#2

INTRODUCTION

APEX Learning is a privately held online learning platform that was utilized by New Rochelle High School ("NRHS"), during the period 2014 through the summer of 2018, for the purpose of affording NRHS seniors the opportunity to make up failed or incomplete coursework and earn credits required for graduation ("credit recovery").

The undersigned was appointed by the Board of Education of the New Rochelle City School District as special counsel for the purpose of conducting an investigation regarding NRHS's utilization of such program for the purpose of credit recovery.[1] The undersigned was tasked with, (i) reviewing whether the *Apex Learning* credit recovery program (the "Apex Program" or the "Program") was administered in compliance with the Regulations of the Commissioner of Education pertaining to credit recovery, and (ii) determining whether any School District employees who performed administrative responsibilities for such Program engaged in misconduct in connection with grading and/or awarding credit to students. The Board of Education's request for an investigation into the latter was triggered, in part, [redacted] and [redacted] The undersigned was charged with conducting a separate investigation into the matter and reviewing the overall manner in which the Apex Program was administered during the four school years the Program was offered at NRHS (academic years, 2014-2015, 2015-2016, 2016-2017, and 2017-2018). The undersigned was also asked to review NRHS's implementation plan for *Edgenuity*, the new online platform through which credit recovery is presently offered at NRHS.

The undersigned's investigation consisted of: review of relevant laws and regulations, interviews of School District personnel, including retired and current employees who were involved with the Program, review of various records furnished by the witnesses who were interviewed (and/or located with their assistance), verbal and written inquiries to *Apex Learning* representatives, review of extensive data furnished by *Apex Learning*, and review of the newly adopted guidelines pertaining to credit recovery at NRHS.

I. 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 (inclusive of ½ unit of credit in U.S. Government and ½ unit of credit in Economics); 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

[1] *Apex Learning* was not utilized by the School District exclusively for credit recovery. It was also utilized as a means for providing AIS, unit recovery, instructional support to students, as well as online course offerings to "homebound" and College-level students during the period 2014 through 2018 and prior.

and/or theatre; 2 units of credit in physical education ("PE"); ½ unit of credit in health; and 3 ½ units of credit in electives. See 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." See 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 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 differs from the approaches listed above. However, the regulations specifically state that any credit recovery program offered to students must:

- be aligned with the applicable New York State learning standards;
- 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 similarly states, in pertinent part, that school districts must ensure that:

- such courses are aligned with the applicable New York State learning standards;
- 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).

II. Initial Information Learned from Apex Representatives & Apex Data

In the spring of 2019, I contacted Rebecca Saunders Ortiz, an *Apex Learning Director of Client Support,* to pose various questions I had regarding the Apex Program, and Ms. Saunders Ortiz put me in contact with Bernee Kamana'o, a *Senior Client Operations Manager* for the company.

Ms. Kamana'o summarily explained that the manner in which Apex's Credit Recovery Programs are implemented varies from school district to school district, as the Program offers a variety of options in regard to curriculum planning and course design. Ms. Kamana'o stated that, generally, courses are divided into units, and within each unit there are a number of lessons and activities to be completed by the student, including diagnostics, quizzes, journals, logs, other written assignments, and examinations (unit tests, final exams, mid-term exams, etc.). Ms. Kamana'o explained that some activities are scored by the computer ("computer-scored"), and some activities are scored by the teacher ("teacher-scored").

Ms. Kamana'o also explained that there is an optional "mastery-based learning" feature that allows students to take pre-tests at the beginning of each unit which assesses whether the students are proficient in content. If proficiency is demonstrated through such pre-tests, students are allowed to "test-out" of the unit. (Attached hereto as Exhibit 1 is an *Apex Learning Best Practices* guide, dated November 2016, which illustrates the various options available to school districts at such time in regard to the implementation of Apex's credit recovery course offerings.)

Ms. Kamana'o explained that Apex courses are designed with the presumption that such courses will be taken by students under the direction and supervision of a teacher who is certified in the subject area under study. Mrs. Kamana'o stated the involvement of a certified teacher is an imperative, and she denied knowledge of any institutions offering Apex courses without teacher involvement. Mrs. Kamana'o explained that only teachers are authorized to award final course grades, and the final course grade must be manually entered into the Apex system by the teacher. Mrs. Kamana'o stated that, although Apex automatically generates a recommended final grade for the student, it is up to the teacher to calculate such, and the teacher has discretion to award a final grade different from that recommended by Apex. Mrs. Kamana'o stated that teachers sometimes assign students supplemental work or extra credit projects offline, which may be counted towards a student's final grade, and other factors may also warrant deviation from Apex's recommended final grade, such as a school's grading policy or practice.

In furtherance of the undersigned's investigation, I requested access to Apex data pertinent to all four school years the Program was in operation at NRHS. Further, I addressed various questions to Mrs. Kamana'o as I studied such data in conjunction with other evidence and questions arose.

- *Apex Course Completions Report*

The undersigned was given access to the *New Rochelle Course Completions* report covering the period August 1, 2014 through July 31, 2018 (hereinafter the "*Course Completions Report*"), which shows data pertaining to all Apex course completions by NRHS students during such time period, including: the title of the course completed, the student's course enrollment date, the student's course completion date, the teacher of record (*Teacher Name*), the *Final Grade*, the name of the individual who assigned the final grade *(Final Grade Assigned By)*, the *Time Spent* by the student (expressed in hours/minutes and days),[2] and the percentage of course activities completed by the student (*Activity Complete %*). (A copy of the *Course Completions Report*, sorted by *Completion Date* (column L), is provided as Exhibit 2.)

The *Course Completions Report* indicates that approximately 281 students completed courses using Apex during the period August 1, 2014 through July 31, 2018, and there were 489 course completions during such time period.[3]

- For the 2014-2015 school year, there were a total of 20 course completions.
  - [redacted] assigned the final grade for all 20 courses (20 students).
- For the 2015-2016 school year, there were a total of 70 course completions.[4]
  - [redacted] assigned the final grade for 57 courses.
  - [redacted] assigned the final grade for 12 courses.
  - [redacted] assigned the final grade for 1 course.
- For the 2016-2017 school year, there were a total of 199 course completions.[5]
  - [redacted] assigned the final grade for 151 courses.
  - [redacted] assigned the final grade for 39 courses.
  - [redacted] assigned the final grade for 9 courses.

[2] In regard to the *Time Spent* recorded in the *Course Completions* report, 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.

[3] The foregoing course count includes completed courses only and does not include any enrolled courses from which students withdrew during the time period under review. The foregoing course count also includes non-credit recovery courses completed during the time period under review, as the report provided by Apex reflects all Apex course completions.

[4] [redacted]

[5] [redacted]

- For the 2017-2018 school year, there were a total of 200 course completions.
    - [redacted] assigned the final grade for 198 courses.
    - [redacted] assigned the final grade for 2 courses.

The *Course Completions Report* indicates a total of 54 course completions (in various different subject areas) over the four-year period for which no *Time Spent* (*00:00*) was recorded by the Apex system. (For 15 of such 54 courses, the student *Enrollment Date* and *Completion Date* are the same.) For the remaining 435 courses completed, the *Time Spent* (per completed course) ranges from 2 minutes, to 81 hours and 15 seconds.

From the *Course Completions Report*, I also noted, (i) a number of instances of students being enrolled in a course in one school year, and completing such course during the following school year, and (ii) instances of students being enrolled in the same classes as students from prior school years (i.e., 2017-2018 Apex students enrolled in the *2016-2017 Physical Education* course).

The undersigned asked Mrs. Kamana'o if this apparent practice of enrolling students in the same courses, year after year, without opening new sections could impact the reliability of the Apex data provided. Specifically, I asked, if modifications were made to a course's requirements over time (i.e., certain units, lessons or activities, which were once requirements, were later eliminated), would the modifications implemented take retroactive effect and impact any data that was previously recorded for earlier enrolled students?[6] 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 must be enrolled in order for the new version of the course to be used. I asked Mrs. Kamana'o if there are any actions that could be taken by a school district administrator that would impact the reliability of Apex's data. Mrs. Kamana'o replied, *No, I have not encountered that before.* I also asked Mrs. Kamana'o how a scenario of same enrollment and completion date, with no *Time Spent*, but a passing final grade is possible. Mrs. Kamana'o replied that she has seen this scenario when, (i) students complete all course work offline, and (ii) a student completed an Apex course at one school and then transferred to a new school – the new teacher chose to add scores for the student so it would be recorded in the system of the new school. I asked if there is any other possible explanation – if a technological glitch (on Apex's end or on a school district's end) could result in the elimination of time that a student spent working on the Apex system? Mrs. Kamana'o did not acknowledge this as a possibility – she stated she could not provide any further explanation, other than the two possibilities noted above. I then asked Ms. Saunders Ortiz if there was anyone at the company, perhaps from a different department or function, who might have more information regarding my areas of inquiry. She responded by stating "they" believe the data to be "factual and accurate," and noting, "interpretation of the data is really dependent on the implementation so we would refer you to the school on that." However, she noted that, in a course like *Physical Education*, a good percentage of the overall score comes from offline activities – a teacher could

[redacted]

print Activity Logs and hand those to the students, and the students could be "working" in the course without ever logging in to the system.

- *Apex Consolidated Activities Report*

In addition to the *Course Completions Report*, the undersigned was given access to the *New Rochelle Consolidated Activities* report (hereinafter the "*Consolidated Activities Report*"), which provides comprehensive information regarding the individual activities completed by students (organized by course, unit, lesson, and activity number) including, for every activity assigned: points earned, points possible, the number of times a student attempted the activity (*Activity Attempts*), the time the student spent on the activity displayed in seconds (*Time Spent Seconds*), a description of whether a student completed the activity and if it was graded by a teacher (*Score Details*), and the name of the teacher who entered the score for the activity in *Grade Book* if such activity was "teacher entered" and not scored by the computer (*Score Awarded By*). This report was primarily used by the undersigned to cross-check and better understand information reported in the *Course Completions Report* and the *Grade Book Audit Report*. (Copies of the *Consolidated Activities Report* pertaining to the 2016-2017 and 2017-2018 school years are provided as Exhibits 3c and 3d.)

