

**DES MOINES PUBLIC SCHOOLS
INVESTIGATIONS OFFICE
HUMAN RESOURCES MANAGEMENT**

**Personnel Investigation of an Alleged Violation of Anti-Bullying and Anti-Harassment
Policy, Corporal Punishment and Allegations of Conduct Unbecoming**

Investigation Conducted By: Amanda Easton, District Investigator
& Steve Garrison, Personnel Investigator

Date of Findings: October 1, 2012

POLICY

Series 500, Code 520, Title: School Discipline, IV: Restraint and Physical Force

Intentional physical punishment of a student is specifically prohibited.

An employee of the Des Moines Independent Community School District shall not inflict, or cause to be inflicted, corporal punishment upon a student. "Corporal punishment" is the intentional physical punishment of a student. "Corporal punishment" includes the use of unreasonable and unnecessary physical force, or physical contact made with the intent to harm or cause pain.

Definition: Corporal punishment refers to intentional application of physical pain as a method of changing behavior. It includes a wide variety of methods such as hitting, slapping, spanking, punching, kicking, pinching, shaking, shoving, choking, use of various object (wooden paddles, belts, sticks, pins, or others), painful body postures (as placing in a closed spaces), use of electric shock, use of excessive exercise drills, or prevention of urine or stool elimination .

Series 500 Code 524 Title: Anti-Bullying and Anti-Harassment Nondiscrimination

No student in the Des Moines Independent Community School District shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in the District programs on the basis of race, color, creed, sex, religion, marital status, ethnic background, national origin, disability, sexual orientation, gender identity, or socio-economic background. The policy of the District shall be to provide educational programs and opportunities for students as needed on the basis of individual needs, interests, abilities, and potential.

Harassment and Bullying Prohibited. Harassment and bullying of students is against federal and state law, and against the policy of the District. The District is committed to maintaining an educational environment free of any form of bullying or harassment by or toward students, parents/guardians, employees, and volunteers while in school, at a school sponsored activity or at any school sponsored function. The District prohibits harassment or bullying based on the students actual or perceived trait or characteristic, including but not limited to the student's actual or perceived race, color, creed, sex, age, religion, marital or familial status, ethnic background, national origin, ancestry, physical or mental ability or disability, sexual orientation, gender identity, physical attribute, political party preference, political belief, or socio-economic background or familial status. Acts of harassment or bullying may be treated as grounds for discipline. Discipline may include suspension or expulsion of a student, termination of an employee, and exclusion of a volunteer from District activities or school premises.

Harassment and Bullying Defined. Any communication toward a student including electronic (such as emails or instant messages), telephonic, written or verbal communication, or any physical act or conduct that is based on an actual or perceived trait or characteristic that creates or could reasonably be expected to create an objectively hostile school environment is prohibited. An objectively hostile school environment is created if the act or conduct:

- places the student in reasonable fear of harm to the student's person or property; or
- has a substantially detrimental effect on the student's physical or mental health; or
- has the effect of substantially interfering with the student's academic performance; or
- has the effect of substantially interfering with the student's ability to participate in or benefit from the District services, activities, or privileges.

Examples of prohibited behavior may include but are not limited to the following:

- unwelcome touching;
- inappropriate or demeaning remarks, jokes, stories, activities, symbols, signs or posters;
- implied or explicit threats concerning grades, awards, property or opportunities;
- requiring explicitly or implicitly that a student submit to harassment or bullying as a term or condition of the student's participation in any educational program or activity.

