

## SPECIFICATION 6

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These charges are nothing else but a violation of the teacher's free speech and expression in disguise, a retaliation against him for exercising it.

Specification 7 -- Respondent has created a link from [www.teacherabuse.com](http://www.teacherabuse.com) to [www.mathspell.com](http://www.mathspell.com), his two websites -- is breathtaking. These are not isolated cases<sup>1</sup>.

Respondent is accused of posting on his website ([teacherabuse.com](http://teacherabuse.com)) : a) "the names of students"; b) "the grades of students"; c) "students attendance records"; d) description of "misconduct of named students".

To support the charges, the DOE produced printouts and a CD containing MCHS folder (DOE #10) downloaded from the website<sup>2</sup>. The CD was created by Richard Marin, Director of Information Technology, Special Commissioner of Investigation (T1011). Exhibit DOE #10 contains hard copies, mostly from the CD, printed out by Martucci , the SCI's investigator assigned to the case.

### A. DESCRIPTION OF THE CD CONTENTS

Below, the names of folders are written in bold to distinguish them from the names of files.

(1)

<b>Main Folder &amp; subfolders</b>	<b>Number of files</b> (easily checked)	Description
<b>CD/MCHS/</b>	5	See (2) below
<b>MCHS/adonai_letters/</b>	6	Supervisor's letters to Respondent
<b>MCHS/disruption/</b>	6	Classroom Incident Reports
<b>MCHS/footnotes/</b>	24	Footnotes to MCHS documents
<b>MCHS/Pictures/</b>	22	Wiltshire, Adonai + scanned documents
<b>MCHS/attendance_matters/</b>	1	School memo dealing with intruding students
<b>MCHS/exams/</b>	5	A student exam paper + ¼ of another's

<sup>1</sup> (i) On 1/15/08, math teacher Florian Lewenstein -- recently released from the rubber room with no formal charges leveled against him -- wrote a letter to mayor Bloomberg to complain about the violation of teachers' constitutional rights : he was sent back that same day with new allegations of verbal abuse (of students).

(ii) David Pakter, The Teacher of the Year (1997), sent to the rubber room for whistleblowing in 2003, has been exonerated and sent back to the rubber room in a pattern painfully familiar. His current charges include Specification 6 : Respondent's actions caused widespread negative publicity and notoriety to the High School of Fashion Industries and the New York City Department of Education in general when his unprofessional behavior was referenced in a UFT Newspaper."

<sup>2</sup> To make the website more manageable, Respondent had created the folder for Middle College High School in which all materials related to the school are grouped -- articles, documents, pictures, etc. Because of legal considerations or irrelevancy, not all of them were posted as argued later.

<b>MCHS/htm_documents/</b>	19	Website documents posted
<b>MCHS/Mking_Per1_grade_04/</b>	6	Grading form of M\$2 class : mostly redacted
<b>TOTAL</b>	<b>94</b>	<b>Marin claimed he " saved each page" (T1096)</b>

(2) Ffive files are directly stored in the **MCHS** folder :

**MCHS /cosby\_customer** : incident report  
**MCHS/ INCIDENT REPORT**  
**MCHS/ M\$4\_attendance**  
**MCHS/ mchs\_frameset** ( a web page devoted to MCHS.)  
**MCHS/ MCHS\_STAFF(1)** (a Microsoft Excel file)

## **B. ARGUMENTS**

- (A) The CD, the DOE evidence, is the product of a fraudulent operation perpetrated by Richard Marin. "Because of his technical background, he accessed things that the general public may not have been able to do ?" the hearing officer asked (T1074). Absolutely : the index (R22) was not posted as Marin admitted ( T1517) ; the general public does not know what index is, let alone how to obtain it. We will show that Marin secured the index in order to obtain documents (e.g. student records) that were not posted. To dispel any ambiguity, we clarify below what is meant by "posting" a document on a website, since the charges hinge on the concept.
- (B) The so called student confidential records are disparate and incomplete documents totally disconnected from Respondent's narrative : it they were posted the DOE should have been able to place them in some context – it did not. Neither Marin nor Martucci provided the slightest context in which they saw these documents. Moreover, among the alleged postings, unlikely items appear : (i) letters Respondent's supervisor put in his file : **MCHS/adonai\_letters/**. Why would he post documents embarrassing to him ? (ii) ALL documents in the folder **CD/MCHS/pictures** can be found in the folder **CD/MCHS/html\_documents**. Why would Respondent post the same documents TWICE ?