- *Apex Grade Book Audit Report*

In response to my request for data that would indicate and isolate score changes and score entries by School District personnel for activities that should have been scored by the Apex system ("computer-scored"), Apex granted me access to the *Grade Book Audit Report* for each of the school years under review. *Grade Book* is the record within which all scores earned by students are recorded (by course), inclusive of the scores earned for diagnostics (*DIA*), quizzes (*QUZ*), computer scored tests (*CST*), and final and mid-term examinations (*EXM*). Mrs. Kamana'o explained that the *Grade Book Audit Report* displays, (i) all computer-scored activities completed by a student for which the score earned by the student was changed by a teacher, and (ii) all computer-scored activities not completed by the student, but which had a score assigned by a teacher. Mrs. Kamana'o explained that the term "override" is utilized to refer to either of the above two actions. (Copies of the undersigned's working copies of the *Grade Book Audit Report* pertaining to each of the school years under review (sorted by *Override Performed By* (column U)) are provided as Exhibits 4a, 4b, 4c, and 4d.)[7]

For each override documented in the *Grade Book Audit Report*, the following pertinent information is reported: the name of the student, the course title, the activity type (i.e., *QUZ*, *CST* or *EXM*), the points possible for such activity, the score earned by the Student (*Student Earned Score*), the date such score was earned (*Student Score Earned On*), the student's score after the override (*Grade Book Score After Override*), the name of the individual who performed the override (*Override Performed By*), and the date and time such override was performed (*Override*

[7] The undersigned's working copies of the *Grade Book Audit Report* show overrides performed in the context of completed courses only. The undersigned did not examine overrides performed in the context of courses for which the *Enrollment Status* is indicated as *Withdrawn* or *Active*.

Date). Mrs. Kamana'o explained that if no score is listed in column S of the report (*Student Earned Score)*, then the student did not complete the activity to earn a computer-generated score.

Mrs. Kamana'o explained that while the override function could be used for improper purposes (such as grade inflation or to award credit when no credit was earned), there are valid justifications for the utilization of such feature. She is aware of overrides being utilized, (i) for special needs students who are taking course content offline – in such cases, teachers may print course work, and students may write their answers on paper; (ii) for students who are taking course content offline for other reasons (i.e., students who are having technical issues on the computer they are utilizing); and (iii) in connection with mastery-based learning, as a means to permit a student to progress in a course after multiple failed attempts at a particular activity – rather than have the student make additional attempts to pass a quiz or test, teachers will sometimes assign additional work offline and award the credit needed for progression to the next unit utilizing the override function. Mrs. Kamana'o explained that, to perform overrides, users must engage in a multi-step process. Users must enter the *Grade Book*, select the unit they wish to review, review the scores earned for the activities within such unit, double-click on the score he or she wishes to change (or enter, if no score is recorded), enter the new score and press, "save".

- *Grade Book Audit Report, 2014-2015 School Year*

The *Grade Book Audit Report* for the 2014-2015 school year (Exhibit 4a) shows 5 "overrides" (score entries for computer-scored tests) during the 2014-2015 school year – 3 overrides by [redacted] and 2 overrides by [redacted] – all pertaining to 1 student. According to information provided by the School District (Exhibit 5), [redacted]

The *Grade Book Audit Report* for the 2014-2015 school year demonstrates that forty percent (40%) of the overrides performed were performed on or after June 1st of the school year.

- *Grade Book Audit Report, 2015-2016 School Year*

The *Grade Book Audit Report* for the 2015-2016 school year (Exhibit 4b) similarly shows minimal utilization of the override function by [redacted] (3 overrides by [redacted] for one student who [redacted] – 1 resulted in no change to the student's earned score,[9] 1 decreased the student's earned score from 21/30 to 15/30, and 1 was a score entry for a *CST*; plus 2 overrides by [redacted] – both resulted in no change to the students' earned scores.)

This report also shows 23 overrides performed by [redacted] during the months of May and June 2016, pertaining to 3 different students. 1 of the 23 overrides performed was for a student [redacted] (See Exhibit 5.) The remaining 22 overrides by [redacted] were for [redacted] and consisted of – 3 overrides increasing the students' earned scores for *DIA* and *CST* activities and 19 score entries for *DIA* and *QUZ* activities.

[redacted]

[9] The student's score was exactly the same after the override was performed.

This report demonstrates that fifty percent (50%) of the overrides performed during the 2015-2016 school year (14 of the 28 overrides) were performed on or after June 1st.

- *Grade Book Audit Report, 2016-2017 School Year*

The *Grade Book Audit Report* for the 2016-2017 school year (Exhibit 4c) demonstrates a substantial increase in utilization of the override feature. This report shows that approximately 760 overrides were performed for approximately 62 students who completed courses on Apex during the 2016-2017 school year. Approximately 4 of the students for whom overrides were performed [redacted] (See Exhibit 5.)

- Approximately 414 overrides for 42 students by [redacted] (33 overrides changed failing scores (less than 65% correct) to passing scores, 6 overrides increased failing scores, 5 overrides increased passing scores, 2 overrides resulted in no change to the students' earned scores, and 368 overrides were score entries for computer-scored activities not completed online by the student (EXM, QUZ, CST)).

- Approximately 297 overrides for 17 students by [redacted] (11 overrides changed failing scores to passing scores, 1 override increased a passing score from 72% to 85%, and 285 overrides were score entries for computer-scored activities not completed online by the student (EXM, QUZ, CST, DIA)).

- Approximately 49 overrides for 3 students by [redacted] (1 override changed a failing score to a passing score, and 48 overrides were score entries for computer-scored activities not completed online by the student (EXM, QUZ, CST)).

- No override activity is reported for [redacted]

This report demonstrates that sixty-eight percent (68%) of the overrides performed during the 2016-2017 school year (514 of the 760 overrides) were performed on or after June 1st.

- *Grade Book Audit Report, 2017-2018 School Year*

The *Grade Book Audit Report* for the 2017-2018 school year (Exhibit 4d) shows that approximately 196 overrides were performed for approximately 33 students who completed courses on Apex. All such overrides were performed [redacted] 13 of the 33 students for whom overrides were performed [redacted] (See Exhibit 5.)

- 11 overrides changed failing scores (less than 65% correct) to passing scores, 1 override decreased a failing score, 1 override decreased a passing scores, 1 override resulted in no change to the student's earned score, and 182 overrides were score entries for computer scored activities not completed online by the student (EXM, QUZ, CST).

In stark contrast to the prior school years of the Program, only two (2%) of the overrides performed during the 2017-2018 school year (4 of the 196 overrides) were performed on or after June 1st.

III. Summary of Interviews of School District Personnel

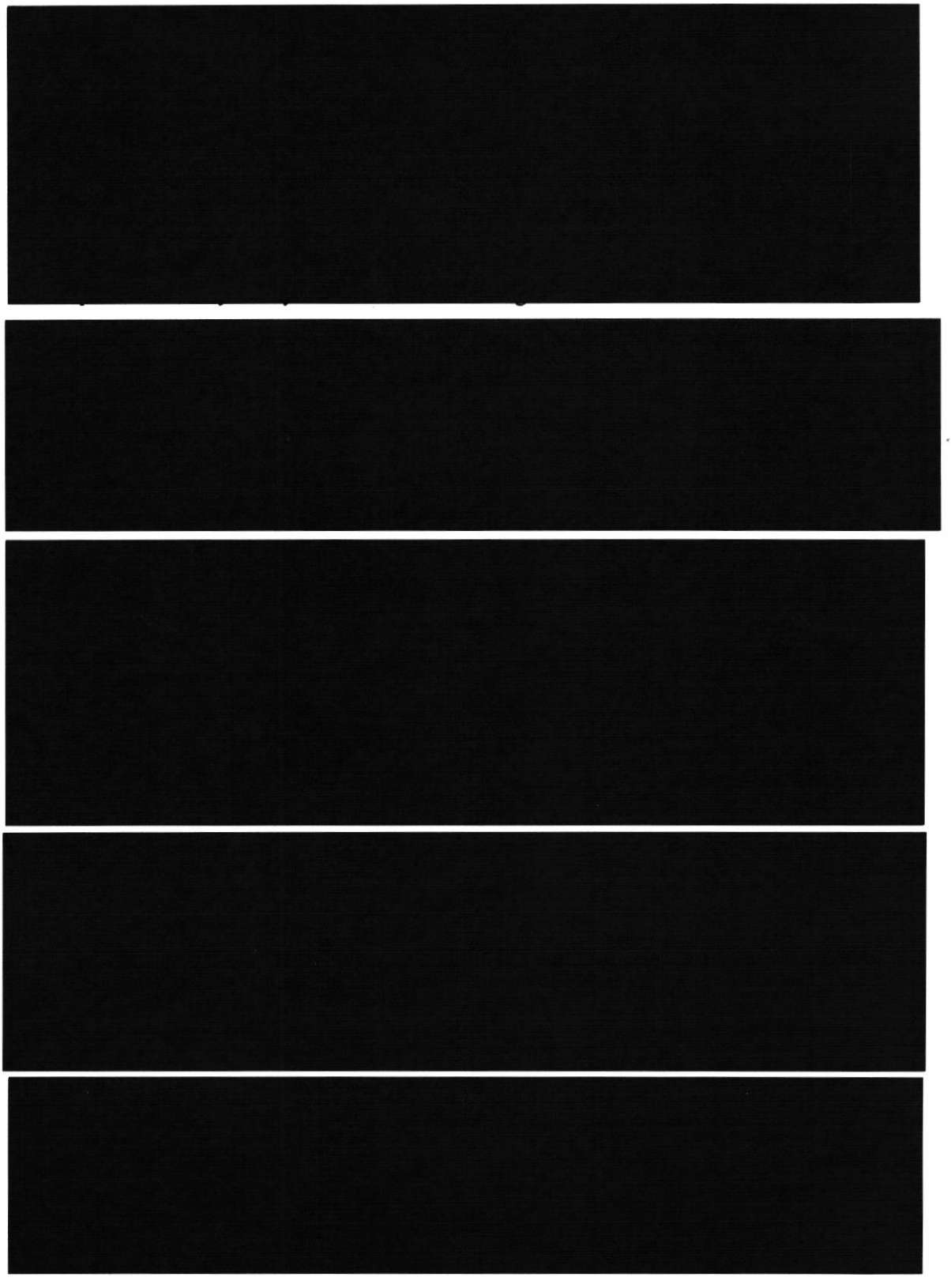
Over twenty witnesses (former and current employees) were interviewed during the course of this investigation, including: [redacted] The pertinent information learned from the available witnesses who were willing to participate in this investigation is summarized below.

