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JULIA FROST
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

13 (UNLIMITED JURISDICTION)

14 JULIA FROST, an individual and a taxpayer,

15
16 Plaintiff,

17 v.

18 HESPERIA UNIFIED SCHOOL DISTRICT, and
19 DOES 2 through 6, inclusive,

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21 Defendants.
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CASE NO.

**COMPLAINT FOR DAMAGES,
INJUNCTIVE AND DECLARATORY
RELIEF:**

1. Unlawful Discrimination on the Basis of Sexual Orientation And/or Association with LGBT and/or Gender Non-Conforming Individuals, Cal. Gov. Code §12940(a);
2. Unlawful Harassment on the Basis of Sexual Orientation And/or Association with LGBT and/or Gender Non-Conforming Individuals, Cal. Gov. Code §12940(j);
3. Unlawful Retaliation in Violation of FEHA, Cal.Gov. Code §12940(h);
4. Failure to Prevent Discrimination in Violation of FEHA, Cal. Gov. Code §12940(k);

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- 5. Failure to Prevent Harassment in Violation of FEHA, Cal. Gov. Code §12940(k);
- 6. Unlawful Discrimination and Harassment Based on Sexual Orientation, Gender Identity and/or Gender Expression in Violation of Cal. Ed. Code § 220;
- 7. Unlawful Retaliation for Advising Pupils Concerning Proper Exercise of Their Free Speech Rights, Cal. Ed. Code § 48907(g);
- 8. Negligent Training and/or Supervision, California Common Law;
- 9. Taxpayer Action for Declaratory and Injunctive Relief

JURY TRIAL DEMAND

INTRODUCTION

1. Julia Frost, a veteran teacher, began working as an English teacher at Sultana High School (“Sultana”) in the Hesperia Unified School District (“HUSD”) in August 2011. Although Ms. Frost was a highly experienced teacher, because she was new to HUSD, she began her employment there as a probationary-status teacher with the expectation of obtaining tenure after two years. Ms. Frost’s performance as an English teacher at Sultana was exemplary. Nevertheless, she was discriminated against, harassed and retaliated against during the course of her employment at Sultana. Ultimately, HUSD elected not to renew her teaching contract after her second year because she is a lesbian who is open about her sexual orientation, who complained about and attempted to challenge discrimination, retaliation and harassment directed against her and others, and who supported the legal rights and the health and safety of Sultana students who are, or were perceived to be, lesbian, gay, bisexual, transgender (LGBT) and/or gender non-conforming and those who associated with them. HUSD’s termination of Ms.

1 Frost's employment has deprived her of her livelihood and endangered her career as a teacher, as
2 a non-reelect sends a very negative signal to other potential school employers.

3 2. The anti-LGBT hostility of Sultana's top administrators became apparent soon
4 after Ms. Frost started her job. At the outset of the 2011-2012 school year Ms. Frost was invited
5 by a heterosexual teacher, Christina Grizanti, to co-advise the school's Gay/Straight Alliance
6 ("GSA") student club. Thousands of high schools across the nation, and hundreds in California
7 have GSAs, student-run clubs that provide support to LGBT students and their friends or allies.
8 These clubs have helped to reduce anti-LGBT bias and increase student mutual support in their
9 high schools, with sometimes life-saving results. All student clubs at Sultana must have faculty
10 advisors, and usually hold their meetings in the classrooms of those advisors. When asked, Ms.
11 Frost agreed to co-advise the GSA with Ms. Grizanti.

12 3. From near the beginning of her employment at Sultana, the school's
13 administrators began to discriminate against Ms. Frost, including by implying that she would not
14 follow applicable professional standards and by treating her as if she posed a danger to students.
15 Early in the school year, Principal Larry Bird ("Bird") summoned Ms. Frost to meet in his office
16 with him and Assistant Principal Jennifer Murillo ("Murillo"). Ms. Frost previously had
17 mentioned her female partner in a conversation with Ms. Murillo, which Murillo had apparently
18 reported to Principal Bird. Visibly displaying his discomfort with Ms. Frost's sexual orientation,
19 he opened the meeting by saying, "Well, Jen told me you have a partner," or words to that effect.
20 He went on to say that he had summoned Ms. Frost to the meeting to make sure that she knew
21 that the GSA should be run by students and not by her. Ms. Frost assured him that she
22 understood that the group – like all student clubs – was to be run by the students, and asked why
23 he had not also summoned her GSA co-advisor to the meeting. Principal Bird did not explain,
24 but said he would be sure to convey the same message to her co-advisor. Ms. Frost later learned
25 that Principal Bird neither held a similar meeting with Ms. Grizanti nor communicated this
26 admonition to her in some other manner.

1 4. The discriminatory behavior of Principal Bird and other top Sultana High officials
2 continued throughout Ms. Frost’s first year of employment at Sultana. Bird and other
3 administrators repeatedly treated Ms. Frost differently than heterosexual teachers and
4 heterosexual faculty advisors. For example, when Ms. Grizanti went on leave, another
5 heterosexual teacher, Jennifer Rhodus, became the GSA co-advisor along with Ms. Frost.
6 Subsequently Principal Bird and Assistant Principal Murillo repeatedly summoned Ms. Frost to
7 meetings in their offices to interrogate her about GSA activities without Ms. Rhodus. As another
8 example, Vice Principal of Discipline Danny Polmounter (“Polmounter”) informed Ms. Frost
9 that she was being investigated for “teaching homosexuality,” or words to that effect. Vice
10 Principal Polmounter eventually told Ms. Frost that he had concluded that she was “teaching gay
11 things,” without explaining why he believed any of her conduct was improper.