My subsequent arguments will be articulated around the following points :

- (1) What is meant by "posting a document" ?
- (2) What is an "index of a folder" ?
- (3) How credible is Marin when he claimed, at his first appearance, that he copied and saved 94 pages in the CD, page by page ?
- (4) ELECTRONIC BURGLARY : Marin did not saved 94 pages, one by one, as he claimed : he downloaded the entire MCHS folder from

its index in a couple of clicks.

- (5) Perez `s testimony : the access to the index was UNBLOCKED on June 4<sup>th</sup> , when he accessed it, BLOCKED during the hearing when he was testifying !
- (6) Martucci`s tale about how he accessed the grading form.
- (7) Dr. Wiltshire , the complainant, admitted he did not see any grades on the website, which proves they were not in the public eye
- (8) Many MCHS files, not the least, are absent in the CD. Why Marin left them out ?
- (9) Why would Respondent post a largely redacted grading form ?
- (10) Attendance records fallacy
- (11) Why would Respondent post disciplinary documents, some protecting student privacy, others violating it ?
- (12) Respondent did post student names -- class rosters or other lists -- but none of them were accompanied with confidential information.

### **POINT 1**

#### **What is meant by POSTING a document on a website ?**

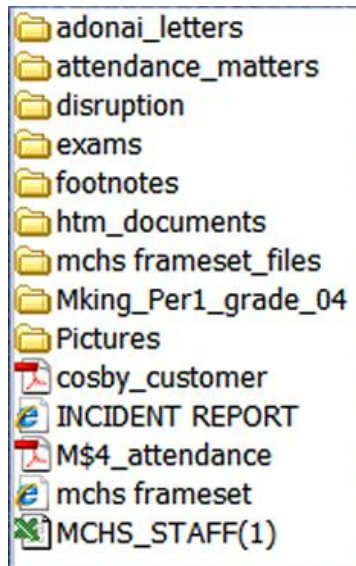
The definition of "posted" leaves little room for interpretation : a document is POSTED when it is directly accessed on the front page of the site , or indirectly via a link. The testimony of Dr. Yarmish, the expert witness, confirmed this (T1666 through T1670). Specifically :

- (1) A web site is a location on the World Wide Web (Internet), a network of computers called SERVERS, that supports specially formatted documents (html). A web site usually contains a variety of documents -- written/audio/video documents, pictures, etc. -- stored in the SERVER, the hosting computer that delivers the web pages. "Home page" is the first page of the web site users see upon entering the site.
- (2) POSTING documents on a website simply means making them available to the public. There are two, and only two, ways to POST a document :
  - a) directly, by displaying it on the home page, or
  - b) indirectly, by creating a link to it -- electronic path built to make the document accessible. Links can be seen on the home page and other web pages.

- (3) When documents are not intended for the public, they are not visible on the home page, and no links to them are created — in other words they are not POSTED<sup>3</sup>. Storing documents in the server cannot be equated with POSTING.

**POINT 2**  
**What is an index of a folder/directory ?**

The folder index is the list of files and subfolders contained in that folder (or directory) : the chart below is the index of the MCHS folder minus files and subfolders Richard Marin left out of the CD, as explained later :



“Anything with the yellow, that’s a folder” as Dr. Yarmish, the expert witness, testified, referring to the MCHS index (T1675). These folders are no different from folders in any computer : once accessed, they are easily copied and saved in a couple of clicks : “It’s a very easy thing to copy each of these...” (T1676) Thus, accessing an index of a folder is tantamount to accessing its files and subfolders in their entirety<sup>4</sup>. To prevent that, since many files and subfolders are off-limits to the public, indexes are password-protected. The index of MCHS was certainly not posted, something Marin admitted :

Fofana : Did you access these because it was posted on my website ?

Marin : No.

Fofana : Thank you. It wasn’t posted ?

Marin : No. (T1517)

How did he access it ?

**POINT 3**  
**How credible is Marin when he claimed, at his first appearance, that he copied and saved 94 pages in the CD, page by page ?**

<sup>3</sup> They are password-protected and the site’s owner permission is needed to access them.

<sup>4</sup> In his first appearance, Marin claimed he copied files and subfolders, page by page, and created the CD, when he clearly used the index to copy and paste MCHS folder in barely one minute. More of this later.

Passages of the transcripts help us sort this out :

Fofana : Did you obtain this through another way, other than going through the server?

Marin : I used the Internet Explorer. I went to the page. I went to each section within that website. I made folders and I saved each page to those folders. (T1096)

That's how, Marin claimed, he saved the files/pages stored in the MCHS folder and its subfolders : we counted 94 in section B.

The Hearing Officer : -- but you -- you do it in the same way that you would save something else on a computer?

