

August 14, 2014

VIA HAND DELIVERY

Mr. Blake Thompson
Secretary of the Board
Board of Trustees for the Ohio State University
210 Bricker Hall
190 North Oval Mall
Columbus, Ohio 43210

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Columbus, Ohio 43201-2178

Dear Secretary Thompson and Mr. Culley:

Our firm represents Jonathan Waters, the former Director of the OSU Marching Band. Jonathan's employment was terminated by the University on July 24 of this year. Pursuant to §3335-1-01 of the Bylaws of the Board of Trustees, we ask that the Board take action to reinstate Jonathan to his former position with the University at its next meeting.

The university's report that precipitated Jonathan's termination is now a matter of public record. The investigators interviewed only a tiny sample of current and former band members in the course of the investigation. Several of those individuals have since come forward to state that they were misquoted in the report, and that information that they provided to the investigators that reflected positively on Jonathan was ignored. Additionally, contrary to Department of Education requirements, Jonathan was not allowed to provide his own witnesses

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in the course of the investigation, nor was he allowed to respond to the report after it was shown to him.

In fact, the report was not even shown to Jonathan until after the University demanded his resignation. His request for additional time to review and respond to the report was summarily rejected and he was ordered to resign within eight hours or face immediate termination. Only weeks before, according to documents in his personnel file, Jonathan was praised by his immediate supervisor (School of Music Director Richard Blatti) for his “courageous” initiative in taking steps to address and change certain aspects of band culture that had been in place for decades, matters that were well-known to many in the University administration but ignored up to that point. Jonathan was rated “Exceptional” – the highest possible rating – in several categories, including “Leadership” and “Change and Innovation” and his overall rating was Exceptional.

Jonathan was not given the opportunity to complete his mission to move the band’s culture in the right direction. He was not given the opportunity to respond to the inaccurate and hastily reached conclusions in the report, either during the investigation or afterward. He was not given protections required both by law and University policy in the administration’s rush to judgment after receiving a report that is now obvious was replete with both substantive and procedural error. The termination of his employment was inconsistent with University traditions of fair play and due process, and should be set aside for this reason alone.

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But there are even more important reasons for reinstating Jonathan. In the short period of time that he served as Director, he brought the Band to new heights of excellence, raised its public image to a national and international level, and significantly increased fundraising. At the same time he was recognized by his superiors for taking appropriate steps to change entrenched aspects of the Band culture that needed to be changed. His efforts in this regard have been the subject of universal praise from current Band members and from those alumni who had the privilege of serving in the Band under Jonathan's directorship. They have also expressed almost unanimous support for his reinstatement.

For all of these reasons, we request that the Board of Trustees review this matter at its meeting, and take all necessary action to reinstate Jonathan to the position that he served so capably before his unjust and unlawful termination.

Sincerely,



David F. Axelrod

DFA/kgk