12 5. Even though she was forced to contend with homophobic harassment, suggestions
13 of unprofessional conduct, and being singled out for sexual orientation-based interrogations
14 during her first year at Sultana, Ms. Frost’s performance as a teacher was outstanding. Her April
15 10, 2012 performance evaluation indicated she had attained all performance goals, and further
16 stated, “Ms. Julia Frost had a great first year as an English teacher at Sultana. It is clear she
17 cares about her students and her new school. She works closely with her colleagues to create
18 common assessments based on the essential standards they have developed. Ms. Frost uses the
19 data from these and other forms of informal and formal assessments to plan and direct her
20 instruction, reteaching, and review. We appreciate her hard work at Sultana this year! Nice job
21 Ms. Frost!”

22 6. In the 2012-2013 school year, the environment at Sultana worsened for Ms. Frost,
23 for LGBT and gender non-conforming students and/or those perceived to be LGBT or gender
24 non-conforming, and for those who associated with them. The administration refused to approve
25 various Gay/Straight Alliance student club activities, began to censor announcements of GSA
26 meetings over the school’s public address system, and entirely omitted the club from the “School
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1 Clubs and Organizations” listing in Sultana High School’s 2012-2013 Student Handbook &
2 Planner. No other student group was subjected to similar censorship and exclusion.

3 7. Although “Seth’s Law,” which is codified as California Education Code §234.1 *et*
4 *seq.*, requires school staff to intervene when they witness acts of bullying, harassment or other
5 discrimination, GSA students reported to Ms. Frost that numerous teachers never did so, and that
6 some regularly made homophobic remarks in class themselves, such as “that’s gay,” “that’s so
7 gay,” and “you’re gay,” and/or similar comments said in a disparaging manner. Students also
8 informed Ms. Frost that when Felicitas Orozco, a lesbian and gender non-conforming student,
9 was voted Homecoming Queen by her peers and wore a suit to the Homecoming Dance in
10 September 2012, teachers had harassed Felicitas about her sexual orientation and gender
11 expression with impunity. Students also told Ms. Frost that when they tried to file complaints of
12 anti-LGBT bullying with Principal Bird and Assistant Principal Murillo, the administrators
13 attempted to dissuade them from doing so, including by threatening to disclose certain students’
14 sexual orientations to their parents notwithstanding the students’ objections and fears of severe
15 parental reactions.

16 8. During the fall of 2012, Sultana’s administrators continued to discriminate against
17 and harass Ms. Frost, including by regularly interrogating her about the GSA’s activities and
18 about her own classroom activities, while failing to do the same with respect to similar activities
19 undertaken by heterosexual teachers at Sultana. Increasingly concerned about the hostile work
20 environment she was facing as well as the effect of school staff’s homophobic comments and
21 other anti-LGBT conduct on LGBT and gender non-conforming students at Sultana, Ms. Frost
22 contacted her union representative Jim Resvaloso. Mr. Resvaloso arranged for a meeting
23 between himself, Principal Bird, Assistant Principal Jennifer Murillo, and Ms. Frost in October
24 2012. During the course of that meeting Mr. Resvaloso and Ms. Frost identified a number of
25 policies and practices at Sultana, including but not limited to the fact that some teachers regularly
26 made homophobic comments in the classroom, and that an even greater number of teachers

1 failed to intervene when students made homophobic statements or harassed other students who
2 are or were perceived to be LGBT and/or gender non-conforming and students who associated
3 with them. Mr. Resvaloso and Ms. Frost explained that the hostile environment toward LGBT
4 and gender non-conforming people was negatively impacting not just Ms. Frost, but Sultana's
5 LGBT and gender non-conforming students, and that Sultana was violating multiple provisions
6 of California law, including the School Safety and Violence Prevention Act (which is codified as
7 Education Code § 220 and known as "AB 537"), and Seth's Law, both of which require schools
8 to protect LGBT and gender non-conforming students from bullying, including by training
9 school staff regarding anti-LGBT conduct and/or bullying and by making Uniform Complaint
10 Procedures available for students to report discrimination and harassment. They also explained
11 that Sultana was violating the FAIR Act (which is codified as Education Code § 51204.5), which
12 requires balanced inclusion of information about the existence and contributions of LGBT people
13 within curriculum and school activities.

14 9. Nevertheless, Sultana's administration continued to violate the rights of LGBT
15 and gender non-conforming students. Students were discouraged from making complaints about
16 misconduct directed at LGBT and gender non-conforming students and those who associated
17 with them. Such would-be complainants were instructed to use Sultana's informal report forms
18 instead of HUSD's formal Uniform Complaint forms and procedures when complaining, and
19 complaints submitted by these students providing notice of and requesting help regarding the
20 anti-LGBT harassment and other abuse by peers, teachers, and school officials were either not
21 adequately investigated or not investigated at all. Administrators and teachers treated same-sex
22 couples differently from LGBT couples by selectively enforcing "public display of affection"
23 rules against them, excluding them from school traditions such as "favorite class couple," and
24 punishing LGBT students more harshly for misconduct than other students. LGBT and gender
25 non-conforming students continued to be discriminated against when Sultana imposed gender
26 stereotypes and suppressed expressions of gender non-conformity by establishing and

1 threatening to enforce gender stereotypical dress codes at school social events. No training was
2 provided to teachers regarding anti-LGBT bullying and, to Ms. Frost's knowledge, no teachers
3 were reprimanded in any way for making homophobic, disparaging comments in the classroom
4 and/or for failing to intervene when others made such comments. The administration continued
5 to treat the GSA differently than other Sultana clubs and to suppress the GSA's speech by
6 improperly refusing to approve their proposed activities and censoring their posters and
7 announcements.

