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Los Angeles Superior Court

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF LOS ANGELES

18 MICHAEL CHWE,
19 Petitioner,
20 vs.
21 SANTA MONICA-MALIBU UNIFIED
22 SCHOOL DISTRICT,
23 Respondent.

Case No. BS180005

VERIFIED PETITION FOR WRIT OF
MANDATE DIRECTED TO SANTA
MONICA-MALIBU UNIFIED SCHOOL
DISTRICT ORDERING COMPLIANCE
WITH THE CALIFORNIA PUBLIC
RECORDS ACT; EXHIBITS A-H

[Gov't Code § 6250 et seq.]

1 Under Code of Civil Procedure §§ 1085 *et seq.* and the California Public Records Act,
2 Government Code §§ 6250 *et seq.*, petitioner Michael Chwe petitions this Court for a writ of
3 mandate directed to respondent Santa Monica-Malibu Unified School District (“Respondent” or
4 “SMMUSD”), commanding Respondent to promptly comply with the California Public Records
5 Act (“Public Records Act” or “CPRA”). By this verified Petition, Prof. Chwe alleges:

6 1. Petitioner, a resident of Los Angeles County and a professor of political
7 science at UCLA, is a concerned parent of two children who attend Santa Monica High School.
8 Prof. Chwe is also a citizen blogger (<http://chwe.net/safety/marken>) and has posted information
9 regarding Ari Marken, a math teacher at Santa Monica High School, whose conduct is the subject
10 of the public records at issue in this lawsuit and the related lawsuit, *Marken v. Santa Monica-*
11 *Malibu Unified School District*, Los Angeles Superior Court case number BC454656. Prof. Chwe
12 is within the class of persons beneficially interested in Respondent’s faithful performance of its
13 legal duties under the CPRA.

14 2. Respondent Santa Monica-Malibu Unified School District (“SMMUSD” or
15 “Respondent”) is a government agency duly organized and operating in Los Angeles County,
16 California. As such, Respondent is a local agency within the scope of the CPRA, and may be
17 compelled to release improperly-withheld public records. *See* Cal. Gov’t Code § 6252(a).

18 3. On December 14, 2010, Prof. Chwe made a California Public Records Act request to
19 SMMUSD. The request asked for “copies of all public records ... concerning the investigation of
20 Santa Monica High School teacher Mr. Ari Marken and the resulting decision to place him on leave
21 in December 2008 for sexually harassing a thirteen-year-old girl, in violation of SMMUSD policy
22 5145.7.” Prof. Chwe’s CPRA request attached a letter written on December 4, 2008, by Michael D.
23 Matthews, Assistant Superintendent of SMMUSD, to the parent of the 13-year-old girl in which he
24 stated that SMMUSD had found that Mr. Marken had violated SMMUSD’s sexual harassment
25 policy and that SMMUSD “has taken appropriate action” against Mr. Marken. Prof. Chwe’s CPRA
26 request also asked for “copies of all public records concerning the investigation of Mr. Marken and
27 the decision to place him on leave again in December 2009 for the entire 2009-2010 school year.”
28 Prof. Chwe also requested “all public records regarding any other substantial complaints about Mr.

1 Marken of improper behavior towards students, including the alleged sexual harassment of students
2 and inappropriate communication and fraternization, including those complaints which resulted in
3 disciplinary action and those complaints which did not, during his entire employment history in the
4 SMMUSD.” Attached as Exhibit A is a true and correct copy of Prof. Chwe’s December 14, 2010,
5 Public Records Act request, which included as an attachment the letter sent by SMMUSD on
6 December 4, 2008 to the family of the 13-year-old girl regarding Mr. Marken’s violation of the
7 sexual harassment policy.¹

8 4. Attached as Exhibit B is a true and correct copy of SMMUSD policy 5145.7, which
9 states, “Prohibited sexual harassment and misconduct includes, but is not limited to, unwelcome
10 sexual advances, unwanted requests for sexual favors or other unwanted verbal, visual or physical
11 conduct of a sexual nature made against another person of the same or opposite gender, in the
12 educational setting.” The SMMUSD sexual harassment policy also states that “[i]f an employee is
13 found to be in violation of this policy, disciplinary action shall include, at a minimum, a letter of
14 reprimand, which shall be placed in the employee’s personnel file. That letter shall not be
15 expunged under any circumstances.”

16 5. On December 20, 2010, Elizabeth Zamora-Mejia, an attorney with Atkinson,
17 Andelson, Loya, Ruud & Romo, who represents SMMUSD, replied to Prof. Chwe’s CPRA request
18 and stated that SMMUSD needed “an additional fourteen (14) days” to respond to the request. She
19 claimed that the “‘unusual circumstances’ necessitating the extension is that there is a need to
20 search for, collect and appropriately examine separate and distinct records that are demanded in a
21 single request and the need to search for and collect records from facilities separate from the office
22 processing the request.” Attached as Exhibit C is a true and correct copy of Ms. Zamora-Mejia’s
23 December 20 letter.

24 6. On January 6, 2011, Ms. Zamora-Mejia wrote that SMMUSD was granting itself a
25 one-month extension until February 7, 2011 to respond to Prof. Chwe’s CPRA request. This one-
26

27 ¹ The family of the 13-year-old girl gave Prof. Chwe permission to use the December 4,
28 2008, letter, with the name of the family redacted.

1 month extension was made not on any of the grounds specified in Government Code § 6253(c), but
2 was done so that Mr. Marken could bring a reverse-CPRA lawsuit seeking a court order preventing
3 the release of the public records requested by Prof. Chwe. Ms. Zamora-Mejia claimed that
4 nondisclosure of records was justified by *Teamsters Local 856 v. Priceless, LLC*, 5 Cal. Rptr. 3d
5 847 (2003), a case overruled by the California Supreme Court in *International Federation of*
6 *Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319, 335
7 (2007) (“Like the Court of Appeal, we find *Priceless* to be unpersuasive”). Attached as Exhibit D
8 is a true and correct copy of Ms. Zamora-Mejia’s January 6 letter.

9 7. On February 4, 2011, Prof. Chwe wrote to the SMMUSD Board of Education and
10 Superintendent Cuneo stating that the additional one-month extension that SMMUSD gave itself
11 violated Public Records Act § 6253. Attached as Exhibit E is a true and correct copy of Prof.
12 Chwe’s February 4 email.

13 8. On February 7, 2011, Prof. Chwe wrote to Ms. Zamora-Mejia, SMMUSD’s counsel,
14 stating again that the one-month extension did not comply with the Public Records Act and asking
15 SMMUSD to live up to its commitment it had made on January 6, 2011, to release the documents
16 on February 7, 2011. Attached as Exhibit F is a true and correct copy of Prof. Chwe’s February 7,
17 2011 email.

18 9. On February 7, 2011, Ms. Zamora-Mejia replied by claiming that SMMUSD’s
19 position on the one-month extension complied with the law and also stated without any explanation
20 that SMMUSD was giving Mr. Marken one additional day to bring a reverse-CPRA lawsuit.
21 Attached as Exhibit G is a true and correct copy of Ms. Zamora-Mejia’s February 7, 2011 letter.

22 10. On February 8, 2011, Mr. Marken brought an *ex parte application* seeking a
23 temporary restraining order enjoining SMMUSD from releasing the public records requested by
24 Prof. Chwe. The case is *Marken v. Santa Monica-Malibu Unified School District*, Los Angeles
25 Superior Court case number BC454656. When the case was called, Prof. Chwe, who was present
26 *in pro per*, was not afforded an opportunity to speak, and the court clerk refused to accept Prof.
27 Chwe’s written statement on the grounds that it was not on pleading paper. Ms. Zamora-Mejia and
28 Mr. Marken’s counsel went into chambers with Judge Ruth Ann Kwan in Department 72 for

1 approximately one hour. Judge Kwan then came back into the public courtroom and announced
2 that she was granting a temporary restraining order “for now,” before setting a preliminary
3 injunction hearing on March 10, 2011. Attached as Exhibit H is a true and correct copy of the
4 temporary restraining order entered by the Court in *Marken v. Santa Monica-Malibu Unified*
5 *School District*.²

6 11. The procedure followed by SMMUSD violated the Public Records Act. First,
7 Government Code § 6253(c) states, “No notice shall specify a date that would result in an extension
8 for more than 14 days.” SMMUSD unilaterally extended the time for response by 46 days.
9 SMMUSD’s stalling also breached Government Code § 6253(d), which states, “Nothing in this
10 chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of
11 public records.” SMMUSD’s conduct amounts to a constructive denial of Prof. Chwe’s CPRA
12 request for the records concerning Mr. Marken.

13 12. SMMUSD further violated the Public Records Act by impermissibly assisting the
14 filing of a reverse-CPRA lawsuit for a declaration that records are not subject to disclosure. In
15 *Filarsky v. Superior Court*, 28 Cal. 4th 419 (2002), the California Supreme Court held that a
16 government could not sue a requester to block release of records because the “exclusive procedure
17 for litigating the issue of a public agency’s obligation to disclose records” is for “a declaratory
18 relief proceeding [to be] commenced only by an individual or entity **seeking** disclosure” of those
19 records. *Id.* at 423, 426 (emphasis added). SMMUSD’s efforts to contract out a reverse-CPRA
20 lawsuit to Mr. Marken in a time frame well beyond that authorized by the Public Records Act
21 violates *Filarsky’s* prohibition on such lawsuits.

22
23
24 _____
25 ² The Court apparently has ordered SMMUSD and Marken to file their upcoming briefing
26 on a preliminary injunction under seal, even though the Rules of Court require the public filing of
27 redacted versions of the papers so that routine legal argument is not withheld from the public. See
28 Cal. R. Ct. 2.551(b)(5). *See* Ex. H (court order stating that “Plaintiff’s points and authorities are
due by 2/23/11, responses due by 3/1/11 and reply is due by 3/7/11. Counsel are ordered to file the
documents under seal, directly in Department 72.”). It does not appear that on-the-record findings
required by Rule of Court 2.550 were made before the Court ordered the parties to file under seal
briefs concerning the request for the preliminary injunction.

