

CONFIDENTIAL MEMORANDUM
ATTORNEY WORK PRODUCT

To: District Accountability Committee (DAC) Members
From: Philip Spare, General Counsel
Re: Independent Investigation-Stargate School
Date: December 4, 2018

NOTE: This memorandum is confidential attorney work product being provided to you in your capacity as a member of the DAC for use in the Stargate School charter renewal process only. This memorandum and the information contained herein is strictly confidential and may not be disclosed absent the express written consent of the author.

Investigation Background

In June 2018, the District engaged the firm of Employment Matters-Flynn Investigations Group (EMFIG) to conduct an independent investigation into a series of complaints and reports the district had received regarding Stargate School. Due to the nature of the reports, the number of Stargate employees, parents, and students involved, and the need to retain confidentiality, the investigation was handled as attorney work product. This redacted and summarized review of the investigation report is an effort to balance the need to provide the information necessary for the district DAC to consider Stargate’s charter renewal application with the need to respect the investigation report as attorney work product.

The District became aware of a wide range of issues about Stargate School that were brought to its attention either directly through complaints by Stargate parents and staff members or indirectly through a variety of means, including secondhand accounts, emails, and other documents. Although categorizing those issues defies any simple method of organization, they broadly fall into four categories that formed the basis for the structure of the investigator’s Report: (I) Child safety issues; (II) Questionable organizational practices; (III) Student disability and special education issues; and (IV) Other issues. Some of the topics addressed in the Report arise from specific allegations of misconduct, some from less tangible suspicions or questions about potential misconduct, and others from broader topics that do not directly implicate individual School employees or Stargate Board(“Board”) members, but may nevertheless identify areas of concern about specific people or groups of people. Prior to the investigation organized by the District, several investigations into a variety of matters at Stargate were conducted by the Colorado Department of Human Services and the United States Department of Education’s Office for Civil Rights (“OCR”). Although some of the issues addressed in the

Report touch upon or relate to the subject matter of some of those investigations, it was not the intent of this Report to re-investigate issues already scrutinized by the OCR or to duplicate any portion of the OCR's investigations.

The investigation included interviews with more than 40 Stargate employees (current and former), parents, and students conducted between June 18 and September 4, 2018. Several persons were interviewed on multiple occasions. The investigator attempted to interview approximately five other individuals. Some of those person refused to be interviewed, others did not respond to multiple efforts to contact them. Other sources of information utilized during the investigation included emails, letters, surveys, reports, notices, Facebooks posts, contact logs, and other documents.

Executive Summary

Although the breadth of issues addressed in the Report make it difficult to provide a brief summary, some broad themes emerged during the investigation process. Information provided by witnesses on a wide range of issues indicates that Employee 1 had a tendency to solve problems and overcome challenges through informal, unconventional, and sometimes questionable means rather than following formal policies and protocols. Overall, it appears that Employee 1 tended to favor expediency over formality even if it sometimes meant violating the law, and exposing students and the School to risks, which could result in financial consequences for the School. The investigator was persuaded that Employee 1 acted in what he thought were the best interests of the School, as opposed to his own personal benefit or aggrandizement. Nevertheless, Employee 1's practice of making decisions on an individual basis with little regard for the long-term effects of those decisions, rather than following formal protocols, has clearly led to a significant amount of discontent among parents and staff members alike with respect to a variety of subjects.

Another major theme that arose frequently through the course of the investigation relates to the School's handling of special education and disability matters, particularly with respect to students with social and emotional disabilities. When Stargate was a smaller school, the use of informal means to resolve such issues appears to have worked well enough that the School was able to serve its students without major difficulties. As the School grew, however, the lack of understanding of and appreciation for the importance of formal protocols to deal with special education and disability matters rapidly became problematic. Employee 1's apparent lack of understanding about those subjects in particular appears to have resulted in circumstances where the School failed to devote adequate resources to students who needed services or to respond inappropriately to their needs. Although the School did eventually hire additional staff and commit more resources to such issues, several of those staff members say that the administration continued to lack the appropriate commitment to and appreciation for the needs of students and the staff who tried to support them.

