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County of Santa Barbara
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA BARBARA**

10 EDWARD BEHRENS,
an individual,

11 Petitioner/Plaintiff,

12 vs.

13 SANTA BARBARA UNIFIED SCHOOL
14 DISTRICT, an entity of the State of California,
15 and DOES 1 through 25, inclusive,

16 Respondents/Defendants.
17

Case No.: 18CV02536

1. **VERIFIED PETITION FOR WRIT OF
MANDATE (C.C.P. § 1085), OR AN
ALTERNATIVE WRIT OF
MANDATE (C.C.P. § 1087), FOR
VIOLATION OF RIGHTS UNDER
CAL. EDUC. CODE, SBUSD
REGULATIONS, AND DUE
PROCESS;**

**COMBINED WITH COMPLAINT FOR
DAMAGES FOR:**

2. **VIOLATION OF CONSTITUTIONAL
RIGHTS, DUE PROCESS – 42 U.S.C.
§ 1983**
3. **UNLAWFUL RETALIATION IN
VIOLATION OF CALIFORNIA
LABOR CODE § 1102.5(C)**

DEMAND FOR JURY TRIAL

Petitioner and Plaintiff EDWARD BEHRENS (hereinafter, “Behrens,” “Petitioner,” or “Plaintiff,” as appropriate), respectfully petitions this Court for a Writ of Mandate pursuant to Code of Civil Procedure § 1085 and brings this action for damages against SANTA BARBARA UNIFIED SCHOOL DISTRICT (hereinafter, the “District,” “Respondent,” or “Defendant,” as appropriate), ordering the District to reinstate Behrens to the position of Principal of San Marcos High School (hereinafter, “SMHS”). Behrens alleges as follows:

NATURE OF THE ACTION

1. This case is about the malicious and retaliatory demotion of a respected and successful high school principal. Ed Behrens committed twenty-seven years of his career to the District and over twenty at SMHS. Promoted to SMHS assistant principal in 1997, and with support from faculty and parents, he was named principal in 2011. However, the District School Board members, each of whom attained their seat by default without a receiving a single vote, and District Superintendent Cary Matsuoka (hereinafter, “Matsuoka”), who was appointed by the School Board only 20 months prior to the events described herein, ignored community support for Behrens and unlawfully removed him from his position in an obvious attempt to make Behrens the scapegoat for District missteps in the wake of a publicized online threat incident, and to forward a larger, harmful agenda.

2. Respondent has argued in recent correspondence that Behrens must accept his demotion because an at-will administrator acts at the pleasure of the School Board, and a demotion decision may be based on any reason. However, Respondent fails to account for additional protections against unreasonable and arbitrary personnel decisions established under section 44031 of the California Education Code (“Section 44031”) and of Due Process guarantees under District Administrative Regulation (“AR”) 4313.2. The District may not withhold derogatory allegations or charges from employees, and it cannot insulate itself by simply neglecting to file material in the employee’s personnel file which the statute contemplates will be brought to the employee's notice. It *must* notify Behrens of all derogatory charges against him and afford him a meaningful opportunity to respond. In failing to consider or to place in the personnel file Behrens’ response to a derogatory letter of reprimand, and in basing the demotion on reasons and materials not disclosed to

1 Behrens, and in supplying a false statement of reasons, Respondent grossly violated these rights.
2 These violations unlawfully prejudiced Behrens in his attempt to defend his position and should
3 result in reinstatement.

4 3. In addition to procedural failures, the demotion was unreasonable and arbitrary as
5 evinced, in part, by false charges made by Matsuoka and several School Board members following
6 the demotion. Behrens has been made the scapegoat for community anger in response to a student
7 threat incident, and his reputation has been severely harmed as a result. Indeed, the demotion is
8 retaliatory and punitive; Behrens has been reassigned to *junior* high school social studies teacher
9 which entails a salary cut of over \$50,000 per year.

10 4. The District didn't anticipate the subsequent, impassioned outcry of support for
11 principal Behrens, including the attendance of over 300 community members at the March 13, 2018
12 Board meeting to challenge the demotion. The District ignored the views of these constituents and
13 approved the demotion, and an election recall effort to remove several School Board members was
14 initiated immediately after. The District has attempted to quell the backlash by charging Behrens,
15 after the fact, with serious, *undisclosed* misconduct, and previously unmentioned implications of
16 racial bias in the admittance procedures of academies developed by Behrens at SMHS. These
17 allegations, which are false, are evidence of the unreasonable and arbitrary nature of the demotion.
18 The District's conduct has humiliated Behrens and resulted in actual damage to Behrens'
19 professional reputation, as many in the community have begun to give credence to such false
20 assertions.

21 5. The demotion constitutes "arbitrary action or conduct by a public entity or an officer
22 thereof" in violation of California Government Code § 800, thereby entitling Behrens to an award of
23 attorneys' fees as provided in that statute. Behrens is also entitled to an award of attorneys' fees as
24 provided by 42 U.S.C. § 1988 and California Code of Civil Procedure § 1021.5, for the violations of
25 Constitutional rights and the California Labor Code.

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1 **PARTIES**

2 6. Petitioner/Plaintiff EDWARD BEHRENS is an individual and is now, and always
3 mentioned herein was, a resident of the City and County Santa Barbara, California, and who was at
4 all times relevant herein employed as the principal of SMHS, part of the District.

5 7. Respondent/Defendant SANTA BARBARA UNIFIED SCHOOL DISTRICT (the
6 “District”) is a municipal corporation organized and existing under the laws of the State of
7 California, and has its principal office in Santa Barbara County, at 720 Santa Barbara St. Santa
8 Barbara, CA 93101.

9 8. The true names and capacities, whether individual, corporate, associate or otherwise,
10 of defendants Does 1 through 25, inclusive, are unknown to Petitioner/Plaintiff, who therefore sues
11 said defendants by such fictitious names. Behrens is informed and believes that each of the
12 defendants designated herein as a DOE is legally responsible in some manner for the events and
13 happenings herein alleged, and Petitioner/Plaintiff’s damages as alleged herein were proximately
14 caused by such defendants. Petitioner/Plaintiff will ask leave of court to amend this complaint and
15 insert the true names and capacities of said DOE defendants when the same have been ascertained.

16 9. Behrens is informed and believes that at all times material herein, each defendant was
17 the agent, servant and employee of certain remaining defendants, and acting within the purpose,
18 scope and course of said agency, service and employment, with the express and/or implied
19 knowledge, permission and consent of those remaining defendants, and each of them, and each of
20 said defendants ratified and approved the acts of the other defendants.

21 10. Petitioner/Plaintiff has been generally damaged in an amount exceeding the
22 jurisdictional minimum of this court, where the amount in controversy exceeds Twenty-Five
23 Thousand Dollars (\$25,000.00).

24
25 **JURISDICTION AND VENUE**

26 11. This Court has jurisdiction over this petition and action pursuant to California Code
27 of Civil Procedure §§ 1085 and 410.10.
28

12. Venue is proper in this Court because Respondent maintains a place of business in Santa Barbara County, and because all of the events and transactions giving rise to this action took place in Santa Barbara County.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

STATEMENT OF FACTS COMMON TO PETITION AND COMPLAINT

13. The District is comprised of numerous public elementary, junior high and high schools located in the city of Santa Barbara, California, with three standard public high schools in the District: Santa Barbara High School, Dos Pueblos High School, and SMHS. The District is governed by a five-seat school Board (hereinafter, the “Board”).