1 13. SMMUSD further violated the Public Records Act by refusing to release responsive
2 public records concerning Mr. Marken's misconduct in 2008, consistent with existing case law.
3 Because the explicit terms of SMMUSD policy 5145.7 require discipline to be imposed for
4 violations of the policy, SMMUSD is required to disclose the withheld disciplinary records of Mr.
5 Marken for violating this policy. *See American Federation of State, County and Municipal*
6 *Employees v. Regents of the University of California*, 80 Cal. App. 3d 913, 918 (1978); *Bakersfield*
7 *City School Dist. v. Superior Court*, 118 Cal. App. 4th 1041, 1044, 1046 (2004); *BRV, Inc. v.*
8 *Superior Court*, 143 Cal. App. 4th 742, 759 (2006).

9 14. Prof. Chwe alleges on information and belief that Respondent will continue to refuse
10 to permit members of the public, including Prof. Chwe, to inspect or obtain copies of the requested
11 public records in violation of the CPRA.

12 15. Prof. Chwe alleges on information and belief that the information it seeks from
13 Respondent is maintained in Los Angeles County.

14 16. Among other provisions of the Public Records Act, Respondent has violated
15 Government Code § 6253, which provides, in pertinent part, that “[e]xcept with respect to public
16 records exempt from disclosure by express provisions of law, each state or local agency, upon a
17 request for a copy of records that reasonably describes an identifiable record or records, shall make
18 the records promptly available to any person[.]”

19 17. Government Code §§ 6259(a) and 6259(b) authorize the Court to compel
20 Respondent to release the requested documents.

21
22 THEREFORE, Prof. Chwe respectfully requests that:

23 1. This Court enter an order declaring that the procedure followed by SMMUSD –
24 including the one-month extension done solely to seek the enjoining of the release of public records
25 – did not comply with the California Public Records Act;

26 2. The Court issue a peremptory writ of mandate, without a hearing or further notice,
27 immediately directing Respondent to disclose to Prof. Chwe the requested records or, in the
28 alternative, an order to show cause issue why these public records should not be disclosed;

1 3. The Court set "times for responsive pleadings and for hearings in these proceedings ...
2 with the object of securing a decision as to these matters at the earliest possible time," as provided
3 in Government Code § 6258.

4 4. The Court enter an order awarding Prof. Chwe his reasonable attorneys' fees and costs
5 incurred in bringing this action, as provided in Government Code § 6259; and

6 5. The Court award such further relief as is just and proper.
7

8 DATED: February 23, 2011

DAVIS WRIGHT TREMAINE LLP
THOMAS R. BURKE
ALONZO WICKERS IV
JEFF GLASSER

9
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11 By: _____
12


Jeff Glasser

13 Attorneys for Petitioner
14 MICHAEL CHWE
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VERIFICATION

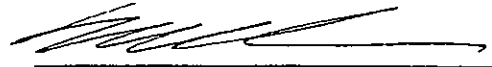
I, Michael Chwe, declare:

1. I am the petitioner in this action, and I am authorized to make this verification.

2. I have read the **VERIFIED PETITION FOR WRIT OF MANDATE DIRECTED TO SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT**. The facts stated in the Petition are either true and correct of my own personal knowledge, or I am informed and believe that such facts are true and correct, and on that basis I allege them to be true and correct.

3. In particular, I verify that I sent to the Santa-Monica-Malibu Unified School District the Public Records Act request described in the petition.

This verification was executed on February 23, 2010, in Santa Monica, California. I declare under penalty of perjury that the foregoing is true and correct.



Michael Chwe

EXHIBIT A

December 14, 2010

Board of Education
Superintendent Tim Cuneo
Santa Monica-Malibu Unified School District
1651 Sixteenth Street
Santa Monica, California 90404

Dear Members of the Board of Education and Superintendent Cuneo,

As a member of the public, I am requesting, under the California Public Records Act (Government Code sections 6250-6276.4), copies of all public records in the Santa Monica-Malibu Unified School District (SMMUSD) concerning the investigation of Santa Monica High School teacher Mr. Ari Marken and the resulting decision to place him on leave in December 2008 for sexually harassing a thirteen-year-old girl, in violation of SMMUSD policy 5145.7 (please see the enclosed letter of December 4, 2008 by Assistant Superintendent Michael D. Matthews).

I am also requesting copies of all public records concerning the investigation of Mr. Marken and the decision to place him on leave again in December 2009 for the entire 2009-2010 school year. According to the news article "District defends handling of sexual harassment case" by Nick Taborek, which appeared in the Santa Monica Daily Press on December 7, 2010, Mr. Marken was placed on leave in December 2009 "after a complaint surfaced that he had engaged in inappropriate communications with students over Facebook."

Also, I am requesting all public records relating to the drafting and adoption in February 2010 of SMMUSD policy 4119.26 on non-fraternization with students, including whether the policy's formation was related to the actions of Mr. Marken. Finally, I am requesting all public records regarding any other substantial complaints about Mr. Marken of improper behavior towards students, including sexual harassment of students and inappropriate communication and fraternization, including those complaints which resulted in disciplinary action and those complaints which did not, during his entire employment history in the SMMUSD.

The California Public Records Act (CPRA) requires that the SMMUSD must respond within ten days (section 6253(c)). For more information about the California Public Records Act, please see "Summary of the California Public Records Act 2004," prepared by the California Attorney General's Office (available at http://ag.ca.gov/publications/summary_public_records_act.pdf).

The CPRA applies to all local agencies including school districts (section 6252). The CPRA provides that personnel files can be exempt from public disclosure (section 6254(c)). However, as stated by the California Attorney General's Office in the report mentioned above, "Only where the invasion of privacy is unwarranted as compared to the public interest in the information does the exemption permit the agency to withhold the record from disclosure" (page 7). In the case of a teacher who has a history of sexually harassing a child, there is an overwhelming public interest for this information to be disclosed to parents so that they can make the best decisions to protect their children.

Also, Proposition 59, an amendment to the California State Constitution passed in 2004, further limits exemptions to public disclosure. Proposition 59 states: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's

right of access, and narrowly construed if it limits the right of access.”

Various cases establish that local agencies must disclose records concerning employees who receive either public or private reproof. In *Chronicle Publishing Company v. Superior Court* (1960), the California Supreme Court wrote: “A private reproof is an official act . . . as much as a public reproof. It means either that some charge brought against the member has been determined to be well founded, or that some conduct warranting reproof has been disclosed. . . . [J]ust as when public disciplinary action follows, their information is subject to release, so it is when private disciplinary action is taken” (the opinion is available at <http://scocal.stanford.edu/opinion/chronicle-pub-co-v-superior-court-29844>). Similarly, in *AFSCME Employees v. Regents of University of California* (1978), the California First District Court of Appeal wrote: “where the charges are found true, or discipline is imposed, the strong public policy against disclosure vanishes; this is true even where the sanction is a private reproof. In such cases a member of the public is entitled to information about the complaint, the discipline, and the ‘information upon which it was based’ ” (the opinion is available at [http://www.firstamendmentcoalition.org/handbook/cases/Employees v Regents.pdf](http://www.firstamendmentcoalition.org/handbook/cases/Employees_v_Regents.pdf)).

SMMUSD policy 5145.7 on sexual harassment states: “If an employee is found to be in violation of this policy, disciplinary action shall include, at a minimum, a letter of reprimand, which shall be placed in the employee’s personnel file.” Thus when any employee, including Mr. Marken, is found to have violated SMMUSD policy 5145.7, public records concerning the case, including for example the letter of reprimand itself, must be disclosed.

The case most closely related to my request is *Bakersfield City School District v. Superior Court* (2004), in which the newspaper *The Bakersfield Californian* sued the Bakersfield City School District for not disclosing records concerning allegations of “[s]exual type conduct, threats of violence and violence” made against Mr. Vincent Brothers, a former assistant principal in the Bakersfield City School District, about an incident that allegedly occurred on February 20, 1996. The California Fourth District Court of Appeal stated: “where complaints of a public employee’s wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well founded, public employee privacy must give way to the public’s right to know. . . . The cases do not stand for the premise that either a finding of the truth of the complaint contained in the personnel records or the imposition of employee discipline is a prerequisite to disclosure” (the opinion is available at [http://www.firstamendmentcoalition.org/handbook/cases/Bakersfield v Superior.pdf](http://www.firstamendmentcoalition.org/handbook/cases/Bakersfield_v_Superior.pdf)). In other words, if there are substantial allegations against an employee such as an assistant principal, public records concerning the allegation must be disclosed, even if the employee has not been disciplined or reprimanded and even if the allegations have not been proven true. The Court ordered the Bakersfield City School District to release all public records concerning the February 20, 1996 incident, with all names redacted except the name of Mr. Brothers.

The SMMUSD has not yet disclosed the reason why Mr. Ari Marken was placed on leave in December 2009 for over six months. If Mr. Marken was reprimanded for violating a SMMUSD policy, public records concerning his actions must be disclosed. If Mr. Marken was not reprimanded or did not violate a SMMUSD policy and was merely investigated, the long period of time for which he was placed on leave indicates that the allegations investigated must have been substantial, and therefore public records concerning his actions must be disclosed under the precedent set by *Bakersfield City School District v. Superior Court*. Similarly, all substantial allegations made about Mr. Marken involving improper behavior toward students during his entire employment in the SMMUSD must be disclosed.

