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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JOHN DOE, an Individual, Plaintiff, v. MILL VALLEY SCHOOL DISTRICT, Defendant.	Case No. CV0003896 **REAL PARTY IN INTEREST HOLLY McDEDE'S OPPOSITION TO PLAINTIFF/PETITIONER JOHN DOE'S MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE**
HOLLY McDEDE, Real Party in Interest.	Date: February 26, 2025 Time: 1:30 p.m. Dept.: H The Hon. Sheila S. Lichtblau

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I. INTRODUCTION

This case is about the people's constitutional right to disclosure of records relating to alleged misconduct of a former public-school employee. The public has a compelling interest in disclosure of misconduct records for such employees, who hold special positions of trust in the community and are charged with the care of its children.

John Doe resigned from the Mill Valley School District (the "District") during the District's investigation of his actions that it deems "well-founded and constitut[ed] 'boundary crossing or grooming behavior.'" Resp't's Opp'n Pet'r's Mot. Prelim. Inj. 10:2–3. Holly McDede, a freelance reporter, made a request for public records that covers documents about the District's investigation into Doe's conduct. The records at issue are subject to disclosure under the California Constitution and California Public Records Act (the "CPRA"). For employees such as Doe, it is settled law that any privacy interest in personnel records must yield to the people's right to disclosure of public records when: (1) the government imposes discipline for misconduct, (2) the government finds misconduct allegations to be true, or (3) the records relate to well-founded and substantial allegations of misconduct, as distinct from baseless or trivial allegations.

The undisputed misconduct at issue here is not baseless or trivial, but a substantial escalating pattern of inappropriate behavior that made staff and community members uncomfortable and jeopardized their health, and which Doe failed to correct, regardless of his supposedly innocent subjective intent. He admits to staring silently at a co-worker, touching two students, failing to use his mask consistently during the COVID-19 pandemic, and commenting about "sex in the booty hole" on a Zoom call. He fails to materially dispute additional incidents that involve berating students.

After the District said it would disclose certain records, Doe filed this action seeking to prevent disclosure. The Court issued a nonbinding preliminary injunction against disclosure to preserve the status quo and is now deciding whether to grant a writ of mandate that would permanently hide these records from public scrutiny. The Court should deny that request because nothing argued by Doe defeats the people's constitutional right to disclosure of public records that reflect discipline imposed on him, contain findings that he committed misconduct, or show

reasonable cause to believe he committed substantial misconduct. The public has a right to assess the records and the District's actions for itself; the law does not require blind trust in the District's official story or Doe's self-serving explanations of his disturbing behavior.

To adopt Doe's position that only allegations of "sexual" or "violent" conduct can be deemed substantial would lead to absurd and unacceptable consequences. Under Doe's theory, the people would have no right to disclosure of records that document well-founded allegations of conduct such as embezzling public funds or discriminating against students based on race or disability, to take only a few examples. The CPRA and California Constitution cannot be construed to condone such absurdity. This Court must instead follow controlling precedent that requires disclosure of all records showing reasonable cause to believe that any nontrivial misconduct occurred. On the undisputed facts, Doe's admitted misconduct was far from trivial, and therefore the Court should deny his motion and allow the District to release the public records at issue.

II. FACTS

John Doe was previously employed in the District; he resigned during an investigation into his conduct. Doe Decl. Supp. Pet'r's Mot. Jdg. ¶¶ 17, 20. On June 7, 2024, Holly McDede, working as a freelance reporter, sought public records from MVSD "related to any and all claims of misconduct against teachers or other school employees from 2014 to the date this request is fulfilled." McDede Decl. ¶ 2 & Ex. 1. On June 28, 2024, McDede updated the request to seek "public records related to claims of sexual harassment, sexual assault, or boundary crossing or grooming behavior made regarding teachers or other school employees" as well as "claims of sexual harassment, sexual assault, or grooming made to the California Commission on Teacher Credentialing." McDede Decl. ¶ 4 & Ex. 2.

On July 8, 2024, the District informed McDede that it interpreted her request as one for "records that satisfy the requirement that the information sought is both of a substantial nature and is well-founded." McDede Decl. ¶ 6 & Ex. 3. The District informed McDede that it had responsive records, which it would review and disclose, to the extent they were subject to disclosure, after sending notices to employees or former employees involved. *Id.* On August 23, 2024, the District

notified Doe regarding the option to oppose disclosure. Boyd Decl. Supp. Pet'r's Mot. Jdg. ¶ 4; *see Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250 (2012).

The records at issue have been lodged under seal, and therefore McDede must rely on Doe's characterization of the records and underlying incidents, which may be self-serving. Although he denies touching a student's thigh and engaging in "manspreading," Doe does not materially dispute the underlying facts of the following allegations against him:

- Staring at a female employee "by looking into her eyes and blinking silently for about 10 seconds" and, on the same day, blocking a doorway to the same female employee and another staff member by "standing in the middle of the kitchen doorway with one arm leaning on the door frame" and forcing them "to exit underneath his arm." Doe also "did not consistently wear his face mask indoors and while in close proximity to staff during the Covid-19 pandemic." These events led to "a Conference Summary memorandum which later became a written warning."
- "[T]ouching the braided hair of a female African-American student," resulting in "the directive that failure to address the conduct could result in a written warning."
- Walking down a hallway "with his arm around a male student's shoulder," again resulting in "the directive that failure to address the conduct could result in a written warning."
- Referring to "having sex in the booty hole" during a Zoom meeting, which led to a "Written Warning."
- Berating "students and a staff member by using a harsh and elevated tone of voice." Doe "resigned prior to learning of this complaint."