14. At the time of the events described herein, none of the Board members received any votes for their current seat through an at-large election: Kate Parker was re-elected by default due to lack of opposition in November 2014; Jacqueline Reid, PhD. (hereinafter “Reid”), Wendy Sims-Moten, and Laura Capps were elected by default due to lack of opposition in November 2016; and Ismael Paredes Ulloa was appointed to fill the vacated seat in or around November 2017.

15. In or around June 2016, the Board appointed Matsuoka as District Superintendent to act as its agent. Matsuoka has said that his leadership philosophy is “to give principals and teachers the autonomy to determine what would work best for their schools rather than mandating change from the top.”¹ However, in the mere twenty months since his appointment, Matsuoka has made sweeping changes to District administration staff.

16. On information and belief, the District experienced an inordinate number of outgoing administrative staff since the 2017 school year began: Barbara Keyani, District Public Information Officer, unexpectedly retired; Helen Rodriguez, Assistant Superintendent of Special Education suddenly resigned her position, replaced by current Assistant Superintendent Frann Wageneck; Jackie Mora, Director of the EL Program, unexpectedly resigned her position mid-year; Dave Hetyonk, director of facilities and operations, announced his retirement this year; Donna Ronzoni,

¹<https://www.wired.com/2015/05/los-angeles-edtech/> (Last visited on May 21, 2018)

VAPA Coordinator, unexpectedly announced retirement; Alicia Saballa, Principal of Santa Barbara Community Academy retired mid-year, and Mitch Torina, Assistant Superintendent of Human Resources, unexpectedly retired this year. Shawn Carey, principal of Dos Pueblos High School, was reassigned to assistant superintendent of secondary education in December 2016, and John Becchio, principal of Santa Barbara High School, was reassigned to the District human resources department effective July 1, 2018.

17. The Board regularly approved Matsuoka's personnel recommendations submitted via extensive, compiled spreadsheets with little debate.² In a 2017 interview with the Santa Barbara Independent, Matsuoka stated he did not appreciate board members who "get on a soap box and talk for five minutes before they get to their questions," and he praised the current Board because they "don't get into details," and with regards to questioning his actions, "they don't overdue it."³

18. Behrens' career in the District began as an English Language Development teacher over twenty years ago where he taught Latino and other minority students English. In 1997, Behrens was named assistant principal of SMHS, and in 2011, with widespread support from faculty and the community, Behrens was promoted to principal of SMHS. Behrens' personnel file shows a positive career trajectory, with generally positive evaluations continuing to the end of the 2016-2017 school year.

19. Due in large part to the implementation of academic programs and academies since 2011 aimed at college preparation and vocational skills, the SMHS graduation rate increased from 90.0% in 2013-14 to 94.0% in 2015-16, five percentage points above the District average and ten points above the state average. The dropout rate decreased from 8.2% in 2013 to 2.4% in 2016, as compared to 6.3% District wide, and 9.7% statewide.

20. The SMHS programs created or introduced by Behrens since 2011 include the Program for Effective Access to College (PEAC), co-created in partnership with La Cumbre Junior

²See, e.g., January Board Meeting <https://www.sbunified.org/2018/01/24/january-23-2018-Board-meeting/> regarding personnel recommendation approval and the accompanying spreadsheet. (Last visited on May 21, 2018)

³ <https://www.independent.com/news/2017/feb/09/new-santa-barbara-school-superintendent-listens/> (Last visited on May 21, 2018)

1 High Principal Jo Ann Caines in 2011; the AAPLE Academy, founded in 2011, which prepares
2 SMHS' outstanding students for top-tier college entrance while cultivating leadership and civic
3 involvement; the Entrepreneurship Academy, founded in 2013, which adds to the core curriculum by
4 focusing on business, marketing and economics; the Academy for Success, introduced in 2014, a
5 tutoring, mentorship and counseling program for under-performing students; Attitude, Harmony,
6 Achievement (AHA), introduced in 2014, an educational program promoting social emotional
7 learning, peace-building and creative expression; the Culinary Program founded in 2014; and the
8 Computer Science Program founded in 2015.

9 21. The California Department of Education awarded SMHS one of the first ever Gold
10 Ribbon Awards in 2015 for the creation of the PEAC Program. In 2016, SMHS was awarded a 6-
11 year Western Association of Schools accreditation. Behrens also implemented the Royal Pride
12 Foundation in 2013, a school fund-raising organization whose mission is to provide guidance and
13 funding support for the academic and extracurricular pursuits of all students. The Royal Pride
14 Foundation has raised over \$3,000,000.

15 22. Under Behrens' leadership, Latino students, a traditionally underrepresented group,
16 experienced marked improvement at SMHS. As noted, Behrens began as an English Language
17 Development teacher, and under his leadership, the number of students classified as English Learner
18 students decreased from 20.3% in 2012 to 12.7% currently, including the reclassification of
19 approximately 200 EL students in 2014-15 alone. Currently, 45% of economically disadvantaged
20 Latino students at SMHS meet or exceed the English Language Arts Mean Score, compared to 33%
21 Santa Barbara High and 43% at Dos Pueblos High. Diversity within the SMHS academies and
22 programs has greatly increased as well: the 2018 incoming AAPLE program is 50% non-white and
23 30% Latino.

24 23. In the 2012-13 evaluation dated November 11, 2013, then-Assistant Superintendent
25 Ben Drat commended Behrens on his efforts to address student diversity and cultural proficiency.
26 Again in 2015-16, after implementation of an improvement plan for student body diversity, Behrens'
27 personnel file indicates that all performance goals were achieved or ongoing, including a marked
28 increase in Equal Opportunity Schools enrollment and Advanced Placement enrollment of Latino

1 students. The evaluation also commended the successful inclusion of Latino cultural topics into
2 Social Studies, English, and other departments.

3 24. Behrens received a largely positive annual evaluation on June 30, 2017 for the 2016-
4 17 school year. The evaluation praised Behrens' focus on English Learners, along with his
5 engagement of Spanish-speaking families through improving language access and with increased
6 attendance at ELAC meetings.

7 ***The January 19, 2018 Chat Room Incident***

8 25. On January 19, 2018, SMHS administrators were made aware of a possible threat
9 made toward a small number of female students in the District by a small group of students in a
10 private online chat room. SMHS Assistant Principal Suzette McCormick (hereinafter,
11 "McCormick") notified Behrens immediately. District Assistant Superintendent Fran Wageneck
12 (hereinafter, "Wageneck") and the Santa Barbara County Sheriff's Office were contacted within one
13 hour of the first report. Under direction from Wageneck, the Sheriff's Office was asked to
14 investigate before any widespread community outreach actions were taken. Following its
15 investigation, it determined that no credible threat of physical harm existed.

16 26. At the time of the incident, the District had no established policy for addressing such
17 a cyber threat, and no protocol for community communication. These deficiencies existed despite a
18 similar threat event in 2015, in which a student made online threats. Matsuoka was not
19 superintendent of the District in 2015. At that time, Behrens handled discipline and communication
20 in a similar fashion, and he similarly refused parent demands to identify the student involved.
21 Behrens was not reprimanded in any way, and no changes to the District safety policies resulted.

22 27. In response to the 2018 threat, Behrens first had to learn the names of all boys
23 involved, as all used pseudonyms. This required assistance from law enforcement and
24 communication with all identified targeted girls. As each boy was identified they were immediately
25 questioned, which in turn led to the identities of other chat room participants. In consultation with
26 District staff, each was appropriately disciplined based on their level of involvement and/or
27 culpability.