Marin : Correct. It's right in the browser, file, save as, and you point to where you want to save and you just save. I used no specialized tools. (T1105)

How did he access the documents/files in the first place ?

The Hearing Officer : As I understand your testimony is that you typed on the web, teacherabuse dot com.

You then -- when you saw it, there were several different areas on the website -- I assume there was a front page. Is that correct?

Marin : Correct.

The Hearing Officer : And the front page had categories?

Marin : Correct.

The Hearing Officer: And clicked those on and when you clicked on a certain category, if you felt it was worthy of saving... (T1104)

He never named any "category" to place any "confidential record" in context. On the front page he claims he locates the link to a "category", clicks on it to access the corresponding document and save it. That's the way he "saved each page to those folders" : 94 pages/files to the nine folders as described earlier in section B. Trouble is, there is only one link on the front page that takes the user to the Middle College High School page where a table of contents resides : all topics related to the school. That page is stored in **CD/MCHS/** mchs\_frameset.html ,reproduced in POINT 7.

Marin wants us to believe, for instance, that he clicked the link to each of the 24 footnote files and save it in the folder **MCHS/footnotes/**.

Did he see the links to the footnotes but not the links to the articles where they are embedded ? Absurd. He saw the articles, did not mention, let alone save, them, into the CD. Why ? Because of their exculpatory value ? None of them evoke student records.

#### POINT 4

**ELECTRONIC BURGLARY : Marin did not save 94 pages, one by one, as he claimed : he downloaded the entire MCHS folder**

**from**

**its index in a couple of clicks.**

During his first appearance, when I tried to elicit from him how he knew the names of the folders in the first place<sup>5</sup>, Marin engaged in a convoluted explanation : the index of MCHS was not part of it.

When Respondent confronted him with the index (R22) in his second appearance, Marin claimed he obtained the document by typing [www.teacherabuse.com/MCHS](http://www.teacherabuse.com/MCHS) and pressing ENTER. He admitted that the index was not posted (T1517). The following exchange took place when the index issue did not surface yet :

The Hearing Officer : And I want to further this. Since we don't have an attorney I want to make sure the questions are -- and it's your testimony that you had no way to access the -- you were not accessing the server in the way that Mr. Fofana showed us earlier?

Marin : Correct; I used no specialized tools to access the server.

The Hearing Officer : And to take another way, in other words, as Mr. Fofana is suggesting, which would be -- I'm -- Mr. Fofana, please interrupt me if this -- is not accurate. What I sensed from Mr. Fofana's suggestion is that only a specialist or expert would have been able to get this information and -- in other words, it was not in the public eye (T1106)

How many regular users know about index and how to extract it from a server, and then access information that was not POSTED ? Saving 94 pages, one by one, in a regular manner from the website is a tale : the index does the job in a couple of clicks.

The index is password-protected as Respondent demonstrated :

Using a multimedia projector and a wireless access to the Internet, he repeated the same process Marin followed : instead of the index of MCHS, a message was prompted on the screen : "403 ERROR – Forbidden" :

"You have received this message because the resource you have requested is not accessible by the webserver due to file permissions or other locking conditions. Please, verify that you have access rights to the requested resource or that the Apache daemon has access rights to the requested resource before trying again."  
(R21,below) :



Marin was asked : "Can you explain to us why it's Forbidden ?" His answer was : "Because it is blocked". (T1523)

<sup>5</sup> Something that puzzled me until I discovered the index document, buried in DOE #10, which prompted me to request his second appearance.

To show how access is “blocked” or “unblocked”, using a password, Respondent went to the server (R20, below)<sup>6</sup> :

The screenshot shows a web hosting control panel for 'bsfofana1 (Business Plus)'. The main heading is 'WEB HOSTING'. On the left, there is a sidebar with 'Logout' and a list of domains including 'll.com', '.com', 'hildren.org', and 'domains ...'. Below this, there are storage usage indicators: '300.0 GB' and '20000 MB'. The main content area has a 'ToolTip: Web Service' with instructions: 'After you change your web service settings, click the APPLY link if it appears in the Server Configuration field. Certain changes will take effect after some time only.' Below the tooltip is a table for 'Web Service' settings:

Web Service	
Domain name	teacherabuse.com
Server Configuration	OK
IP Address	72.41.200.145
Preinstalled Scripts	Restore to default
Site Studio	ON login

Below the 'Web Service' table is a 'Settings' section with a table for 'Indexes':

Settings			
Indexes	<input type="radio"/> Enabled	<input checked="" type="radio"/> Disabled	<input type="radio"/> Fancy

Indexes access is DISABLED (blocked) or ENABLED (allowed) as indicated at the bottom of the picture : as the plural suggests the process of permission/interdiction applies to all indexes of the web site ; it is not confined to MCHS alone.

