

10 October 2016

**DELIVERED VIA ELECTRONIC MAIL**

Ms. Alexa Cunningham, Superintendent

℅ Salt Lake City School District

440 East 100 South

Salt Lake City, Utah 84111-1891

**Re:** **Third Request for Full Transcript (un-redacted)**

Dear Dr. Cunningham,

Acting under the authority of my elected office, and in my official capacity as a member of the Salt Lake City Board of Education, I submit the following request on behalf of the residents of Salt Lake City, District 2. **I am once again requesting a COMPLETE and un-redacted copy of the Dr. Christy’s Discipline Appeal Hearing that occurred and was arbitrated by Kirk G. McRae on August 25, 2016.** I am also requesting copies of all un-redacted Exhibits associated with this hearing.

**VIOLATION**
I am sending a courtesy copy of this letter to a number of elected and appointed officials. In doing so, I am demonstrating the break down in local school Board governance as a result of your apparent disdain for my elected office; as evidence by the fact that you continue to deny my requests for information related to a matter that I am required to adjudicate. This letter will also serve to place you on notice that in refusing to provide me the documentation that I require to perform my duties, you are *“restricting and impairing”* my ability *“to serve and represent the residents of my District”.*

Accordingly,your actions are in violation of §53-3-401 of Utah Code:

 **Notwithstanding a local school board's status as a body corporate, an elected member of a local school board serves and represents the residents of the local school board member's district, and that service and representation may not be restricted or impaired by the local school board member's membership on, or obligations to, the local school board.**

**BOARD MEETING**
As you are aware, a Salt Lake City Board of Education meeting is scheduled for **Tuesday, October 11, 2016**. The action item on the agenda states:

 *Recommendation of Hearing Officer* [[1]](#footnote-1)

The exhibit attached to the agenda is a memo from you and in part states:

 *“Kirk G. McRae served as the hearing officer and has recommended to the board that the*

 *imposed discipline be upheld as it was “reasonable, appropriate, and sufficient.” As per*

 *Section II of the Employee Handbook, the hearing officer’s decision shall be subject to*

 *board approval.”* [[2]](#footnote-2)

**GARRITSON MEMO**

On October 3, 2016 – The Board received an email from Tina Hatch advising the following:

 *“I have attached the hearing officer’s report regarding the K. Christy matter, as well as the board letter that will be submitted for approval in a public board meeting…”* [[3]](#footnote-3)

I could not open the links in the email and went to the District offices to obtain a copy of the hearing officer’s determination [[4]](#footnote-4) with an accompanying memo by Human Resource Director, Byron Garritson, which in part states:

 *According to the Administrative Procedures for P-4 Discipline of District Employees, the recommendation is submitted to the board.*

 *Section D. outlines the responsibilities and options of the Board of Education:*

 *1.The board will review the hearing officer’s recommendations and either accept them, or prepare its own findings and conclusions* ***based on the record of the hearing****.*

 *2. In making its decision the board may, at its discretion, allow the employee and the district to submit written or oral argument regarding the matter.*

 *3. The board may also reopen the hearing to receive additional evidence from the parties.*

 *4. The board’s decision shall be delivered in person or sent by certified mail to the employee and the district.*

 *5. The board’s decision is final.* [[5]](#footnote-5)

**TRANSCRIPT REQUESTS**
According to Procedures P-4 the Board is entitled to a **record of the hearing**, yet you refuse to provide me a copy of the Transcript.

 **On October 03, 2016 –** I sent you an email requesting a copy of theHearing Transcript and Exhibits, I stated the following: *I picked up a hard copy of the "confidential personnel report". My packet is missing the exhibits as well as the transcripts of the hearing. I can pick up a copy of the transcript of the hearing and the exhibits at tonight's Board meeting as that will give me a week to review the material.***[[6]](#footnote-6)**

**On October 5, 2016 –** I had not yet received a copy of the Transcript and Exhibits, I sent you another email asking for the status on my receiving the Transcript and Exhibits. [[7]](#footnote-7) You replied:

 *Mr. Clara, We are working on the exhibits and transcript and hope to have that ready to go by Friday.*

 *Lexi* [[8]](#footnote-8)

**On October 7, 2016 –** I received an email from your office advising me that the Transcript and Exhibit can be accessed via links in the email. **[[9]](#footnote-9)** The links provided me did not work. I called your office to see if I could pick up the documents. They advised me that the documents were in the mail.

