# ALASKA WORKERS' COMPENSATION BOARD

**P.O. Box 115512** **Juneau, Alaska 99811-5512**

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| ROBERT A. WOOLF,<br><br>Employee,<br>Claimant,<br><br>v.<br><br>BERING STRAIT SCHOOL DISTRICT,<br><br>Employer,<br>and<br><br>APEI,<br><br>Insurer,<br>Defendants. | INTERLOCUTORY DECISION AND ORDER<br><br>AWCB Case No. 201702574<br><br>AWCB Decision No. 19-0136<br><br>Filed with AWCB Juneau, Alaska on December 24, 2019 |

Robert A. Woolf's (Employee) June 17, 2019 petition for discovery sanctions and August 22, 2019 petition for an extension of the time to request a hearing were heard in Juneau, Alaska, on November 5, 2019, a date selected on September 6, 2019. An August 2, 2019 decision and order gave rise to this hearing. Employee appeared telephonically, represented himself and testified. Attorney Colby Smith appeared and represented Bering Strait School District and APEI (Employer). Witnesses included Eugenia Sleeper and Donald Austin who testified on behalf of Employer. The record closed at the hearing's conclusion on November 5, 2019.

## ISSUES

As a preliminary issue, Employee objected to Employer's hearing exhibits. He contended they contained evidence which had not been filed 20 days before the hearing. Employee objected to Mr. Austin's affidavit because it contained statements by another person, Peggy Cowan, which

were false and damaging to his reputation. He contended he must be provided the opportunity to confront Ms. Cowan by cross-examination because he did not believe she made the statements. Employee requested Employer's hearing exhibits be stricken from the record.

Employer contended the only new evidence in the hearing brief exhibits were witness affidavits and it is common practice to submit affidavits from witnesses. It contended the statements attributed to Ms. Cowan in a witness affidavit were not being asserted for their truth. Employer contended Ms. Cowan's statements were being asserted to explain there were no additional discovery records outstanding. An oral order overruled Employee's objection to Employer's hearing brief exhibits.

**1) Was the oral order overruling Employee's objection to Employer's hearing brief exhibits correct?**

Employee contends Employer failed to comply with discovery orders because it failed to provide ordered discovery. He requests an order directing Employer to allow him personal access to his teacher email account and directing Employer to provide missing discovery.

Employer contends it complied with discovery orders. It contends it provided Employee with every email contained in his archived email account. Employer contends evidence Employee seeks from the third-party lawsuit is confidential and sensitive information about minor students. It contends there is no provision under the Alaska Workers' Compensation Act for discovery sanctions. Employer requests Employee's petition be denied.

**2) Did Employer fail to comply with discovery orders, and if so, should Employer be sanctioned for failing to comply with discovery orders?**

Employee contends his time to request a hearing under AS 23.30.110(c) should be extended because Employer has failed to provide ordered discovery and did so to delay his claim. He contends he needs to provide the outstanding discovery to a psychiatrist for an assessment of his work injury. Employee requests an order granting him a six month extension to allow him time to obtain psychiatric treatment.

Employer contends it provided all ordered discovery and has not delayed in providing discovery. Employer requests an order dismissing Employee's claim under AS 23.30.110(c).

**3) Should Employee's time to request a hearing under AS 23.30.110(c) be extended?**

FINDINGS OF FACT

The following facts are reiterated from *Woolf v. Bering Strait School District*, AWCB Decision No. 19-0080 (August 2, 2019) (*Woolf I*), are undisputed or are established by a preponderance of the evidence:

1) On November 10, 2016, Principal Roxanne Meneguin issued a written notice of reprimand to Employee based upon his insubordination with her and other teachers, failure to follow curriculum and lack of control with his students. (*Woolf I*).

2) On November 13, 2016, Employee responded to the reprimand contending it was overly broad without any details regarding the allegations. (*Id*.).

3) On November 18, 2016, Superintendent Robert Bolen wrote a letter to Employee explaining he received communications between Director Gerald Pickner and Employee containing his request to be relieved of his teaching position as soon as a replacement could be found. Superintendent Bolen offered to transfer Employee to another position teaching eighth- through twelfth-grade science at another school to expedite his wishes and "assist in your returning to good health." The school district also remained willing to release him from his teacher contract, subject to an appropriate mutual release of claims. (Letter, November 18, 2016).

4) On November 22, 2016, Employee visited Valentine Wurmstein, FNP-C, for anxiety and stress from work stress which improved with rest. She recommended he return to his previous dose of hypertension medication, use Ativan as written and follow up with her during her next village trip. (*Woolf I*).

5) On November 28, 2016, Principal Meneguin informed Employee's wife her services as a substitute teacher for Employer were no longer needed and she would call when she needed her services. (Letter, November 28, 2016).

6) On November 29, 2016, Employee complained of increasing anxiety. He reported Post Traumatic Stress Disorder (PTSD) from a shooting 16 years earlier with similar issues. FNP-C Wurmstein referred Employee to behavioral health services for an urgent assessment. Arthur

Bannow, LCSW, spoke with Employee telephonically. Employee reported increasing distress caused by an ongoing conflict at work. His wife was fired from the school and the principal was attempting to force him to teach a math class that was unethical to teach in the conditions at the school. Employee was offered alternate positions but felt he needed to stick to his position and protect his students. He reported he still suffered from PTSD from an incident he faced 15 years earlier and the conflict at school was "stirring it up." (*Woolf I*).

7) On December 1, 2016, FNP-C Wurmstein wrote a letter addressed, "To whom this may concern" stating, "[Employee] has been under my care for the last few weeks. Due to medical issues [Employee] has needed to be off work starting November 11, 2016. I am not sure when he will be cleared to return to work. I will notify you when he can return at a later date." (*Id*.).

8) On December 8, 2016, Carolyn Heflin delivered two letters from Superintendent Bolen stating Employee was on unauthorized leave since November 11, 2016, and a written "Notice of Proposed Dismissal and Pretermination Hearing." Employee was notified of his proposed dismissal from employment and a pretermination hearing scheduled on December 15, 2016 for incompetency, substantial noncompliance with the school laws, regulations or bylaws of the department, bylaws of the district or the written rules of the superintendent and breach of his employment contract. His absence was unapproved because he failed to provide a written statement from an attending physician documenting his need for his use of sick leave. Employee was prohibited from accessing school district facilities, grounds or equipment, including the network, without advanced written approval of the site administrator. Any access would constitute trespass and the district would take appropriate legal action. The restriction did not apply to his district housing. Employee was directed to immediately turn in his keys and any district equipment in his possession, including a lap-top. (Letters, December 8, 2016). Employee signed a document acknowledging he received two letters from Superintendent Bolen from Ms. Heflin and turned in his district keys and computer to her on December 8, 2016. Below that he initiated a statement agreeing he would give the school computer to the tribal president. (Signed Document, December 8, 2016).

9) On December 8, 2016, Employee reported increasing anxiety issues and PTSD from a shooting 16 years earlier with similar issues. FNP-C Wurmstein assessed anxiety and recommended he continue with the plan of care. (FNP-C Wurmstein chart note, December 8, 2016).

10) On December 9, 2016, Superintendent Bolen wrote a letter to Employee stating his refusal to immediately return the district-issued lap-top to Ms. Heflin yesterday when she gave the December 8, 2016 letter to him constituted insubordination and conversion, constituted additional causes for his proposed dismissal and would be added to the "Bill of Particulars" provided on December 8, 2016. Superintendent Bolen directed Employee to immediately return the lap-top to the site administrator. (Letter, December 9, 2016).

11) On December 14, 2016, Dr. Bolen provided Employee an amended written "Notice of Proposed Dismissal and Pretermination Hearing." (*Woolf I*).

12) On December 21, 2016, Employee visited FNP-C Wurmstein for trouble regulating his blood pressure for a few months due to extreme stress. His blood pressure was 140/80. His associated symptoms included insomnia, anxiety and PTSD issues, which stress worsened and a calm environment improved. She referred Employee to behavioral health services and refilled his prescriptions. Employee spoke telephonically with Mr. Bannow, LCSW, for urgent behavioral health services. He reported going through a termination process despite his desire to stay and bring resolution for students; and the school district had rejected his absence based upon medical grounds. He believed his access to services was going to be jeopardized because his employer was going to cut off his health insurance. Mr. Bannow encouraged him to not let that be a barrier and stated there could be another pathway to services, like a sliding fee scale. He noted Employee was in a good mood despite the significant setbacks. (*Id*.).

13) On December 27, 2016, FNP-C Wurmstein wrote a letter addressed, "To whom this may concern" stating:

> I am writing on behalf of [Employee]. He had been under my care as his primary care provider for several months. I am a FNP-C who provides care in the Village of Wales. As the FNP-C for the village I provide primary care, physicals and referrals. During this time [Employee] has been seen by me multiple times and by the CHA's on several occasions. [Employee] has also been seen by alternative departments at [Norton Sound Health Corporation] NSHC during this time.
>
> As a FNP-C and this patient's primary care provider I can certify patients to be off and to return to work as deemed medically necessary. Please let me know what other documentation you need from me to reconsider the elimination of his health care. (*Id*.).

14) On December 29, 2016, a medical assistant at NSHC, noted FNP-C Wurmstein's December 28, 2016 order for a psychiatric referral was being closed out as complete because Employee had contacted the behavioral health clinician and an assessment was to be scheduled soon. (*Id*.).

15) On January 18, 2017, Employee's employment was terminated by the school district for incompetency, substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent, and breach of his contract of employment. (*Id*.). Employee was notified the school district decided not to offer him a teaching contract for the next school year in the event he challenged his dismissal and the dismissal was overturned. (Letter of Non-Retention, January 18, 2017). Employee was also notified his tenancy at district housing was terminated and he must vacate his housing unit on or before January 28, 2017. (Notice to Vacate, January 18, 2017).

16) On February 2, 2017, Employee reported he had been under tremendous stress related to his recent job as a teacher in a remote Alaskan village. His blood pressure was 164/100 at the clinic and he had one elevated systolic reading of 177. Employee was able to bring his blood pressure down with exercise and stress reduction. Over the last month, his blood pressure was 136/77. Nandi Than, M.D., assessed hypertension stage 1 to 2, recently exacerbated by underlying work-related stress. She increased his Hyzaar and recommended he monitor his blood pressure closely at home. (*Id*.).

17) On February 8, 2017, Employer reported Employee notified it on January 31, 2017 that he had "stress and high blood pressure from work." (*Id*.).

18) On March 27, 2017, Employer denied all benefits contending it received no medical documentation indicating work-stress was the cause of any mental injury and Employee is not entitled to benefits for a mental injury arising out of his termination. (*Id*.).

19) On April 10, 2017, Employee claimed total disability (TTD), medical costs, penalty for late-paid compensation, interest and a finding of unfair or frivolous controversion. He described the nature of the injury as, "I experienced dangerously high blood pressure initiated by a hostile and chaotic work environment for which I had to take action to protect my students from an abusive principle who had placed my students into courses for which they did not have the pre-requisite skills." The reason for his claim stated Employer denied medical services and lost wages. (Claim for Workers' Compensation Benefits, April 10, 2017).

20) On April 27, 2017, Employer denied all benefits and served its controversion notice on Employee by U.S. mail. It contended it received no medical documentation work-stress was the cause of any mental injury and that Employee was not entitled to benefits for any mental injury arising out of his termination because it was taken in good faith by Employer. (Controversion Notice, April 27, 2017).

21) On May 16, 2017, Employee requested Employer be compelled to provide discovery, including a February 8, 2017 injury report, all email communication he had with the school district about a potential student suicide and Employee's blood pressure problems. (Petition, May 16, 2017).

22) On May 26, 2017, Employee's former attorney entered his appearance on behalf of Employee. (Entry of Appearance, May 26, 2017).

23) On June 5, 2017, Employee filed an amended claim seeking TTD, medical costs, penalty, interest, attorney fees and costs for physical and mental injuries caused by work stress. He stated, "While in the course and scope of his employment, [Employee] began to experience dangerously high blood pressure initiated by the work environment." The reason provided for filing the claim included, "Employee reported disability and need for care for hypertension, a physical condition, caused by employment stress. Such report to employer was made timely upon request. . . . The hypertension caused employee to be taken off work. Employee was terminated for abiding physician restriction. . . . There was also a mental injury and that claim remains unchanged." (Amended Workers' Compensation Claim, June 5, 2017).

24) On June 11, 2017, Diane DiGiulio, Ph.D., a clinical neuropsychologist, completed a neurological assessment of Employee for the Division of Vocational Rehabilitation (DVR). Employee reported a history of PTSD 18 years earlier with no reoccurrence of symptoms until his recent encounter with the hostile work environment. He described as witnessing, and voicing a complaint, about repetitive verbal and psychological abuse of a ninth-grade student by a school administrator. Dr. DiGiulio diagnosed "other specified depressive disorder," "other specified anxiety disorder" and "other specified trauma and stressor-related disorder." She opined Employee's symptoms do not meet full criteria for a PTSD diagnosis. Dr. DiGiulio recommended stress reduction, given his report that his high level of stress was aggravating his hypertension and antidepressant medication to address his obsessional ruminations, which

interferes with his ability to adapt to his circumstances and his ability to fully benefit from psychological treatment directed towards reducing his overall stress level. (*Woolf I*).

25) On June 23, 2017, Employee reported being under a lot of stress and suffering from anxiety. He had a history of PTSD with depression but did not feel like his depression was active. Employee's blood pressures were intermittently elevated but on average about 130/70. Dr. Than added Norvasc and recommended he continue Hyzaar. (*Id*.).

26) On June 27, 2017, Employee's attorney agreed to a 60 day extension for Employer to file an answer to Employee's May 16, 2017 petition to compel. (Prehearing Conference Summary, June 27, 2017).

27) On July 17, 2017, Employee's case with the DVR was closed because he was ineligible for services as he had the ability to return to remunerative employment. (*Woolf I*).

28) On August 10, 2017, FNP-C Wurmstein responded to an *ex parte* letter from Employer's attorney asking her if Employee was capable of returning to work on December 21, 2016. She responded, "He was medically cleared at this time." When asked to opine if Employee was medically stable as of December 21, 2016, FNP-C Wurmstein replied, "He was medically cleared at this time." (*Woolf I*).

29) On September 28, 2017, Employer denied TTD and medical costs, contending it received no medical documentation indicating work-stress was the cause of any mental injury or that his high blood pressure was the result of his employment. It contended Employee was not entitled to benefits for any mental injury arising out of his termination because Employer terminated him in good faith. Employer also contended Employee was not entitled to TTD after December 22, 2016, based upon FNP-C Wurmstein's opinion he was medically stable. (Controversion Notice, September 28, 2017).

30) On October 2, 2017, Employee reported his blood pressure at home had been in the target 120s over 80s or less. He said he was under a lot of stress but was coping well with it. Dr. Than continued his Hyzaar and Norvasc. (*Woolf I*).

31) On January 10, 2018, Employee petitioned to compel Employer to provide discovery. He had received 675 pages of discovery from his attorney, which was provided by Employer. The discovery contained a December 2, 2016 email from Superintendent Bolen to Eugenia Sleeper and cc'd to Director Pickner, Mark Vink, Principal Meneguin and Saul Friedman, which stated Employee had not submitted for sick days or leave without pay, "He only tells us he can't work,"

and he has "not communicated with Roxy Meneguin since abandoning his job on November 10, 2016." Employee requested Employer provide copies of hand-written notes his wife brought to Principal Meneguin when he did not have access to the internet and a copy of his entire teacher email archive with a formal statement about the chain of custody, and all communication between Superintendent Bolen, Eugenia Sleeper and those cc'd in the email about the statements in the email. (Petition, January 10, 2018).