Pet'r's Mot. Jdg. 3–5. Doe was placed on administrative leave pending investigation of his actions and resigned during the investigation. *Id.* 6:4–5.

III. LEGAL STANDARD

The Court may issue a writ of mandate only to enforce a clear, unequivocal, and mandatory duty. *L.A. Waterkeeper v. State Water Res. Control Bd.*, 92 Cal. App. 5th 230, 265–66 (2023). The Court's order granting a preliminary injunction was issued to preserve the status quo

pending final decision on the merits and does not bind the Court in deciding this motion. *Bomberger v. McKelvey*, 35 Cal. 2d 607, 612 (1950); *Jomicra, Inc. v. Cal. Mobile Home Dealers Ass'n*, 12 Cal. App. 3d 396, 402 (1970).

IV. ARGUMENT

A. Access to Public Records is Guaranteed by the California Constitution.

"Openness in government is essential to the functioning of a democracy." *Int'l Fed'n of Pro. & Tech. Eng'rs, Local 21 v. Superior Ct.*, 42 Cal. 4th 319, 328 (2007) [hereinafter *Local 21*]. To that end, access to public records is a constitutional right in California. "The people have the right of access to information concerning the conduct of the people's business, and, therefore . . . the writings of public officials and agencies shall be open to public scrutiny. . . . In order to ensure public access to . . . the writings of public officials and agencies, . . . each local agency is hereby required to comply with the California Public Records Act." Cal. Const. art. I, § 3(b)(1), (7).

The CPRA reflects "legislative impatience with secrecy in government," for "secrecy is antithetical to a democratic system of 'government of the people, by the people [and] for the people.'" *San Gabriel Trib. v. Superior Ct.*, 143 Cal. App. 3d 762, 771–72 (1983) (alteration in original) (quoting Opinion No. 67-144, 53 Ops. Cal. Atty. Gen. 136, 143 (1970)). As the CPRA declares, "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Gov't Code § 7921.000.

The District is subject to the CPRA and must provide public records upon request unless it asserts and proves the records are exempt from disclosure. Gov't Code §§ 7920.510(d), 7920.525(a), 7922.000, 7922.530(a). It is undisputed that the documents McDede requested are public records, and the District is not seeking to prevent their disclosure in their entirety.

B. Doe Must Prove Disclosure of the Records at Issue is Prohibited by Law.

In bringing this action to preclude disclosure, Doe cannot merely contend the records at issue might qualify for an exemption under the CPRA. The CPRA's exemptions "are permissive, not mandatory" and thus "allow nondisclosure but do not prohibit disclosure." *Amgen Inc. v. Cal. Corr. Health Care Servs.*, 47 Cal. App. 5th 716, 732 (2020) (citation omitted); *see also* Gov't Code § 7921.500. The discretion to assert exemptions belongs to the District, not Doe, and the

District cannot be compelled to exercise discretion "in a particular manner." *Marken*, 202 Cal. App. 4th at 1266.

Because the District "has the discretion to invoke an exemption" and an injunction "cannot be used to control an exercise of discretion," Doe "must show disclosure is otherwise prohibited by law, that is, that the government agency *lacks* discretion to disclose" the records at issue. *Amgen*, 47 Cal. App. 5th at 732 (citations and internal quotation marks omitted). This case does not involve records that agencies may "have no discretion to disclose," such as "pupil records." *Marken*, 202 Cal. App. 4th at 1266 n.12. Student privacy laws do not prevent disclosure of records about staff misconduct. *BRV, Inc. v. Superior Ct.*, 143 Cal. App. 4th 742, 754–55 (2006). Doe asserts his own interest in privacy, which cannot defeat the people's right to disclosure of the records at issue in this case, for the reasons discussed below.

C. The People's Constitutional Right to Disclosure Can Outweigh any Privacy Interests Doe Might Possess.

Any privacy interests claimed by Doe cannot unconditionally preclude disclosure of the records at issue. Such privacy interests are not absolute. *Marken*, 202 Cal. App. 4th at 1271 ("[A]n '[i]nvasion of a privacy interest is not a violation of the state constitutional right to privacy if the invasion is justified by a competing interest.'") (quoting *Jacob B. v. County of Shasta*, 40 Cal. 4th 948, 961 (2007) ("The constitutional right to privacy has never been absolute; it is subject to a balancing of interests.")). The "strong public policy supporting transparency in government" that is "grounded in both the California Constitution and the CPRA" can "outweigh constitutional privacy interests" and require disclosure of public records. *Id*. (citations omitted).