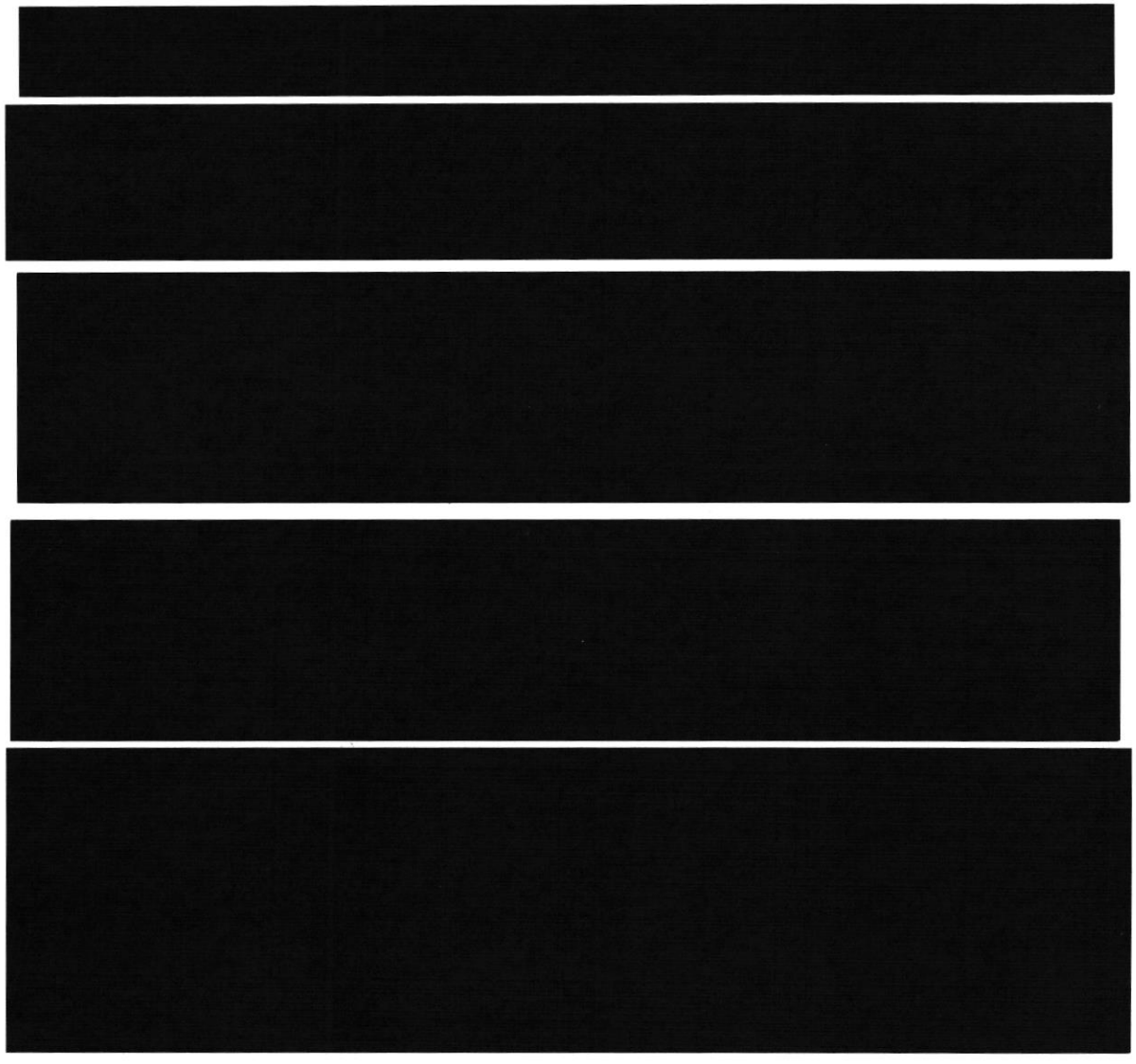
- [redacted]

[redacted]

[redacted]

[10] [redacted] Neither, [redacted] nor [redacted] responded to my requests for an interview.





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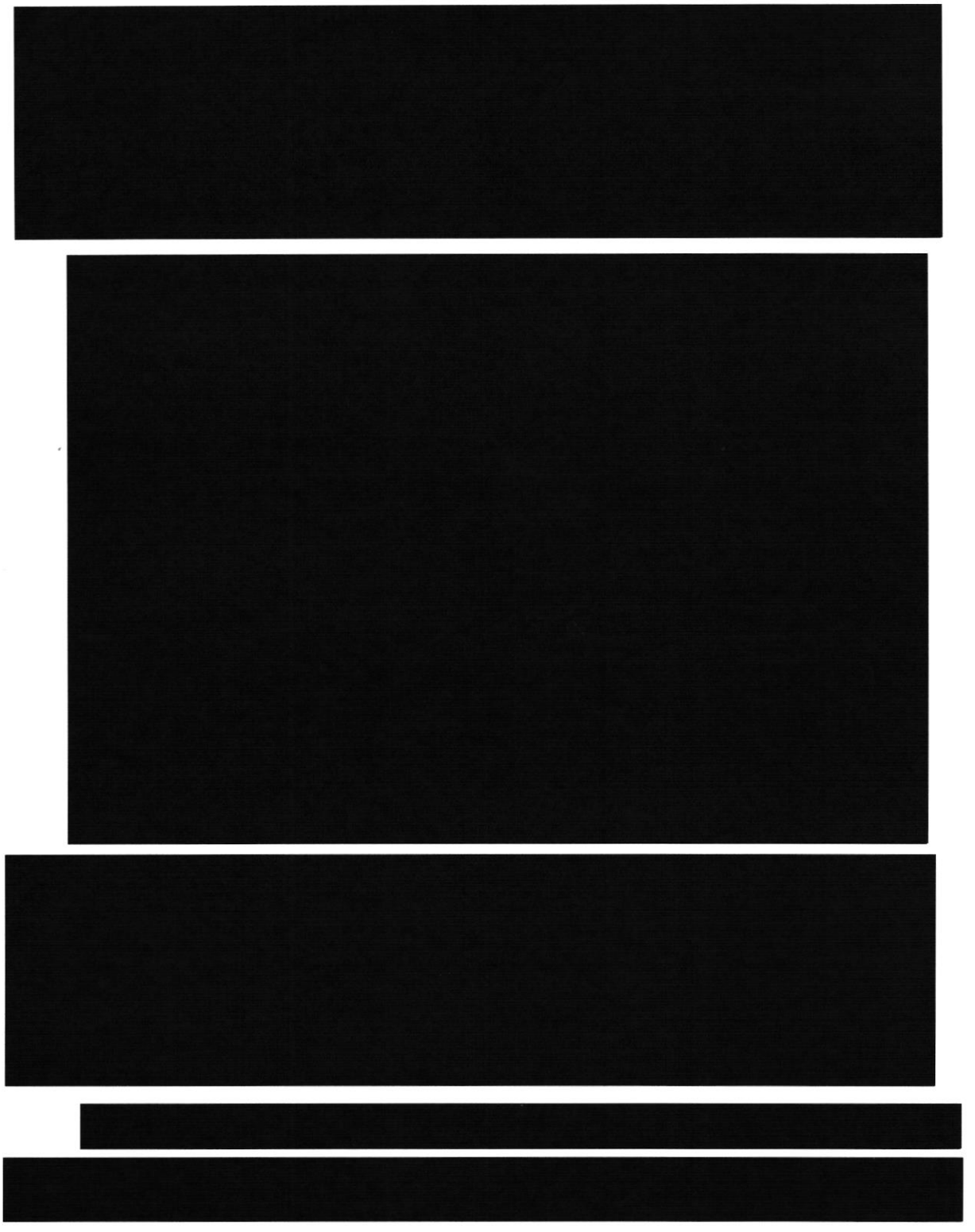

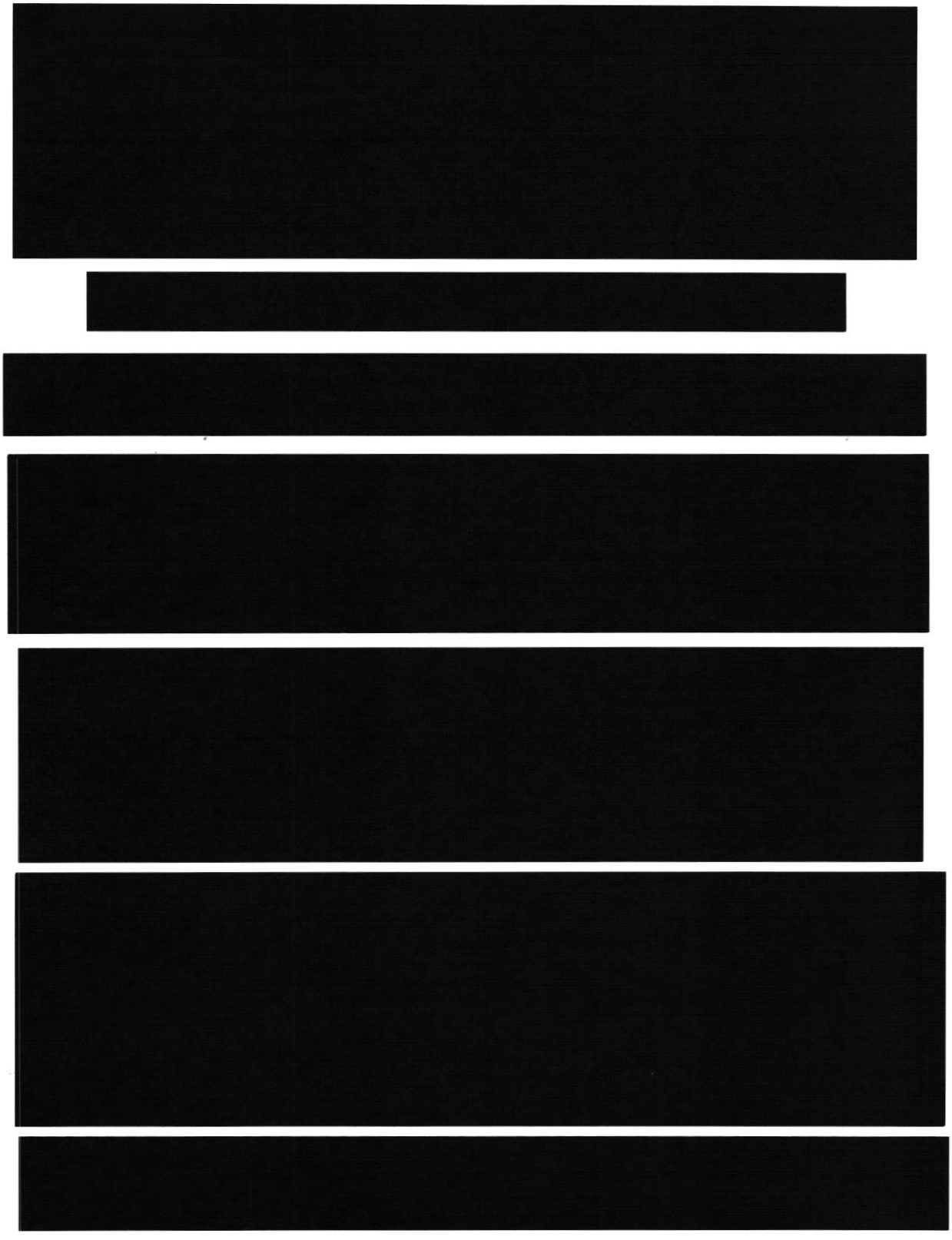

[redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

- [redacted]