32) On January 30, 2018, Employee again petitioned to compel Employer to provide discovery. He wrote, "I add a mental injury to the injury of high blood pressure. . . ." on the petition and attached a 39 page commentary. Employee included two newspaper articles explaining Amos Oxereok, a school employee, had been arrested for charges of sexual abuse of minor students on September 14, 2016, and a civil lawsuit had been filed by parents of 13 minor children who had been abused by Mr. Oxereok and Jim Valcarce was representing the plaintiffs. He also attached an email from Ward Walker to Employee dated December 5, 2017, stating:

> I've been doing some thinking lately. First, I had a fifth grader in one of my schools who threw an apple at his teacher and then he was suspended for ten days. They wanted me to get involved. It turns out that he was doing a worksheet where he was being asked to multiple two three digit decimal numbers. A quick improvised test showed that he was still counting on his fingers and did not know his times tables. He did not understand the algorithm for multiplication of two digit numbers, did not know what a fraction was or a decimal was. No wonder he was frustrated. I told them he needed instruction at his instructional level. Evidently this means for them giving him the grade level work and then "offering supports"-- there was "no evidence that giving students below grade level work would lead to success." The principal assured me that he would receive differentiated instruction--they are also very much against having someone identified as SPED -- it confirms exactly what you found. . . .

(Petition, January 30, 2018; Commentary, January 30, 2018).

33) On February 2, 2018, Employee's former attorney withdrew. (Notice of Withdrawal, February 2, 2018).

34) On February 5, 2018, a division technician served a notice for a February 27, 2018 prehearing conference. (Prehearing Conference Notice, February 5, 2018).

35) On February 5, 2018, Employee emailed a request to reschedule the February 27, 2018 prehearing conference because he was out of the country and to reschedule after he returned on April 5, 2018, but before April 12, 2018. (Email, February 5, 2018).

36) On February 6, 2018, a technician rescheduled the February 27, 2018 prehearing conference to April 11, 2018. (Prehearing Conference Notice Served, February 6, 2018).

37) On February 11, 2018, Employee emailed the division seeking assistance to obtain his file from his former attorney. He said his attorney provided him with a 670 page document from Employer in response to the discovery request he made which did not include what he requested in his petitions and he asked his former attorney for all documents in his file. Employee said his former attorney told him it would take him a while to comply and the failure to provide it was impeding his ability to work on his case. (Email, February 11, 2018).

38) On February 12, 2018, a workers' compensation officer directed Employee to the Alaska Bar Association for guidance on attorney-client issues. (Email, February 12, 2018).

39) On April 11, 2018, Employee confirmed receiving 675 pages of discovery from his former attorney which Employer stated it provided in response to Employee's first discovery request. Because Employee's discovery petitions contained numerous discovery requests and Employer provided Employee discovery which was not filed, the designee ordered Employer to file a response to Employee's petition by May 2, 2018, and scheduled another prehearing conference on May 11, 2018. The designee informed Employee he must file and serve on all opposing parties an affidavit of readiness for hearing (ARH) within two years of Employer's April 27, 2017 controversion notice or provide written notice he still wants a hearing but has not completed all discovery. (*Woolf I*).

40) On May 2, 2018, Employer answered Employee's January 10 and 30, 2018 petitions and provided 428 pages of discovery, including the following emails:

a) On October 24, 2016, Dawn Hendrickson, emailed Frank Stanek, the former math teacher, at 12:31 p.m. and told him that Employee wanted to know if a specific student took Algebra last year. At 1:30 p.m. Mr. Stanek replied to Ms. Hendrickson the student was in Algebra according to the schedule and this year the students should be in Geometry. Ms. Hendrickson forwarded Mr. Stanek's response to Employee at 1:41 p.m. At 4:45 p.m. Employee thanked Mr. Stanek for his reply, described the problems the student was having and asked which book was used last year. Mr. Stanek replied at 5:04 p.m. stating two students, including the student at issue, should never have been put in Algebra. However, one would always tell him he did not know how to do math problems to get something easy.

Two years prior to his being there the students lacked any solid instruction but, "Don't let them play you." At 5:22 p.m. Employee said one student lacked confidence and he was trying to encourage him. But he did not want to frustrate the student with stuff the student found difficult because of his previous foundation. The other two students were placed in Algebra before they were ready and that was not fair. Employee wondered whether the district guidelines to keep them in grade level work was good for them and said, "[w]e wonder why the suicide rate is so high. . . ." (Emails, October 24, 2016).

b) On November 9, 2016, Director Pickner emailed Employee, and cc'd Ms. Heflin and Superintendent Bolen, and said he never intended to threaten Employee; he had taken Employee's emails to say he felt like he could not teach the math coursework. He appreciated Employee's situation with student abilities and suggested talking with Ms. Heflin before deciding to follow "the darker road of leaving your position." The email contained the following previous emails: (1) Employee's November 8, 2016 email, Employee stating he would willingly resign before the end of the school year if Director Pickner could find a replacement because he was not doing well teaching there. He would do what he can reasonably do within the constraints of his health to stay as long as they needed him until the end of the school year. Employee had not been successful teaching math or science. Yesterday he gave his math students a pre-course test which tests their knowledge of material from earlier courses to determine what needed to be reviewed. Three out of four sixth graders stayed focused and completed many of the problems. The seventh and eighth graders had behavioral problems and none of them focused on the test. They were largely out of control; even with the new aide and Principal Meneguin came in they were better behaved but would not complete the test. Principal Meneguin was asked to help with a student but the student would not move seats or work on the test so the student was removed from the room and a parent was called. When the student returned to the room, she did not do much on the test. Of the little work they did, most of the seventh and eighth graders did not demonstrate much knowledge of math concepts or skills needed to do the problems. Principal Meneguin kept telling him that the students can do the work, implying they are faking a lack of knowledge and skill. Employee is supposed to be using a pacing guide but he believed the students lack the proper math foundation for him to teach at the required pace after working one-on-one with the students. He did not believe the math program was suitable for the

students' needs or maybe he was not competent enough to implement the program. Employee was not able to control their behavior. He shared statements made by Mr. Stanek in emails and said it was a travesty to place a high school Geometry student in a course which was "far, far beyond" the student's capability. (Email, November 8, 2016). (2) Director Pickner's November 9, 2016, reply to Employee's email direct him to discuss curriculum or student ability matters with Ms. Heflin, the Director of Curriculum. If Employee was incapable of meeting the needs of his contract, Director Pickner told Employee to let him know; and (3) Employee's November 9, 2016 email stating the problem was the students were placed in math courses for which they are not prepared because Algebra is a prerequisite for Geometry. He felt qualified to teach math and Mr. Pickner's threat to take legal action against him because he misrepresented himself as a math teacher was an insult and caused Employee and his wife to ask him to find replacements as soon as possible. (Email, November 9, 2016).

c) On November 12, 2016, Employee emailed Director Pickner, Ms. Heflin and his personal email account a response to Principal Meneguin's reprimand. He contended Principal Meneguin was retaliating against him because he advocated for and protected a student from her aggressive reprimand for the student's failure to complete assigned work. Employee already informed Principal Meneguin the student had no background in Algebra, which was a prerequisite for the class, and all class work was out of the student's ability level. Employee discussed the incident with legal counsel and was informed he witnessed child abuse against his student by Principal Meneguin and he was required to report it because he was a mandated reporter. He said he filed a report with the Alaska Office of Children's Services (OCS) and copied the Commissioner of the Alaska Department of Education and Early Development (DEED). Employee said he would respond to the formal reprimand but must first request details to support her accusations. His blood pressure was still too high and dealing with all of the legal implications caused him a great deal of anxiety. Employee needed to be careful to not get too stressed out and must return to the clinic on Monday for blood samples they were unable to draw the day before after three attempts. He said the school was a very hostile and unsafe work environment. Employee said he could not resign until the formal reprimand was resolved fairly and he was worried it would get more tense at

school because of the OCS report. The classroom temperature was 59 degrees. (Email, November 12, 2016).

d) On November 16, 2016, Director Pickner emailed Employee's personal email account at 11:34 a.m. and said he hoped to meet with him that day and Ms. Heflin was happy to meet with him as well about his concerns. (Email, November 16, 2016). Director Pickner forwarded the email to Ms. Sleeper and cc'd Superintendent Bolen at 6:24 p.m. and stated Employee had not responded. (Email, November 16, 2016).

e) On November 23, 2016, Employee emailed Superintendent Bolen, and cc'd his personal email account and Sandra King, the Bering Strait Education Association (BSEA) president, a letter in response to Superintendent Bolen's November 18, 2016 letter, a November 9, 2016 letter addressed to his aid with instruction for the middle school math class, a document entitled, "Recommendations to BSSD Regional Board" and three pictures. (Email, November 23, 2016).

f) On November 26, 2016, Employee emailed Superintendent Bolen and Director Pickner stating his apartment was 53 degrees even though the thermostat was set at 75 degrees. The maintenance person had come by and set the heat at the highest setting but his apartment was still below 60 degrees if he did not use a space heater or oven. Employee informed Principal Meneguin about the heat issue but she did nothing. (Email, November 26, 2016).

g) On November 27, 2016, Employee emailed Principal Meneguin, Superintendent Bolen, Director Pickner, Ms. King, and cc'd his personal email account, a document entitled, "Level One Formal Grievance from [Employee]" with two supporting documents. (Email, November 27, 2016).

h) On November 27, 2016, Employee emailed Bruce Downes at OCS from his personal email account and cc'd Superintendent Bolen and said a parent of a student at a different school told him Principal Meneguin treated the student abusively and the parent had other problems with Principal Meneguin's role. The parent was willing to speak with OCS and he provided the parent's telephone number. (Email, November 27, 2016).

i) On November 28, 2016, Employee emailed Superintendent Bolen and Director Pickner, and cc'd Alaska Wage and Hour, his personal email account and Ms. King, about Principal Meneguin's firing of his wife that morning. His wife had not received most of the salary owed to her as she was paid 45 hours of full-time work but 212 hours were still owed.

Employee asked Director Pickner if his wife was fired on his orders. Attached to the email as the dismissal letter and Employee's wife's November 15, 2016 pay stub and check. (Email, November 28, 2016).

j) On November 28, 2016, Mr. Vink, the Business Manager, emailed Employee, and cc'd Ms. Sleeper, Superintendent Bolen, Director Pickner, Principal Meneguin and Employee's personal email account, requesting he provide a written statement from his attending physician certifying his need for more than three consecutive days of leave per the negotiated agreement. All of Employee's absences on November 11, 14-18, 21-23 and 28 were unapproved as of this time. (Email, November 28, 2016).

k) On November 29, 2016, Ms. Hendrickson wrote a document entitled, "Conversations with [Employee]" and described conversations she had with Employee about the curriculum and his responses. (Hendrickson document, November 29, 2016).

l) On November 30, 2016, Employee emailed Principal Meneguin, Superintendent Bolen, Director Pickner and Sandra King, and cc's his personal email account a substitute grievance. (Email, November 30, 2016).

m) On November 30, 2016, Michael Isom, Ed. D., the school counselor, emailed Principal Meneguin that he spoke with Employee on November 29, 2016 for almost 30 minutes. Employee asked if was appropriate for students in ninth through twelfth grade to be placed into Geometry because he believed the students were not prepared because they did not have proper algebra foundation. Dr. Isom explained Employee should bring questions about curriculum to Principal Meneguin and the curriculum director and that demonstrating proficiency levels would help bolster his assertions. Employee said he contacted Ms. Heflin but she was out of state and wanted to meet with him upon her return and he requested Ms. Heflin email so there would be a record. Employee brought up conversations between him and Chase Ervin about the students' lack of math skills. Dr. Isom told Employee the discussion was irrelevant and it was his responsibility to teach within the curriculum and work with students to bring them up to standards. Employee made statements about his OCS report, his wife's employment agreement and termination and Mr. Stanek's emails. Dr. Isom did not address any of those issues. The only thing he addressed was Employee's lack of professionalism and the impact on the students as a direct result of him failing to meet is professional obligation because teachers have an ethical responsibility not to abandon

students regardless of what transpired in the workplace. Employee rebutted that he was unable to teach students based on what he believed was correct and Principal Meneguin would force him to do what he was unwilling to the point his blood pressure would become elevated. (Email, November 30, 2016).

n) On November 30, 2016, Principal Meneguin emailed Director Pickner and Ms. Heflin a document written by Aren Montgomery. Mr. Montgomery stated he had discussed curriculum with Employee on two occasions the week of October 17-19, 2016. He stopped in Employee's classroom on October 17 to check and see how things were going. Employee was moving desks into small groups because he said he was having difficulty teaching kids that were at different levels and seemed angry and frustrated. Mr. Montgomery explained students were at different levels of ability in lower grades as well. Employee said he could not teach students that were at different levels and he was not going to follow Principal Meneguin's instructions and planned on doing it his way. He said the district did not know what it was doing. Mr. Montgomery attended a teachers' meeting on October 19 when Principal Meneguin was out of the village and Ms. Hendrickson was in charge of the meeting. Employee complained about his job a good part of the meeting. Ms. Hendrickson told Employee he needed to take grades weekly. Employee said he did not take regular grades and just averaged five or six grades to get the final grade. Mr. Montgomery said he told Employee, "why don't you just listen and give what [Ms. Hendrickson] is telling you a try." Ms. Hendrickson thanked him for his support. (Email, November 30, 2016).

o) On December 1, 2016, Ms. Heflin emailed Superintendent Bolen and said she spoke with Principal Meneguin. Principal Meneguin said Employee did not tell her he was reporting to OCS as Employee stated in communications on November 30, 2016. Ms. Heflin reviewed Employee's emails and discovered conflicting statements about the OCS filing. In his November 12, 2016 email, Employee said he filed the OCS report after he received the written reprimand on November 11, 2016, and that he contacted counsel the same day as the incident and legal counsel advised him he witnessed child abuse and that he was a mandated report. (Email, December 1, 2016).

p) On December 2, 2016, Superintendent Bolen emailed Mr. Vink, Principal Meneguin, and cc'd Director Pickner and Tera Cunningham, asking if Employee returned to work and if he had submitted a leave request and a certification slip from the clinic. He also asked for the

first date Employee worked and how many current days of sick leave and personal leave he had accrued. (December 2, 2016).

q) On December 2, 2016, Mr. Montgomery emailed Superintendent Bolen stating he was completing a long term sub contract in Wales. He believed Employee was stirring up trouble and making untrue statements in the village concerning Principal Meneguin and staff. A parent of a student made negative statements that Employee was kicked out of the school and teachers are leaving Wales because of the staff and Principal Meneguin. (Email, December 2, 2016).

r) On December 2, 2016, Superintendent Bolen emailed Ms. Sleeper and cc'd Director Pickner, Mr. Vink, Principal Meneguin and Saul Friedman, and stated, Employee had not submitted for sick days or leave without pay, "He only tells us he can't work," and he has "not communicated with Roxy Meneguin since abandoning his job on November 10, 2016." (Email, December 2, 2016).

s) On December 2, 2016, Mr. Stanek emailed Ms. Heflin and attached correspondence between Employee and Mr. Stanek. He wanted to clarify that when he said the students should not have been put in Algebra he meant they were having difficulties with general math skills before entering the class but he taught them Algebra at the level for which they were ready. Mr. Stanek clarified that when he said the students lacked any solid instruction for two years prior to his time teaching, he meant that the students stayed up all night and were not working up to their capabilities, which was addressed repeatedly with parents. Ms. Heflin forwarded the email to Superintendent Bolen and Director Pickner on December 2, 2016. (Emails, December 2, 2016).

t) On December 3, 2016, Employee emailed Jim Seitz, the executive director of the Alaska Professional Teaching Practices Commission (PTPC), and cc'd Ms. King, Hedy Eischeid from the National Education Association Alaska, Paul Sharaba and Justin Woolf-Sullivan, with a Code of Ethics and Teaching Standards Complaint and Request for Investigation against Principal Meneguin and Superintendent Bolen. (Email, December 3, 2016).

u) On December 4, 2016, Ms. King emailed Superintendent Bolen and Ms. Heflin and said, "This is the email I received yesterday. He has not waited to hear back from BSEA about anything, this came as I was still discussing options with Hedy and the rights committee chair." (Email, December 4, 2016).

v) On December 6, 2016, Principal Meneguin emailed Ms. Heflin, Superintendent Bolen and Director Pickner stating she had "been made aware of [Employee's] recent activity from a reliable source." Employee started circulating a petition around the village requesting she be removed or fired. The issue had reached a breaking point and it was wearing on the community, staff moral and her peace of mind. Employee was also getting on the district's maintenance guys. (Email, December 6, 2016).