Finally, CPRA section 6254.5 states that "whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions." In other words, if the SMMUSD discloses a public record to any member of the public, it cannot claim that the record is exempt from disclosure when other members of the public request it. SMMUSD policy 5145.7 on sexual harassment states that after an investigation is completed, "[t]he Assistant Superintendent of Human Resources or designee and/or independent investigator shall write a report of his/her findings, decision, and reasons for the decision and shall present this report to the student who complained and the person accused." SMMUSD policy 4119.26 on non-fraternization with students states that "[t]he district shall utilize the investigation procedures followed for complaints of sexual harassment within the district." Thus, if a SMMUSD teacher is found to have violated either policies 5145.7 or 4119.26, a report is given to the student who complained. This student is a member of the public and not an employee of the SMMUSD. Thus, under CPRA section 6254.5, this report must be disclosed to the public.

For all of these reasons, the SMMUSD is required to disclose copies of the public records I request above, with names redacted except that of Mr. Marken, as in the case of *Bakersfield City School District v. Superior Court*. I should note that the term "public records" is defined in section 6252(e) and 6252(g) of the CPRA, and "includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained" by the SMMUSD and includes "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording."

Please note that CPRA section 6253.1 requires the SMMUSD to assist the public in making a focused and effective request by identifying records and information that are responsive to the request, describing the information technology and physical location of the records, and providing suggestions for overcoming any practical basis for denying access to the records or information sought.

Should the SMMUSD deny any part of this request, the SMMUSD is required to provide a written response describing the legal basis upon which the SMMUSD relies. CPRA section 6255(a) states that the SMMUSD "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." In other words, if the SMMUSD withholds any public record, it is required to make a written justification specific to that particular record.

Please note that CPRA section 6253(c) states that the SMMUSD "shall promptly notify the person making the request of the determination and the reasons therefore." Section 6253(d) states that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial."

Pursuant to CPRA section 6255(b), please clearly state in writing: (1) if the SMMUSD is withholding any documents; (2) if the SMMUSD is redacting any documents; (3) what documents the SMMUSD is withholding and/or redacting; and (4) the alleged legal bases for withholding and/or redacting the particular documents. To the extent documents are being withheld, should those documents also contain material that is not subject to any applicable exemption to disclosure, then the disclosable portions of the documents must be segregated and produced.

If the SMMUSD determines that any requested records are subject to exemption, I request that the SMMUSD exercise its discretion to disclose some or all of the records notwithstanding the exemption and also, with respect to records containing both exempt and non-exempt content, the SMMUSD redact the exempt content and disclose the rest.

I also request that you preserve intact all documents and computer communications and attachments relating to my request, including but not limited to all emails and computer files, wherever originated, received, or copied, and including archives thereof preserved on tape, hard drive, disc, or any other archival medium, and including any printouts or other reproduction of any such computer communications.

Again, the SMMUSD is required by CPRA section 6253(c) to respond in ten days. Because I am sending you this request on December 14, 2010, please respond by December 24, 2010.

Thank you very much.

Sincerely yours,

Michael Chwe



**Santa Monica
Malibu Schools**
Extraordinary Public Education

December 4, 2008

Dear Mrs. _____

On October 20, 2008, you submitted a written complaint regarding alleged activities by an SMMUSD employee, Mr. Ari Marken, towards your daughter. Abiding by SMMUSD Board Policy 5145.7 on Sexual Harassment, the District hired an independent investigator to examine this complaint. The District found that Mr. Marken did violate Board Policy 5145.7 and has taken appropriate action.

The Santa Monica Malibu Unified School District is committed to the safety of all of our students. I thank you for bringing your complaint forward, and I expect that your daughter will not experience any future problems. If there are any such problems in the future, please do not hesitate to call Mr. Larry Boone, House Principal, Dr. Hugo Pedroza, Principal, or me.

Thank you again, and best wishes for an outstanding school year for your daughter.

Sincerely,

Michael D. Matthews, Ed.D.
Assistant Superintendent

CC: Dr. Hugo Pedroza, Principal, Santa Monica High School



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VERIFICATION

I, Michael Chwe, declare:

1. I am the petitioner in this action, and I am authorized to make this verification.

2. I have read the **VERIFIED PETITION FOR WRIT OF MANDATE DIRECTED TO SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT**. The facts stated in the Petition are either true and correct of my own personal knowledge, or I am informed and believe that such facts are true and correct, and on that basis I allege them to be true and correct.

3. In particular, I verify that I sent to the Santa-Monica-Malibu Unified School District the Public Records Act request described in the petition.

This verification was executed on February 24, 2010, in _____, California. I declare under penalty of perjury that the foregoing is true and correct.

Michael Chwe

EXHIBIT B

Sexual Harassment

Prohibited sexual harassment and misconduct includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors or other unwanted verbal, visual or physical conduct of a sexual nature made against another person of the same or opposite gender, in the educational setting. Egregious examples of sexual harassment and misconduct include: (Education Code 212.5; 5 CCR 4916)

1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's academic status or progress
2. Submission to or rejection of the conduct by a student is used as the basis for academic decisions affecting the student
3. The conduct has the purpose or effect of having a negative impact on the student's academic performance, or of creating an intimidating, hostile or offensive educational environment
4. Submission to or rejection of the conduct by the student is used as the basis for any decision affecting the student regarding benefits and services, honors, programs, or activities available at or through any district program or activity

Additionally, any consensual sexual relationship between an employee/volunteer and student, including students who have reached the age of consent, is prohibited.

Types of conduct which are prohibited in the district and which may constitute sexual harassment include, but are not limited to:

1. Unwelcome leering, sexual flirtations or propositions
2. Sexual slurs, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions
3. Graphic comments about an individual's body, or overly personal conversation
4. Sexual jokes, notes, stories, drawings, pictures, electronic communication, or gestures
5. Spreading sexual rumors, including those spread via electronic communication
6. Teasing or sexual remarks about students enrolled in a predominantly single-gender class
7. Massaging, grabbing, fondling, stroking or brushing the body
8. Touching an individual's body or clothes in a sexual way
9. Purposefully cornering or blocking normal movements with sexual intent
10. Displaying sexually suggestive objects
11. Homophobic taunts or other slurs related to sexual orientation
12. The conduct includes excessive or repeated touching of a student that is without a clear educational purpose.

Preventing Sexual Harassment and Misconduct

In an effort to prevent the occurrence or perception of sexual misconduct, the following precautions shall be taken by all employees:

1. Employees shall, whenever possible, avoid closed door meetings and before/during/after school hours activities with only one student.
2. On any student trip away from school, there shall be a minimum of two chaperones, preferably a man and a woman.

Notifications

A copy of the district's sexual harassment policy shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)
2. Be displayed in a prominent location in the main administrative building or other area where notices of district rules, regulations, procedures and standards of conduct are posted (Education Code 231.5)
3. Be provided as part of any orientation program conducted for new students at the beginning of each quarter, semester or summer session (Education Code 231.5)
4. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures and standards of conduct (Education Code 231.5)
5. Be provided to employees and employee organizations

Investigation of Complaints at School (Site-Level Grievance Procedure)

1. Notice and Receipt of Complaint: Any student who believes he/she has been subjected to sexual harassment or who has witnessed sexual harassment may file a complaint with any school employee. Within 24 hours of receiving a complaint, the school employee shall report it to the Coordinator/Principal. In addition, any school employee who observes any incident of sexual harassment involving a student shall, within 24 hours, report this observation to the Coordinator/Principal, whether or not the victim files a complaint.

In any case of sexual harassment involving the Coordinator/Principal to whom the complaint would ordinarily be made, the employee who receives the student's report or who observes the incident shall instead report to the Superintendent or designee.

2. The Coordinator/Principal shall report a complaint to the Superintendent using the Confidential Incident Report form. Even if no complaint is filed, the Coordinator/Principal has a duty to investigate suspected sexual harassment or misconduct.

3. Initiation of Investigation: The Coordinator/Principal shall initiate an impartial investigation of an allegation of sexual harassment within five school days of receiving notice of the harassing behavior, regardless of whether a formal complaint has been filed. The district shall be considered to have "notice" of the need for an investigation upon receipt of information from a student who believes he/she has been subjected to harassment, the student's parent/guardian, an employee who received a complaint from a student, or any employee or student who witnessed the behavior.

4. The Coordinator/Principal and Superintendent shall determine whether the Coordinator/Principal, a designee, or an independent investigator will investigate the complaint. In cases of complaints filed against an employee, an independent investigator shall investigate the complaint. That person shall promptly investigate all complaints of sexual harassment. In so doing, he/she shall talk individually with:

- a. The student who is complaining
- b. The person accused of harassment
- c. Anyone who witnessed the conduct complained of
- d. Anyone mentioned as having related information

5. The student who is complaining shall have an opportunity to describe the incident, present witnesses and other evidence of the harassment, and put his/her complaint in writing.

6. The Coordinator/Principal or designee shall discuss the complaint only with the people described above. If the complaint regards occurrences for which the Coordinator/Principal or designee has a reasonable suspicion of child abuse, the Coordinator/Principal or designee is mandated to report to law enforcement and/or child protective agencies as per Board Policy and Administrative Regulation 5141.4. When necessary to carry out his/her investigation or for other good reasons that apply to the particular situation, the Coordinator/Principal or designee also may discuss the complaint with the following persons:

- a. The Superintendent or designee
- b. The parent/guardian of the student who complained
- c. If the alleged harasser is a student, his/her parent/guardian
- d. A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth
- e. Child protective agencies responsible for investigating child abuse reports
- f. Legal counsel for the district

7. The complainant shall not be required or asked to meet with the alleged harasser or person suspected of sexual misconduct. If the alleged harasser or person suspected of sexual misconduct is a district employee or volunteer, then during the course of the investigation, he/she shall discontinue contact with students.