The Board's traditionally limited role and its lack of formal protocols for addressing concerns expressed by parents and staff members appears to have exacerbated many of the issues addressed in the Report. It seems apparent that Employee 1 enjoyed tremendous autonomy, to

the point that he was largely able to operate without any meaningful oversight. And because Employee 1 served as the Board's primary source of information about School matters, even those that implicated his own decision-making, he was able to control what information the Board received. Until very recently, the Board appears to have been willing to extend a significant amount of deference to Employee 1 by accepting his explanations about a variety of matters without seriously questioning the reliability of the information he provided or seeking other sources of information. To some parents and staff members, that approach by the Board created the appearance that Employee 1 was beyond reproach, and that any concerns they had about him would fall on deaf ears if reported to the Board. It also led some parents to conclude that the Board was behind recent initiatives to publicly support Employee 1 in the face of numerous complaints about his performance, particularly with respect to several investigations by the OCR. The result has been a great deal of distrust toward the School's administration and the Board.

Standard of Proof

The standard of proof applied to the allegations addressed in this report was the preponderance of evidence standard applied in most civil court cases addressing equal employment opportunity matters. A preponderance of evidence means that a version of facts or causes is deemed more likely than not the correct version. Thus, the findings articulated here employ the language, "more likely than not" or its counterpart, "less likely than so" in the absence of unqualified corroboration of the subject allegation.

Summary of Findings

Issue 1: The investigator found it more likely than not that the Board did not contact law enforcement or initiate a Title IX investigation in response to allegations of sexual touching against Employee 2 because: (1) Employee 2 was no longer a school employee by the time the Board learned about the matter; (2) the Board relied primarily on Employee 1 for information about the matter; (3) the Board did not have a formal system in place for the submission and disposition of complaints; (4) the Board did not perceive that its role included conducting Title IX investigations or reporting concerns to law enforcement; and (5) the Board deferred to the OCR's investigation of the matter after Parent 1 filed a complaint.

Issue 2: The investigator found that Board member 1 conducted an inquiry into the complaint about Employee 1 deliberately driving a golf cart toward Student 1 by having an in-person conversation with Parent 2 and talking to Employee 1 about it; that the Board decided as a group to verbally reprimand Employee 1 close to the time when Parent 2 made his complaint; and that neither Board member 1's inquiry nor the ensuing verbal reprimand of Employee 1 were documented.

Issue 3: The investigator found that Board member 2 conducted an inquiry into the allegation that Employee 1 and Employee 3 operated a school bus without the appropriate license by speaking to two witnesses and then verbally reporting her findings to the Board; that an unknown Board member spoke to other unidentified witnesses; that the Board decided as a group to verbally reprimand Employee 1; that the Board verbally reprimanded Employee 1 during an

executive session shortly after becoming aware of the allegation; and that the Board prepared no documentation regarding the matter.

Issue 4: The investigator found it more likely than not that Employee 1 refused to allow staff to call an ambulance for a suicidal student in 2016 because: (1) the student did not appear to be in medical distress; (2) he felt like Employee 4 tended to overreact in such situations; and (3) the student's mother agreed to pick up the student. This investigator finds it more likely than not that Employee 1 refused to allow staff to transport or escort a suicidal student to the ER during the 2016/17 school year because: (1) he felt like Employee 4 tended to overreact in such situations; (2) School policy is to contact parents or guardians before students are taken to the hospital; and (3) School staff should not transport students to the hospital themselves.

Issue 5: The investigator found that several hiring decisions by Employee 1 have caused significant suspicion among staff members that Employee 1 made hiring and promotion decisions based on his personal relationships with candidates. Many staff members also say they feel like Employee 1 maintained an "inner circle" of favored employees, though opinions differ about who was included in that group. The investigator found it less likely than so that there is a culture of heavy alcohol consumption among administrators and other staff members.

