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**NEW ROCHELLE CITY SCHOOL DISTRICT**

**APEX II**

**Special Counsel's Investigation Report**

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Dated: October 3, 2019

\*\*\*\*\* Privileged & Confidential \*\*\*\*\*

*I. Introduction*

During the course of the undersigned's investigation of the *APEX Learning* Online Credit Recovery Program<sup>1</sup> at New Rochelle High School ("NRHS") (hereinafter the "APEX Program"), I interviewed [REDACTED] During such interview, [REDACTED]

In response to my request for examples [REDACTED]

During the weeks following my interview [REDACTED]

On July 26, 2019, I interviewed [REDACTED]

I concluded my questioning of [REDACTED]

[REDACTED] on this matter, as he had no union representation present, and I became concerned he might ultimately become the subject of discipline.

<sup>1</sup> *APEX Learning* was the online platform through which NRHS offered online courses and credit recovery to students during the period 2014 through the conclusion of the 2017-18 school year. [REDACTED]

<sup>2</sup> Appendix #1-a and Appendix #1-b: Photographs of the pertinent pages, p. 1 and p. 20, are annexed to this report.

[REDACTED] was advised of his right to have union representation present for the interview, however, he elected to proceed without it.

I

The issues investigated by the undersigned were:

## ***II. Summary of Investigative Efforts***

This investigation consisted of review of relevant laws and regulations, searches of the School District's email system, retrieval of data from the *eSchoolPLUS* system, verbal and written inquiries to *APEX Learning*, and interviews of School District personnel. Eight witnesses were formally interviewed during the course of this investigation, including:

## ***III. Relevant Laws & Regulations***

***Diploma Requirements:*** Pursuant to Section 100.5 of the Regulations of the Commissioner of Education (the "Commissioner's Regulations"), students in the general education program are required to earn at least 22 units of credit to receive a high school diploma, inclusive of: 4 units of credit in English; 4 units of credit in social studies; 3 units of credit in science; 3 units of credit in mathematics; 1 unit of credit in languages other than English ("LOTE"); 1 unit of credit in visual art, music, dance and/or theatre; 2 units of credit in physical education ("PE"); 0.5 unit of credit in health; and 3.5 units of credit in electives. 8 N.Y.C.R.R. §100.5(a).

As per Section 100.1(a) and (b) of the Commissioner's Regulations, a *unit of credit* is earned by "the mastery of the learning outcomes set forth in a New York State-developed or locally developed syllabus for a given high school subject, after a student has had the opportunity to complete a *unit of study* in the given subject matter area". *Unit of study* is defined as, "at least 180 minutes of instruction per week throughout the school year, or the equivalent." 8 N.Y.C.R.R. §100.1(a) and (b).

***Credit Recovery:*** Section 100.5(d)(8) of the Commissioner's Regulations authorizes school districts to offer students who previously failed a course required for graduation, the opportunity to make-up incomplete or failed courses and obtain credit. 8 N.Y.C.R.R. §100.5(d)(8). In regard to make-up credit programs, also known as "credit recovery programs," the Commissioner's Regulations authorize school districts to select the specific format of the program(s) through which

credit-recovery is offered, and the following differing approaches are listed in the regulation as acceptable options:

- repeating an entire course;
- taking the course again as part of a summer school program;
- receiving intensive instruction in the deficiency areas of the course; or
- \*digital learning (online study) that:
  - is comparable in scope and quality to regular classroom instruction;
  - provides for documentation of satisfactory student achievement; and
  - includes regular and substantive interaction between the student and the teacher who is certified in the subject matter area and providing direction and/or supervision.

The above list is not exhaustive meaning, it's within the discretion of local school districts to offer a credit recovery program that is different from the approaches listed above. However, the Commissioner's Regulations specifically state that any credit recovery program offered to students must:

- be aligned with the applicable New York State learning standard;
- satisfactorily address the student's course completion deficiencies and individual needs; and
- ensure that the student receives equivalent, intensive instruction in the subject matter area provided under the direction and/or supervision of a teacher who is certified in the subject matter area.

The Commissioner's Regulations further provide that a student's participation in a credit recovery program must be approved by a school-based panel consisting of, at a minimum, the principal, a teacher in the subject area for which the student must make up credit, and a guidance director or other administrator. 8 N.Y.C.R.R. §100.5(d)(8).

Online Courses Generally: In regard to online courses taken for credit, Section 100.5(d)(10) of the Commissioner's Regulations states, in pertinent part, that school districts must ensure that:

- such courses are aligned with the applicable New York State learning standard;
- such courses provide for documentation of student mastery of the learning outcomes;
- instruction is provided by or under the direction and/or supervision of a certified teacher;
- such courses include regular and substantive interaction between the student and the certified teacher providing direction and/or supervision; and
- instruction satisfies the *unit of study* and *unit of credit* requirements in Section 100.1(a) and (b) of the Commissioner's Regulations (described above). 8 N.Y.C.R.R. §100.5(d)(8).

**IV. Interviews** [REDACTED]

On July 31 and September 6, 2019, the undersigned met with [REDACTED]

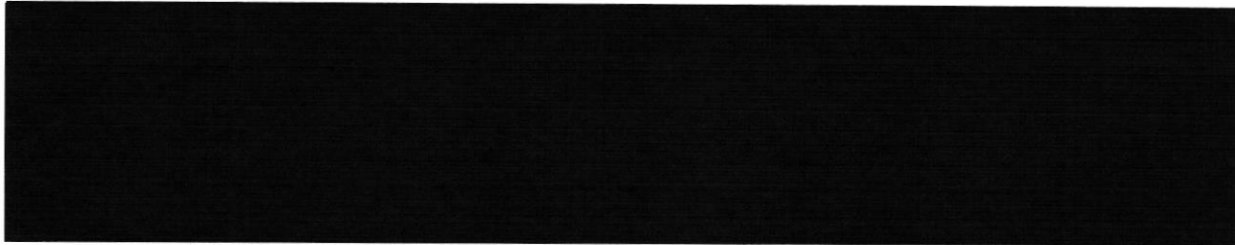
[REDACTED]

