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8 for Open Government

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO – HALL OF JUSTICE

12 SAN DIEGANS FOR OPEN GOVERNMENT; and) CASE NO. 37-2017-00015136-CU-MC-CTL
13 DOES 1 through 10,)

14 Plaintiffs and Petitioners,)

15 vs.)

16 POWAY UNIFIED SCHOOL DISTRICT;)
17 MARIAN KIM-PHELPS; MICHELLE)
18 O'CONNOR RATCLIFF; T.J. ZANE;)
19 DARSHANA PATEL; and DOES 11 through 1,000,)

20 Defendants and Respondents.)

**VERIFIED COMPLAINT FOR
DECLARATORY, INJUNCTIVE, AND
OTHER EQUITABLE RELIEF AND
PETITION FOR WRIT OF MANDATE
BASED ON VIOLATIONS OF THE
RALPH M. BROWN ACT AND OTHER
LAWS**

21 Petitioner and Plaintiff SAN DIEGANS FOR OPEN GOVERNMENT ("Plaintiff") alleges as
22 follows in this Verified Complaint for Declaratory, Injunctive, and Other Equitable Relief and Petition
23 for Writ of Mandate Based on Violations of the Ralph M. Brown Act and Other Laws:

24 **Parties**

25 1. Plaintiff is a non-profit organization formed and operating under the laws of the State
26 of California. At least one of Plaintiff's members resides in and pays taxes within the geographical
27 jurisdiction of the Poway Unified School District ("PUSD") and has an interest in, among other things,
28 ensuring that PUSD's governing body and employees comply with the law and make transparent
government decisions. Plaintiff is suing on its own behalf and on behalf of its members, all persons
similarly situated, all taxpayers within PUSD's geographical jurisdiction, and/or on behalf of PUSD.¹

¹ No matter how any portion of this pleading's allegations or prayer is construed, in no way does Plaintiff intend to assert a claim or seek relief that is inconsistent with the following parameters: (1) Plaintiff does not seek any relief greater than or different from the relief sought for the general public or for a class of which Plaintiff's members residing within PUSD's geographical jurisdiction are

1 2. Under the Ralph M. Brown Act (GOV'T CODE § 54950 et seq.), Defendant and
2 Respondent PUSD is a "local agency" and its governing board is a "legislative body." See GOV'T CODE
3 §§ 54951 & 54952(a).

4 3. Defendant and Respondent MARIAN KIM-PHELPS ("KIM-PHELPS") is PUSD's
5 superintendent of schools. Defendants and Respondents MICHELLE O'CONNOR RATCLIFF; T.J.
6 ZANE; DARSHANA PATEL are members of PUSD's governing board.

7 4. The true names and capacities of the parties identified as DOES 1 through 1,000 are
8 unknown to Plaintiff, who will seek the Court's permission to amend this pleading in order to allege
9 the true names and capacities as soon as they are ascertained. Each of the fictitiously named Defendants
10 and Respondents 11 through 1,000 has some cognizable interest in the subject matter and/or the relief
11 sought in this lawsuit.

12 **Background Information**

13 5. During a public meeting on March 7, 2017, PUSD's governing board purported to hire
14 KIM-PHELPS to serve as superintendent of schools. As an open-government advocate, Plaintiff
15 opposes the hiring of KIM-PHELPS because the public meeting was a farce, and members of the public
16 had no meaningful opportunity to express their views on the issue of whether KIM-PHELPS should be
17 hired as superintendent. In fact, a majority of the members of PUSD's governing board agreed to
18 employ her as the superintendent *during one or more non-public meetings occurring before* her
19 employment contract was approved in public, doing so by communicating with KIM-PHELPS through
20 designated board members and through one or more other intermediaries. The governing board's
21 approval of her employment contract at the public meeting was therefore a *fait accompli* long before
22 members of the public were given the opportunity to express their views on the matter. Such secrecy
23 is illegal under the Brown Act and other laws.

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28 themselves members. (2) This lawsuit seeks to enforce at least one important right affecting the public
interest and to confer at least one significant benefit, whether pecuniary or non-pecuniary, on the general
public or a large class of persons. (3) Private enforcement is necessary and places a disproportionate
financial burden on Plaintiff in relation to its stake in the matter.

1 **Jurisdiction and Exhaustion of Remedies**

2 6. Government Code Section 54960.1(a) provides as follows: “The district attorney or any
3 interested person may commence an action by mandamus or injunction for the purpose of obtaining a
4 judicial determination that an action taken by a legislative body of a local agency in violation of Section
5 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in
6 this chapter shall be construed to prevent a legislative body from curing or correcting an action
7 challenged pursuant to this section.”

8 7. Plaintiff is an “interested person” within the meaning of Government Code Section
9 54960.1. Plaintiff demanded that PUSD’s governing board cure or correct the actions taken in violation
10 of the Brown Act, as required by Government Code Section 54960.1. PUSD’s governing board rejected
11 the demand. A true and correct copy of the demand is attached to this pleading as Exhibit “A,” and a
12 true and correct copy of its rejection is attached to this pleading as Exhibit “B.”

13 8. Plaintiff also brings this action pursuant to Code of Civil Procedure Section 526a and
14 Sections 1060 *et seq.* and 1084 *et seq.*, among other applicable provisions of law.

15 9. Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law since
16 its members and other members of the public will suffer irreparable harm as a result of violations of the
17 Brown Act by PUSD’s governing board. The decision to hire KIM-PHELPS also rests on the board’s
18 failure to satisfy a clear, present, ministerial duty to act in accordance with all applicable laws.

19 10. Plaintiff has a beneficial right and interest in the members of PUSD’s governing board
20 fulfilling all their legal duties, as alleged in this pleading.

21 **FIRST CAUSE OF ACTION**
22 **Violation of Ralph M. Brown Act**
(Against All Defendants and Respondents)

23 11. Paragraphs 1 through 10 are fully incorporated into this paragraph.

24 12. Plaintiff is informed and believes and on that basis alleges as follows:

25 A. In private – *i.e.*, not during a public meeting – and no later than February 14,
26 2017:

27 i. A majority of the members of PUSD’s governing board voted to designate
28 one or two of themselves and/or attorney Trevin E. Sims of Lozano Smith LLP to negotiatc an

1 employment contract with and appoint a new superintendent (“Designated Intermediaries”). The
2 governing board’s goal in hiring Mr. Sims was to ensure that the board appointed a new superintendent
3 and approved an employment contract no later than February 14, 2017.

4 ii. A majority of the members of PUSD’s governing board affirmatively
5 selected KIM-PHELPS as their preferred choice for new superintendent.

6 iii. At least one of the Designated Intermediaries communicated with KIM-
7 PHELPS to negotiate the terms of employment that the governing board would be willing to offer and
8 that she would be willing to accept.

9 iv. With the assistance of the Designated Intermediaries, a majority of the
10 members of PUSD’s governing board and KIM-PHELPS came to an agreement on the terms of
11 employment; the governing board presented those terms to her through the Designated Intermediaries;
12 and she communicated her acceptance of those terms to the board through the Designated
13 Intermediaries.

14 v. With the assistance of the Designated Intermediaries, a majority of the
15 members of PUSD’s governing board and KIM-PHELPS further agreed that a press release should be
16 issued to announce the board’s decision to hire her. KIM-PHELPS prepared the first draft of the press
17 release and sent it to the Designated Intermediaries for delivery to the board.

18 B. On February 14, 2017:

19 i. PUSD issued the following announcement on Twitter: “The PUSD Board
20 has chosen a new superintendent: @mkimphelps who comes to us from the Westminster. Congrats and
21 welcome! More info to come!” A true and correct copy of the announcement is attached to this
22 pleading as Exhibit “C.”

23 ii. PUSD issued the following announcement on Facebook: “The PUSD
24 Board has announced Marian Kim-Phelps as our new Superintendent! She comes to us from the
25 Westminster School District. Congratulations and welcome to #TeamPUSD. More information to
26 come tomorrow.” A true and correct copy of the announcement is attached to this pleading as Exhibit
27 “D.”

1 iii. T.J. Zane, one of the members of PUSD’s governing board who voted
2 to hire KIM-PHELPS, issued the following announcement on Facebook: “Breaking: PUSD Board
3 announces its choice for a new Superintendent! Congratulations Dr. Phelps!” A true and correct copy
4 of the announcement is attached to this pleading as Exhibit “E.”

5 C. On February 15, 2017:

6 i. PUSD issued the following announcement on Twitter: “Want to know
7 more about the PUSD board’s selection to lead #PowayUnified? Read more about new Supe
8 @mkimphelps here powayusd.com/getmedia/ac866...” A true and correct copy of the announcement
9 is attached to this pleading as Exhibit “F.”

