

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT

DOCKET NO.: 2177CV00572

WILLIAM FAHEY,)
Plaintiff,)
)
vs.)
)
ANDREW P. FLANAGAN,)
Individually, and)
AS MANAGER FOR THE TOWN)
OF ANDOVER,)
Defendants.)

VERIFIED COMPLAINT AND JURY DEMAND

This case arises out of the wrongful termination of 27-year Andover Youth Services Director William Fahey ("Fahey" or "Plaintiff") and the accompanying misconduct of Andover Town Manager, Andrew P. Flanagan ("Flanagan").

In January of 1994, The Town of Andover ("the Town") hired Fahey in response to three Andover teenage suicides to develop and administer Andover Youth Services ("AYS"), an organization dedicated to supporting Andover adolescents. For the past 27 years, Fahey has devoted himself to supporting those Andover adolescents and to developing a youth services program that is second to none. Nevertheless, on May 10, 2021, by letter issued from Flanagan on behalf of the Town, Fahey was fired "for cause", as a result of findings in an investigative Report ("Report") commissioned by the Town after Fahey was suspended because of alleged "credible information" that he "engaged in inappropriate behavior with a minor." Fahey disputes that the Report supports the allegation and denies that the Town has demonstrated sufficient cause to terminate his employment. Fahey alleges that the investigation and resulting Report commissioned

by the Town is severely flawed, goes beyond its stated "scope" of the investigation, and is being used by Flanagan to achieve his long held goals of discrediting Fahey in the community, terminating his employment with the Town and taking over the Cormier Youth Center. Nevertheless, Fahey believes that the Report and his response to it should be disclosed to the public.

Fahey alleges that over the past five and a half years, Flanagan targeted Fahey for termination. Further, Fahey alleges that Flanagan has been making knowingly, and with malice, false statements that wrongfully insinuate to the public that Fahey was being investigated for and ultimately terminated because of criminal behavior involving a minor. Flanagan is using the Town commissioned Report as a sword against Fahey by insinuating that it supports the original accusations of Fahey engaging in improper sexual conduct with a former AYS employee and as a shield by refusing to release the Report. Fahey now brings this action against Andrew P. Flanagan and the Town of Andover (collectively as the "Defendants") for (a) Breach of Contract; (b) Breach of Covenant of Good Faith and Fair Dealing; (c) Defamation of Character; (d) Intentional Infliction of Emotional Distress; and (e) Tortious Interference with a Contract.

PARTIES

1. The Plaintiff, William Fahey, resides at 107 Waverly Road, North Andover, Massachusetts 01845.
2. The Defendant, Andrew P. Flanagan, resides at 130 Holt Road, Andover, Massachusetts 01810.
3. The Defendant, Town of Andover, is a duly incorporated municipality in the Commonwealth of Massachusetts with an address of 36 Bartlet Street, Andover, Massachusetts 01810.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to G.L. c. 223A § 2, because both the Plaintiff and the Defendants are domiciled in Massachusetts and the dispute between the parties relates to actions occurring in Andover, Massachusetts.
5. Venue is proper in Essex County because the Defendants are located in Andover, Massachusetts.

FACTS

6. Fahey was hired in January 1994 by the Town to create Andover Youth Services (“AYS”). AYS was formed in the wake of three Andover teen suicides and was designed as a program to support and benefit Andover adolescents. Since his hiring in 1994, Fahey has devoted his life to the development and administration of AYS. The Town and thousands of adolescents have been helped due to Fahey’s commitment to AYS.
7. From the time he was hired in 1994 until 2019, Fahey was a member of the Andover Independent Employees Association (the “Association”).
8. In 2019, Flanagan filed a petition with the Department of Labor Relations seeking to sever the Director of Youth Services and other town administrators, from the Association. The Town and the Association entered into an April 19, 2019 Agreement effective May 1, 2019 (“the Agreement”), in which, among other things, the Director of Youth Services position was removed from the Association. A copy of the Agreement is attached hereto as Exhibit A.
9. The Agreement states that, “[t]he Town Manager may remove any incumbent only for cause after furnishing the incumbent with a written statement of the reasons for dismissal and allowing the incumbent fifteen (15) calendar days to reply in writing or upon request to appear personally or with counsel and to reply to the Town Manager.” (emphasis added).