The CPRA contains an exemption for "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Gov't Code § 7927.700. This exemption parallels the CPRA's catchall exemption, Gov't Code § 7922.000, and balances any privacy interests against the public's interest in disclosure. *Versaci v. Superior Ct.*, 127 Cal. App. 4th 805, 818 (2005); *Braun v. City of Taft*, 154 Cal. App. 3d 332, 345 (1984). To the extent the records at issue do not fall within the personnel files exemption, their disclosure cannot violate the constitutional right to privacy. *Marken*, 202 Cal. App. 4th at 1271 n.18. Under settled law, the

records at issue do not qualify for this exemption to the extent they merely document Doe's employment, reflect discipline imposed on him, contain findings that he committed misconduct, or relate to well-founded allegations of substantial misconduct against Doe, and therefore disclosure of such records cannot invade Doe's right to privacy.

D. Any Records Documenting Doe's Employment Must Be Disclosed.

To the extent any of the records at issue are unconnected to misconduct allegations and merely show the fact and duration of Doe's employment, his salary, and his professional background, as well as his name, their disclosure cannot invade any privacy rights. *Local 21*, 42 Cal. 4th at 333 (requiring disclosure of public employees' names and salaries due to "the strong public interest in knowing how the government spends its money"); *Eskaton Monterey Hosp. v. Myers*, 134 Cal. App. 3d 788, 794 (1982) (noting "information as to the education, training, experience, awards, previous positions and publications of [the employee]. . . . is routinely presented in both professional and social settings, is relatively innocuous and implicates no applicable privacy or public policy exemption").

E. The Public Is Entitled to Disclosure of Records Related to Complaints of Misconduct that the District Found True or Imposed Discipline to Remedy.

With respect to records relating to complaints about Doe, misconduct of public employees is "undoubtedly an issue of public interest." *See Collondrez v. City of Rio Vista*, 61 Cal. App. 5th 1039, 1050 (2021). The public has a compelling interest in disclosure of records that "shed light on the public agency's performance of its duty" to respond to such complaints, *Versaci*, 127 Cal. App. 4th at 820 (citation omitted), and show "whether the law is being properly applied or carried out in an evenhanded manner." *CBS, Inc. v. Block*, 42 Cal. 3d 646, 656 (1986). The right to transparency "safeguard[s] the accountability of government to the public." *Reg. Div. of Freedom Newspapers v. County of Orange*, 158 Cal. App. 3d 893, 901 (1984) (citation omitted).

California law is clear that "where the charges are found true, *or* discipline is imposed" on a public employee such as Doe, the relevant records must be disclosed. *Am. Fed'n of State, Cnty. & Mun. Emps. v. Regents of Univ. of Cal.*, 80 Cal. App. 3d 913, 918 (1978) [hereinafter *AFSCME*] (emphasis added). "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." *Id.* (citation and quotation marks omitted). Accordingly, if "the complaint has been upheld by the agency involved *or* discipline imposed, even if only a private reproval, it must be disclosed," regardless of the nature of the misconduct. *Marken*, 202 Cal. App. 4th at 1275 (citation omitted) (emphasis added).

Even if no formal discipline was imposed on Doe, discipline is not required to meet this standard. It is sufficient if charges are found true. Doe admits that the District found the complaint of inconsistent face mask usage true. Pet'r's Mot. Jdg. 4:7–8 ("The sole "findings" were inconsistent face mask usage and a directive to immediately improve effective communication and relationships due to the reported staff discomfort."). Without access to the records at issue, McDede cannot verify if the District found any of the other allegations to be true. Except for the thigh-touching and manspreading incidents, Doe does not dispute that the underlying events occurred. The Court is respectfully requested to review the records *in camera* to determine if the District found the other charges to be true and deny the writ of mandate as to records relating to inconsistent face mask usage.[1]

As for discipline, Doe admits he received "two written warnings." Pet'r's Mot. Jdg. 11:7–9. He also admits he received "a directive to immediately improve effective communication and relationships due to the reported staff discomfort," as to the silent accolades/doorway standing/face mask incidents and "directive[s] that failure to address the conduct could result in a written warning," as to the manspreading, hair touching, and shoulder-touching incidents. Pet'r's Mot. Jdg. 4:7–8, 4:18–19, 4:25–5:1, 5:7.

Doe contends that only a "reprimand," not a "warning," is sufficient to amount to "discipline" for purposes of disclosure, but the cases he cites are not controlling. Pet'r's Mot. Jdg. 11:10–17. The cases Doe cites do not arise "[w]ithin the meaning of *Marken*" or "under the CPRA," as he suggests, or even under the right to privacy. *Id.* Instead, these cases arise in the distinct context of public employment law, as to whether the government sufficiently justified

[1] The District "disputes [Doe's] claim that he was never disciplined for alleged misconduct. The facts show that Petitioner elected to resign . . . in response to the allegations against him." Resp't's Opp'n Mot. Prelim. Inj. 7.