28 28. Some of the families of the targeted girls demanded the names of the boys. As

1 SMHS principal, the District requires Behrens to communicate to SMHS parents any event involving
2 violence and/or a threat of violence via the ParentSquare communication service. While the District
3 had not previously conducted any training or issued any protocol with respect to online threat
4 communications, the Family Educational Rights and Privacy Act (“FERPA”) makes it illegal for any
5 educational agency or institution to permit “the release of education records (or personally
6 identifiable information contained therein...) without the written consent of their parents to any
7 individual, agency, or organization.” 20 U.S.C. 1232g (b)(1).

8 29. On Tuesday afternoon, January 23, 2018, several SMHS parents contacted Behrens
9 privately and threatened to release to local news media a video created by one of the chat-room
10 students. The video depicted that student with an antique musket describing violent acts towards
11 other District students. The parents claimed they would not release the video if Behrens sent a
12 ParentSquare message identifying the students involved in the online chat and video, and disclosing
13 the consequences imposed on those students. Releasing student identities in this manner is a
14 violation of privacy restrictions under FERPA.

15 30. The District required that Behrens not release any chat or video details, and the
16 District required that Behrens avoid creating community panic or anger. However, based on the
17 parents’ ultimatum, Behrens could not prevent the release of the video or the ensuing community
18 uproar without violating FERPA. Behrens refused to release the identities of the boys, thereby
19 conforming with the FERPA mandate. With Wageneck’s guidance, a ParentSquare communication
20 addressing the online chat was released with no identifying information. The communication was
21 reviewed and approved by Wageneck and District Public Relations Officer Lauren Bianchi
22 Klemann.

23 31. In addition, Wageneck and Behrens held an informational meeting with parents of the
24 targeted students that evening. At the meeting conducted by Wageneck, the parents expressed
25 concern over the District’s lack of transparency and that the District had no online threat
26 management and communication plan in place. Immediately following the meeting, the video was
27 released to the local news media, setting off fear and distrust of District management throughout the
28

1 SMHS the community.⁴

2 32. At a subsequent community meeting conducted by Matsuoka on February 5, 2018,
3 parent frustration boiled over. Matsuoka was visibly embarrassed and offered only apologies for the
4 District's failures.⁵ Behrens is informed and believes that immediately following the February 5,
5 2018 community meeting, Matsuoka began a campaign to deflect blame away from himself and his
6 assistants and to make Behrens the scapegoat for the community's reaction to the incident.

7 33. On February 7, 2018, just two days following Matsuoka's meeting, Behrens received
8 a highly critical Letter of Reprimand (hereinafter, the "LOR") blaming Behrens for "exacerbating"
9 the threat situation. The LOR states that "appropriate safety protocol was executed in conjunction
10 with law enforcement," but unfairly admonishes Behrens for failing to properly communicate details
11 of the incident to the community. The LOR blames Behrens for the release of the threat video,
12 stating that "details of the disturbing incident went viral in a way that was beyond the control of
13 District staff." (Attached hereto as **Exhibit A** is a true copy of the LOR.)

14 34. The LOR states it will be placed in his personnel file. It makes no reference to
15 demotion or reassignment, and it grants Behrens ten days to respond.

16 35. The LOR confirms that District management was fully aware of the online threat
17 situation, stating that McCormick informed Wageneck when she was first notified of the incident
18 (Friday, January 19, 2018), and that Wageneck texted Behrens on Monday, January 22 stating, "Can
19 you call me when you get a chance? Need an update on the threat incident that occurred Friday."

20 36. Behrens prepared and submitted a written response to the LOR on February 19, 2018,
21 in which he explained details surrounding the incident and challenged inaccuracies and inappropriate
22 or misplaced criticisms. The District completely ignored Behrens' response; it was not added to his
23 personnel file, it was never referenced or discussed by Matsuoka or any other District employee, and
24 it was not shown to the Board during subsequent personnel discussions. Behrens is informed and
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27 ⁴<http://www.keyt.com/news/san-marcos-parents-react-to-violent-social-media-video-1/690857959>
(Last Visited on May 21, 2018)

28 ⁵<http://www.keyt.com/news/santa-barbara-s-county/santa-barbara-unified-school-district-superintendent-apologizes-to-parents-during-forum/697338639> (Last visited on May 21, 2018)

1 believes that, to this day, it does not appear in Behrens' personnel file. (Attached hereto as **Exhibit B**
2 is a true copy of Behrens' response to the LOR.)

3 ***Behrens' Demotion and Defendants' Statements***

4 37. Despite the given ten-day response window granted by the LOR, Matsuoka prepared
5 Behrens' Notice of Reassignment (hereinafter, the "Notice") to social studies teacher on February
6 12, 2018, only *five* days following the LOR and seven days prior to receiving Behrens' response.
7 (Attached hereto as **Exhibit C** is a true copy of the Notice.)

8 38. Behrens received the Notice along with an extremely negative evaluation on February
9 22, 2018. The evaluation shows an inexplicable drop in five of six review categories since the June
10 2017 review. The evaluation was clearly influenced by the LOR, blaming "a portion of the fallout
11 that the District experienced in the wake of the online chat room incident" on Behrens' inability to
12 communicate District priorities to the staff. (Attached hereto as **Exhibit D** is a true copy of the
13 February 22, 2018 evaluation.)

14 39. Matsuoka subsequently confirmed a timeline of events which was first published by a
15 parent-led recall group during an interview published April 24, 2018.⁶

16 40. Matsuoka urged Behrens to resign; he asked Behrens to decide by March 6, 2018 if
17 he would prefer to resign rather than accept the reassignment and pay cut.

18 41. Pursuant to California Education Code § 44896 and District AR 4313.2, Behrens
19 requested a Statement of Reasons (hereinafter, the "SOR") for his demotion on February 28, 2018.
20 Initially denied by District counsel, Behrens received the SOR on March 7, 2018. In it, Matsuoka
21 stated he did not rely "on any materials not contained in [the] personnel file." (Attached hereto as
22 **Exhibit E** is a true copy of the SOR.)

23 42. In the SOR, Matsuoka assured Behrens that the demotion was *not* based on the chat
24 room incident, stating his recommendation was "not based on any single or chain of events, but
25 rather stems from an examination of many factors pertaining to your leadership over a substantial
26 period." The letter also informed Behrens he may address the Board at the March 13, 2018 Board
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28 ⁶<https://www.newsmakerswithjr.com/single-post/2018/04/24/One-on-One-with-Superintendent-Matsuoka-Parents-Have-It-Wrong-on-Principal-Canning> (Last visited on May 21, 2018)

1 meeting where the matter would then be decided in a closed session.

2 43. Several local news organizations ran stories of Behrens' proposed reassignment and
3 at the March 13, 2018 Board meeting over 300 community members attended to support Behrens
4 and oppose the demotion. In conjunction with a written statement submitted on March 12, 2018,
5 Behrens addressed the Board, outlining his accomplishments and attempting to counter the reasons
6 given in the SOR. Over forty community members also commented in support of Behrens at the
7 meeting. (Attached hereto as **Exhibit F** is a true copy of the written statement submitted to the Board
8 on March 12, 2018.)

9 44. During the March 13, 2018 Board meeting, in front of over 300 SMHS parents and
10 community members, Matsuoka displayed open hostility and malice toward Behrens' supporters.
11 Matsuoka was photographed making a profane and lengthy gesture towards one of Behrens' most
12 adamant supporters while that supporter was addressing Matsuoka and the Board. Though Matsuoka
13 has falsely stated the picture was doctored,⁷ Behrens is informed and believes that the photograph is
14 unedited, and a true version of the photograph appears below:



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28 ⁷<http://www.keyt.com/news/santa-barbara-s-county/one-on-one-with-santa-barbara-unified-school-district-superintendent-cary-matsuoka/736625023> (Last visited on May 21, 2018)

1 The above photograph provides evidence of the bias, contempt, ill-will and malice exhibited
2 by Matsuoka towards Behrens and those community members who were properly expressing
3 concerns over matters of grave importance to their children's education and futures.

