

**BEFORE THE BOARD OF TRUSTEES OF THE
FAIRFAX SCHOOL DISTRICT**

**IN THE MATTER OF THE PUBLIC
CENSURE OF TRUSTEE PALMER
MOLAND**

**[PROPOSED]
RESOLUTION NO. 2021-08**

**A Resolution by the Governing
Board to Censure Trustee Palmer
Moland For Abusive and
Inappropriate Conduct**

The Board of Trustees (“Board”) of the Fairfax School District (“District”) hereby issues this public censure with intent of disassociating itself from and expressing disapproval of Trustee Palmer Moland’s violation of Board Policies, Administrative Regulations and Bylaws, as follows:

WHEREAS,

- A. Trustee Moland was a former classified employee of the District before his election to the Board in 2018. He was sworn in to office as a Trustee in December 2018.
- B. On August 5, 2020 and August 17, 2020, District received two complaints from a group of classified confidential employees and the President of the local chapter of the classified employees union, California School Employees Association (“CSEA”), Chapter 162, alleging inappropriate, harassing and/or abusive conduct toward them and other classified employees by Trustee Moland; and
- C. District retained an independent attorney investigator to investigate the allegations raised by the classified employees. Trustee Moland was interviewed twice during the investigation and given the opportunity to respond to the employees’ allegations. While the investigator did not find evidence that Trustee Moland treated employees wrongfully due to any protected status, such as race or age, under the Fair Employment & Housing Act (“FEHA”) (Govt. Code §12900, et seq.), the investigator did find substantial evidence that Trustee Moland engaged in abusive, or bullying, conduct toward classified employees in violation of District policy and, further, engaged in behaviors in violation of Board Bylaws. In addition, with respect to Trustee Moland’s honesty, the investigator seriously questioned Trustee Moland’s credibility, concluding, based on his interview statements and the evidence provided to the investigator, including Trustee Moland’s Facebook posts, that Trustee Moland was purposely untruthful, misleading, evasive, and duplicitous; and

- D. Government Code §12950.1(h)(2) and Administrative Regulation 4119.11/4119.21/4119.31 define abusive conduct as “conduct undertaken with malice that a reasonable person would find hostile or offensive and that is not related to an employer’s legitimate business interests (including performance standards). Examples of abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance.” Abusive conduct can negatively affect the work environment including a reduction in productivity and employee morale. Abusive conduct may also lead to employee claims of unlawful harassment and other potential unlawful employment and unfair labor practices. The Board takes very seriously any abuse of power or abusive conduct on the part of a board member toward students, employees and families of the District; and
- E. Board Bylaw 9200 provides “that the Board is the unit of authority over the district and that a Board member has no individual authority.” Further, “[u]less agreed to by the Board as a whole, individual members of the Board shall not exercise any administrative responsibility with respect to the schools or command the services of any school employee. Individual Board members shall submit requests for information to the Superintendent. Board members shall refer Board-related correspondence to the Superintendent for forwarding to the Board for placement on the Board’s agenda, as appropriate.” Individual Board members do not have authority to resolve complaints and should refer any complainant to the Superintendent or designee so that the complaint may appropriately be handled through District’s processes. Additionally, a “Board member whose child is attending a district school should be aware of his/her role as a Board member when interacting with district employees about his/her child.” The position of a Board member may unduly influence or inhibit the performance of school personnel; and
- F. Board Bylaw 9005.1 recognizes that the Board will govern in a dignified, professional, and respectful manner. Board members are to respect the distinctions between Board and staff roles and refrain from performing management functions of the Superintendent and staff. Questions and concerns raised by staff, students, parents or the community to individual Board members are to be communicated directly to the Superintendent. Board members are to work with all Board members and the Superintendent as a team devoted to students and dedicated to making all members of the team successful. Board members must adhere to a high standard of moral, ethical, and legal conduct and their behavior must serve as an example to the youth and families of the District; and
- G. The Board recognizes the rights of Board members to freely express their views and encourages open discussion of issues during Board meetings in ways that

promote the Board's ability to govern the District. Board members should recognize, however, that when speaking to the community and others, their statements may be perceived as reflecting the views and positions of the Board and District. As provided in Board Bylaw 9010, "Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board." Further, "[a]ll public statements authorized to be made on behalf of the Board shall be made by the Board President or, if appropriate, by the Superintendent or other designated representative;" and