10 ii. PUSD issued the following announcement on Facebook: “In case you
11 missed it, the Board of Education named its selection for a new Superintendent last night! She’ll be
12 officially hired when her contract is approved at the March 7th board meeting. Learn more about Dr.
13 Marian Kim-Phelps here: [http://powayusd.com/getmedia/ac86601f5a9f4d6d9ba7a998266bf051/
14 PR21517MarianKimPhelpsSuperintendent.aspx](http://powayusd.com/getmedia/ac86601f5a9f4d6d9ba7a998266bf051/PR21517MarianKimPhelpsSuperintendent.aspx).” A true and correct copy of the announcement is
15 attached to this pleading as Exhibit “G.”

16 iii. PUSD issued a press release that contained the following statement by
17 Michelle O’Connor-Ratcliff, another member of PUSD’s governing board who voted to hire KIM-
18 PHELPS: “Dr. Kim-Phelps is an incredibly accomplished Superintendent. She has outstanding
19 credentials and brings the experience and vision needed to lead the district and embrace the community.
20 We are very excited to have her as our next Superintendent.” A true and correct copy of the press
21 release is attached to this pleading as Exhibit “H.”

22 D. On February 27, 2017, PUSD issued a “TeamPUSD Newsletter” containing the
23 following statement: “The Board of Education has selected Dr. Marian Kim-Phelps as our next
24 Superintendent. Dr. Kim-Phelps, currently the Westminster School District Superintendent, will
25 officially become the new Superintendent for PUSD on March 7th, when her contract is approved by
26 the Board.” A true and correct copy of the newsletter is attached to this pleading as Exhibit “I.”

27 E. On March 7, 2017:

28 i. Prior to the vote by PUSD’s governing board on the employment contract
for KIM-PHELPS, the clerk of the board announced during a public meeting that the board had “voted

1 [during an earlier closed-session meeting pursuant to Government Code Sections 54957 and 54957.1]
2] to appoint Dr. Marian Kim-Phelps as Superintendent for Poway Unified School District.” A true and
3 correct copy of the minutes of the meeting are attached to this pleading as Exhibit “J.”

4 ii. Prior to the vote by PUSD’s governing board on the employment contract
5 for KIM-PHELPS, the board’s student member stated, with reference to KIM-PHELPS, that she [*i.e.*,
6 the student member] was so excited to see her take office shortly.”

7 iii. Prior to the vote by PUSD’s governing board on the employment contract
8 for KIM-PHELPS, the president of the board announced the material terms of the contract, including
9 the terms governing the compensation to be received by her.

10 iv. PUSD issued a press release that contained the following statement:
11 “Tonight at its March 7th meeting, the Board of Education approved the Superintendent contract for
12 Dr. Mirian Kim-Phelps.” The press release was issued as a PDF file. The electronic metadata for the
13 PDF file indicate that it was created at 10:26 a.m. on March 7, 2017. However, the meeting of PUSD’s
14 governing board on that date did not begin until 4:04 p.m. A true and correct copy of the press release
15 is attached to this pleading as Exhibit “K.”

16 13. Government Code Section 54957(b) provides as follows: “(1) Subject to paragraph (2),
17 this chapter shall not be construed to prevent the legislative body of a local agency from holding closed
18 sessions during a regular or special meeting to consider the appointment, employment, evaluation of
19 performance, discipline, or dismissal of a public employee or to hear complaints or charges brought
20 against the employee by another person or employee unless the employee requests a public session. (2)
21 As a condition to holding a closed session on specific complaints or charges brought against an
22 employee by another person or employee, the employee shall be given written notice of his or her right
23 to have the complaints or charges heard in an open session rather than a closed session, which notice
24 shall be delivered to the employee personally or by mail at least 24 hours before the time for holding
25 the session. If notice is not given, any disciplinary or other action taken by the legislative body against
26 the employee based on the specific complaints or charges in the closed session shall be null and void.
27 (3) The legislative body also may exclude from the public or closed meeting, during the examination
28 of a witness, any or all other witnesses in the matter being investigated by the legislative body. (4) For

1 the purposes of this subdivision, the term ‘employee’ shall include an officer or an independent
2 contractor who functions as an officer or an employee but shall not include any elected official, member
3 of a legislative body or other independent contractors. This subdivision shall not limit local officials’
4 ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and
5 Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant
6 to this subdivision shall not include discussion or action on proposed compensation except for a
7 reduction of compensation that results from the imposition of discipline.”

8 14. KIM-PHELPS is an “employee” within the meaning of Government Code Section
9 54957(b).

10 15. Each and every closed-session meeting of PUSD’s governing board during 2017 with
11 respect to the appointment of a new superintendent generally or to KIM-PHELPS specifically was
12 agendized pursuant to Government Code Section 54957.

13 16. The compensation to be provided to KIM-PHELPS pursuant to her employment contract
14 with PUSD was discussed and/or acted on by the governing board during one or more of its closed-
15 session meetings concerning the superintendent position and/or KIM-PHELPS. Had there been no
16 discussion of such compensation, among other things, (i) PUSD could have included those terms in the
17 unsigned contract included in the agenda materials for the board’s meeting on March 7, 2017; (ii) the
18 board’s president could not have recited the material terms of the contract, including the terms
19 governing the compensation to be received by KIM-PHELPS; (iii) the board would not have voted to
20 “appoint” KIM-PHELPS as superintendent prior to consideration of the contract in open session; (iv)
21 PUSD would not have issued multiple public announcing about the hiring of KIM-PHELPS prior to
22 March 7, 2017; and (v) KIM-PHELPS would not have prepared the first draft of the press release
23 announcing her hiring and would not have sent it to the Designated Intermediaries for delivery to the
24 board.

25 17. Prior to this Court’s declaration that PUSD’s employment contract with KIM-PHELPS
26 is void, KIM-PHELPS will have been paid substantial sums of money by PUSD pursuant to the
27 contract. However, the receipt of public monies pursuant to a void contract requires the recipients to
28 return all such monies to the public agency that paid out the monies to them. Plaintiff, its members,

1 PUSD's taxpayers, and other members of the public are all being harmed by the continued payment of
2 monies to KIM-PHELPS pursuant to the void contract. Plaintiff thus seeks an order imposing a
3 constructive trust on KIM-PHELPS and requiring KIM-PHELPS to pay restitution to PUSD and its
4 taxpayers for all monies received by her under the voice contract and imposing a constructive trust over
5 all such sums until they are fully repaid to PUSD. In addition, Plaintiff seeks the same relief against
6 Defendants and Respondents O'CONNOR-RATCLIFF, ZANE, and PATEL jointly and severally
7 because they constitute the majority of PUSD's governing board who committed the Brown Act
8 violations alleged in this pleading and thereby acted fraudulently, deceptively, and in excess of their
9 legal authority.

10 **Prayer**

11 FOR ALL THESE REASONS, Plaintiff respectfully prays for the following relief against all
12 Defendants and Respondents (and any and all other parties who may oppose Plaintiff in this
13 proceeding):

14 A. A judgment determining or declaring that PUSD failed to comply fully with the Brown
15 Act as it relates to the approval of the KIM-PHELPS employment contract, rendering the contract's
16 approval null and void;

17 B. A judgment determining or declaring that PUSD must comply fully with the Brown Act
18 before approval of the KIM-PHELPS employment contract or other similar contract for the employment
19 of a superintendent;

20 C. Injunctive relief prohibiting PUSD from taking any further action (including but not
21 limited to the expenditure of any public funds) in connection with the KIM-PHELPS employment
22 contract, unless and until PUSD has fully complied with the Brown Act and all other applicable laws
23 as determined by the Court;

24 D. Issuance of a writ of mandate requiring PUSD to rescind the approval of the KIM-
25 PHELPS employment contract, unless and until PUSD has fully complied with the Brown Act and all
26 other applicable laws as determined by this Court;

27 E. Against KIM-PHELPS, O'CONNOR-RATCLIFF, ZANE, and PATEL jointly and
28 severally, a constructive trust in favor of PUSD and its taxpayers on all monies paid to KIM-PHELPS

1 pursuant to the void employment contract and an order directing each of them jointly and severally to
2 make restitution to PUSD and its taxpayers for all such monies;

3 F. Any and all other relief that may be authorized by the Brown Act but is not explicitly
4 or specifically requested elsewhere in this Prayer;

5 G. All legal fees and other expenses incurred in connection with this proceeding, including
6 but not limited to reasonable attorney fees as authorized by the Government Code, the Code of Civil
7 Procedure, and/or other applicable law; and

8 H. Any and all further relief that this Court may deem appropriate.

9 Date: April 26, 2017.

Respectfully submitted,

10 BRIGGS LAW CORPORATION

11
12 By:



Cory J. Briggs

13 Attorneys for Plaintiff San Diegans for Open
14 Government

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "A"

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FACSIMILE COVER SHEET

Recipient: Michelle O'Connor-Ratliff

Recipient's fax number: (858) 485-1388

Date: 3/20/2017 BLC File: 1593.47

Total Pages (including cover sheet): 2

Sender: Priscilla Villanueva for Anthony Kim

Sender's fax number: 619-515-6410 X 909-949-7121

Message: Request to Cure Violations Of Ralph M. Brown Act
Letter



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BLC File(s): 1593.47

20 March 2017

Michelle O'Connor-Ratcliff, Board President
Poway Unified School District
15250 Avenue of Science
Poway, CA 92128-3406

Via Fax and E-mail

Re: Request to Cure Violations of Ralph M. Brown Act

Dear President O'Connor-Ratcliff:

On behalf of my client, San Diegans for Open Government, I am writing to request the cure of violations of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) committed by the Board of Education prior to the open-session portion of its meetings on February 14, 2017, and March 7, 2017, in regards to the hiring of Dr. Marian Kim-Phelps as the new superintendent.