[redacted]

[redacted]

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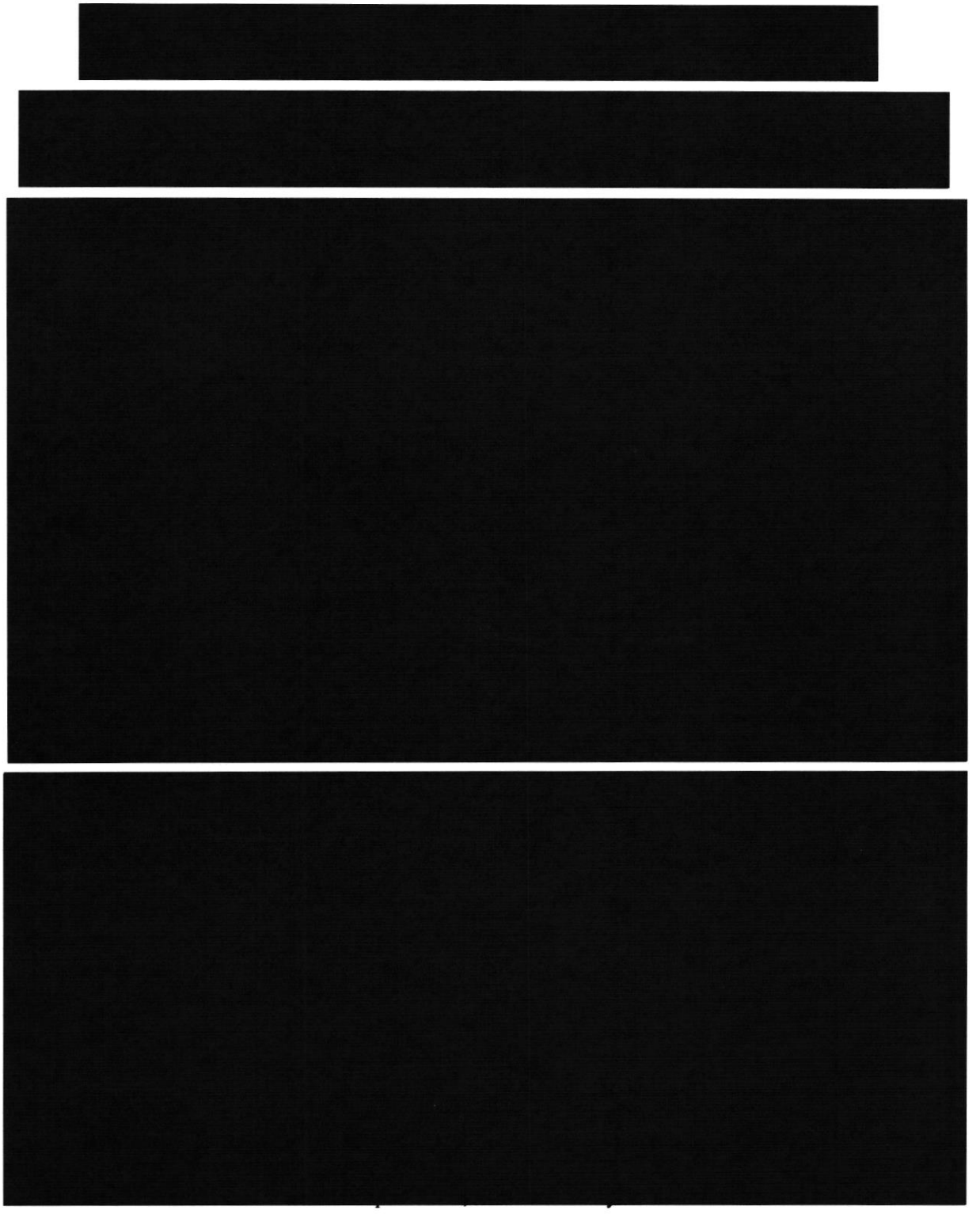
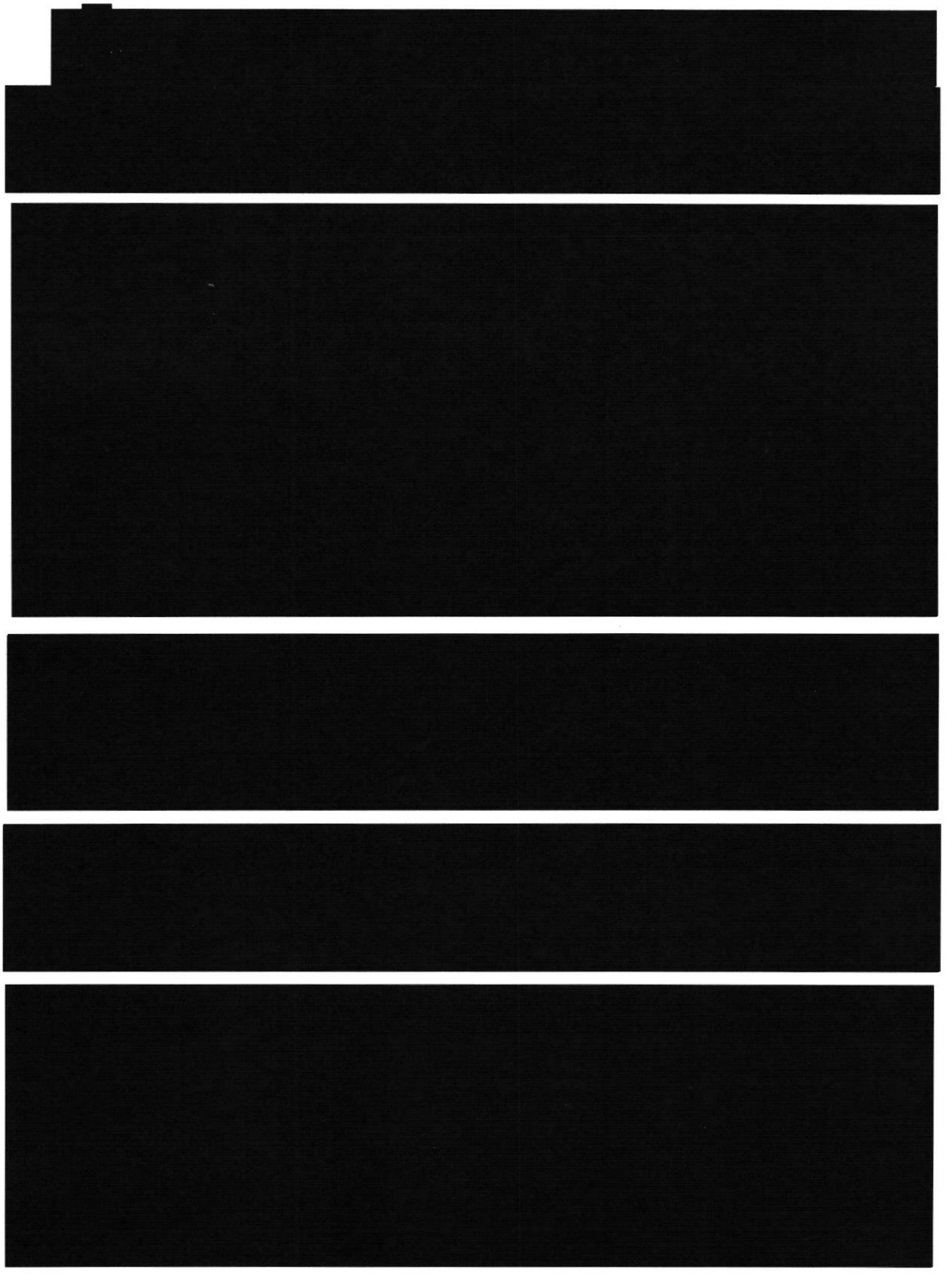