4 45. After public comment, the Board and Matsuoka retreated to a 3-hour closed session
5 where the Board approved the reassignment by 4-1 vote. Immediately following the demotion
6 approval, a group of SMHS parents initiated a grass-roots campaign to recall District Board
7 members. As Matsuoka and Board members scrambled to quell the backlash and justify the
8 controversial decision, they made several public statements identified below, indicating the
9 demotion decision was based on professional misconduct and/or information *not* reflected in
10 Behrens' personnel file and not disclosed to Behrens.

11 46. These statements contradict those reasons stated in the SOR and have created a false
12 but incredibly harmful perception in the community that Behrens was demoted for improper
13 behavior and/or egregious misconduct surrounding the threat situation at SMHS. These pretextual
14 statements constitute direct evidence of the retaliatory, malicious, unreasonable, and arbitrary and
15 capricious nature of the demotion.

16 47. At a "Parent Input Meeting" conducted by Matsuoka on April 10, 2018 several
17 parents questioned why Behrens was demoted. Matsuoka said that changes were made at SMHS to
18 ensure "equal access," and that in choosing Behrens' replacement he intended to focus on "the
19 equity issue" at SMHS to rectify disparities in minority student achievement.⁸ On information and
20 belief, Matsuoka's statements imply that SMHS' academy and program admittance procedures
21 developed under Behrens are racially biased.

22 48. When asked about the SMHS programs implemented by Behrens during a
23 "Newsmakers with Jerry Roberts" interview published online on April 24, 2018, Matsuoka similarly
24 described bias at SMHS under Behrens' leadership, stating that changes were required "to ensure
25 equal access to all students," and that the "design of the academies" and the admittance standards
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27 ⁸<https://www.facebook.com/kristinpt/videos/1721160994617089/> (Last visited [DATE]); and
28 <https://www.newsmakerswithjr.com/single-post/2018/04/10/Cary-in-the-Lions-Den-School-Supe-at-SMHS> (Last visited on May 21, 2018).

1 created inequitable access to the academies.⁹

2 49. Behrens was never notified of such allegations and was never given the opportunity
3 to respond to such charges. No criticisms of racial inequity in SMHS program admittance
4 procedures have ever appeared in his personnel file.

5 50. In an email to multiple SMHS parents on or around March 14, 2018, Board President
6 Reid defended her controversial vote by implying that Behrens displayed a bias towards certain
7 portions of the student body, stating: “I ran for school Board because I truly believe in the
8 importance of ensuring that ALL students have access to the curriculum and the ability to achieve
9 educational success.” (Attached hereto as **Exhibit G** is a true copy of the email sent from Reid on
10 March 14, 2018.) Behrens is informed and believes that, on April 9, 2018, Reid met with a
11 concerned parent and stated there was some reason for the demotion that she could not disclose but
12 that was not reflected in Behrens’ personnel file.

13 51. In the April 24, 2018 “Newsmakers” interview, Matsuoka further attacked Behrens’
14 reputation and made false statements charging serious misconduct in connection to the threat
15 incident and resulting in his demotion.

16 52. Specifically, when asked about Behrens’ demotion and the handling of the chat room
17 incident, Matsuoka stated Behrens failed to timely notify the District: “My cabinet team was not
18 informed until Tuesday January 23rd, Late afternoon [sic] when my cabinet team started to become
19 aware of the depth of the incident.”¹⁰ Matsuoka continued his false statements to paint Behrens as
20 the scapegoat for the community frustration surrounding the online threat communication, stating the
21 District could not “support, investigate, help with communication and get the word out” about the
22 threat because “there was a four-day delay in my cabinet team being informed.”¹¹

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24 _____
25 ⁹[https://www.newsmakerswithjr.com/single-post/2018/04/24/One-on-One-with-Superintendent-](https://www.newsmakerswithjr.com/single-post/2018/04/24/One-on-One-with-Superintendent-Matsuoka-Parents-Have-It-Wrong-on-Principal-Canning)
26 [Matsuoka-Parents-Have-It-Wrong-on-Principal-Canning](https://www.newsmakerswithjr.com/single-post/2018/04/24/One-on-One-with-Superintendent-Matsuoka-Parents-Have-It-Wrong-on-Principal-Canning) (Last visited on May 21, 2018)

27 ¹⁰ See fn. 9, supra.

28 ¹¹ Id.

1 53. Matsuoka blamed Behrens for failing to assess the threat properly, leading to parent
2 outrage:

3 *“If we had been informed on Friday, we could have just done the threat assessment*
4 *together. School administration, superintendent and cabinet. And we probably would*
5 *have realized, this thing’s going to escalate really fast... it would have been better if*
we had gotten to [the affected students] first.”¹²

6 54. Matsuoka’s harmful statements about Behrens’ handling of the threat incident are
7 patently false. Matsuoka was well-aware that his statements were false: SMHS administration
8 notified Wageneck within one hour of hearing of the online threat, as confirmed in the District-
9 drafted LOR, and Wageneck instructed SMHS staff on a plan of action with regards to
10 communication and discipline. The District’s own written statement in the LOR describing
11 Wageneck’s update request on Monday, January 22 sharply discredits Matsuoka’s statement that
12 “his cabinet” was not made aware until late afternoon on Tuesday, January 23.

13 55. These statements explicitly describe serious misconduct on the part of Behrens and
14 his staff with regards to the potential violent threat aimed at District students, a subject of obvious
15 community concern. Matsuoka was embarrassed that details of the threat were made public, thereby
16 alerting the public to the District’s failure to prepare for such an online threat. Petitioner is informed
17 and believes that, immediately following the February 7, 2018 community meeting where parents,
18 angered by the threat video, voiced their distrust of District management and policies, Matsuoka
19 began his campaign to retaliate against Behrens and deflect community outrage onto him.

20 56. Indeed, SMHS parents were angered at the District’s failure to notify the public of the
21 identities of the boys involved and the consequences imposed on each of them, and Matsuoka
22 manipulated the timeline of events to wash his hands of all communication decisions and implicate
23 Behrens as the scapegoat.

24 57. These statements and conduct constitute evidence of the retaliatory nature of the
25 demotion. Such false charges are stigmatizing and damaging to Behrens’ professional reputation,
26 harming his ability to procure future employment in his chosen profession.

27 _____
28 ¹² Id.

1 58. In demoting Behrens, the District violated his rights under the Education Code and
2 District regulations, as well as his liberty interest in seeking future employment in his chosen
3 profession. Matsuoka, Board members and other District employees justified the controversial
4 decision by attacking Behrens' reputation, knowingly putting forth false charges of misconduct and
5 alluding to racial bias and other, undisclosed misconduct. Behrens has suffered humiliation and
6 deep reputational harm as a result of the due process violations. Petitioner now requests this Court
7 grant this Petition for Reinstatement and rectify these violations and the harm caused by
8 Respondent's actions.