- H. The Board is sincerely committed to positive, safe and supportive working conditions for District employees. The Board has delegated to the Superintendent the primary responsibility for overseeing the District's personnel system. It is the Superintendent or designee who assigns, supervises and evaluates the work of all employees in accordance with effective accountability systems approved by the Board. Oversight of District employees is not the role of an individual Board member; and
- I. The Board is further committed to upholding Board Policies, Administrative Regulations and Bylaws, open, honest and respectful communication and conduct, and adherence to state and federal laws governing the Board's actions and behaviors; and
- J. During the investigation of the two complaints by classified employees, Trustee Moland stated to the investigator that he received post-election training in the prevention of sexual harassment (which includes abusive conduct training) and the Brown Act. Trustee Moland also stated he completed a five-day training through the California School Boards Association ("CSBA"), known as the Masters on Governance Training, and confirmed to the investigator that CSBA is a recognized resource and authority on board policies and administrative regulations; and
- K. During the course of the investigation, the investigator interviewed multiple witnesses, including Trustee Moland on two separate occasions, and reviewed documents provided by the witnesses relevant to the investigation. The investigator sustained, or concluded that the evidence supported by a preponderance (i.e. the evidence on one side is more than the evidence on the other side), the following allegations of the complainants:
 - a. Trustee Moland engaged in abusive conduct toward classified employees in violation of District policy by:
 - i. *Approaching classified staff, particularly District Office staff, in a demanding or aggressive manner.* Witnesses gave credible accounts of numerous incidents where Trustee Moland scrutinized their work, failed to follow protocols, and created extra work in an

already busy office. Multiple employees also described their sense that Trustee Moland wanted to “catch” them in some kind of misconduct. The District Office staff descriptions of Trustee Moland included: bully, pushy, frustrating, demanding, manipulative, controlling, aggressive, hostile, disrespectful, hurtful, shaming, insistent, stressful and mentally draining. The MOT staff described Trustee Moland similarly. In comparison, witnesses described the other Board members as following District protocols, positive, and supportive. The investigation found credible evidence to support a nexus between Trustee Moland’s conduct and his animosity toward the Superintendent and the MOT Director in retaliation for discipline Trustee Moland received in 2015 as a classified employee when he “took” a District bus to transport his basketball team without District authorization. Multiple witnesses stated Trustee Moland expressed his desire to get rid of the Superintendent, MOT Director and another District employee. The investigator concluded that Trustee Moland’s constrained interpretation of the Superintendent’s responsibilities further supported this finding.

- ii. *Directly and repeatedly asking classified employees questions that Trustee Moland should be directing to the Superintendent.* The investigation found that Trustee Moland’s demanding, unprofessional, and persistent questioning and requests for information and documents, particularly from District Office staff and even after being directed to the Superintendent, was reasonably offensive and intimidating to the employees. This conduct was also disruptive of the legitimate business operations of the District. The investigator concluded that Trustee Moland’s behavior was more egregious because of its nexus with Trustee Moland’s expressed desire to remove the Superintendent from his position.
- iii. *Inappropriately criticizing the work performance of a confidential classified employee to another classified employee.* Board Policy 4319.23, Administrative Regulations 4112.6/4212.6/4312.6, and Board Bylaw 9011 recognize the confidentiality inherent in personnel information. While the investigation disclosed only one incident, the investigator concluded that Trustee’s Moland’s conduct was especially egregious because it concerned a District employee’s alleged substandard job performance, violated multiple District policies, and displayed a level of malice or animus toward the employee in an effort to deflect the other employee’s criticism of Trustee Moland. The investigation found the resulting hurt, embarrassment, and offense felt by the criticized employee was reasonable given the disparity in power and status between Trustee Moland and the employee he was gossiping about.

- iv. *Stating that classified employees in the District office failed to wear facemasks at work during public comment at a Board meeting and in social media posts.* The investigation found that Trustee Moland misconstrued prior Board action and the Superintendent's directives in the wearing of facemasks in the workplace and attempted to assume administrative authority belonging to the Superintendent. The investigation found Trustee Moland's derogatory remarks especially egregious given his lack of due diligence to gain accurate information concerning the directives given to employees about facemask wearing and the power disparity between Trustee Moland and the District Office staff. Trustee Moland failed to respect the distinction between his role as a Board member and the role of the Superintendent. The policing of employees using facemasks falls outside his role as a trustee. The employees were reasonably offended by Trustee Moland's derogatory and shaming remarks (social media posting included the statement "#Shameful") given Trustee Moland's lack of accurate information and his position as a trustee.

