

Robert Shaner, Ph.D.
Superintendent

Debi Fragomeni
Assistant Superintendent for Instruction



ROCHESTER
COMMUNITY SCHOOLS

PRIDE IN EXCELLENCE

Dana J. Taylor, CPA, CFF
Assistant Superintendent for Business

Elizabeth A. Davis
Chief Human Resource Officer

501 W. University Drive, Rochester, Michigan 48307 • Phone: 248.726.3000 • Fax: 248.726.3105

June 25, 2018

COPY

Certified Mail – Return Receipt Requested

Mr. & Mrs. [REDACTED]
[REDACTED]
Rochester Hills, MI [REDACTED]

Dear Mr. and Mrs. [REDACTED]

As you know, the administration of the Rochester Community Schools (the District) charged your son, [REDACTED] with violating Item 17 of the District's Student Code of Conduct (Electronic Tampering). You requested a hearing on the charges, which took place on May 31, 2018, before District Hearing Officer, Mrs. Debi Fragomeni, the District's Assistant Superintendent for Instruction. You and [REDACTED] attended the May 31, 2018 hearing and were represented by attorney [REDACTED]. The District was represented by attorney Robert Lusk. The hearing was recorded. Based on the evidence presented at the hearing, Hearing Officer Fragomeni issued her written decision on June 4, 2018 concluding [REDACTED] had violated the District Student Code of Conduct, as charged, and permanently expelling [REDACTED] from the District; subject to his right to petition for reinstatement after 150 school days.

Through your attorney, you appealed the Hearing Officer's decision to a District Expulsion Appeals Panel. The hearing before the Panel was scheduled and took place on June 21, 2018. The Panel was properly constituted and I served as the Panel's spokesperson. You and [REDACTED] were represented by attorney [REDACTED]. The District's administration was represented by attorney Lusk. The Panel's hearing was recorded.

There was no dispute [REDACTED] had, in fact, violated Item 17 of the District's Student Code of Conduct. Specifically, on May 8, 2018, [REDACTED] admitted to Assistant Principals [REDACTED] and [REDACTED] that, two years previously, he and another student installed software on the District's computer system that permitted him and the other student to access District cameras and student and teacher files. [REDACTED] also admitted the other student had used District resources to "mine" for crypto-currency, in an effort to make a profit. [REDACTED] further admitted he had used a student log-in to gain access to the open internet at school and had given the same password to other students.

The issue in dispute at the Panel hearing was whether the punishment, permanent expulsion, was too harsh in light of the facts and circumstances. Attorney [REDACTED] also argued the Hearing Officer had not complied with Section 1310d¹ and 1310c(1)² of the Revised School Code. Section 1310d creates a presumption against long-term suspension and expulsion and requires the District to consider seven factors to rebut the presumption. Section 1310d also provides the method the District uses to consider these factors is within the District's "sole discretion." Separately, Section 1310c(1) requires the District to consider restorative practices in addition to or in lieu of suspension or expulsion.

The record of the hearing before Hearing Officer Fragomeni reflects she did, indeed, consider the seven factors identified by Section 1310d. These factors were discussed by attorneys [REDACTED] and Lusk at length on the record and Hearing Officer Fragomeni's decision specifically referenced her consideration of the Section 1310d factors.

¹ MCL 380.1310d

² MCL 380.1310c(1)

The Section 1310d factors were again considered by the Panel. The Panel considered them as follows:

Age. ██████ was born on ██████. Thus, his violation of the District's Student Code of Conduct occurred between the ages of approximately 13 and 15. At these age, the District expects students to understand and conform their behavior to the requirements of the Student Code of Conduct. ██████ was also old enough to understand his behavior allowed him to access confidential files and communications.

Disciplinary History. ██████ violated the Student Code of Conduct on December 17, 2017 when, separately, he "hijacked" a District program running in another classroom. On that occasion, ██████ was counseled that similar violations may lead to more serious disciplinary consequences. Yet, apparently, he did not divulge the much more serious offenses upon which the instant charges are based.