w) On December 7, 2016, Ms. Heflin emailed Ms. Sleeper and cc'd Superintendent Bolen. Because Employee had not entered any grades for his sixth through twelfth grade math or science students, she required legal assistance. Ms. Heflin was concerned about crafting a comment on students' report cards about not receiving a quarter two grade and credit given to high school students for the semester, especially for the students with a failing quarter one grade. (Email, December 7, 2016).

x) On December 7, 2016, Employee emailed Superintendent Bolen and cc'd Justin Woolf-Sullivan and Ms. King from his personal email account regarding being cut off from the internet at the school and having limited access to the internet at the Wales tribal government office which was interfering with his communication with the BSEA about his formal grievance. His apartment was going down to 62 degrees if he did not turn on the oven and a small space heater. (Email, December 7, 2016).

y) On December 7, 2016, Ms. Heflin emailed Principal Meneguin and Superintendent Bolen stating she would be arriving on the school district plane at 1:45 to deliver Employee's notice of termination hearing letter and no trespass letter. If he had a school computer, she would pick it up and pass along the items to the maintenance man to bring back to the school. (Email, December 7, 2016).

z) On December 7, 2016, Superintendent Bolen emailed Ms. Heflin two letters to deliver to Employee. He informed her he emailed Ms. Sleeper about whether Employee can stay in district housing. (Email, December 7, 2016).

aa) On December 9, 2016, Ms. Heflin emailed Superintendent Bolen and Ms. Sleeper asking the education technology department to suspend Employee's access to his teacher email account and other district accounts until a decision was made after the hearing the following week. Employee retained his computer and Principal Meneguin confirmed the password to access the internet at the school was changed. (Email, December 9, 2016).

bb) On December 9, 2016, Employee emailed from his personal email account a letter dated December 1, 2016, from P-C Wurmstein about his leave to Superintendent Bolen, and cc'd Ms. King and the BSEA rights committee. He went to the clinic to get the copy on this date and he had been going there every day or two to get it which he believed was due diligence. Employee stated he was wrongfully deprived access to evidence when he was cut off from his teacher email account and the internet when he was working to complete a formal grievance process and prepare for the dismissal hearing. (Email, December 9, 2016).

cc) On December 9, 2016, Employee emailed Superintendent Bolen, and cc'd Ms. King from his personal email account. He had just received the December 9, 2016 letter which claimed he was being insubordinate because he did not give the district-issued lap-top to Ms. Heflin when she came to his apartment the day before. He asked Ms. Heflin if he could have time to copy files from the lap-top and erase anything personal. Ms. Heflin said she had to catch a plane so Employee asked if he could return it to Anna Oxereok, the president of the Wales tribal government. Ms. Heflin agreed and wrote something on the form and he initialed it without reading it. Employee brought the computer to Ms. Oxereok within an hour. He had just called Ms. Oxereok and she said she still had the computer but did not feel comfortable going to Principal Meneguin's home or to the school to drop it off; Principal Meneguin could pick up the computer at the clinic. (Email, December 9, 2016).

dd) On December 9, 2016, Superintendent Bolen emailed Principal Meneguin, cc'd Ms. Heflin and Ms. Sleeper, and said Employee's lap-top was with Ms. Oxereok at the clinic. He requested it be picked up and to let him know when she had it. (Email, December 9, 2016).

ee) On December 10, 2016, the BSEA rights committee emailed Principal Meneguin a grievance letter. Ms. King emailed Superintendent Bolen, Ms. Heflin and Director Pickner a copy of the grievance. (Emails, December 10, 2016).

ff) On December 16, 2016, "EdTech" emailed Employee's personal email account and cc'd EdTech, Superintendent Bolen, Director Pickner and Ms. Eischeid, stating his teacher email account was active for his use beginning December 27, 2016, at 8 a.m. Alaska Time until December 30, 2016 at 5 p.m. Alaska Time and provided a temporary password and his email login. (Email, December 16, 2016).

gg) On December 28, 2016, Superintendent Bolen emailed EdTech and cc'd Director Pickner and Ms. Sleeper asking to confirm whether or not Employee had accessed his email, and if so when. (Email, December 28, 2016).

hh) On January 3, 2017, Eric Lowry emailed Ms. Hendrickson and cc'd Ed Tech, Superintendent Bolen and Principal Meneguin and said, "You will get an email in about 3 hours that you are cc'd on with Bob's login info. I am including that here as well. His email is still: [redacted]. Temporary password: [redacted]. Allowing bob to use the Ethernet dongle I sent you (with the Air's) along with an ethernet cable will ensure no unauthorized wifi access." (Email, January 3, 2017).

ii) On January 4, 2017, Ms. Hendrickson emailed Principal Meneguin, Superintendent Bolen and EdTech and advised Employee he needed a couple hours to archive items; she asked what should she should do and if anyone needed to call and tell him exactly what he was to do. (Email, January 4, 2017).

jj) On January 4, 2017, Ms. Hendrickson emailed Principal Meneguin, Superintendent Bolen and EdTech stating Employee was done and left at 12:25 p.m. (Email, January 4, 2017).

kk) On February 9, 2017, Superintendent Bolen emailed Jessica Garrett, and cc'd Ms. Sleeper all of the documents he had at that time regarding actions taken against Employee. He attached a Release Letter, Letter of Unapproved Absences, Letter of Pretermination, Letter of Pretermination Revised 12.14.16, Pretermination Hearing Attachment, Medical Release, Continued Subordination Directive, Letter of Continued Pretermination, Termination Letter, Notice of Non-retention and Notice to Vacate. (Email, February 9, 2017).

(Employer Answer, May 2, 2018).

41) On May 8, 2018, Employee filed 251 pages of documents including a letter dated January 3, 2016, from Ms. Hendrickson stating, "At the request of the district, I will be at the school tomorrow January 4 (Wednesday) so that you will have access to your BSSD work email. Please be at the school at 10 am. I will let you in and escort you to a designated area. If the internet is not attainable at that time, I will send someone to let you know." He also included a document entitled, "Statements of [Employee] written on December 14, 2016 for the Level One Grievance Hearing of that same date." The document included Employee's preliminary comments about Principal Meneguin's November 30, 2016 statements. On page three of that document, Employee addressed Principal Meneguin's statement that "I gave [Employee] permission to

show his snake to the students, but not to keep the snake in the classroom. I had to ask [Employee] multiple times to remove the snake out of the classroom and to bring it home." Employee said:

> . . . . I requested in my November 13, 2016 memo, I need Ms. Meneguin to cite actual instances, identify witnesses, and provide documentation of her asking me "multiple times to remove the snake out of the classroom and to bring it home." Not once did she ever do that verbally, and not once did she ever send me an email or provide to me in writing in any way with a request for such action.
>
> When I was still in Juneau I had sent an email message to Ms. Meneguin to inquire about aquariums that I might use for a snake cage and for setting up a pond life ecosystem with the local Wales flora and fauna. This is well documented in email archives. . . .
>
> Ms. Meneguin did not offer me any support for these two requests that I made prior to leaving Juneau to move to Wales, and indeed she did inform me that she would not allow me keep the snake in my classroom in an email message sent to me in Juneau, but she wrote that I could keep the snake in my apartment and bring it to school.
>
> I had actually been grateful that Ms. Meneguin not once asked me to take the snake back to my apartment from my classroom. . . .

Employee included a January 31, 2017 letter he wrote to Superintendent Bolen where he expressed serious concerns about the chain of custody of his teacher email account because Principal Meneguin, Superintendent Bolen, Director Pickner, Ms. Hendrickson and Ms. Eischeid were allowed access. He also contended he was not provided adequate access to his teacher email account and the internet to access his personal email account. Employee included a document entitled, "Testimony submitted on January 11, 2017" where requested his email archive because he was unable to find emails he had with Principal Meneguin about the cold classroom temperatures on weekends, emails about his sick leave and the previous school years' teacher regarding whether a student had completed Algebra, and a November 11, 2016 email with lesson plans. The document included lesson plans for October 17-21, 24-28, October 31-November 4, (Notice of Intent to Rely, May 8, 2018).

42) On May 9, 2018, Employee filed a several documents including a November 17, 2016 handwritten letter to Principal Meneguin by Employee stating he would not be able to teach that day because he was told to avoid stressful situations. (Notice of Intent to Rely, May 9, 2018).

43) On May 17, 2018, the board designee issued a discovery order granting in part and denying in part Employee's January 10, 2018 and January 30, 2018 petitions to compel discovery. The designee ordered Employer to search for and provide Employee copies of emails that it had not already provided, which were received by or written by Employee regarding specific events, including: the temperature in his classroom, his request for training about the former instructor charged with sexual abuse of minors, special education services for his students, the math curriculum, his students' math skills, the curriculum and textbooks for his science courses, the snake he kept in his classroom, the November 9, 2016 email to Principal Meneguin about his ninth grade math student, written lesson plans after November 10, 2016, his medical treatment and blood pressure, his missing student's tests and other paperwork and his requests to get them back, his December 3, 2016 Alaska Professional Teaching Practices Commission complaint, and the termination of his wife's employment with Employer. Employer was not ordered to provide a full archive of Employee's email account as the scope of the request was overbroad. (Prehearing Conference Summary, May 11, 2018; Prehearing Conference Summary Served, May 17, 2018).

44) On May 22, 2018, Kari Hancock, M.D., a psychiatrist, evaluated Employee for an Employer's Medication Evaluation (EME). Employee brought five pages of an evaluation titled, "Evaluation of Robert Woolf, January 21, 25, 27, 29, 1999" and the December 5, 2017 email from Ward Walker. He stated he could return to work without restrictions if he has appropriate therapeutic support. Employee discussed a past situation where he was falsely accused of child molestation and received therapeutic support to get through it and return to work. He was diagnosed with PTSD when the false accusations were made and he now felt similar to how he felt back then. Employee's symptoms worsened with the workers' compensation process. He reported he felt responsible for the death of a student that died violently after he informed the principal the student was a danger to himself and others and the principal told him to wait for ongoing support until the school psychologist came. Employee also reported another incident involving another student committing suicide after a school trip to another village for a conference when something happened to the student and the student could not talk. He brought the student to the village clinic and the student was taken by float plane the next day to get medical care. Employee stated he felt he had not done enough for that student and still felt guilt about his death. Dr. Hancock diagnosed preexisting PTSD in partial remission, psychological

factors affecting hypertension and major depressive disorder recurrent in remission. She opined his employment with Employer is not the substantial cause of his diagnoses. Dr. Hancock stated the stressors while employed for Employer temporarily aggravated his chronic conditions which wax and wane with stressors. She noted he was medically cleared to return to work on December 21, 2016, the last medication addition to his hypertension treatment occurred on June 23, 2017, and on October 2, 2017, Employee reported his blood pressure at home was in the target 120s and that it was quite reactive, for example, when he had a conflict with his wife. Dr. Hancock stated Employee appeared to be a compassionate man who becomes distressed when he believes someone is being victimized, which stems from the unfortunate experienced he had with tragic student deaths in the past and his own situation when he was falsely accused. Any reminders of those experiences exacerbates his symptoms and ongoing life stressors and health concerns in older individuals can contribute to symptom recurrence and intensification. She opined Employee did not incur a permanent partial impairment (PPI) as a result of his employment. She recommended treatment to help Employee "manage his stress in the context of his chronic conditions" but there are no work restrictions as result of his employment. (*Woolf I*).

45) On May 30, 2018, Employer denied TTD, temporary partial disability (TPD), PPI benefits, medical costs and reemployment benefits based upon Dr. Handcock's EME report. (Controversion Notice, May 30, 2018).

46) On June 1, 2018, Employee requested advice from a workers' compensation technician on how to challenge the EME report. The workers' compensation technician provided him a petition form and SIME form by email. (*Woolf I*).

47) On June 22, 2018, Employee informed the division and Employer he would be helping his wife move to Illinois for her new position as an ordained United Methodist minister. He would be flying back to Juneau to continue working on his case thereafter. (*Id*.).

48) On August 23, 2018, Employee came into the division's Juneau office for assistance with the petition and SIME forms, which he received. (*Id*.).

49) On January 7, 2019, Employee emailed the division explaining why he chose to put aside working on his case while his wife settled into her new job as a pastor of two churches in Illinois. He had to set aside working on his case because it caused too much stress and associated high blood pressure. Employee chose to reduce his stress by not working on his case to enable him to form good relations with the members of the two churches. He stated the stress caused by

Employer's wrongful actions continued to manifest when he worked on his case so he had to do so carefully. He had began to receive professional mental health services to have support necessary to safely work on his case. Employee asked to be informed of any pending deadlines for his case, what he needs to do and the dates of any deadlines. (*Id*.).

50) On January 8, 2019, a workers' compensation officer emailed Employee to inform him he must file an ARH or written notice he still wants a hearing but has not completed all discovery within two years of Employer's April 27, 2017 controversion notice. A follow up email stated the deadline was approaching rapidly on April 26, 2019. (*Id*.).

51) On January 14, 2019, Employee sought psychological assistance with Jodi Wiman, LCPC. He stated he was facing very difficult legal testimony soon and had situational high blood pressure from case related stress. Employee had purposefully ignored his case for the past six months in an attempt to allow him and his wife time to settle in Illinois. However, he recognized more of a need to manage his stress now that he was spending time preparing for his testimony. Employee reported sleep disruption, irritability and problems concentrating in addition to the blood pressure issue. He noticed some familiar symptoms, such as rumination, creeping in like it did when he experienced PTSD in the past. Ms. Wiman diagnosed unspecified anxiety and planned to implement coping skills and provide support and validation. (*Id*.).

52) On January 21, 2019, Ms. Wiman noted Employee was in good spirits. She spent time working on relaxation and stress management techniques with him. She stated, "[Employee] is a very intelligent man with a lot of insights. He mainly needs a sounding board and some guidance on relaxation and stress management." (*Id*.).

53) On February 22, 2019, Employee requested an SIME. (Petition, February 22, 2019).

54) On March 11, 2019, Employee requested an extension of the time to request a hearing. He contended his work injury prevented him from returning to work and he relied on his wife's income. Employee contended he had to move from Juneau, Alaska to Illinois for his wife's work as a minister and it would have been very difficult from him to pursue his workers' compensation claim while forming new relations as a pastor's spouse. He contended he waited until they had settled in Illinois and after he received professional therapeutic support before he returned to working on his claim. Employee claims working on his claim re-traumatized him. (*Woolf I*).

55) On March 20, 2019, Employer withdrew or waived its denial based on the unusual and extraordinary situation and contended its May 30, 2018 controversion is based solely on the medical evidence. Employee contended Employer failed to produce discovery it was ordered to on May 17, 2018. (Prehearing Conference Summary, March 20, 2019).

56) On April 11, 2019, Employee was much more stressed for his appointment with Ms. Wiman than during previous appointments. He had a deposition the following week and was very worried about his health. Employee's blood pressure had been spiking again while preparing for his case. He panicked when he received an email regarding his case and he was almost scared to open his mail. Employee experienced some symptoms of PTSD as he was feeling re-traumatized by having to revisit the aspects of the case. He reported hypervigilance, rumination, sleep disruption, general anxiousness and a physical response in the form of greatly heightened blood pressure to triggers. Ms. Wiman worked with Employee on ways to emotionally tolerate the hearing so his blood pressure did not reach dangerous levels. (*Woolf I*).

57) On April 15, 2019, Employee contended a gag order was issued preventing discussion of the third-party civil lawsuit, which delayed counseling for the students and training for teachers. The designee ordered Employer to release redacted formal discovery materials Employer provided in a third-party lawsuit by minor students against Employer and a copy of the settlement agreement for the third-party civil law suit. The designee also ordered Employer to redact all records to avoid disclosure of any confidential information concerning any students or assault victims and to provide a copy of any gag order should the discovery material be protected by one. Employee contended Employer failed to comply with the May 17, 2018 discovery order because it failed to produce emails. Employer contended it provided every available email but would follow up to see if there were any additional available emails. Employee contended Employer failed to provide a chain of custody for the emails. Employer objected to Employee's accusation of spoliation of evidence. (Prehearing Conference Summary, April 15, 2019).