ALLEGATION #1—CAMPERO COMPLAINT OF COPORAL PUNISHMENT AND BULLYING/HARASSMENT ON SEPTEMBER 3, 2012

Both Jeff Hummel, Vice Principal at RAILS Academy at Lincoln High School, and Paul Williamson, Principal at Lincoln High School, reported that on September 4, 2012, they received calls from Mary Walker, mother of former Lincoln High School sophomore [REDACTED]. Walker alleged her son was hazed and bullied by Tom Mihalovich, Head Coach of Lincoln High School football on September 3, 2012 at football practice. Both administrators reported Walker acknowledged her son posted a disparaging comment about the varsity football team on Twitter on August 31, 2012. Walker reported her son removed the “tweet” and then posted an apology to varsity players on Twitter. Walker reported that [REDACTED], hereinafter referred to as “Complainant,” was subjected to the following behaviors as a punishment for the posting:

- Complainant was forced to stand in front of the varsity team and recite the offensive “tweet”;
- During the time that Complainant addressed the varsity team, Mihalovich permitted varsity team members to direct threatening statements and derogatory remarks toward Complainant without Mihalovich, or any other coach, intervening to stop this behavior;
- As an additional punishment, Complainant was forced to run for two hours without a water break;
- While running, Mihalovich mocked and taunted Complainant with questions like, “Why don’t you go to Dowling?”;
- Coaching staff continued to add drills to Complainant’s punishment with the intent of making him quit the football team;
- Coaching staff required that Complainant continue to run even after he reported to coaching staff he felt sick; and
- When Complainant reported he could run no more, Assistant Coach, Kevin Johnston, kicked him off the football team.

Walker reported to both Paul Williamson and Jeff Hummel that because of these behaviors, she disenrolled her son from Lincoln High School and enrolled him in Dowling Catholic High School on Tuesday, September 4, 2012.

Complainant, provided a formal complaint to this Investigator on September 11, 2012. In addition to the allegations made by Mary Walker, Complainant added that when he addressed the varsity football team, Mihalovich directed profane, abusive language at him saying, “Fucking tell them what you tweeted.” Complainant added that while running during his punishment, Mihalovich yelled out to Complainant “Go

back to Dowling!” and “Your thumbs weren’t tired when you sent that tweet.” Complainant also reported that the threatening remarks allegedly made by varsity players, such as “Let him practice with us,” frightened him to the extent that he left practice fully dressed in his practice equipment in order to avoid changing with the varsity team in the locker room. Finally, Complainant reported his parents disenrolled him from Lincoln High School because he feared violence from varsity football team members.

Contradicting Walker’s initial complaint, Complainant reported he believed he ran as a punishment for approximately one hour, instead of two.

Walker and Complainant alleged Mihalovich’s behaviors on Monday, September 3rd, 2012, required that Complainant, explicitly or implicitly, submit to harassment or bullying as a term or condition of Complainant’s continued participation in a District activity, the Lincoln High School football program. Additionally, Walker and Complainant alleged Mihalovich authorized a member of his coaching staff to subject Complainant to excessive exercise drills as a form of corporal punishment for perceived misconduct.

SUMMARY OF INVESTIGATIVE FACTS

The Investigators have considered all relevant statements, documentation, and video footage submitted throughout the course of the investigation. The following is an account of the events that occurred on September 3, 2012, as substantiated by the preponderance of the evidence:

██████████, former sophomore at Lincoln High School, posted a message on Friday, August 31, 2012 on a social media site named Twitter. Postings are referred to as “tweets.” The tweet read, “The reason I don’t go to the Varsity games at Lincoln is because they get fucking destroyed when they play half-decent teams.” According to all coaching staff, the tweet was discussed on Saturday, September 1, 2012 at a coaches meeting.

Mihalovich claimed he was informed of the tweet by a random student he could not identify by name or phone number. Mihalovich claimed the random student called him at his home on Saturday morning to report the tweet and made the comment, “He’s in our locker room” referring to the Complainant. Mihalovich reported he believed these statements were made by a student athlete because the individual who allegedly contacted him referred to Mihalovich as “Coach” during the phone call. Mihalovich alleges he experienced concern regarding players taking the situation into their own hands and retaliating against Complainant for the disparaging tweet. Mihalovich reported it is for these reasons that he alerted

the other coaching staff members about the tweet on Saturday, September 1st, and ultimately decided it would be proactive and in the players and Complainant's best interest to have Complainant address the team on Monday, September 3, 2012 during practice and apologize. Mihalovich claimed no physical punishment was discussed at all on Saturday, September 1st, 2012.

