

**From:** Rachael Rogers <[Rachael.Rogers@evergreenps.org](mailto:Rachael.Rogers@evergreenps.org)>  
**Sent:** Tuesday, December 7, 2021 6:43 PM  
**To:** Ginny Gronwoldt <[Ginny.Gronwoldt@evergreenps.org](mailto:Ginny.Gronwoldt@evergreenps.org)>; Rob Perkins <[Rob.Perkins@evergreenps.org](mailto:Rob.Perkins@evergreenps.org)>; Julie Bocanegra <[Julie.Bocanegra@evergreenps.org](mailto:Julie.Bocanegra@evergreenps.org)>; Victoria Bradford <[Victoria.Bradford@evergreenps.org](mailto:Victoria.Bradford@evergreenps.org)>  
**Subject:** FW: Final summation of your initial findings

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**From:** [Rick Kaiser](#)  
**Sent:** Tuesday, December 7, 2021 1:55 PM  
**To:** [Rachael Rogers](#)  
**Subject:** Re: Final summation of your initial findings

**EXTERNAL MESSAGE:** Do not click on any links or attachments unless you know the content is safe.

Correct.

Best Regards,

Rick Kaiser  
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On Dec 7, 2021, at 13:24, Rachael Rogers <[Rachael.Rogers@evergreenps.org](mailto:Rachael.Rogers@evergreenps.org)> wrote:

Dear Rick,

I am writing to summarize the salient information you shared from your initial investigation.

### **Complaints and Initial Findings**

You indicated that you were investigating complaints from two administrative employees against Superintendent Michael Merlino. In your investigation thus far you interviewed Superintendent Merlino twice, each complainant, and three witnesses.

You conclude that a rebuttable presumption exists that Mr. Merlino has retaliated against one of the administrative employees. I'll refer to her as "the administrative employee." You also conclude that on several occasions Mr. Merlino abused his power.

### **Complaint by Administrative Employee**

Mr. Merlino and the administrative employee had a great relationship for years; Mr. Merlino conferred often with her. This good relationship

started to fray after Mr. Merlino began a romantic relationship with another District employee who he wanted to promote. The administrative employee, in her role as a personnel administrator, explained to Mr. Merlino that she believed this would be an inappropriate promotion given the appearance of fairness and possible conflicts. After Mr. Merlino persisted in wanting to hire his new girlfriend, the administrative employee felt it was her duty to notify the School Board and District legal counsel. School Board members agreed that it would be inappropriate for Mr. Merlino to promote his girlfriend. After Mr. Merlino explained to his girlfriend that she would not be promoted, she broke up with Mr. Merlino on the spot (they later reconciled).

The administrative employee is responsible for the matter coming to the School Board's attention and the Board is ultimately responsible for why the position was not filled. Mr. Merlino knew that she was the one who notified the Board, and that she did so upon advice of District legal counsel. Mr. Merlino blames his romantic partner not getting this position on the administrative employee and District counsel. The administrative employee has said she was and is opposed to Mr. Merlino dating the District employee.

After this incident, the administrative employee described how she was disinvited/not invited to attend meetings where HR matters were discussed, she was alienated, marginalized, and unfairly blamed by him for certain matters; Mr. Merlino's response was to deny any wrongdoing..

You also received information from the District's attorney that his relationship with Mr. Merlino changed after Mr. Merlino learned that the attorney provided advice (which Mr. Merlino did not like) about the promotion of Mr. Merlino's romantic partner.

More than one witness substantiated the claim that Mr. Merlino disparaged, marginalized, and treated the administrative employee in ways that he did not treat others.

In your interviews with Mr. Merlino, he tried to justify his behavior by complaining that the administrative employee is not a "team player," and that administration feared her (but you noted to us it's not uncommon for employees to fear administrators in her position). Mr. Merlino indicated that, despite Mr. Merlino working closely with the administrative employee prior to her notifying the Board of the legitimate concerns about the promotion of his girlfriend, Mr. Merlino now takes the position that the administrative employee is not flexible and only agrees on a course of action if it works for her. You indicate that Mr. Merlino prepared an evaluation of the administrative employee in which he gave her the lowest marks possible in most categories – again, even though the administrative employee has previously had exemplary evaluations and even though Mr. Merlino previously relied heavily on the administrative employee..

### **Abuse of Power Complaint**

You reviewed various District Policies, including 5281 (Disciplinary Action and Discharge) and 5271 (Reporting Improper Governmental Action). This has informed some of your conclusions.