58) On April 15, 2019, Employee was increasingly stressed again. His phone conference was that day and he was still noticeably frazzled. He shared documentation, including dates and times of his blood pressure before, during and after this phone conference and it was indicative of a correlation between his contact or involvement with this case and his physical stress response. Ms. Wiman continued working on ways to proactively and reactively manage his

stress response symptoms so he could get through the case with the least amount of negative emotional response as possible. (*Woolf I*).

59) On April 22, 2019, the April 15, 2019 prehearing conference summary was served. (Prehearing Conference Summary Served Event, April 22, 2019).

60) On May 2, 2019, Employer requested the designee reconsider the April 15, 2019 discovery order. Employer contended the order was over burdensome because the file for the third-party civil lawsuit is maintained in five filing cabinets and contains facts concerning sexual assaults of minor children and it would take months to go through all of the files and make the appropriate confidential redactions. It contended the attorney representing the plaintiffs in the civil law suit contended the entire case has confidentiality concerns and the settlement agreements were confidential. Employer attached three protective orders in the third-party civil lawsuit and contented it would take an additional six months to obtain remaining protective orders. It contended Employee can request the court file on his own. Employer attached an email from Attorney Valcarce to Employer's attorney which stated, "[t]he entire file (which for me two file cabinets full, plus I have an entire room of exhibits for trial) has confidentiality concerns. There were also several court orders regarding such, and sealing certain things." It also attached the following protective orders issued by the Superior Court in the third-party civil lawsuit: (1) a protective order dated December 18, 2018, which stated, "The parties are prohibited from disclosing the records, images, footage, and/or other material by the Alaska State Troopers to persons outside this litigation."; (2) an order dated June 21, 2018, granting Employer's motion to modify the December 18, 2018 order to permit the school district to disclose to a former employee the content of any communication in which the employee participated, including the date, time and place of the communication, the identity of the other participants and the content of the conversation; and (3) an order grating the plaintiffs' motion for a protective order for depositions dated June 25, 2018. (Request for Reconsideration of Prehearing Conference dated April 22, 2019, May 2, 2019).

61) On May 31, 2019, Employee emailed Employer's attorney contending he had not provided the ordered discovery. (Employee email, May 31, 2019). Employer's attorney replied to Employee's email and stated it produced discovery to Employee's former attorney on June 21 and July 19, 2017, and to Employee on May 2 and May 15, 2018. His office produced the documentation ordered on May 28, 2018. After appropriate permission was obtained for

redacted student grades, the grades were provided on June 22, 2018. Employer's attorney stated all emails currently existing addressing the May 17, 2018 order were produced. No documentation regarding the third-party civil lawsuit was produced because Attorney Valcarce advised him the entire file has confidentiality concerns. (Employer email, May 31, 2019). Employee replied Employer's attorney told him at the prehearing conference he would resend the emails he already provided and he has not received them. He asked Employer's attorney to send them again. (Employee email, May 31, 2019). Employer's attorney stated he resent all the documentation to Employee on May 2, 2018, and on May 15, 2018. He resent them again. (Employer email, May 31, 2018).

62) On June 13, 2019, Employee emailed the workers' compensation division asking how he could compel Employer to immediately send ordered discovery materials. (Employee, June 13, 2018).

63) On June 14, 2018, a workers' compensation officer replied and directed Employee to file Employer's discovery answers on a notice of intent to rely form so they can be reviewed. He was informed he can file a petition for noncompliance with discovery orders and sanctions and a petition form was attached. (Email, June 14, 2018).

64) On June 17, 2019, Employee requested Employer be sanctioned for noncompliance with a discovery order. He contended Employer failed to comply with the designee's May 17, 2018 discovery order. (Petition, June 17, 2019).

65) On June 17, 2019, Employee filed a notice of intent to rely with 615 pages of discovery material provided by Employer. He wrote on the notice of intent to rely that Employer sent him 868 pages of documents with only a few emails from his teacher email archive. Employee contended Employer failed to provide emails he sent to his immediate supervisor regarding medical reasons he was away from work. (Notice of Intent to Rely, June 17, 2019).

66) On June 18, 2019, Employee filed 22 pages of documents:

a) On November 11, 2016, Employee sent an email entitled, "on sick leave today" to Principal Meneguin, and cc'd Director Pickner and Ms. Heflin. He had a serious episode of dizziness after Principal Meneguin confronted him in his classroom with the reprimand. Employee had not slept much the night before and for the last three weeks after he became aware the students were wrongfully placed in math classes, he struggled to help Principal

Meneguin recognize that fact and attempted to pace the math class consistent with their math capabilities and the students acted out because of their frustration. He still felt dizzy that morning and his blood pressure was significantly higher than when he first arrived. Employee provided lesson plans for a substitute teacher. (Email, November 11, 2016). He forwarded the email to his personal email account on November 15, 2016. (Email, November 15, 2016).

b) On November 13, 2016, Employee emailed Principal Meneguin, Director Pickner and Ms. Heflin advising his blood pressure remained high and he would not be in class tomorrow because it was dangerously high and because he needed to go to the clinic for a blood draw and to adjust his medication. When he went to his classroom the day before, he found many papers missing, including student work he was using for assessment, printed lesson plans from previous weeks with handwritten notes, other handwritten notes for planned lessons and personal documents he used to plan lessons. He suggested lesson plans for his classes. Employee explained the top student in his Geometry class scored only 11.5 out of 88 on the first assessment tool in the text book and the rest of his class, except one absent student, tested lower and he hoped that information was used to determine what was best for his students. He emailed Karen Beranek about materials in the science classes and he received back from her a curriculum for those classes, which he had not been informed existed as he had only been provided a page number in the textbooks the students had completed and told he was to continue from that point. One requirement in the curriculum was to teach from an Earth Science textbook but he could only find one copy and Principal Meneguin said she would look for other copies but he had not heard back. He drafted new lesson plans in handwriting but those documents were missing. Employee was also missing the sixth through eighth grade assessments, so he asked that the students be assessed again. The classroom was only 58 degrees after using a space heater and it was too cold to continue working on the email. He forwarded this email to his personal email account on November 13, 2016. (Emails, November 13, 2016).

c) On November 13, 2016, Director Pickner emailed Employee and cc'd Ms. Heflin and Principal Meneguin and said he was sorry to hear about Employee's health issue and he would be returning to Unalakleet and felt a face-to-face meeting among all parties was needed. (Email, November 13, 2016). Employee stated his blood pressure was still high and

he was following up with the clinic about his medication. When he went to his classroom the day before, he found many papers missing, including student work he was using for assessment, printed lesson plans from previous weeks with handwritten notes, other handwritten notes for planned lessons and personal documents he used to plan lessons. The thermostat in the room read 52 degrees and he was unable to stay for long due to the temperature. (Email, November 13, 2016). Employee forwarded the emails to his personal account on January 4, 2017. (Email, January 4, 2017).

d) On November 14, 2016, Employee sent an email entitled "continuing medical leave" to Principal Meneguin, Director Pickner, Ms. Heflin and Ms. King stating he had high blood pressure that day at the Wales Clinic and it was determined to be a consequence of the stress associated with what was happening at the school. Until his blood pressure was under control, he was advised not to teach and to be careful with the work he did to address the formal reprimand. (Email, November 14, 2016). Employee forwarded this email to his personal email account on November 14 and 15, 2016. (Emails, November 14 and 15, 2016).

e) On November 15, 2015, Employee emailed Principal Meneguin and Director Pickner and said he had not received his blood test results or new prescription for his blood pressure. He was still avoiding stress as directed the day before when his blood pressure measured 164/104. (Email, November 15, 2015). Director Pickner replied to Employee that he was sorry to hear about Employee's ongoing blood pressure issues. He believed a meeting the next day with Employee and Ms. Heflin would go a long way to resolve Employee's concerns and reduce his stress level. (Email, November 15, 2016). Employee forwarded his November 15, 2015 email to his personal email account on November 15, 2016. (Email, November 15, 2016).

f) On November 22, 2016, Employee sent an email entitled "continued medical leave" to Principal Meneguin, Director Pickner and to his personal email account stating his blood pressure medication change was not adequate. He was prescribed another medication and until this or other interventions were successful in treating his situational high blood pressure, it was dangerous for him to teach. (Email, November 22, 2016).

g) On November 27, 2016, Employee emailed Principal Meneguin and cc'd Director Pickner and his personal email account and said stress-induced health problems still prevented him from teaching as the new medication was not working and he was going back

to the clinic tomorrow. He said the stress he was experiencing was caused by the wrongful disciplinary action Principal Meneguin took on November 10, 2016. (Email, November 27, 2019).

h) On November 28, 2016, Employee replied to the November 28, 2016 email sent from Mr. Vink to Employee, Ms. Sleeper, Superintendent Bolen, Director Pickner, Principal Meneguin and Employee's personal email account and stated he had another appointment at the clinic the next day so he would request the required written statement. (Email, November 28, 2016).

(Notice of Intent to Rely, June 18, 2019).

67) On June 19, 2019, Employee the December 3, 2016, email from Employee to Jim Seitz, and cc'd to Ms. King, Ms. Eischeid, Paul Sharaba and Justin Woolf-Sullivan, with a Code of Ethics and Teaching Standards Complaint and Request for Investigation against Principal Meneguin and Superintendent Bolen. (Email, December 3, 2016).

68) On August 2, 2019, *Woolf I* denied Employee's petition for an SIME and denied his request for an extension of time to request a hearing and determined Employee had 50 days left to request a hearing. It scheduled a prehearing conference to set a hearing on Employee's June 17, 2019 petition. (*Woolf I*).

69) On August 21, 2019, the parties attended a prehearing conference to set a hearing on Employee's June 17, 2019 petition. Employee contended Employer also failed to comply with the April 15, 2019 discovery order and requested a separate hearing be scheduled to determine whether Employer complied with the April 15, 2019 discovery order. Employer objected to setting a hearing date because an ARH had not been filed. It requested it be provided the opportunity to confer with potential witnesses to check their availability before scheduling a hearing. Employee said he was traveling between August 26 and September 27, 2019. The designee provided Employer with hearing dates in September and October 2019 and scheduled a prehearing conference on September 6, 2019, when Employee stated he would be available. (Prehearing Conference Summary, August 21, 2019).

70) On August 26, 2019, Employer filed and served on Employee a letter stating the CD contained all documentation, correspondence and emails that remained on Employee's teacher email account with student names redacted. The CD contained 435 document files including the following emails:

a) On October 11, 2016, Employee's received an email from "Gmail Team" entitled "Tips for using your new inbox" and another email entitled "How to use Gmail with Google Apps." (Emails, October 11, 2016).

b) On October 24, 2016, at 11:35 a.m., Employee emailed Principal Meneguin and Ms. Hendrickson about a math student in his Geometry class stating he found out the student did not take Algebra I. He recommended placing the student in the Algebra course instead of continuing with Geometry. Ms. Hendrickson replied at 11:35 and said Mr. Stanek taught Algebra last year. Ms. Hendrickson emailed Mr. Stanek at 12:31 p.m. and told him that Employee wanted to know if the student took Algebra. At 12:32 p.m. Principal Meneguin replied to Employee informing him he must teach from the math curriculum, "there is no choice on this," all of the high school students had Algebra and Employee must get the "aimsweb" done. At 1:30 p.m. Mr. Stanek replied to Ms. Hendrickson the student was in Algebra according to the schedule and this year the students should be in Geometry. Ms. Hendrickson forwarded Mr. Stanek's response to Employee at 1:41 p.m. At 4:45 p.m. Employee thanked Mr. Stanek for his reply, described the problems the student was having and asked which book was used last year. Mr. Stanek replied at 5:04 p.m. that two students, including the student at issue, should never have been put in Algebra. However, one would always tell him he did not know how to do math problems to get something easy. Two years prior to his being there the students lacked any solid instruction but, "Don't let them play you." At 5:12 p.m. Employee replied to Principal Meneguin's 12:32 p.m. email and cc'd Ms. Hendrickson and said he knows about the "AimWeb" and would continue to do it as directed by Ms. Hendrickson. He said he would do his best he can with the student and was keeping to the textbook. Employee asked for flash cards for addition, subtraction, multiplication and division for a student because the student did not know basic math. At 5:26 p.m. Employee forwarded Mr. Stanek's response to Principal Meneguin and Ms. Hendrickson stating he would do what he can and said, "Sure, the district wants the kinds in grade-level courses, but that does NOT mean that they are ready for them." (Emails, October 24, 2016). Employee forwarded the 11:27 a.m., 11:35 a.m., 12:32 p.m. and 5:12 p.m. emails to his personal email account on November 15, 2016. (Email, November 15, 2016).

c) On October 29, 2016, Employee emailed Principal Meneguin, and cc'd Ms. Hendrickson, and Ms. Beranek he would be extending his middle school math class 15 minutes to 75 minutes total instruction time and reduce his science class to 39 minutes of instruction as she suggested. He discussed rearranging his math classroom so the sixth graders were together as they were working in the green textbook and the seventh and eighth graders were together as they were working in the red textbook. Employee really wished the students were placed in textbooks based upon their ability level. (Email, October 29, 2016). Ms. Beranek replied and asked if Employee wanted her to forward the email to Mr. Martin. (Email, October 29, 2016). Employee responded "no" because Mr. Martin would be coming to the school and he just wanted her to be aware of the cut in science class instruction time. (Email, October 29, 2016). Ms. Beranek asked Employee if he had been up in the attic because there were supplies up there. (Email, October 29, 2016).

d) On October 31, 2016, Employee responded to Ms. Beranek's October 29, 2016 email and said he would go up to the attic. He asked if there was a way to get keys to the equipment and materials in locked cabinets in his classroom and if there were climate change curriculum materials. (Email, October 31, 2016). He forwarded the email chain beginning on October 29, 2016 to October 31, 2016 to his personal email account on November 15, 2016. (Email, November 15, 2016).

e) On November 4, 2016, Ms. Beranek replied to Employee's October 31, 2016 email and referred him to the ACMP Arctic Climate Modeling Program and gave him a link. She also told him, "We are currently in partnership with UAF and the REACH UP grant." (Email, November 4, 2016). Employee replied that program was the one he meant and thanked her for sending the materials. (Email, November 4, 2016). Ms. Beranek suggested Employee get involved with REACH UP. (Email, November 4, 2016). Employee replied he wanted to be involved. His classroom temperature was 53 degrees so he needed to plan lessons quickly and he would look at the materials that week. (Email, November 4, 2016). He forwarded the November 4, 2016 emails chain to his personal email account on November 15, 2016. (Email, November 15, 2016).

f) On November 6, 2016, Employee emailed Director Pickner informing him his classroom was only 53 degrees and most of his students were not able to do the class work in their math textbooks without a lot of one-on-one instruction which was impossible to provide. He

discussed Mr. Stanek's emails and said that his Geometry students did not have a solid background in algebra. Employee said the district's policy of placing students in the grade level class with the required curriculum pacing was not working. Placing the eighth graders in the same math book as the seventh grades helped but his aide did not know some of the math. Employee hoped Director Pickner could get a middle school specialist for the students next year and that he was more capable of meeting their needs. Mr. Martin was in his class a few days earlier and a student brought up black holes which led to a discussion of how Albert Einstein's mathematical theory of general relativity had predicted black holes before they were discovered. After the class, Mr. Martin told Employee he should not have allowed the student to divert from classroom instruction. He was dumbfounded because he had asked Mr. Martin to model a lesson for his Geometry class and he did not show up. Employee told Mr. Martin he wanted him to experience teaching the lesson so he could see himself the textbook was not suitable for students. Mr. Martin became angry and walked out of his classroom and left the village without speaking with Employee. Employee expressed additional concerns regarding statements Principal Meneguin and her husband made about village residents and subsistence rights. (Email, November 6, 2016).

g) On November 6, 2016, Employee emailed Principal Meneguin and asked if he could tutor a student and for an electric heater for his classroom because it was 50 degrees. (Email, November 6, 2016). Principal Meneguin replied and said he could tutor students after school as she told him repeatedly. She did not know if there was an electric heater. (Email, November 6, 2016).