Johnston, a second accused staff member [REDACTED], corroborated Mihalovich's statements. Respondent reported Mihalovich received word of the tweet from someone and discussed the situation with coaching staff members on Saturday, September 1st. Johnston reported he then pulled up the tweet on his cell phone and read it aloud to the coaching staff.

Coach Larry Gamblin, hereinafter "Respondent," [REDACTED], corroborated Mihalovich's statements. Respondent reported the coaching staff decided to have Complainant address the team because other players had found out about the tweet and the coaching staff feared players would take matters into their own hands. However, when asked which players found out about the tweet, Respondent, like Mihalovich, could not identify any players. Respondent reported he believed Coach Tom Alessio and Coach Joe Bianchi received reports from concerned players regarding the tweet.

However, Ross Flowers, Assistant Varsity Football Coach at Lincoln High School, reported Johnston has a brother who follows Complainant on Twitter. Flowers alleged Johnston's brother took a screen shot of the tweet and sent it to Johnston in a text. Johnston then came in and shared that information with the rest of the staff. Both Coach Alessio and Coach Bianchi deny they ever heard concerns regarding the tweet expressed by other players prior to the alleged incidents on Monday, September 3, 2012. Only the accused coaches have provided any statements to suggest the decision to have the Complainant address the varsity football team and recite his tweet was intended to quell a disturbance among student athletes that was already in progress. In fact, statements reportedly made by Mihalovich during the time that Complainant addressed the team appear to have the intent of inciting the varsity players. Therefore, Mihalovich's claims, that a concern for the Complainant's well-being and a fear of retaliation prompted the decision to have the Complainant recite the tweet in front of the team, are not credible.

Following this discussion, witnesses agree Coach Joe Bianchi called the Complainant to question him about the tweet. During the call, Complainant admitted to Bianchi that he posted the tweet and apologized for this decision. Coach Bianchi informed Complainant that he would have some type of punishment during practice on Monday, September 3, 2012.

Flowers reported that all coaches present on Saturday talked and decided Complainant would address the varsity team, so that he could let them know exactly what he posted, and that after practice, Complainant would have “extra conditioning.” Flowers reported, “extra conditioning” is the coaches’ standard form of punishment. Bianchi, Alessio, and sophomore head coach, Matt Lakis, all acknowledged that running was discussed on Saturday morning as a punishment for the Complainant’s decision to post the disparaging tweet, though all reported the amount of running and exercise, and the length of time that physical activity would last, was not decided. Therefore, Mihalovich’s claim that, prior to September 3, 2012, he had no knowledge Complainant would be required to run as punishment is also not credible.

On Monday, September 3, 2012, Complainant reported to sophomore practice, which, according to all parties, began at 9:00am. Mihalovich alleges he had not thought of the tweet all weekend and only remembered it when he noticed Complainant in the locker room changing. Mihalovich reported he then brought all the coaches together and asked their opinion on having Complainant address the varsity team, admit what he posted and apologize. Mihalovich reported coaches Bianchi, Flowers, Johnston and Respondent all agreed it was a good idea. Flowers, Lakis and Bianchi reported that the punishments of addressing the varsity team and extra running had already been discussed with Mihalovich on Saturday, September 1st. Therefore, Mihalovich’s account of this conversation is not credible.

Mihalovich reported Complainant walked over to the varsity practice after varsity warm-ups. He reported he met Complainant halfway and explained to Complainant that he wanted him to “man-up” and admit what he tweeted and then apologize to the team. However, Complainant reported that Coach Kevin Johnston told him to go over to the varsity practice and wait until they finished warming up. He did not report any interaction with Mihalovich prior to addressing the team. Additionally, Flowers reported that Johnston brought Complainant over to the varsity team. Varsity player ██████████ reported Johnston brought Complainant over to the varsity practice. None of those interviewed reported Mihalovich met Complainant halfway.