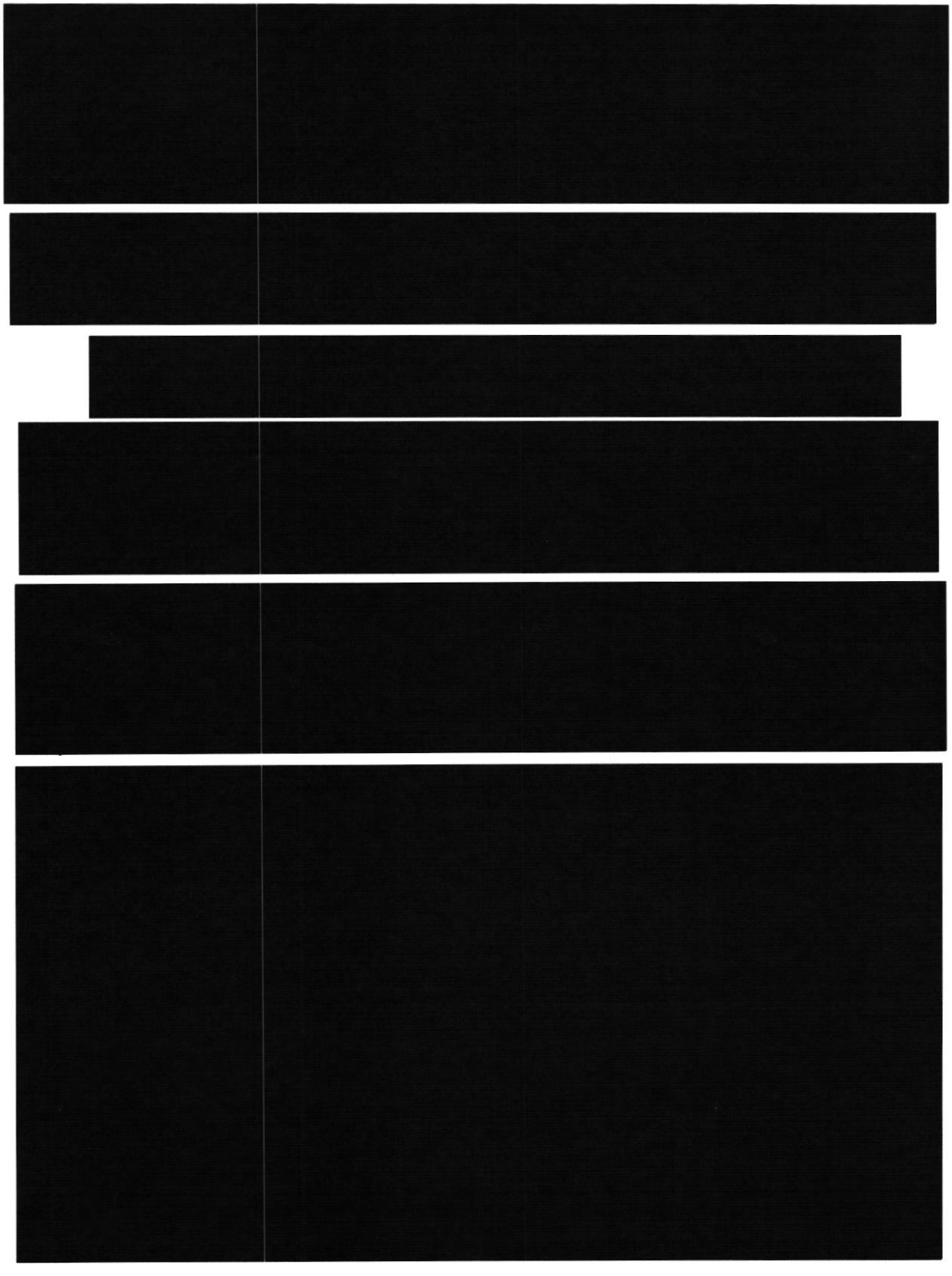
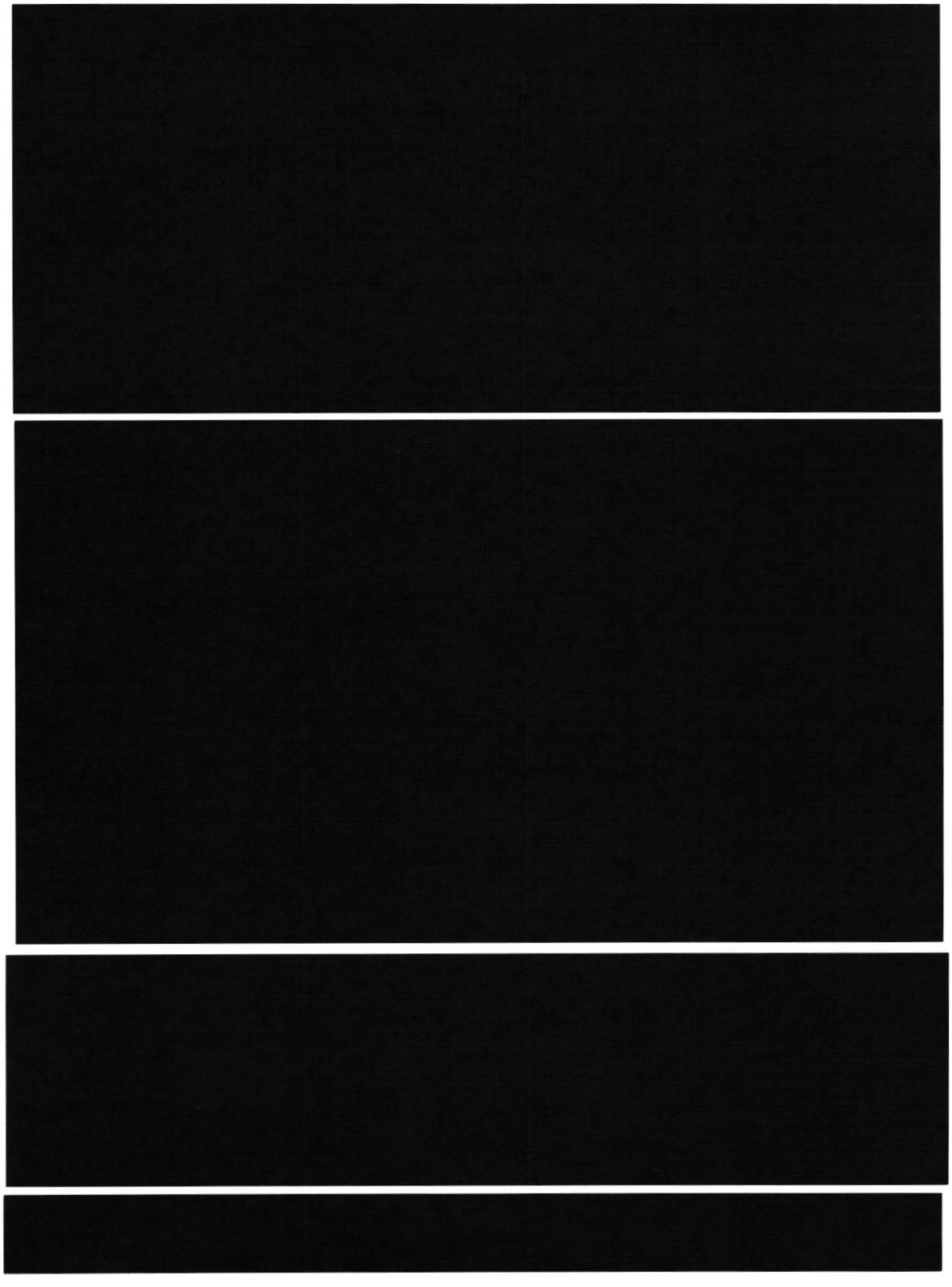
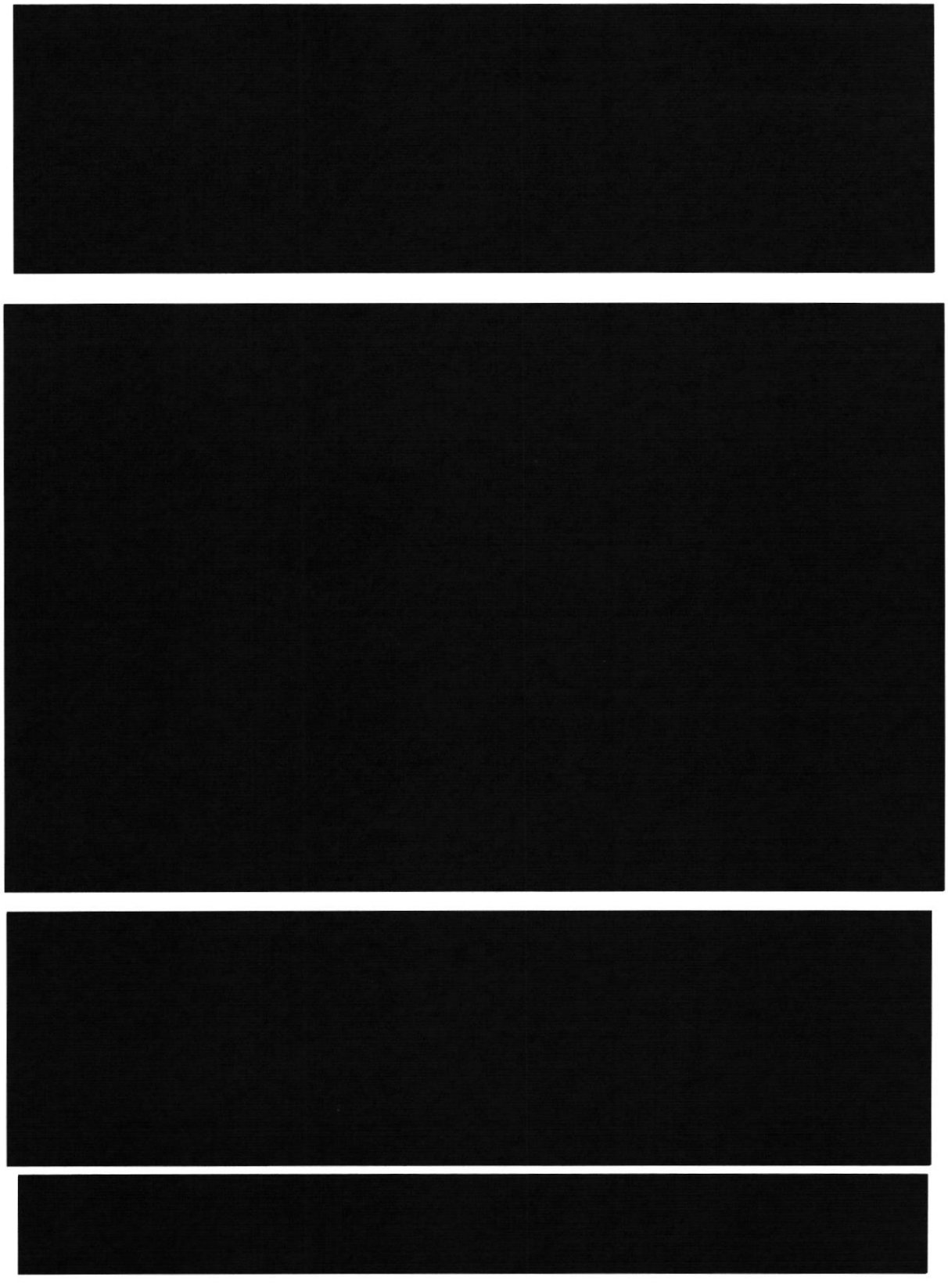
[redacted]