10. On February 5, 2021, the Town placed Fahey on paid administrative leave and stated in a letter from Human Resources Director, Jessica Porter that the Town “received credible information that you may have engaged in improper conduct with a minor.” The letter went on to say that “you are being placed on administrative leave effective immediately and until further notice, pending an investigation into this information that we are commencing. You will be notified when we intend to interview you.”
11. The February 5 letter also stated that Fahey was prohibited access to the Cormier Youth Center, where AYS is headquartered and was “directed not to have any contact of any kind – in person, in writing, or in electronic form by cell phone, email, texting, or social media – with any current or prior Andover Youth Services program participants or any current staff of Andover Youth Services. During this leave, you are also not to enter the building or grounds of the Cormier Youth Center at any time for any reason.” Fahey’s cell phone and computer were confiscated and he was embarrassingly escorted from his office at the Cormier Center. A copy of the February 5, 2021 letter is attached hereto as Exhibit B.
12. On Monday, February 8, 2021, Andover Director of Community Services, Jemma Lambert met with the AYS full time staff and told them that Fahey had been suspended pending an investigation by the Essex County District Attorney.
13. Also on or about February 8, 2021, Fahey was told that Attorney Regina M. Ryan (“Ms. Ryan”) of Discrimination and Harassment Solutions was conducting the subject investigation relating to a former AYS employee.
14. On February 24, 2021, Ms. Ryan conducted an interview of Mr. Fahey and inquired into the alleged improper conduct by Fahey.

15. According to Ms. Ryan, the investigation was initiated by a former Town of Andover employee who alleged to Town Community Support Coordinator, Sobhan Namvar, that Fahey engaged in “sexually inappropriate behavior” while Fahey was the former employee’s supervisor at AYS. This allegation and whether or not the alleged behavior violated Town policy was the announced “Scope Of Investigation.” Ms. Ryan made it clear that this was an Andover investigation. There was no mention of the Essex County District Attorney’s office or any police involvement.
16. After the interview with Ms. Ryan, Fahey requested that the Town return his cell phone as numerous people would be trying to reach him to no avail and without explanation. Ms. Ryan responded by directing Fahey to make the request directly to the Town. The Town refused to release the cell phone to Fahey, claiming that the investigation was “ongoing”. Fahey never got the phone back from the Town and as a result has no idea who may have been frustrated in their inability to reach him. He also lost personal photographs and voicemail messages that he had saved including messages from two close friends that he lost to cancer.

Flanagan Issues Notice of Intent to Dismiss Fahey

17. On April 7, 2021, Flanagan sent Fahey a letter on behalf of the Town noticing his “intent” to dismiss Fahey as the AYS director “based upon the investigatory report issued by Ms. Ryan on April 5, 2021.” This was the first time Fahey was notified of the existence of the Report.
18. Flanagan stated in his April 7 letter that, among Ms. Ryan’s findings were that Fahey engaged in inappropriate behavior by “physically hugging” and his “improper expression of love” to participants.
19. According to Flanagan, the investigative Report supported terminating Fahey for “just cause” because his conduct is “unbecoming an [sic] employee of the Town” and “incompetency or

inefficiency in the performance of your duties.” There was no mention of any finding against Fahey of criminal or sexual misconduct.

20. Also on April 7, 2021, Fahey through counsel, immediately requested a copy of the Report in order to prepare a response within the 15-day period proscribed by the Agreement. Flanagan, through counsel, refused to issue the Report to Fahey unless he would agree to enter into a non-disclosure agreement (“NDA”).
21. On April 8 and 9, there were numerous exchanges between the Town’s counsel and Fahey’s counsel regarding the alleged need for Fahey to sign the NDA.
22. Seeking to get around the necessity for the NDA, on April 9, counsel for Fahey requested the Report redacted by the Town. He also requested that the Town produce Fahey’s personnel file.
23. On April 12, the Town provided Fahey with a copy of the redacted Report, but it was so severely redacted that it was impossible to review and respond to. Also, on April 12, the Town produced Fahey’s personnel file.
24. On April 14, counsel for the Town and counsel for Fahey discussed and agreed to a revised NDA that recognized that the NDA could be superseded by an Order of Court. A copy of the signed NDA is attached hereto as Exhibit C.
25. On April 15, the un-redacted Report was provided to Fahey and his counsel.
26. On April 22, Fahey, through counsel, responded to the Report, pointed out its flaws, deficiencies and incorrect facts, and emphasized the importance of Ms. Ryan’s conclusion that the source of the original allegation was not credible and that the original allegation was not substantiated.
27. Fahey’s April 22 response letter also refuted any allegation that could rise to the level of supporting “termination for cause” and denied any allegation that Fahey engaged in services

that he was not qualified to provide or any other conduct considered “unbecoming”. The Fahey response letter pointed out the numerous flaws in the Report and asserted that the flawed investigation and Report were simply tools designed to further Flanagan’s goal to terminate Fahey.