In particular, my client believes that the Board engaged in an illegal closed-session meeting and/or an illegal serial meeting because the Board committed to hiring Dr. Kim-Phelps at some point prior to the open-session portion of the February 14 and/or March 7 meeting(s). Closed-session meetings that are not authorized by statute and properly agendaized are prohibited under Government Code Section 54953, and the Board did not properly agendaize any closed session to establish the compensation and other employment terms for Dr. Kim-Phelps. Serial meetings are prohibited under Section 54952.2, without qualification.

Under the Brown Act, the violations must be cured not more than 30 days after receipt of this letter. Please notify me *in writing* as soon as possible to let me know whether the violations will be cured and, if so, when the cure will take place. (My client may sue before receiving your response.)

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Original Signed

Anthony N. Kim

cc: T.J. Zane, Dr. Darshana Patel, Kimberley Beatty, Charles Sellers, Dr. Marian Kim-Phelps (via e-mail)



TRANSMISSION VERIFICATION REPORT

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SER. # : U63088K2N278525

DATE, TIME 03/20 11:58AM
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Message: Request to Cure Violations Of Ralph M. Brown Act
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**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "B"

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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OUR FILE NUMBER:

005463 00216
1562267.1

April 13, 2017

VIA FAX AND U.S. MAIL
(909) 949-7121

Anthony N. Kim, Esq.
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Re: Poway Unified School District

Dear Mr. Kim:

This firm represents the Poway Unified School District ("District"), and this letter is in response to your letter to the District Board President dated March 20, 2017. Please direct all further correspondence regarding this matter to the undersigned.

In your letter you demand that the Board cure alleged violations of the Brown Act, which you contend were "committed by the Board of Education prior to the open-session portion of its meetings on February 14, 2017, and March 7, 2017, in regards to the hiring of Dr. Marian Kim-Phelps as the new superintendent." You state your client "believes" the Board "engaged in an illegal closed-session meeting and/or an illegal serial meeting because the Board committed to hiring Dr. Kim-Phelps at some point prior to the open-session portion of the February 14 and/or March 7 meeting(s)." You assert "the Board did not properly agendaize any closed session to establish the compensation and other employment terms for Dr. Kim-Phelps." For reasons described herein, the District respectfully rejects your contentions, and no further action related to the employment of Dr. Kim-Phelps will be taken.

Initially, it is our position that the demand is legally insufficient. In order to meet the legal standard authorizing a subsequent lawsuit a demand to cure or correct "shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation." (Govt. Code § 54960.1(b).) The purpose of the notice requirement is to allow the local agency to either "cure or correct the challenged action" or decide "not to cure or correct the challenged action." (Govt. Code § 54960.1(c)(2).) We contend your demand fails to meet this legal standard. Specifically, you contend your client "believes" there were "violations" of the Brown Act, but your particular description refers to an unspecified "illegal closed-session meeting and/or an illegal serial meeting" regarding "hiring Dr. Kim-Phelps." You "believe" this violation or violations occurred "at some point prior to the open-session portion of the February 14 and/or March 7 meeting(s)" —

Anthony N. Kim, Esq.
April 13, 2017
Page 2

in other words, “at some point” during a period of approximately one month or longer. You provide no information which leads your client to “believe” a violation occurred, at an unspecified date, time and circumstance. Stated another way, your demand does not put the District on notice of “the challenged action” you are demanding be cured or corrected.

Additionally, regarding the merits of your claim, what your client “believes” to have occurred is not accurate. The Board did not engage in an illegal closed-session meeting at any time prior to the February 14, 2017 open session or the March 7, 2017 open session. The Board did not engage in an illegal serial meeting prior to the February 14, 2017 open session or the March 7, 2017 open session. The Board’s processes and decision related to the employment of Dr. Kim-Phelps, including decisions related to her appointment and the terms and conditions of her employment, were in compliance with the Brown Act.

Finally, even if one were to assume for the sake of argument that your client’s belief is correct, any violation(s) has/have already been cured and corrected. The Brown Act is clear: “Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.” (Govt. Code § 54960.1(a).) Additionally, the Brown Act provides for a required dismissal of litigation when a challenged “action taken” has already been cured or corrected: “During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.” (Govt. Code 54960.1(e).)¹ These provisions, applied to indisputable facts, described below, reveal that your claims are not only moot (even if assumed accurate) but that any action filed pursuant to Government Code section 54960.1 would be clearly frivolous and totally lacking in merit. (Govt. Code § 54960.5.)

The content of your letter concedes that your client “believes” the Board “committed to hiring Dr. Kim-Phelps,” outside of a noticed meeting, “at some point prior to the open-session portion of the February 14 and/or March 7 meeting(s).”

The closed session agenda for the March 7, 2017 meeting included: “7. CLOSED SESSION: PUBLIC EMPLOYEE EMPLOYMENT/APPOINTMENT; Pursuant to Government Code Section 54957 and 54957.1; Title: Superintendent.” This satisfies the “safe harbor” agenda provisions of Government Code section 54954.5(e). At the commencement of the open session, pursuant to Government Code section 54957.1, the Board Clerk announced that action had been taken in closed session to employ Dr. Kim-Phelps, including the vote of each Board member. In accordance with Government Code section 53262(a), the open session agenda included the following as Item D-201: “Approval of the Employment Agreement Between Poway Unified School District and the Superintendent.” A copy of the contract was available in accordance with Government Code section 53262(b). During the Board member comments portion of the agenda, each Board member

¹ The Brown Act also negates any action under Government Code section 54960.1 if an “action taken was in substantial compliance” with the Brown Act. (Govt. Code § 54960.1(d)(1).)

Anthony N. Kim, Esq.
April 13, 2017
Page 3

commented on the contract and the employment of Dr. Kim-Phelps. When agenda item D-201 was called shortly thereafter, after a brief introduction of the item the Board President read a detailed, two-and-a-half-minute summary of the material terms of the employment contract, in accordance with Government Code section 54953(c)(3). Following this, eight public speakers spoke on the item, in support of Board approval of the contract, and fourteen individuals registered their support without speaking. The Board then approved the contract, and Dr. Kim-Phelps spoke to the Board. Again, all of this occurred *after* the claimed violation of the Brown Act. Even if your contention was accurate, therefore, a very public cure and correct action has already been taken.

Furthermore, this March 7, 2017 open session was the culmination of a lengthy process of openness and public disclosure regarding the employment of Dr. Kim-Phelps occurring prior to March 7, 2017. This process demonstrates that if your allegation is that a violation of the Brown Act occurred before the February 14, 2017 meeting (assuming the assertion is true for the sake of argument), it was cured at the February 14, 2017 Board meeting as well. Specifically, the agenda for the February 14, 2017 closed session included: “7. CLOSED SESSION: PUBLIC EMPLOYMENT: Superintendent, Pursuant of Government Code Section 54957;” and “9. CLOSED SESSION: PUBLIC EMPLOYEE APPOINTMENT, Pursuant to Government Code Section 54957, Title: Superintendent.” These satisfy the “safe harbor” agenda provisions of Government Code section 54954.5(e). After the closed session, the Board Clerk publicly reported that the Board had selected Dr. Kim-Phelps as the “finalist” for the position, along with the vote of each member, and that the Board intended to make a final appointment and approve an employment contract on March 7, 2017. Following this meeting, a publicly-issued and posted “Board Briefs” document stated the following: “Superintendent Search Update – The Board reported out from Closed Session that a new Superintendent has been chosen, Dr. Marian Kim-Phelps. A contract will be brought forward at the next regular Board Meeting, March 7, 2017. A press release with additional information will be available tomorrow.” The Press Release of the following day, “PUSD Board Selects Dr. Marian Kim-Phelps as New Superintendent,” reiterated that final action to employ and approve a contract would occur at the March 7, 2017 meeting. This action was reported in the San Diego Union-Tribune (“Poway Unified School District board votes 3-2 on top superintendent choice”) and 92129 Magazine (“PUSD Board Selects Dr. Marian Kim-Phelps as New Superintendent”), among other media outlets.²

In addition to demonstrating that any cure or correct action would already be deemed to have occurred even if your client’s contention was accurate, the series of closed and open session agenda items, full public disclosures of actions taken, and public notice, coverage and participation in the process negate your implication that the violation suspected by your client resulted in prejudice to your client or any other member of the public. “Even where a plaintiff has satisfied the threshold procedural requirements to set aside an agency’s action, Brown Act violations will not necessarily invalidate a decision. Appellants must show prejudice.” (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555-556; *San Lorenzo Valley Community Advocates for Responsible Education v.*

² See <http://www.sandiegouniontribune.com/pomerado-news/news/schools/sd-cm-pow-pusd-new-supt-20170215-htm1story.html> (UT Article); and <http://92129magazine.com/2017/02/16/pusd-board-selects-dr-marian-kim-phelps-as-new-superintendent/> (92129 Magazine article.)