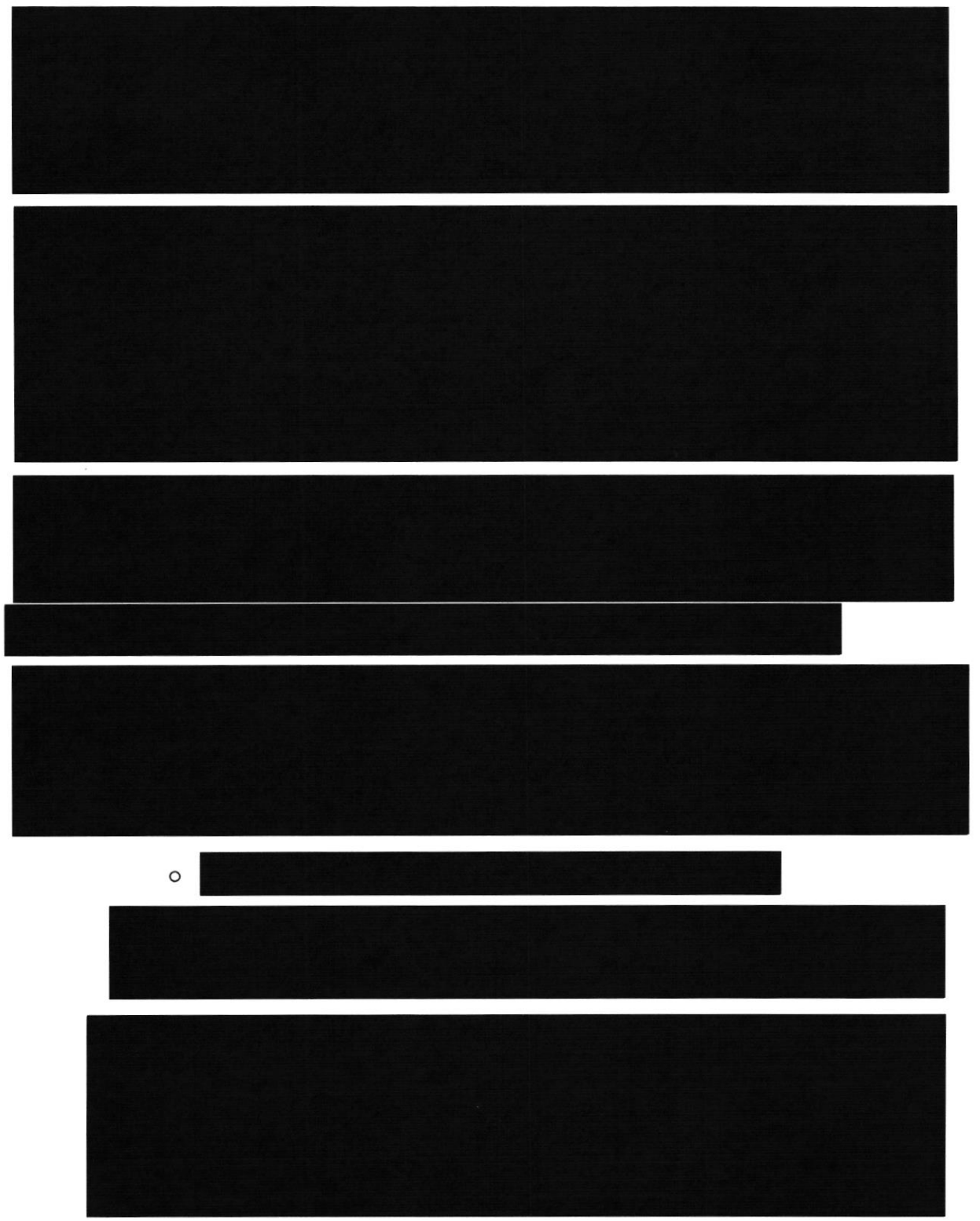












- [redacted]

[redacted]

[The undersigned consulted the *Consolidated Activities Report* (Exhibit 3c), rows 28313 – 28390, for further details regarding this student's activities on Apex for the course in question and noted: [redacted] is specified as the teacher of record (column C); [redacted] entered the scores for all written assignments completed by this student; the student completed all computer-scored activities for the first "semester" of the course online, units 1 through 7 (*Time Spent* and *Activity Attempts* are indicated), but the student completed no work for the second "semester" of the course, units 8 through 12, computer-scored or otherwise (no *Time Spent* or *Activity Attempts* are indicated); and all of the overrides performed pertain to the second "semester" work, units 8 through 12.]

- [redacted]

[redacted]

[The undersigned consulted the *Consolidated Activities Report* (Exhibit 3c), rows 28391 – 28468, for details regarding this student's activities on Apex for the course in question, *Physical Science Prescriptive*, and noted: [redacted] is specified as the teacher of record (column C), and [redacted] entered the scores for all written assignments and computer-scored activities, with the exception of the first 7 or so activities (parts of units 1 and 2), which were completed by the student online. The undersigned also noted from the *Grade Book Audit Report* (Exhibit 4c) that [redacted] performed 54 overrides for this same student for a different Apex science course, on June 21, 2017, the same date as [redacted] overrides for this student. See Exhibit 4c, rows 221 – 274.]

[redacted]

[redacted]

[redacted]

[The undersigned consulted the *Grade Book Audit Report* (Exhibit 4c) and noted the 35 overrides performed on June 21, 2017 under [redacted] were performed during various hours of the school day, including 10:00 AM, 11:00 AM, 12:00 PM, and 2:00 PM.]

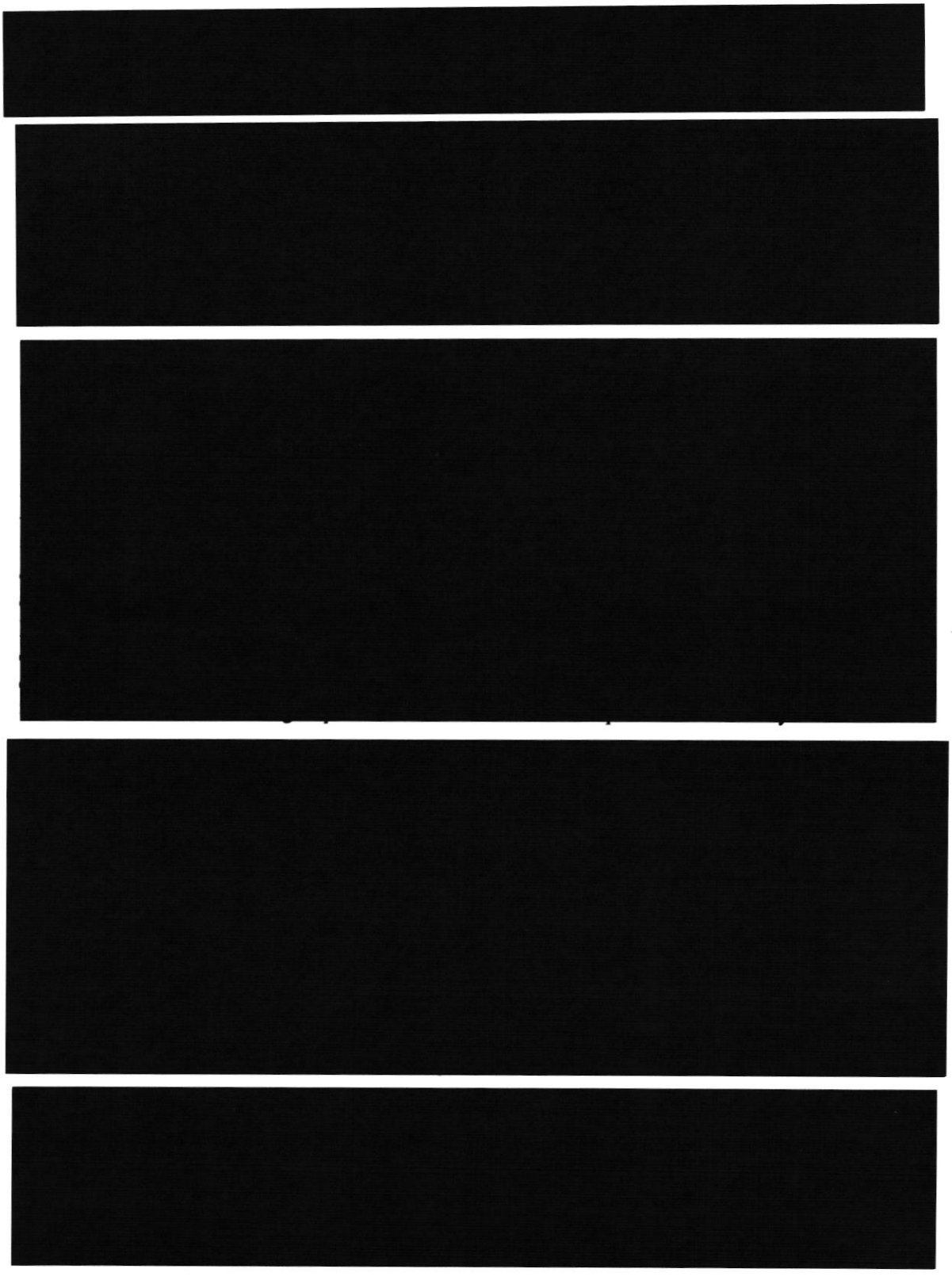
[redacted]