28. On May 10, 2021, Flanagan responded to Fahey’s response, and terminated Fahey concluding that “given the existence of just cause the best interests of the Town and its residents warrant dismissal, which takes effect immediately.” Flanagan also announced that he “intend[s] to reorganize the operations of AYS.”
29. In his letter, Flanagan accused Fahey of “cultivating a personal, dependent relationship with vulnerable participants and families” as evidenced by the fact that Fahey was “referring to yourself as ‘Billy’” and that Fahey texted messages using “emojis” expressing “luv” for and physically hugging AYS participants. Again, these “findings” were never discussed with Fahey as being improper prior to his suspension nor was he ever given the opportunity to respond.
30. Flanagan’s letter of May 10, 2021 was not consistent with the findings of the Report in numerous ways. Even his rendition of the genesis of the investigation differs from what the investigator stated. In his letter, Flanagan stated that the Town was notified of the allegations against Fahey by the Essex District Attorney’s office and the Andover Police Department. However, according to Ms. Ryan, the investigation was initiated when “a former employee of the Town of Andover reported to Town Community Support Coordinator Sobhan Namvar that the Director of Andover Youth Services, William Fahey, engaged in sexually inappropriate behavior “while he was the former employee’s supervisor at AYS.”
31. Interestingly, among other things, Flanagan wrongfully asserts in his letter that Fahey’s April 22 response letter states that he provided “counseling services because they are requested by

individuals” and that “your failure to refer participant/their families to Mr. Namvar is inappropriate standing alone.” There is nothing in Fahey’s response stating that he provided “counseling services.” In fact, Fahey denied providing such services and gave examples of the referrals he made after troubled youths came to him for guidance and also correctly pointed out that AYS has its own licensed Social worker to whom Fahey has made numerous referrals.

32. It is now clear that it was Mr. Namvar who sought the intervention of the Essex County District Attorney’s office. Contrary to the assertions made by Flanagan, the “investigation” started with the Town and Mr. Namvar. Upon information and belief, it was not originally initiated with the Essex County DA’s office. In fact, the Essex County DA’s office declined taking any action as the allegations were not of criminal conduct.
33. On May 13, 2021, the Eagle Tribune published an article concerning the investigation and Fahey’s termination.
34. In the newspaper article, Flanagan was quoted as stating that because of the conduct disclosed earlier in the year from an “outside agency” and “other complaints” against Fahey throughout the years, Flanagan decided to terminate Fahey. Notably, Flanagan did not disclose how many complaints were made, nor the basis for the complaints. Fahey has no knowledge of any such “complaints.” Flanagan has wrongfully misled the public by stating that the investigation of Fahey was initiated by an “outside agency” when he knew it was initiated with a Town employee.
35. Because of the NDA imposed by the Town against Fahey, he is currently prohibited from disclosing the contents of the Report.

36. Release of the Report and the file containing Fahey's response to the Report will show how Flanagan has misled the Andover Selectmen and the community at large and acted to defame Fahey's character and reputation in the community and in Fahey's profession.

37. While the Town's investigation and Report are flawed in many respects, the Report does not contain support that Fahey engaged in the kind of nefarious behavior suggested by Flanagan. Without disclosing the content of the Report, Fahey can disclose, contrary to the false information and innuendo being promoted by Flanagan the following relating to the Report:

- A. There is no mention in the Report of any investigation by the Essex County District Attorney's Office, the Massachusetts State Police, nor the Andover Police Department;
- B. There is no finding in the Report of any sexual misconduct by Fahey with a minor or any person;
- C. There was not a single AYS staff person interviewed by the investigator;
- D. There was not a single AYS Foundation Board member or anyone associated with AYS that was interviewed by the investigator; and
- E. The investigation was not limited to the original scope of the investigation initiated by the allegation of the former AYS employee that Fahey "engaged in sexually inappropriate behavior" while he was the employee's supervisor at AYS but expanded into areas including Fahey's continued caring about and providing support to former AYS participants who are now adults in their 20's, 30's, and 40's.