9
10 **ARGUMENT IN SUPPORT OF PETITION FOR WRIT ON INFORMATION AND BELIEF**

11 **A. This Court Should Grant This Petition and Order Reinstatement of Petitioner**
12 **Because Petitioner Was Prejudiced by Violations of Rights Afforded Under the**
13 **Education Code and District Administrative Regulations Which Severely Tainted**
14 **the Demotion Decision**

15 59. In California, school administrators are at-will and serve at the pleasure of the
16 governing board. *Quirk v. Board of Education of Moorpark Unified School District* (1988) 199
17 Cal.App.3d 729; *Anaclerio v. Skinner*, (1976) 64 Cal. App. 3d 194. However, a reassignment or
18 termination may not be unreasonable or arbitrary, and the legislature provides protections to
19 minimize the risk of arbitrary or prejudicial employment decisions. *Miller v. Chico Unified School*
20 *Dist.*, (1979) 24 Cal.3d 703, 718.

21 60. Section 44031 expressly states derogatory information "shall not be entered into an
22 employee's personnel records unless and until the employee is given notice and an opportunity to
23 review and comment on that information." Section 44031 (b)(1). Section 44031 also prohibits the
24 District from withholding any additional, outstanding derogatory allegations or information. *Id.*; See
25 *Miller, supra*, 24 Cal.3d at 712, stating the school district may not "insulate itself by simply
26 neglecting to file material which the statute contemplates will be brought to the employee's notice";
27 see also, e.g., *Dougherty v. Cortez* (9th Cir. 2011) 446 Fed. Appx. 877, 879, stating Section 44031
28 "create[s] a property interest to the extent of allowing a rebuttal letter to be placed in a personnel file
alongside any derogatory information."

1 61. A certificated employee should be reinstated if (1) the District violated Section 44031
2 and (2) the violation prejudiced the employee in the resulting employment decision. *Miller, supra*,
3 24 Cal.3d at 713. In *Miller*, a junior high school principal with a generally positive evaluation
4 history was demoted to a teaching position based on a derogatory memorandum that was compiled
5 by the superintendent and submitted to the school board, but only shown to the employee for the first
6 time after the reassignment was finalized. *Id.* at 708-710. The Supreme Court ruled that the district
7 violated the principal’s rights afforded under Section 44031, but that reinstatement was only proper
8 if the Board relied on the memorandum, thereby prejudicing the principal. *Id.* at 715-16. The case
9 was remanded to make this determination.

10 62. In addition, District regulations provide protections beyond those in the California
11 Code. District regulations mandate that when the demotion or termination of a certificated
12 administrator is proposed, the District shall provide “timely access to any materials on which the
13 proposed action is based,” and “the right to respond either orally or in writing to the proposed
14 action.” AR 4313.2, subheading ‘Due Process.’

15 63. The District has argued that a school board is free to transfer an administrator without
16 cause or evaluation, for any reason satisfactory to the appointing authority without a hearing.
17 However, this analysis falls short by failing to account for protections against unreasonable and
18 arbitrary personnel action set forth in the Education Code and the District’s own regulations. The
19 District’s right to reassign Behrens for any reason does not permit it to withhold those reasons. The
20 District *must* notify Behrens of *all* material on which the demotion is based, as well as any
21 derogatory material to be placed in the personnel file, and they *must* afford Behrens a meaningful
22 opportunity to respond. Section 44031; AR 4313.2.

23 ***i. Respondent Violated Section 44031 and AR 4313.2 By Placing the LOR in***
24 ***Petitioner’s Personnel File and By Relying on Undisclosed Information and/or***
25 ***Materials Without Granting Petitioner a Meaningful Opportunity to Respond***

26 64. A mere two days after a community meeting where Matsuoka was embarrassed by
27 District’s failures and the community fallout after the online threat incident, Behrens received the
28 highly derogatory LOR on February 7, 2018 blaming him despite the District’s lack of
communication protocol. Behrens drafted a lengthy, point-by-point response addressing several

1 inaccuracies and inappropriate criticisms contained within and submitted the response to the District
2 on February 19, 2018. While Behrens submitted a response, it was summarily ignored, and it was
3 not attached to the LOR as mandated by Section 44031. To this day, the response does not appear in
4 Behrens' file. The LOR, however, was immediately placed in the file.

5 65. Matsuoka *never* intended to afford Behrens' an opportunity to respond: the February
6 5, 2018 LOR granted Behrens ten days to respond, but Matsuoka prepared the Notice on February
7 12, 2018 - only *five* days following the LOR. Matsuoka then trumped up an excessively negative
8 evaluation ten days later to justify the demotion decision. Matsuoka predetermined Behrens' fate,
9 and paid only lip-service to Behrens' right to respond to serious misconduct allegations, a violation
10 of Section 44031. See e.g., *Poole v. Orange County Fire Authority*, (2013) 221 Cal.App.4th 155,
11 164-65, applying *Miller* to a similar statute protecting firefighters and finding that a public employee
12 must be given a *meaningful* opportunity to respond to adverse comments that will affect personnel
13 decisions concerning the employee.

14 66. In addition, following the closed-session Board meeting on March 13, 2018, District
15 personnel stated that the decision was based on information and/or misconduct that is *not* reflected in
16 Behrens' personnel file. Essentially, District personnel implied it was racial inequity related to
17 Behrens' academics that led to the demotion. These comments directly contradict any notice of
18 reasons or materials provided to Behrens. No criticisms of racial disparity in the academy
19 admittance process appear in his personnel file. To the contrary, student performance statistics and
20 each prior evaluation and improvement plan indicate success. The SOR, however, expressly states
21 that Matsuoka did not rely "on any materials not contained in [the] personnel file."

22 67. The LOR was pretextual and highly prejudicial, and Behrens was not given a
23 meaningful opportunity to respond. The failure to consider Behrens' response or to enter it into his
24 personnel file is a clear violation of Section 44031 and should result in reinstatement. See e.g.
25 *Kempland v. Regents of Univ. of Cal.*, (1984) 155 Cal. App. 3d 644, 649-650, nullifying a dismissal
26 when the employer "went through the motions" with regards to procedures, failed to consider the
27 employee's written response to derogatory allegations, and finalized the dismissal decision prior to
28 the employee's response. In addition, the District's reliance on undisclosed material violated AR

1 4313.2 and rendered Behrens' March 13 address to the Board wholly ineffectual as no meaningful
2 response was possible. These violations severely prejudiced Behrens' attempt to defend his position.
3 The demotion therefore was unlawful, and he should be reinstated.

4 ***ii. The False Statement of Reasons Given to Behrens Violated Educ. Code § 44896***
5 ***and Due Process Rights Guaranteed Under AR 4313.2***

6 68. When a certificated employee is to be released or reassigned to a teaching position,
7 the District is required to give, upon the employee's request, a written statement of the reasons for
8 the action. Ed. C. § 44896; AR 4313.2. The employee is entitled to a truthful and complete
9 statement of reasons on which the demotion is based; "to hold otherwise would render meaningless
10 the statutory requirement." *Grant v. Adams* (1977) 69 Cal.App.3d 127, 137-38.

11 69. The SOR given to Behrens on March 7, 2018 is false. Matsuoka explicitly stated he
12 did not rely "on any materials not contained in [the] personnel file," and that his recommendation
13 was "not based on any single or chain of events, but rather stems from an examination of many
14 factors pertaining to [Behrens'] leadership over a substantial period."

15 70. However, several facts and Matsuoka's own statements following the demotion belie
16 the SOR. First, Behrens' personnel file contains largely positive reviews and standard
17 recommendations for improvement throughout his career as principal at SMHS. However,
18 immediately following the online incident and the ensuing community frustration, Behrens received
19 the highly critical LOR, and Matsuoka made the decision to demote on February 12, 2018 - a mere
20 five days later. At that time, the positive June 2017 evaluation and the negative LOR were the most
21 recent entries in the file. Either Matsuoka based his decision on the single or chain of events
22 described in the LOR, or he relied on information not contained in the personnel file.