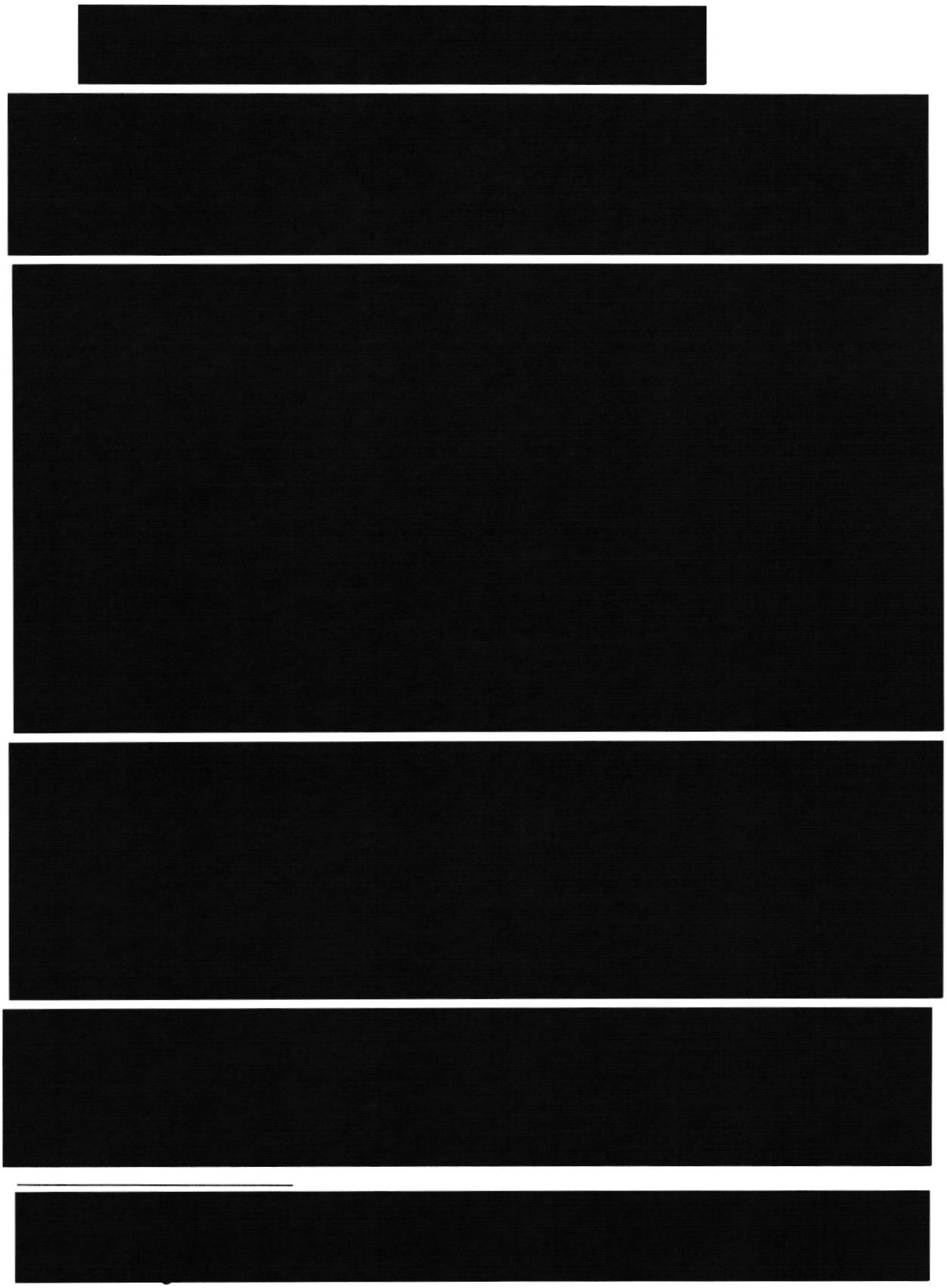
[redacted]

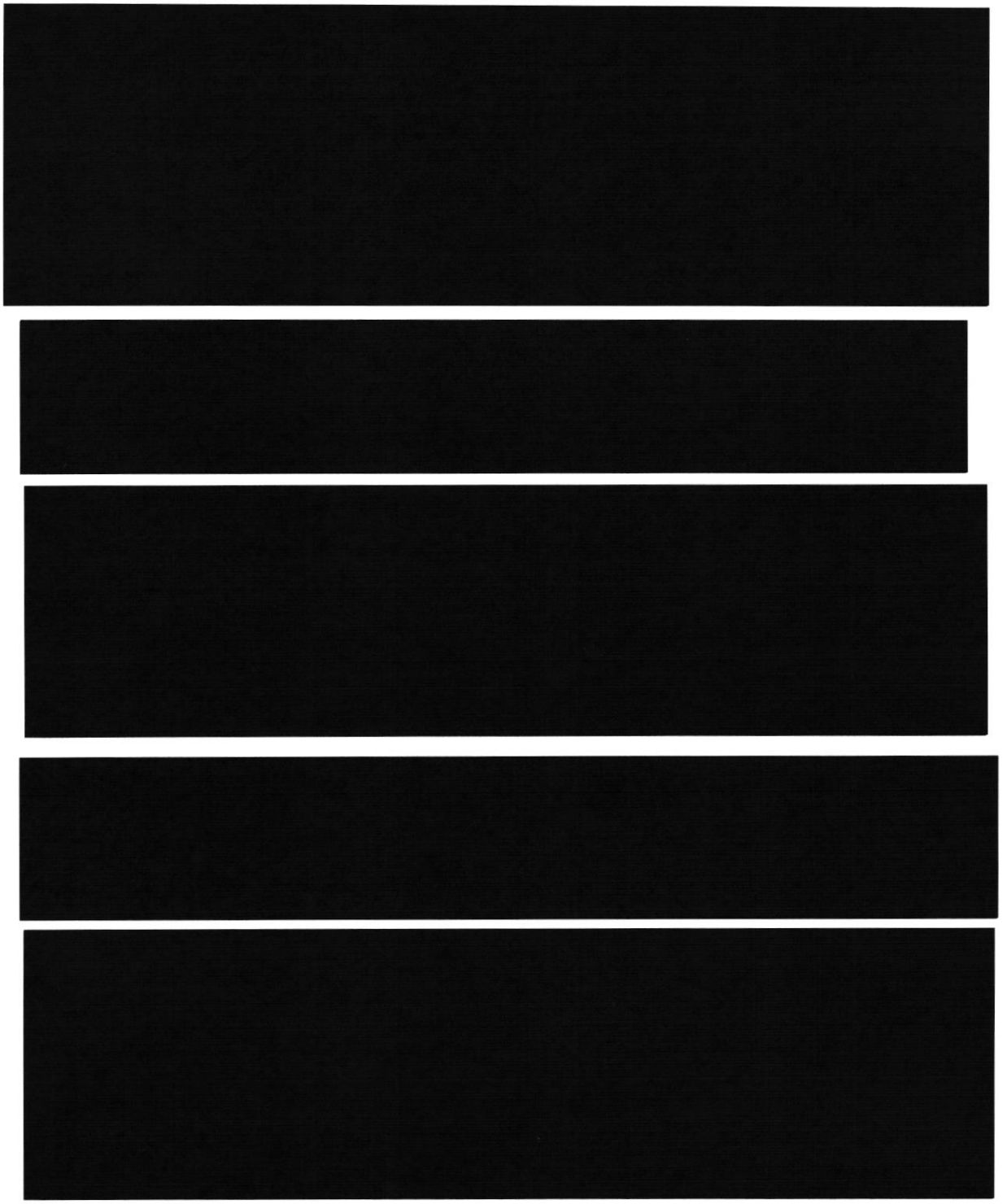
- [redacted]

[redacted]

[redacted]







[redacted]

[The undersigned consulted the *Consolidated Activities Report* (Exhibit 3c), rows 12055 – 12102, for further details regarding this student's activities on Apex for the course in question and noted: [redacted] entered the scores for all written assignments completed by this student, and the student completed no work online (no *Time Spent* or *Activity Attempts* are indicated). The undersigned further noted from the *Grade Book Audit Report*, rows 128 and 129, the student's course enrollment date, course completion date, and the dates of the overrides performed are the same (6/16/17).]

- [redacted]

[redacted]

[The undersigned consulted the *Consolidated Activities Report*, rows 16774 – 16841, for details regarding [redacted] activities on Apex for the course in question, and noted: [redacted] is specified as the teacher of record (column C), the scores for approximately 55 course activities (QUZ, CST, EXM, and pre-tests) are teacher-entered on 6/20/17 by [redacted] and it appears the student attempted four Unit 1 activities online on 6/20/17 (*Time Spent* and *Activity Attempts* are indicated.]

- [redacted]

[redacted]

[redacted]

- [redacted]

[redacted]

[The undersigned noted from the *Grade Book Audit Report* that the overrides in question were performed at approximately 4:30 PM on 6/21/17. The undersigned consulted the *Consolidated Activities Report* for details regarding this student's activities on Apex for the course in question, *College and Career Preparation I and II*. The undersigned noted that all of the scores awarded to such student were *Teacher Entered* on 6/21/17, as per rows 19280 – 19321 of such report, with no *Time Spent* or *Activity Attempts* by the student. The undersigned also located evidence that the student successfully completed *College and Career Preparation I (Time Spent* and *Activity Attempts* are indicated for each of the assigned activities), rows 7407 – 7429, which is duplicative of approximately one half of the activities required for the *College and Career Preparation I and II* course. The date of the first grade earned for the student's *College and Career Preparation I* course, 4/8/17, is consistent with the 4/6/17 enrollment date recorded in the *House 1 Apex Log*.]

- [redacted]

[redacted] who [redacted] admittedly supervised on Apex, and for whom 34 overrides were performed under [redacted] login credentials on 6/21/17. The undersigned consulted the *Consolidated Activities*

Report for details regarding this student's activities on Apex for the course in question, *Biology Literacy Advantage*. The undersigned noted that all of the scores awarded to such student were *Teacher Entered* on 6/21/17, as per rows 18749 – 18856 of such report, with no *Time Spent* or *Activity Attempts* by the student. The undersigned further noted from the *Grade Book Audit Report*, the student's course enrollment date, course completion date, and the dates of the overrides performed are the same (6/21/17).]

In further response to the 7 overrides [redacted] during the hour of 9:00 AM on June 21, 2017 [redacted] 9:01 AM, and see [redacted] 9:16AM), [redacted]

In further response to the 77 overrides performed under [redacted] (rows 203 – 220), [redacted] (rows 221 – 274), and [redacted] (301 – 305) on June 21, 2017 during the hours of approximately 3:00 PM and 4:45 PM, [redacted]

IV. Accuracy and Reliability of Apex Data Provided

During this investigation, the undersigned spent a significant amount of time studying Apex data, and revisiting such data as witnesses were interviewed, in an effort to reconcile it with the statements and evidence provided. The undersigned also corresponded and spoke with *Apex Learning* representatives to request clarification as I uncovered inconsistencies and information that could not be reconciled. Of particular concern was the data in the *Course Completions Report* indicating a total of 54 course completions (in various different subject areas) over the four-year period in question for which no *Time Spent* (00:00) was recorded by the Apex system. I found this data particularly concerning given that Apex is an online credit recovery platform. As noted in Section II of this report, the undersigned inquired about various possibilities that could impact the

[redacted]

reliability of Apex's data, and *Apex Learning* initially maintained the data was "factual and accurate."