38. Upon information and belief, Flanagan has not informed the full Board of Selectmen or others that Ms. Ryan concluded that the person who made the original allegations against Fahey lacked credibility and that the original allegation was not substantiated. Otherwise why would Selectman Christopher Huntress make such an otherwise irresponsible public statement that

“as a father” he understood and supported Flanagan’s decision. The statement by Huntress clearly suggests that either he was unaware of the Ms. Ryan’s findings as to the credibility of the accuser or that he too is engaging in intentionally wrongful conduct designed to discredit Fahey and ruin his reputation.

39. Importantly, Fahey’s personnel file contained no mention of the other “complaints” referenced by Flanagan in the Eagle Tribune article nor did it contain any performance evaluations or performance improvement plans. In other words, despite the fact that Fahey worked under the supervision of the Town Manager, Flanagan never warned Fahey of other “complaints” nor did he ever give Fahey the opportunity to address those phantom “complaints.” This 27-year employee of the Town was simply discarded by Flanagan.

Fahey Was Targeted By Flanagan

40. The Town hired Flanagan as its Town Manager in October 2015.
41. At the time he was hired, Flanagan knew that the newly constructed Cormier Youth Center, which was primarily funded by private money raised by the Andover Youth Foundation, was to be managed by AYS. Nevertheless, Flanagan let it be made known to many individuals that it was his intent to wrestle the building away from AYS and make it available to the Town at large under his management.
42. In February 2016, at a Town budget meeting, Flanagan announced his intention to have the Youth Center open to use by all different factions and groups in Andover.
43. Shortly after Flanagan’s announced intent to open the Cormier Youth Center to various groups, Fahey asked Flanagan for a meeting to discuss his plans. On the only occasion that Flanagan met one on one with Fahey, Fahey expressed his concern to Flanagan that his opening the Youth Center to other constituencies was inconsistent with the original intent for the Youth

Center, was contrary to the contract between the Town and the Cormier Youth Center, and was contrary to the entire AYS program, which was to benefit the adolescent age group in Andover. Fahey explained to Flanagan that having the Cormier Center as the exclusive domain of AYS and its commitment to the youth of Andover was the basis upon which the Foundation raised five million dollars to build the Youth Center.

44. From that time on, Flanagan failed to support Fahey and AYS. Also, upon information and belief, after Fahey stood up for AYS in his meeting with Flanagan, Flanagan told others in substance that Fahey was difficult to work with and therefore needed to go.
45. Over the past five years, Fahey has repeatedly sought to meet with Flanagan only to have Flanagan ignore his requests. Flanagan has not spoken with Fahey at all over the past five years.
46. Flanagan has never met with any of the other AYS staff members. During the entire time that Fahey was ordered to stay away from the Cormier Center and not contact any of its' staff, Flanagan never bothered to check in on the staff or the AYS program.

2017 Suspension

47. In the summer of 2015, it was brought to Fahey's attention by an Andover High School teacher that one of the AYS employees was engaging in an improper relationship with a recent Andover High School graduate who was 18 years-old at the time.
48. Upon learning of the allegation, Fahey immediately reported it to the Andover Human Resource Director. Fahey also suspended the AYS employee.
49. Toward the end of the summer of 2015, the former AYS employee applied to AYS to be reinstated. Fahey discussed the request with the Director of HR who gave Fahey the go-ahead to reinstate the former employee. With the full knowledge of the HR Director and the interim

Town Manager, the AYS employee returned to work primarily to assist with the move into the Cormier Center. The former AYS employee resigned from AYS in early 2016. The matter was closed.