The Guidance File

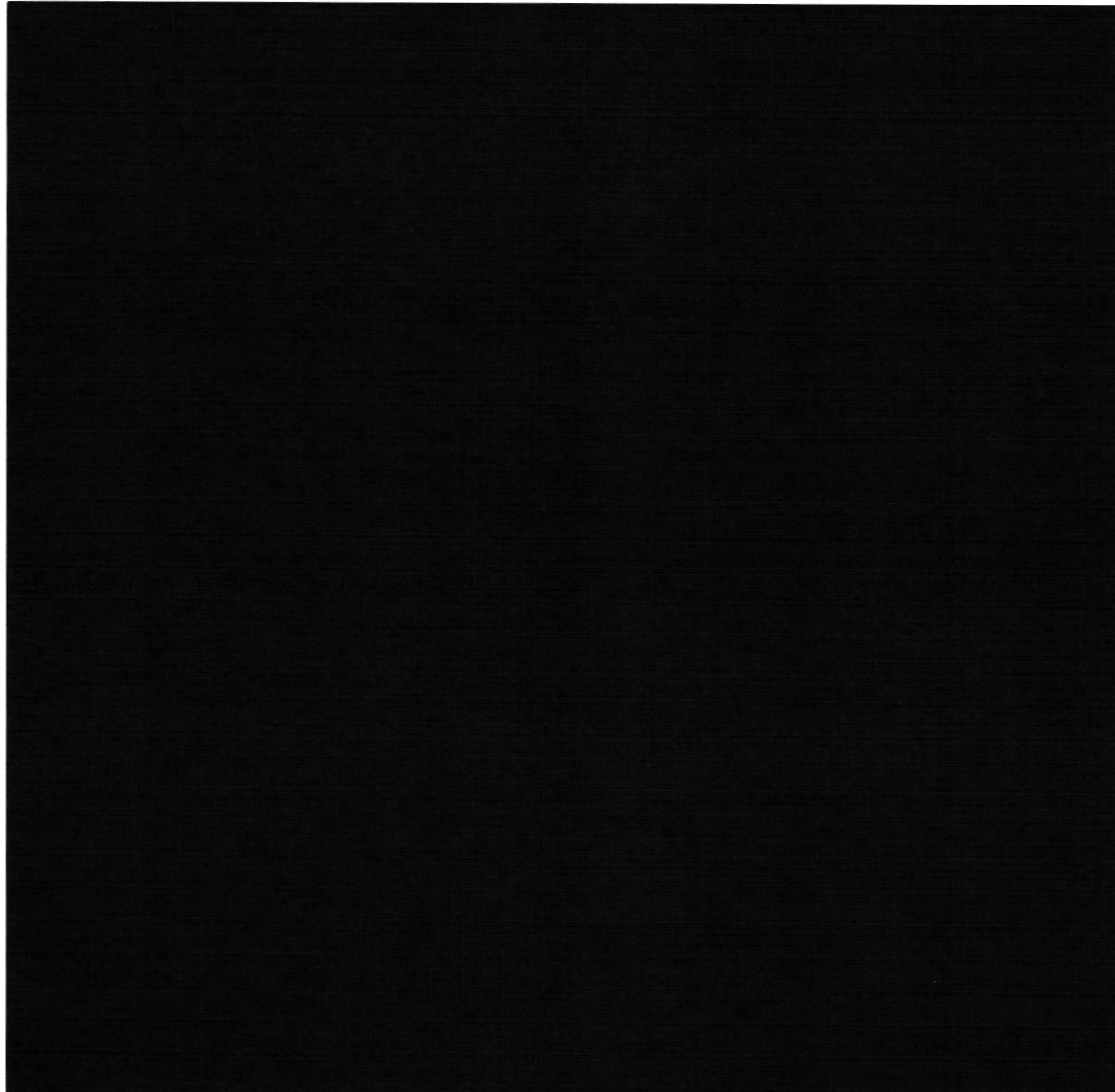
[REDACTED] The student's file is then moved to storage and maintained for a period of six years. The undersigned located the documentation annexed hereto as Appendix #3

The Graduation List & Certification Process:

Student Transcripts:

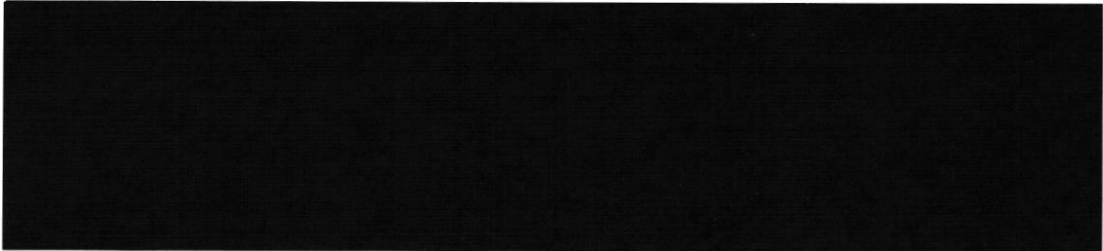
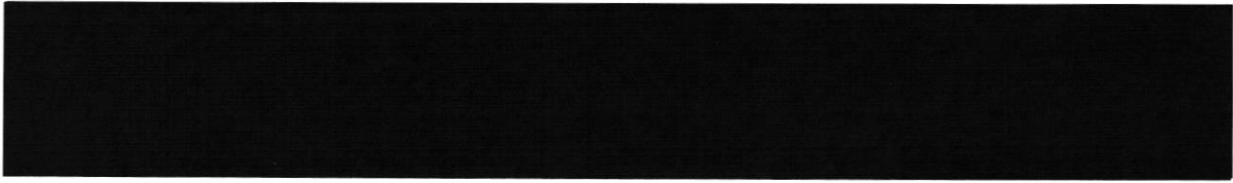


V. Audit of [redacted]



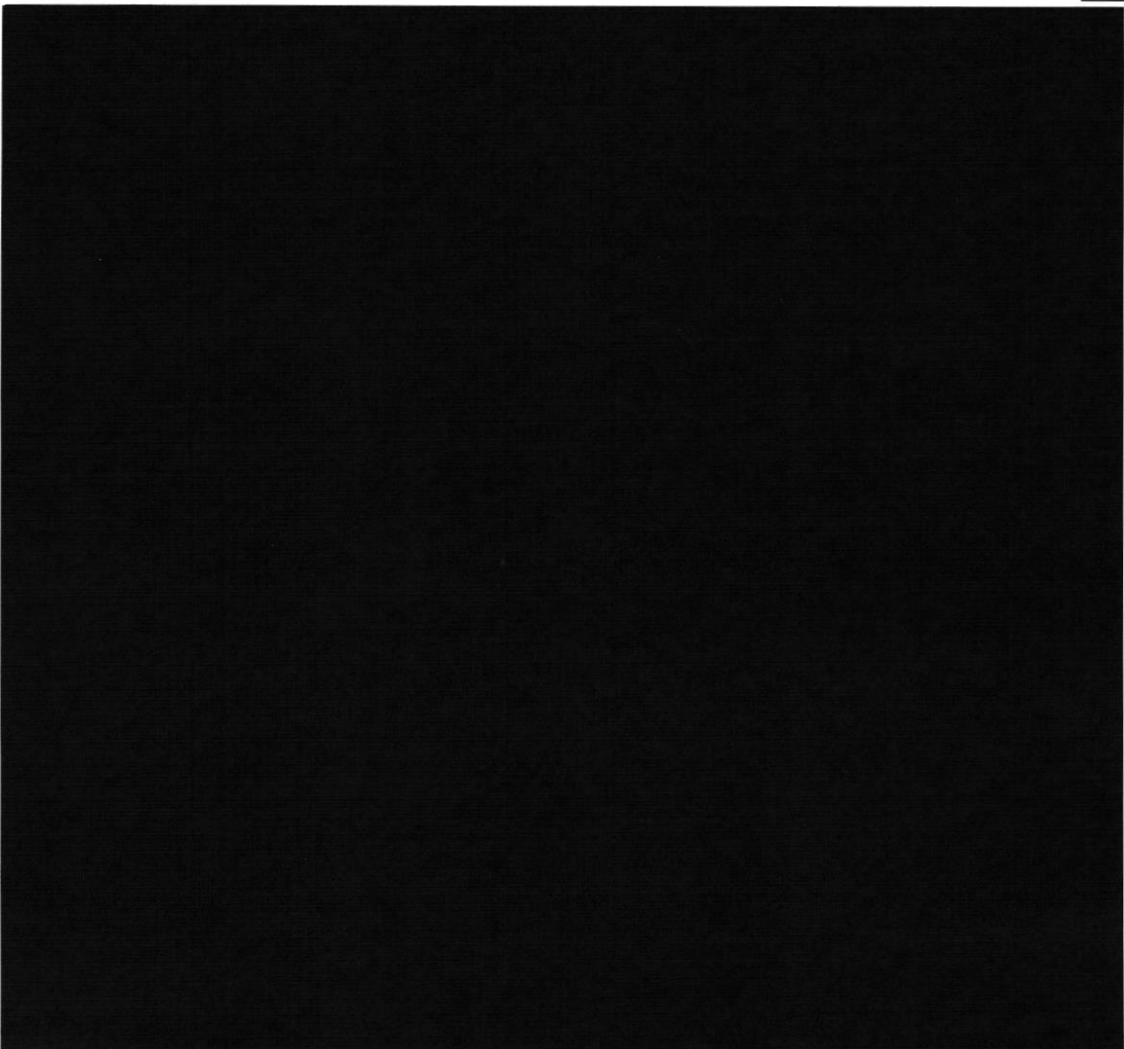
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<sup>4</sup> See Appendices 7 and 8.