8. In reaching a decision about the complaint, the Assistant Superintendent of Human Resources or designee and/or independent investigator may take into account:

- a. Statements made by the persons identified above
- b. The details and consistency of each person's account
- c. Evidence of how the complaining student reacted to the incident
- d. Evidence of any past instances of harassment by the alleged harasser

e. Evidence of any past harassment complaints that were found to be untrue

9. To judge the severity of the harassment, the Assistant Superintendent of Human Resources or designee and/or independent investigator may take into consideration:

a. How the misconduct affected one or more students' education

b. The type, frequency, and duration of the misconduct

c. The number of persons involved

d. The age and gender of the person accused of harassment

e. The subject(s) of harassment

f. The place and situation where the incident occurred

g. Other incidents at the school, including incidents of harassment that were not related to gender

10. The Assistant Superintendent of Human Resources or designee and/or independent investigator shall write a report of his/her findings, decision, and reasons for the decision and shall present this report to the student who complained and the person accused.

11. The Assistant Superintendent of Human Resources or designee and/or independent investigator shall give the Superintendent or designee a written report of the complaint and investigation. If the principal or designee verifies that sexual harassment occurred, this report shall describe the actions taken to end the harassment, address the effects of the harassment on the student harassed, and prevent retaliation or further harassment.

12. Within two weeks after receiving the complaint, the Coordinator/Principal or designee shall determine whether or not the student who complained has been further harassed. The Coordinator/Principal or designee shall keep a record of this information and shall continue this follow-up.

Enforcement

The Superintendent or designee shall take appropriate actions to reinforce the district's sexual harassment policy. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti.

2. Providing training to students, staff, and parents/guardians about how to recognize harassment and how to respond

3. Notifying parents/guardians of the actions taken.

4. Notifying child protective services.

5. Taking appropriate disciplinary action. In addition, the Coordinator/Principal or designee may take disciplinary measures against any person who is found to have made a complaint of sexual harassment which he/she knew was not true.

6. If an employee is found to be in violation of this policy, disciplinary action shall include, at a

minimum, a letter of reprimand, which shall be placed in the employee's personnel file. That letter shall not be expunged under any circumstances.

Support for Students

The Superintendent or designee shall take appropriate actions to provide support for students who have been subjected to sexual harassment and/or misconduct by a district employee or volunteer.

1. The Principal or designee will make it clear to the affected student(s) and the parents/guardians that any form of retaliation or mistreatment of a student who complained will not be tolerated.
2. In instances where there were substantiated findings that a student was subjected to sexual harassment/misconduct by a district employee or volunteer, the district will offer, and upon the request of the parent/guardian, will assist the student in receiving therapeutic intervention.

Notifications

A copy of the district's sexual harassment policy and regulation shall:

1. Be included in the notifications that are sent to parents/guardians at the beginning of each school year (Education Code 48980; 5 CCR 4917)
2. Appear in any school or district publication that sets forth the school's or district's comprehensive rules, regulations, procedures, and standards of conduct (Education Code 231.5)
3. Be included in the student handbook
4. Be provided to employees and employee organizations

Regulation SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

approved: August 19, 2009 Santa Monica, California

EXHIBIT C

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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SACRAMENTO
(916) 923-1200
FAX (916) 923-1222

SAN DIEGO
(619) 485-9526
FAX (619) 485-9412

OUR FILE NUMBER:

005332.00168
1700703v1

December 20, 2010

Mr. Michael Chwe
422 26th Street
Santa Monica, CA 90402

Re: Public Records Requested dated December 14, 2010

Dear Mr. Chwe:

This law firm represents the Santa Monica-Malibu Unified School District ("SMMUSD"), and we have been requested to respond to your Public Records Act received by the District on December 14, 2010.

Your request seeks "copies of all public records" concerning the following:

- "the investigation of Santa Monica High School teacher Mr. Ari Marken and the resulting decision to place him on leave in December 2008" for violation of SMMUSD policy 5145.7;
- "the investigation of Mr. Marken and the decision to place him on leave again in December 2009" regarding Facebook communications;
- "all public records relating to the drafting and adoption of SMMUSD policy 4119.26; and
- "all public records regarding any other substantial complaints about Mr. Marken of improper behavior to students...including those complaints which resulted in disciplinary action and those complaints which did not, during his entire employment history with the SMMUSD."

To the extent that the requested records exist, and are in the possession of the District, and not exempt from disclosure pursuant to the Public Records Act, more specifically, including but not limited to, Government Code section 6254(b), (c), (f), (k) and (p) and Section 6255, copies will be produced and you will be informed of the cost.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

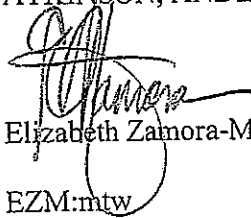
Michael Chwe
December 20, 2010
Page 2

Since your request seeks documents which may contain confidential personnel information, it is necessary for the District to extend the time for response pursuant to Government Code section 6253(c) by an additional fourteen (14) days. The "unusual circumstances" necessitating the extension is that there is a need to search for, collect and appropriately examine separate and distinct records that are demanded in a single request and the need to search for and collect records from facilities separate from the office processing the request. Moreover, given that your request seeks personnel information, additional time to examine and redact these documents is required. (Gov. Code sections 6253(a) and (c)(2), and Section 6255.) As authorized by law, you will therefore be provided with a response by January 7, 2010.

Should you have any further questions regarding this matter, please contact the undersigned.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Elizabeth Zamora-Mejia

EZM:mtw

cc: Tim Cuneo, Superintendent

EXHIBIT D

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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(559) 225-8700
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FAX (916) 923-1222

SAN DIEGO
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FAX (619) 485-9412

COUR FILE NUMBER:

005332.00168
1714251v1

January 6, 2011

VIA OVERNITE EXPRESS

Mr. Michael Chwe
422 26th Street
Santa Monica, CA 90402

Re: Public Records Act Request Dated December 14, 2010

Dear Mr. Chwe:

In correspondence dated December 20, 2010, we informed you that the Santa Monica-Malibu Unified School District ("District") was reviewing your December 14, 2010, Public Records Act request, and that to the extent the requested records exist and are not exempt from disclosure, copies would be produced. You were further informed that the District would provide you with a written response to your request by January 7, 2011.

Your request seeks "copies of all public records" concerning the following:

1. "the investigation of Santa Monica High School teacher Mr. Ari Marken and the resulting decision to place him on leave in December 2008" for violation of SMMUSD policy 5145.7;
2. "all public records regarding any other substantial complaints about Mr. Marken of improper behavior to students...including those complaints which resulted in disciplinary action and those complaints which did not, during his entire employment history with the SMMUSD";
3. "the investigation of Mr. Marken and the decision to place him on leave again in December 2009" regarding Facebook communications; and
4. "all public records relating to the drafting and adoption of SMMUSD policy 4119.26."

Since your request seeks disclosure of personnel documents, some of which may be confidential and subject to constitutional protections, the District notified Mr. Marken of its receipt of your Public Records Act request and its intent to fully comply with the request by January 7. On December 27, 2010, the District's legal counsel received a letter from Mr. Marken's attorney taking the position that the requested personnel documents involve legally-protected privacy interests and are therefore not disclosable. Additionally, Mr. Marken's attorney requested that the District either refuse to disclose the documents from Mr. Marken's personnel file or provide him with a one-month period prior to the document production in order to allow him an opportunity to seek court adjudication of whether or not the documents the District intends to release are disclosable.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Michael Chwe
January 6, 2011
Page 2

The District believes that the one-month period requested by Mr. Marken's attorney is reasonable and appropriate, given the complex state and federal constitutional privacy rights involved in this matter. The District's decision to provide the requested time should not, however, be construed as a refusal to produce the requested documents. This decision is merely intended to permit the employee whose records will be disclosed to seek court consideration of the legal arguments against disclosure in an expeditious manner. Accordingly, unless a court orders otherwise, by February 7, 2011, the District will produce all records responsive to Requests # 1 and #2 referenced above.

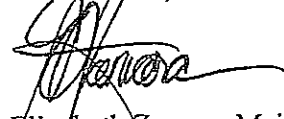
Request #3 seeks information concerning a personnel investigation involving Mr. Marken that was determined to be without merit. Court decisions have clearly established that public employees have a legally protected right to the privacy of their personnel files. *Teamsters Local 856 v. Priceless, LLC* (2003) 5 Cal Rptr 3d 847. Moreover, Government Code section 6254(c) exempts from disclosure personnel files that, if released, would constitute an unwarranted invasion of personal privacy. Complaints against employees may be disclosable if the complaint reveals "allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well-founded." *Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041, 1046. However, since your request seeks information about an allegation against Mr. Marken that was without merit and therefore, by definition, not well-founded, the need to protect Mr. Marken's privacy in his personnel records outweighs the public's interest in disclosure. For all these reasons, Superintendent Tim Cuneo has determined that the documents sought in Request #3, as referenced above, will not be disclosed by the District.

With respect to Request #4, regarding the drafting and adoption of SMMUSD policy 4119.26, responsive documents are enclosed with this letter.

Should you have any further questions regarding this matter, please contact the undersigned.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Elizabeth Zamora-Mejia

EZM:mtw
Enclosure

cc: Tim Cuneo, Superintendent

**Santa Monica-Malibu Unified School District
Board of Education Meeting
SPECIAL MEETING**

May 14, 2009

A special meeting of the Santa Monica-Malibu Unified School District Board of Education was held on Thursday, May 14, 2009, in the Board Room of the District Offices: 1651 16th Street, Santa Monica, CA. The Board of Education called the meeting to order at 5:10 p.m. in the Board Conference Room at the District Offices: 1651 16th Street, Santa Monica, CA. At 5:11 p.m., the Board of Education moved to Closed Session regarding the items listed below. The public meeting reconvened at 6:12 p.m. in the Board Room.

I CALL TO ORDER

A. Roll Call – Board of Education

Ralph Mechur	Jose Escarce
Barry Snell	Maria Leon-Vazquez – <i>excused</i>
Ben Allen	Kelly Pye
Oscar de la Torre	

II CLOSED SESSION

- Conference with Superintendent regarding 2008-2009 Strategies for Negotiations with S.E.I.U. pursuant to GC §54957.6 as cited in the Brown Act.
- Conference with Superintendent regarding 2008-2009 Strategies for Negotiations with S.M.M.C.T.A. pursuant to GC §54957.6 as cited in the Brown Act.
No action was taken in closed session.