The demonstration showed that, as part of safeguarding the indexes, three clicks are needed for the change -- from “disabled” to “enabled” -- to take effect : 1) click the button ENABLED or DISABLED ; 2) click SUBMIT button ; 3) click APPLY that appears automatically. (T1528). Thus, it is virtually impossible to inadvertently enable the indexes. The expert witness concurred : “...It’s very common in things of this nature that they make you click a few – more than one click (T1680).

Respondent did not enable the index inadvertently. No PERMISSION was given to Marin to access the index. Leaving the blocked-unblocked issue aside for a moment, by accessing the index of MCHS, not POSTED (i.e. not accessible via the front page or a direct link) as he admitted, Marin managed to obtain the confidential documents I never posted : **POINT 2** exposed the tale about “saving each page” of the folder : you don’t need to save each page once you secure the index because it allowed you to save the entire MCHS folder in a couple clicks as Dr. Yarmish testified. Let us call a spade a spade : Marin, thus the SCI, committed an offense amenable to Electronic Communications Privacy Act. Viewed as illegal search, the SCI’s action violated Respondent’s Fourth Amendment rights as well. Marin insults people’s intelligence when he claimed that the index was not blocked in April 2006 (T1524)<sup>7</sup>. The DOE’s argument that the server configuration today

<sup>7</sup> Parenthetically, when the Hearing Officer accurately put the issue in clear terms for both parties -- “In his view, it wasn’t blocked back then ; in your view this is the demonstration of what should have happened back then”-- , somehow I contradicted him : “Oh, no, no, sir, I never mentioned what happened before” (T1525). Mistakes abound in stressful situations !

was not necessarily the same as when Marin downloaded the index, therefore Respondent's demonstration only showed what *might* have happened : The Hearing Officer concurred. Well, the argument became moot when Giovanni Perez, another information technology specialist, an OSI's investigator (T2300), replicated the process on May 6, 2008 ( while the hearing was under way !) – by typing [www.teacherabuse.com/MCHS](http://www.teacherabuse.com/MCHS) and pressing ENTER -- and obtained the same index, augmented with new subfolders created after April 2006 (DOE # 14). Marin and Perez would have us believe that the index was ENABLED : it was unblocked then, it is unblocked now. No Forbidden message (R21) was prompted. Absurd.

Even if Giovanni's action did not kill the configuration argument , it remained untenable because Internet security is not function of a particular "configuration" : leaving folder indexes unprotected is tantamount to expose confidential documents, as discussed in POINT 2, and jeopardizing the survival of companies running their own web sites or companies hosting web sites for a fee : who would seek their services under such circumstances ? However, hackers –Marin and Giovanni turned out to be ones -- exist to remind us that there is no such thing as 100% secure web site. Two events illuminate this issue :

(1) Security experts held a contest this month to show just how quick and effective Google hacking can be. During a technology security-industry meeting in Seattle, contestants using only Google for less than an hour turned up sensitive information – potentially useful for financial fraud – on about 25 million people. They dug up various combinations of people's names, dates of birth, Social Security numbers, and credit-card information, including some cards numbers apparently left exposed by the U.S. Department of Justice.

**"Identity Theft Made Easier", Wall Street Journal, march 25, 2005, page B1**

(2) A group of computer hackers said yesterday that they had accessed a [Yahoo](http://www.yahoo.com) e-mail account of Alaska Gov. [Sarah Palin](http://www.sarahpalin.com), the Republican vice presidential nominee, publishing some of her private communications to expose what appeared to be her use of a personal account for government business.(...) "At around midnight last night some members affiliated with the group gained access to governor Palin's email account, 'gov.palin@yahoo.com' and handed over the contents to the government sunshine site Wikileaks.org," said a message on the site(...)Michael Allison, chief executive of the Internet Crimes Group, a private company specializing in Internet security, said the hackers may have accessed Palin's account by using publicly available information to guess her password, or by using a small program called a rojan to capture her keystrokes. "

**Hackers Access Palin's Personal E-Mail, Post Some Online" Washington Post, 9/18/ 2008**

## **POINT 5**

**Perez 's testimony : the access to the index was UNBLOCKED on June 4<sup>th</sup> , when he accessed it, BLOCKED during the hearing when he was testifying !**

Perez's testimony was two-fold : 1) users may know folder names without "fishing around" : when you hover the cursor over any link, "at the bottom of the page on the lower left-corner, you will see it guides you to where the link will direct you to" (T2305); 2) By typing [www.teacherabuse.com/MCHS](http://www.teacherabuse.com/MCHS) he obtained the index of MCHS on June 4<sup>th</sup>, in an effort to confirm Marin's claim : the index was not BLOCKED in April 2006 when he accessed it.