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iv.

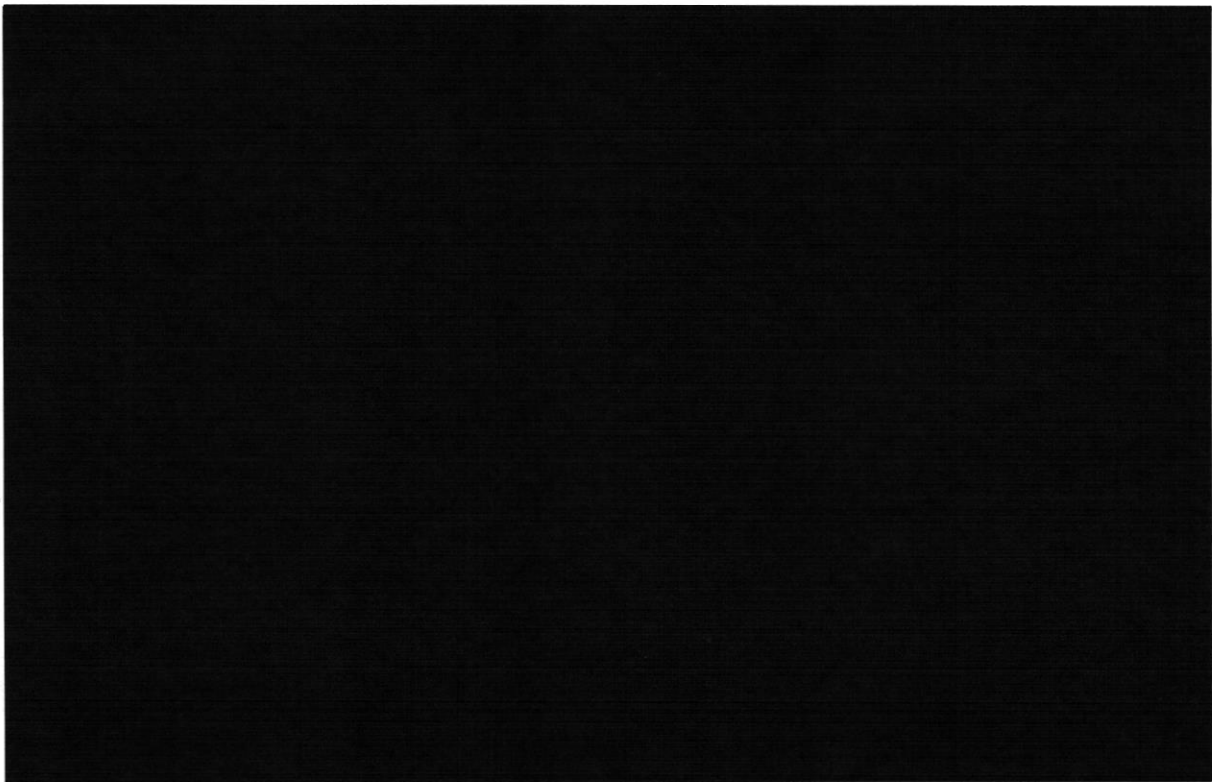
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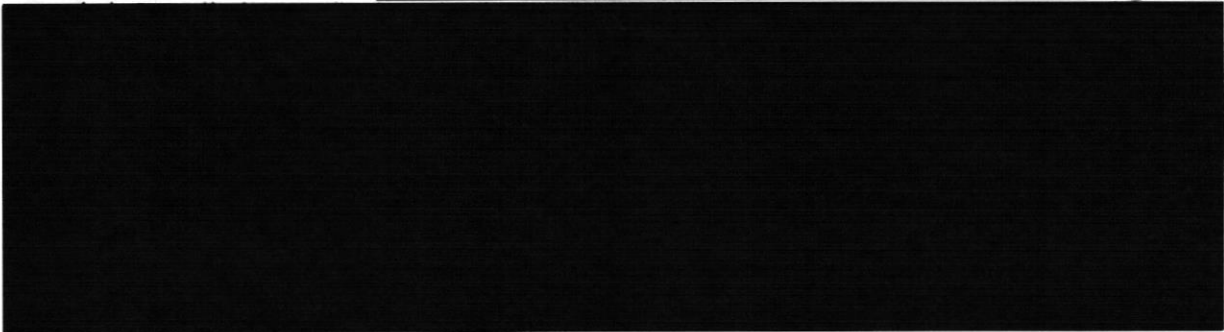
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iii.



Summary of Audit Findings:



**VI. Information Extracted from Google Vault Search Results:**

The School District's IT Department was asked to conduct a search for all emails, sent or received, by the following individuals





March 6, 2018:

March 29, 2018:

March 29, 2018:

April 9, 2018:

May 1, 2018:

May 2, 2018:

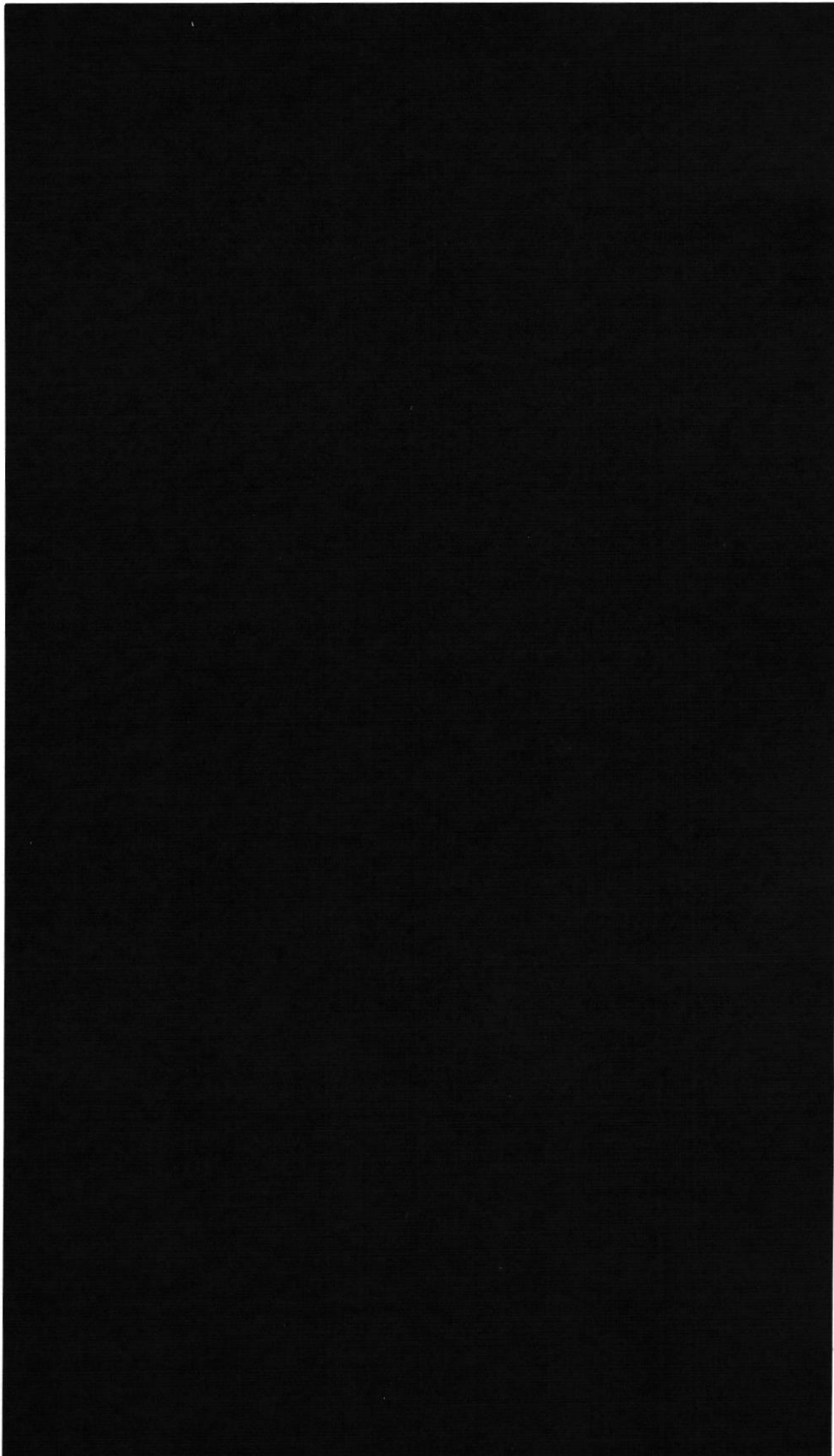
May 3, 2018:

May 16, 2018:

May 16, 2018:

May 22, 2018:

May 23, 2018:



May 30, 2018:

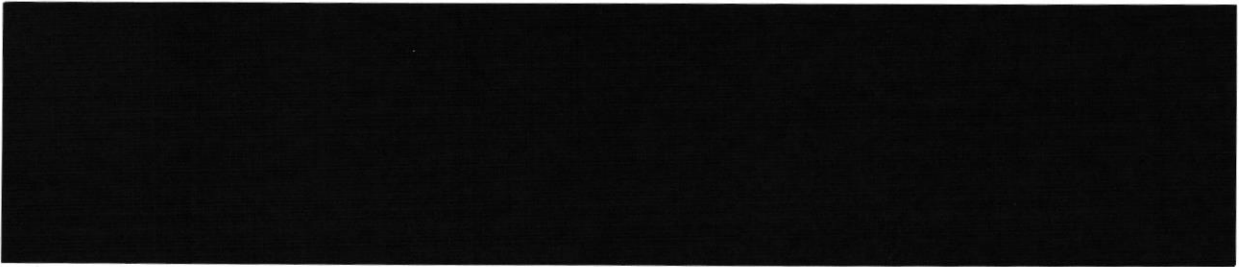
June 5, 2018:

June 20, 2018:

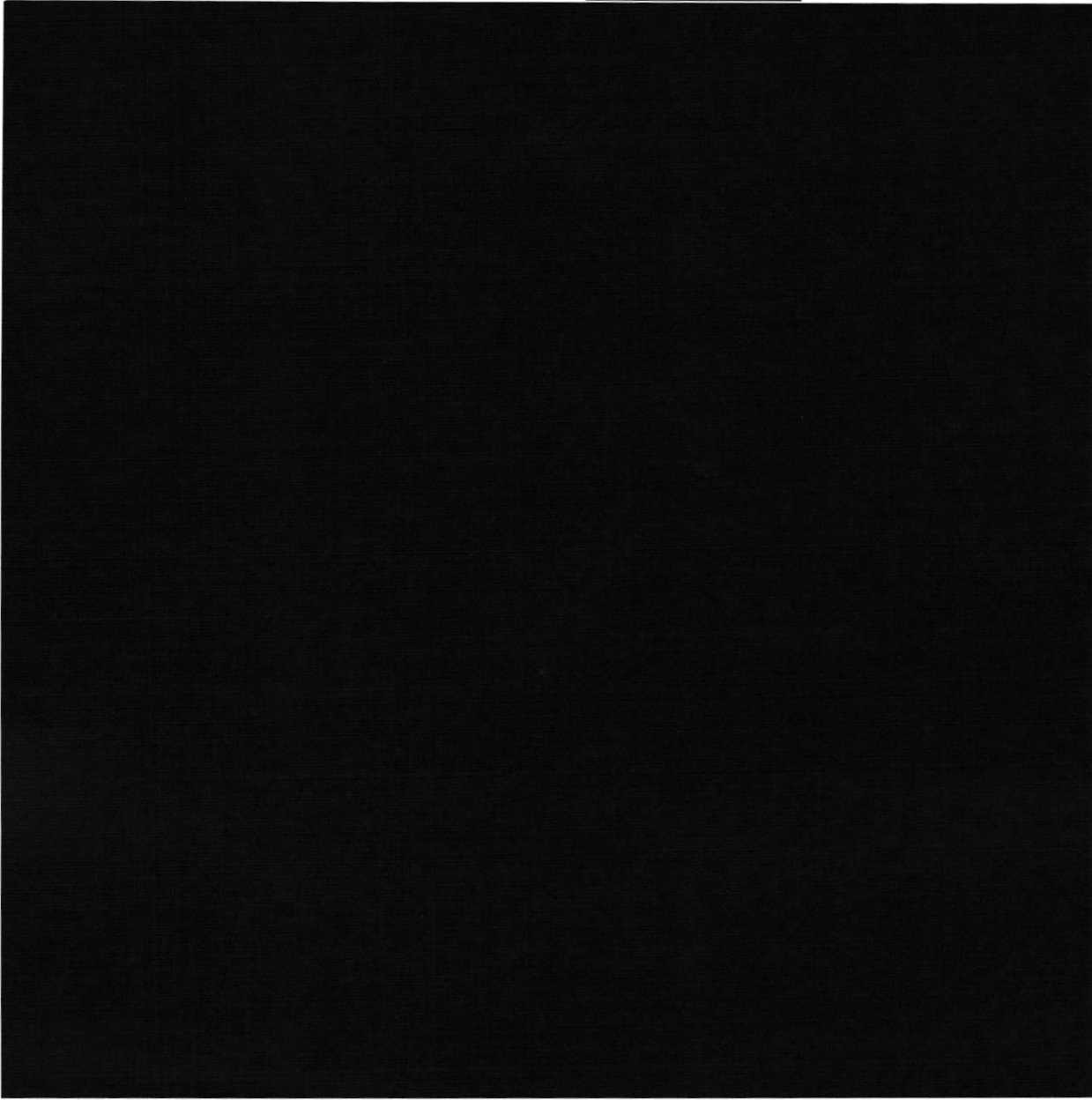
June 25, 2018:

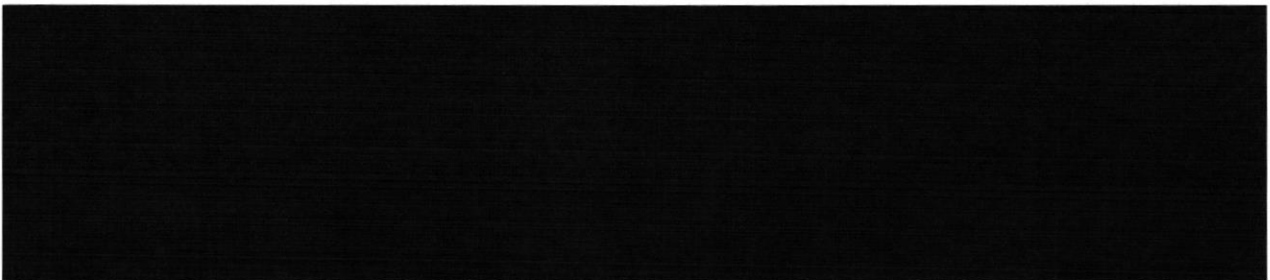
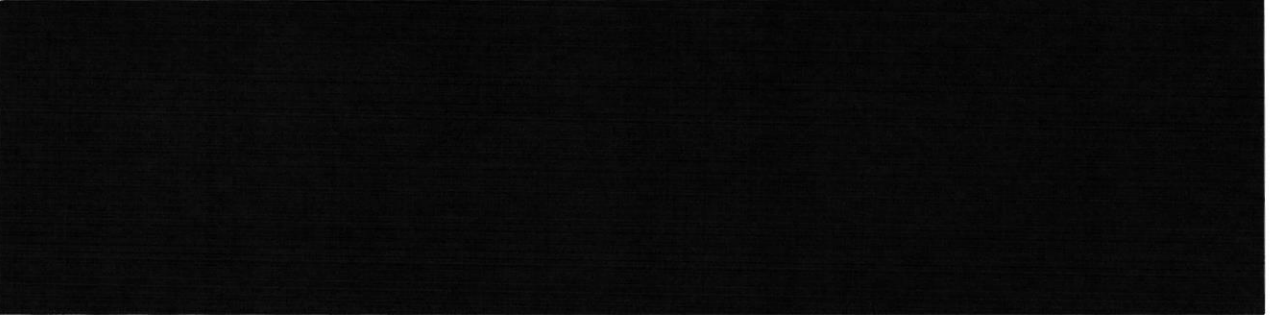
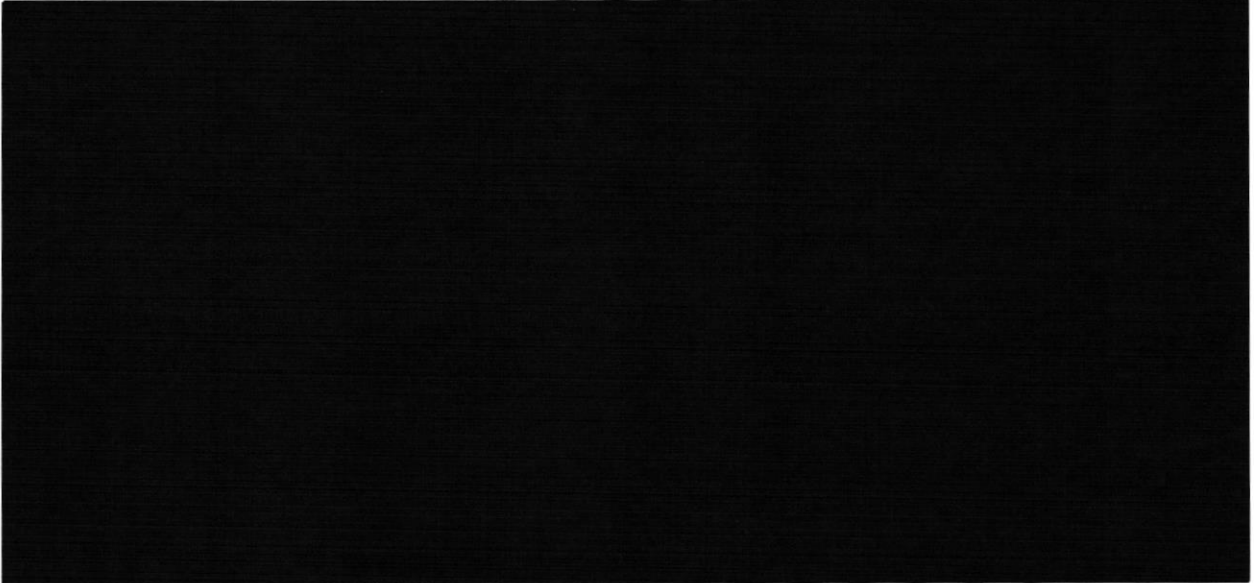
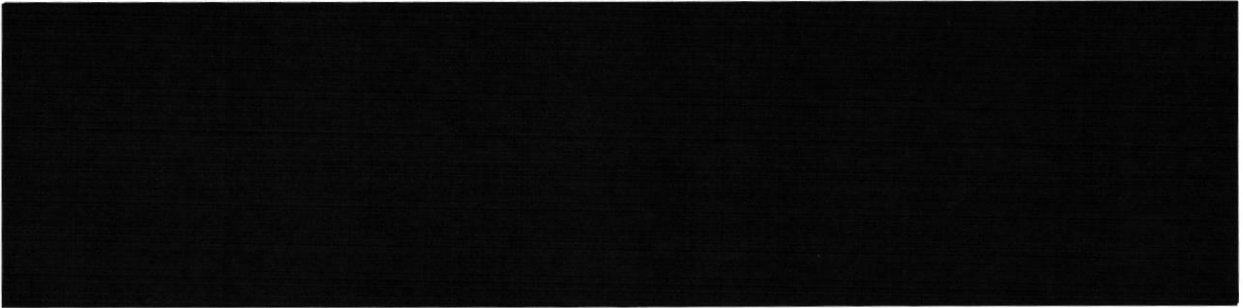
June 26, 2018

**VII. Interview #2**



*VIII. Interview #1 with*





[REDACTED]

***IX. Information Retrieved from eSchoolPLUS regarding Transcript Entries***

On or about August 2, 2019, I requested data from eSchoolPLUS [REDACTED]. This data was retrieved by the School District's IT Department (with the assistance of the Lower Hudson RIC data team) and furnished to the undersigned on August 20, 2019. This data is presented in Appendix #5-a.