23 71. Second, Matsuoka charged Behrens with serious wrongdoing in subsequent
24 statements. When asked about the demotion and the threat incident fallout in the April 24, 2018
25 interview, Matsuoka falsely stated that Behrens and his staff failed to notify his cabinet of the threat
26 incident until late afternoon on Tuesday, January 23, 2018, when his cabinet was actually notified on
27 Friday, by Behrens' staff, within an hour of hearing of the threat. Matsuoka further blamed the
28 community frustration on Behrens' failure to properly assess the threat level and to follow District

1 communication plans, though none existed at the time. Given the timing and details surrounding the
2 demotion, Matsuoka's subsequent comments are direct evidence that the decision was based, at least
3 in part, on the single threat event.

4 72. Finally, Matsuoka and several Board members have made comments indicating the
5 decision was made for reasons not stated in the SOR. Specifically, District employees have made
6 numerous comments implying that Behrens and his programs suffer from a racial bias, although no
7 such reasons were provided in the LOR. Again, these statements directly evidence violations of
8 Behrens' rights guaranteed under the Education code and District regulations.

9 73. Petitioner anticipates that the District will advocate that the only remedy for
10 noncompliance with Section 44896 is a demand for a new and accurate statement of reasons. This
11 argument fails to consider the District's own regulations. AR 4313.2 guarantees "Due Process"
12 rights above and beyond those in the Education code. Prior to a final decision, a certificated
13 employee is guaranteed "timely access to any materials on which the *proposed* action is based," as
14 well as the right to respond to the proposed action. (emphasis added.) In order to "respond to the
15 proposed action," a statement of reasons and provision of materials under AR 4313.2 must provide
16 adequate notice of the allegations and pending action against Behrens. Otherwise, any opportunity to
17 respond is meaningless. *Kempland v. Regents of Univ. of Cal.*, *supra*, 155 Cal. App. 3d at 649-650;
18 *Poole*, *supra*, 221 Cal. App. 4th at 165.

19 74. Substantial evidence indicates that Behrens was given a false SOR that failed to
20 adequately notify Behrens of the allegations against him. Matsuoka maliciously misled him with
21 regards to the reasons and materials on which the decision was based rendering any defense of his
22 position utterly meaningless. The false SOR violated Behrens' due process rights guaranteed under
23 AR 4313.2. Accordingly, this Court should grant this petition seeking reinstatement.

24 ***iii. Behrens Demotion is Unlawful Because He Was Severely Prejudiced by the***
25 ***Respondent's Violations of Section 44031 and the Due Process Rights Guaranteed***
Under AR 4313.2

26 75. The District's violation of Behrens' Section 44031 and AR 4313.2 rights rendered
27 Behrens' March 13, 2018 rebuttal entirely futile; had Behrens been made aware of the true reasons
28 for his demotions or the existence and substance of any outstanding derogatory information, he

1 could have contradicted any inaccurate information and/or explained any misconceptions. *Miller*,
2 *supra*, 24 Cal.3d at 712-13. Derogatory and damaging charges of racial disparity in the admittance
3 procedures of SMHS academies do not appear in his personnel file. Were Behrens notified that his
4 demotion was based on such charges, he most certainly would have presented a zealous defense.

5 76. The SOR was maliciously misleading, precluding any opportunity to address the
6 charges against him. Behrens was forced to speculate about what led to his demotion. During his
7 March 13, 2018 address to the Board, he spent considerable time and energy focusing on
8 information contained in the personnel file and on the known (albeit vague) charges put forth in the
9 false SOR. Even if Behrens assumed the threat incident fallout factored into the decision, he
10 reasonably assumed his February 19, 2018 written response to the LOR had been presented to the
11 Board as mandated by Section 44031 and AR 4313.2.

12 77. The denial of Behrens' right to counter the damning charges in the LOR and the
13 District's reliance on material not given to Behrens or placed in his personnel file severely
14 prejudiced the demotion decision. Indeed, had Behrens been afforded a meaningful opportunity to
15 address the charges against him, he could have rebutted the charges, as even the District's Wageneck
16 affirmed, in an interview with Santa Barbara KEYT on January 25, 2018, that SMHS administrators
17 acted appropriately,¹³ and Assistant Principal McCormick also has confirmed Behrens' timeline of
18 events.

19 78. Behrens was prejudiced by the District's violations of his rights under Section 44031
20 and AR 4313.2. Accordingly, Behrens demotion was unreasonable and arbitrary, and he therefore
21 should be reinstated. *Miller, supra* 24 Cal.3d at 715-16; see also *Poole, supra*, 221 Cal. App. 4th at
22 165, stating adverse personnel actions are unreasonable unless the employee has an opportunity to
23 respond to the derogatory comments upon which the action as based. This Court should grant this
24 petition and Behrens should be reinstated.

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27
28 ¹³<http://www.keyt.com/news/san-marcos-parents-react-to-violent-social-media-video-1/690857959>
(Last visited on May 21, 2018)

1 **B. The Demotion is Void Because Respondent Violated Behrens’ *Liberty* Interest in**
2 **Future Employment Requiring Due Process**

3 79. The requirements of procedural due process apply to the deprivation of interests
4 encompassed by the Fourteenth Amendment's protection of liberty and property. *Board of Regents*
5 *v. Roth*, (1972) 408 U.S. 564, 569-70. “The right ... to follow a chosen profession free from
6 unreasonable governmental interference comes within the ‘liberty’ and ‘property’ concepts of the
7 Fifth Amendment.” *Greene v. McElroy* (1959) 360 U.S. 474, 492. Everything done in violation of a
8 constitutional provision is void. *Katzberg v. Regents of University of California*, (2002) 29 Cal.4th
9 300.

10 80. A dismissal that effectively precludes future work in the individual's chosen
11 profession violates that person’s liberty interest protected by the Due Process Clause. *Braswell v.*
12 *Shoreline Fire Dept.*, (9th Cir. 2010) 622 F.3d 1099, 1102–1103. Accordingly, the California
13 Supreme Court has adopted the rule that even when a public employee is at-will, that “employee's
14 liberty interests are deprived when his discharge is accompanied by charges that might seriously
15 damage his standing and associations in his community or impose on him a stigma or other disability
16 that forecloses his freedom to take advantage of other employment opportunities.” *Katzberg* 29
17 Cal.4th at 304-05; citing *Roth* 408 U.S. at 573. When such a liberty deprivation occurs, a party has a
18 right to a “name-clearing hearing.” *Id.* See *Codd v. Velger* (1977) 429 U.S. 624, 627.

19 81. In *Lubey v. City and County of S.F.*, (1979) 98 Cal. App. 3d 340, the dismissal of
20 nontenured probationary police officers was set aside because vague charges of “misconduct” were
21 levied against the officers without “notice and opportunity for hearing appropriate to the nature of
22 the case,” or opportunity to refute the charges or to clear their names. The court reasoned that a
23 charge of misconduct stigmatized their reputations, their chances of future employment in their
24 chosen field and elsewhere were “seriously impaired,” and their standing in the community was
25 “seriously damaged.” *Id.* at 347. To trigger liberty interest due process protections, reasons for
26 dismissal must be made public. *Murden v. County of Sacramento*, (1984) 160 Cal.App.3d 302.

27 82. Following Behrens’ demotion from his position as SMHS principal on March 13,
28 2018, the District has engaged in an ongoing campaign to justify the controversial decision by

1 attacking Behrens' reputation and alleging he committed misconduct. Board members have
2 indicated on several occasions that reasons for the demotion include evidence of misconduct and/or
3 derogatory information not contained in the personnel file.