The first point amounts to beating a dead horse : nobody disputes that a link to any file will reveal the folder where it is stored. That's the way Marin, presumably, came to know the folder MCHS. That's not the central issue. When Dr. Yarmish talked about "fishing around" to identify folder names, he had in mind confidential folders sitting in the server, with no link to them (T1719). He probably thought

MCHS was one of those. So, this is a non-issue.

The second point is the real issue : The expert witness and I claimed that the index is password-protected and you needed permission to access it, as the Forbidden Message indicates. Dr. Yarmish was clear about it :

(i) **During direct examination :**

Fofana : Dr. Yarmish, I just typed MCHS and got this on the screen. [the index of MCHS as of June 11,2008]. Does anybody , you know, in the public can have access to this ?

Dr. Yarmish : Unless they have – if they have specific permission...

(ii) **During cross-examination :**

The DOE's counsel : Let me just ask you this way : On any web site – on any web page, everything is public unless it's protected ?

Dr. Yarmish : The default is that a folder is protected. Because anything is – you could – anything could be protected or not protected. But the default, in other words, the usual, would be that a folder, which is – gives you a list of the index – would be protected.

Cross-examining Perez was quite revealing, when I asked him to repeat the process by which he obtained the index (DOE # 14) using his own laptop, the result was the Forbidden message (R21) on the screen. (T2321).

His explanation ? On June 4, he was able to extract the index because "whoever the host of this page has finally put the qualifier of having an index page put into that particular subfolder." If that was the case, Marin would evoke it. The fact of the matter is we demonstrated that the index is accessible only when ENABLED and inaccessible when DISABLED. You need permission to access it. The suggestion that there was a security loophole, and the company hosting my website closed it after June 4<sup>th</sup>, is pathetic !

## **POINT 6**

### **Martucci's tale about how he accessed the grading form**

For a SCI's investigator to be assigned to a website case, at a minimum, one would expect him to know how to click a link, and save the corresponding document as described by Marin (POINT 3). And yet, he testified that he went to the "information technology person at my office, Mr. Marin. I asked Mr. Marin if he could download..." (T1010)

Martucci testified that he saw "posted grades" and printed them out (T1050). How did he access them ? Not by clicking on some links. No, unlike Marin who claimed he clicked on links and saved the same grading form, Martucci is more creative : for each page, he successively typed in : a slash after teacherabuse.com ; MCHS ; then "marking, period one, grade, zero, four..." (T1050, T1051). In other words he typed in **www.teacherabuse.com/MCHS/ Mking\_Per1\_grade\_04**, followed by the file name (six files/pages), something he had to know in the first place. He is not honest enough to simply say : I saw no grades online myself. I printed out the grading form from the CD.

## POINT 7

### Dr. Wiltshire , the complainant who triggered the SCI's investigation, admitted he did not see any grades on the website

Cross-examining Wiltshire :

Fofana : Did you see student's grades on teacherabuse.com, yourself?

Wiltshire : No. (T859)

They were not in the public eye. The tale about student grades posted was fabricated by the DOE (Cf. **POINT 4**). The very person who filed the complaint did not see them.

Fofana : Okay. This investigation of my Web site took place in 2006, as the S.C.I. stated. Since then, did you try to look at the teacherabuse.com, to find out if, indeed, student's names and grades were posted? In other words, following the S.C.I. investigation, did you try to take a look at the teacherabuse.com, whether there are grades or not?

Wiltshire : No. (T860)

Fofana : Did you look the Web site at the time when the investigator found that there were grades, you know, alleged grades? Did you check yourself since then?

Wiltshire : No, I have not checked your Web site.

Fofana : Why not? You are a principal.

Wiltshire : Why should I check your Web site?

Fofana : I'm --.

Wiltshire : I have no interest in your Web sites. I don't want to check it. Why am I checking it?

Fofana : Well, sir -- okay. I'm going to put it this way. (T861)

Fofana : You're running a school, a teacher has been accused of posting, you know, 4 grades on a -- on a Web site.

Wiltshire : Yes.

Fofana : There's an investigation --

Wiltshire : Yeah.

Fofana : -- prompted by your own your complaint.

Wiltshire : Yes.

Fofana : And you're telling us that you did not --?