50. Even though the matter was closed and the former AYS employee had not been working at AYS for over a year, in July of 2017, Flanagan re-opened the matter and initiated an investigation of Fahey. At the time, Fahey was still a member of the Union. Flanagan issued a directive through Fahey's Union Representative that Fahey was to present himself to Flanagan at 5 pm that day and that Fahey would have the option to either resign or get terminated.
51. Fahey refused to resign and Flanagan issued a directive suspending Fahey "pending an investigation." Flanagan then advised the Board of Selectmen that Fahey had been placed on "administrative leave pending the outcome of a sensitive personnel investigation" and asked that it remain "confidential." Apparently unconcerned about just how "confidential" the matter remained Flanagan sent another email to 11 Andover employees letting them know that Fahey was suspended pending a "sensitive personnel investigation." The fact that Fahey was missing from Youth Services became fodder for the newspapers.
52. Flanagan re-opened the matter with full knowledge that it was Fahey who recognized the impropriety and brought it to the attention of the HR Director. It did not matter to Flanagan that the matter had been dealt with and was closed. Flanagan acted to embarrass Fahey in front of the community by suggesting that he did something terribly wrong that required the immediate act of suspension. After the investigation was completed, Flanagan would only agree to Fahey returning to his position if he signed a so called "Last Chance" agreement.
53. Since Fahey wanted to continue his work as Director of AYS, he signed the agreement, which stated that he "failed to properly supervise an employee," even while expressing his

disagreement with the document and the allegation. At that time, he was warned by several people that Flanagan “was out to get him.” The manner in which Flanagan resurrected a closed matter in an attempt to gain Fahey’s resignation demonstrated that those warnings had merit.

54. Even after Fahey signed the so-called Last Chance agreement, Flanagan made another attempt to get rid of Fahey. On the Monday following the Friday on which Fahey signed the Last Chance Agreement, Flanagan reissued an order suspending Fahey again, claiming that Fahey had “lied” during the investigation about when the former employee resigned from AYS. As evidence, Flanagan relied upon a sign in log that showed the first name of a person who signed into the Doherty School that happened to also be the first name of the former AYS employee. Fahey pointed out that while the first name on the sign in was that of the former AYS employee, the last name was not.
55. There was no justifiable reason for Flanagan to suspend and embarrass Fahey. The incident in question was not ongoing. The only reason to suspend Fahey was to cause him embarrassment, to insinuate serious wrong doing on Fahey’s part, and to harm his reputation in the community.
56. In 2019, Flanagan orchestrated the removal of Fahey from the labor relations protection of the Andover Independent Employees Association.
57. Flanagan has actively engaged in a campaign to discredit Fahey within the community and remove him from his position. Among other things, Flanagan has not spoken directly to Fahey for 5 years. He has frozen Fahey’s salary and has failed to give him any even modest increases regardless of the fact that as of 2016, Fahey’s responsibilities were increased significantly to include overall management of the 21,000 square foot building and administration of all of its programs. As a result, even though he was a division head, Fahey’s salary was lower than salaries of many Andover employees with less experience and less responsibilities.

58. Flanagan's targeting of Fahey culminated with the February 2021 flawed Town investigation, the Report and resulting dissemination of misleading and inaccurate information through the May 10, 2021 termination of Fahey, and continues with Flanagan feeding the public with misinformation.
59. As a result of Flanagan's defamatory conduct, he has destroyed Fahey's reputation in the community and in Fahey's profession. In today's world of social media and the internet, Flanagan's attacks on Fahey will remain in the public domain forever.
60. Since the time Flanagan started his campaign against Fahey, Fahey has experienced severe emotional distress and has been diagnosed with a "stress disorder." That emotional distress has resulted in among other things, emergency room hospital visits, cardiac concerns, depression and lack of sleep.

COUNT I – BREACH OF CONTRACT (v. the Town of Andover)

61. The Plaintiff restates and re-alleges Paragraphs 1 through 60 of this Complaint as if fully set forth herein.
62. The employment contract dated April 19, 2019, provides that the AYS director may only be removed from his position if there is "just cause."
63. The Town breached the employment contract when Fahey was terminated for no valid "just cause."
64. Before his termination, Fahey had an annual salary of approximately \$100,000, however, as a result of his wrongful termination, Fahey is currently unemployed. Fahey is 59 years-old and had planned to work until he was over 70 years-old.
65. As a result of the Town's wrongful termination of Fahey, he has lost nine years of wages, and considerable work benefits such as health insurance and pension benefits.

COUNT II – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING (v. Town of Andover)

66. The Plaintiff restates and re-alleges Paragraphs 1-65 of the Complaint as if fully set forth herein.
67. Under Massachusetts law, the contract between Fahey and the Town has in it a covenant of good faith and fair dealing.
68. By its actions to target Fahey and terminate his employment without cause, the Town has violated the covenant of good faith and fair dealing.
69. As a result of the Town's breach, Fahey has been damaged.