h) On November 7, 2016, Employee emailed Ms. Beranek, asking if there were materials addressing the net primary productivity of the open ocean, coastal zones and upwelling. (Email, 7, 2016). Ms. Beranek replied and said, "Please follow the curriculum for Life Science for Middle School and High School" and provided a link to the curriculum. (Email, November 7, 2016). Employee replied, "I hear you loud and clear. I won't include the local ecology and how it is important for the people of this village and region." He thanked her for sending him the curriculum which had not been provided previously. Employee asked to change the order of the curriculum. (Email, November 7, 2016). Ms. Beranek said he can modify the sequence and extension of the district approved scope and sequence, "just don't co-opt it for your own agenda, please." (Email, November 7, 2016). Employee forwarded

the email chain to his personal email account on November 15, 2016. (Email, November 15, 2016).

i) On November 8, 2016, Employee emailed Director Pickner, and cc'd Principal Meneguin, Ms. Hendrickson and his personal email account, stating he would willingly resign before the end of the school year if Director Pickner could find a replacement because he was not doing well teaching there. He would do what he can reasonably do within the constraints of his health to stay as long as they needed him until the end of the school year. Employee had not been successful teaching math or science. Yesterday he gave his math students a pre-course test which tests their knowledge material from earlier courses to determine what needed to be reviewed. Three out of four sixth graders stayed focused and completed many of the problems. The seventh and eighth graders had behavior problems and none of them focused on the test. They were largely out of control, even with the new aide, and when Principal Meneguin came in they were better behaved but would not complete the test. Principal Meneguin was asked to help with a student but the student would not move seats or work on the test so the student was removed from the room and a parent was called. When the student returned to the room, the student did not do much on the test. Of the little work they did, most of the seventh and eighth graders did not demonstrate much knowledge of math concepts or skills needed to do the problems. Principal Meneguin kept telling him that the students can do the work, implying they are faking a lack of knowledge and skill. Employee was supposed to be using a pacing guide but he believes the students lack the proper math foundation for him to teach at the required pace after working one-on-one with the students. He did not believe the math program was suitable for the students' needs or maybe he was not competent enough to implement the program. Employee was not able to control their behavior. He shared statements made by Mr. Stanek in emails and said it was a travesty to place his high school students in a Geometry class "far, bar beyond" the students' capability. (Email, November 8, 2016). He forwarded his email to his personal email on January 4, 2017. (Email, January 4, 2017). On November 9, 2016, Mr. Pickner replied to Employee's email, cc's Ms. Heflin, and directed him to discuss curriculum or student ability matters with Ms. Heflin, the Director of Curriculum. If Employee was incapable of meeting the needs of his contract, Mr. Pickner told Employee to let him know. (Email, November 9, 2016). Employee replied the problem was the students were placed in

math courses for which they are not prepared because Algebra is a prerequisite for Geometry. He felt qualified to teach math and Mr. Pickner's threat to take legal action against him because he misrepresented himself as a math teacher was an insult and caused Employee and his wife to ask he find replacements as soon as possible. (Email, November 9, 2016). Mr. Pickner replied and said he never intended to threaten Employee; he had taken Employee's emails to state he felt like he could not teach the math coursework. He appreciated Employee's situation with student abilities and suggested talking with Ms. Heflin before deciding to follow "the darker road of leaving your position." (Email, November 9, 2016). Ms. Heflin emailed Employee that she preferred to speak to teachers in person rather than by emails. (Email, November 9, 2016). Employee replied he preferred archived information because Mr. Martin's communications with him were not documented in writing and he was uncomfortable continuing without a written record. (Email, November 9, 2016). Ms. Heflin responded and cc'd Employee's personal email account on November 10, 2016. She stated she would like to speak with him the next day as "Often issues [are] better addressed through collaborative conversations than through emails." (Email, November 10, 2016). On Employee forwarded the email chain to his personal account on November 15, 2016. (Email, November 15, 2016).

j) On November 9, 2016, Employee emailed Principal Meneguin, and cc'd Director Pickner, about the wood shop and water problems in his apartment and thanked her for visiting his Geometry class the day before and providing him support in urging a student to try doing the assigned work. He said the student had mostly shut down in part because the student did not have the skills or knowledge to do the required school work. Employee noted the student had other issues and was concerned frustration in math class contributed to the student's worsening sense of self-worth. He said the student seemed to manifest some of the symptoms he observed in other students who had committed suicide in the past. Principal Meneguin replied about the water problem. Employee replied again about the water problem. (Emails, November 9, 2016). He forwarded the emails to his personal email account on January 4, 2017. (Email, January 4, 2017).

k) On November 10, 2016, Employee emailed Director Pickner, Ms. Heflin and his personal email account and said he had just received the reprimand from Principal Meneguin. He offered to leave his position right away, even tomorrow, but asked for two weeks to box up

his personal items and mail them. (Email, November 10, 2016). Employee forwarded the email to his personal email account on January 4, 2017. (Email, January 4, 2017).

l) On November 11, 2016, Employee emailed Director Pickner and cc'd Ms. Heflin and his personal email account and requested an independent investigation of the student wrongfully paced in the Geometry class because the student was special needs and possibly severely emotionally disturbed. Two weeks earlier, he had reported the student to the school counselor for possible suicide indicators. A day prior, Employee found out the student should have been placed in Pre-Algebra and the student's placement in Geometry caused extreme frustration and behavior, which was the basis for Principal Meneguin's reprimand. Principal Meneguin told him she would try to get the student removed from the school but the student's grandmother was a problem. Employee vacated his offer to resign and requested an official copy of the negotiated agreement, for a union representative to help with his formal written reply to Principal Meneguin's reprimand and for a copy of his personnel record. (Email, November 11, 2016). He forwarded the email to his personal email on November 15, 2016. (Email, November 15, 2016).

m) On November 11, 2016, Ms. Hendrickson emailed Employee and cc'd Principal Meneguin and said she entered all of his AimsWeb scores for him because they were due that day and finished giving the assessment to students who still needed to complete them. (Email, November 11, 2016). Employee replied on November 12, 2016, and thanked her. He was at the school and had spent 45 minutes looking for the tests so he could score and enter them. (Email, November 12, 2016). Employee forwarded the two emails to his personal email account on January 4, 2017. (Email, January 4, 2017).

n) On November 12, 2016, Employee emailed OCS and cc'd the Commissioner of the DEED and his personal email account, and stated he was sending the email as a mandated reporter. He said Principal Meneguin abused a student in his Geometry class when she yelled at the student and kicked the student out of school for not doing required class work even though he had informed her that the student did not have the foundational skills to do the required work. Employee believed the student was severely emotionally disturbed with special needs and had a difficult family life and the abuse could easily cause the student to commit suicide. Ms. Heflin and Mr. Pickner did not adequately respond to his concerns about the student. (Email, November 12, 2016).

o) On November 12, 2016, Employee emailed the Commissioner of the DEED, and cc'd his personal email account, and requested a separate investigation into the questionable circumstances of the math program for seventh through twelfth grades in Wales because he believed a majority of his students cannot successfully complete the work required in the mandated math courses at the pace required based on their assessment results. He said the principal told him the students were faking so they would not have to work hard but he worked the students and knew for certain almost all of them did not have the background skills necessary to be successful using the mandated textbooks at the required pace. The math curriculum specialist and director were worse than nonresponsive. The vocational specialist told him other villages were having similar problems with the math program but were afraid to speak up and Director Pickner cautioned the vocational specialist not to speak with Employee. (Email, November 12, 2016).

p) On November 13, 2016, Employee emailed Principal Meneguin, Director Pickner, Ms. Heflin and cc'd his personal email account with a reply to the reprimand and a copy of the reprimand. (Email, November 13, 2016). He forwarded the email to his personal email account on November 15, 2016. (Email, November 15, 2016).

q) On November 14, 2016, Bruce Downes from OCS emailed Employee and cc'd Employee's personal email account and stated he would be talking with his supervisors about Employee's report of child abuse. (Email, November 14, 2016). Employee replied and cc'd his personal email account and the DEED Commissioner that he had visited the village-based counselor and she told him important information about the student, including the student's special needs and the already existing OCS case concerning the student's needs. Ms. Oxereok shared serious concerns about Principal Meneguin with him and he included her telephone number. (Email, November 14, 2016).

r) On November 19, 2016, Employee replied to Director Pickner's November 16, 2016 email using his personal email account and said he did not get the email until just now because he did not have email at his apartment. He was working on a reply to Superintendent's November 19, 2016 letter which caused his blood pressure to get bad again. Employee hoped his blood pressure stabilized soon. (Email, November 19, 2016).

s) On November 26, 2016, Employee forwarded the November 26, 2016 email from Employee to Superintendent Bolen and Director Pickner to his personal email account. (Email, November 26, 2016).

t) On November 28, 2016 Employee replied to Mr. Vink, Ms. Sleeper, Superintendent Bolen, Director Pickner, Principal Meneguin and Employee's personal email account and said that he had another appointment at the clinic tomorrow so he would request the required written statement. (Email, November 28, 2016).

u) On December 5, 2016, Employee emailed Sandra King from his personal email account, and cc'd his email account, a draft of a letter in response to Superintendent Bolen's offer. (Email, December 5, 2016). He forwarded the email to his personal email account on December 5, 2016. (Email, December 5, 2016).

v) On January 4, 2017, Employee forwarded the November 13, 2016 email from Employee to Principal Meneguin, Director Pickner and Ms. Heflin to his personal email account. (Email, January 4, 2017).

w) On January 4, 2017, Employee forwarded the November 12, 2016 email chain with Employee, Director Pickner and Ms. Heflin to his personal email account. (Email, January 4, 2017).

x) On August 12, 2019, Google at no-reply@accounts.google.com sent Employee's teacher email address an email with the subject line, "Archive of google data requested" and another email entitled "Security alert" saying a new device was signed into the teacher email account. (Emails, August 12, 2019).

y) Emails were sent from Employee's teacher account to a redacted recipient with no message on several dates from November 13 to November 28, 2016, forwarding documents including the reprimand from Principal Meneguin, Employee's "First Reply to reprimand Nov 13, 2016," draft to send to president of BSEA for advice, November 17, 2016 letter from BSSD Superintendent, final draft of letter to send to Superintendent Bolen, Recommendations to BSSD regional board, November 9 letter to Carrie about math class, three pictures, November 18, 2016 letter from Superintendent Bolen, Pdf final draft of letter to send to Superintendent Bolen, Level One Formal Grievance from [Employee], Letter of Dismissal to Imelda from Roxanne Meneguin, November 15 2016 BSSD pay stub and check for Imelda. (Emails, November 13-28, 2016).

(Letter with CD, August 26, 2019).

71) All but six of the emails provided by Employer, dated October 20, 24, November 6 and December 1, 2016, concerning the unusual or extraordinary work environment topics in the discovery order were forwarded or copied to Employee's personal email account in 2016 and 2017. (Record).

72) Employee currently uses the same personal email account he did back in 2016 and 2017. (Record).

73) On September 6, 2019, the board designee set the November 5, 2019 hearing on Employee's June 17, 2019 petition. (Prehearing Conference Summary, September 6, 2019).

74) On October 15, 2019, the parties agreed to add Employee's August 22, 2019 petition as an issue for the November 5, 2019 hearing. (Prehearing Conference Summary, October 15, 2019).

75) On October 28, 2019, Chase Ervin signed an affidavit stating he is the school district Educational Technology Facilitator. In August 2019, Superintendent Bolen asked him to download Employee's entire teacher email account on a thumb drive and send it to Attorney Eugenia Sleeper. Mr. Ervin copied Employee's entire email user account including inbox, outbox, user folders, and trash folder onto a thumb drive and sent it Ms. Sleeper. (Affidavit of Chase Ervin, October 28, 2019).

76) On October 29, 2019, Donald Austin signed a declaration stating he was admitted to practice *pro hac vice* in Alaska for the third-party civil law suit brought by students, which alleged Mr. Oxereok sexually abused them. Mr. Oxereok was arrested and convicted for those crimes and is serving time in prison. Mr. Austin was the lead attorney defending the school district during the last three and half months of discovery, in evaluating the case for settlement purposes, preparing for trial and negotiating the settlement. He has first-hand knowledge of those matters. Mr. Austin was provided information about Employee through Plaintiffs' initial disclosures. He and another attorney analyzed the information to determine if Employee was a significant factor in any way in the case. Employee was never a factor in defending the civil case. Mr. Austin stated, "His information was not relevant, was mostly hearsay, and he would have been subject to a cross-examination that would have left him discredited as an 'over-zealous, vindictive individual who makes exaggerated claims in order to support his efforts to seek revenge against BSSD for firing him and his wife.'" He constructed what would have been a witness file on Employee for the civil trial had it been created because he did not have a hard copy of such a file. Mr. Austin

suspected Employee was one of the witnesses for whom an actual hard copy had not been created because he did not have much to contribute to the case for either the plaintiff or defendant. Only two documents would have been in the file which he attached to his affidavit. The first is an October 5, 2018 case file assessing Employee's role in the civil case to determine if he was significant in the case and whether it would be necessary or prudent to depose him. The second document was the February 26, 2018 Plaintiffs' Initial Disclosures, which listed persons who may have had relevant knowledge for the civil case and did not include Employee and attached Employee's January 30, 2018 petition; Employee's January 30, 2018 commentary; Dr. DiGiulio's June 11, 2017 neuropsychological assessment; an email from Ward Walker to Employee dated December 5, 2017; and an January 23, 2018 email from Employee to Attorney Valcarce dated with an undated letter from Employee. Mr. Austin stated he can "confidently say [Employee] did not play any role in any of the District decision making" in the civil case and he viewed his role as insignificant. In September 2018, he assigned associate Jacob Blair to analyze Employee's involvement and impact on the civil case to determine if he was going to be a factor at trial which would require deposing him and Mr. Blair authored the October 5, 2018 memo which stated,

> Overview
> You have asked me to analyze the information we have on [Employee]. He is a former Wales School employee, who Plaintiffs provided information about in their initial disclosures. At this time, we believe he is nothing more than a red herring because he was not teaching, nor was he even present in Wales, during the alleged abuse period. The information we have pertaining to [Employee] paints him as an over-zealous, vindictive individual who makes exaggerated claims in order to support his efforts to seek revenge against BSSD for firing him and his wife. First, he has petitioned the Alaska Department of Labor, claiming he was "injured" while working at Wales School. Second, he has contacted Plaintiffs' counsel wanting to file a cross action lawsuit against BSSD for "inappropriate math instruction" and a personal injury lawsuit for "the terrible harm" BSSD did to him and his wife. He essentially offered to help with the Plaintiffs' lawsuit as well, indicating that Plaintiffs' counsel may be able to "use some of what [he] witnessed in Wales."
>
> Background/General Info
> Robert Woolf is a 67-year-old man who lives in Douglas, Alaska, with his wife. . . . [Employee] obtained an M.A. in Teaching from UAS in 1991, and he has worked as a teacher since 1983, including several assignments in Alaska native villages. BSSD's expert, Peggy Cowan, is familiar with [Employee], and she

> described him as a whiny, complaining individual. She also described [Employee] as having a track record of going against policies and procedures that he disagrees with. Ms. Cowan noted that [Employee] was once fired after he violated a curriculum requirement by choosing to teach evolution, which was not allowed in the particular community. She also outlined a situation where he sought retribution after Ms. Cowan would not show him favoritism and did not support him when he was teaching at Point Hope. . . .

The October 5, 2018 memo provided Mr. Austin information that Employee would not be a factor at trial and he could focus attention elsewhere in preparing for mediation and trial. He was the representative that evaluated and valued the civil case for settlement and represented the district at the December 2018 mediation and settlement discussions which resulted in settlement. As part of the settlement agreement, the district agreed to conduct training of district employees in preventing sexual abuse of students and he conducted that training on August 19, 2019 at Unalakleet. The January 23, 2018 email from Employee to Mr. Valcarce stated,

> I was briefly the math/science teacher in the Native Village of Wales in 2016 after two other teachers who held the same position, and a third teacher left the village during the first month of the 2016/2017 school year. Apparently these three teachers had bad experiences with the staff of the Bering Strait School District (BSSD), and therefore chose to leave within weeks of arriving in the village. I witnessed wrongdoing by BSSD that was very harmful to my students, which I describe in the attached letter, and I also describe wrongdoing by BSSD that was harmful to me and to my wife after I voiced concern about this wrongdoing.
>
> When I recently learned of your representing students who were sexually abused in the Wales school by a BSSD employee, I was heartened to know that some of my students will likely be getting some recognition and compensation. . . .