III PUBLIC COMMENTS

Public Comments is the time when members of the audience may address the Board of Education on items not scheduled on the meeting's agenda. All speakers are limited to three (3) minutes. When there is a large number of speakers, the Board may reduce the allotted time to two (2) minutes per speaker. The Brown Act (Government Code) states that Board members may not engage in discussion of issues raised during "III. Public Comments," except to ask clarifying questions, make a brief announcement, make a brief report on his or her own activities, or to refer the matter to staff. This Public Comment section is limited to twenty (20) minutes.

- *Harry Keiley and Vincent Bernote, members of the district, addressed the board regarding employee benefits.*
- *Richard McKinnon, a member of the community, addressed the board regarding the redevelopment plan at Santa Monica High School.*

IV DISCUSSION ITEMS

These items are submitted for information (FIRST READING) and discussion. Action will generally be considered at the next regularly scheduled meeting of the Board.

- D.01 Review Board Policy Series 2000, 4000, and 90001-4
- 2000 Series (Administration)
 - 4000 Series (Personnel)
 - 9000 Series (By-Laws of the Board)

V ADJOURNMENT

It was moved by Mr. Snell, seconded by Dr. Escarce, and voted 6/0 (Ms. Leon-Vazquez was absent) to adjourn the meeting at 9:12 p.m. The next regular meeting will be held on **Thursday, May 21, 2009, at 5:30 p.m.** at the Santa Monica City Council Chambers, 1685 Main Street, Santa Monica, CA.

Approved: _____

President

Superintendent

DISCUSSION ITEMS

TO: BOARD OF EDUCATION

DISCUSSION

05/14/09

FROM: TIM CUNEO

RE: REVIEW BOARD POLICY SERIES 2000, 4000, AND 9000

DISCUSSION ITEM NO. D.01

It is recommend that the Board of Education review Board Policy Articles 2000 (Administration), 4000 (Personnel), and 9000 (By-laws of the Board) for adoption at a subsequent Board of Education meeting.

At that subsequent meeting, staff will recommended that the Board delete all current policies, administrative regulations in these articles and adopt those reviewed and recommended for Board adoption today and that these actions will be effective August 1, 2009.

COMMENT: The District embarked on a process of reviewing and updating all its policies, administrative regulations and related exhibits. It was agreed that California School Boards Association Board policies would serve as an example for that comparative review and in November a series of workshops were conducted with appropriate staff and a consultant from CSBA to review each District Policy, administrative regulation and exhibit along side those of CSBA and make recommended changes to the Board. Previous revisions made to policies that reflect the specific interests of SMMUSD have not been altered (as long as those revisions are compliant with state and federal law). Attached is a matrix of staff recommendations for deletion and adoption of policies and administrative regulations for these articles that was sent to CSBA and produced the policies and administrative regulations before you today.

A second Board of Education meeting is scheduled for May 28, 2009, to continue this process with Articles 3000 (Business and Non-Instructional Operations), 6000 (Students), and 7000 (Facilities).

Additionally, staff recommended and the Board approved after the new policies are adopted they would be returned to CSBA for uploading to their computers and be linked to our web site for public and staff access and printing.

CSBA issues updates in March, July, and November of each year that reflect recent changes in Federal and

state statute, law, Education Code and case law. When received these changes will be reviewed and appropriate recommendations made to the board.

In this manner, the District can maintain its policies and administrative regulations that will keep the District in full compliance.

Attachments:

Article 2000 - Administration
Article 4000 - Personnel
Article 9000 - By-laws of Board

***** ***** ***** ***** ***** *****

Mr. Cuneo suggested posting the discussed policies online for thirty days before they come back for action. Once policies have been discussed, they will be approved at a future meeting on the Consent Calendar.

Ms. Pye asked about developing a schedule to make sure policies remain updated. Mr. Hill explained that CSBA regularly notifies districts of updates, changes to law and ed code. Mr. Cuneo replied that the district could take a block of policies and review them every five years or so. He added that a link to the CSBA site would be established on the SMMUSD website, allowing online access to the district's new policies with minimal maintenance effort.

4000 SERIES

Ms. Pye inquired about a civility policy, which had been discussed in the past. Dr. Matthews replied that the district was looking into it. She also emphasized the immediate need for a policy requiring all personnel to hired solely through the district, even hourly employees. Ms. Pye cited health and safety concerns and critical legal and liability issues that dictate the immediate need for such a policy. The board agreed with this request. Dr. Matthews replied this would be considered a top priority.

Mr. de la Torre requested that an orientation be given to Student Board Members every fall.

Board Policy 4115

Ms. Pye asked if proposed changes to this policy would be discussed with SMMCTA. Dr. Matthews said he believed the contract with the union went above and beyond this policy, but that he would discuss any proposed changes to this policy with the union prior to bringing it back for board approval.

Board Policies 4119.21, 4219.21, and 4319.21

Dr. Matthews suggested that this policy come back for a second reading prior to board approval. Ms. Pye suggested that when

staff brings back a list of all policies to be discussed separately during the next school year, the board will prioritize the order in which each policy will come back for a second reading.

Board Policy 4119.26

Dr. Matthews suggested that this policy come back for a second reading prior to board approval. Dr. Escarce asked staff to examine language consistency in this policy, compared to 4119.11 and 5145.7. Ms. Pye requested that the ad hoc policy committee look into Dr. Escarce's suggestion. Mr. Allen suggested the following change to the 3rd paragraph, 2nd sentence: "This includes communication through..." Ms. Pye suggested adding language specifying that this policy applies to students who are also age 18 and older. Dr. Matthews said language could be included listing activities between employees and students that would be appropriate in order to provide specific guidance for staff. The board requested copies of policies 4119.11 and 5145.7 in the Friday Packet.

4158

Dr. Matthews suggested that this policy come back for a second reading prior to board approval.

New Policies: 4000, 4100, 4111.2, 4112, 4112.22, 4112.24, 4112.5, 4112.62, 4112.8, 4112.9, 4117.2, 4117.5, 4119.1, 4119.23, 4131.1, 4132, 4154, 4161.11, 4161.2, 4161.9, 4212, 4215, 4231, 4261.11, 4300, 4301, 4313.2, 4314, 4315, 4315.1, 4331

Dr. Matthews explained that these are new policies and will come back for approval on the consent agenda.

4112.22(a)

Mr. de la Torre suggested that the district clarify in the policy the actual time limit for teachers to earn CLAD certification.

4112.5

Ms. Pye requested that the ad hoc policy committee review this policy before it returns for board approval.

4112.62

Dr. Matthews said that he would discuss any proposed changes to this policy with both unions prior to bringing it back for board approval.

4119.25

Dr. Escarce requested language addressing the motivation behind this policy be included in the opening paragraph. Dr. Matthews suggested that this policy come back for a second reading prior to board approval.

4136

The board requested that this policy be included in the annual employee notification policy (4112.9), especially the part concerning tutoring students.

Policies with Updates (little or no changes): 4020, 4030, 4031, 4032, 4040, 4111, 4112.2, 4112.23, 4112.4, 4112.42, 4113, 4115, 4116, 4119.11, 4119.41, 4119.42, 4119.43, 4131, 4135, 4139, 4143.1, 4144, 4151, 4156.3, 4157, 4157.1, 4157.3, 4161.8

4030

The board requested that this policy also be included in the annual employee notification policy (4112.9).

4131

Mr. de la Torre inquired about adding language that may allow for a reward to employees who participate in professional development activities that address issues of equity and closing the achievement gap. Dr. Matthews replied that this could be discussed during negotiations with the unions.

Delete Policies: 4033, 4137, 4213.5

Dr. Matthews explained that these policies will be deleted at a future board meeting.

2000 SERIES

2000, 2110, 2111, 2120, 2121, 2140, 2220.1, 2220.2, 2230

Mr. Cuneo explained that changes to these policies would come back for board approval on the consent agenda.

9000 SERIES

9000, 9005, 9010, 9011, 9012, 9100, 9120, 9121, 9122, 9123, 9124, 9124.1, 9124.2, 9125, 9130, 9131, 9131, 9131.1, 9132, 9140, 9150, 9210, 9212, 9213, 9220, 9222, 9223, 9224, 9230, 9240, 9250, 9260, 9270, 9310, 9320, 9321, 9321.1, 9322, 9323, 9323.2, 9324, 9400

Mr. Cuneo explained that changes to these policies would come back for board approval on the consent agenda.

TO: BOARD OF EDUCATION

DISCUSSION
10/01/09

FROM: TIM CUNEO / MICHAEL D. MATTHEWS

RE: CONSIDER ADOPTING POLICY 4119.26 – NON-FRATERNIZATION WITH STUDENTS

DISCUSSION ITEM NO. D.06

During the Board of Education's review of all district policies and administrative regulations this past spring and summer, staff recommended and board members requested that specific policies return for a second reading. The attached board policy was included in this list.

This policy will return for board approval at the next board meeting.

Attachments:

- BP 4119.26 – Non-Fraternization with Students

***** ***** ***** ***** ***** *****

Staff requested to postpone this item until after union leadership had met with staff.

NON-FRATERNIZATION WITH STUDENTS

The relationship between the school employee and the student should be one of professional cooperation and respect. All employees, whether certificated or classified, have a responsibility to conduct themselves in a manner that will maintain an atmosphere that is conducive to learning.

It is the policy of the Board of Education to prohibit any type of close personal relationship between a school employee and a student that may reasonably be perceived as unprofessional, including, but not limited to the perception of a dating relationship. School employees shall not entertain students, socialize with students, or spend an excess amount of time with students in such a manner as to reasonably create the impression to district staff, other students, their parents/guardians, or the public that an unprofessional relationship exists.