COUNT III – DEFAMATION OF CHARACTER (v. Flanagan Individually)

70. The Plaintiff restates and re-alleges Paragraphs 1 through 69 of this Complaint as if fully set forth herein.
71. Flanagan made false statements to the public intentionally insinuating that Fahey had engaged in criminal behavior which led to his termination.
72. Flanagan knew or should have known when he told others that Fahey was being investigated by the Essex County District Attorney and the police that people would reach the conclusion that Fahey had done something criminally improper.
73. Flanagan acted with actual malice when he knew or should have known that the statements regarding an investigation were false, or he acted with reckless disregard as to the truth of the statements because the Report failed to make any finding of criminal or sexual misconduct. Nonetheless, Flanagan made these false statements to the public.
74. These false statements made by Flanagan caused damage to Fahey's reputation and as a professional youth director.

75. As a result of Flanagan's defamatory actions, Fahey's reputation has been assaulted. He is entitled to damages.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (v. Flanagan Individually)

76. The Plaintiff restates and re-alleges Paragraphs 1 through 75 of this Complaint as if fully set forth herein.

77. Flanagan's continued actions to target Fahey's removal as AYS director amounts to extreme and outrageous conduct and done with the intent to cause Fahey emotional distress.

78. Since Flanagan targeted Fahey for termination and since the investigation began, Fahey has experienced constant stress and anxiety.

79. As a result of the intentional acts of Flanagan, Fahey has suffered harm and damages.

COUNT V – INTENTIONAL INTERFERENCE WITH ADVANTAGEOUS CONTRACTUAL/BUSINESS RELATIONS (v. Flanagan Individually)

80. The Plaintiff incorporates by reference each of the allegations contained in paragraphs 1-79 above.

81. Fahey had an employment contract and relationship with the Town.

82. Flanagan knowingly made false statements regarding Fahey's character and actions and wrongfully insinuated that Fahey was suspended for criminal or sexually inappropriate behavior in order to induce the Town to sever the employment relationship with Fahey.

83. Flanagan's statements to third parties that he wanted to remove Fahey from his position as Director of AYS, and his actions to destroy Fahey's reputation in the community indicates spiteful behavior directed towards Fahey. Flanagan's actions were not related to a legitimate employment interest, but instead was acting against Fahey on his own malignant purpose.

84. As a result, Fahey has suffered damages.

WHEREFORE, for the reasons set forth above, the Plaintiff hereby requests that this Court enter an order:

- a. Finding for the Plaintiff on Counts I through V of the Complaint;
- b. Awarding Plaintiff damages for lost wages and benefits, emotional distress, and loss of reputation;
- c. Awarding Plaintiff costs and attorney's fees; and
- d. Awarding Plaintiff all other damages as this Court deems just and appropriate.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

Respectfully Submitted,
WILLIAM FAHEY,
By his attorneys,




Daniel J. Murphy (BBO No: 549073)
Daniel Murphy (BBO No: 685760)
THE MURPHY LAW GROUP, LLC
565 Turnpike Street, Unit 72
North Andover, MA 01845
djm@mlgllc.com
Tel: (978) 686-3200

DATED: 6/3/21

VERIFICATION OF COMPLAINT BY PLAINTIFF

I, William Fahey, certify under the pains and penalties of perjury that I have read the Verified Complaint, the facts stated therein are true based upon my own present knowledge or based upon my review of any relevant documents, and that no material facts have been omitted therefrom.

Signed under the pains and penalties of perjury this 3rd day of June, 2021.



William Fahey

EXHIBIT A

AGREEMENT BY AND BETWEEN
THE TOWN OF ANDOVER
AND

ANDOVER INDEPENDENT EMPLOYEES ASSOCIATION
Regarding Department of Labor Relations Docket #CAS-19-7112
April 19, 2019

WHEREAS, the Town of Andover ("Town") filed a clarification petition with the Department of Labor Relations ("DLR"), Docket # CAS-19-7112, seeking to sever certain positions from the Andover Independent Employees Association ("Association");

WHEREAS, the Town and the Association, collectively referred to as the "Parties" wish to resolve CAS-19-7112 without the time and expense of litigation;

NOW THEREFORE, the Parties agree as follows:

1. Effective May 1, 2019, the following positions shall be removed from the Association as managerial employees:
 - Director of Public Health
 - Director of Conservation
 - Recreation Director
 - Director of Youth Services
 - Director of Elder Services
 - Director of Planning
 - Inspector of Buildings/Building Commissioner
2. For purposes of this Agreement, the term "incumbent" herein shall mean an employee in one of the positions listed in Section #1 of this Agreement who was in such position on April 19, 2019.
3. All existing personnel records and personnel file entries for incumbents shall remain in effect. This provision shall include but not be limited to evaluations, discipline, and previous agreements.
4. The Town shall not reduce the salaries for any incumbents which includes the longevity pay each incumbent received at the time his/her positions was removed from the bargaining unit represented by the Association.
5. The incumbents shall be entitled to the following Additional Longevity Pay (which was in Article 7.17 of the Association's 2016-2019 collective bargaining agreement):

Incumbents hired prior to November 1, 2008 are eligible to receive an additional 15% Longevity Pay for a period of up to 26 weeks payable weekly, upon written request to the Town Manager. This Additional Longevity Pay shall be a one-time benefit in addition to the incumbent's current longevity payment and it shall be calculated in the same manner.

An incumbent receiving the Additional Longevity Pay will not be eligible for any longevity pay following this 26 week period.

If the request for Additional 15% Longevity Pay is made by October 1st for payment commencing in the subsequent fiscal year, this Additional Longevity Pay shall not affect the traditional longevity pay. In this case, the member shall return to their previous longevity following the 26-week period.

Should the incumbent hired before November 1, 2008 die unexpectedly and thus forfeit the opportunity to apply for the additional 15% Longevity Pay, such longevity payment will be awarded to the incumbent's estate based on the salary earned during the incumbent's last six months of service.

All incumbents hired on or after November 1, 2008 shall not be eligible for the 15% Additional Longevity Pay.

6. Incumbents shall retain all accrued unused sick time, vacation time (subject to the limit of two weeks carryover), any terminal leave to which such incumbent would have been entitled, if any, under Article 15.14 of the Association's 2016-2019 collective bargaining agreement.
7. The Town Manager may remove any incumbent only for cause after furnishing the incumbent with a written statement of the reasons for dismissal and allowing the incumbent fifteen (15) calendar days to reply in writing or upon request to appear personally or with counsel and to reply to the Town Manager.

Just causes for dismissal, demotion or suspension are listed below, although dismissal, demotion or suspension may be made for other just cause:

- a. Conviction of a felony, or a misdemeanor involving moral turpitude;
- b. Violation of any principles of the merit system;
- c. Conduct unbecoming of an employee of the Town, on or off duty;
- d. Violation of any lawful official regulation or order or failure to obey any proper direction made and given by a supervisor;
- e. Being under the influence of alcohol, drugs or other intoxicants on duty;
- f. Insubordination or disgraceful conduct, either on or off duty;
- g. Offensive conduct or language in public, towards the public, Town officials, or employees, either on or off duty;
- h. Incompetence or inefficiency in the performance of the duties of his/her position;
- i. Carelessness or negligence with the monies or other property of the town;
- j. Use, attempts to use or threats to use personal or political influence in securing promotion, leave of absence, transfer, change of pay rate, or character of work;
- k. Inducement or attempts to induce an officer or employee of the Town to commit an unlawful act or to act in violation of any lawful department or official regulation or order;
- l. Taking for his/her personal use from any person any fee, gift, or other valuable thing in the course of his/her work in connection with it, when such gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons;

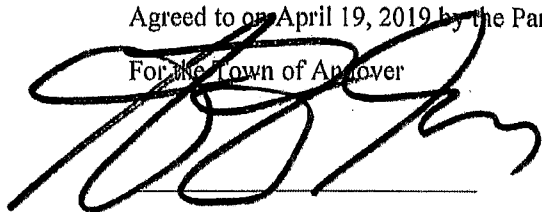
- m. Engaging in outside business activities on Town time, or use of Town property for such activity;
- n. Failure to maintain a satisfactory attendance record.

This provision shall not apply to any employee hired into one of the positions listed in #1 above after April 19, 2019.

