

April 20, 2011

Lori M. Kelly, Director
Office of Professional Conduct
Ohio Department of Education
25 South Front Street
Columbus, Ohio 43215

RE: Response to Letter of Admonishment

Dear Lori M. Kelly:

This letter shall serve as John Freshwater's response to the Ohio Department of Education's correspondence dated March 22, 2011, which was received on March 23, 2011. The letter is titled as a "Letter of Admonishment" and signed by Lori M. Kelly, Director, Office of Professional Conduct.

Let it be known the Ohio Department of Education's Letter of Admonishment contains false information and is erroneous, defamatory and unwarranted.

The Letter of Admonishment includes the following false, erroneous, defamatory and unwarranted statements and conclusions:

1. "After investigating these allegations, the Department determined you used poor judgment when you permitted student to volunteer to touch a live Tesla coil which resulted in an injury to a student."
2. "As a result of your use of poor judgment in allowing students to volunteer to touch a Tesla coil, you have engaged in conduct unbecoming to the teaching profession and have violated Revised Code §3319.31."

John Freshwater specifically rebuts the entirety of any allegation of wrongdoing or allegation of unbecoming conduct and specifically demands these false, erroneous, defamatory and unwarranted statements be removed from any communication issued by the Ohio Department of Education regarding him or his license.

The Ohio Department of Education's Letter of Admonishment cites an alleged injury to a student occurred. Pursuant to Ohio Revised Code §3319.16 John Freshwater demanded a hearing which took place before a referee. Subsequent to thirty-eight (38) days of witness testimony from over eighty (80) witnesses covering approximately three hundred fifty (350) exhibits and addressing numerous allegations, Referee R. Lee Shepherd deduced in a written opinion regarding the Tesla coil:

"Due to the sensational and provocative nature of this specified ground, it and the facts and circumstances surrounding it became the focus of the curious, including those in the video, audio, and

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print media. Once sworn testimony was presented, it became (sic) obvious that speculation and imagination had pushed reality aside. There was a plausible explanation for how and why the Tesla Coil had been used by John Freshwater. Further, and more crucial to a review of the Amended Resolution, the use of the Tesla Coil by John Freshwater did not seem to be a proper subject for the Amended Resolution. By letter of January 22, 2008 as authorized by Principal William White (Board Exhibit 6 – Attachment 16) the Tesla Coil matter had been concluded. John Freshwater was instructed to cease and desist the use of the device “for purposes of shocking students”. No evidence was presented that John Freshwater used the Tesla Coil for any purpose thereafter. The issue and incident was dealt with by the administration.”

Any allegation of student harm or poor judgment exercised by John Freshwater had been effectively resolved by the local school district, which involved a simple letter of direction dated January 22, 2008 (attached as Exhibit “A” to this letter and referenced in Exhibit “B” of this letter, *John Freshwater’s Closing Statement Brief*, at pages 3, 10, 27, 28, 63, 65 and 164). The letter issued by the local school district on January 22, 2008, resulted in a full adjudication of the allegation of harm and matter of Tesla coil use, just as has been ruled upon by Referee Shepherd. The precise words in the letter of January 22, 2008, written by the local school principal with approval from the local school superintendent require restatement here:

“Subject to follow through on the above issues and no further incidences whereas anyone is being shocked with the machines this letter will not become part of your permanent record.”

The local school principal, William White, testified his letter was reviewed by local school Superintendent Steve Short as Principal White stated, “ I checked with Mr. Short, talked to Mr. Short to make sure that the letter did say what I intended it to say.” (Transcript page 495) The fundamental nature of the letter written and agreed to by the local school principal and superintendent was that the local school officials did not deem John Freshwater’s conduct unbecoming but in fact provided him consideration with a promise for his performance; a promise that further documentation would not occur if John Freshwater did not use the Tesla coil again in a similar manner. Assuredly John Freshwater has not used a Tesla coil since December 2007.