Anthony N. Kim, Esq.
April 13, 2017
Page 4

San Lorenzo Valley Unified School District (2006) 139 Cal.App.4th 1356; *Galbiso v. Orosi Public Utility District* (2010) 182 Cal.App.4th 652, 671.) You have not attempted to describe any prejudice to your client, and it is our position you could not do so. Moreover, similar to the circumstances in *Cohan*, there can be no doubt that the public was well aware of the intent to employ Dr. Kim-Phelps and the eventual terms and conditions of her employment adopted in open session after substantial public participation. (30 Cal.App.4th 547, 555-556.) After a properly-noticed closed session on February 14, 2017 the Board announced Dr. Kim-Phelps as the “finalist,” followed by a Board Briefs announcement and press release, all three of these public disclosures announcing that intended final action to employ and approve a contract would occur on March 7, 2017. This was reported in the press. At that subsequent meeting three weeks later the matter of the employment of Dr. Kim-Phelps was properly agendized for closed and open session, and a review of the minutes and video of the meeting leave no doubt that intended actions — including the final action approving the employment contract *after* the alleged Brown Act violation — were well-known to the public. As is noted in *Galbiso*, when “parties were well aware of the other side’s position and arguments, no prejudice is apparent.” (182 Cal.App.4th at 670-671.)³

For the reasons stated herein, we respectfully disagree with your contention that there has been a violation of the Brown Act. The indisputable facts related to the February 14, 2017 and March 7, 2017 meeting agendas and conduct demonstrate that the employment of Dr. Kim-Phelps, and the terms and conditions of her employment reflected in the publicly-disclosed and adopted contract, were carried out with full public knowledge and participation and in compliance with the Brown Act.

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

Regards,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Mark R. Bresee

³ Given the previous letters served on the District from your law firm, on behalf of the same client, there can be no credible contention that your client was unaware of the relative points of view at play, or of the history of properly agendized consideration of the employment of Dr. Kim-Phelps.

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "C"



Poway Unified
@powayusd

Follow



The PUSD Board has chosen a new superintendent: @mkimphelps who comes to us from the Westminster. Congrats and welcome! More info to come!



RETWEETS 12 LIKES 23



9:14 PM - 14 Feb 2017

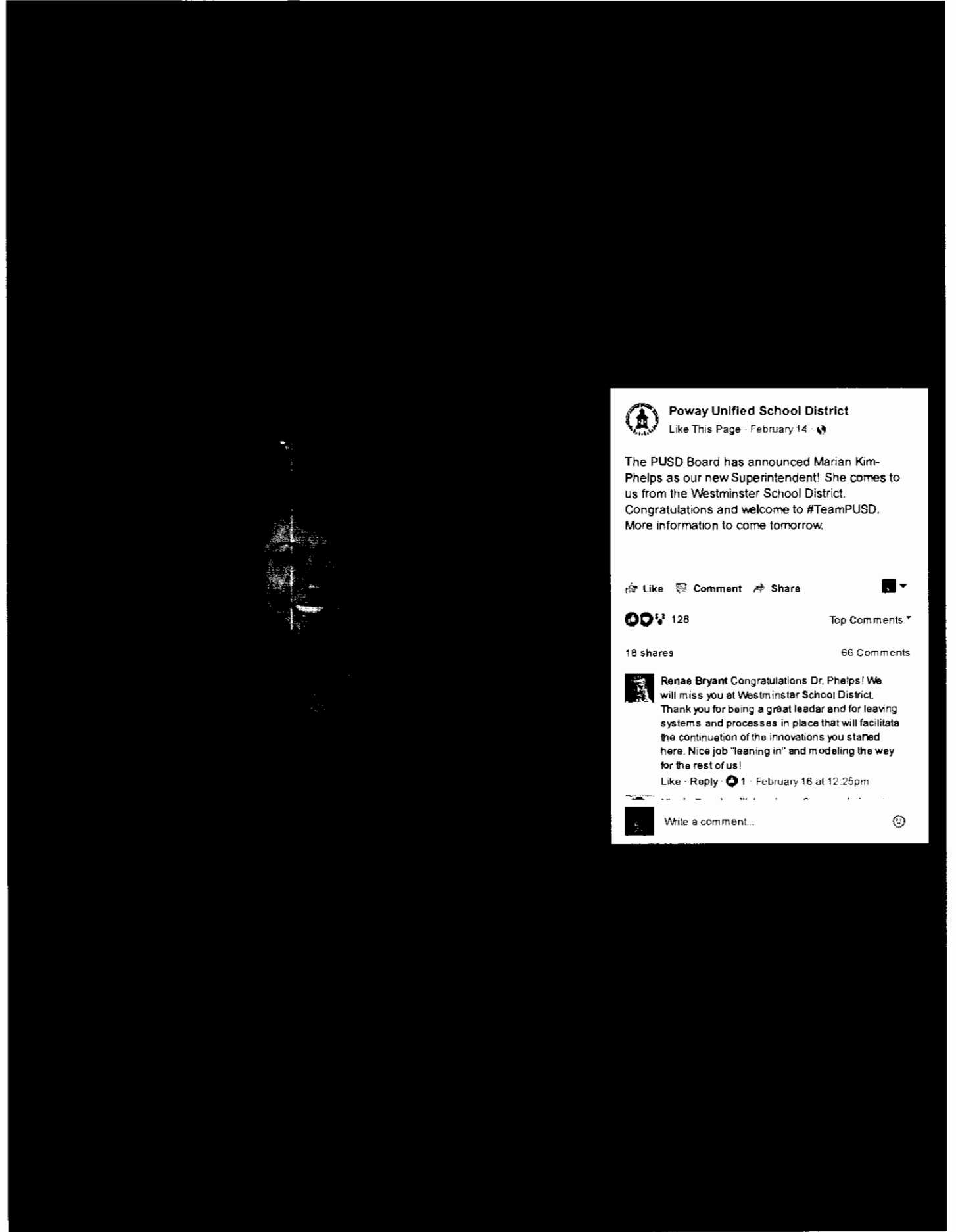
Reply icon Retweet icon 12 Like icon 23



Reply to @powayusd @mkimphelps

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "D"



Poway Unified School District

Like This Page · February 14 ·

The PUSD Board has announced Marian Kim-Phelps as our new Superintendent! She comes to us from the Westminster School District. Congratulations and welcome to #TeamPUSD. More information to come tomorrow.

Like Comment Share

128

Top Comments

18 shares

66 Comments



Renee Bryant Congratulations Dr. Phelps! We will miss you at Westminster School District. Thank you for being a great leader and for leaving systems and processes in place that will facilitate the continuation of the innovations you started here. Nice job "learning in" and modeling the way for the rest of us!

Like · Reply · 1 · February 16 at 12:25pm



Write a comment...



**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "E"

T.J. Zane Timeline Recent

Add Friend



T.J. Zane

Add Friend Message

Timeline About Friends & Mutual Photos More

DO YOU KNOW T.J.?

To see what he shares with friends, send him a friend request.

Add Friend



8 Mutual Friends

T.J. Zane February 26 at 11:48pm

Just watched Deepwater Horizon. Whoa. Great flick.

Like Comment Share

Nancy Pusanik Halay and 25 others

Hector Gastelum Hacksaw Ridge is already at Redbox Like · Reply · 1 · February 26 at 11:56pm

Bart Miranda I watched it last night too! Awsome movie! Like · Reply · February 27 at 4:58am

Eric Christen Great movie. We watched 13 Hours: The Secret Soldiers of Benghazi instead of the Oscars. Like · Reply · 1 · February 27 at 7:41am

Natale Hart I loved that movie! Did you cry at the end? I may or may not have. Like · Reply · February 27 at 2:00pm

Write a comment...

T.J. Zane was looking for an electrician. February 25 at 12:22pm



- Ricky Picano likes Mark Maples's video.
- Maya Stonecastle likes Patty Agee's post in Sourdough Bread Baking.
- Liva Borak Beaudin reacted to U.S. Senator Bernie Sanders's link.
- Jeffrey Bozanic likes Gabriela Peparo's post.
- Pam Slater-Price shared Housekeeping 101's video.