Mihalovich reported he stood approximately ten feet behind Complainant when he started speaking to the varsity team, and when Complainant became “quiet” due to nervousness, Mihalovich supported the Complainant and “helped” him tell the varsity team members what he tweeted. However, Complainant reported Mihalovich told him to “Fucking tell them what you tweeted.” Mihalovich denies directing profanity at Complainant during this interaction and claims he asked Complainant to address the team as a teachable moment and was there to support the Complainant in this endeavor. Four varsity players reported that Mihalovich’s interaction with Complainant was hostile during the time he asked Complainant to address the varsity team. ██████████ varsity football player, reported Mihalovich

said, “This is bullshit.” [REDACTED] varsity football player reported Mihalovich said, “This is what he said about you guys and he’s your brother.” Additionally, during the building-level inquiry of this complaint, [REDACTED] admitted he reported to Principal Williamson that, while Mihalovich was telling the team about what Complainant posted, he “dropped several f-bombs.” Furthermore, Alessio reported during the building-level inquiry that Mihalovich was using “colorful language” when telling Complainant to address the team.

By all accounts, Complainant recited a version of the tweet to the varsity team that did not contain profanity. Complainant’s explanation of the tweet did not report the tweet verbatim. Mihalovich admits he then recited the tweet verbatim. Flowers reported Mihalovich had the tweet memorized, in its entirety. After reciting the tweet, all but one witness-reported the varsity team members yelled out comments to Complainant for thirty seconds to one minute. Reported comments include:

- “Let him practice with us”
- “Why do you think you’re so good?”
- “Go back to Dowling”
- “Go to a different school.”
- “Put him in the drill so we can hit him.”
- “Make him take off the Rails shirt.”
- “Let him do grinders with us.”
- “Let him practice with us today coach.”
- “That’s messed up.”
- “I can’t believe you.”

Mihalovich reported that, as varsity team members became louder and more excited during this exchange, he then told them, “Enough” and sent Complainant back to practice. Some witnesses corroborated Mihalovich’s account that after approximately 30 second to one minute of the varsity team directing threatening and insulting comments to the Complainant, he stopped them by saying “Enough.” Some witnesses reported that no coaches intervened to stop the comments. However, in line with the statements cited above regarding the tone of the interaction, [REDACTED], varsity football player, reported Mihalovich ended the interaction by telling Complainant, “Get out of my face!” [REDACTED], varsity football player, reported Mihalovich told Complainant, “Get out of my face. I don’t want to see you anymore.” Mihalovich denies telling Complainant to “get out of his face.” Mihalovich’s denials are not credible.

Mihalovich reported varsity team members asked if Complainant could be put into practice with them, but he explained to the players that the situation was “done.” This statement is supported by more than one witness.

Mihalovich reported the varsity team began to practice and then he was approached by Respondent who allegedly said to Mihalovich, "I just realized that [REDACTED] didn't apologize and so I'm going to have him run hills with [REDACTED]." It is Mihalovich's argument that, prior to Complainant "forgetting" to apologize during the time he addressed the varsity team, Mihalovich had no intention of having Complainant run as an additional punishment. Mihalovich claimed the running as a punishment was Respondent's idea following Complainant addressing the varsity team. Mihalovich reported Respondent was upset that Complainant had not apologized to the varsity team. Mihalovich claimed Respondent requested permission to assign Complainant the punishment of running and Mihalovich approved it. Respondent reported he didn't care about the apology. Furthermore, Bianchi, Alessio, Flowers, and Lakis reported extra running as a punishment had already been discussed on Saturday. All witnesses agree Respondent assigned and supervised Complainant running drills.

Mary Walker, Complainant's mother, reported to Williamson and Hummel that Complainant ran for two hours as a punishment for his tweet and was subsequently kicked off the football team. Complainant reported he ran for approximately one hour. During this investigation, Walker revised her position and reported she believed Complainant's punishment lasted from 45 minutes to one hour. Mihalovich, Respondent, and Johnston reported Complainant ran for fifteen to twenty minutes. All witnesses agree Complainant started his punishment shortly after sophomore practice ended. Lakis reported it takes the team approximately two minutes to walk from the field to the locker room. Video footage demonstrates sophomore players arrived at the locker room following their practice at 12:05pm. Video footage shows that at 12:37pm Complainant arrived at the locker room after completion of his punishment. Based on video footage alone, Complainant's punishment could not have been longer than 32 minutes. Both Walker and Complainant's claims of physical activity as punishment that lasted from one hour to two hours are not credible.