It is also the policy of the Board to prohibit any type of sexual relationship, sexual contact, or sexually-nuanced behavior between a school employee and an enrolled student without regard to the student's age. This includes internet chat rooms, "MySpace" or similar web sites, cell phones, and all other forms of electronic or other types of communication. This prohibition applies to students of the same or opposite sex of the school employee. It also applies regardless of whether the student or the school employee initiated the sexual behavior, and whether or not the student welcomes the sexual behavior and/or reciprocates the attention.

The district shall promptly investigate all reasonable allegations of prohibited staff/student relationships. The district shall utilize the investigation procedures followed for complaints of sexual harassment within the district, as referenced below.

(cf. 4119.11 - Sexual Harassment/Personnel)
(cf. 5145.7 - Sexual Harassment/Students)

Legal Reference:

1681 - Title XI the Education Amendments of 1972; 20 U.S.C.

TO: BOARD OF EDUCATION DISCUSSION
10/15/09
FROM: TIM CUNEO / MICHAEL D. MATTHEWS Postponed from
10/01/09
RE: CONSIDER ADOPTING POLICY 4119.21 – PROFESSIONAL STANDARDS

DISCUSSION ITEM NO. D.06

During the Board of Education's review of all district policies and administrative regulations this past spring and summer, staff recommended and board members requested that specific policies return for a second reading. The attached board policy was included in this list.

This policy will return for board approval at the next board meeting.

Attachments:

- BP 4119.21 – Professional Standards
- Exhibit 4116.21 – Code of Ethics of the Education Profession
- Exhibit 4216.21 – Code of Ethics: Classified Employees
- Exhibit 4316.21 – California Professional Standards for Educational Leaders

***** ***** ***** ***** ***** *****

This item was postponed to a future meeting.

All Personnel

BP 4119.21

4219.21

PROFESSIONAL STANDARDS

4319.21

The Board of Education expects district employees to maintain the highest ethical standards, follow district policies and regulations, and abide by state and federal laws. Employee conduct should enhance the integrity of the district and advance the goals of the educational programs. Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her responsibilities and should focus on his/her contribution to the learning and achievement of district students.

(cf. 0000 - Vision)

(cf. 4112.2 - Certification)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

The Board encourages district employees to accept as guiding principles the professional standards and codes of ethics adopted by professional associations to which they may belong.

(cf. 2111 - Superintendent Governance Standards)

(cf. 9005 - Governance Standards)

Legal Reference:

CODE OF REGULATIONS, TITLE 5

80331-80338 Rules of conduct for professional educators

Management Resources:

CDE PUBLICATIONS

California Professional Standards for Educational Leaders, 2001

COUNCIL OF CHIEF STATE SCHOOL OFFICERS PUBLICATIONS

Standards for School Leaders, 1996

NATIONAL EDUCATION ASSOCIATION PUBLICATIONS

Code of Ethics of the Education Profession, 1975

WEB SITES

CDE: <http://www.cde.ca.gov>

Commission on Teacher Credentialing: <http://www.ctc.ca.gov>

Association of California School Administrators: <http://www.acsa.org>

California School Leadership Academy: <http://www.csla.org>

Council of Chief State School Officers: <http://www.ccsso.org>

California Teachers Association: <http://www.cta.org>

California Federation of Teachers: <http://www.cft.org>

California School Employees Association: <http://www.csea.com>

TO: BOARD OF EDUCATION
FROM: TIM CUNEO / MICHAEL D. MATTHEWS
RE: CONSIDER ADOPTING POLICY 4119.26 – NON-FRATERNIZATION WITH STUDENTS

DISCUSSION
02/04/10
Postponed
from 10/01/09

DISCUSSION ITEM NO. D.01

During the Board of Education's review of all district policies and administrative regulations this past spring and summer, staff recommended and board members requested that specific policies return for a second reading. The attached board policy was included in this list. Assistant Superintendent Michael Matthews and SMMCTA President Harry Keiley have spoken with secondary school teachers about the proposed policy.

This policy will return for board approval at the next board meeting.

Attachments:

- BP 4119.26 – Non-Fraternization with Students

Ms. Pye asked about people who come onto campus but are not employees. Dr. Matthews answered that if the district has a contract with an outside person, supervision would be in place while that person was on campus. Also, the district is educating both students and parents to inform school staff if an inappropriate relationship between staff and students is occurring.

Mr. Mechur asked what happens if a student makes an inappropriate move against employee. Dr. Matthews explained that the sexual harassment policy protects both students and staff. If a staff member feels a student is behaving inappropriately toward him/her, a report should be made to the administrator.

Mr. de la Torre recommended adding "set boundaries" to first the paragraph. The board agreed.

Mr. Snell asked if this policy also covered volunteers on campuses. Dr. Matthews said he is working on districtwide volunteer training. He added that a couple schools do great job on this, but he wants all volunteers to receive the same training.

NON-FRATERNIZATION WITH STUDENTS

The relationship between the school employee and the student should be one of professional cooperation and respect. All employees, whether certificated or classified, have a responsibility to set boundaries and conduct themselves in a manner that will maintain an atmosphere that is conducive to learning.

It is the policy of the Board of Education to prohibit any type of close personal relationship between a school employee and a student that may reasonably be perceived as unprofessional, including, but not limited to the perception of a dating relationship. School employees shall not entertain students, socialize with students, or spend an excess amount of time with students in such a manner as to reasonably create the impression to district staff, other students, their parents/guardians, or the public that an unprofessional relationship exists.

It is also the policy of the Board to prohibit any type of sexual relationship, sexual contact, or sexually-nuanced behavior between a school employee and an enrolled student without regard to the student's age. This includes internet chat rooms, social networking sites such as "Facebook" or similar web sites, cell phones, and all other forms of electronic or other types of communication. This prohibition applies to students of the same or opposite sex of the school employee. It also applies regardless of whether the student or the school employee initiated the sexual behavior, and whether or not the student welcomes the sexual behavior and/or reciprocates the attention.

The district shall promptly investigate all reasonable allegations of prohibited staff/student relationships. The district shall utilize the investigation procedures followed for complaints of sexual harassment within the district, as referenced below.

Legal Reference:

1681 - Title XI the Education Amendments of 1972; 20 U.S.C.

TO: BOARD OF EDUCATION

ACTION/CONSENT
02/18/10

FROM: TIM CUNEO / MICHAEL D. MATTHEWS

RE: ADOPT POLICY 4119.26 – NON-FRATERNIZATION WITH STUDENTS

RECOMMENDATION NO. A.20

It is recommended that the Board of Education adopt policy 4119.26 – Non-Fraternization with Students.

COMMENTS: During the Board of Education's review of all district policies and administrative regulations this past spring and summer, staff recommended and board members requested that specific policies return for a second reading. The attached board policy was included in this list. Assistant Superintendent Michael Matthews and SMMCTA President Harry Keiley have spoken with secondary school teachers about the proposed policy.

This policy was a discussion item at the February 4, 2010, board meeting.

Attachments:

- BP 4119.26 – Non-Fraternization with Students

MOTION MADE BY: Mr. Allen
SECONDED BY: Dr. Escarce
STUDENT ADVISORY VOTE: Aye
AYES: All (6) (Mr. de la Torre was absent)
NOES: None (0)

NON-FRATERNIZATION WITH STUDENTS

The relationship between the school employee and the student should be one of professional cooperation and respect. All employees, whether certificated or classified, have a responsibility to set boundaries and conduct themselves in a manner that will maintain an atmosphere that is conducive to learning.

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The district shall promptly investigate all reasonable allegations of prohibited staff/student relationships. The district shall utilize the investigation procedures followed for complaints of sexual harassment within the district, as referenced below.

Legal Reference:

1681 - Title XI the Education Amendments of 1972; 20 U.S.C.

EXHIBIT E

From: Michael Chwe <michael@chwe.net>
Subject: **SMMUSD is in violation of the California Public Records Act; response to Ms. Zamora-Mejia, SMMUSD counsel**



Date: February 4, 2011 4:38:22 PM PST

To: ballen@smmusd.org, odelatorre@smmusd.org, jescarce@smmusd.org, mlvazquez@smmusd.org, llieberman@smmusd.org, lieberman@hlkklaw.com, rmechur@smmusd.org, npatel@smmusd.org, Tim Cuneo <tcuneo@smmusd.org>, ezamora-mejia@aalrr.com

Cc: Michael Chwe <michael@chwe.net>

3 Attachments, 1.9 MB

February 4, 2011

Board of Education
Superintendent Tim Cuneo
Santa Monica-Malibu Unified School District (SMMUSD)
1651 Sixteenth Street
Santa Monica, California 90404

Dear Members of the Board of Education and Superintendent Cuneo,

On December 14, 2010, I submitted a request to the SMMUSD, under the California Public Records Act, for public records concerning Santa Monica High School teacher Mr. Ari Marken. The public records I requested include those involving the SMMUSD's investigation of Mr. Marken and the resulting decision to place him on leave in December 2008 for sexually harassing a thirteen-year-old girl, in violation of SMMUSD policy 5145.7, the SMMUSD decision to place Mr. Marken on leave again in December 2009, and other substantial complaints about Mr. Marken of improper behavior towards students. My request is enclosed below for your reference.

The California Public Records Act requires that the SMMUSD respond within ten days. Section 6253 states, "In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days."

On December 20, 2010, I received a letter (enclosed below) from SMMUSD counsel, Ms. Elizabeth Zamora-Mejia of Atkinson, Andelson, Loya, Ruud & Romo, saying that the SMMUSD needed to extend the time limit by 14 days and that the SMMUSD would respond by January 7, 2011.

On January 6, 2011, I received a second letter from Ms. Elizabeth Zamora-Mejia saying that the SMMUSD needed to extend the time limit again, this time for a month, in order to allow Mr. Marken the opportunity to seek court adjudication of whether the documents will be released, given his privacy rights. The letter stated that unless a court orders otherwise, the SMMUSD will provide all records in response to my request on February 7, 2011.