- Tony Lawrence
- Liva Borak Beaudin
- Debbie Acker-Grossb...
- BJ Lawrence
- Patricia Portugal
- Albart Schafer
- Lucas O'Connor
- Georgatta Gomez
- Joshua Emerson Smith
- John Slump 45m
- Emily Seraty Cox
- Sera Kant 37m
- Rita Carlson 8m
- Ajan Haskwitz 5h
- Peter Bolland 1h
- Merco González 8h

Add Friend

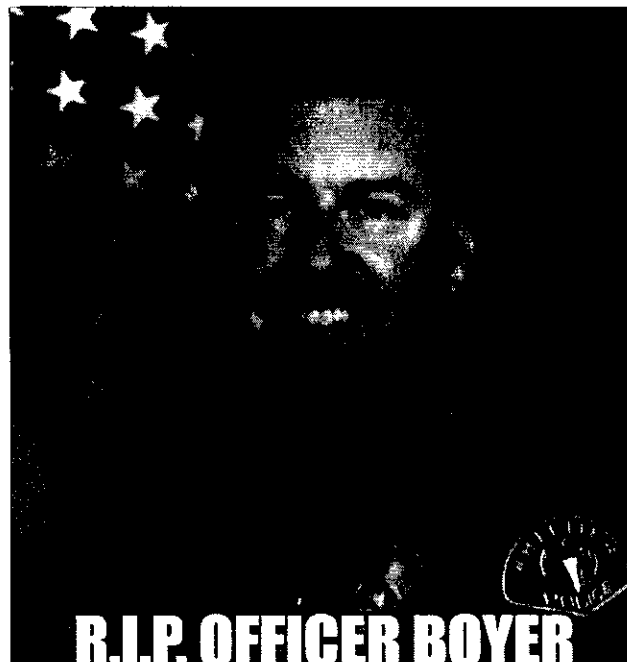
Susanne Schaible Mehran. Ac/dc alactic ... awesome man
Like · Reply · February 25 at 1:05pm

Christine Dooley Well that's shocking.
Like · Reply · 4 · February 25 at 1:32pm
T.J. Zane replied · 3 Replies

Michael McSweeney T.J, you can do this. Its not hard and you won't gat zapped.
Call ma and i'll walk you thru it
Like · Reply · 1 · February 25 at 6:27pm
Michael McSweeney replied · 4 Replies

Dele Long Call an alacrician for products liability unliass you ara sura..
Like · Reply · February 26 at 4:55pm
Write a comment...

T.J. Zane
February 21 at 11:54am



Like Comment Share

49

2 shares

Don McKinney God Bless !
Like · Reply · February 21 at 3:48pm

Jantca Juelka Hester
Like · Reply · February 21 at 7:38pm

Write a comment...

T.J. Zane shared Poway Unified School District's photo.
February 14 at 11:02pm

BREAKING: PUSD Board announces its choice for a new Superintendent!
Congratulations Dr. Phelps!



Intro

Pass the Tabasco.

- Board Membar at Poway Unifiad School District
- Chairman at San Diego County Prosperity Institute
- Principal at PAC Management & Consulting, Inc.
- Former Executive Director at Republican Party of San Diego County
- Former Presiden/CEO at Lincoln Club of San Diego County
- Studied Political Sciencia (BA) and Communications (BA) at University of Pennsylvania
- Went to East Haven High School
- Lives in San Diego, California
- Married to Rozanna Zane
- From East Haven, Connecticut



T.J. and 11 of your friends have a bio and featured photos. Add them to your profile too. Add info

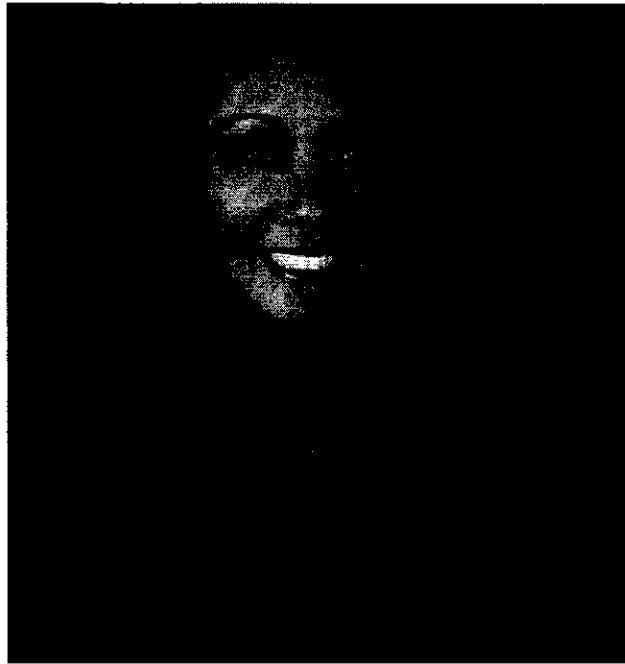
You and T.J.

- 8 mutual friends including John Falchi and Gil Cabrara
- Lives in San Diego, California

- Ricky Piceno likes Mark Maplas's video.
- Maya Stonecastle likes Patty Aгаа's post in Sourdough Bread Baking.
- Livia Borak Beaudin reacted to U.S. Senator Bernia Sanders's link.
- Jeffrey Bozanic likes Gabriele Paparo's post.
- Pam Slater-Price shared Housekeeping 101's video.
- Tony Lawrence
- Livia Borek Baaudin
- Debbie Acker-Grossb...
- BJ Lawrence
- Patricia Portugal
- Albert Schafer
- Lucas O'Connor
- Georgetta Gomaz
- Joshua Emerson Smith
- John Stump 45m
- Emily Seraty Cox
- Sara Kant 37m
- Rita Carlson 8m
- Alan Haskwitz 5h
- Petar Bolland 1h
- Marco Gonzalaz 8h

T.J. Zane Timeline Recent

Add Friend



- Ricky Piceno likes Mark Maples's video.
- Maya Stonecastle likes Patty Agee's post in Sourdough Bread Baking.
- Livia Borak Beaudin reacted to U.S. Senator Bernie Sanders's link.
- Jeffrey Bozanic likes Gabnate Paparo's post.
- Pam Slater-Price shared Housekeeping 101's video.

Friends · 2,732 (8 Mutual)



- Tony Lawrence
- Livia Borak Beaudin
- Debbie Acker-Grossb...
- BJ Lawrence
- Patricia Portugal
- Albert Schafer
- Lucas O'Connor
- Georgette Gomez
- Joshua Emerson Smith
- John Stump 45m
- Emily Serafy Cox
- Sara Kent 37m
- Rita Carlson 8m
- Alan Haskvitz 5h
- Peter Bolland 1h
- Marco Gonzalez 8h

Poway Unified School District Like Page February 14 at 9:18pm

The PUSD Board has announced Manan Kim-Phelps as our new Superintendent! She comes to us from the Westminster School District. Congratulations and welcome to #TeamPUSD. More information to come tomorrow.

Like Comment Share

24

Jo Medina-Alegria Awesome!! Like · Reply · 1 · February 15 at 6:20am

Scott Hasson Let's hope at some reasonable salary with performance milestones. Like · Reply · February 15 at 8:10am

John Culea Good grief, How long has she been out of college? Like · Reply · February 15 at 2:25pm

Jo Medina-Alegria replied · 6 Replies

Charles Wesley Kim Jr. Kim. Hmmm. Can't go wrong with that name. Like · Reply · February 15 at 9:13pm

Write a comment...

T.J. Zane shared Bo Harmon's post. February 10 at 7:43am

Bo Harmon February 9 at 11:05am

Can someone remind me who all I'm supposed to boycott and who to support? I know Lyft and Uber are in there but not sure which one is on which side. Airbnb pop...

See More

Like Comment Share

1

Write a comment...

T.J. Zane February 7 at 3:20pm

Add Friend

29

Denise Gtsham I couldn't be prouder to call you a friend, T.J. Zane. #teamzane Like · Reply · 2 · February 7 at 10:31pm

Sage Naumann replied · 1 Reply

Write a comment...

T.J. Zane February 7 at 3:04pm

This is pretty surreal... my intern, who finished working for me a few months ago, is just killing it. I hope he'll hire me someday. Naweed Tahmas



Naweed Tahmas February 7 at 1:56pm

What a hectic week! Fifteen interviews done since Wednesday with the New York Times, Fox, CBS, NBC, and other news outlets. I was able to share to the Bay Area, the state, and the nation the importance of free speech and the fight to preserve it in Berkeley.

Like Comment Share

31

View 2 more comments

Donna Spradley Cleary He was my intern first!?? Like · Reply · February 7 at 3:35pm

Naweed Tahmas As I always say, I learned from the best. Like · Reply · 4 · February 7 at 4:00pm

Dale Long Tj, some say your student's actions reflect positive reflection on the mentor. Looks like fun meaningful work. Kudos Like · Reply · February 7 at 5:01pm

Eric Park Enjoy those 15 minutes, buddy. You give Dinesh hope. Like · Reply · February 14 at 11:12pm

Write a comment...