Respondent reported he assigned to Complainant the same "conditioning" drills he had assigned regularly to [REDACTED], varsity football player. Respondent reported he assigned both Complainant and [REDACTED] a lap around the shot-put field, followed by a break that was approximately "four plays" or four minutes. Respondent reported he then assigned ten hill sprints, followed by a break that was approximately four minutes. The hill sprints were completed on a hill next to the practice field that is approximately 63 feet from top to bottom, at an incline of approximately 15-20 feet. Respondent reported he then assigned an undetermined number of "up-downs," which is a drill where the player runs in place, jumps to ground, lays with their belly flat on the ground, then jumps up and puts their hands in the air. Respondent reported, "It couldn't have been that many because [REDACTED] struggles with them." Respondent reported that because [REDACTED] was struggling with this drill, he permitted Complainant and

██████████ a longer break, a break of approximately “six to seven plays.” Respondent reported that, after the break, he believes he assigned 15 more hill sprints. Respondent reported that while completing hills, the varsity team took a water break and he allowed Complainant and Drayton to take a short water break at that time, and told them to return quickly and complete their hill sprints. Respondent reported that he told Complainant the fifteen hill sprints were the last drill he would be required to complete as his punishment. Respondent reported that, following the water break, Complainant stopped exercising and was approached by Johnston.

Complainant’s description of the physical activity he was required to do as punishment differs significantly from what Respondent claimed he assigned. Complainant reported that, following a two and a half hour sophomore practice, he was assigned as punishment, exercise drills, one after the other, without any indication as to when the punishment would end. Complainant reported he was told by Respondent to run twenty hill sprints. After completing those, he was allowed a four-play break. Complainant reported he was then told by Respondent to do twenty up-downs. Complainant acknowledged that between each drill, he was permitted a break that was a minimum of four-plays in length. Complainant reported, he was then told to run two laps around the practice football field, to run to the backstop and back, and then to run twenty more hill sprints. He reported he completed ten of the last twenty hill sprints and then he could do no more.

Witnesses agree Complainant completed at least twenty hill sprints, twenty up-downs, two laps around the practice field and an undetermined number of hill sprints before walking off the field. There is discrepancy among witnesses regarding the number of hill sprints Complainant was assigned in the last drill prior to walking off the field. However when initially questioned, ██████████’s description of what activities were assigned to the Complainant matched the Complainant’s description very closely. Since the investigation and all of the events that have occurred, including a student athlete rally protesting the Mihalovich’s paid administrative leave, ██████████ changed his statement to indicate Complainant was assigned less hill sprints during the last drill--ten hill sprints prior to walking off the field, as opposed to the twenty hill sprints he initially reported. Nearly every witness present to observe Complainant’s punishment and to hear the instructions provided by Respondent to the Complainant agree with Complainant’s statements ██████████ regarding the number and types of drills he completed.

Complainant reported ██████████ did not complete anywhere near the number of drills he completed on September 3, 2012.

██████████ agreed with Complainant’s assessment. ██████████, varsity football player, was assigned extra conditioning and ran with Complainant. All witnesses except Johnston reported ██████████ was

unable to keep up with Complainant. Johnston reported that [REDACTED], who is an overweight player who does extra conditioning to get in shape, actually ran faster than the Complainant throughout the “conditioning.” [REDACTED] himself reported he was unable to complete the conditioning Complainant was assigned and that Complainant was much faster. [REDACTED] confirmed Complainant completed all of the drills he was assigned except for the last twenty hills of which he completed ten. [REDACTED] also reported Complainant continued to run after [REDACTED] had stopped. Respondent reported [REDACTED] completed the exact same drills the Complainant completed. Respondent first reported he was monitoring the Complainant’s progress, and then contradicted himself and said he was not monitoring the activities and had the students working on an “honor” system. By all accounts, Respondent assigned varsity captain the task of counting the Complainant’s progress. [REDACTED] reported Complainant completed twenty hill sprints, twenty up-downs, two laps around the practice field, and then five additional hill sprints before exiting the field. Therefore, Respondent’s statements are not credible.