8 10. In early February 2013, Amber Stanford, a student member of the GSA,
9 approached Ms. Frost and asked her to print out a Uniform Complaint Procedure
10 Discrimination/Harassment Complaint Reporting Form from the website of the GSA Network, a
11 nonprofit organization that provides support to high school and middle school GSAs across the
12 nation. Amber used the form Ms. Frost printed at her request to attempt to file a complaint
13 regarding her anatomy teacher having instructed a student in class to "Take the gay headband
14 off," or words to that effect, and having made the homophobic comment, "That's so gay," or
15 words to that effect, in a disparaging tone. When Amber submitted her complaint to Principal
16 Bird on or about Friday, February 8, 2013, he demanded to know where she had obtained the
17 Uniform Complaint Form. Amber told him that she had asked Ms. Frost to print it for her.

18 11. On or about Wednesday, February 13, 2013, just days after Amber attempted to
19 file her Uniform Complaint Form, Principal Bird informed Ms. Frost in a meeting that she was a
20 "non-reelect," meaning her employment would not be renewed for the following school year.
21 Principal Bird stated, "You are just not a good fit here," or words to that effect. In early March
22 of 2013, Ms. Frost received a letter from the Hesperia Unified School District Governing Board
23 informing her that HUSD would not be renewing her teaching contract. Ms. Frost has since
24 attempted to obtain other employment, but her "non-reelection" and the circumstances
25 surrounding it stand in the way of her finding another similar position.

1 perpetrated by certain defendants, the remaining defendant or defendants confirmed and ratified
2 said acts and omissions.

3 17. Whenever and wherever reference is made in this complaint to any act or failure
4 to act by a defendant or defendants, such allegations and references shall also be deemed to mean
5 the acts and failure to act of each defendant acting individually, jointly, or severally.

6 **JURISDICTION AND VENUE**

7 18. Venue is proper in this judicial district, pursuant to California Code of Civil
8 Procedure §395(a) and California Government Code §12965(b), and the amounts in controversy
9 exceed this Court’s jurisdictional minimum. Plaintiff resides in and Defendant is a public entity
10 in the County of San Bernardino, and all acts and omissions giving rise to liability are alleged to
11 have occurred in the County of San Bernardino.

12 **GENERAL FACTUAL ALLEGATIONS**

13 19. Plaintiff Julia Frost began working at Sultana in the HUSD in August 2011 as an
14 English teacher. Ms. Frost had a number of years of experience as a teacher, including nine
15 years of experience teaching English in the Fontana Unified School District. Because Ms. Frost
16 was teaching in a new district, she began her employment at Sultana as a probationary-status
17 teacher with the expectation of obtaining tenure after two years.

18 20. As a public school in California, Sultana is required to comply with state laws
19 designed to ensure a safe learning environment for LGBT and gender non-conforming staff and
20 students as well as staff and students perceived to be LGBT and/or gender non-conforming at
21 public schools in California, and those who associate with them. These laws include, but are not
22 limited to, AB 537, Seth’s Law, and the FAIR Act. AB 537 added actual or perceived sexual
23 orientation and gender identity to California Education Code §220, making explicit the
24 prohibitions against discrimination and harassment of students and school staff on those bases.
25 AB 537 also mandated that Uniform Complaint Procedures be available to students and staff
26 members to file complaints of discrimination or harassment based on sexual orientation or

1 gender identity. Seth's Law, California Education Code §234.1 *et seq.*, requires California
2 school districts to adopt comprehensive anti-bullying policies that address abuse based on sexual
3 orientation and gender identity or expression, and to train school staff on those policies. Seth's
4 Law also requires all school staff members to intervene when they witness acts of discrimination
5 or harassment. The FAIR Act, California Education Code §51204.5 *et seq.*, prohibits the use of
6 biased educational materials or activities that, in a discriminatory manner, reflect adversely on
7 persons because of their sexual orientation and requires the inclusion of the political, economic,
8 and social contributions of LGBT people in educational texts and social studies curricula, as the
9 contributions of other people are included.

10 21. Prior to the beginning of her first year at the school, Ms. Frost attended a series of
11 meetings required for new teachers in HUSD. At those meetings she met fellow Sultana teacher
12 Christina Grizanti. Ms. Grizanti asked Ms. Frost if Ms. Frost would co-advise Sultana's
13 Gay/Straight Alliance ("GSA") student club. Ms. Frost agreed to be a faculty co-advisor with
14 Ms. Grizanti, who is heterosexual. Early in the school year, Jennifer Rhodus, who is
15 heterosexual, replaced Ms. Grizanti as the other faculty co-advisor of the club when Ms. Grizanti
16 went on leave.

17 22. The GSA is one of approximately three dozen student clubs at Sultana. Its goals
18 are to create a safe environment at Sultana by working to end discrimination, harassment, and
19 violence, and to facilitate students supporting each other and learning about homophobia,
20 transphobia, and other prejudice and social hostility that creates stress, anxiety, and alienation for
21 some students. The GSA at Sultana is one of hundreds of GSAs at high schools in California,
22 and thousands throughout the nation.

23 23. Student clubs at Sultana are required to have a faculty advisor, and generally meet
24 at lunchtime in their advisors' rooms. Student clubs plan a variety of activities, including social
25 events, community service, and fundraisers. If students wish to have announcements read to the
26 school about their meetings or events over the public address system, they submit the text of the
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1 announcements to Angela Espinoza, secretary of the Associated Student Body (“ASB”). To
2 request approval for an activity, student groups write the request in their meeting minutes and
3 submit those minutes to Ms. Espinoza. Ms. Espinoza forwards all student club requests to H.R.
4 Lugo, the Assistant Principal of Student Activities.

5 24. Early in the school year, Assistant Principal Jennifer Murillo completed a
6 classroom observation of Ms. Frost’s teaching and met with Ms. Frost to discuss the observation.
7 Assistant Principal Murillo gave Ms. Frost a very positive evaluation. During the meeting,
8 Assistant Principal Murillo discussed her husband and, in response, Ms. Frost mentioned that she
9 had a female partner.