**On October 8, 2016 –** No documents arrived in the mail.

**On October 09, 2016** – I sent you a second request for a copy of the Transcript. [[10]](#footnote-10)

**On October 10, 2016**- You replied:

 *Mr. Clara, Mrs. Hatch has the packet of documents that was emailed and mailed on Friday. She will expect you at 10. Mr. Garriton was out of the office on Friday and today. Tomorrow I will get the information for your requests from Friday and Tuesday. Lexi* [[11]](#footnote-11)

I went to the District office and obtained the packet of information. To my disappointment I received 13 pages of the transcript and most of those pages were redacted. I also only received a few of the exhibits and many of those were redacted. I am now sending you this **third request for the Transcripts and Exhibits**.

**HEARING OFFICER**

As indicated in earlier correspondence, Procedure P-4 –States:

 *"…superintendent shall appoint an* ***impartial hearing officer*** *consistent with any applicable written/negotiated agreement."* [[12]](#footnote-12)

I am calling into question the level of *“impartiality”* exercised in selecting this hearing officer. In a previous correspondence in response to my inquiry of how this hearing officer was selected, I was advised as follows:

 *“…a list of qualified hearing officers that I rotate through; the hearing officers are individuals who are very familiar with employment law, both federal and state, and public education.”* [[13]](#footnote-13)

After looking through my records of the past four years, it appears that this hearing officer was used by the District to the exclusion of others on the list and it appears that he has done other work for the District.

That is not *“rotating”* and it decreases the changes that he will be *“impartial”.*

Surely you can understand that by using the same hearing officer repeatedly and hiring him for other work within the District breeds familiarity that could incentivize one to always rule in favor of the District. I have also received a report that this hearing officer is related to McKell Withers. These are issues I raised in my email to you this past Friday morning that you have not yet responded to. [[14]](#footnote-14)

**DR. CHRISTY DUE PROCESS**

Additionally, on Friday morning,[[15]](#footnote-15) I sent you an email where I reminded you that back in July, I asked you what policy or law was the District following to uphold this demotion and subsequent appeal process. I stated the following:

 *“I remain baffled as to what reasonable explanation you or anyone in your administration can offer as to why Dr. Kathleen Christy has been treated so harshly by you and your predecessor. As a member of the Board, I am frustrated and angry that every time I ask for clarification on her due process rights, I am given a different explanation on what appeals procedure she needs to follow. I can accept that you are not responsible for the 11th hour actions of your predecessor. The part that I find unacceptable, is how a new Superintendent, new HR Director and four attorneys cannot determine what due process rights Dr. Christy should follow in order to address these false charges. That is not only inexcusable it is utterly ridiculous. Moreover, I believe it was wrong of you to allow a demotion to stand prior to the yet to be determined appeal process to be fully understood or completed." [[16]](#footnote-16)*

You never replied to my concerns raised in July of this year. On Friday, I again asked for clarification on Board policy and procedure on the this issue.[[17]](#footnote-17) You have not yet responded. It appears that the District is operating under three separate statutes that in my reading of them are not applicable to Dr. Christy’s demotion and the manner in which it occurred. You or members of your administration have provided the following convoluted explanations:

1. The Garritson memo quotes Board Procedure P-4 as the authority under which the Board will review that hearing officer’s determination. My reading of the procedure states the Board will review appeals to dismissals not demotions. [[18]](#footnote-18) How does this procedure inform the Board’s actions on this issue?
2. The Cunningham memo that is in the exhibit for the Board’s agenda states: *“As per Section II of the Employee Handbook, the hearing officer’s decision shall be subject to board approval.”.* Yet, I am not seeing that reference in the Handbook. [[19]](#footnote-19) How does that reference inform the Board’s actions on this issue?
3. The McRae decision states that he is holding the hearing *“pursuant to negotiated policy and … §53A-8a-101 et. Seq. of the Utah Code.”* When I read that section of the code it references appeals to a *“dismissal”* incidental to an “evaluation”. Dr. Christy was not dismissed. Moreover, on more than one occasion, you have advised the Board that administrators in the District office do not have evaluations on file. [[20]](#footnote-20) How does this section of the Utah Code inform the Board’s actions in this issue?