adverse employment actions. *See Paratransit, Inc. v. Unemployment Ins. Appeals Bd.*, 59 Cal. 4th 551, 561 (2014) (noting that in the context of a claim for unemployment insurance, while "insubordination amounting to misconduct generally entails 'cumulative acts with prior reprimands or warnings, . . . a single act without prior reprimands or warnings can be insubordinate if the act is substantially detrimental to the employer's interest.") (cleaned up); *Woodland Joint Unified Sch. Dist. v. Comm'n on Pro. Competence*, 2 Cal. App. 4th 1429, 1455–56 (1992) (holding a teacher's conduct, which included insulting students, displaying insubordination to administrators, and bullying other teachers, rendered him unfit to teach and that he was aware such actions were wrongful even though he was not first "warned, reprimanded, or disciplined concerning his conduct"); *Catricala v. State Pers. Bd.*, 43 Cal. App. 3d 642, 647–48 (1974) (holding a demotion was an excessive punishment for first offense of misuing a sick day and noting "that the State Personnel Guide to Employee Discipline, . . . , suggests penalties for a first offense . . . of a 'warning' and a maximum of a 'letter of reprimand.'").

Nor do these cases expressly stand for the proposition that a "reprimand" is a form of discipline but a "warning" is not, even in the employment-law context. *See People v. Casper*, 33 Cal. 4th 38, 43 (2004) ("It is axiomatic that cases are not authority for propositions not considered."). Accordingly, those cases do not preclude a holding that the warnings and directives Doe received were sufficient "reproval" to require disclosure of public records. *See Marken*, 202 Cal. App. 4th at 1275. The Court is respectfully requested to deny the writ of mandate Doe seeks as to records relating to any incidents for which the District imposed discipline on him, as determined by the Court's in camera review.

F. The Public Is Entitled to Disclosure of Records that Contain Reasonable Grounds to Believe Doe Committed Substantial Misconduct.

In any event, while findings of misconduct and discipline are sufficient to require disclosure, they are not necessary. Although "there is a strong policy for disclosure of true charges," the relevant "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." *Bakersfield City Sch. Dist. v. Superior Ct.*, 118 Cal. App. 4th 1041,

1045 (2004). As the Court of Appeal held, even in the absence of discipline or findings of truth, "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." *Id.* (citation omitted).

Therefore, if the records "reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded" and substantial, disclosure cannot be enjoined. *Id.* at 1047; *see also Marken*, 202 Cal. App. 4th at 1272 (holding that "a proper reconciliation between the right to information embodied in the CPRA and the constitutional right to privacy" upholds "the right of public access" when alleged misconduct is of "substantial nature" and "there is reasonable cause to believe the complaint to be well founded"). As the Court of Appeal recognized in *Bakersfield City School District*, "both trial and appellate courts, working with little or nothing more than written records, are ill-equipped to determine the veracity of the complaint." 118 Cal. App. 4th 1041 at 1047. As such, the "indicia of reliability" needed to support reasonable cause do not require certainty or strong proof. *See id*. The terms "reasonable cause" and "probable cause" are generally "synonymous." *Carroll v. State*, 217 Cal. App. 3d 134, 141 (1990). Therefore, this Court need only find there was probable cause to believe the incidents occurred.

That standard is met here. As noted above, Doe does not dispute the facts of most of the incidents at issue. Instead, he disputes only how to characterize them, but that goes to the question whether they are substantial allegations, not whether there is reasonable cause to believe the events in question occurred. Accordingly, those incidents are well founded in fact. The District has noted an additional indicator of reliability in that there "were a significant number of complaints brought forth against Doe from various community members, including staff, and parents of students." Resp't's Opp'n Pet'r's Mot. Prelim. Inj. 11:5–7. The Court may also consider the fact that Doe resigned during the investigation into his conduct to be an indicator of reliability. *See* Doe Decl. Supp. Pet'r's Mot. Jdg. ¶¶ 17, 20. The Court is respectfully requested to review the records *in camera* to verify reasonable cause to believe the disputed incidents occurred. *Bakersfield City Sch. Dist.*, 118 Cal. App. 4th at 1047 (holding courts "are required to examine the

documents presented to determine whether they reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded").

Doe is mistaken that only "allegations of sexual-type conduct, threats of violence, and violence" qualify as "substantial." *Associated Chino Tchrs. v. Chino Valley Unified Sch. Dist.*, 30 Cal. App. 5th 530, 543 (2018). Such conduct is sufficient to make allegations substantial, but it is not necessary. *Cf. Iloh v. Regents of Univ. of Cal.*, 87 Cal. App. 5th 513, 526–27 (2023) (ordering disclosure of records related to alleged plagiarism); *Doe v. Regents of Univ. of Cal.*, 102 Cal. App. 5th 766, 769–70, 777 (2024) (rejecting a preliminary injunction against disclosure in a reverse-CPRA case of a report that concluded University of California professors "engaged in improper governmental activities," violated conflict-of-interest laws, and retaliated against another faculty member); *AFSCME*, 80 Cal. App. 3d at 916, 918–19 (ordering disclosure of portions of an audit-investigation report of alleged financial misconduct by employees of the University of California at San Francisco); *Woodland Joint Unified Sch. Dist*, 2 Cal. App. 4th at 1434–35, 1456–57 (construing California Education Code section 44932 and holding that misconduct including insulting students, bullying other teachers, and displaying insubordination was substantial enough to dismiss a teacher for "evident unfitness for service" without prior warning).