Disability. ██████

Seriousness of the Incident. Attorney ██████ noted that ██████ had not committed a mandatory expulsion offense, such as weapons possession. Attorney Lusk pointed out, and the Panel agrees, that, nevertheless, ██████ offense was very serious. ██████ offense was pre-meditated, deliberate and on-going. ██████ accessed records protected by federal and state law and subjected himself and the District to liability under those laws. Furthermore, the District incurred significant expense to remedy ██████ violation, including: re-assigning a District employee to investigate the depth of ██████ penetration into the District's computer systems, purchasing additional software to correct ██████ penetration and the time it took all District personnel and students to re-boot their computers after the new software was installed.

Threat to Safety. ██████ did not directly threaten the safety of staff or students. However, the Panel found his misconduct had great potential for indirectly threatening the safety and well-being of staff and students by invading their privacy, including special education and health records.

Restorative Practices. The Hearing Officer and the Panel considered whether restorative practices might be used in addition to or in conjunction with suspension or expulsion. However, this is not a case in which the Hearing Officer or the Panel concluded restorative practices were particularly helpful. Restorative practices would not undo ██████ breach of the privacy rights of staff and students whose accounts were accessed. Restorative practices would not compensate the District for the lost time of the employees who were re-assigned to investigate and correct ██████ misconduct. Restorative practices would not compensate all District users for financial impact of the reassignment, the additional software the District purchased to fix and prevent future similar misconduct or the time spent by the thousands of staff and students who were then required to update their computers.

Lesser Punishment. The Hearing Officer and the Panel did not believe a lesser punishment would be sufficient to deter ██████ and other student from engaging in similar misconduct in the future. Many students enjoy the "bragging rights" that attach to hacking into an institution's computers. Moreover, despite two opportunities (before the Hearing Officer and the Panel) ██████ and his representatives did not offer a satisfactory explanation for his two-year long on-going pattern of misconduct or his failure to report his misconduct, even after being reprimanded for similar, albeit less serious, misconduct in December 2017. These factors, seen together,

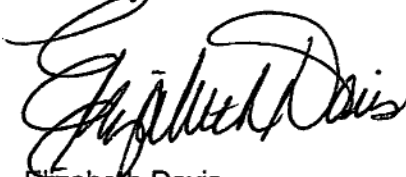
justify a penalty that will deter [REDACTED] from further, similar misconduct, and, at the same time, discourage other students from engaging in similar misconduct.

Accordingly, the Panel affirms Hearing Officer Fragomeni's decision to expel [REDACTED] from the District. You may contact Ms. Carrie Lawler [REDACTED] to obtain information about alternative methods for continuing his education and petitioning the District for readmission after 150 school days from the date of Hearing Officer Fragomeni's decision. In the meantime, and unless the District grants a petition for reinstatement, [REDACTED] is prohibited from being present on any premises owned or used by the District. [REDACTED] is also prohibited from being present at any District-related function, regardless whether that function is conducted on or away from premises owned or used by the District.

Notwithstanding today's decision, that Panel recognizes that [REDACTED] is a young man with many strengths. The District expects [REDACTED] will continue his education during his expulsion and his parents will petition for reinstatement and commit [REDACTED] to taking those steps that will facilitate his re-admission to the District and eventual graduation.

Question or comments concerning the Panel's decision may be addressed to the undersigned or, if from attorney [REDACTED] to Mr. Lusk.

Sincerely,



Elizabeth Davis
Chief Human Resource Officer

cc: Mrs. Debi Fragomeni, Assistant Superintendent for Instruction
Mrs. Carrie Lawler, Executive Director of Secondary Education
[REDACTED] Assistant Principal, [REDACTED]
Mr. Robert Lusk, Lusk & Albertson, PLC
Counseling Office, [REDACTED]
Student Enrollment Office