4 83. In addition, Matsuoka made several statements in the April 24, 2018 interview,
5 charging Behrens with serious misconduct and violations of District protocol with regard to the
6 threat incident. District personnel comments have humiliated Behrens, are highly stigmatizing, and
7 will negatively impact Behrens' prospects for future employment in his chosen profession.

8 84. A public-school administration position is of high public interest and a court can
9 realistically assume that future, potential employers in public education will investigate Behrens'
10 background to discover the reasons for his demotion. See *Murden, supra*, 160 Cal.App.3d at 309. It
11 is highly doubtful another public-school district would hire Behrens given the publicized statements
12 made by District representatives. *Id.*

13 85. *Grant v. Adams* denied a claim by a principal that his liberty interests were violated
14 by a false statement of reasons. 69 Cal.App.3d at 163. There, however, the court noted that a
15 reassigned employee had a lowered liberty interest than one who is terminated, and therefore a
16 demotion based on "reduction in administrative staff" did not sufficiently stigmatize or damage the
17 principal's reputation. *Id.* In stark contrast, Behrens, though also reassigned to a class room
18 position, has suffered substantial and undeniable damage to his reputation and community standing.
19 Charges of misconduct related to a threat incident and of racial inequity are considerably more
20 damning than financial downsizing. Given that the demotion occurred immediately in the wake of
21 the online threat incident and ensuing community outrage, the timing alone raises the specter of
22 serious misconduct, harming Behrens' reputation and community standing. See *Murden, supra*, 160
23 Cal.App.3d at 309.

24 86. Behrens' liberty interest was implicated by the charges made in connection with his
25 loss of employment; the District's stigmatizing statements made following the demotion is direct
26 evidence that the adverse employment action unlawfully violated Behrens' right of due process. He
27 therefore was entitled to an opportunity to refute the charges and clear his name. *Katzenberg*, 29
28 Cal.4th at 305. As noted above, Matsuoka's false SOR and failure to afford Behrens a meaningful

1 response to misconduct charges made any attempt to defend his position and clear his name futile.
2 In fact, Behrens did not learn of many of the harmful charges against until they surfaced after the
3 demotion decision was final. Behrens' demotion was done in violation of his due process rights, and
4 accordingly, the demotion is void. *Id.*

5 FIRST CAUSE OF ACTION

6 (Writ of Mandate – C.C.P. § 1085)

7 87. Petitioner realleges and incorporates by reference all of the allegations contained in
8 the paragraphs above, inclusive, as though fully set forth herein.

9 88. California Education Code § 44031(b)(1) provides:

10 “Information of a derogatory nature shall not be entered into an employee’s personnel
11 records unless and until the employee is given notice and an opportunity to review and
12 comment on that information. The employee shall have the right to enter, and have attached
13 to any derogatory statement, his or her own comments.”

14 89. District regulation AR 4313.2 ‘**Due Process**’ provides, in relevant part:

15 “When taking action to demote a certificated administrator ..., the school district shall
16 provide the employee with all of the following: 1. Timely notice of the proposed action,
17 pursuant to Education Code 44951, and a **statement of the specific reasons for the action;**
18 **2. Timely access to any materials on which the proposed action is based;** 3. **The right to**
19 **respond either orally or in writing to the proposed action.** (emphasis added).

20 90. Respondent has a clear, ministerial duty under California Education § 44031 District
21 AR 4313.2 to, inter alia, notify Behrens of all derogatory allegations against him and afford him a
22 meaningful opportunity to respond, to attach the response to the derogatory document in his
23 personnel file, and to apprise Behrens of all reasons and materials upon which the demotion decision
24 was based along with a meaningful opportunity to respond. The District failed to do so. Such
25 violations prejudiced the demotion decision, rendering the decision unreasonable and void.

26 91. The District’s violations cannot be rectified by a mere provision of a new, truthful
27 statement of reasons. Following the demotion, Respondent harmed Behrens’ reputation by publicly
28 stating that the demotion resulted from serious misconduct related to student safety and racial equity.
Such allegations are of dire community concern and therefore negatively affect Behrens’ community
associations and harm his prospects for future employment in his chosen profession. The demotion

1 violated Behrens' liberty interests protected by due process guarantees. The false statement of
2 reasons maliciously misled Behrens, precluding any meaningful opportunity to clear his name. The
3 District humiliated Behrens, forcing him to publicly defend his long, laudable career without
4 notifying him of the reasons for the demotion. The District predetermined Behrens' fate and never
5 intended to grant him a fair hearing. The demotion is unreasonable and therefore void.

6 92. Behrens has a beneficial interest in the issuance of a Writ of Mandate, apart from that
7 of the public at large, in that if this Petition is granted, Behrens will be afforded the rights guaranteed
8 to him by the protections of due process, the California Education Code, and District regulations.
9 Violations of these provisions include and require, inter alia, that he be reinstated to the position of
10 principal of SMHS.

11 93. Behrens does not have a plain, speedy, and adequate remedy at law. Behrens is
12 informed and believes that there are no available legal procedures to redress the harm that he will
13 suffer if his requested relief is denied. While Behrens is including with this Writ Petition a separate
14 Complaint for Damages, that Complaint may take years to come to jury trial, and it does not afford a
15 plain, speedy, and efficient remedy to force Respondent to reverse its conduct in this matter that
16 violated Behrens' due process rights and those afforded under the Education Code and District
17 regulations. Only Writ relief can promptly require Respondent to reverse its illegal March 13, 2018
18 demotion and reinstate Behrens to his position.

19 **SECOND CAUSE OF ACTION**

20 **(Violation of Constitutional Rights, Due Process - 42 U.S.C. § 1983)**

21 94. Plaintiff realleges and incorporates by reference all of the allegations contained in the
22 paragraphs above, inclusive, as though fully set forth herein.

23 95. 42 U.S.C. § 1983 *et. seq.* (hereinafter, "Section 1983") provides:

24 "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any
25 State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen
26 of the United States or other person within the jurisdiction thereof to the deprivation of any
27 rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the
28 party injured in an action at law, suit in equity, or other proper proceeding for redress, except
that in any action brought against a judicial officer for an act or omission taken in such
officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree
was violated or declaratory relief was unavailable. For the purposes of this section, any Act
of Congress applicable exclusively to the District of Columbia shall be considered to be a

1 statute of the District of Columbia.”

2 96. State courts exercise concurrent jurisdiction with federal district courts over cases
3 arising under Section 1983. See *Haywood v. Drown*, (2009) 556 U.S. 729, 731; *Patsy v. Board of*
4 *Regents of Florida*, (1982) 457 U.S. 496, 506-07; *Maine v. Thiboutot*, (1980) 448 U.S. 1, 3 n.1.

5 97. Behrens has a constitutionally protected right to follow his chosen profession of high
6 school administrator free from unreasonable governmental interference. Behrens’ demotion
7 damaged his standing and associations in the community and imposed on him a stigma that
8 forecloses his freedom to take advantage of other employment opportunities. Such an adverse
9 employment action violates Behrens’ liberty interest protected by the due process clause.

10 98. Defendant, acting under the color of California law, deprived Behrens of his liberty
11 interest without due process in violation of the Fourteenth Amendment of the United States
12 Constitution, California Constitution, Article I, Sec. 7, California Education Code § 44031, and
13 District AR 4313.2.