[REDACTED]

In light of these findings, I next requested data that would show [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

X. [REDACTED]

[REDACTED] was interviewed on August 26, 2019, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

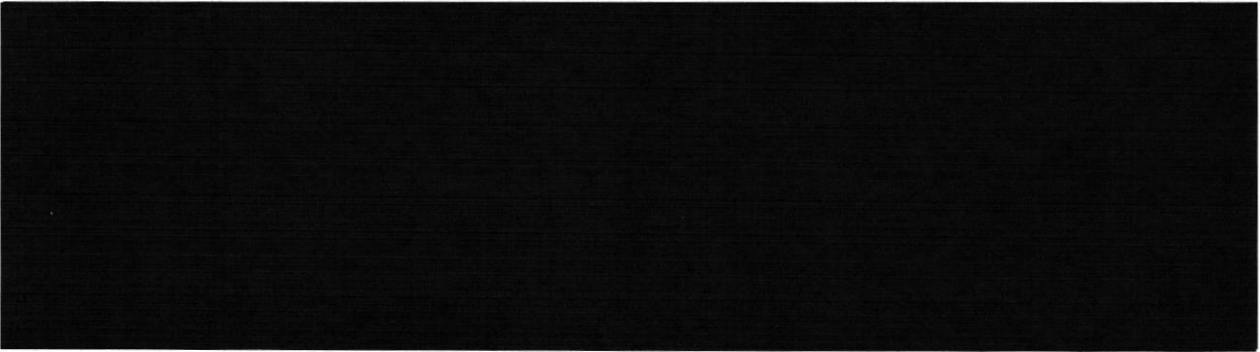
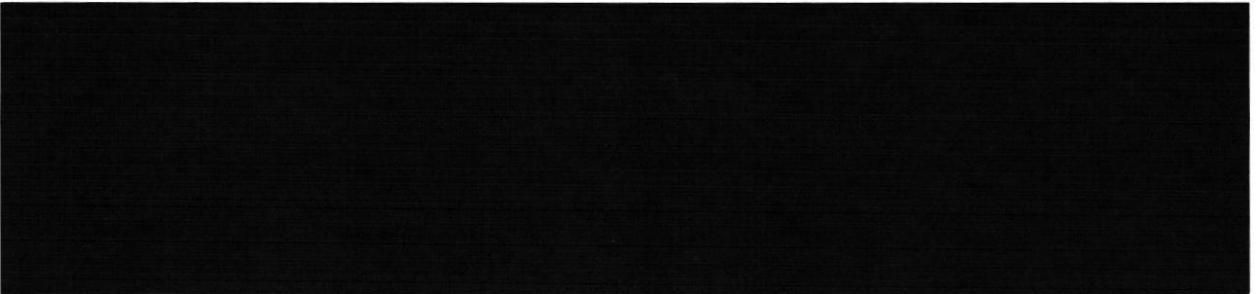
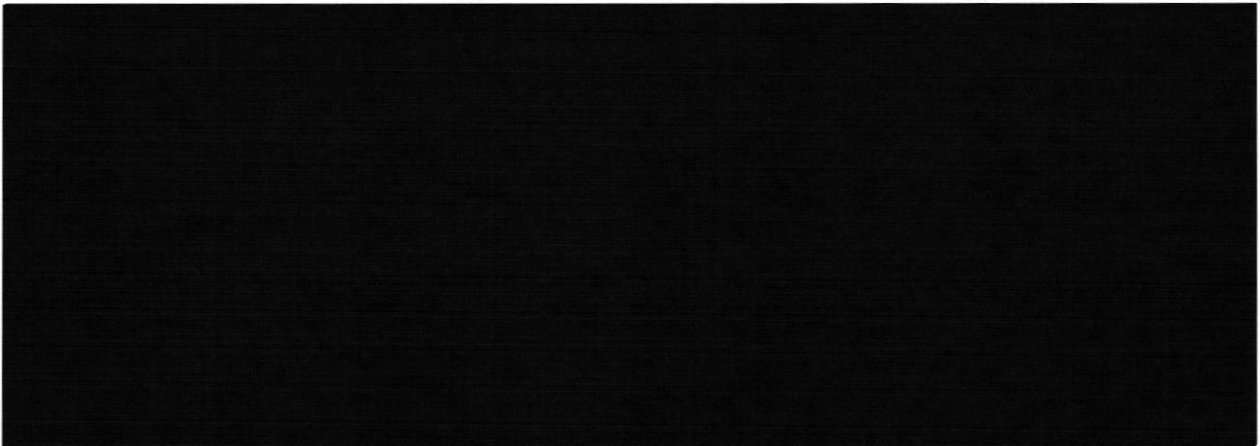
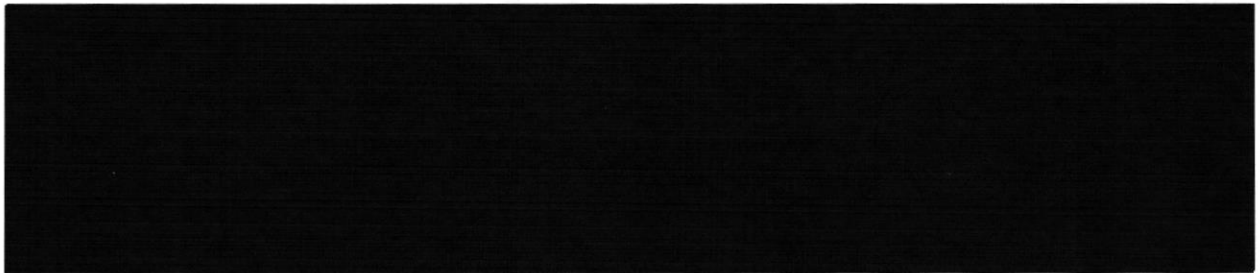
XI. Interview #2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





[Redacted]

On the evening of August 26, 2019  
[Redacted] Department of Human Resources  
[Redacted] on August 27, 2019 by 9:00 AM.

*XIII.* [Redacted]

[Redacted]

[Redacted]

*XII. Interview #2* [Redacted]

[Redacted]

[REDACTED]

**XIV. Interview with** [REDACTED]

[REDACTED] was interviewed on September 6, 2019, [REDACTED]

[REDACTED]

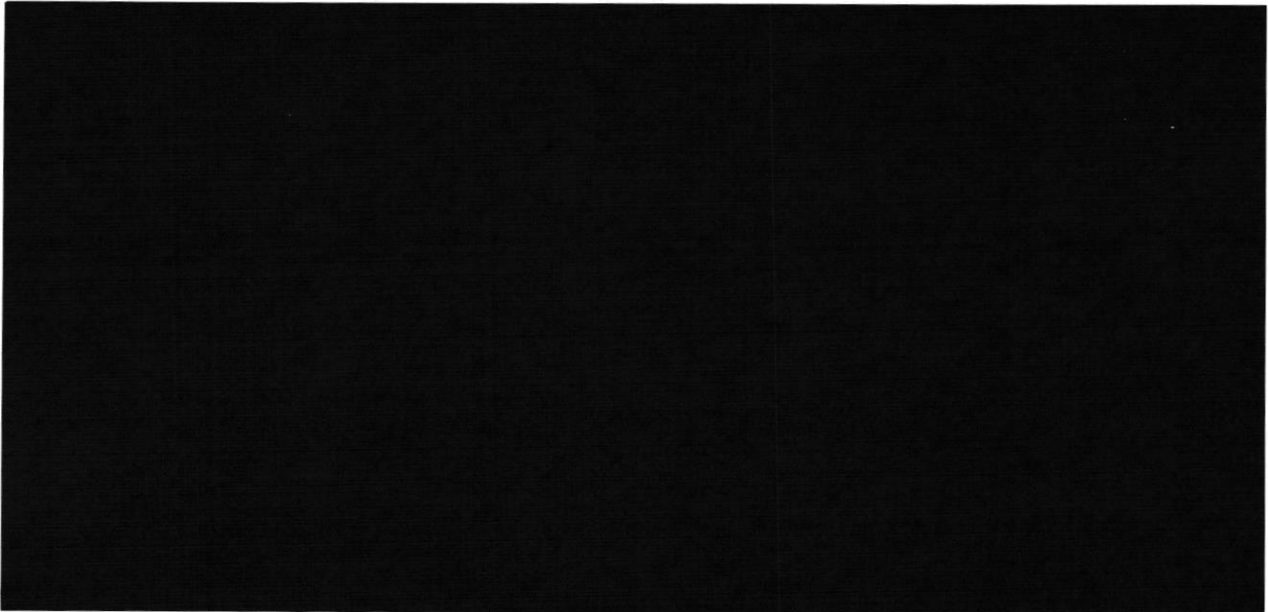
the system with Joseph Starvaggi or any other administrator.