**MCKELL WITHERS PhD**

**On July 18, 2016** – I met with you, in your office and I informed you that on 10/29/15 the Board received an email from Janet Roberts advising us that Dr. Christy had a master’s degree at that time. [[21]](#footnote-21) I also advised you that your predecessor, McKell Withers was not awarded his Doctorate until 12/16/2005.[[22]](#footnote-22) Yet, he freely used the title of Dr. in 2003 [[23]](#footnote-23) and in 2004. [[24]](#footnote-24) I repeated these two facts to you in my July 31, 2016 correspondence. [[25]](#footnote-25) I am interested to see how this matter could have progressed to this stage within the context of these two facts. I am hoping that the Transcript of the hearing will enlighten me.

**CONCLUSION**
As one who was elected to represent the interest of my community, all I can say is: **SHAME ON YOU!**

The manner in which you and your administration have manipulated and abused this appeal process is astonishing. It is clear to me and others, that it is your intent to deceive members of the Board by limiting the evidence surrounding this action. Your continued display of contempt for elected officials is a symbol of all the is wrong with public education in the state of Utah. I can assure you, that your behavior is contrary to Utah values and will not go unchallenged.

Shalom,

Michael Clara

J. Michael Clára

**Board Member, District 2**

**cc:** Senator Wayne Niederhauser, President
 Representative Greg Hughes, Speaker of the House of Representatives
 Utah State Auditor John Dougall
 Senator Luz Escamilla, Minority Assistant Whip

 Representative Angela Romero

 Representative Sandra Hollins
 Select Members of Utah Legislative Education Committees
 Ms. Rickie McCandless, Salt Lake City Mayor’s Designee

1. Salt Lake City Board of Education Meeting Agenda 10/11/16 [↑](#footnote-ref-1)
2. Alexa Cunningham memo to the Board of Education 10/11/16 [↑](#footnote-ref-2)
3. Tina Hatch email to the Board – Board letter and KC Report 10/03/16 [↑](#footnote-ref-3)
4. In the Matter of the Employment Discipline Concerning Kathleen Christy Appellant and Salt Lake City School Dist. Respondent –Decision of Hearing Officer Kirk G. McRae [↑](#footnote-ref-4)
5. Byron Garritson memo to the Board – Hearing Officer Recommendation from Appeal Filed by Kathleen Christy 09/29/16 [↑](#footnote-ref-5)
6. Michael Clara email to Byron Garritson and Superintendent Cunningham – Hard Copy 10/04/16 [↑](#footnote-ref-6)
7. Michael Clara email to Superintendent Cunningham –Hearing Officers 10/05/16 [↑](#footnote-ref-7)
8. Superintendent Cunningham email to Michael Clara – Hearing Officers 10/05/16 [↑](#footnote-ref-8)
9. Superintendent Cunningham email to Board members –Passwords 10/07/16 [↑](#footnote-ref-9)
10. Michael Clara email to Superintendent Cunningham – 2nd Request for Transcript 10/09/16 [↑](#footnote-ref-10)
11. Superintendent Cunningham email to Michael Clara – 2nd Request for Transcript 10/10/16 [↑](#footnote-ref-11)
12. Salt Lake City School District Procedure P-4 [↑](#footnote-ref-12)
13. Byron Garritson email to Michael Clara Hard Copy 10/04/16 [↑](#footnote-ref-13)
14. Michael Clara email to Superintendent Cunningham – Hearing Officers 10/07/16 [↑](#footnote-ref-14)
15. *Ibid* [↑](#footnote-ref-15)
16. Michael Clara letter to Superintendent Cunningham –Cannibalization of Public Education 07/31/16 [↑](#footnote-ref-16)
17. *Op. cit.* Footnote *14* [↑](#footnote-ref-17)
18. *Op. cit.* Footnote 5 [↑](#footnote-ref-18)
19. *Op. cit.* Footnote 2 [↑](#footnote-ref-19)
20. Superintendent Weekly Report to the Board 07/21/16 [↑](#footnote-ref-20)
21. Janet Robert email to the Board –Reorganization 10/29/15 [↑](#footnote-ref-21)
22. University of Utah – McKell S. Withers – Doctor of Education –Awarded 12/16/2005 –VERIFIDED [↑](#footnote-ref-22)
23. Salt Lake City School District –Public Information Office 11/04/03 [↑](#footnote-ref-23)
24. Resolution Tuition Tax Credits 03/02/04 [↑](#footnote-ref-24)
25. *Op. cit*. footnote 16 [↑](#footnote-ref-25)