Wiltshire : Once I saw the information on the Web site, and I make a report, my job is completed. I saw the information there, it was alerted to me. I saw the rosters --. (T862)

Grades were not part of the information Wiltshire saw : rosters, something Responded acknowledged in his testimony (Cf. **POINT 12** for details)

## POINT 8

## **Many MCHS files are absent in the CD. Why Marin left them out ?**

The file **CD/MCHS/** mchs frameset.html contains the table of contents (below):  
Why Marin left out these articles, but downloaded the footnotes of the same articles  
(MCHS/footnotes/)?

### **Table of Contents**

#### **1. Out Of The Past**

**2003 SUMMER SCHOOL DISASTER, WITH 2 PRINCIPALS & 4 A.P.'S LEADING**

#### **2. Principal's Personal Vendetta vs Children Interests**

#### **3. The Cost of Incompetence : Little Learning As Programming Chaos Played Out**

#### **4. Disruptive Students : Having "Fun" & Passing Classes Anyway**

#### **5. Bogus Corporal Punishment Charges To Get Teacher In Line**

**2004 FALL : TRIUMPH OF INCOMPETENCE & RELENTLESS HARASSMENT**

#### **6. Programming Curse Encore : Grotesque Attendance Sheets & Report Cards**

**7. Reports On Four Lesson Observations (Both Deemed Unsatisfactory) Betray Wiltshire & Adonai 's Deficiencies In Math**

**8. Harassment By Proxy : Abusive Students With Carte Blanche.**

**9. Two Dozens Parents Rallied To Get His Job Back, Six Are Helping Him To Get Rid Of A Teacher.**

By definition, the "table of contents" announces what the writer intends to recount -- his experience at MCHS in the case of Respondent.

Clicking on any article except for articles 7,8, and 9 (not yet available at the time Richard Marin downloaded MCHS folder), the name of the subfolder where the articles are stored appears : "sections". Reasonably, if Respondent posted student confidential records, there should be mention of those records in one or more articles. The DOE suppressed these articles lest they undermine its case. Otherwise, why the omission ?

## POINT 9

### Why would Respondent post largely redacted grading form ?

What the DOE calls the “students grades” is a five-page grading form<sup>8</sup> , 59% redacted ( 23 out of 39). Why would I post a grading form largely redacted ? Protecting the privacy of some, violating others’ ? The fact of the matter is this document was abandoned.

- Richard Marin provided no context for the alleged posting : no captions or comments, it is dangling and totally disconnected from Respondent’s narrative. Implausible.  
if grades were posted, at least one of the articles would reasonably evoke them, and the DOE would point to it as evidence.

## POINT 10

### Attendance records fallacy

**MCHS/** M\$4\_attendance.pdf (below) is not “student attendance records” per se.

2004 - 2005 FIRST SEMESTER																																
M\$4 Per. 4		Akeem Jibri / Allen Darius / Belgrave Onari / Booker Jr. Jamel / Branch Zaecaerus / Burke Jason / Chang Wayne / Charles Patrick / Delane Bertho / Delfortmonte Althea / Dudley Nathaniel / George Kyanna / Harris Merika / Isaac Candice / Johnson Kareem / King Nikosi / LaBeach Travis / Mahela Shamnda / Manning Yolani / Mattis Michael / Mc Gray Darrell / McDonald Rozell / Morency Stephanie / Nicholls Jason / Ryan Liselle / Scipio Kurtisha / Simmons Tariq / St Paul Tawana / Towris Portia / Walker Raymon																														
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
M	27-Sep-04	P	P	P	P	P			NS	P	P		P	P	P				P	NS	NS								NS			NS
T	28-Sep-04						in	in				in						in									in					
W	29-Sep-04																															
Th	30-Sep-04																															
F	01-Oct-04																															
M	04-Oct-04																															
T	05-Oct-04															in																
W	06-Oct-04																															
Th	07-Oct-04																															
F	08-Oct-04		in							out																in						
M	11-Oct-04	SCHOOL CLOSED : COLOMBUS DAY																														
T	12-Oct-04					out			out																							
W	13-Oct-04																in															
Th	14-Oct-04																															
F	15-Oct-04																															

The M\$4 class met for the first time on September 27, three weeks into the semester, because of never-ending programming problems. I created this document from the initial roster to track students flow in a highly instable environment : IN for “transferred in” and OUT for “transferred out”. Microsoft Excel, quite handy, allowed me to easily add in-coming student in alphabetical order into the list. (Never delete out-going students.) On the first day I did take the attendance, and that’s all about it : P for present, and NS for “No Show”. It is ridiculous for the DOE to claim that student attendance records were posted because there is none for the rest of the period covered by the document : September 28 to October 15. Most importantly I had no reason to post a truncated

<sup>8</sup> Grading form for a M\$2 class : 6 pages in subfolder **MCHS/Mking\_Per1\_grade\_04/** : M\$2\_grades\_p1, M\$2\_grades\_p2, M\$2\_grades\_p3, M\$2\_grades\_p4, M\$2\_grades\_p5. The sixth page happens to be the repetition of page 1 : M\$2\_page1.

document like this and , once again, the DOE provided no context where it fits, such as an article or a comment.