**XV. Final Interview with** [REDACTED]

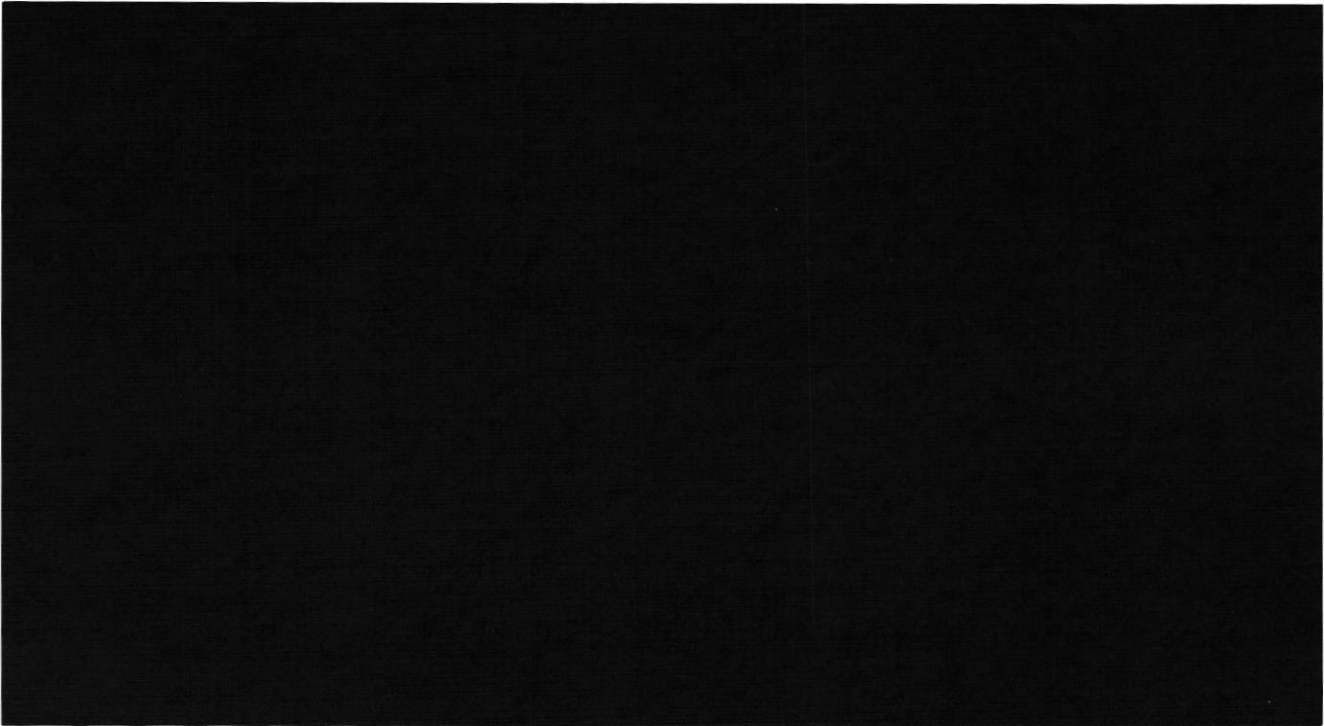
On September 11, 2019, I conducted a final interview of [REDACTED]

[REDACTED]

[REDACTED]



*XVI. Telephone Conference with*


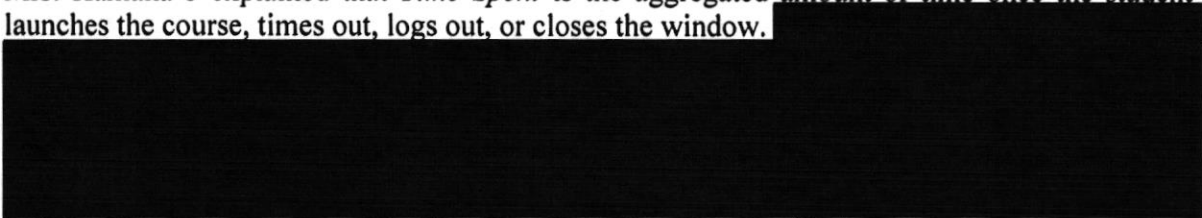




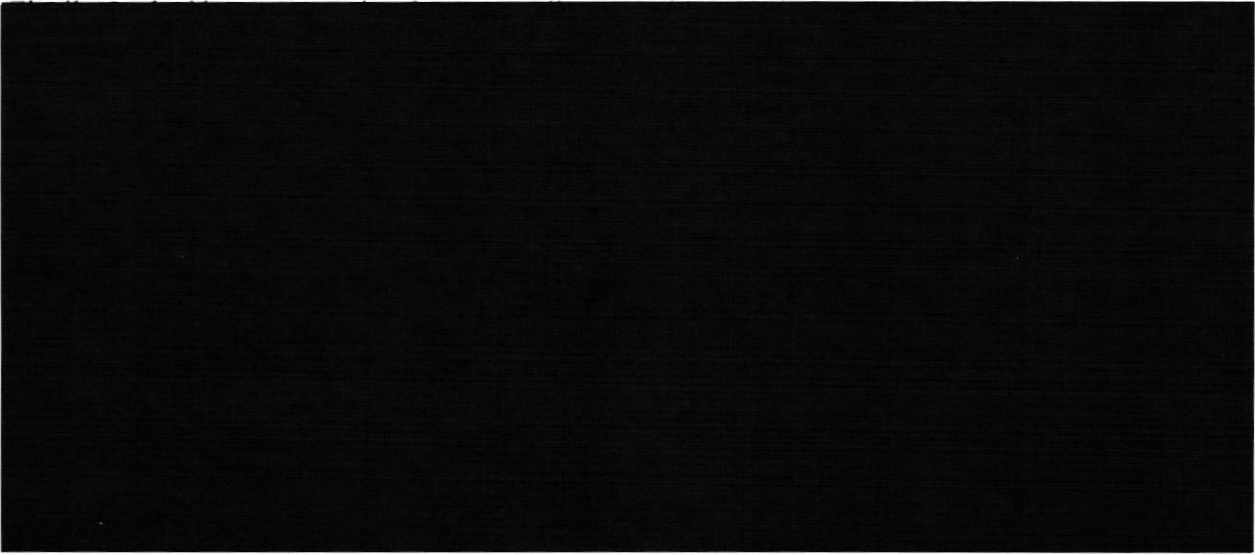

**XVII. Information Obtained from Apex Learning Representatives**

I contacted representatives from *Apex Learning* to ask questions about the reliability of the data recorded in the various Apex reports made available by the company, including Appendices 7 and 8. The following pertinent information was provided by Rebecca Saunders Ortiz (*Director, Client Support*) and Bernee Kamana`o (*Apex Learning Senior Client Operations Manager*).

In regard to the *Time Spent* recorded in the *Course Completions* report (Appendix 8, Column L), Mrs. Kamana`o explained that *Time Spent* is the aggregated amount of time once the student launches the course, times out, logs out, or closes the window.