All parties agree that during the second set of hill sprints, Complainant stopped and was approached by Johnston. All parties agree that when Complainant stopped running, Johnston approached and told him to continue. Respondent reported Johnston told Complainant, “This is your conditioning. Finish or turn in your pads.” Complainant reported Johnston said, “Turn your shit in tomorrow” after Complainant told Johnston he could not finish the drills. Johnston denied telling Complainant to turn his “shit in” and reported he has never directed profane language at a student athlete. That statement is refuted by all student witnesses and most coaching staff members. All student witnesses reported Johnston uses profane language at practices. Johnston admitted he made the statement, “Finish the punishment or get off the field and turn your stuff in tomorrow.” Furthermore Johnston admitted he had a conversation with Flowers telling him, “If [Complainant] is off the team, we need to get in touch with him tomorrow because he still has all of his equipment on.”

When asked during his interview what drills Complainant completed for his punishment, Johnston reported, “The only thing I saw him do was run hills.” When asked if he was aware that Complainant had done significantly more than just run hills, Johnston reported, “no.” He then offered, “I don’t think it’s possible he ran it in 30 minutes. With the pace that he set and the breaks he was taking, there’s no way he ran that much.” Present to observe the Complainant completing his punishment were Amanda Brakke, Athletic Trainer at Lincoln High School; [REDACTED], varsity football player; and [REDACTED], varsity football player. Complainant acknowledged he received breaks in between drills and took breaks as needed. Complainant acknowledged it would have taken him between two and four minutes to walk from the practice field to the locker room. All things considered, breaks included, it is a fair assessment that Complainant’s punishment lasted between 25 minutes and 30 minutes. In that period of time, all

witnesses agree Complainant completed 20 hill sprints, 20 up-downs, two laps around the practice field, and at least five more hill sprints.

The National Association for Sport and Physical Education released a position statement on physical activity used as a punishment in 2009. It reads, “Administering or withholding physical activity as a form of punishment and/or behavior management is an inappropriate practice.” According to Chapter 103 of the Iowa Code, corporal punishment includes an unreasonable request or requirement of a student engaged in activities associated with physical education or extra-curricular athletics. When questioned regarding the number of repetitions and drills Complainant claimed he completed during his punishment on September 3, 2012, Johnston—the individual responsible for issuing the Complainant the ultimatum to finish the drills or quit the team—reported it was “not possible” that Complainant completed the number of drills reported by the Complainant and witnessed by Brakke, [REDACTED] and [REDACTED]. By Johnston’s own admission, the requirement of Complainant to continue to exercise, beyond what he had already completed at the point of reported exhaustion, or be removed from the team was unreasonable.

An average runner can complete a mile in ten minutes. In addition to completing a two and half hour practice, as a punishment for sending a disparaging tweet, Complainant was required to engage in physical activity that would be the equivalent of running two and half to three miles. All coaches reported that, to their knowledge, never before had a player received a punishment of this magnitude for any infraction. Examples of more severe player infractions that received less physical punishment included, but are not limited to, a player assaulting and harassing a fellow player, a player assaulting an adult female by kicking her in the face, and a student athlete being arrested for possession of alcohol. By all accounts, Complainant’s punishment was more severe than any other punishment that any coach reported. Coaches reported the average physical punishment for players was completing 10-15 hill sprints. Complainant reported he completed all of the assigned drills except the last twenty hills, of which he completed ten, and was unable to finish due to exhaustion. Physical activity to the point of exhaustion as a punishment is unreasonable and a form of corporal punishment.

Lastly, Complainant’s punishment ended because he walked off the field, unable to go on, even after being warned that leaving would mean he was quitting the football team. Contradicting Respondent’s claims that he told Complainant the second set of hill sprints he began before walking off the field were Complainant’s last required physical activity, Brakke, [REDACTED] and Complainant all reported Respondent did not tell the Complainant when his punishment would end. It is reasonable for Complainant to believe he would have been required to do more exercise had he not left when he did.