### **POINT 11**

#### **Why would Respondent post disciplinary documents, some protecting student privacy, others violating it ?**

- No report on "misconduct of named students" was posted : no student identity was revealed. The only student incident reports that were posted can be found in this file :  
**MCHS /cosby\_customer**. The student, one of my accusers, is referred to only as D.D. to protect his privacy, and the posting has a context : the reports were evoked in a homepage article, "Moral Vacuum, Intellectual Deficit":  
<<The [OSI's](#) investigator, Robert Colon, interviewed me in April 2005 :  
--Your students said you abused them verbally : you called them stupid, retarded, they amounted to nothing...What do you have to say ?  
-- I have nothing to say. I do not deal in wholesale accusations made by faceless accusers. Please be specific.  
-- Are you saying, all these students are lying ?  
-- I am not saying True or False : it is simply meaningless to me until you identify someone who claim I abused them.  
-- OK. Do you know D.D. ?  
--- I do.  
-- He said you called him retarded.

I did not know whether to laugh or cry. This was a case of the tail wagging the dog. I immediately pulled out four incident reports<sup>9</sup> from my bag and handed them in. On the 11/01 incident report you [ the reader]can see the use of the word "retarded", and by whom. >>

- Four referrals (**MCHS/htm\_documents/ 03\_summer\_referrals.html**) with comments were posted, using students initials to protect their privacy. The DOE rejected this argument, arguing that initials did not protect privacy because they can be used "to cross-reference" who students are (T2203). Well, that contradicts its own practice: is it not to protect student privacy that the DOE itself uses initials D.D., K.S., and M.B. in Specification 4 , and N.A. and L.J. in Specification 6 ?
- Why would I post the other incident reports ( **in MCHS/disruption/** ) , without concealing the identities of the students involved ? It makes no sense.

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<sup>9</sup> Robert Colon denied I gave him the incident reports (T1255, T1256). He is not credible because he acknowledged, in cross-examination, that he did receive a document (nearly 30 pages) that includes them (T1257, T1258).

Finally, once again, the DOE did not provide any context for the incriminated incident reports. In what "section" – or "category" to use the Hearing Officer's terminology -- did Marin locate the links to these incident reports ?

## **POINT 12**

### **Respondent posted class rosters or other lists, as he testified, but none of them accompanied with confidential information**

**What was posted**, and in what context, is discussed in the following article (we recall the DOE did not save any article in the CD). The files RealM\$2, RealM\$3, RealM\$5, fictionalM\$2, etc... in **CD/MCHS/htm\_documents/** are referred to as :

[Real M\\$2 attendance](#) vs [Fictional M\\$2 attendance](#) , etc.

### **3. The Cost of Incompetence : Little Learning As Programming Chaos Played Out**

The reader may recall the substantial raise teachers obtained in exchange for, mainly, an increase of instruction time (20 minutes per day) ; however, in all likelihood, he or she is unaware that many principals are wasting days, or even weeks, of instruction simply because they are utterly incapable to get the school programming right.

On September 4, 2002, Charles Majors, Brooklyn High Schools Superintendent -- Middle College HS principal until June 2001 -- fired Dr. Michael Wiltshire, the man he hired to replace him, for incompetence. The Superintendent was incensed at Wiltshire's inept handling of the school programming, and the chaos that ensued. Two dozen parents lead by two politicians forced the chancellor to reinstate him -- next section for details. [Charles Majors was not aware of similar situation at Prospect Heights High School : the programming was so bad that new programs were given both to students and teachers 3 weeks into the semester.]

What is meant by school programming ? Each semester, including summer, the principal faces the following problem :

**How to** a) issue a program card to each student, indicating his course schedule : periods, subjects, rooms, teachers ( click [here](#) for a sample) ; b) determine each teacher's program, i.e. teaching load including the number of classes and corresponding rooms

**Based on** : 1) the comprehensive list of students ; 2) the list of teachers (each to carry a 5-period teaching load with some exceptions : e.g. deans, UFT chapter leader, etc.) ; 3) the list of classrooms ( 40 approximately at Middle College HS); 4) the list of subject matters at various levels : English, math, science, social studies, etc.