The undated letter by Employee to Attorney Valcarce stated,

> I would very much like you to consider helping me put together a class action lawsuit for the parents in all the BSSD villages where their kids have received inappropriate math instruction that is harmful to the well being of these children. I also hope you would also consider helping my wife and me file a personal injury lawsuit against BSSD for the terrible harm they did to both of us. . . .

As part of the settlement in the civil case, the school district agreed to conduct a training of employees in preventing sexual abuse of students and Mr. Austin conducted that training on August 16, 2019. He received permission from Attorney Valcarce to use the facts of the case in his training and recited all of the things Attorney Valcarce raised as situations where the school

district should have looked further into particular instances. None of those situations involved Employee because he was not present until after Mr. Oxereok's arrest and the harm had already been done to the children. (Declaration of Donald F. Austin, Exhibits 1 and 2, October 29, 2019).

77) On October 29, 2019, Employer filed a witness list stating Ms. Sleeper, the attorney representing Employer in Employee's termination, would testify telephonically "and/or" by affidavit to address documents in possession of the BSSD concerning Employee; Chase Ervin was expected to testify telephonically "and/or" by affidavit regarding all emails and correspondences concerning Employee; Donald Austin, the lead attorney for Employer in the third-party lawsuit, was expected to testify telephonically or by affidavit concerning what, if any, documents exist concerning Employee. (Witness List, October 29, 2019).

78) On October 29, 2019, Employee filed a hearing brief contending Employer had failed to provide ordered discovery in an attempt to obstruct his disclosure of wrongdoings committing by Employer against him and his students. He contended he received the January 3, 2017 email from EdTech, which had been emailed to Principal Meneguin, Superintendent Bolen, Director Pickner, Ms. Hendrickson and Ms. Eischeid, and provided him a temporary password to his teacher email account to allow him to access his emails for his termination proceedings. He contended sending the user name and password to other people allowed them the opportunity to tamper with his email account and delete emails. Employee contended Employer is hiding or has destroyed email messages from his teacher email account where he exposed problems with implementation of a math curriculum, the failure to identify students who required special education, and requested counseling for students and training for teachers working with children who were traumatized by the sexual abuse that had been perpetrated against students by a former school district employee. He contended he suffered a mental injury when Employer retaliated against him for being a whistleblower by wrongfully cutting off his health insurance and salary and terminating his and his wife's employment. Employee contended Employer must be ordered to provide a log providing a "chain of custody" for his teacher email account including the names of all individuals who had access to it, how long each individual had access and an explanation of how the account could have been altered. He contended Employer delayed his case by failing to provide ordered discovery. Employee contended he needs the discovery materials to provide to a psychiatrist to get the assessment he needs because the work environment he experienced

was so abnormal a competent psychiatrist would question the veracity of his description. He contended Employer provided only a few emails of the extensive communications he had regarding identification of students eligible for special education services, the math curriculum and the missing students' tests and paperwork and his attempt to get it back. He requested full access to his archived teacher email account so he can verify whether all of the emails were provided. Employee contended he remembered emails with the Math Facilitator, James Martin and emails with Principal Meneguin requesting counseling for abused children and training for teachers to better serve the traumatized students which Employer did not provide. He contended Employer failed to provide any emails he sent to Ms. Meneguin seeking special education services and one email he sent to Ms. Meneguin regarding the 88 item prerequisite skills test he gave his ninth through twelfth grade students. Employee contended an email he sent to Ms. Meneguin regarding the science curriculum guide and asking for an Earth Science textbook he was required to use but could not locate and Prinicpal Meneguin's reply she found only one or a few copies and would order more were not provided by Employer, was missing. He contended Employer failed to provide any emails between him and Principal Meneguin about the snake he kept in his science classroom. Employee contended he seems to have all or most of his emails regarding his medical treatment and high blood pressure but not the replies. Employee contended Employer provided his email to Principal Meneguin about his ninth grade math student but not the follow-up email. He contended Employer failed to provide the emails messages he sent questioning "the wisdom" of firing his wife without cause. Employee contended he needs the missing evidence to enable him to seek mental health services and to provide the plaintiff attorney in the third-party case so he could "seek more adequate reparations for [his] students." He contends there is evidence Employer altered his email account in the August 26, 2019 discovery. Employee contended Employer already altered his email account because there were emails entitled "attachment" sent by his teacher email account from November 13, 2016 through November 28, 2016, which he did not send, and the email account they were sent to was redacted. He requested James Martin's email account be searched for emails with Employee after October 29, 2016, regarding his math class. Employee contended there are files provided with the August 26, 2019 discovery materials that had nothing to do with his claim and were never in his email. He contended those files were added to make it appear the full archive of his teacher email account was provided. Employee requested access to the teacher

email archive so he can verify whether those files were even in the archive. He requested Employer be compelled to provide him records of the third-party lawsuit that referred to him, records of the context in which he was referred to in those records, records of all requests of Employer to provide counseling for students who experienced the trauma of sexual abuse by school staff, records referring to all requests for Employer to give training for teachers to better serve the needs of children traumatized by the sexual abuse of a staff member, records referring to the counseling for students and training for students or the lack thereof, and records describing the way former Principal Meneguin responded to the original sexual assault reports. Employee attached the document entitled, "Testimony submitted on January 11, 2017 to provide additions to." (Employee Hearing Brief, October 29, 2019).

79) On October 29, 2019, Ms. Sleeper signed a notarized affidavit stating she was an attorney with Jermain, Dunnagan & Owens, P.C., and general counsel for Employer. In response to further requests by Employer's attorney in July 2019, she requested the school district provide a full copy of Employee's entire teacher email account. At that time, the district office was closed and employees were away from the work site during the summer break. On August 15, 2019, Ms. Sleeper's office received a thumb driving containing Employee's entire email account by certified mail. She confirmed with the school district staff person that provided the thumb drive that it contained all information from Employee's email account including inbox, outbox, user folders and trash folder. Ms. Sleeper's office reviewed the contents of the thumb drive for confidential student information which was redacted and the entire redacted file was sent to Employer's attorney on August 22, 2019. Attached to the affidavit was the December 16, 2016 email from EdTech to Employee's personal email account and the January 3, 2016 letter from Ms. Hendrickson to Employee. (Affidavit of Eugenia Sleeper, October 29, 2019).

80) On October 29, 2019, Employer filed a hearing brief and hearing exhibits. The hearing exhibits included the following: an October 29, 2019 notarized affidavit from Ms. Sleeper with attachments; an October 28, 2019 notarized affidavit from Mr. Ervin and an October 29, 2019 declaration from Mr. Austin with attachments. (Employer hearing brief and exhibits, October 29, 2019).

81) On November 5, 2019, Employee filed a written opening statement. He contended he needs the full archive of his teacher email to take to a psychiatrist and have his injury and traumatic experience assessed and for a treatment plan to be designed and implemented so he can return to

work as a teacher. Employee contended Employer's evidence personally attacked him and it continues to attempt to discredit his professional reputation. He contended Employer used false claims about him as a means to stop him from being an effective whistleblower. Employee contended he acted as a whistleblower by exposing the serious harm Employer caused his students. He contended Employer presented false representations by Ms. Cowan in its exhibit. Employee contended he was going to testify in the third-party lawsuit against Employer regarding the mistreatment of students by Principal Meneguin but Employer's attorneys chose to settle instead, in part because they wanted to silence him because his testimony was going to be very significant. He contended Ms. Cowan likely warned Employer he would be a credible witness because they worked together professionally beginning in the early to mid-1980s. Employee contended Employer should be required to produce Ms. Cowan as a witness for this hearing because the memorandum Employer submitted contained statements attributed to Ms. Cowan, the statements were hearsay and Employer relied on the statements for their truth. He contended the statements attributed to Ms. Cowan contained false information about him because it said he was fired from a previous teaching job for violating a curriculum requirement by teaching evolution which was not true. Employee contended the way Employer depicts him is false and adds to his mental injury. He contended Employer continues to refuse to provide ordered discovery and has delayed his case so the AS 23.30.110(c) time limit could run out. (Opening statement for November 5, 2019 AWCB hearing, November 5, 2019).

82) Employee testified he remembered receiving an email from former Principal Meneguin in which she stated she said was not allowed to discuss the sexual abuse of minor students' for liability reasons after he requested counseling for students and training for teachers and sending follow up emails where he made it clear counseling for students and training for teachers was needed. Those emails are missing from the archive. He submitted a statement for the pretermination hearing contending there were missing emails. Employee has an appointment on November 20, 2019, with a psychiatrist. (Employee).

83) Employee contended he needs a six month extension of time under AS 23.30.110(c). He contended he needed four months after receiving the missing evidence to provide it to the psychiatrist for an assessment of the work injury and his need for care. Employee contended the April 22, 2019 discovery order was too broad. However, he contended Employer should be compelled to provide all records of the third-party civil lawsuit that referred to him, the context

in which he was referred to in those records, records referring to all requests for counseling for students and training for students, records of the counseling for students and training for teachers or the lack thereof, and records describing the way Principal Meneguin responded to the original sexual assault reports. (Employee hearing arguments).

84) Ms. Sleeper testified she handles employment and whistleblower lawsuits for the school district. She was not present for Employee's pretermination hearing. No one else would have had access to his teacher email account and he was provided two opportunities to access his email account to copy, print or review the emails. It was her understanding nobody accessed Employee's account but him. Ms. Sleeper verified with the school district staff that they downloaded his entire teacher email account, including the emails he sent and those he received, any emails moved to folders he set up, and anything that had been deleted but was not automatically purged by Google. The discovery material provided was reviewed and redacted for confidential student information. Employee asked for chain of custody at the pretermination hearing but did not identify any particular emails he believed were missing. (Ms. Sleeper).

85) Mr. Austin testified he has experience defending school districts when there have been allegations of sexual abuse and conducting investigations when it may have occurred. He took over the third-party civil lawsuit in August 2018, after the lead defense attorney passed away, and continued until it ended in February 2019. Mr. Austin oversaw the case and the strategy decisions as to who to depose and what investigations to undertake to defend the case. A couple of associates assisted him with the case and he conferred with them but he made decisions and made recommendations to the school district. Employer's attorney contacted him about documentation regarding Employee. Mr. Austin looked through the electronic file in the third-party civil case and was only able to find the documents he attached to his declaration regarding Employee: the memo written by an associate to explain Employee's involvement in the case to decide whether to depose him and the information provided by Attorney Valcarce in the initial disclosures. After he wrote his declaration, he went into the electronic file and looked at depositions where he thought Employee's name would have come up and he was not named in any of those transcripts, including depositions of liability experts, school district administrators and a few other people that were involved in the case. Mr. Austin provided all of the documentation he had regarding Employee with his declaration. There are boxes of documents regarding the case but the key evidence is the electronic database and the only documents he

found in the database were the documents he provided. Mr. Austin will be providing training for teachers on how to recognize possible sexual grooming. He reviewed all the records of the case and never saw any communications requesting training for teachers and counseling for students. When the case settled, Attorney Valcarce requested training at the school district, which Mr. Austin arranged and provided. The training would have happened with or without the settlement agreement because both the school district and the insurance company recognized it was needed. He did not believe requests for counseling and training after Mr. Oxereok was arrested were significant in the third-party civil lawsuit. What he thought was significant was what did people do before the minors were assaulted and what they did immediately after. He remembered that counseling was not provided to the abused minor students immediately after the arrest of Mr. Oxereok. Eventually counseling was provided to some of the minors but he did not remember any requests for counseling for students or training for teachers after Mr. Oxereok's arrest. (Mr. Austin).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
>
> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
> . . . .

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.**
> . . .
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to

> admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense.

Under AS 23.30.108(c) and 8 AAC 45.065(a)(10), discovery disputes are initially decided at the prehearing conference level by a board designee. *Yarborough v. Fairbanks Resource Agency, Inc.*, AWCB Decision No. 01-0229 (November 15, 2001). If an employee does not comply with a board designee's order regarding discovery matters, AS 23.30.108(c) and AS 23.30.135(a) grant broad, discretionary authority for the imposition of "appropriate sanctions" including and in addition to benefits forfeiture. Another lesser sanction is found in 8 AAC 45.054(d), which authorizes the exclusion at hearing of any evidence that was the subject of a discovery request a party refused to honor. *Sullivan v. Casa Valdez Restaurant*, AWCB Decision No. 98-0296 (November 30, 1998); *McCarroll v. Catholic Community Services*, AWCB Decision No. 97-0001 (January 6, 1997).

The law has long favored giving a party his "day in court," see, *e.g., Sandstrom & Sons, Inc. v. State of Alaska*, 843 P.2d 645, 647 (Alaska 1992), and unless otherwise provided for by statute, workers' compensation cases will be decided on their merits. AS 23.30.001(2). Dismissal should only be imposed in "extreme" circumstances and even then, only if a party's failure to comply with discovery has been willful and when lesser sanctions are insufficient to protect the adverse party's rights. *Sandstrom* at 647. Since a workers' compensation claim dismissal under AS 23.30.108(c) is analogous to dismissal of a civil action under Civil Rule 37(b)(3), the factors set forth in that subsection when deciding petitions to dismiss have been consulted. *Sullivan*; *McCarroll*.

"Willfulness" is defined as the "conscious intent to impede discovery, and not mere delay, inability or good faith resistance." *Hughes v. Bobich*, 875 P.2d 749; 752 (Alaska 1994). Once noncompliance has been demonstrated, the noncomplying party bears the burden of proving that the failure to comply was not willful. *Id*. at 753. Willfulness has been established when a party has been warned of the potential dismissal of his claim and has violated multiple discovery orders. *Erpelding*. It has also been established when a party had been warned of the potential

dismissal of her claim and refused to participate in proceedings and discovery multiple times. *Sullivan*. Offering unsatisfactory excuses to "substantial and continuing violations" of a discovery order demonstrates willfulness. *Hughes* at 753. Dismissal was appropriate when a party violated two orders to compel and lesser sanctions had been tried. *DeNardo v. ABC Inc. RV Motorhomes*, 51 P.3d 919, 921-22 (Alaska 2002). However, dismissal was improper when a party had not violated a prior discovery order and no previous sanctions had been imposed. *Hughes* at 754.

Dismissal has been reversed as an abuse of discretion where the board failed to consider and explain why a lesser sanction would be inadequate to protect the parties' interests. *Erpelding v. R&M Consultants, Inc.*, Case No. 3AN-05-12979 CI (Alaska Superior Ct., April 26, 2007), reversing *Erpelding v. R&M Consultants, Inc.*, AWCB Decision No. 05-0252 (October 3, 2005). "While we have recognized that the trial court need not make detailed findings or examine every alternative remedy, we have held that litigation ending sanctions will not be upheld unless 'the record clearly indicate[s] a reasonable exploration of possible and meaningful alternatives to dismissal." *Hughes v. Bobich*, 875 P.2d 749, 753 (Alaska 1994). "A conclusory rejection of all sanctions short of dismissing an action does not suffice as a reasonable exploration of meaningful alternatives." *DeNardo v. ABC Inc. RV Motorhomes*, 51 P.3d 919, 926 (Alaska 2002).

> **AS 23.30.110. Procedure on claims.**
> . . . .
>
> (c) Before a hearing is scheduled, a party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. . . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

AS 23.30.110(c) requires an employee, once a claim has been filed and controverted by the employer, to prosecute the employee's claim in a timely manner. *Jonathan v. Doyon Drilling,*

*Inc.*, 890 P.2d 1121 (Alaska 1995). Generally, failure to request a timely hearing requires a claim be dismissed. *Bailey v. Texas Instruments, Inc.*, 111 P.3d 321 (Alaska 2005).