See More Recent Stories

- Ricky Piceno likes Mark Maples's video.
- Maya Stonecastle likes Patty Agae's post in Sourdough Bread Baking.
- Livia Borak Beaudin reacted to U.S. Senator Bernie Sanders's link.
- Jeffrey Bozanic likes Gabriele Paparo's post.
- Pam Slater-Price shared Housekeeping 101's video.

- Tony Lawrence
- Livia Borak Beaudin
- Debbie Acker-Grosb...
- BJ Lawrence
- Patricia Portugel
- Albert Schafer
- Lucas O'Connor
- Gaorgetta Gomaz
- Joshua Emerson Smith
- John Stump 45m
- Emily Serafy Cox
- Sara Kent 37m
- Rita Carlson 6m
- Alan Haskwitz 5h
- Peter Bolland 1h
- Marco Gonzalez 8h

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

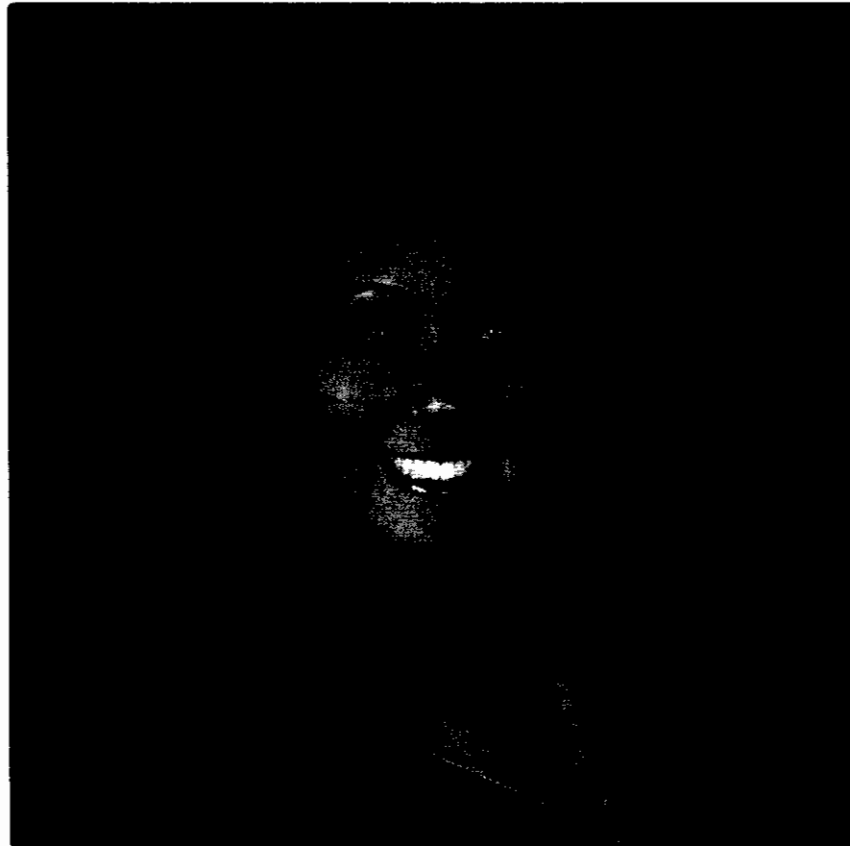
Exhibit "F"



Poway Unified
@powayusd

Follow

Want to know more about the PUSD board's selection to lead #PowayUnified? Read more about new Supe @mkimphelps here powayusd.com/getmedia/ac866 ...



RETWEETS 13 LIKES 21



10:19 AM - 15 Feb 2017

Reply icon Retweet icon 13 Like icon 21



Reply to @powayusd @mkimphelps

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "G"



Poway Unified School District

Like This Page · February 15 ·

In case you missed it, the Board of Education named its selection for a new Superintendent last night! She'll be officially hired when her contract is approved at the March 7th board meeting. Learn more about Dr. Marian Kim-Phelps here: <http://powayusd.com/getmedia/ac86601f-5a9f-4d6d-9ba7-a998266bf051/PR2-15-17-Marian-Kim-Phelps-Superintendent.aspx>

Like Comment Share

78

Top Comments ▾

3 shares

14 Comments



Erin Tozer Welcome to PUSD! Now here is someone that looks qualified enough to be the US Secretary of Education! So happy to have you.
Like · Reply · 3 · February 15 at 5:03pm



Nancy Ebnar Denen Big welcome to Dr. Phelps, PUSD's first female superintendent.
Like · Reply · 4 · February 15 at 4:53pm · Edited



Tess Cohen Congratulations Marian!!! Saw the announcement on channel 10 news!!!
Like · Reply · February 15 at 9:38pm



Jennifer Roberson Poway is lucky to have you as their Superintendent! Congratulations.
Like · Reply · February 16 at 5:09pm



Jimmy Nguyen Congratulations Dr Kim-Phelps. You'll be greatly miss at WSD.
Like · Reply · February 16 at 1:50pm



Rosa Yungen Welcome!
Like · Reply · 1 · February 15 at 10:43am

View 8 more comments



Write a comment...



Timeline Photos

Share Embed Like

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "H"



PRESS RELEASE

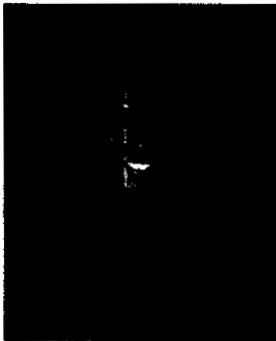
15250 Avenue of Science ■■ San Diego ■■ California 92128-3406

Phone (858) 521-2700 ■■ FAX (858) 485-1075

For Immediate Release

Contact: Christine Paik, Director of Communications (858) 521-2707

February 15, 2017



PUSD Board Selects Dr. Marian Kim-Phelps as New Superintendent

After a nationwide search, the Board of Trustees for the Poway Unified School District has named Dr. Marian Kim-Phelps as their selection to lead the 3rd largest school district in San Diego County.

Westminster School District Superintendent Dr. Marian Kim-Phelps will officially become the new Superintendent for the Poway Unified School District on March 7th when her contract is approved by the Board of Trustees. Kim-Phelps will be the first minority and the first female superintendent for the top job in Poway. The Poway Unified School Board on Tuesday announced Kim-Phelps as the finalist from a pool of 91 applicants.

Since becoming Westminster School District's superintendent, Dr. Kim Phelps has focused on bringing equity, access and opportunities to every student in the district. Under her leadership, the district established the first Vietnamese Dual Language Immersion Academy in California, a Spanish Dual Language Immersion Academy, a STEAM Magnet School, a GATE Academy and Orange County's first Computer Science Magnet School. Last year, Westminster School District was one of only 13 districts throughout California to be named an Honor Roll District, a national program recognizing high-performing schools that improve the outcomes for students. The district was also honored as a 2015 White House Initiative on Educational Excellence for Hispanics "Bright Spot in Hispanic Education". Most recently, the Orange County Register named Dr. Kim Phelps as one of Orange County's 100 Most Influential "2016 Game Changers in Orange County."

In her 25 years as an educator, she was an elementary and middle school teacher, a vice principal, elementary principal for 10 years, Area Superintendent for four years serving 32 schools K-12, and currently Superintendent for nearly

four years for 17 K-8 schools. Dr. Kim-Phelps is also an adjunct professor at California State University Fullerton, where she has taught doctorate level coursework on Ethical and Legal Dimensions of Educational Leadership.

“Dr. Kim-Phelps is an incredibly accomplished Superintendent. She has outstanding credentials and brings the experience and vision needed to lead the district and embrace the community. We are very excited to have her as our next Superintendent,” announced Board President Michelle O’Connor-Ratcliff.

Dr. Kim-Phelps was awarded the 2016 Golden Bell Award by the California School Board Association for technology, she was named 2016 ACSA District Administrator of the Year and the 2013 Central Office Administrator of the Year by the Association of California Administrators (ACSA) Region 18. Kim-Phelps was awarded the 2009 and 2010 ACSA National Distinguished Principal Finalist Award for the State of California. In addition, Dr. Kim-Phelps was part of the senior level management team that led the 2nd largest school district in the state to become recognized as a 2013 Broad Prize for Urban Education District Finalist. Prior to and during her years as an educator, Dr. Kim-Phelps worked in hospital business administration with Scripps Health for over ten years.

Dr. Kim-Phelps says, “I am honored to have been selected as the new superintendent for Poway Unified, and I look forward to being part of a high quality team and district. I am committed to ensuring that our children not only have the skills necessary to be college and career ready, but have the skills needed to be successful in life! I look forward to building on the achievements of Poway Unified while looking forward to a shared future.”

Dr. Kim-Phelps earned a Doctorate degree from San Diego State University, a Master of Arts in Educational Leadership from Point Loma Nazarene University and a Bachelor of Arts from University of California, San Diego.