This is what programming is about. Failure to do it right -- Wiltshire's hallmark for the last four years -- led to chaos as attendance sheets conflict with students programs. The consequences can be devastating :

- Instable environment hardly conducive to learning : click [here](#) and [there](#) for students testimonies [C:\bouncing&bouncing1.html and bouncing&bouncing2.html in the DOE evidence CD : **MCHS/htm\_documents/**].
- Inaccurate attendance making planning and evaluation futile.
- Bungled report cards causing frictions between students/parents and teachers.

Please, contrast the real attendance and the fiction one for summer 2003 (2004 Fall will be no different) :

<b>2003 Summer School Attendance Debacle</b>	
<b>Period 1</b>	<p style="text-align: center;"><a href="#"><u>Real M\$2 attendance</u></a> <b>vs</b> <a href="#"><u>Fictional M\$2 attendance</u></a></p>
<b>Period 2</b>	<p style="text-align: center;"><a href="#"><u>Real M\$3 attendance</u></a> <b>vs</b> <a href="#"><u>Fictional M\$3 attendance (2 pages !)</u></a></p>
<b>Period 3</b>	<p style="text-align: center;"><a href="#"><u>Real M\$5 attendance</u></a> <b>vs</b> <a href="#"><u>Fictional M\$5 attendance</u></a></p>

You would expect Wiltshire, a "scholar", to address, and remedy, this issue adequately, especially when it almost cost him his job. After all, you need not reinvent the wheel : there are many schools in this blessed land where principals handle programming in a satisfactory manner, or at least prevent it from running amok. All it takes is to approach one's peers who have been successful -- apparently, ego prevents Wiltshire from doing just that.

Same cause, same effects : as described in subsequent sections Wiltshire's inability to create a stable learning environment manifested itself again in Fall 2004.

The article falls within New York City school district's whistleblower law : informing parents, and the public in general, on how students are short-changed, is certainly socially desirable, and the "cost", posting student names, is a trifle compared to exposing damages inflicted on them by an incompetent principal. If posting student names was a reprehensible act then many institutions in the United States would be prosecuted, including many school districts. Example of 300 names and 20 pictures posted on the Internet by a venerable institution :

"The Semifinalists of the 67th Intel Science Talent Search were chosen from among 1602 entrants representing 504 high schools in 45 states, Puerto Rico, the Virgin Islands and two overseas schools. Each of the 300 Semifinalists, as well as their schools, will receive awards of \$1,000 for this honor.

From this group of 300 Semifinalists, 40 Finalists will be chosen to attend the Science Talent Institute in Washington, D.C. from March 6-11, 2008. During their trip to Washington, the Finalists will participate in a final judging process and share in \$530,000 in scholarships. The top prize of a \$100,000 scholarship will be announced at a black tie banquet and awards ceremony on March 11, 2008"

Vivian Webb School, Claremont, CA  
**Agarwal, Kanika** (16)

Northgate High School, Walnut Creek, CA  
**Almasi, Susann Melinda** (17)

Lawrence High School, Cedarhurst, NY  
**Alpert, Matthew Nathaniel** (17)

Stafford Senior High School, Falmouth, VA  
**Alt, II, Richard Charles** (17)

Ward Melville High School, East Setauket, NY  
**Anderson, Steven Kim** (17)

Waltham Senior High School, Waltham, MA  
**Appasani, Raghu Kiran** (18)  
(...)

Source : <http://www.societyforscience.org/sts/67sts/ALPHSEMI.CFM>

### **C. CONCLUSION**

- We know that, from the index, it takes a couple of clicks to copy and paste the entire folder into the CD (POINT 2.) That's what Marin did, contrary to his tale about saving pages from the front page : he fraudulently obtained

the index, then used it to download the MCHS documents –links to some, and none to others, he obtained them all.

- Even if you were to accept Marin's word that he did not tamper with the permission mechanism, he did use the index , unavailable via the main web page or a direct link, to access and download the MCHS files, some of which were not intended for the public. His story about clicking on categories on the web site front page to access documents stored in the folder MCHS, and save them (T1102), is not credible : why would you take pain to fetch water in a well when a faucet made it available to you ? Why did he go out of his way to secure the index in the first place ?
- The Principal, the complainant, testified he did not see student grades himself (**POINT 7**).
- The SCI's investigator did not access the grades via main page or a direct link (**POINT 6**). We recall he looked up DOE #10 during his testimony. If student records were in the public eye, he would not resort to an information technology engineer (Marin) in the course of his investigation.

*Specification 6 has no merit, and should be dismissed.*