This second extension is in clear violation of section 6253 of the California Public Records Act, which unequivocally states: "No notice shall specify a date that would result in an extension for more than 14 days." Of course Mr. Marken's legal rights, including his privacy rights, should be protected, but no single party, including the SMMUSD, Mr. Marken, or myself, has the authority to excuse the SMMUSD from its obligations under state law. SMMUSD board members, who are elected by the public, have the ultimate responsibility to ensure that the SMMUSD complies with all state laws.

Sincerely yours,

Michael Chwe

December 14, 2010

Board of Education
Superintendent Tim Cuneo
Santa Monica-Malibu Unified School District
1651 Sixteenth Street
Santa Monica, California 90404

Dear Members of the Board of Education and Superintendent Cuneo,

As a member of the public, I am requesting, under the California Public Records Act (Government Code sections 6250-6276.4), copies of all public records in the Santa Monica-Malibu Unified School District (SMMUSD) concerning the investigation of Santa Monica High School teacher Mr. Ari Marken and the resulting decision to place him on leave in December 2008 for sexually harassing a thirteen-year-old girl, in violation of SMMUSD policy 5145.7 (please see the enclosed letter of December 4, 2008 by Assistant Superintendent Michael D. Matthews).

I am also requesting copies of all public records concerning the investigation of Mr. Marken and the decision to place him on leave again in December 2009 for the entire 2009-2010 school year. According to the news article "District defends handling of sexual harassment case" by Nick Taborek, which appeared in the Santa Monica Daily Press on December 7, 2010, Mr. Marken was placed on leave in December 2009 "after a complaint surfaced that he had engaged in inappropriate communications with students over Facebook."

Also, I am requesting all public records relating to the drafting and adoption in February 2010 of SMMUSD policy 4119.26 on non-fraternization with students, including whether the policy's formation was related to the actions of Mr. Marken. Finally, I am requesting all public records regarding any other substantial complaints about Mr. Marken of improper behavior towards students, including sexual harassment of students and inappropriate communication and fraternization, including those complaints which resulted in disciplinary action and those complaints which did not, during his entire employment history in the SMMUSD.

The California Public Records Act (CPRA) requires that the SMMUSD must respond within ten days (section 6253(c)). For more information about the California Public Records Act, please see "Summary of the California Public Records Act 2004," prepared by the California Attorney General's Office (available at http://ag.ca.gov/publications/summary_public_records_act.pdf).

The CPRA applies to all local agencies including school districts (section 6252). The CPRA provides that personnel files can be exempt from public disclosure (section 6254(c)). However, as stated by the California Attorney General's Office in the report mentioned above, "Only where the invasion of privacy is unwarranted as compared to the public interest in the information does the exemption permit the agency to withhold the record from disclosure" (page 7). In the case of a teacher who has a history of sexually harassing a child, there is an overwhelming public interest for this information to be disclosed to parents so that they can make the best decisions to protect their children.

Also, Proposition 59, an amendment to the California State Constitution passed in 2004, further limits exemptions to public disclosure. Proposition 59 states: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

Various cases establish that local agencies must disclose records concerning employees who receive either public or private reproof. In *Chronicle Publishing Company v. Superior Court* (1960), the California Supreme Court wrote: "A private reproof is an official act . . . as much as a public reproof. It means either that some charge brought against the member has been determined to be well founded, or that some conduct warranting reproof has been disclosed. . . . [J]ust as when public disciplinary action follows, their information is subject to release, so it is when private disciplinary action is taken" (the opinion is available at <http://scocal.stanford.edu/opinion/chronicle-pub-co-v-superior-court-29844>). Similarly, in *AFSCME Employees v. Regents of University of California* (1978), the

California First District Court of Appeal wrote: "where the charges are found true, or discipline is imposed, the strong public policy against disclosure vanishes; this is true even where the sanction is a private reproof. In such cases a member of the public is entitled to information about the complaint, the discipline, and the 'information upon which it was based' " (the opinion is available at http://www.firstamendmentcoalition.org/handbook/cases/Employees_v_Regents.pdf).

SMMUSD policy 5145.7 on sexual harassment states: "If an employee is found to be in violation of this policy, disciplinary action shall include, at a minimum, a letter of reprimand, which shall be placed in the employee's personnel file." Thus when any employee, including Mr. Marken, is found to have violated SMMUSD policy 5145.7, public records concerning the case, including for example the letter of reprimand itself, must be disclosed.

The case most closely related to my request is *Bakersfield City School District v. Superior Court* (2004), in which the newspaper *The Bakersfield Californian* sued the Bakersfield City School District for not disclosing records concerning allegations of "[s]exual type conduct, threats of violence and violence" made against Mr. Vincent Brothers, a former assistant principal in the Bakersfield City School District, about an incident that allegedly occurred on February 20, 1996. The California Fourth District Court of Appeal stated: "where complaints of a public employee's wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial, and there is reasonable cause to believe the complaint is well founded, public employee privacy must give way to the public's right to know. . . . The cases do not stand for the premise that either a finding of the truth of the complaint contained in the personnel records or the imposition of employee discipline is a prerequisite to disclosure" (the opinion is available at http://www.firstamendmentcoalition.org/handbook/cases/Bakersfield_v_Superior.pdf). In other words, if there are substantial allegations against an employee such as an assistant principal, public records concerning the allegation must be disclosed, even if the employee has not been disciplined or reprimanded and even if the allegations have not been proven true. The Court ordered the Bakersfield City School District to release all public records concerning the February 20, 1996 incident, with all names redacted except the name of Mr. Brothers.

The SMMUSD has not yet disclosed the reason why Mr. Ari Marken was placed on leave in December 2009 for over six months. If Mr. Marken was reprimanded for violating a SMMUSD policy, public records concerning his actions must be disclosed. If Mr. Marken was not reprimanded or did not violate a SMMUSD policy and was merely investigated, the long period of time for which he was placed on leave indicates that the allegations investigated must have been substantial, and therefore public records concerning his actions must be disclosed under the precedent set by *Bakersfield City School District v. Superior Court*. Similarly, all substantial allegations made about Mr. Marken involving improper behavior toward students during his entire employment in the SMMUSD must be disclosed.

Finally, CPRA section 6254.5 states that "whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions." In other words, if the SMMUSD discloses a public record to any member of the public, it cannot claim that the record is exempt from disclosure when other members of the public request it. SMMUSD policy 5145.7 on sexual harassment states that after an investigation is completed, "[t]he Assistant Superintendent of Human Resources or designee and/or independent investigator shall write a report of his/her findings, decision, and reasons for the decision and shall present this report to the student who complained and the person accused." SMMUSD policy 4119.26 on non-fraternization with students states that "[t]he district shall utilize the investigation procedures followed for complaints of sexual harassment within the district." Thus, if a SMMUSD teacher is found to have violated either policies 5145.7 or 4119.26, a report is given to the student who complained. This student is a member of the public and not an employee of the SMMUSD. Thus, under CPRA section 6254.5, this report must be disclosed to the public.

For all of these reasons, the SMMUSD is required to disclose copies of the public records I request above, with names redacted except that of Mr. Marken, as in the case of *Bakersfield City School District v. Superior Court*. I should note that the term "public records" is defined in section 6252(e) and 6252(g) of the CPRA, and "includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained" by the SMMUSD and includes "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording."

Please note that CPRA section 6253.1 requires the SMMUSD to assist the public in making a focused and effective request by identifying records and information that are responsive to the request, describing the information technology and physical location of the records, and providing suggestions for overcoming any practical basis for denying access to the records or information sought.

Should the SMMUSD deny any part of this request, the SMMUSD is required to provide a written response describing the legal basis upon which the SMMUSD relies. CPRA section 6255(a) states that the SMMUSD "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." In other words, if the SMMUSD withholds any public record, it is required to make a written justification specific to that particular record.

Please note that CPRA section 6253(c) states that the SMMUSD "shall promptly notify the person making the request of the determination and the reasons therefore." Section 6253(d) states that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial."

Pursuant to CPRA section 6255(b), please clearly state in writing: (1) if the SMMUSD is withholding any documents; (2) if the SMMUSD is redacting any documents; (3) what documents the SMMUSD is withholding and/or redacting; and (4) the alleged legal bases for withholding and/or redacting the particular documents. To the extent documents are being withheld, should those documents also contain material that is not subject to any applicable exemption to disclosure, then the disclosable portions of the documents must be segregated and produced.

If the SMMUSD determines that any requested records are subject to exemption, I request that the SMMUSD exercise its discretion to disclose some or all of the records notwithstanding the exemption and also, with respect to records containing both exempt and non-exempt content, the SMMUSD redact the exempt content and disclose the rest.

I also request that you preserve intact all documents and computer communications and attachments relating to my request, including but not limited to all emails and computer files, wherever originated, received, or copied, and including archives thereof preserved on tape, hard drive, disc, or any other archival medium, and including any printouts or other reproduction of any such computer communications.

Again, the SMMUSD is required by CPRA section 6253(c) to respond in ten days. Because I am sending you this request on December 14, 2010, please respond by December 24, 2010.

Thank you very much.

Sincerely yours,

Michael Chwe



December 4, 2008

Dear Mrs. _____

On October 20, 2008, you submitted a written complaint regarding alleged activities by an SMMUSD employee, Mr. Ari Marken, towards your daughter. Abiding by SMMUSD Board Policy 5145.7 on Sexual Harassment, the District hired an independent investigator to examine this complaint. The District found that Mr. Marken did violate Board Policy 5145.7 and has taken appropriate action.

The Santa Monica Malibu Unified School District is committed to the safety of all of our students. I thank you for bringing your complaint forward, and I expect that your daughter will not experience any future problems. If there are any such problems in the future, please do not hesitate to call Mr. Larry Boone, House Principal, Dr. Hugo Pedroza, Principal, or me.

Thank you again, and best wishes for an outstanding school year for your daughter.