To make an allegation "substantial," it is necessary only that it is not "baseless or trivial." *Bakersfield City Sch. Dist.*, 118 Cal. App. 4th at 1045. While Doe's behavior may not have been as egregious as the conduct at issue in *Marken* or *Bakersfield City School District*, it is far from "trivial." This is not a minor case about an employee borrowing a few office supplies for personal use or clocking in five minutes late.

On the undisputed facts, Doe's behavior involved an escalating series of intimidating or inappropriate actions. He admits that he stared at a colleague, in her office and without speaking, for about 10 seconds, and made her uncomfortable. Doe Decl. Supp. Pet'r's Mot. Jdg. ¶ 5. He admits that he failed to wear his face mask consistently during the COVID-19 pandemic, which jeopardized public health and the health of staff, students, and their families, and fails to materially dispute that he forced the same colleague he stared at to walk under his arm to exit a door. *Id.* ¶¶ 5–7. He admits to touching multiple students — one on the hair and another on the shoulder —

and receiving directives to correct his conduct in both instances. *Id.* ¶¶ 10–11; Pet'r's Mot. Jdg. 4:25–5:7. He admits to repeating a comment about "sex in the booty hole" on a Zoom call, a recording of which was circulated to District families and staff. Doe Decl. Supp. Pet'r's Mot. Jdg. ¶¶ 12–13. He avers nothing regarding an incident of berating students, failing to materially dispute it. *See generally* Doe Decl. Supp. Pet'r's Mot. Jdg.

Taken as a whole, these kinds of actions are not trivial, because, as reported in the media, they can be early warning signs of more egregious conduct in the future. *See, e.g.,* Holly McDede, *A San José Teacher Is Charged with Sexual Abuse. His School District Knew of Alleged Misconduct a Decade Ago*, KQED (June 12, 2023), https://www.kqed.org/news/11952597/a-san-jose-teacher-is-charged-with-sexual-abuse-his-school-district-knew-of-alleged-misconduct-a-decade-ago. The public has a compelling interest in assessing the extent to which school districts respond to substantial early warning signs like the incidents at issue here before they can escalate to more egregious abuse and leave irrevocable trauma and distrust in the community.

To construe the test for "substantial misconduct" as limited to sexual or violent activities would generate absurd consequences and hamper the public's ability to hold its government accountable. In addition to the type of escalating pattern of inappropriate or boundary-crossing behaviors at issue in this case, there are numerous additional forms of substantial misconduct that may not be characterized as "sexual or violent" but nonetheless command a powerful public interest in disclosure to hold government accountable. For example, a public-school employee could have allegedly engaged in financial misconduct and embezzled millions in taxpayer funds or extorted unauthorized fees from students. A public-school employee could also engage in intentional discrimination, such as by referring to students by racial slurs, refusing to allow minority students to participate in certain activities, or mocking students who use wheelchairs. Alternatively, a public-school employee could commit a substantial dereliction of duty by failing to show up for work repeatedly and without excuse or warning. In any of these examples, the people have a compelling interest in monitoring the government's performance of its duty to protect their community from these nontrivial abuses of public power, and the employee's privacy interests must yield so long as there is reasonable cause that the allegations are well founded in

fact. Under Doe's position, the people would have no right to disclosure of records documenting reasonable grounds to believe that public school employees committed embezzlement or egregious discrimination. The CPRA and California Constitution cannot be construed to result in such "absurd consequences." *Sierra Club*, 57 Cal. 4th at 165.

Further, the court must measure what is "substantial" misconduct from its own objective assessment of whether the alleged conduct is nontrivial, rather than hinging on the subjective intent of the accused. Limiting the definition of "substantial misconduct" to sexual or violent misconduct would invite public employees facing well-founded allegations of sexual harassment to bog down the courts with mini trials on whether they subjectively acted with sexual or violent intent before determining the public's right of access, impairing the Legislature's goal of prompt disclosure. *See Filarsky v. Superior Ct.*, 28 Cal. 4th 419, 427 (2002) ("[T]he Act's provision regarding a public agency's obligation to act promptly upon receiving a request for disclosure, the provision directing the trial court in a proceeding under the Act to reach a decision as soon as possible, and the provision for expedited appellate review all reflect a clear legislative intent that the determination of the obligation to disclose records requested from a public agency be made expeditiously.") (citations omitted).

Although Doe also contends the District did not invoke its policies against sexual misconduct or harassment during its interactions with him, this Court must make its own judgment on whether the allegations were substantial for purposes of requiring disclosure of the records at issue. While the District may have accepted innocent explanations for certain incidents in isolation, once the allegations continued and the District was able to assess the full pattern of behavior, it accurately determined the events to involve substantial "boundary crossing or grooming behavior." Similarly, this Court is not bound by the decision of the Committee of Credentials to take no adverse action against Doe. For purposes of this case, the issue is whether the allegations against Doe are substantial, or more than merely trivial, which does not require the revocation of his credential.