10 25. Other teachers began discussing Ms. Frost’s sexual orientation soon after she
11 began working at Sultana. In August 2011, during Ms. Frost’s first month of teaching, a teacher
12 informed Ms. Frost that other teachers were discussing Ms. Frost’s sexual orientation and that
13 one teacher had commented, “She doesn’t look like a lesbian,” or words to that effect. Soon
14 thereafter, fellow teacher Leo Adkins confronted Ms. Frost, demanding to know “which one is
15 the man and which one is the woman in your relationship?” or words to that effect.

16 26. Assistant Principal Murillo reported to Principal Larry Bird that Ms. Frost is a
17 lesbian, and Principal Bird summoned her to his office for a meeting in September 2011. Visibly
18 displaying his discomfort with Ms. Frost’s sexual orientation, he opened the meeting by saying,
19 “Well, Jen told me you have a partner,” or words to that effect. Principal Bird went on to say
20 that he had summoned Ms. Frost to the meeting to make sure that she knew that the GSA should
21 be run by students and not by her. Ms. Frost assured him that she understood that the group –
22 like all student clubs – was to be run by the students, and asked why he had not also summoned
23 her GSA co-advisor to the meeting. Principal Bird did not explain, but said he would be sure to
24 convey the same message to her co-advisor. Ms. Frost later learned that Principal Bird neither
25 held a similar meeting with Ms. Grizanti nor communicated this admonition to her in some other
26 manner.

1 27. In or around September 2011, the GSA requested permission to hold a training of
2 other students during lunchtime as part of Ally Week, a week that is focused on students
3 identifying, supporting, and celebrating students and adults who are not LGBT but who are
4 committed to opposing the bullying and harassment of LGBT students. Ally Week is organized
5 through the Gay, Lesbian and Straight Education Network (GLSEN), a national organization
6 established in 1990 to ensure that schools are safe for all students. During Ally Week, GSAs
7 nationwide offer lunchtime training to students on how to intervene when they see LGBT
8 students being targeted by bullies. Sultana's GSA requested approval to provide a training using
9 a lesson plan provided by GLSEN to GSAs across the country.

10 28. At Sultana, student-requested events were typically approved by the ASB
11 officers alone. However, in October of 2011, Ms. Frost was summoned to meet with
12 administrators and answer questions about the proposed Ally Week training without her co-
13 advisor Jennifer Rhodus. When Ms. Frost arrived at the meeting, she found herself facing four
14 top school administrators, Principal Bird, Assistant Principal Murillo, Assistant Principal H.R.
15 Lugo, and Head Counselor Kim Falahee. Ms. Frost asked that Ms. Rhodus be present, and only
16 then was Jennifer Rhodus summoned to the meeting. Even though the GSA students had
17 provided the administrators with a copy of the lesson plan the students intended to use for the
18 Ally Week training, Ms. Falahee and Assistant Principal Lugo interrogated Ms. Frost and Ms.
19 Rhodus about the purpose of the event. Their questions expressed their seeming skepticism that
20 Ally Week's stated purpose indeed was to teach students tools to stop bullying, as opposed to
21 being a cover for inappropriate efforts to persuade students to change their sexual orientation.
22 Ms. Frost and Ms. Rhodus invited all four administrators present at the meeting to attend the
23 training to alleviate their concerns, but none of them did so. The administration never officially
24 responded to the GSA's request for approval of the event, neither approving nor denying
25 approval of the requested activities. Due to the lack of approval, the students were left to hold
26 the training without being able to publicize the activity as student clubs usually would do. Even

1 so, the students were able to gather hundreds of student pledges not to engage in homophobic
2 bullying or harassment and to intervene if they observed such conduct and could do so safely.
3 Notably, although the pledge confirms the standards of conduct established by state law, certain
4 senior administrators refused to sign it when asked to do so by members of the GSA.

5 29. In April 2012, members of the Sultana GSA decided they wished to participate in
6 a national event called the “Day of Silence.” On April 20, 2012, the Day of Silence, students in
7 high schools across the nation take vows of silence to draw attention to the silencing of LGBT
8 youth through bullying and anti-LGBT harassment. Students pass out cards to others explaining
9 their reasons for not speaking for the day.

10 30. After the GSA members informed the administration that they wished to
11 participate in the Day of Silence, Principal Bird and Assistant Principal Murillo again singled out
12 Ms. Frost by calling her in for a meeting about the students’ intentions without informing Ms.
13 Rhodus of the meeting. In the meeting, Principal Bird expressed a number of concerns,
14 including that GSA students would be rude to teachers. In response Ms. Frost assured him that
15 she would write up any student who behaved in a rude or disrespectful manner in conjunction
16 with the event. At Principal Bird’s request, Ms. Frost drafted information about the event to be
17 distributed to teachers. But Principal Bird never distributed the information Ms. Frost had
18 prepared for him or, to Ms. Frost’s knowledge, any other information to teachers about the 2012
19 Day of Silence.

20 31. Around the same time, Sultana teacher Harvey Miller sent a harassing email and
21 letter to Ms. Frost in which he said that gay students should not be allowed to protest on campus.
22 Mr. Miller then called Ms. Frost on the phone and yelled at her, saying that “gays should not be
23 teaching” and are “disgusting,” or words to that effect. Ms. Frost reported the harassing phone
24 call to Principal Bird’s secretary, who said she would pass on the information to Principal Bird.
25 Upon information and belief, neither Principal Bird nor any Sultana administrator took any
26 action to reprimand Mr. Miller or to respond in any way to Ms. Frost’s report of this harassment.