As the Ohio Department of Education’s Letter of Admonishment acknowledges in its first paragraph, allegations can be “employment related” and “addressed at the district level”. Absent from the *Licensure Code of Professional Conduct for Ohio Educators*

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which was included in the Ohio Department of Education's Letter of Admonishment, is any indication of prohibition for using a Tesla coil when a teacher followed on-the-job-training procedures and made use of a Tesla coil in the exact same manner as colleagues which is what John Freshwater did. The Tesla coil used by John Freshwater had been purchased and owned by the local school district for over twenty (20) years. The manufacturer of the Tesla coil affirmed instructions for a twenty (20) year old Tesla coil were non-existent and did not warn against contact with human skin (Deposition Transcript of Gerald Cuzelis, United States District Court, So. Dist. of Ohio, Case No. 2:08cv575, June 15, 2010).

More precisely regarding the allegation of harm to any student, an overwhelming abundance of sworn testimony revealed John Freshwater never caused any harm to any student nor did any other teacher ever who used a Tesla coil with a student volunteer. Any reader of this letter or any inquiry into this matter must take note of – and actually read - the legal briefs submitted by John Freshwater. Particular attention must be given to the sworn testimony of John Freshwater's teacher colleagues and the fellow classmates who were actually physically present in the class with student Zach Dennis, the student whose family claims harm. John Freshwater does not need to make any credibility assertion about the student who falsely alleged he was harmed by a Tesla coil as classmates of the student make clear what happened in Freshwater's classroom when classmates testified under oath by stating, "Zach Dennis is a liar" and he is "lieing" about Freshwater's use of the Tesla coil Exhibit "B" specifically, Page 74 and other, Pages 63-79: How can Zach Dennis be believed regarding his allegation if ten (10) classroom eyewitnesses testify Zach Dennis is "lying" (Transcript Page 5289, 5127, 5128) or is a "liar" (Transcript Page 5309, Employee Exhibit 116) or is being untruthful? (Transcript Page 5243) Even Principal White testified he learned Zach Dennis had been dishonest with his parents as reported to Principal White by the Dennis parents. (Transcript Page 587 Line 22 – Page 588, Line 11).

Forty-three (43) days elapsed between December 7, 2007, the date of the alleged injury, and January 22, 2008, the date of the local principal's adjudicating letter, during which time the student who alleged harm did not even visit a doctor's office. Medical doctor Dr. Patrick Johnston testified he would be highly suspicious of the scant evidence provided by the Dennis Family (Transcript Page 5421-22, 5432). Dr. Johnston discounted the alleged harm to the student concluding the parents fabricated the harm so they could sue John Freshwater (Transcript Page 5432, and Exhibit "B" Pages 44, 63-79). Another classmate received a text from the student who alleged John Freshwater harmed him from which sworn testimony revealed the allegedly harmed student admitted, "his parents blew it all out of proportion" (Exhibit "B" Page 76).

Local Superintendent Steve Short personally received the report of alleged harm made by the student's family against John Freshwater but the superintendent did not make any mandatory reporting of the alleged harm as required by Ohio Revised Code §2151.421.

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Demand for Investigation of Educator Steve Short and William White for Violations of Law and the Licensure Code of Professional Conduct for Ohio Educators

The local school district investigated the initial complaint of harm for forty-three (43) days before issuing an exonerating letter of adjudication to John Freshwater.

Nobody from the local school district made any report of harm or injury as required by Ohio Revised Code §2151.421.

If there was any evidence of harm to the student as alleged certainly a mandatory report would have been simply made. The evidence provided in the first forty-three (43) days after the incident did not change and was only later enhanced by interviewing the classmates of the student allegedly harmed – interviews the local school district refused to do. Evidence clearly concludes a student was never harmed by John Freshwater.

However, if the Ohio Department of Education's Letter of Admonishment is to stand against John Freshwater, logic and the law require an investigation and admonishment of the local school authorities who failed to actually comply with the mandatory reporting law of Ohio Revised Code §2151.421. The local superintendent and principal actually broke the law.