██████████, varsity football player, reported he heard a conversation between Johnston and Mihalovich regarding Complainant and that both coaches stated Complainant had to finish. Mihalovich acknowledges he approved that Complainant be required to run as additional punishment and Complainant was completing his punishment right next to the field where Mihalovich was working with players.

Complainant reported that during the punishment, Mihalovich was yelling at him saying, “Go back to Dowling” and “Your thumbs weren’t tired when you sent that tweet.” Mihalovich, Johnston, and Respondent deny making the comments. Most witnesses reported Mihalovich, Johnston and Respondent did not yell these comments to the Complainant. However, ██████████, varsity football player, reported Mihalovich told Complainant, “Go back to Dowling.” ██████████ reported Johnston yelled the comment to Complainant, “You might as well go to Dowling,” and that when Complainant appeared tired Johnston yelled, “Well, your thumbs didn’t get tired.” Additionally, ██████████ reported Respondent yelled at Complainant, “You might as well go to Dowling.”

During his punishment, Complainant reported he asked ██████████ for a water break and ██████████ told him he could not have water. ██████████ reported Complainant did not ask him for water and that Complainant was given a water break with the varsity team. ██████████ and ██████████ reported Complainant did not receive water breaks. Amanda Brakke, Athletic Trainer at Lincoln High, and Tom Alessio, football coach, reported Complainant was not given a water break. ██████████, who ran beside Complainant during a portion of the punishment, reported Complainant received no water breaks. Furthermore, Alessio reported Complainant should have received water breaks every ten to fifteen minutes during his punishment. Weather reports for September 3, 2012 at 12:00pm indicate the temperature was 79 degrees. Johnston admitted Complainant received no water break. Respondent reported he gave Complainant a water break with the team, providing this Investigator and exact quote of what he told Complainant and ██████████ when sending them for water. Then later in the interview, Respondent reported when the varsity team took a water break, he believed Complainant had already walked off the field and was witnessed by Respondent speaking with a family friend in the parking lot. When asked if he knew if Complainant received a water break, Respondent admitted he did not know. Mihalovich reported he was unsure if Complainant received a water break during his punishment.

Mary Walker and Complainant alleged Complainant feared retaliation from the varsity team. Video footage shows that after walking off the field, Complainant arrived at the door to the building that contains the locker room to find it locked. Complainant can be seen sitting and waiting for approximately one minute before leaving. Complainant, family friend Adam Brown, and Johnston agree that

Complainant left the parking lot dressed in full gear. Complainant reported he would have needed to wait until the varsity team completed practice for the locker room door to be unlocked and then, he would have been required to change with the varsity team and he feared for his safety. Complainant reported he felt physically threatened when players said they wanted him to practice with them and that they wanted to put him in tackling drills so they could hit him following the discussion regarding the tweet.

Both Complainant and Mihalovich acknowledge Complainant expressed fear of retaliation to the Mihalovich when they met following practice on September 3, 2012. Subsequently, Complainant did not return to school at Lincoln High School on September 4, 2012 and was disenrolled from Lincoln High School that same day.

The preponderance of the evidence indicates that following a discovery that Complainant posted a disparaging tweet about the varsity football team at Lincoln High School, Mihalovich required that Complainant submit to bullying and harassment from himself, Respondent and varsity team members in order to continue participating in the football program at Lincoln High School. The allegation of a violation of the District's Bullying/Harassment policy is founded for Respondent. Additionally, the physical punishment imposed on Complainant by Respondent, enforced by Johnston and approved by Mihalovich was unreasonable and constitutes corporal punishment. The allegation of corporal punishment for Respondent is founded.

The investigation is now closed and referred to administrators in the Human Resources Management Department for handling as a personnel matter.

ANTI-RETALIATION STATEMENT

The District may take disciplinary action against any employee who is found to have retaliated against another employee or student who has filed a formal complaint or provided testimony during a complaint.