14 99. Defendant approved Behrens’ demotion from principal of SMHS to junior high
15 school social studies teacher on March 13, 2018. This demotion entails a loss of certain benefits and
16 a salary decrease of over \$50,000 per year.

17 100. Following the demotion, Defendant engaged in an ongoing public campaign to justify
18 the controversial decision by attacking Behrens’ reputation and alleging gross misconduct and racial
19 bias. Defendant subjected Behrens to an adverse employment action in violation of his due process
20 rights, as he was not afforded sufficient notice or a name-clearing hearing regarding these
21 allegations.

22 101. Defendant failed to consider the liberty right Behrens had in his professional
23 reputation cultivated through an over twenty-year career at SMHS and widespread community
24 engagement. Behrens has endured unwarranted and meritless criticism, public humiliation and
25 reputational harm stemming from the Defendant’s retaliatory demotion and subsequent allegations.
26 In demoting Behrens, Defendant has caused substantial harm to his reputation and negatively
27 affected his prospects for future employment in his chosen profession without affording him notice
28 or a meaningful opportunity to clear his name.

102. As a result of Defendant's violation of his due process rights, Behrens has suffered an adverse employment action that will entail lost wages and other employment benefits, and reputational harm resulting in severe emotional and physical distress, the exact amount of which will be proven at trial.

103. Defendant's conduct was committed with any one or more of oppression, fraud, or malice with the willful, wanton intention of depriving Behrens of property or legal rights or otherwise causing injury or was despicable conduct that subjected Behrens to hardship in conscious disregard of Behrens' rights, or in reckless disregard of Behrens' rights, so as to justify an award of exemplary and punitive damages.

THIRD CAUSE OF ACTION

(Unlawful Retaliation in Violation of California Labor Code § 1102.5(c))

104. Plaintiff realleges and incorporates by reference all of the allegations contained in the paragraphs above, inclusive, as though fully set forth herein.

105. California Labor Code § 1102.5 prohibits any adverse employment action in retaliation “against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.” Lab. Code § 1102.5 (c).

106. FERPA states, in relevant part, that no educational agency or institution may maintain a “policy or practice of permitting the release of education records (or personally identifiable information contained therein...) without the written consent of their parents to any individual, agency, or organization.” 20 U.S.C. 1232g (b)(1); see also California Welfare and Institutions Code § 827; and District AR 5125.

107. The District is an employer for the purposes of California Labor Code § 1102. At the time of the events described herein, the District employed Behrens as a certificated administrator at SMHS.

108. Behrens refused publicly to identify SMHS students suspected of participating in the chat, or to disclose the consequences imposed on those students, despite threats by several SMHS parents, which resulted in the release of a threatening student-made video.

1 109. Behrens had reasonable cause to believe that preventing the video release and
2 subsequent community outrage was only possible if he violated student privacy provisions of
3 FERPA, as well as California Code and District regulations.

4 110. Defendant demoted Behrens, principal of SMHS with an over twenty-year career at
5 the school, to junior high school social studies teacher, in large part due to the fact that Behrens
6 protected the District from committing violations of FERPA.

7 111. Behrens' refusal to violate applicable laws and regulations was a substantial
8 motivating factor in the retaliation. Matsuoka issued the LOR only two days following the
9 community meeting where community members expressed outrage provoked by the video release,
10 and he prepared the Notice of reassignment only five days later. In the LOR, Matsuoka admonished
11 Behrens because "details of the disturbing incident went viral in a way that was beyond the control
12 of District staff." The causal link is established by "inference derived from circumstantial evidence,
13 such as the employer's knowledge that the employee engaged in protected activities and the
14 proximity in time between the protected action and allegedly retaliatory employment decision."
15 *Morgan v. Regents of University of CA* (2000) 105 Cal.App.4th 52, 69-70 (internal quotations
16 omitted).

17 112. Because of Defendant's retaliatory actions against him, Behrens suffered a demotion
18 which entails lost wages and other employment benefits, and reputational harm resulting in severe
19 emotional and physical distress, the exact amount of which will be proven at trial.

20 113. Defendant's retaliatory conduct was committed with any one or more of oppression,
21 fraud, or malice with the intention of depriving Behrens of property or legal rights or otherwise
22 causing injury or was despicable conduct that subjected Behrens to hardship in conscious disregard
23 of Behrens' rights, or in reckless disregard of Behrens' rights, so as to justify an award of exemplary
24 and punitive damages.

25 ///

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PRAYER FOR RELIEF

Wherefore:

Petitioner prays for judgment as follows on the First Cause of Action:

1. For a Writ of Mandate to be issued pursuant to Code of Civil Procedure § 1085, ordering District to reverse its March 13, 2018 demotion of Behrens, reinstate him to his position of principal of SMHS, and pay to him any back pay and/or benefits lost as a result of that demotion.

2. In the alternative, that an alternative Writ of Mandate be issued pursuant to Code of Civil Procedure § 1087, ordering Respondent to show cause why Petitioner's requested Writ of Mandate should not issue.

3. For an award of attorney's fees under any provision of statutory or common law that allows for such an award, including but not limited to California Government Code § 800.

Plaintiff prays for judgment as follows on the Second and Third Causes of Action:

1. For compensatory damages in an amount according to proof.

2. For punitive and exemplary damages in an amount according to proof.

On All Causes of Action:

1. For an award of interest and costs of suit to the extent permitted by law.

2. For an award of Attorney's Fees under any provision of statutory or common law that allows for such an award, including but not limited to California Government Code § 800 and Code of Civil Procedure § 1021.5, and 42 U.S.C. § 1988.

3. For such other and further relief as the Court deems just and proper.

DATED: May 21, 2018

CAPPELLO & NOËL LLP

By: 

Leila J. Noël
Ian A. Schaeffer

Attorneys for Plaintiff

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VERIFICATION

I, Edward Behrens, the undersigned, state:

I am the Petitioner and Plaintiff in the foregoing lawsuit. I have read the above Verified Petition for Writ of Mandate (C.C.P. § 1085) for Violation of Rights Under Cal. Educ. Code, SBUSD Regulations, and Due Process and the combined Complaint for Damages for Violation of Constitutional Rights, Due Process – 42 U.S.C. § 1983 and Unlawful Retaliation in Violation of California Labor Code § 1102.5(c) and I am familiar with its contents. I am informed and believe that the matters stated therein are true and on that basis verify that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification is executed on May 21, 2018 in Santa Barbara, California.

By: 

EDWARD BEHRENS

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EXHIBIT A

(To Be Separately Filed Under Seal)

EXHIBIT B

(To Be Separately Filed Under Seal)

EXHIBIT C

(To Be Separately Filed Under Seal)

EXHIBIT D

(To Be Separately Filed Under Seal)

EXHIBIT E

(To Be Separately Filed Under Seal)

EXHIBIT F

(To Be Separately Filed Under Seal)

EXHIBIT G

From: Jackie Reid <jreid@sbunified.org>

Date: Wed, Mar 14, 2018 at 5:02 PM

Subject: Re: Request for a meeting

To: [REDACTED]

CC: <jreid@teachingfair.org>

Dear [REDACTED],

Thank you for your email. I respect and understand that you are upset with the outcome of the Board's decision last night. Honestly, I wish I could speak with you about this issue; however, it is a Personnel matter, and the SBUSD legal counsel has advised us as per Education Code and Policy, that we can not provide any information relational to this issue.

I ran for school board because I truly believe in the importance of ensuring that ALL students have access to the curriculum and the ability to achieve educational success as well as being empowered to reach their full potential as responsible, ethical, and productive citizens in this diverse world. I stand by my decision.

Best,
Jackie Reid