As part of John Freshwater's rebuttal to these false, erroneous, defamatory and unwarranted statements made by the Ohio Department of Education, it is hereby demanded that the Ohio Department of Education conduct an immediate investigation regarding the allegation brought to the attention of the department that both Mount Vernon City School Superintendent Steve Short and then Mount Vernon Middle School Principal William White willfully failed to comply with Ohio Revised Code §2151.421, the failure of which would be a specific violation of law and worthy of a finding of unbecoming conduct as a school administrator. The Licensure Code of Professional Conduct for Ohio Educators and the accompanying Licensure Code of Professional Conduct for Ohio Educators – Frequently Asked Questions (FAQ), Revised June 2009, require that "*all licensed individuals should report to his/her superintendent or chief administrator any conduct that substantially impairs an educator's ability to function professionally in his or her position, or any conduct that is detrimental to the health, safety and welfare of students*".

Demand for Investigation of Other Educators Who Used the Tesla Coil as Did John Freshwater for Violations of Law and the Licensure Code of Professional Conduct for Ohio Educators

The essence of the Ohio Department of Education's Letter of Admonishment is that educators should be disciplined for an alleged, now known to be false accusation of harm, despite having followed on-the-job-training procedures and making use of a Tesla coil in

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the exact same manner as colleagues with a pattern of conduct that had proven reliable and safe for over twenty (20) years. The logic adopted by the Ohio Department of Education's Letter of Admonishment requires inquiry into and action toward the other five (5) teachers who also used the Tesla coil in the exact manner as did John Freshwater. As the attached Exhibit "B" demonstrates, sworn testimony revealed five (5) teachers other than John Freshwater used a Tesla coil with student volunteers: Teachers Steve Farmer, Dino D'Ettore, Lori Miller, Donald Newcomer and Bill Oxenford (Exhibit "B", Diagram between pages 20-21, titled, "Those Middle School Teachers who used the Tesla Coil in a manner LATER determined to be a "misuse"). The number notations on the diagram under the teacher names indicate the page of the official transcript where the sworn testimony can be found. Accordingly, pursuant to Ohio Revised Code §3319.31 and §3319.311 and the Licensure Code of Professional Conduct for Ohio Educators, this letter complies with any reporting requirement required by an Ohio public school teacher by notifying the Ohio Department of Education of similar conduct having been undertaken by other Ohio school professionals. Pursuant to Ohio Revised Code §3319.311 the Ohio Department of Education may investigate any information received about a person that reasonably appears to be a basis for action under section Ohio Revised Code §3319.31.

Summary

When the prospect of any legitimate injury is removed from the Ohio Department of Education's analysis, the basis of logic is severed for the issuance of any Letter of Admonishment to John Freshwater. Further, the Licensure Code of Professional Conduct for Ohio Educators and the accompanying Licensure Code of Professional Conduct for Ohio Educators – Frequently Asked Questions (FAQ), Revised June 2009, state, "the Department may not investigate a violation of the LCPCOE if the school district or educational entity imposed a penalty, sanction or other conditions that adequately addressed the educator's conduct". The local school district imposed an "other conditions that adequately addressed the educator's conduct" by issuing the January 22, 2008, letter to John Freshwater.

The Licensure Code of Professional Conduct for Ohio Educators and the accompanying Licensure Code of Professional Conduct for Ohio Educators – Frequently Asked Questions (FAQ), Revised June 2009, state "(i)f there is a determination that the allegation is false or cannot be proven, no disciplinary action will be imposed." If a thorough investigation was conducted pursuant to Section 3319.311 of the Ohio Revised Code with an evaluation of the sworn testimony taken in proceedings, the student who alleged harm can only be deemed as other classmates described: a liar. According to the licensure code all the information obtained in the case file will be sealed two years after the investigation is concluded in accordance with Section 3319.311 of the Ohio Revised Code.

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Conclusion

John Freshwater herein demands the Ohio Department of Education's Letter of Admonishment be immediately rescinded as the allegations relied upon in the letter are false, erroneous, defamatory and unwarranted and subject to legal action.

Respectfully,


R. Kelly Hamilton

Acknowledged by John Freshwater


John Freshwater