Even if the Court accepted Doe's limitation on "substantial" misconduct to only "sexual-type" or violent conduct, the allegations against Doe may still be "substantial" when taken

together under such a definition, regardless of Doe's supposedly innocent explanations. As the District emphasized in its opposition to the preliminary injunction, "Grooming behavior typically involves a pattern of behavior rather than isolated incidents. Doe's conduct, as accurately outlined in the Motion, demonstrates a pattern of behavior, where viewed holistically, reveals its sexual nature and intent. As such, these allegations involve sexual-type conduct, and thus satisfy the 'substantial' prong of the *Marken* test." Resp't's Opp'n. Mot. Prelim. Inj. 10:17–20; *see also Marken*, 202 Cal. App. 4th at 1274 (holding the misconduct was "substantial" notwithstanding plaintiff's argument that the superior court had characterized the conduct as "'probably on the lowest end of the spectrum' in terms of allegations of sexual harassment").

This case is not like *Associated Chino Teachers*, in which the behavior at issue arose from the unique context of competitive high school sports and the court found that a coach's conduct was "objectively reasonable" because it was "nothing more than what most dedicated coaches do to motivate players, maintain discipline and team morale, and push athletes toward their full potential." 30 Cal. App. 5th at 543. Taken as a whole, Doe's undisputed conduct was far from objectively reasonable or trivial in a very different context from competitive athletics. In these circumstances, Doe cannot prove that his alleged privacy interests clearly outweigh the public's compelling interest in disclosure.

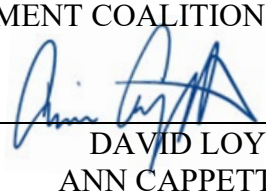
How school districts respond to behavior such as Doe's is undoubtedly a matter of public concern. The release of the records requested by McDede can help examine what actions the District took to address or prevent harm or misconduct in its schools. Disclosure of the records at issue is justified by the public's compelling interest in assessing whether and to what extent the District properly responded to Doe's undisputed conduct. Preventing violence and sexual harm or misconduct before it happens is essential to children's safety. Thus, the requested records are extremely valuable to the public, and the constitutional right to public disclosure outweighs Doe's alleged privacy interests.

V. CONCLUSION

For the foregoing reasons, the Court is respectfully requested to deny Doe's motion for judgment to issue the writ of mandate and allow the District to disclose public records requested by McDede.

Dated: February 4, 2025

FIRST AMENDMENT COALITION

By 

DAVID LOY
ANN CAPPETTA
Attorneys for Intervenor HOLLY McDEDE

DECLARATION OF HOLLY McDEDE

I, HOLLY McDEDE, declare as follows:

1. I make this declaration based on personal knowledge, and if called as a witness I could and would testify competently to the facts stated herein.

2. On June 7, 2024, I made a request under the California Public Records Act ("CPRA") to Mill Valley School District (the "District") for "all public records related to any and all claims of misconduct against teachers or other school employees from 2014 to the date this request is fulfilled" as well as "records related to any and all reports to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled."

3. A true and correct copy of the March 8 request to Napa Valley Unified School District is attached hereto as Exhibit 1.

4. On June 28, 2024, I updated the request to seek "public records related to claims of sexual harassment, sexual assault, or boundary crossing or grooming behavior made regarding teachers or other school employees" as well as "claims of sexual harassment, sexual assault, or grooming made to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled."

5. A true and correct copy of the updated request to the District is attached hereto as Exhibit 2.

6. In a letter by email dated July 8, 2024, the District informed me that "the information sought is both of a substantial nature and is well-founded." The District told me it located responsive records, which it would make available with redactions after sending notices to individuals involved.

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7. A true and correct copy of the July 8, 2024 communication with the District is attached hereto as Exhibit 3.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of February 2025 at Oakland, California.

Dated: February 4, 2025

HOLLY McDEDE

EXHIBIT 1

Gmail **Holly McDede <hollyjmcdede@gmail.com>**

CA Public Record Act Request - Mill Valley

1 message

Holly McDede <hollyjmcdede@gmail.com> Fri, Jun 7, 2024 at 8:00 AM
To: communications@mvschools.org

Good morning,

This is a request made under the California Public Records Act, Government Code sections 7920.000 – 7931.000, for records in the possession or control of your agency.

I am requesting all public records related to any and all claims of misconduct against teachers or other school employees from 2014 to the date this request is fulfilled.

Such public records should include, but not be limited to, all complaints; allegations; claims; investigatory reports; analyses; summaries; memoranda and/or notes; interview recordings; transcripts and/or notes; reviews; emails, text or other electronic messages, voicemails, and/or other communications and/or correspondence; determinations; decisions; orders; resignation letters; employment reclassification documents; offers in compromise and/or settlement agreements; termination and/or transfer papers; letters of reproval and/or other disciplinary actions, whether imposed or not; referrals to law enforcement, administrative, and/or licensing agencies, departments, and/or bodies; appeals; court filings and/or rulings; and all similar materials notwithstanding the use of other terminology, nomenclature, or categorization by this or other involved public agencies.

I am also requesting records related to any and all reports to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled.