1 32. In May 2012, Vice Principal of Discipline Polmounter came into Ms. Frost’s
2 classroom and informed Ms. Frost she was being investigated for “teaching homosexuality,” or
3 words to that effect. Vice Principal Polmounter examined Ms. Frost’s classroom as part of this
4 purported “investigation.” Mr. Polmounter told Ms. Frost he had concluded that she was
5 “teaching gay things,” or words to that effect, based on the presence of a tolerance poster, a
6 sticker indicating her classroom was a safe space for LGBT students, and a rainbow flag. Ms.
7 Frost responded that she was teaching Julius Caesar and would be happy to give him her lesson
8 plans. Ms. Frost also invited Vice Principal Polmounter to drop by and observe her teaching
9 whenever he liked.

10 33. In the 2012-2013 school year, the environment at Sultana worsened for Ms. Frost,
11 for students who are or were perceived to be LGBT and/or gender non-conforming, and for those
12 who associated with them. The administration refused to approve various GSA activities, began
13 to censor announcements of GSA meetings over the school’s public address system, and entirely
14 omitted the club from the “School Clubs and Organizations” listing in Sultana High School’s
15 2012-2013 Student Handbook & Planner. No other student group was subjected to similar
16 censorship and exclusion.

17 34. For example, the GSA requested permission to screen the Emmy-nominated,
18 made-for-TV film “Prayers for Bobby.” This film tells the true story of a mother who became an
19 advocate for gay rights after her gay son committed suicide when he learned that she considered
20 his homosexuality an irredeemable sin. Although other student clubs regularly showed movies,
21 Principal Bird denied permission to screen “Prayer for Bobby,” explaining that he was
22 “uncomfortable” with the content of the film. The GSA then submitted a request to screen “To
23 Wong Foo, Thanks for Everything!,” a PG-13 rated comedy about three drag queens on a cross-
24 country road trip. That request also was denied. The students were told that the administration
25 had concerns about potential copyright infringement. The students found this perplexing and
26 frustrating because they did not plan to charge admission to the screening of the film and both

1 the students and Ms. Frost had informed the administration of this fact. The GSA made a third
2 attempt to show a movie, requesting to screen the documentary “Out in the Silence.” This film
3 tells the story of a controversy ignited in the filmmaker’s small hometown in Pennsylvania when
4 he announced his wedding to another man and the filmmaker’s subsequent response to the severe
5 bullying of a gay teen by the town’s residents. Although Ms. Frost emailed the filmmaker and
6 obtained written permission for the GSA to screen the film, Sultana officials denied this request
7 as well. Around the same time, a history teacher at Sultana screened the R-rated film
8 “Schindler’s List” in class, which graphically depicts Nazi concentration camps, without
9 comment from the administration.

10 35. Although Seth’s Law requires school staff members to intervene when they
11 witness acts of anti-LGBT discrimination or harassment, GSA students repeatedly reported to
12 Ms. Frost that numerous teachers never did so, and that some regularly expressed anti-LGBT
13 bias and made homophobic remarks in class themselves, such as saying “that’s gay,” “that’s so
14 gay,” and “you’re gay,” and/or similar comments in a disparaging manner, and that they did so
15 without any known repercussions. For example, Amber Stanford, a student at Sultana and a
16 member of the GSA, informed Ms. Frost that she had complained to Principal Bird about a
17 woodshop instructor who freely made homophobic remarks in class, including “that’s gay” or
18 “you’re gay” used as an expression of disdain, but that, upon information and belief, no action
19 had been taken regarding these comments. Moreover, the students sought advice from Ms. Frost
20 concerning use of the word “gay” and related words as a criticism, insult or slur by senior-level
21 administrators as well as by teachers. For example, GSA members explained to Ms. Frost that
22 they had overheard Assistant Principal Lugo say, contemptuously, “That’s so gay,” and refer to
23 his own son disdainfully as a “vagina,” apparently to criticize him for behaving in what Assistant
24 Principal Lugo considered to be a feminine manner.

25 36. In September 2012, the students of Sultana elected Felicitas Orozco, a lesbian and
26 gender non-conforming student, Homecoming Queen. Assistant Principal Lugo had tried to
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1 discourage at least one student from voting for her and referred to her nomination as “a joke.”
2 Felicitas accepted the award wearing a collared shirt and jeans, and wore a suit to the
3 Homecoming Dance. Multiple faculty members expressed their discomfort and disdain
4 regarding homosexuality and gender non-conforming mannerisms and behavior by telling their
5 students, Felicitas, and/or Ms. Frost that they disapproved of Felicitas and her decision to wear a
6 suit. As an example, a few days after the Homecoming Dance, the cheerleading coach
7 confronted Ms. Frost, demanding to know what Felicitas had said to Ms. Frost about various
8 things, including anything Felicitas might have said about the cheerleading coach, the coach’s
9 comments about Felicitas, or the cheerleaders. In doing so, the coach repeatedly referred to
10 LGBT individuals as “those people.”

11 37. Teachers continued to harass and ridicule Felicitas about her sexual orientation
12 and her gender expression. Eventually, Felicitas told Ms. Frost how she was being treated by
13 Sultana teachers and described the adverse effects on her of that treatment. Ms. Frost asked
14 Felicitas a series of questions to ascertain that she was not in immediate physical danger,
15 suggested that she file a report with the school immediately, and offered to accompany her to
16 Assistant Principal Murillo’s office. Felicitas requested that she do so. When Ms. Frost went to
17 accompany Felicitas from her class with Mr. Brown on video production to Ms. Murillo’s office,
18 the teacher of the class asked Felicitas in a condescending and derogatory tone, “Why do *you*
19 need to see *her?*,” referring to Ms. Frost. Mr. Brown then laughed at Felicitas. Ms. Frost
20 accompanied Felicitas to Assistant Principal Murillo’s office, where Felicitas filed a complaint
21 detailing the harassment and discrimination to which she had been subjected by numerous
22 teachers. Ms. Frost wrote a report explaining what Felicitas had disclosed to her and how
23 Felicitas’ video production teacher had treated Felicitas, and describing the cheerleading coach’s
24 anti-LGBT comments.