In particular, your investigation revealed an incident that occurred in August 2020 from which you find a conclusion can be drawn that Mr. Merlino engaged in an abuse of power. At that time, the supervisor of Mr. Merlino's girlfriend realized that the girlfriend had not updated an absence on the District database as required. The supervisor sent an email to Mr. Merlino's girlfriend, reminding her to update her absences. The presumption is then that Mr. Merlino's girlfriend went straight to Mr. Merlino, upset about this email; Mr. Merlino then raised this issue with the Board saying that the supervisor was targeting his girlfriend. This is an abuse of power. Instead of telling his girlfriend to discuss with her supervisor or appropriately raise the issue up the chain, he interjected himself into the situation and he went straight to the Board.

You learned about a scenario involving an investigator hired by the District to investigate a complaint against Mr. Merlino related to the hiring of a position within the District. Mr. Merlino attempted to terminate the investigator because he was concerned the investigation was taking too long. However, Mr. Merlino never spoke to the District employee leading the investigation about what he was trying to do. Instead, Mr. Merlino contacted a lawyer, but not the District's lawyer, to seek help with terminating the investigator. You noted that an accused does not get to choose the person who conducts the investigation into their own alleged bad actions. This was a clear abuse of power and misconduct under District Policy 5281. Mr. Merlino tried to justify his behavior by explaining that he believed that the administrative employee had counseled the complainant of that investigation (although no evidence has ever been found of that) and that the administrative employee and District legal counsel had conferred about the investigation.

In May 2020, another incident occurred. The administrative employee opposed the termination of another employee. This employee sent numerous emails regarding the department in which Mr. Merlino's girlfriend worked; some of the emails, or at least one, became heated. Mr. Merlino's girlfriend forwarded to Mr. Merlino some of these emails. Rather than staying out of the situation given his romantic involvement with his girlfriend, Mr. Merlino went to the administrative employee and said he wanted this employee fired. Again, this is a possible abuse of power as there no evidence Mr. Merlino's girlfriend wanted this employee fired. At the very least, it is inappropriate. Mr. Merlino doesn't remember (and thus doesn't refute) saying he wanted this employee fired. The administrative employee is insistent he did say that. Mr. Merlino tried to justify his conduct by saying he has an open-door policy and anyone within the District can tell him anything at any time. Mr. Merlino produced an email to that effect; but the email also indicated that the situation was apparently resolved.

### **Lack of Credibility by Mr. Merlino**

Mr. Merlino has said in his interviews with you that he wants “team players” to work for the District and s specifically wants someone he can trust. He indicated that the administrative employee is not someone he can trust. However, Mr. Merlino’s assertion of wanting a team environment lacks credibility when it comes to the administrative employee.

There are four examples of Mr. Merlino’s behaviors/actions that show Mr. Merlino’s abuse of power and retaliation against the administrative employee.

- 1) First, while supposedly wanting to create a team environment, Mr. Merlino turned around, behind the back of the administrative employee, and tried to get her fired by the Board (more than once). We now know that, while he was supposed to be mediating his disputes with the administrative employee, he was acting in a duplicitous manner by trying to get her fired.
- 2) Second, Mr. Merlino prepared a draft evaluation for the administrative employee (never given to her) purported to be for the period of time through December 2020
  - a. In this evaluation, Mr. Merlino gives the administrative employee the lowest scores possible in most categories. This is the worst evaluation you have ever read; it is not balanced at all. You described the evaluation as a “hatchet job”. In this evaluation you note that Mr. Merlino is not attempting to empower the administrative employee to succeed and does not align with his desire to have a “team player,” or to be a “team player” himself.
  - b. Of note is that you learned Mr. Merlino previously (that is, before the situation with his girlfriend) had described the administrative employee as the best at her job in the entire State and well-deserving of a raise in summer of 2019 to the Board.
- 3) On two separate occasions Mr. Merlino has provided external resources to others in the School District in an attempt to engage in what I will refer to as “character assassination.”
  - a. He provided information to the Board directly and implied he believed the administrative employee suffered from a personality disorder.
  - b. This is evidence that Mr. Merlino perceives the administrative employee as a threat and he is trying to cut off her lines of escape.
  - c. This conduct served no legitimate professional purpose.

- 4) During a meeting with certain cabinet level staff, Mr. Merlino told the cabinet members a very personal story about the administrative employee's childhood.
  - a. This was not Mr. Merlino's story to share – he had no permission from the administrative employee to do so.
  - b. Mr. Merlino does not recall this conversation (and thus does not refute it). The employee who reported the conversation has no reason to lie and has impeccable credibility.

Your summation is that this is at least a “decent case of a whistleblower being retaliated against” and an abuse of power.

Please let me know if you disagree with any of the above.

Thank you,  
Rachael Rogers

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