Mrs. Kamana`o replied that modifications to courses are not retroactive – when a course is modified or updated, a new version of the course is released. Mrs. Kamana`o stated that new classrooms must be created and students enrolled in order for the new version of the course to be used. The District may decide to allow the students to continue working in the older version of the course or they may be withdrawn from the older version and re-enrolled in the new version.



[REDACTED]

**XVIII. Findings, Opinions & Recommendations**

Based on all of the information I gathered and reviewed during the course of my investigation, the following represents the undersigned's findings, opinions and recommendations.

**Issue #1:** [REDACTED]

**Findings:** The undersigned was unable to substantiate [REDACTED] which is a graduation requirement, as per Section 100.5 of the Commissioner's Regulations. 8 N.Y.C.R.R. §100.5(a). Thus, it appears [REDACTED] did not meet New York State's credit requirements for a high school diploma.

i. [REDACTED]

ii. [REDACTED]

[REDACTED]

[Redacted]

iii.

[Redacted]

iv.

[Redacted]

v.

[Redacted]

**Issue #2:**

[Redacted]

**Findings:** I am unable to conclude

[Redacted]

[Redacted]

i.

[Redacted]

[Redacted]

4. [Redacted]

3. [Redacted]

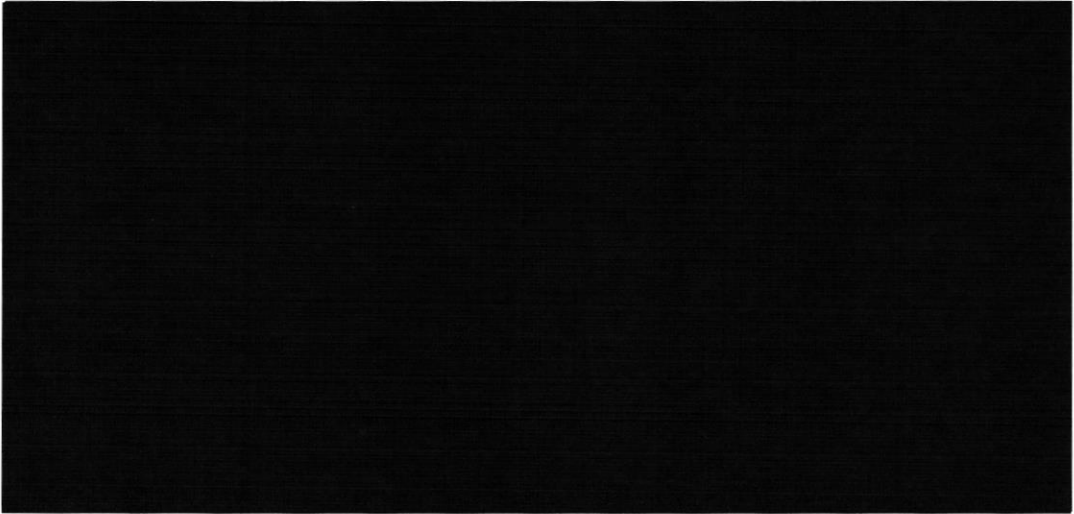
2. [Redacted]

1. [Redacted]

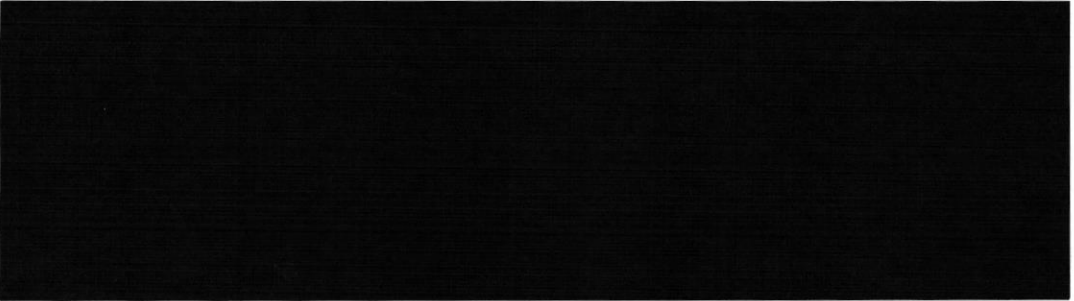
b. [Redacted]

a. [Redacted]

[Redacted]



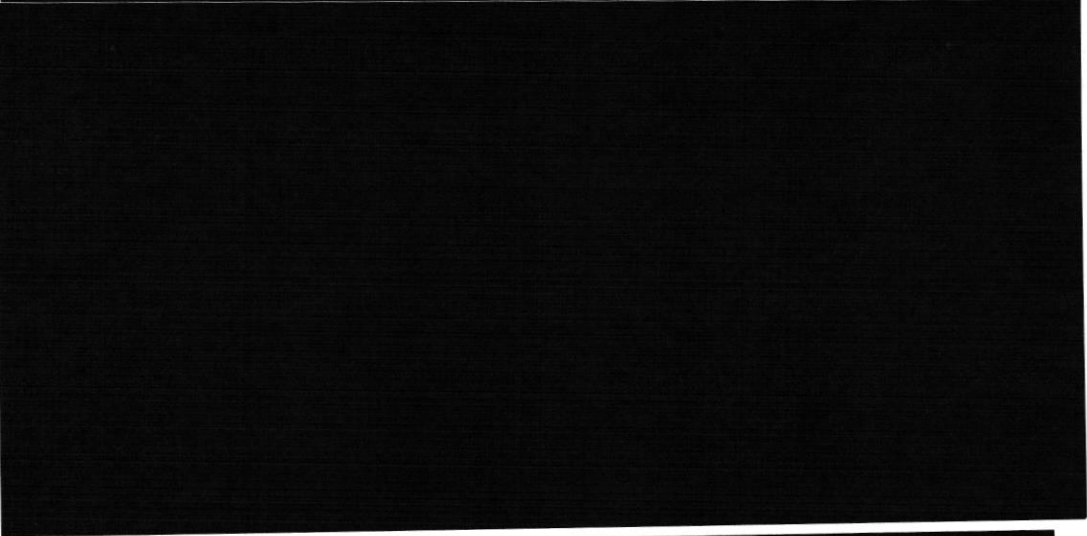
b.



a.



ii.



c.





[Redacted]

[Redacted]

c.

[Redacted]

b.

[Redacted]

a.

[Redacted]

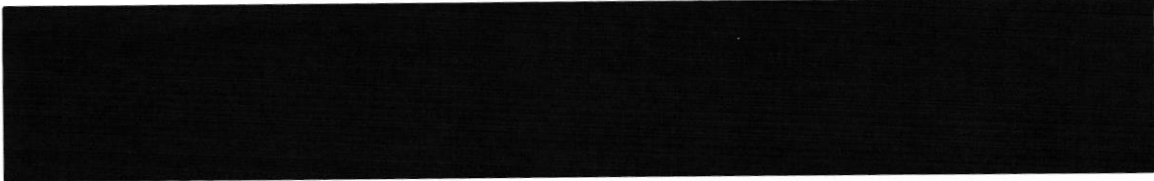
!!!

[Redacted]

c.

[Redacted]

iv.



The foregoing investigative findings and opinions are referred to General Counsel for discussion with the Board of Education. It is specifically recommended that the Board of Education consult with General Counsel regarding: (i) any disciplinary action and/or counseling of School District personnel that might be warranted, and (ii) protocols that could be implemented to prevent similar occurrences in the future.

Dated: October 3, 2019  
Miller Place, New York

Yours, etc.,

By:



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