25 38. In response to Felicitas informing Assistant Principal Murillo that she wanted to
26 file a complaint concerning the hostile and discriminatory treatment by school staff, Murillo told
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1 Felicitas and Ms. Frost that the filing of any formal complaint would force Murillo to disclose
2 Felicitas' sexual orientation to her father. Ms. Frost told Murillo that Felicitas had not talked to
3 her father about her sexual orientation and that her father was extremely conservative and might
4 kick her out of the house or have other severely negative reactions if he were told that she is a
5 lesbian. Ms. Frost further told Assistant Principal Murillo that, because school staff and other
6 students did not pose a threat to Felicitas' physical safety, there was no reason to disclose her
7 sexual orientation to her father against Felicitas' wishes and that to do so under these
8 circumstances would be improper. With complete disregard for Felicitas' anxiety, her desire to
9 decide for herself when to come out to her father, and the danger it might pose to Felicitas' home
10 situation, Assistant Principal Murillo again insisted she would tell Felicitas' father that Felicitas
11 is a lesbian, then claiming she needed to do so because of an unspecified "safety issue." As a
12 result, Felicitas was forced to tell her father she is a lesbian that day, so that he would learn this
13 information directly from her in her own words and not from Assistant Principal Murillo.

14 39. Upon information and belief, neither Felicitas' complaint nor Ms. Frost's report
15 were investigated or otherwise addressed by Sultana's administrators. Although Felicitas
16 requested a copy of her complaint, Assistant Principal Murillo never gave her one.

17 40. Another openly gay student in the GSA told Ms. Frost that he too had attempted
18 to report to Sultana's administrators the bullying, discrimination and/or harassment he had
19 experienced. But, when he tried to file a complaint, Vice Principal Polmounter similarly had
20 threatened to call his parents against his wishes and tell them he is gay. Unlike Felicitas, this
21 student was deterred from filing his complaint and felt that much more vulnerable, distraught,
22 and frustrated as a result.

23 41. In October of 2012, contrary to school policy, a phone call was transferred from
24 the counseling department to Ms. Frost's classroom without an identification of the caller or to
25 which student he was connected. When Ms. Frost answered the call, she encountered an enraged
26 man who claimed to be a parent and refused to give his name. The man accused Ms. Frost of

1 having a “gay agenda,” or words to that effect, yelled that he would stop her any way he could,
2 and that he would find someone to help him stop her. During the call, Ms. Frost advised the man
3 that he should take the matter up with Principal Bird. But, the man repeatedly said he only
4 wanted to talk with Ms. Frost. At the point when Ms. Frost felt that the man had threatened her
5 explicitly, she again told him he should speak to Principal Bird and hung up the phone. She
6 immediately made a report of the threat. Principal Bird’s office then called the school police in
7 an effort to identify the parent. Ms. Frost was so upset that she could not go to work the next
8 day. Thereafter, she requested information about the status of the investigation and whether the
9 man had been identified so that she could protect herself. She received no response for a full
10 week. Ms. Frost was eventually told the identity of the parent and that he had been permitted to
11 remove his daughter from her class based on the parent’s objection to her sexual orientation.

12 42. When Ms. Frost began teaching at Sultana, she was instructed by then-head of the
13 English department Cliff Baker to use Kelly Gallagher’s website as a resource for lesson plans, a
14 website which other Sultana English teachers also frequently used as part of their lesson plans.
15 At the time, Mr. Baker also referred Ms. Frost to two Kelly Gallagher videos which provided
16 instruction about how best to develop “article of the week” activities into a lesson plan. In
17 October of 2012, Ms. Frost downloaded an article and suggested questions from that website.
18 The recommended assignment asked students to summarize the claims made by the author of a
19 Newsweek article concerning the repeal of the U.S. military’s “Don’t Ask, Don’t Tell” policy
20 along with any support for those claims contained in the article. Students were not asked for or
21 assigned to write about their own views concerning the “Don’t Ask, Don’t Tell” policy. Other
22 English teachers at Sultana and across the country used the same article and assignment in their
23 classrooms.

24 43. Shortly thereafter, Assistant Principal Murillo and Vice Principal Polmounter
25 summoned Ms. Frost to a meeting in which they criticized the assignment, told her that a parent
26 had complained about it, and informed Ms. Frost that she had to present “the other side of the
27

1 issue” to students, or words to that effect. During the meeting, it became clear to Ms. Frost that
2 neither Polmounter nor Murillo had read the article, nor had they reviewed the assignment Ms.
3 Frost actually had given, before criticizing her teaching. Ms. Frost explained that the assignment
4 she had given the students was not to take a political position with respect to the repeal of the
5 military policy or the policy itself, but to identify the author’s claim and the support the author
6 had articulated for the claim. Ms. Frost pointed out that other teachers had used the same
7 assignment, that it was from a website that Sultana instructed its English teachers to utilize for
8 resources, and that she apparently was the only teacher summoned to a meeting and criticized for
9 using the assignment in the form recommended by the website. To Ms. Frost’s knowledge,
10 although heterosexual English teachers at Sultana had used the assignment in their classes, none
11 of them were summoned to meet with the administration or subjected to any criticism concerning
12 this assignment either before or after Ms. Frost was subjected to such treatment.