- 8. Effective May 1, 2019, the Town agrees to establish a "Super Step" that will be awarded on either a permanent or temporary basis at the Town Manager's discretion for any of the following reasons: increased responsibilities beyond existing job description resulting from extraordinary events, in order to maintain market value for the position or to assume Department Head responsibilities on a temporary and prolonged basis as determined by the Town Manager. The Town Manager's decision whether or not to award the "Super Step" is not subject to grievance and arbitration.
- 9. The Town agrees not to file a CAS petition with DLR to sever any additional positions from the bargaining unit between April 19, 2019 and January 1, 2025
- 10. The Town shall withdraw its petition with the DLR, Docket #CAS 19-7112 when this Agreement becomes effective.
- 11. This Agreement is subject to approval by the Association's Executive Board and shall not be effective until such approval.

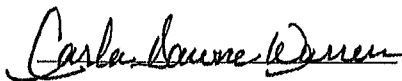
Agreed to on April 19, 2019 by the Parties subject to Section #11 of this Agreement.

For the Town of Andover



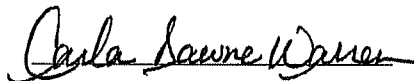
Andrew P. Flanagan
Town Manager

For the Andover Independent Employees Association



Carla Dawne Warren
President, AIEA

This agreement was approved unanimously by the Association's Executive Board on April 19, 2019.
This agreement is effective April 19, 2019.



Carla Dawne Warren
President, AIEA

EXHIBIT B



Andrew P. Flanagan
Town Manager

TOWN OF ANDOVER

Human Resources Office
36 Bartlet Street
Andover, MA 01810
(978) 623-8500
www.andoverma.gov

February 5, 2021

VIA HAND DELIVERY

Mr. William Fahey
121 Waverley Road
North Andover, MA 01845

Dear Mr. Fahey:

We have received credible information that you may have engaged in improper conduct with a minor. Given the nature of the allegations, you are being placed on paid administrative leave effective immediately and until further notice, pending an investigation into this information that we are commencing. You will be notified when we intend to interview you.

During this leave, you are directed not to have contact of any kind - in person, in writing, or in electronic form by cell phone, email, texting, or social media - with any current or prior Andover Youth Services program participants or any current staff of Andover Youth Services. During this leave, you are also not to enter the building or grounds of the Cormier Youth Center at any time for any reason.

Sincerely,

Jessica Porter
Human Resources Director

cc: Andrew Flanagan, Town Manager
Jemma Lambert, Director of Community Services
Personnel File of William Fahey

EXHIBIT C

NON-DISCLOSURE AGREEMENT

The following agreement is entered into between William Fahey ("Fahey") and the Town of Andover ("the Town").

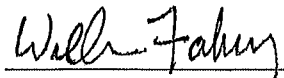
WHEREAS, Fahey and the Town (collectively "the Parties") are party to an employment dispute between them;

WHEREAS, in connection with the dispute the Town has caused an investigation to be conducted and the investigation has produced a report and exhibits that contain information relating to third persons, the disclosure of which the Town believes would constitute an unwarranted invasion of the privacy of such persons; and

WHEREAS, Fahey asserts a right to access the report and exhibits in order to protect his rights and obtain the assistance of his attorneys regarding the employment dispute;

NOW THEREFORE, the Parties agree as follows:

1. The Town agrees that Fahey shall have the right to access and review the Investigation Report of Discrimination and Harassment Solutions dated April 5, 2021 and Exhibits 1-10 thereto ("the Documents") on the following terms and conditions.
2. Fahey agrees that he shall not disclose the Documents or the substance, content, or information in the Documents to any person by any means, with the sole exception of his attorneys Daniel Murphy and Daniel Murphy, Jr., unless the Town, acting through the Town Manager, expressly approves in advance and in writing disclosure to other persons. Fahey further agrees that the Documents and such, substance, content, and information therein shall be used solely for his response to and defense of the intended action stated in the letter from Town Manager dated April 7, 2021. Fahey acknowledges that the Town is relying on the promises set forth herein in making the Documents and the substance, content and information therein available to him.
3. Fahey acknowledges that his violation of the foregoing terms and conditions shall constitute independent grounds for discipline up to and including dismissal.
4. The Parties agree that the terms and conditions set forth herein shall remain in full force and effect until and unless a tribunal or entity with jurisdiction enters an order regarding the use and disclosure of the Documents and the substance, content and information therein.



William Fahey

Date: April 14, 2021

Town of Andover

By: Andrew Flanagan, Town Manager