The Alaska Supreme Court stated because AS 23.30.110(c) is a procedural statute, its application is directory rather than mandatory and substantial compliance is acceptable absent significant prejudice to the other party. *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 196 (Alaska 2008). However, substantial compliance does not mean noncompliance or late compliance. *Id*. at 198. Although substantial compliance does not require the filing of a formal affidavit, it still requires a claimant to file, within two years of a controversion, either a request for hearing, or a request for additional time to prepare for a hearing. *Id*. A request for additional time constitutes substantial compliance and tolls the time-bar until the board decides whether to give the claimant more time to pursue the claim. *Id*. If the claimant is given more time, the board must specify the amount of time granted to the claimant. *Id*. If the claimant's request for additional time is denied, the two-year time limit begins to run again, and the claimant has only the remainder of that time period to request a hearing. *Id*. The board has discretion to consider the merits of the request of additional time and any resulting prejudice to the employer. *Id*. at 199.

The board has power to excuse failure to file a timely request for hearing when the evidence supports application of a form of equitable relief, such as when the parties are participating in the SIME process. *Kim*, at 197-198; *Tonoian v. Pinkerton Sec*, AWCAC Decision No. 029 at 11 (January 30, 2007). A claimant bears the burden of establishing by substantial evidence a legal excuse from the AS 23.30.110(c) statutory deadline. *Providence Health System v. Hessel*, AWCAC Decision No. 131 at 8 (March 24, 2010).

The Alaska Supreme Court held the board owes a duty to every claimant to fully advise him of "all the real facts" that bear upon his right to compensation, and to instruct him on how to pursue that right under law. *Richard v. Fireman's Fund Insurance Co.,* 384 P.2d 445, 449 (Alaska 1963). *Bohlman v. Alaska Const. & Engineering*, 205 P.3d 316 (Alaska 2009), applying *Richard*, held the board has a duty to inform a *pro se* claimant how to preserve his claim under AS 23.30.110(c) with specificity when warranted by the facts, but did not delineate the full extent of the duty. Consequently, *Richard* is applied to excuse noncompliance with AS

23.30.110(c) when the board failed to adequately inform a *pro se* claimant of the two-year time limitation. *Dennis v. Champion Builders*, AWCB Decision No. 08-0151 (August 22, 2008).

Certain legal grounds might also excuse noncompliance with AS 23.30.110(c), such as lack of mental capacity or incompetence, and equitable estoppel against a governmental agency by a *pro se* claimant. *Tonoian*. An erroneous statement by adjudication staff as to the specific form that a request for hearing must take, or the specific day on which the two years expires, may be grounds for application of estoppel against the board. *Id*. at 7.

> **AS 23.30.115. Attendance and fees of witnesses**. (a) . . . . [T]he testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.
> . . . .
>
> **AS 23.30.122. Credibility of witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The board's credibility findings are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

The scope of evidence admissible in administrative hearings is broader than is allowed in civil courts generally, with most civil rules of procedure and evidence inapplicable. AS 23.30.135. Under these relaxed evidentiary rules, discovery should be at least as liberal as in a civil action and relevancy standards should be at least as broad. *Granus v. Fell,* AWCB Decision No. 99-0016 (January 20, 1999). The board may "receive and consider, not only hearsay testimony, but

any kind of evidence that may throw light on a claim pending before it." *Cook v. Alaska Workmen's Compensation Board*, 476 P.2d 29, 32 (Alaska 1970)(further citations omitted).

*Granus*, in addition to guidance determining admissibility, established a two-step analysis to determine whether information is properly discoverable:

> Information which would be inadmissible at trial, may nonetheless be discoverable if it is reasonably calculated to lead to admissible evidence. Under our relaxed rules of evidence, discovery should be at least as liberal as in a civil action and the relevancy standards should be at least as broad.
>
> To be admissible at hearing, evidence must be 'relevant.' However, we find a party seeking to discover information need only show the information appears reasonably calculated to lead to the discovery of evidence admissible at hearing. *Smart v. Aleutian Constructors,* AWCB Decision No. 98-0289 (November 23, 1989).
>
> The first step in determining whether information sought to be released is relevant, is to analyze what matters are "at issue" or in dispute in the case . . . In the second step we must decide whether the information sought by employer is relevant for discovery purposes, that is, whether it is reasonably "calculated" to lead to facts that will have any tendency to make a question at issue in the case more or less likely.
> . . .
>
> The proponent . . . must be able to articulate a reasonable nexus between the information sought to be released and evidence that would be relevant to a material issue in the case.
>
> To be "reasonably" calculated to lead to admissible evidence, both the scope of information within the release terms and the time periods it covers must be reasonable. The nature of employee's injury, the evidence thus far developed, and the specific disputed issues in the case determine whether the scope of information sought and the period of time covered by a release are reasonable.

*Granus* at 11-15. Information is relevant for discovery purposes if it is reasonably calculated to illuminate facts that will have a tendency to make a question at issue in the case more or less likely. *Granus.* Information that may have a "historical or causal connection to injuries" is generally discoverable. *Id.*

The Alaska Rules of Civil Procedure provide guidance in interpreting procedural statutes and regulations. *Granus*. Parties in civil actions do not have unlimited access to discovery. As noted in Alaska Civil Procedure Rule 26(b)

> The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if . . . (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues . . .

A party is not entitled to receive another individual's medical records absent a release, 45 CFR 164.508, particularly where the information was compiled in "reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding." 45 CFR 164.524(a)(ii).

> **8 AAC 45.054. Discovery.**
> (a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. In addition, the parties may agree or, upon a party's petition, the board or designee will exercise discretion and direct that the deposition testimony of a witness be taken by telephone conference call. The party seeking to introduce a witness' testimony by deposition shall pay the initial cost of the deposition.
> . . . .
>
> (d) A party who refuses to release information after having been properly served with a request for discovery may not introduce at a hearing the evidence which is the subject of the discovery request.

> **Alaska Civil Procedure Rule. 37. Failure to Make Disclosure or Cooperate in Discovery.**
> . . . .
>
> **(b) Failure to Comply with Order.**
> . . . .
>
> (3) *Standards for imposition of Sanctions*. Prior to making an order under sections (A), (B), or (C) of subparagraph (b)(2) the court shall consider

(A) the nature of the violation, including the willfulness of the conduct and the materiality of the Information that the party failed to disclose;

(B) the prejudice to the opposing party;

(C) the relationship between the information the party failed to disclose and the proposed sanction;

(D) whether a lesser sanction would adequately protect the opposing party and deter other discovery violations; and

(E) other factors deemed appropriate by the court or required by law.

The court shall not make an order that has the effect of establishing or dismissing a claim or defense or determining a central issue in the litigation unless the court finds that the party acted willfully.

(c) **Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.**

(1) A party that without substantial justification fails to disclose information required by Rules 26(a), 26(e)(1), or 26.1(b) shall not, unless such failure is harmless, be permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under sections (A), (B), and (C) of subparagraph (b)(2) of this rule and may include informing the jury of the failure to make the disclosure.

. . . .

**Alaska Evidence Rule 801. Definitions.** The following definitions apply under this article:

(a) **Statement.** A statement is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

. . . .

(c) **Hearsay.** Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

. . . .

**Alaska Evidence Rule 803. Hearsay Exceptions -- Availability of Declarant Immaterial**. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

> . . . .
>
> (6) **Business Records**. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term 'business' as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
>
> **Alaska Evidence Rule 901. Requirement of Authentication or Identification.**The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims except as provided in paragraphs (a) and (b) below:
>
> (a) Whenever the prosecution in a criminal trial offers (1) real evidence which is of such a nature as not to be readily identifiable, or as to be susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud, or (2) testimony describing real evidence of the type set forth in (1) if the information on which the description is based was acquired while the evidence was in the custody or control of the prosecution, the prosecution must first demonstrate as a matter of reasonable certainty that the evidence is at the time of trial or was at the time it was observed properly identified and free of the possible taints identified by this paragraph.
>
> (b) In any case in which real evidence of the kind described in paragraph (a) of this rule is offered, the court may require additional proof before deciding whether to admit or exclude evidence under Rule 403.

"Good faith" is defined as honesty in belief or purpose. *Black's Law Dictionary* 808 (10th ed. 2014). "Bad faith" is defined as dishonesty of purpose, belief or motive. *Black's Law Dictionary* 166 (10th ed. 2014). "Spoliation" is defined as intentional destruction, mutilation, alteration, or concealment of evidence. *Black's Law Dictionary* 1620 (10th ed. 2014). "Chain of evidence" is defined as the movement and location of real evidence, and the history or those persons who had it in their custody, from the time it is obtained to the time it is presented in court. *Black's Law Dictionary* 277-78 (10th ed. 2014). "Real evidence" is physical evidence that plays a direct part in the incident in question. *Black's Law Dictionary* 677 (10th ed. 2014).

"Documentary evidence" is evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible. *Black's Law Dictionary* 675 (10th ed. 2014).

## ANALYSIS

**1) Was the oral order overruling Employee's objection to Employer's hearing brief exhibits correct?**

Employee objected to all of Employer's hearing brief exhibits. Regulations require documentary evidence be filed not less than 20 days prior to hearing. 8 AAC 45.120(f). If documentary evidence is filed 20 days or more prior to hearing, it can be relied upon unless a written request for cross-examination of the document's author is filed and served upon all parties at least 10 days before the hearing. *Id*. The December 16, 2016 email giving Employee access to his teacher email account, the January 3, 2016 letter from Ms. Hendrickson, Employee's January 20, 2018 petition and commentary, Dr. DiGiulio's June 11, 2017 neurological assessment and December 5, 2017 email from Ward Walker were filed more than 20 days before the hearing. Employee never filed a written request for cross-examination of the documents' authors. Therefore, those documents may be relied upon to reach a decision. The oral order overruling Employee's objection to these documents was correct.

If documentary evidence is filed less than 20 days prior to hearing, those documents will only be relied upon if the parties waive their cross-examination rights or the documents are admissible under a hearsay exception set forth in the Alaska Rules of Evidence. 8 AAC 45.120(i). The Alaska Rules of Evidence define "hearsay" as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Evid. R. 801(c). Meanwhile, a statement is an oral or written assertion. Evid. R. 801(a). Ms. Sleeper's and Mr. Ervin's affidavits and Mr. Austin's declaration with attachments were not filed 20 days before the hearing. Employee did not waive his right to cross-examine the authors. Employee was provided the opportunity to cross-examine Ms. Sleeper and Mr. Austin at hearing. Employee objected to Ms. Cowan's statements in an exhibit provided by Mr. Austin. Ms. Cowan's statements were not submitted to prove their truth; they were submitted to establish the fact they were made to Mr. Austin's associate who prepared a memorandum which was relied upon by Mr. Austin, among other documents, to determine Employee was not a significant

witness in the third-party civil lawsuit. Therefore, Ms. Cowan's statements were not hearsay. The order overruling Employee's objection to Ms. Sleeper's affidavit and Mr. Austin's declaration, including the exhibits, was correct.

Employee was not provided the opportunity to cross-examine Mr. Ervin because he did not testify at hearing. Employer contends it is common practice to submit affidavits from witnesses, which is certainly true. However, the testimony of a material witness, including a party, may be taken by written or oral deposition, not by affidavit which does not provide an opportunity to cross-examine the witness. AS 23.30.115; 8 AAC 45.054(a). Employee did not waive his right to cross-examine Mr. Ervin and his affidavit was in the written record less than 20 days before the hearing. Mr. Ervin was expected to testify about all emails and correspondences concerning Employee. Unless Mr. Ervin's affidavit is not hearsay or falls under a hearsay exception, it is inadmissible. 8 AAC 45.120(h). Mr. Ervin's affidavit is hearsay because it is a written statement, other than one made by Mr. Ervin while testifying at hearing and offered to prove the truth of the matter asserted, which is that Mr. Ervin copied Employee's entire teacher email archive and sent it to Ms. Sleeper's office. Mr. Ervin's statement does not fall under the business records exception because it is not a record kept in the regular course of business and was instead prepared for litigation. Evid. R. 803(6). The oral order overruling Employee's objection to Mr. Ervin's affidavit was incorrect. It cannot be relied upon in reaching a decision. 8 AAC 45.120(f), (i).

**2) Did Employer fail to comply with discovery orders, and if so, should Employer be sanctioned for failing to comply with discovery orders?**

*a) May 17, 2018 discovery order*

Employee filed claims contending work stress, including his work environment and termination, caused him to have high blood pressure and mental stress. On January 30, 2018, he requested Employer be compelled to provide his entire teacher email archive and a "chain of evidence" for the account to gather evidence about his work environment which he contended was unusual and extraordinary. On May 17, 2018, the designee denied Employee's request for his entire teacher email account and a "chain of evidence" and ordered Employer to provide any emails it had not already provided that were received or sent by Employee about issues Employee contended

constituted an unusual and extraordinary work environment, including: the temperature in his classroom, his request for training about the former instructor charged with sexual abuse of minors, special education services for his students, the math curriculum, his students' math skills, the curriculum and textbooks for his science courses, the snake he kept in his classroom, the November 9, 2016 email to Principal Meneguin about his ninth grade math student, written lesson plans after November 10, 2016, his medical treatment and blood pressure, his missing student's tests and other paperwork and his requests to get them back, his December 3, 2016 Alaska Professional Teaching Practices Commission complaint, and the termination of his wife's employment with Employer.

Employee contends Employer failed to comply with the May 17, 2018 discovery order and requested sanctions because it took more than 17 months for Employer to send him emails from his teacher email archive and additional emails are still outstanding. He failed to specify which sanction should be imposed but instead requested Employer be compelled to provide missing emails and a "chain of evidence" for his archived email account because other people were provided his login and temporary password and to provide him access to his archived teacher email account to verify its contents. Employer contends it complied with the May 17, 2018 discovery order as it provided Employee with his entire archived teacher email. It contends no additional emails exist because it provided all of the emails from Employee's teacher account.

Employer provided 675 pages of discovery to Employee's former attorney, which Employee confirmed receiving from his former attorney on April 11, 2018. Employer filed 428 pages of discovery on May 2, 2018 with its answer to Employee' January 30, 2018 petition. Employer provided additional discovery to Employee on May 15 and 28 and June 22, 2018. Employee took a break from the case from June 22, 2018 through January 9, 2019 because the case negatively impacted his health by affecting his blood pressure and he needed to devote his time to the family move. The record contains no medical report stating his hypertension or psychological condition incapacitated him to such an extent that he was unable to participate in his case's discovery or prepare his case for hearing from June 22, 2018 through January 9, 2019. Employee first contended Employer failed to provide ordered discovery pursuant to the May 17, 2018 order at prehearing conference more than 10 months later on March 20, 2019. Employee's

10 month break from participating in the discovery process was not reasonable, quick, efficient or fair. AS 23.30.001(1). He did not diligently pursue discovery after receiving Employer's discovery materials in response to the discovery order.

When Employer withdrew its controversion of benefits based upon on the unusual and extraordinary work environment on March 20, 2019, whether the work environment was unusual and extraordinary was no longer a material issue. *Granus*. The material issue is whether the work injury is the substantial cause of Employee's disability and need for medical treatment. *Rogers & Babler*. Employee contends he needs the emails to obtain medical treatment because the school environment was so abnormal a competent psychiatrist would doubt his account. However, there is no physician opinion discounting Employee's description of the work environment or requiring evidence to substantiate his description of the work environment.

Employee asked the division for assistance because Employer failed to comply with a discovery order on June 13, 2019, and was advised on how to file a petition for noncompliance and sanctions on June 17, 2019. Employer served on Employee and filed the additional discovery on August 26, 2019, contending it provided the entire archive of Employee's teacher email account. It contends it had to wait until employees came back from summer break in August 2019 to obtain the entire archived teacher email account. It was reasonable for Employer to obtain an archive of Employee's teacher email account in August 2019 because it relied on school district staff to obtain the archive.

Employee contends Employer continues to fail to comply with the discovery orders because emails are missing. Employer contends it provided all of the emails and their attachments contained in Employee's teacher email account which was archived on Google's remote server. It contends there are no additional emails available from Employee's teacher email account.

Employee contends Employer failed to provide any emails he sent requesting special education services for his students. The record contains a November 11, 2016 email from Employee to Director Pickner and Ms. Heflin requesting an independent investigation of a student who had

special needs. It also contains emails dated October 24, November 6, 8, and 9, 2016, which discussed his high school math students and their math proficiencies.