#

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "I"

From: POWAY UNIFIED SCHOOL DISTRICT [mailto:email@blackboard.com]

Sent: Monday, February 27, 2017 4:36 PM

To:

Subject: TeamPUSD Newsletter



Dear PUSD Families,

Please enjoy the February edition of the #TeamPUSD Newsletter, a monthly publication by the District's Office of Communications. This is a new way to highlight student, staff, and school achievements as well as share fun photos, news, and events happening District wide.

Please click on the image below to read more. Enjoy!

#TEAMPUSD

SHARING THE GOOD NEWS AND GOOD WORK OF STUDENTS AND
STAFF

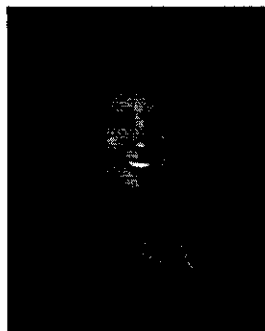
FEBRUARY 2017 EDITION

Welcome back from February break! I hope you had some time to relax and regroup as we gear up for a busy Spring. A lot of exciting things are happening across the District. Enjoy this latest edition of the TeamPUSD Newsletter, and catch up on all the good news. Submissions are always welcome: cpaik@powayusd.com

Sincerely,
Christine Paik, Director of Communications

WELCOME TO PUSD'S NEW SUPERINTENDENT

The Board of Education has selected Dr. Marian Kim-Phelps as our next Superintendent. Dr. Kim-Phelps, currently the Westminster School District Superintendent, will officially become the new Superintendent for PUSD on March 7th when her contract is approved by the Board. "Dr. Kim-Phelps is an incredibly accomplished Superintendent. She has outstanding credentials and brings the experience and vision needed to lead the District and embrace the community. We are very excited to have her as our next Superintendent," announced Board President Michelle O'Connor-Ratcliff. Read more about Dr. Kim-Phelps [here](#).



The Poway Unified School District (PUSD) is an equal opportunity employer/program and is committed to an active Nondiscrimination Program. PUSD does not discriminate on the basis of race, color, national origin, sex, sexual orientation, ethnic group identification, ancestry, religion, gender, gender identification, mental or physical disability. For more information, please contact the Associate Superintendent, Personnel Support Services, Poway Unified School District, 15250 Avenue of Science, San Diego, CA 92128-3406.

This e-mail has been sent to you by POWAY UNIFIED SCHOOL DISTRICT. To maximize their communication with you, you may be receiving this e-mail in addition to a phone call with the same message. If you no longer wish to receive email notifications from POWAY UNIFIED SCHOOL DISTRICT, please [click here](#) to unsubscribe.

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "J"



**POWAY UNIFIED SCHOOL DISTRICT
MINUTES OF THE BOARD OF EDUCATION
AT A REGULAR MEETING**

March 7, 2017
District Office Community Room

CLOSED SESSION

Board President O'Connor-Ratcliff called the meeting to order at 4:04 p.m. to receive public comment on the closed session agenda items. There were no public comments, and all Board members convened to closed session in the Board Conference Room. The closed session was adjourned at 5:40 p.m., and Board members reconvened in the Community Room to begin their regular meeting and relay any reportable action taken during closed session.

REGULAR MEETING

A. PRELIMINARY FUNCTIONS

A-1 Reconvene / Call to Order

The regular meeting of the Board of Education was called to order at 6:04 p.m. by Board President O'Connor-Ratcliff.

A-2 Report Out of Closed Session

1. CLOSED SESSION: CONFERENCE WITH LABOR NEGOTIATOR

Agent Negotiator: Sandra Huezo
PFT, PSEA Unit I and Unit II

2. CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – POTENTIAL LITIGATION

Pursuant to Government Code Section 54956.9(d)(2) (One Potential Case)
Legal Counsel: Mark Bresee

3. CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Approval of Settlement Agreement between the District and PSEA regarding Case No. LA-CE-6104E
Pursuant to Government Code Section 54957 and 54956.39

**4. CLOSED SESSION: PUBLIC EMPLOYEES DISCIPLINES/DISMISSALS/ RELEASES/
REASSIGNMENTS/TRANSFERS/NON-RENEWALS/RESIGNATIONS**

Pursuant to Government Code Section 54957

5. CLOSED SESSION: PUBLIC EMPLOYEES PERFORMANCE EVALUATIONS

Title: Classroom Teachers (2)

**6. CLOSED SESSION: PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE/
COMPLAINT**

Pursuant to Government Code Section 54957; (1 Case)
Unrepresented Employees: Management

7. CLOSED SESSION: PUBLIC EMPLOYEE EMPLOYMENT/APPOINTMENT

Pursuant to Government Code Section 54957 and 54957.1

Title: Superintendent

8. CLOSED SESSION: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8; Parcel Number 678-070-25-00; 312-293-11-00, 306-250-27-00, and 306-250-32-00

Legal Counsel: Best Best & Krieger, Tyree K. Dorward

9. CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(a); Case No. 37-2016-00026157-CU-OE-CTL

Legal Counsel: Dennis Walsh

Clerk Patel reported that in the matter of Item No. 7 Public Employee Employment/Appointment, Superintendent, on a motion by Mr. Zane and a second by Board President O'Connor-Ratcliff, the Board of Education voted to appoint Dr. Marian Kim-Phelps as Superintendent for Poway Unified School District. *Ayes: O'Connor-Ratcliff, Zane, and Patel. Noes: Beatty and Sellers. Motion passed: 3-2.*

There was no other reportable action taken in closed session.

A-3 Salute to Flag

Board President O'Connor-Ratcliff led the salute to the flag.

A-4 Members in Attendance

All Board members were in attendance, including Student Board Member Ella Smith.

A-5 Welcome to Public

Mr. Sellers welcomed the public and offered instructions on the procedure for addressing the Board during the Public Comments segment of the meeting.

A-6 Approval of Minutes

On a motion by Mrs. Beatty, and a second by Mr. Sellers, the minutes of the February 14, 2017, Regular Board Meeting were approved as amended by moving A-7, D208, and D-209 into open session after the closed session items. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

On a motion by Mr. Zane, and a second by Dr. Patel, the minutes of the February 28, 2017, Special Board Meeting were approved as presented. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

A-7 Approval of Agenda Sequence

Following discussion, Mr. Zane recommended that agenda item D-201 be heard prior to other agenda items. On a motion by Mr. Zane, and a second by Dr. Patel, the agenda sequence was amended as suggested. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

A-8 Approval of Consent Calendar

100 – LEARNING SUPPORT SERVICES

102 Adoption of New High School Courses

103 Adoption of High School Supplemental Text

104 Approval of Resolution No. 75-2017 PUSD Robotics Day

105 Approval/Ratification of Out-of-State Field Trips

106 Acceptance of Gifts

200 – PERSONNEL SUPPORT SERVICES

203 Approval of Resolution No. 79-2017 Entitled “Resolution Regarding Non-Reelection and Release of Temporary Certificated Employees”

204 Approval of Internship Agreement (Educational Specialist) with Point Loma Nazarene University

205 Approval of Internship Agreement (Educational Specialist) with Cal State University San Marcos

300 – BUSINESS SUPPORT SERVICES

400 – SCHOOL FACILITIES IMPROVEMENT DISTRICT

500 – COMMUNITY FACILITIES DISTRICT

600 – SUPERINTENDENT’S OFFICE

Mrs. Beatty asked that item E-102 be pulled for discussion, and Board President O’Connor-Ratcliff asked that item E-104 be pulled on behalf of a member of the public for discussion. On a motion by Mr. Zane, and a second by Mrs. Beatty, with the exception of items E-102 and E-104, the items on the consent calendar were approved as presented. *Ayes: O’Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

B. REPORTS / PRESENTATIONS / EARLY AGENDA ITEMS

B-1 Student Board Representative Reports

Student Board representatives Elizabeth Kerrigan from Abraxas High School, Nicole Labrador from Del Norte High School, Grace Hard from Mt. Carmel High School, Trevor George from Poway High School, Jalen Rasoul from Rancho Bernardo High School, and Nathan Xia from Westview High School, reported on events and activities at their respective schools.

B-2 (a) Superintendent’s Briefing

The following updates on current issues and events were presented:

- Dr. Mel Robertson shared highlights from the student and staff recognitions.
- Executive Director of Learning Support Services Eric Lehew, gave a presentation on the California Assessment of Student Performance and Progress, or CAASPP, and the new “Dashboard” measurements the state will be releasing soon.
- Dr. Robertson spoke about participation in the LCAP forums over the past month; and current budget challenges during the budget workshop held for the Board of Education.

(b) Student Recognition

Accomplishments and awards earned by students were recognized

(c) Staff Recognition

Accomplishments and awards earned by staff members were recognized.

B-3 Board Member Reports

Board members reported on their activities and events attended since the previous meeting.