Sincerely,



Michael D. Matthews, Ed.D.
Assistant Superintendent

CC: Dr. Hugo Pedroza, Principal, Santa Monica High School

Santa Monica-Malibu Unified School District

1651 Sixteenth Street • Santa Monica • California 90404-3891 • (310) 450-8338 • www.smmusd.org
Board of Education: Emily Bloomfield • Oscar de la Torre • José Escarcas • María Leon-Vazquez • Kelly Pye • Barry Snell • Kathy Wisnicki
Dianne Talarico, Superintendent of Schools



[zamoramejia....pdf \(1.65 KB\)](#)



[zamoramejia....pdf \(1.5 MB\)](#)

EXHIBIT F

From: Michael Chwe <michael@chwe.net>
Subject: release of documents today concerning Mr. Ari Marken

Date: February 7, 2011 1:01:35 PM PST

To: ezamora-mejia@aalrr.com

Cc: ballen@smmusd.org, odelatorre@smmusd.org, jescarce@smmusd.org,
mlvazquez@smmusd.org, llieberman@smmusd.org, lieberman@hkklaw.com, rmechur@smmusd.org,
npatel@smmusd.org, Tim Cuneo <tcuneo@smmusd.org>, Michael Chwe <michael@chwe.net>

2 Attachments, 1.8 MB



February 7, 2011

Ms. Elizabeth Zamora-Mejia
Atkinson, Andelson, Loya, Ruud & Romo
12800 Center Court Drive, Suite 300
Cerritos, California 90703-9364
Fax 562-653-3333

Dear Ms. Zamora-Mejia,

Thank you very much for your letter of January 6, 2011, included below, representing the Santa Monica-Malibu Unified School District (SMMUSD). Your letter was in response to my request, made on December 14, 2010, under the California Public Records Act (CPRA), for documents concerning Santa Monica High School math teacher Mr. Ari Marken. My request is also enclosed for your reference.

In this letter you write that the SMMUSD intends to fully comply with my request but only after an extension of one month, an extension in addition to the 14 day extension permitted by the CPRA under "unusual circumstances." You write that the district decided upon this one month extension to allow Mr. Marken the opportunity to obtain a court order to prevent the release of the documents.

This additional one month extension is in violation of the California Public Records Act, which explicitly states in section 6253 that "No notice shall specify a date that would result in an extension for more than 14 days." In addition, section 6253 states that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records." Needless to say, if a local agency is permitted to set its own timetable for releasing public records, the time limits (10 days with a 14 day extension possible under unusual circumstances) explicitly stated in the California Public Records Act would be without meaning. I do not agree to or accept this additional one month extension.

In your January 6, 2011 letter, you write that "unless a court orders otherwise, by February 7, 2011, the District will produce all records responsive to Requests #1 and #2 referenced above." I am not aware of any court order concerning my CPRA request, and I thus expect the District to comply with its own explicit commitment and release the documents today.

Thank you very much.

Sincerely yours,

Michael Chwe



[zamoramejia....pdf \(1.5 MB\)](#)

EXHIBIT G

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

12800 CENTER COURT DRIVE, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
(562) 653-3200 - (714) 826-5480

FAX (562) 653-3333
WWW.AALRR.COM

FRESNO
(559) 225-6700
FAX (559) 225-3416

IRVINE
(949) 453-4260
FAX (949) 453-4262

PLEASANTON
(925) 227-9200
FAX (925) 227-9202

RIVERSIDE
(951) 683-1122
FAX (951) 683-1144

SACRAMENTO
(916) 923-1200
FAX (916) 923-1222

SAN DIEGO
(619) 485-9526
FAX (619) 485-9412

OUR FILE NUMBER:

005332.00168
1742565V1

February 7, 2011

VIA E-MAIL (MICHAEL@CHWE.NET) ONLY

Mr. Michael Chwe
422 26th Street
Santa Monica, CA 90402

Re: Public Records Request

Dear Mr. Chwe:

I am in receipt of your February 4, 2011, email correspondence, wherein you assert that the District violated the California Public Records Act ("CPRA") relative to the District's response to your public records request. In fact, as discussed more fully below, the District complied with the time limits in which to provide you with a response to your request, and has discretion as to production, depending on the need to balance competing interests.

You correctly point out that the CPRA requires that a public agency must respond to a public record's request within ten (10) days, and that in certain circumstances, that time limit may be extended by an additional fourteen (14) days. These time limits are set forth in Government Code §6253(c).

Notably, these time limits, whether 10 days or 24 days, address the time period in which a public agency, including a school district, must provide a *response* to the public records request by notifying the requesting party as to whether the request seeks disclosable public records. Specifically, Section 6253(c) indicates that within the specified time limits, the agency shall "determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor." (Emphasis added.)

Contrary to your claims, nothing in the language of Government Code section 6253 states that these time periods apply to when a public agency must *produce* disclosable records to a requesting party. If the California legislature had intended for documents sought in a public records request to be produced within 10 or 24 days, it could easily have specified such a requirement in the CPRA. No such language exists. Instead, Section 6253(c) provides that:

When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available.

Mr. Michael Chwe
February 7, 2011
Page 2

In the matter of your December 14, 2010, public records request, the District provided you with an initial written response on December 20, 2010 and a supplemental response on January 7, 2011, which set forth the District's determination that some of your request sought disclosable public records and expressly informed you of the estimated date when the records would be made available to you. By so doing, there is no dispute that the District's responses were timely, and that you were clearly informed of the estimated date (February 7th) on which the records would be produced to you.

It also bears noting that the District acted reasonably in making a determination that disclosable records would be produced on February 7, 2011, unless a court ordered otherwise. Indeed, in its detailed explanation regarding the estimated production date, you were informed that the reason for not immediately producing the documents was due to the fact that some of the records you seek involve confidential, personnel information that implicate state and federal constitutional rights and that Mr. Marken's attorney had requested time in which to seek court adjudication to ensure those rights were not violated by the District. While the District has a duty to comply with the CPRA, it also has a duty to ensure that it does not violate the constitutional privacy rights of its employees in personnel-related records. The District's actions are thus not aimed at delaying or obstructing the inspection or copying of disclosable records, but rather to provide Mr. Marken and his attorney the opportunity to obtain judicial review.

In light of these facts, the District's decision to establish a production date of February 7th was not, as you assert, an "extension" of the time in which to provide you with a response pursuant to Section 6253(c). Instead, that decision was aimed at complying with another provision of that same statute: to dispatch a determination that your request sought disclosable records and to "*state the estimated date and time when the records will be made available.*" It is the District's position, therefore, that its actions have not only been reasonable and appropriate, but that its actions fully comply with applicable law.

The District in this matter has attempted to balance competing interests by exercising its discretion to briefly hold off on producing responsive personnel-related records in order to allow Mr. Marken and his attorney to seek judicial review as to whether the records sought by your request are, in fact, disclosable. There is nothing in the language of the CPRA that prohibits the District from exercising discretion to produce disclosable records in a manner that is reasonable and appropriate under the circumstances. While you may disagree with the District's position, we believe that the District's actions are lawful and that the one-month period is reasonable and not unduly prejudicial to you.

In sum, the District is fully aware of its legal obligations with respect to compliance with the California Public Records Act, but is also mindful of its legal obligations to protect the privacy rights of District employees. As you pointed out in your correspondence, the District's board members have the ultimate responsibility to ensure that the District complies with all applicable laws. At times, as in this case, the only way that can be accomplished is to properly weigh competing legal interests and, where necessary, obtain judicial guidance.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

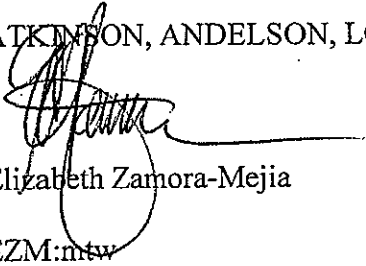
Mr. Michael Chwe
February 7, 2011
Page 3

Additionally, by now, you are aware that Mr. Marken's attorney is going to seek injunctive relief in a court proceeding taking place on February 8, 2011. While the District did previously inform you that disclosable records would be produced on February 7th, absent a court order indicating otherwise, please be advised that the District did grant a one-day extension requested by opposing counsel. Accordingly, pursuant to the requirements of Government Code Section 6253(c), you are hereby informed that the estimated date and time for the District's production of disclosable records sought in your request shall be 5:00 p.m. on February 8, 2011. Copies will be produced to you by mail and you will be informed of the cost.

Should you have any further questions regarding this matter, please contact the undersigned.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A handwritten signature in black ink, appearing to read 'Elizabeth Zamora-Mejia', with a long horizontal line extending to the right.

Elizabeth Zamora-Mejia

EZM:ntw

cc: Tim Cuneo, Superintendent

EXHIBIT H

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/08/11

DEPT. 72

HONORABLE RUTH ANN KWAN

JUDGE S. VALENTE

DEPUTY CLERK

HONORABLE #15

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. CRUZ, C.A.

Deputy Sheriff T. FONG

Reporter

8:30 am

BC454656

Plaintiff DEBORAH ESHAGHIAN (X)
Counsel DANIEL J. KOLODZIEJ (X)

ARI MARKEN
VS
SANTA MONICA-MALIBU UNIFIED SCH DISTRICT
RECUSAL: O'BRIEN
170.6 - ANN JONES BY PLFF

Defendant ELIZABETH ZAMORA-MEJIA (X)
Counsel
NON PARTY:
MICHAEL CHWE (X)

NATURE OF PROCEEDINGS:

PLAINTIFF ARI MARKEN'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION;

Matter is called for hearing.

In camera review was held in chambers, on the record.

The Court GRANTS plaintiff's request for a temporary restraining order.

Preliminary Injunction Hearing is set for March 10, 2011 at 9:00 a.m. in Department 72.

Plaintiff's points and authorities are due by 2/23/11, responses due by 3/1/11 and reply is due by 3/7/11. Counsel are ordered to file the documents under seal, directly in Department 72.

Notice is waived.

MINUTES ENTERED 02/08/11 COUNTY CLERK

11/60/20