Employee contends Employer provided some but not all of the email messages about the temperature in his classroom. The record includes six emails he sent mentioning or discussing his classroom temperature on November 4, 2016, November 6, 2016, November 12, 2016, and November 13, 2016, Principal Meneguin's response on November 6, 2016 to his November 6, 2016 email, and two emails regarding the temperature in his apartment dated November 26 and December 7, 2016.

Employee contends Employer failed to provide emails he sent to Principal Meneguin asking for training for teachers and counseling for students for the sexual abuse that took place in the school before his employment. Employer contends it provided Employee's entire teacher email archive on August 26, 2019, any such emails would have been provided if they existed and Mr. Austin's testimony demonstrates no such emails existed.

Employee contends Employer produced a small fraction of the emails he sent about the math curriculum. The record contains numerous emails dated October 24, November 6, 8, 9, 13, 29, 30, 2016, regarding the math curriculum. Employee also contends he emailed Mr. Martin about all of his math classes after October 29, 2016, and Employer failed to provide those emails. He requested Mr. Martin's email account be searched for emails with Employee. Employee's November 9, 2016, email to Ms. Heflin documented he was uncomfortable continuing to communicate with her without a written record of their conversations because Mr. Martin's communications with him were not documented in writing. His testimony he communicated by email with Mr. Martin about the math curriculum is contradicted by evidence in the record. Employee's request to search Mr. Martin's email account will be denied.

Employee contends Employer failed to provide an email with Principal Meneguin about his students' math skills due to their performance on an 88 item prerequisite skills test. There is a November 13, 2016 email from Employee to Principal Meneguin, Director Pickner and Ms. Heflin about the 88 item prerequisite test in the record.

Employee contends Employer failed to provide emails he sent to Principal Meneguin asking for a textbook for his science course and her reply. The November 13, 2016 email from Employee to Principal Meneguin, Director Pickner and Ms. Heflin discussed the missing textbook and Principal Meneguin's failure to follow up and provide additional copies. Furthermore, Employer included the emails between Employee and Ms. Beranek, including the October 31, 2016 email about the attic and the November 7, 2016 email Ms. Beranek sent with a link to the science curriculum and their following communications about the curriculum. There is no evidence in the November 13, 2016 email that any emails are missing, as it did not specify he communicated with Principal Meneguin by email, only that he told her about the missing books and she said she would find other copies.

Employee contends Employer failed to provide any emails between him and Principal Meneguin about the snake he kept in his class room. On May 8, 2018, Employee filed a document entitled, "Statements of [Employee] written on December 14, 2016 for the Level One Grievance Hearing of that same date." In that document, he discussed emails with Principal Meneguin about the snake and stated he sent the messages when he was still in Juneau, before he moved to Wales to teach. The August 26, 2019 discovery provided by Employer includes two emails on October 11, 2016, documenting his teacher email account was set up that day. Based on the evidence provided by both parties, Employee did not email Principal Meneguin about the snake from his teacher email account; rather he did so prior to his arrival to Wales from his personal email account. The emails about the snake would not be in Employee's teacher email account because Employee communicated with his personal email account. Employee still uses the same personal email account and may obtain the emails himself. Civ. Pro. R. 26(b).

Employee contends Employer failed to provide any replies to emails he sent about his high blood pressure and medical treatment. The record contains replies to Employee from Director Pickner on November 13 and 15, 2016, in response to Employee's emails about his high blood pressure.

Employee contends Employer failed to provide all of the emails about his missing paperwork and student tests. On June 18, 2019, Employee filed emails dated November 13, 2016 from

Employee to Director Pickner, Ms. Heflin and Principal Meneguin about the missing documents. On August 26, 2019, Employer provided an email from Ms. Hendrickson dated November 11, 2016, about entering test scores and Employee's response on November 12, 2012, thanking her and saying he spent 45 minutes searching for the tests to do it himself.

Employee contends he believes that he was not provided all of the emails about his December 3, 2016 formal complaint with the PTPC. On May 2, 2018, Employer provided the December 3, 2016 email Employee sent and the December 4, 2016 email from Ms. King forwarding the complaint to Superintendent Bolen and Ms. Heflin.

Employee contends Employer failed to provide all of the emails he sent to the school district central office when his wife's employment was terminated. Employer filed an email dated November 28, 2016, from Employee to Superintendent Bolen and Director Pickner, Alaska Wage and Hour, his personal email account and Ms. King where Employee inquired about his wife's firing. In conclusion, a careful review of the discovery materials show there are no missing documents or emails, emails Employee contended were missing were provided and emails he contented existed did not exist. *Roger & Babler*.

The evidence shows Employer provided discovery in good faith after the discovery order and did not violate multiple discovery orders. *Hughes*; *Erpelding*; *Black's*. It continued to provide discovery in good faith when it withdrew the controversion based on the issue of unusual and extraordinary work environment. *Id*. It also resisted providing Employee the entire archived email account in good faith because the discovery order denied his request for the entire account. *Id*. The August 12, 2019 email provided by Employer on August 26, 2019, demonstrates an archive of Employee's teacher email was requested from Google, the remote server Employer used for email services. Ms. Sleeper testified she sent a complete redacted copy of the archived teacher email account which did not include purged or permanently deleted emails. A careful inspection of the discovery materials show there are no references to any missing documents or emails in any emails produced by Employee and Employer, all but six of the emails provided by Employer concerning the unusual or extraordinary work environment topics in the discovery order were forwarded or copied to Employee's personal email account in 2016 and 2017 and

some of the emails Employee seeks were sent from his personal email account. Employee continues to use the same personal email account but did not inform Employer or the designee that made the discovery order he forwarded or copied most of the emails he sought to his personal email account when he made his discovery request. Discovery may be limited when evidence is obtainable from some other source that is more convenient, less burdensome, or less expensive. Civ. P. R. 26. Employee produced no evidence demonstrating he was unable to obtain the emails which were copied or forwarded to his personal email account, from that account. Even if Employer had willfully failed to comply with the discovery order, any prejudice to Employee would have been minimal because he still used the same email account and could take reasonable steps to obtain the material himself, like pursuing his personal email archive. Civ. P. R. 26, 37(b)(3)(B).

The sanctions provided under the Act for willfully failing to comply with a discovery order include not allowing the party that failed to release information to introduce the information at hearing or dismissing the party's defense. AS 23.30.108(c); 8 AAC 45.054(d). Dismissal should only be imposed in extreme circumstances and even then, only if (1) a party's failure to comply with discovery has been willful; and (2) lesser sanctions are insufficient to protect the rights of the adverse party. AS 23.30.108(c); *Sandstrom*; *Hughes*; *DeNardo*; *Erpelding*. Because Employee seeks to introduce the information, not allowing Employer to introduce the discovery material at hearing is not an appropriate sanction. Civ. P. R. 37(b)(3)(D). The most appropriate sanction had Employer's failure to comply been willful would be dismissal of Employer's defense that the work environment was not unusual and extraordinary. Employer's withdrawal of the defense based on the unusual and extraordinary work environment conforms to the remaining and harsher sanction of dismissing Employer's defense the work environment was not unusual or extraordinary. *Id*. Employer's withdrawal of the defense protects Employee's rights because he no longer needs to provide evidence showing his work environment was unusual or extraordinary. While he argues he needs the emails to obtain medical treatment, there is no physician opinion discounting Employee's description of the work environment or requiring evidence to substantiate his description of the work environment and Employee sought information he could obtain himself because he forwarded and copied his personal email account with most of the emails he sought.

Dismissal of Employer's remaining defense there is no medical documentation indicating work-stress was the cause of any mental injury or that Employee's high blood pressure was the result of his employment and the work stress caused only a temporary aggravation of his chronic preexisting conditions which resolved based upon Dr. Hancock's EME report will not be imposed because Employer provided discovery in good faith and there is no connection between the information Employee contends Employer failed to disclose and Employer's remaining defense. Civ. P. R. 37(b)(3)(C). Employer will not be sanctioned.

Employee requested a "chain of custody" for his teacher email account and for access to the archived email account to verify its contents. He contends his teacher email account was tampered with because Employer provided emails dated November 13 to November 28, 2016, from his teacher email account with the recipient redacted which he did not send and the archive included photos he did not remember. Employee also contends his login and password were provided to Superintendent Bolen, Director Pickner, Ms. Eischeid, Principal Meneguin and Ms. Hendrickson and they had motive to alter his teacher email account.

Spoliation is defined as intentional destruction, mutilation, alternation or concealment of evidence. *Black's*. The two emails providing Employee's login and password were sent on December 16, 2016, and January 3, 2017, after the emails Employee questioned were sent. The possibility that emails could be deleted because another person had access to the account is not evidence any emails were actually deleted. Had Employer or an agent of Employer sent emails from Employee's email account from November 13 to November 28, 2016, as Employee contends, it would not constitute spoliation because there is no evidence the emails Employee seeks to discover were destroyed, mutilated, altered or concealed simply because the questioned emails were sent. *Rogers & Babler*. The inclusion of photos Employee does not remember is not evidence of spoliation because there is no evidence the emails he seeks to discover were destroyed, mutilated, altered or concealed simply because the questioned photos were included. Furthermore, Employee has not contended the other emails Employer provided were altered or mutilated and has not questioned the authenticity of those emails. However, he contends emails

are missing so they must have been destroyed or concealed by Employer. But a careful review of the records showed no emails or documents were missing.

In a criminal case, Evidence Rule 901 requires the prosecution to demonstrate to a reasonable certainty that real evidence, at the time of the trial or at the time it was properly identified, was free of adulteration, contamination, modification, tampering or other changes. This is similar to the "chain of evidence" Employee seeks. *Black's*. Emails are electronic documentary evidence, not real evidence, and this is not a criminal case. *Black's*; Evid. R. 901. Employer was not ordered to produce Employee's entire teacher email account, only emails on specific issues which Employee contended constituted an unusual and extraordinary work environment. Emails which have been permanently deleted are not recoverable. Employer cannot be ordered to create evidence or produce something it does not have. Civ. P. R. 26. It would be overly burdensome to require Employer to provide Employee direct access to the archived teacher email account when it provided a complete copy of his archived teacher email account and there is no evidence emails were missing. Employer will not be ordered to produce a chain of custody for Employee's teacher email account and will not be ordered to provide Employee access to his archived teacher email account.

*b) April 22, 2019 discovery order*

The April 22, 2019 discovery order directed Employer to release formal discovery materials it provided in the third-party civil lawsuit, redacted to avoid disclosure of any confidential information concerning any student or assault victim and to provide a gag order should the materials be protected by one. Employer filed protective orders from the superior court handling the third-party civil lawsuit and an email from the Plaintiffs' attorney stating the entire file had confidentiality concerns and there were several court orders sealing documents. It contended the third-party discovery materials are confidential and protected by protective orders. Employer also contended the discovery materials were voluminous and it would be over burdensome to go through all of the material and provide information permitted by the protective orders. Because Employee agrees Employer should not be ordered to provide confidential material from the third-party law suit and requested the April 22, 2019 discovery order be amended, this decision will not address whether Employer failed to comply with it and Employer will not be sanctioned.

Employee amends his discovery request to contend Employer should compelled to provide all records of the third-party civil lawsuit that referred to him, the context in which he was referred to in those records, records referring to all requests for counseling for students and training for students, records of the counseling for students and training for teachers or the lack thereof, and records describing the way Principal Meneguin responded to the original sexual assault reports. The material issues in this case is whether Employee's work injury is the substantial cause of his disability and need for medical treatment. *Granus*. He contends work stress, including Principal Meneguin's refusal to provide counseling for students and training for teachers after a staff person sexually assaulted students at school, caused his disability and need for medical treatment. Employer contends there are no communications in the third-party lawsuit from any person requesting training for teachers and counseling for students. It contends it provided all documents from the third-party lawsuit concerning Employee and direct evidence regarding the training provided to staff. Employer contends the remaining information Employee seeks is confidential.

Mr. Austin credibly testified he provided all of the documentation he had regarding Employee with his declaration, no counseling for students or training for teachers was provided immediately after Mr. Oxereok's arrest, school district staff were provided training he presented in 2019 to prevent sexual abuse of students, students eventually received counseling, Employee was not mentioned in any deposition transcript and there were no communications in the third-party lawsuit records requesting training for teachers and counseling for students. AS 23.30.122; *Smith*.

Mr. Oxereok was arrested before Employee's employment with Employer; the original sexual assault reports, which lead to Mr. Oxereok's arrest, were made before Employee's employment. Therefore, Principal Meneguin's response to the original assault reports, which occurred before his employment, is not relevant to Employee's work injury. Mr. Austin provided the subject matter and the date training was provided for school district staff, confirmed Employee's allegation training was not provided while he was employed and confirmed counseling for students was not immediately provided. Employer has provided discovery material conforming

to Employee's amended request and Employee is not entitled to confidential counseling information for minor students who are not party to this case. 45 CFR 164.524(a)(ii). Employer will not be compelled to provide additional discovery concerning the third-party lawsuit.

**3) Should Employee's time to request a hearing under AS 23.30.110(c) be extended?**

Employee contends he should be granted an extension of the AS 23.30.110(c) deadline because Employer failed to provide discovery to impede his claim. Employee bears the burden of establishing by substantial evidence a legal excuse from the AS 23.30.110(c) deadline. *Hessel*. Employee contends it took more than 17 months for Employer to send him parts of his teacher email archive. The first discovery order was issued May 17, 2018. Employee took a break from the case from June 22, 2018 through January 9, 2019. The record contains no medical report stating his hypertension or psychological condition incapacitated him to such an extent that he was unable to participate in his case's discovery or prepare his case for hearing from June 22, 2018 through January 9, 2019. *Tonoian*. Employee did not contend Employer failed to provide all discovery pursuant to the May 17, 2018 order until more than 10 months later on March 20, 2019. Employee was informed of the two-year deadline before and after he took his break. *Richard*; *Bohlman*. His failure to diligently pursue discovery for more than 10 months does not constitute a legal excuse from the AS 23.30.110(c) deadline. *Hessel*; *Jonathan*; *Rogers & Babler*. Employee contends he needs the emails to obtain medical treatment because the school environment was so abnormal a competent psychiatrist would doubt his account and he requests additional time to pursue medical treatment. However, there is no physician opinion discounting Employee's description of the work environment or requiring evidence to substantiate his description of the work environment. Employee failed to provide substantial evidence excusing him from the statutory deadline. His time to request a hearing under AS 23.30.110(c) will not be extended.

On August 2, 2019, *Woolf I* determined Employee had 50 days remaining to request a hearing. Employee requested another extension of time on August 22, 2019, 20 days after August 2, 2019. A claimant's request for additional time constitutes substantial compliance with AS 23.30.110(c) and tolls the time-bar until the request is granted or denied. *Kim*. If the claimant's request for additional time is denied, the two-year time limit begins to run again, and the

claimant has only the remainder of that time period to request a hearing. *Id*. Employee has 30 days from the date this decision and order is issued and served to request a hearing (50 days – 20 days = 30 days). AS 23.30.110(c); *Kim*.

## CONCLUSIONS OF LAW

1) The oral order overruling Employee's objection to Mr. Ervin's affidavit was incorrect but the oral order overruling his objection to Employer's other hearing brief exhibits was correct.
2) Employer did not fail to comply with a discovery order and will not be sanctioned.
3) Employee's time to request a hearing under AS 23.30.110(c) should not be extended.

## ORDER

1) Employee's June 17, 2019 petition is denied.
2) Employee's August 22, 2019 petition is denied.
3) **Employee has 30 days from the date this decision and order is issued and served to request a hearing.**

Dated in Juneau, Alaska on December 24, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn M Setzer, Designated Chair

/s/
Bradley Austin, Member

## PETITION FOR REVIEW

A party may seek review of an interlocutory other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

## RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of ROBERT A. WOOLF, employee / claimant v. BERING STRAIT SCHOOL DISTRICT, employer; APEI, insurer / defendants; Case No. 201702574; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on December 24, 2019.

/s/
Dani Byers, Acting Workers' Compensation Officer II