Please let me know if you have any questions and I look forward to your response,

Holly McDede
Reporter
732-397-3323

EXHIBIT 2

Gmail **Holly McDede <hollyjmcdede@gmail.com>**

California Public Records Act Request

3 messages

Lindsey A. Soares <lsoares@lozanosmith.com> Fri, Jun 14, 2024 at 4:27 PM
To: "hollyjmcdede@gmail.com" <hollyjmcdede@gmail.com>
Cc: Jaspreet Lochab-Dogra <jlochab@lozanosmith.com>, "Roman J. Muñoz" <rmunoz@lozanosmith.com>

Hello Ms. McDede,

Please see the attached correspondence from Roman J. Muñoz and Jaspreet Lochab-Dogra.

Thank you,

Lindsey A. Soares | Legal Secretary to Jaspreet Lochab-Dogra,

Sinead M. McDonough, McKenzie Hoffman, & Rebecca Wilson

One Capitol Mall, Suite 640, Sacramento, CA 95814

T: 916.329.7433 F: 916.329.9050

061424 Clarification Response - McDede PRA 060724.pdf
63K

Holly McDede <hollyjmcdede@gmail.com> Fri, Jun 28, 2024 at 7:17 AM
To: "Lindsey A. Soares" <lsoares@lozanosmith.com>
Cc: Jaspreet Lochab-Dogra <jlochab@lozanosmith.com>, "Roman J. Muñoz" <rmunoz@lozanosmith.com>

Good morning,

Thank you for your request for clarification.

I can narrow this request to public records related to claims of sexual harassment, sexual assault, or boundary crossing or grooming behavior made regarding teachers or other school employees.

I can similarly narrow my request for records involving the Teacher Credentialing Commission, which would narrow that part of the request to claims of sexual harassment, sexual assault, or grooming made to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled.

Please let me know if this helps.

Holly McDede
Reporter
732-397-3323

[Quoted text hidden]

Mecia L. Gill <mgill@lozanosmith.com> Mon, Jul 8, 2024 at 12:42 PM
To: Holly McDede <hollyjmcdede@gmail.com>
Cc: "Roman J. Muñoz" <rmunoz@lozanosmith.com>, Jaspreet Lochab-Dogra <jlochab@lozanosmith.com>

Dear Ms. McDede:

On behalf of the Mill Valley School District, attached is its initial response to your California Public Records Act request dated June 7, 2024.

Sincerely,

LS Lozano Smith ATTORNEYS AT LAW

Mecia L. Gill I Legal Secretary to Roman J. Muñoz,

Michael E. Smith, Travis J. Lindsey & Gabriela D. Flowers

One Capitol Mall, Suite 640, Sacramento, CA 95814

T: 916.329.7433 F: 916.329.9050

From: Holly McDede <hollyjmcdede@gmail.com>
Sent: Friday, June 28, 2024 7:17 AM
To: Lindsey A. Soares <lsoares@lozanosmith.com>
Cc: Jaspreet Lochab-Dogra <jlochab@lozanosmith.com>; Roman J. Muñoz <rmunoz@lozanosmith.com>
Subject: Re: California Public Records Act Request

CAUTION: External E-Mail:

[Quoted text hidden]

070824 Initial Response - McDede PRA 060724 4891-0213-5503 1.pdf
220K

Roman J. Muñoz
Attorney at Law

E-mail: rmunoz@lozanosmith.com

Jaspreet Lochab-Dogra
Attorney at Law

E-mail: jlochab@lozanosmith.com

June 14, 2024

By E-Mail: hollyjmcdede@gmail.com

Holly McDede

Re: California Public Records Act Request

Dear Holly McDede,

Our firm represents the Mill Valley School District ("District"), which is in receipt of your California Public Records Act ("CPRA") (Gov. Code, § 7920.000 et seq.) request dated June 7, 2024, for specified records of the District. You specifically requested:

> *"[A]ll public records related to any and all claims of misconduct against teachers or other school employees from 2014 to the date this request is fulfilled.*
>
> *Such public records should include, but not be limited to, all complaints; allegations; claims; investigatory reports; analyses; summaries; memoranda and/or notes; interview recordings; transcripts and/or notes; reviews; emails, text or other electronic messages, voicemails, and/or other communications and/or correspondence; determinations; decisions; orders; resignation letters; employment reclassification documents; offers in compromise and/or settlement agreements; termination and/or transfer papers; letters of reproval and/or other disciplinary actions, whether imposed or not; referrals to law enforcement, administrative, and/or licensing agencies, departments, and/or bodies; appeals; court filings and/or rulings; and all similar materials notwithstanding the use of other terminology, nomenclature, or categorization by this or other involved public agencies.*
>
> *I am also requesting records related to any and all reports to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled."*

The District has analyzed your request for information against the intent and specific provisions of the CPRA. Pursuant to Government Code section 7922.600, subdivision (a), subsection (1), the District hereby offers to assist you in clarifying your request. Please contact my legal assistant, Lindsey Soares at lsoares@lozanosmith.com, so that we can set up a time that is mutually agreeable to further discuss the necessary clarifications.

Please feel free to contact me if you have any questions.