Issue 6: The investigator is unaware of any information suggesting that Employee 1 conducted a "purge" of older female teachers, and no contemporary witnesses asserted such an allegation.

Issue 7: The investigator found that the Board discussed and/or looked into some of the issues identified by Parent 3, Employee 4, and Employee 5 about various alleged behaviors and decisions by Employee 1, that the Board made some procedural and structural changes as a consequence, but that the Board did not document any of its efforts in that regard.

Issue 8: It is undisputed that Community member 1 volunteered as an employee at Stargate without receiving any compensation until the School hired Employee 6, and that the Board approved of Community member 1's role. The investigator found it less likely than so that Community member 1 asked Employee 6 to add time to a timecard and then give the money from that extra time to Community member 1. The investigator found it less likely than so that Community member 1 attempted to use the temporary position as a Stargate volunteer to cultivate their own business with other schools.

Issue 9: The investigator found that Employee 1 hired Employee 7 over Employee 5's objections about Employee 7 having a criminal record that included a conviction for child abuse because of the amount of time that had passed since the incidents giving rise to the charges, the fact that other schools had recently employed Employee 7, and because Employee 1 says Employee 8 approved the hiring decision.

Issue 10: The investigator found it more likely than not that Employee 1 instructed Employee 9 to destroy students' records for the prior school year. (The School was subsequently issued a citation by the Colorado Department of Human Services for failure to maintain student records, and a related citation for failure to report potential child abuse arising out of an allegation of student-on-student sexual assault).

Issue 11: The investigator found it more likely than not that Employee 1 falsely informed the District that Employee 10 taught course A but not course B to conceal the fact that Employee 10 was teaching course B without the required endorsement, but less likely than so that Employee 1 instructed Employee 11 to recode the classes taught by Employee 10.

Issue 12: The investigator found it more likely than not that Employee 1 allowed Employee 2 to use Stargate's facilities for approximately two years, but that Employee 2 paid the School for only three weeks of that time.

Issue 13: The investigator found it more likely than not that Employee 1 and Employee 12 provided a favorable but strictly factual letter to Student 2 because Student 2 had not yet been charged with a crime, and they felt like they needed to be careful about treating Student 2 fairly. The investigator found it less likely than so that Parent 4's later donation of several hundred dollars to the School influenced decisions about the letter.

Issue 14: The investigator found it less likely than so that Employee 1 allowed students with sub-125 test scores to be admitted to Stargate's K-8 program.

Issue 15: The investigator found it more likely than not that Stargate has occasionally paid the IQ test fees for applicants who could demonstrate a financial need, but less likely than so that it has done so for politically favored families or families who supported the School financially, or that Employee 1 ever personally paid any applicants' IQ test fees.

Issue 16: The investigator found that: (1) Employee 1 did not notify the District about the two violation notices issued by the Colorado Department of Human Services because his perception is that Employee 9 or Employee 5 had the responsibility to do so; (2) Employee 5 did not notify the District because Employee 5 was unaware of any expectation to do so; and (3) Employee 9's stance is unknown because Employee 9 declined to participate in the investigation.

Issue 17: The investigator found it more likely than not that Company 1 paid the airfare and hotel for Employee 1 to attend a business conference, but finds it less likely than so that the outdoor digital sign subsequently purchased by Stargate came from Company 1.

Issue 18: The investigator found it more likely than not that Employee 1 and Board member 2 asked for extra security to attend Board meetings because the meetings had become highly contentious and because several parents had expressed safety concerns to them. The investigator found it less likely than so that requesting extra security presence was intended to intimidate parents or that anyone associated with Stargate requested the presence of a K-9 officer at a meeting.

Issue 19: The investigator found it more likely than not that Employee 1 terminated Employee 13's employment because he had reason to believe that Employee 13 had been falsifying timecards for an extended period of time.