B-4 2017 CSBA Delegate Assembly Election

Mr. Sellers put forth six names as representatives to the 2017 CSBA Delegate Assembly:

Stephen Cochrane (Del Mar Unified School District)
Beth Hergesheimer (San Dieguito Unified School District)
Tamara Otero (Cajon Valley Unified School District)
Dawn Perfect (Ramona Unified School District)
Louis M. Smith (Coronado Unified School District)
Cipriano Vargas (Vista Unified School District)

On a motion by Mr. Sellers, and a second by Dr. Patel, the Board of Education voted for those named as representatives to the 2017 CSBA Delegate Assembly. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

EARLY AGENDA ITEMS – As approved in agenda item A-7, this item was considered prior to routine agenda items.

D-201 Approval of the Employment Agreement Between Poway Unified School District and the Superintendent

Following discussion, on a motion by Mr. Zane, and a second by Dr. Patel, the Board of Education approved the employment agreement between Poway Unified School District and the Superintendent. *Ayes: O'Connor-Ratcliff, Zane, and Patel. Noes: Beatty and Sellers. Motion carried, 3-2.*

Public Comments, the following members of the public spoke in favor of Dr. Marian Kim-Phelps' contract:

Richard Nash
Jen Roberson
Scott Himmelstein
Candy Smiley, representing Poway Federation of Teachers.
Mary Andrews
Joe Erpelding
Kimie Lochtefeld
Armando Farias

The following members of the public did not speak, but supported Dr. Marian Kim-Phelps' contract:

Karen O.
Didi Ferrer
Eddie Park
James Jimenez
Bill Vance
Robert Holzman
Shelley Smith
Brad Bourda
Sandi Failla
Linda Hippe
Cyndi Paik
Nicole Jacobson
Jennifer Burks
Kathy Vance

Following a short recess, the regular Board of Education Meeting was called back in session at 7:55 p.m. by Board President O'Connor-Ratcliff.

C. PUBLIC COMMENTS

Lynnette Turner spoke on behalf of the PSEA, regarding working together through the coming budget cuts.

Doug Crooks spoke about classified positions that have not been restored since the last cuts.

Courtney Martin spoke about looking for budget cut solutions.

Ian Williamson spoke regarding Westview Theater repairs.

Maria Taylor spoke regarding Westview Theater repairs.

Sophia Cobarrubia spoke in favor of repairs to the Westview Theater.

Evan Williamson spoke in favor of repairs to the Westview Theater classroom.

Gerry Carlson spoke regarding the budget cuts and the Transportation Department.

Janet Lettang spoke about Board priorities and budget cuts.

Kim Rizzo requested that the World Language Textbooks be updated.

Jessica Xu spoke regarding National Save Your Vision Month.

Sharlene O'Keefe spoke regarding Poway on Stage.

D. ACTION ITEMS

D-101 Ratification of Stipulated Agreements for Student Expulsion

On a motion by Mrs. Beatty, and a second by Mr. Zane, the Board of Education approved and ratified student discipline Case No. 2016-2017.14. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

As approved in item A-8, agenda item E-102 and E-204 were pulled from the Consent Calendar for discussion and action.

E-102 Adoption of High School Supplemental Text

Following discussion, on a motion by Mrs. Beatty, and a second by Mr. Zane, the Board of Education approved the adoption of the High School Supplemental Text. Preferential vote Aye by Student Board member Ella Smith. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

E-104 Approval of Resolution No. 75-2017 PUSD Robotics Day

Following discussion, on a motion by Board President O'Connor-Ratcliff, and a second by Mrs. Beatty, the Board of Education approved Resolution No. 75-2017. Preferential vote Aye by Student Board member Ella Smith. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

Public Comments: Cathleen Pieroni spoke about the Robotics Competition's Civic Engagement Award.

As approved in item A-7, agenda item D-201 was heard prior to routine agenda items.

D-202 Ratification of Employment Agreement for the Acting Superintendent

Following discussion, on a motion by Mr. Zane, and a second by Mrs. Beatty, the Board of Education approved the employment agreement for the Acting Superintendent. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

D-301 Approval and Certification of Second Interim Financial Report and Approval of Resolution No. 78-2017 Entitled "Authorization to Revise the 2016-2017 Budget as Reflected in the Second Interim Financial Report"

Following a presentation by Director of Finance Joy Ramino, on a motion by Mrs. Beatty, and a second by Mr. Zane, the Board of Education approved the Certification of Second Interim Financial Report and approval of Resolution No. 78-2017. Preferential vote Aye by Student Board member Ella Smith. *Ayes: O'Connor-Ratcliff, Zane, Patel, Beatty, and Sellers. Motion carried unanimously, 5-0.*

F. FIRST READING ITEMS

G. INFORMATION ITEMS

H. NEW BUSINESS – BOARD MEMBERS

H-1 Board Self Evaluation Goals – Board President Michelle O'Connor-Ratcliff

The Board of Education discussed their self-evaluation goals.

H-2 CSBA Safe Haven Resolution – Board Member Kimberley Beatty

The Board of Education discussed the CSBA Safe Haven Resolution, and directed staff to bring it forward as an action item for the next Board meeting.

Public Comment: Terry Norwood spoke in favor of a Safe Haven Resolution.

I. CORRESPONDENCE

There was no correspondence presented.

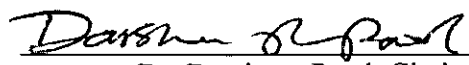
J. CLOSED SESSION

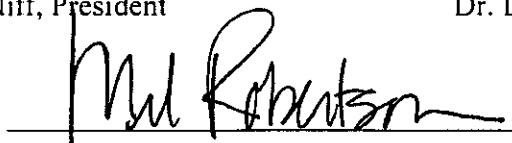
There were no additional items discussed in Closed Session.

K. ADJOURNMENT

The meeting was adjourned at 9:38 p.m.


Michelle O'Connor-Ratcliff, President


Dr. Darshana Patel, Clerk


Mel Robertson, Acting Secretary

am

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE
RELIEF AND PETITION FOR WRIT OF MANDATE BASED ON VIOLATIONS OF
THE RALPH M. BROWN ACT AND OTHER LAWS**

Exhibit "K"



PRESS RELEASE

15250 Avenue of Science ■■ San Diego ■■ California 92128-3406

Phone (858) 521-2700 ■■ FAX (858) 485-1075

For Immediate Release

Contact: Christine Paik, Director of Communications (858) 521-2707

March 7, 2017



New Poway Superintendent Dr. Marian Kim-Phelps to Start in April

Tonight at its March 7th meeting, the Board of Education approved the Superintendent contract for Dr. Marian Kim-Phelps. Dr. Kim-Phelps' first day as Superintendent of the Poway Unified School District will be April 3, 2017.

Many people in the audience spoke in support of Dr. Kim-Phelps during public comments, emphasizing Dr. Kim-Phelps' qualifications, leadership skills, and her commitment to children.

"I'm looking forward to starting the work as the new leader of the Poway Unified School District," said Dr. Kim-Phelps. "My past experiences have shaped me so that I'm poised to take on the challenges at Poway. I believe that I am coming in with the right intentions and with the right heart to make a difference in the lives of our children. People can count on me to be a hands-on, visible leader in our schools, District, and community events. I am committed to ensuring that every child experiences a world-class education and is prepared for college and career."

Among Dr. Kim-Phelps' short-term goals is to conduct a listening and learning tour to find out what has been working in PUSD schools and what challenges the District faces; then to develop a strategic plan so PUSD can continue to have schools that offer innovative programs to support college and career readiness.

In the long term, she wants to ensure the District puts into place systems of accountability and processes and procedures that allow the organization to operate effectively and efficiently; Dr. Kim-Phelps also wants to stabilize the budget so that the District can support innovative programs while providing competitive compensation for employees in order to retain the best staff.

At its February 14th meeting, the Board of Trustees named Dr. Kim-Phelps as their selection to lead the 3rd largest school district in San Diego County. After a nationwide search, Kim-Phelps was the finalist from a pool of 91 applicants.

"Dr. Kim-Phelps has the experience, qualifications, and vision PUSD needs. We are very fortunate to have found such an amazing leader, and we eagerly anticipate collaborating with her to make our district even more successful," said Board President Michelle O'Connor-Ratcliff.

In her 25 years as an educator, she was an elementary and middle school teacher, a vice principal, and principal for 10 years, as well as Area Superintendent for four years serving 32 schools K-12, including leading four different high schools in San Diego County. Dr. Kim-Phelps is currently the Superintendent of Westminster School District in Orange County for nearly four years. She is also an adjunct professor at California State University Fullerton, where she has taught doctorate level coursework on Ethical and Legal Dimensions of Educational Leadership.

A long-time resident of the San Diego area, Dr. Kim-Phelps earned a Doctorate degree from San Diego State University, a Master of Arts in Educational Leadership from Point Loma Nazarene University and a Bachelor of Arts from University of California, San Diego.

#

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Bernardino

I have read the foregoing COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER EQUITABLE RELIEF etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for San Diegans for Open Government a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on April 26, 2017, at Upland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Cory J. Briggs
Type or Print Name

[Handwritten Signature]
Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of, State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

on in this action
by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
I deposited such envelope in the mail at, California.
The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California.
(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I
(Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)