Notwithstanding *Apex Learning's* insistence, the undersigned continued to doubt the accuracy and reliability of the data provided, particularly in light of, (i) the data in the *Course Completions Report* pertaining to the 2014-2015 school year showing that, for 18 of the 20 courses completed, no *Time Spent* was recorded by the Apex system (see Exhibit 2), in contrast with (ii) data in the *Grade Book Audit Report* showing only 5 overrides for such school year (all pertaining to the same student) (see Exhibit 4a). The above information was also irreconcilable with the witness statements and physical evidence obtained: (i) [redacted]

In light of the foregoing, the undersigned requested a copy of the *Consolidated Activities Report* for the 2014-2015 school year (Exhibit 3a), and cross-checked the information reported therein for [redacted] with the information reported in the *Course Completions Report* (Exhibit 2). The undersigned observed that the *Consolidated Activities Report,* (i) showed values for "*Date Grade Entered*" (Column S) and "*Points Earned*" (Column T) for substantially all of the course activities assigned to this student, (ii) there were no instances of "*Teacher Entered*" scores, and (iii) the were a substantial number of activities indicated as, "tested out." (See Exhibit 3a, rows 11817 - 11985). (The undersigned further observed that the above scenario repeated itself for other Apex students.) On October 30, 2019, the undersigned contacted *Apex Learning* and specifically asked, if [redacted] did not complete or attempt any course activities online (as the reports indicate), and if a teacher did not enter the scores (as there are no overrides indicated for this student in the *Grade Book Audit Report*), how did the student obtain the points that were awarded? Also, if [redacted] tested-out" of various units (as the *Consolidated Activities Report* indicates), why wasn't he credited "*Time Spent*" for the amount of time he spent completing such pre-tests? (The undersigned's email correspondence with Apex is provided with this report as Exhibit 16.)

On November 1, 2019, in response to the above query, Ms. Saunders Ortiz of *Apex Learning* notified the undersigned that the *Course Completions Report* for the period 2014 through 2018 (Exhibit 2) and the *Consolidated Activities Reports* for the 2014-2015 and 2015-2016 school years (Exhibits 3a and 3b) "were incorrect," explaining:

> *We discovered that Time spent, Activity Attempt, and score details were stored differently prior to 8/1/2015 and we didn't account for that in the previous versions of the reports. We spent yesterday updating the reports and Bernee will be sending you the links to these soon.*

On the afternoon of November 1, 2019, *Apex Learning* gave me access to purportedly corrected versions of the *Course Completions Report* and *Consolidated Activities Reports*; however, my inspection of such data revealed that it was still flawed. Specifically, information reported in the "corrected" version of the *Course Completions Report* was inconsistent with information reported

in the "corrected" version of the *Consolidated Activities Report* for the 2014-2015 school year. (i.e., Row 410 of the "corrected" *Course Completions Report* showed the completion of *Health Opportunities through Physical Education (HOPE) (2015),* [redacted] (a *00:00 Time Spent*, 78% *Activity Complete* student), but the updated *Consolidated Activities Report* for the 2014-2015 school year contained no information at all regarding this student.)

On November 1, 2019, I advised *Apex Learning* that the "corrected" reports still seemed to be incorrect. (See Exhibit 16.) In response, on November 6, 2019, the company notified me it was conducting its own investigation and explained:

> *It appears that certain older activity detail data (including, unfortunately, Time Spent and Activity Attempts) has expired. So a "0" for Time Spent may mean "data unavailable" as opposed to zero seconds spent. We are determining now if it can be retrieved. I should have an update for you by the end of the day today or tomorrow.*

In response, I notified *Apex Learning* that it was imperative that I know the scope of the issue(s) impacting the data provided, as the *00:00 Time Spent* course completion occurrences appear in the Apex reports pertaining to all four school years. (See Exhibit 17.) Apex agreed to pass my request on to the person(s) investigating the issue. (See Exhibit 18.)

As of the date of the undersigned's issuance of this report, no further information or updates have been received from Apex. Thus, the nature of the error and the scope of the error impacting the Apex data which was examined during the course of this investigation is unknown.

V. Findings, Opinions & Recommendations

Issue #1: Was the Apex Learning Online Credit Recovery Program administered in compliance with the Regulations of the Commissioner of Education governing credit recovery?

Based on the information learned from the available witnesses who were willing to participate in this investigation and the documents reviewed, the undersigned finds that the Apex Credit Recovery Program at NRHS was not administered in compliance with the Regulations of the Commissioner of Education, at any point in time, during the years the Program was in operation.

The foregoing finding is largely driven by the lack of certified teacher involvement with students enrolled in Apex credit recovery course offerings during the period 2014 through 2018. As explained in Section I of this report, Section 100.5(d)(8) of the Commissioner's Regulations expressly requires that online credit recovery programs, (i) 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," and (ii) include regular and substantive interaction between the student and a teacher who is certified in the subject matter area and providing direction and/or supervision. See 8 N.Y.C.R.R. §100.5(d)(8); see also, 8 N.Y.C.R.R. § 100.5(d)(10), applicable to online course offerings.

[redacted]

[redacted]

The undersigned also finds the School District's system for approval of student participation in the Program was not compliant with the Commissioner's Regulations, as enrollments were not approved by a school-based panel consisting of (at a minimum) the principal, a teacher certified in the subject area under study, and a guidance director or other administrator. 8 N.Y.C.R.R. §100.5(d)(8). [redacted]

The undersigned further finds that the cabinet's decision to require 65% course completion for passing is not consistent with the section of the Commissioner's Regulations requiring that credit recovery programs "satisfactorily address the student's course completion deficiencies and individual needs." A "one-size-fits-all" approach is at odds with the student-focused and need-based determination required under the regulations governing credit recovery.

As for other areas of concern noted by the undersigned during the course of this investigation:

- Commencing in or around the 2016-2017 school year, Apex tests were not administered in a manner that preserved the security of tests or academic integrity. [redacted]
- [redacted]

[redacted]

[redacted]

- [redacted]

- The undersigned uncovered evidence suggesting that some students were enrolled in credit recovery courses without prior failed attempts at such coursework.

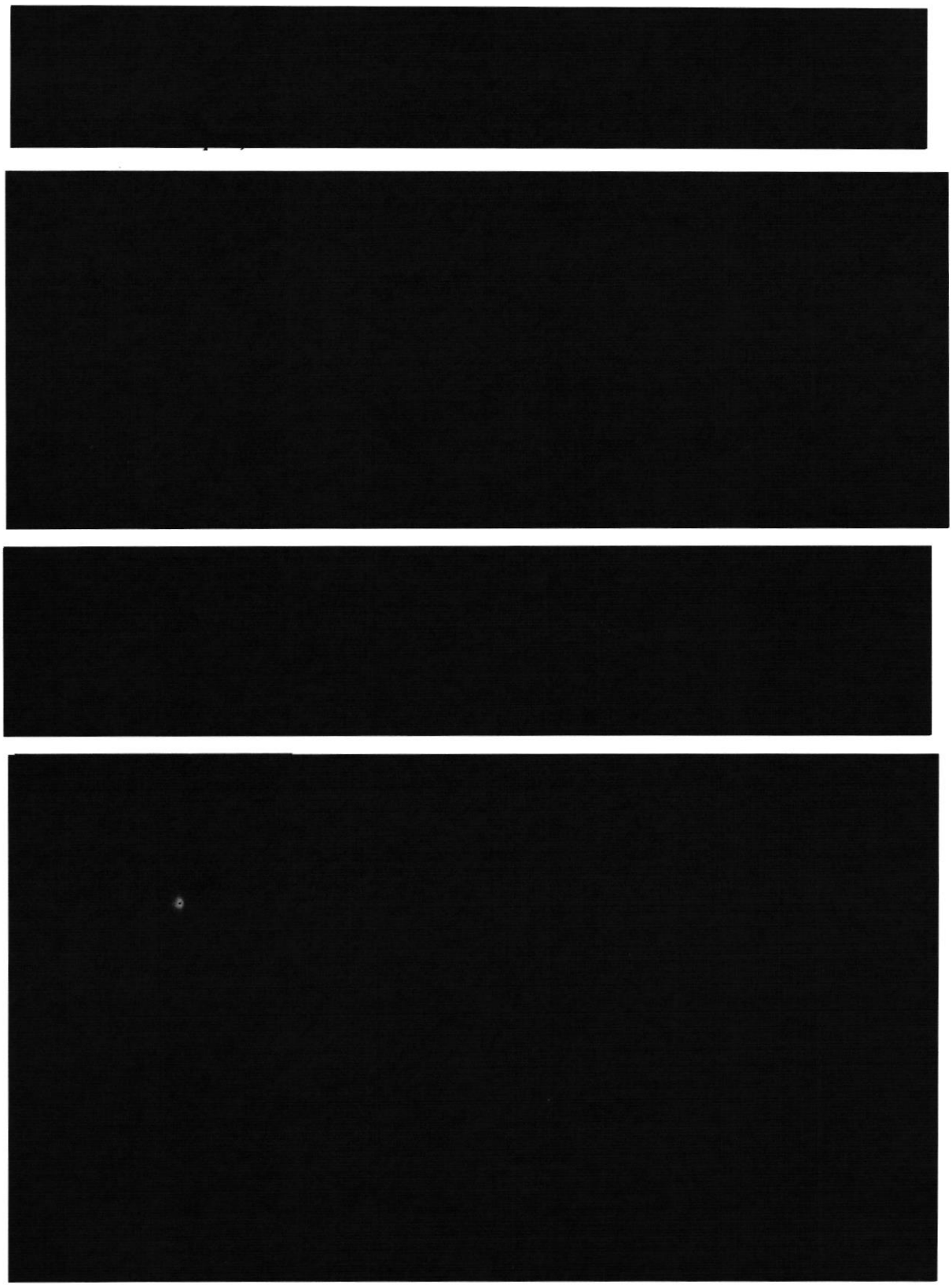
- [redacted]
    - Students enrolled in the same class sections as students from prior school years (i.e., 2017-2018 Apex students enrolled in the *2016-2017 Physical Education* course);
    - Students enrolled in the same class sections as students from other Houses;
    - Incorrect information regarding the teacher of record [redacted]
    - Occasions of students being enrolled in the same course twice;
    - Occasions of students commencing coursework in one school year and completing such coursework the following school year.

- [redacted]

- Finally, the undersigned learned that no failing grades or unsuccessful attempts were documented for any of the Apex credit recovery courses offered. (Incomplete and unsuccessful attempts by students are designated in the Apex system as "*Withdrawn.*") [redacted]

Issue #2: Did the School District employees who had administrative responsibilities for the Apex Program engage in misconduct in grading and awarding credit to students?

[redacted]



[redacted]

[redacted]

Issue #3: Newly Adopted Guidelines Applicable to Online Credit Recovery

[redacted] *Edgenuity* was launched during the spring of 2019 and utilized by a cohort of approximately eight (8) graduating seniors.

[redacted]

[redacted]

- [redacted]

[redacted]

[redacted]

The foregoing investigative findings and opinions are referred to General Counsel for discussion with the Board of Education.

Dated: December 3, 2019
Miller Place, New York

Yours, etc.,

By: [redacted]
REGINA M. CAFARELLA, Esq.

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