13 44. Increasingly concerned about the rising level of hostility she was facing in her
14 work environment as well as the effect of school staff’s homophobia on LGBT and gender non-
15 conforming students at Sultana, Ms. Frost contacted her union representative Jim Resvaloso for
16 help. Mr. Resvaloso arranged a meeting between himself, Principal Bird, Assistant Principal
17 Jennifer Murillo, and Ms. Frost in October 2012. Mr. Resvaloso explained to the administrators
18 that it was not appropriate for them to bring the concerns of homophobic parents to Ms. Frost
19 unless there was a safety issue for Ms. Frost, and that such complaints should be given no
20 legitimacy because Ms. Frost’s sexual orientation could not be a topic of legitimate criticism for
21 parents or others. Ms. Frost and Mr. Resvaloso reported to Principal Bird and Assistant Principal
22 Murillo that some Sultana teachers regularly made homophobic comments in their classrooms
23 and that an even greater number of teachers failed to intervene when students made homophobic
24 statements or harassed other students who are, or were perceived to be, LGBT and/or gender
25 non-conforming, and students who associated with them. They explained why and how the
26 hostile environment toward LGBT and gender non-conforming people was negatively impacting

1 not just Ms. Frost, but Sultana’s LGBT and gender non-conforming students. They further
2 explained that Sultana’s failure to address the harassing and discriminatory conditions was
3 inconsistent with the California School Safety and Violence Prevention Act (“AB 537”) and
4 Seth’s Law, which require schools to protect LGBT and gender non-conforming students from
5 bullying, including by training school staff regarding anti-LGBT conduct and/or bullying and by
6 making Uniform Complaint Procedures available for students to report discrimination and
7 harassment. They also explained that Sultana’s discriminatory exclusion of LGBT activities,
8 films and other information was inconsistent with the FAIR Act.

9 45. Nevertheless, Sultana’s administration continued to violate the rights of LGBT
10 and gender non-conforming students. Students were discouraged from making complaints about
11 misconduct directed at LGBT and gender non-conforming students and those who associated
12 with them. Such would-be complainants were instructed to use Sultana’s informal incident
13 report forms instead of HUSD’s formal Uniform Complaint form and procedures to submit their
14 complaints, and those complaints then were either not adequately investigated or not investigated
15 at all. Administrators and teachers treated same-sex couples differently from other couples by
16 selectively enforcing “public display of affection” rules against them, excluding them from
17 school traditions such as “favorite class couple,” and punishing LGBT students more harshly for
18 misconduct than other students. LGBT and gender non-conforming students additionally were
19 discriminated against when Sultana imposed gender stereotypes and suppressed expressions of
20 gender non-conformity by establishing and threatening to enforce gender stereotypical dress
21 codes at school social events. Despite the students’ complaints and the requirements of state
22 law, no training was provided to teachers regarding anti-LGBT bullying and, to Ms. Frost’s
23 knowledge, no teachers were reprimanded in any way for making disparaging comments about
24 LGBT people in the classroom or for failing to intervene when others made such comments. The
25 administration continued to treat the GSA differently than other Sultana student clubs and to
26 suppress the GSA members’ speech by refusing to approve their proposed activities and

1 censoring their posters and announcements. Throughout her employment at Sultana, and
2 consistently with the faculty advisory role she had been asked to fulfill, Ms. Frost advised the
3 GSA students about appropriate ways to request administration help to reduce the discrimination
4 and end the censorship of the GSA and GSA members, and to stop the discrimination and
5 harassment targeting LGBT and gender non-conforming students by faculty and school officials
6 as well as by fellow students.

7 46. For example, in early February 2013, Amber Stanford, a student member of the
8 GSA, approached Ms. Frost and asked her to print out a Uniform Complaint Procedure
9 Discrimination/Harassment Complaint Reporting Form from the website of the GSA Network, a
10 nonprofit organization that provides support to high school and middle school GSAs across the
11 nation. Amber used the form Ms. Frost printed at her request to attempt to file a complaint
12 regarding her anatomy teacher having instructed a student in the class to “Take the gay headband
13 off,” or words to that effect, and making the homophobic comment, “That’s so gay,” or words to
14 that effect. When Amber submitted her complaint on or about Friday, February 8, 2013,
15 Principal Bird demanded to know where she had obtained the Uniform Complaint Form. Amber
16 told him that she had asked Ms. Frost to print it for her.

17 47. On or about Wednesday, February 13, 2013, just days after Amber told Principal
18 Bird that Ms. Frost had accommodated her request to obtain the Uniform Complaint Form,
19 Principal Bird informed Ms. Frost that she was a “non-reelect,” meaning her employment would
20 not be renewed for the following school year. Principal Bird stated to Ms. Frost, “You are just
21 not a good fit here,” or words to that effect.

22 48. Ms. Frost informed her union representative, Mr. Resvaloso, about Principal
23 Bird’s non-reelect decision. Mr. Resvaloso then approached Karen Kelly, the Assistant
24 Superintendent of Personnel Services for HUSD. Assistant Superintendent Kelly was
25 empowered to rescind the non-reelect decision. However, she refused to do so even after Mr.
26 Resvaloso told her that there were clear issues of discrimination and retaliation in how Sultana

1 had treated Ms. Frost. Despite the fact that Assistant Superintendent Kelly herself had litigated a
2 discrimination case against HUSD for years which she eventually settled for reinstatement to her
3 former position and \$500,000, Ms. Kelly told Mr. Resvaloso that she did not believe that HUSD
4 would ever discriminate. Ms. Frost subsequently received a letter from Ms. Kelly in early March
5 informing her that at its March 4, 2013 meeting, the HUSD's Governing Board had decided not
6 to renew her teaching contract.