Sincerely,

LOZANO SMITH

Jaspreet Lochab-Dogra

JAL/ls

EXHIBIT 3

Roman J. Muñoz
Attorney at Law

E-mail: rmunoz@lozanosmith.com

Jaspreet Lochab-Dogra
Attorney at Law

E-mail: jlochab@lozanosmith.com

July 8, 2024

By E-Mail: hollyjmcdede@gmail.com

Holly McDede

Re: California Public Records Act Request

Dear Holly McDede:

As you were previously informed, our firm represents the Mill Valley School District ("District"), which is in receipt of your California Public Records Act ("CPRA") (Gov. Code, § 7920.000 et seq.) request dated June 7, 2024, for specified records of the District. You specifically requested:

> *"[A]ll public records related to any and all claims of misconduct against teachers or other school employees from 2014 to the date this request is fulfilled.*
>
> *Such public records should include, but not be limited to, all complaints; allegations; claims; investigatory reports; analyses; summaries; memoranda and/or notes; interview recordings; transcripts and/or notes; reviews; emails, text or other electronic messages, voicemails, and/or other communications and/or correspondence; determinations; decisions; orders; resignation letters; employment reclassification documents; offers in compromise and/or settlement agreements; termination and/or transfer papers; letters of reproval and/or other disciplinary actions, whether imposed or not; referrals to law enforcement, administrative, and/or licensing agencies, departments, and/or bodies; appeals; court filings and/or rulings; and all similar materials notwithstanding the use of other terminology, nomenclature, or categorization by this or other involved public agencies.*
>
> *I am also requesting records related to any and all reports to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled."*

In our June 14, 2024, correspondence, we sought, pursuant to Government Code section 7922.600, subdivision (a), subsection (1), clarifications regarding your request. We had

requested that you contact Lindsey Soares at lsoares@lozanosmith.com, to set up a mutually agreeable time to further discuss the necessary clarifications.

On June 28, 2024, you responded to our correspondence with the following clarified request:

> *I can narrow this request to public records related to claims of sexual harassment, sexual assault, or boundary crossing or grooming behavior made regarding teachers or other school employees.*
>
> *I can similarly narrow my request for records involving the Teacher Credentialing Commission, which would narrow that part of the request to claims of sexual harassment, sexual assault, or grooming made to the California Commission on Teacher Credentialing from 2014 to the date this request is fulfilled.*

We interpret the use of the term "claims" in relation to the above-mentioned misconduct as records that satisfy the requirement that the information sought is both of a substantial nature and well-founded. (See *American Federation v. Regents of University of California* (1978) 80 Cal.App.3d 913; see also *Associated Chino Teachers v. Chino Valley Unified School District* (2018) 30 Cal.App.5th 530.) As a result, we believe the following exemptions are applicable to the request:

- Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure. (Gov. Code, § 7927.500.)

- Personnel, personal contact information, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. (Gov. Code, §§ 7927.700 and 7927.705.)

- Records may also be exempt under the "deliberative process privilege" to protect the decision-making processes of government agencies to promote candid discussion within the agency. (Gov. Code, § 7922.000; *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 225.)

- Documents revealing information where the public's interest in obtaining the records is clearly outweighed by the public's interest in the District not disclosing the requested information. (Gov. Code, § 7922.000(a).)

Accordingly, our initial review indicates the District has responsive records in its possession. For those records that are subject to disclosure, we anticipate the records will be made available to you once the District has had a reasonable time to conduct a search, identify responsive records, and send the legally required notices to the employees or former employees involved. (See *Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal.App.4th 1250.) Should any responsive documents in the District's possession be withheld, you will be promptly

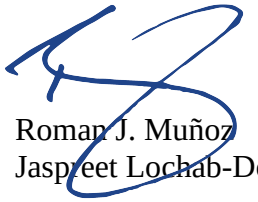
notified of the basis for that determination and the name and title of the person responsible for that decision.

The District will make all reasonable efforts to provide the requested records to you in a manner consistent with the CPRA by no later than August 30, 2024, provided that we will timely notify you if this is not possible.

Please feel free to contact me if you have any questions.

Sincerely,

LOZANO SMITH



Roman J. Muñoz
Jaspreet Lochab-Dogra

JAL/RJM/mg

PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On February 5, 2025, I served true copies of the following document(s) described as **REAL PARTY IN INTEREST HOLLY McDEDE'S OPPOSITION TO PLAINTIFF/ PETITIONER JOHN DOE'S MOTION FOR JUDGMENT ON PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

Shannon DeNatale Boyd, SBN 273574
Jeff F. Tchakarov, SBN 295506
PRICE, POSTEL & PARMA LLP
200 East Carrillo Street, Fourth Floor
Santa Barbara, California 93101
sdb@ppplaw.com
jft@ppplaw.com

Attorneys for Plaintiff John Doe

Roman J. Muñoz, SBN 206135
Jaspreet Lochab-Dogra, SBN 345601
LOZANO SMITH, Attorneys at Law
One Capitol Mall, Suite 640
Sacramento, CA 95814
jlochab@lozanosmith.com
rmunoz@lozanosmith.com

Attorneys for Defendant Mill Valley School District

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 5, 2025, at East Palo Alto, California.

Robin P. Regnier