- v. *Reading an unsigned, undated letter addressed to "Dr. P. Moland" regarding dissatisfaction with classified employees during public comment.* The investigation found merit in the association President's concerns. Board Bylaw 9200 requires Board members to refer Board-related correspondence to the Superintendent for forwarding to the Board for placement on the Board's agenda, as appropriate. As with any other Board member, Trustee Moland has no authority to resolve complaints individually. Board Bylaw 9005.1 also requires Board members to communicate directly with the Superintendent whenever parent or community concerns or questions are raised, which the evidence showed Trustee Moland did not do. The investigator further concluded that Trustee Moland's actions were egregious, offensive, threatening and humiliating.

- vi. *Monitoring classified employees during the performance of their job duties, following school buses, videotaping or photographing classified employees at work, or reporting classified employees' alleged tardiness to supervisors.* The investigation found that Trustee Moland performed management or administrative functions as a trustee in a manner motivated by his self-interest to discredit the Superintendent and the MOT Director in violation of Board Bylaws 9200 and 9005.1. Trustee Moland's stated reasons for his conduct were found not credible as his actions were motivated by self-interest to discredit the Superintendent and MOT Director. The investigator determined that Trustee Moland's conduct was egregious. Trustee

Moland's unusual behavior upset and distracted the bus drivers and, due to his position, reasonably intimidated them. Further, the investigator noted that Trustee Moland's conduct may impair his ability to carry out his responsibilities as a board member in hearings and appeals of personnel matters. Board Bylaw 9000 presumes neutrality of the individual Board members. The investigator found it foreseeable that Trustee Moland's usurpation of the administrative function may create conflicts preventing Trustee Moland from serving in the Board's judicial (i.e. neutral decision-making) capacity; and

- L. The investigator found, on multiple occasions during his two interviews, that Trustee Moland gave inconsistent and clearly inaccurate statements despite his agreement to tell the truth. For example, when asked if Trustee Moland physically inspected the District buses, Trustee Moland told the investigator he may have inspected the buses with the MOT Director. He was unsure. Later in his interview, Trustee Moland described the District buses as unclean. This statement was inconsistent with his previous statement that he was unsure he had physically inspected the buses while at the MOT yard. Trustee Moland also represented to the investigator he had worked as a full time bus driver with the District for about one year. When he and the Superintendent later produced a chronology of Trustee Moland's employment with the District, he had only worked a total of 39.75 hours as a bus driver. The investigator concluded that Trustee Moland was purposely untruthful during his interview in an effort to support his contention that the MOT Director allowed him to use a District bus whenever he wanted and thus his previous discipline for unauthorized use of a District bus was inappropriate. The investigator concluded that Trustee Moland's interview statements, Facebook postings, and exhibits contained multiple statements that negatively affected his credibility. Some were clearly not truthful while others were evasive, duplicitous or erroneous; and
- M. In addition to the abusive conduct toward the classified employees described above, the Board heard from the KFTA Vice President at its November 12, 2020 meeting alleging similar, abusive behavior by Trustee Moland. Trustee Moland posted on social media that the KFTA Vice President, in support of two board members for re-election to the Board, engaged in illegal political activity and that "all eyes are watching." Due to his position as a trustee, this made the employee reasonably uncomfortable and feeling harassed. On investigation by the District, it was determined that Trustee Moland's factual account was inaccurate. This conduct is further evidence of persistent violation of Board bylaws, regulations and policy by Trustee Moland and his careless disregard for the truth. Such conduct must be immediately corrected; and
- N. Trustee Moland's abusive conduct toward District employees continues to fail to meet the professional standards expected of an elected official or the standards

expected of any District employee or trustee, and violated District Policies, Administrative Regulations and Board Bylaws, including, but not limited to, Administrative Regulation 4119.11/4119.21/4119.31, Board Bylaws 9000, 9005.1, 9010, and 9200, and Board Policy 4319.23. Further, Trustee Moland's furtive effort to "catch" employees or otherwise discredit or shame them to advance his own self-interests or for retaliatory or retributive purposes is egregious behavior that negatively affects staff morale and disrupts the mission of the District in providing a safe and welcoming environment for students to learn and succeed. As also provided in Board Policy 4030, the Board "is determined to provide a safe, positive environment where all district employees are assured of a full and equal employment access and opportunities, protection from harassment and intimidation, and freedom of any fear of reprisal or retribution for asserting their employment rights in accordance with law." Trustee Moland's abusive conduct interferes with the District's mission; and