Issue 20: The investigator found it less likely than so that Stargate imposed an excessive fee on Parent 5 for documents produced in response to a CORA request.

Issue 21: The investigator found it less likely than so that Board members and Stargate stakeholders have colluded with each other in an effort to attack dissident parents on social media.

Issue 22: The investigator found it more likely than not that Employee 1 placed an image of a celebrity's face over the image of a student's face on a poster of an athletic team because (1) Employee 1 was reluctant to remove the poster because he perceived it as a "showpiece"; (2) he did not appreciate the impact that the poster would have on the victim and the victim's relative; and (3) he believed that people who viewed the poster would not recognize that he placed the celebrity's image over the student's image without looking at it up close.

Issue 23: The investigator found it more likely than not that Stargate administrators, particularly at the elementary level, have struggled to provide adequate services to students in the form of IEPs and 504 plans because of insufficient staffing and a lack of understanding about the School's legal obligations, and that concerns about those issues have contributed to some staff members' decisions to leave the School. This investigator finds it less likely than so that Stargate administrators have engaged in a systematic, deliberate effort to deny services to students or to prevent students with special needs from enrolling at the School.

Issue 24: The investigator found it more likely than not that Employee 1 suspended Student 3 because of kicking a fellow student, and less likely than so that Employee 1's decision was influenced by Parent 3's efforts to obtain a 504 plan for the student. The investigator also found it more likely than not that the School kept Student 3 in the office while waiting for a parent to pick up the student so the suspension paperwork could be provided to her, that Parent 3 came to the office to retrieve her student but refused to accept the paperwork, and that Employee 1 followed Parent 3 to a car in an attempt to give Parent 3 the paperwork. The investigator found it less likely than so that the School deprived Student 3 of a meal on a day when the student misplaced his lunch.

Issue 25: The investigator found that Employee 1 instructed Employees 4 and 14 to reduce the length of their training presentations by half because he was concerned that longer presentations would cause the audience to lose interest. (The training presentations at issue were required pursuant to the terms of an OCR Resolution Agreement for an alleged Section 504 violation by Stargate).

Issue 26: The investigator found it less likely than so that Employee 1 colluded with the Board to intimidate Student 4 from returning to school.

Issue 27: The investigator found that Stargate did not investigate Employee 15's claim that an inappropriate comment by Employee 16 "was not the first comment" that made her or Employee 17 uncomfortable because the investigator, Employee 18, limited the investigation to issues identified by Employee 17.

Issue 28: The investigator found it less likely than so that Employee 1 told Community member 2 that Employee 17 was the source of a complaint against Employee 16, but more likely than not that Employee 1 told Employee 19 that he felt like Employee 17 had retaliated against Employee 16 by making that complaint.

Issue 29: The investigator found that after learning about an incident when Student 5 was inappropriately touched by a fellow student, Employee 1 spoke to both students, obtained written statements from them, and called their parents, but that he did not call CPS.

Other Issues

During the course of the investigation, a number of issues or complaints were brought to the investigator's attention. Because these matters were outside the scope of the investigation, no findings were made regarding them. The issues/allegations could be broadly characterized as follows:

- Unprofessional conduct and retaliation by Stargate administrators;
- Non-responsiveness by the Stargate Board to complaints;
- Failure of the School to adequately support teaching staff;
- Allegations of sexual harassment / sexual assault / Title IX violations and related retaliation in addition to those previously the subject of complaints to and within the jurisdiction of the OCR;
- Section 504 retaliation;
- Lack of transparency/accountability of Board governance structure;
- Deficient educational programming and curriculum support infrastructure;
- Favoritism and violation of internal policies and by-laws;
- Failure of Stargate administrators to address student bullying.

Finally, unrelated to the investigation, there are open legal issues related to the authority of Stargate under Colorado and federal law to limit enrollment to students who pass an IQ test with a 125 cut score, and to require parents to pay for a private IQ test as a condition of submitting an application for admission to the School.

End of Memorandum.