- O. Censure is a collective, formal and public condemnation or denouncement of an individual member's conduct or behavior that violates laws or policies; it is a formal public act of disapproval of, as well as disassociation from, a member's unacceptable behavior.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board does hereby censure, disavow and formally express its disapproval of and disassociation from the conduct of Trustee Moland described above.
2. The Board does hereby direct Trustee Moland to review and comply with Board Policies, Regulations, and Bylaws. Trustee Moland is further directed to comply with federal and state laws, including laws that prohibit retaliation, and cease and desist from engaging in abusive conduct and disrespectful and unprofessional treatment of District employees, students, fellow Trustees and members of the public.
3. Trustee Moland is instructed to further the mission of the District in providing a safe and welcoming environment for students to learn and succeed as well as a safe and positive work environment for District employees.
4. Trustee Moland is reminded that it is not his job to direct the day to day operations of the District and he is directed not to usurp the role of the Superintendent or any other administrative or management function. Unless agreed to by Board action, Trustee Moland is directed not to exercise any administrative responsibility with respect to the schools or make demands or requests of any District employee. All reasonable requests for information shall be made to the Superintendent at reasonable times mutually agreed to with the Superintendent. Trustee Moland shall be respectful of the Superintendent's time. Any Board-related correspondence shall be referred to the Superintendent for forwarding to

the Board for placement on the agenda, as appropriate. Any complaints received shall also be referred to the Superintendent.

5. Trustee Moland is directed to follow all protocols for District school site or facility visits. Trustee Moland shall wait to enter any school site or District facility until accompanied by a site representative.
6. The Board does hereby remove Trustee Moland from any committee or leadership position on the Board until Trustee Moland successfully completes effective governance and school laws and regulations training from a District-approved program and demonstrates a commitment to abide by Board Bylaws, Regulations, Policies, laws and suspends Trustee Moland from representing the District and the Board at public functions in any official capacity, including but not limited to school ceremonies, fundraisers, conferences, student events, and community events.
7. The Board will reevaluate Trustee Moland's conduct and commitment to honest and effective governance at a public meeting following successful completion of an effective governance and school laws and regulations training program to determine whether he has appropriately complied with the direction given in this Resolution, and the Board will determine whether or not to reinstate Trustee Moland in any leadership role or committee.
8. Notwithstanding the foregoing recommendations and directives, and due to the credibility concerns raised from the investigation, the Board recommends that Trustee Moland consider resigning from the Board to allow this Board to continue its mission of creating a safe learning and work environment worthy of the District's students, families, and employees.
9. In the event that Trustee Moland chooses to remain on the board, the Board strongly recommends that Trustee Moland seek the assistance of an executive or leadership development coach. A qualified and professional executive or leadership development coach can assist Trustee Moland in reaching self-awareness, insight, understanding and alignment of behaviors consistent with Board Policies, Administrative Regulations and Bylaws, as well as the mission of the District. Due to Trustee Moland's intentional misconduct and demonstrated lack of credibility, Trustee Moland would be solely responsible for the costs and expense of an executive coach. Should Trustee Moland commit himself to the use of an experienced and qualified executive coach, and Board determines that coaching proves effective, the Board may, in its discretion, reimburse Trustee Moland for the cost of one (1) or more coaching sessions.
10. Trustee Moland is on notice that a failure to comply with Board Policies, Administrative Regulations, Bylaws, or the directives in this Resolution will result

in the Board's refusal to indemnify Trustee Moland for any claims or actions resulting from his conduct to the extent allowed by law.

PASSED AND ADOPTED by the Board of Trustees of the Fairfax School District at a regular meeting held on December 15, 2020 by the following vote or abstention of each member present:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

_____, Board President
Fairfax School District

CERTIFICATION

I, _____, Clerk to the Board of Trustees of the Fairfax School District, certify that the foregoing Resolution was regularly introduced, passed, and adopted by the Board of Trustees at its meeting held on _____.

DATED: _____

Clerk, Board of Trustees
Fairfax School District