7 49. On March 18, 2013, the American Civil Liberties Union of Southern California
8 ("ACLU") sent a letter to HUSD on behalf of the GSA, alleging, among other things, pervasive
9 discrimination against LGBT and gender non-conforming students at Sultana and illegal
10 suppression of GSA members' speech regarding the GSA and LGBT issues. The ACLU letter
11 also stated that the illegal actions taken against the LGBT, gender non-conforming and/or GSA
12 member students included Sultana's decision to "non-reelect" Ms. Frost based on her support of
13 the GSA and her own sexual orientation. The ACLU's letter generated significant media
14 coverage and prompted the HUSD Governing Board to adopt revised policies regarding bullying
15 and to open an investigation into the ACLU's allegations.

16 50. On March 21, 2013, Ms. Frost filed a claim pursuant to California Government
17 Code §§ 910 and 911.2 by certified mail, notifying David McLaughlin, Interim Superintendent
18 of the HUSD, the Governing Board of the HUSD, and Principal Larry Bird of Sultana High
19 School of the aforementioned facts. A true and correct copy of Ms. Frost's Government Code
20 complaint is attached hereto as Exhibit A. On May 22, 2013, the HUSD faxed plaintiff's counsel
21 a denial of all the claims set forth in her Government Code claim, a true and accurate copy of
22 which is attached hereto as Exhibit B.

23 51. On March 22, 2013, Ms. Frost utilized Uniform Complaint Procedures to file a
24 Uniform Complaint with HUSD describing the aforementioned facts, and alleging violations of
25 Education Code §220, which prohibits discrimination and harassment based on sexual
26 orientation in schools, and Education Code §48907(g), which prohibits retaliation against

1 teachers who protect the First Amendment rights of students. Ms. Frost's Uniform Complaint
2 also alleged that Sultana High School had violated the FAIR Act, AB 537, and Seth's Law. A
3 true and correct copy of Ms. Frost's Uniform Complaint is attached hereto as Exhibit C. On
4 May 22, 2013, the HUSD faxed plaintiff's counsel a notice stating, among other things, that it
5 would not investigate her complaint and that it had referred the complaint to the Department of
6 Fair Employment and Housing ("DFEH"), a true and accurate copy of which is attached hereto
7 as Exhibit D. On June 5, 2013, plaintiff's counsel filed an appeal of that response with the
8 California Department of Education. A true and accurate copy of Plaintiffs' letter brief in
9 support of her appeal is attached hereto as Exhibit E. On July 26, 2013, the HUSD faxed
10 plaintiff's counsel a copy of its response to that appeal, a true and accurate copy of which is
11 attached hereto as Exhibit F. As of today, the Department of Education has not issued a decision
12 on Ms. Frost's appeal.

13 52. On or about April 5, 2013, Ms. Frost filed charges with the DFEH against Sultana
14 High School and the HUSD and its School Board, and against Principal Bird, Assistant Principal
15 Murillo, Vice Principal Polmounter, and Assistant Principal Lugo. The causes of action alleged
16 herein were alleged in Ms. Frost's DFEH charge with supporting factual allegations, which Ms.
17 Frost later amended to include the discriminatory, retaliatory, and harassing events described in
18 paragraphs 53-56 below. Ms. Frost received a right to sue letter from the DFEH on November
19 13, 2013. A true and correct copy of Ms. Frost's amended DFEH charge, including her right to
20 sue letter, is attached hereto as Ex. G.

21 53. On April 15, 2013, in an after-the-fact attempt to justify HUSD's discriminatory
22 and retaliatory decision not to renew Ms. Frost's contract and to retaliate against Ms. Frost,
23 Principal Bird and Assistant Principal Murillo met with Ms. Frost and Mr. Resvaloso, who
24 attended the meeting as Ms. Frost's union representative. In this disciplinary conference, Bird
25 and Murillo criticized Ms. Frost for meeting with students in her classroom on March 25 and
26 April 2, 2013, as well as for a classroom discussion in Ms. Frost's class allegedly addressing

1 topics raised in the ACLU letter, including HUSD’s decision not to renew Ms. Frost’s teaching
2 contract.

3 54. On April 18, 2013, in a further act of discrimination and retaliation attempting
4 improperly to justify the illegal decision not to reelect Ms. Frost, Assistant Principal Murillo
5 issued a negative performance evaluation to Ms. Frost. In that evaluation, Murillo generally
6 commended Ms. Frost’s teaching. However, Murillo also accused Ms. Frost of having, “on
7 several occasions, exhibited poor judgment.” The four instances of purportedly “poor judgment”
8 detailed in the review made obvious the administration’s lack of good faith in assessing Ms.
9 Frost’s teaching and professionally appropriate commitment to her students; all were obviously
10 manufactured as a pretext for discrimination and retaliation.

11 55. For example, Murillo accused Ms. Frost of improperly meeting with three
12 students for non-instructional reasons during her prep period on March 25, 2013. Murillo made
13 this criticism knowing that the students had approached Ms. Frost for help because one of them
14 who had a history of suicidal ideation had just been kicked out of his house because of his sexual
15 orientation. In the days following Ms. Frost’s prompt action to refer this student to a counselor
16 at the school, neither Murillo nor any other Sultana officials criticized her for responding to the
17 students’ request for help. The mid-April 2013 reviews were the first time Sultana
18 administrators took the plainly erroneous position that Ms. Frost should have disregarded her
19 responsibilities as the GSA’s faculty advisor and under California law as a licensed teacher and
20 refused the students’ request for guidance. Murillo also reprimanded Ms. Frost for having used
21 class time to respond to student questions about the letter the ACLU had sent HUSD, even
22 though Ms. Frost allowed only a cursory discussion of the letter during her class time. By
23 contrast, non-LGBT teachers and administrators used large sections of and/or entire class periods
24 to have detailed conversations about the letter and, upon information and belief, were not
25 similarly reprimanded. Although fully aware she had never done so, Murillo accused Ms. Frost
26 of having given an assignment to students asking them to defend their personal positions for or
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1 against marriage for same-sex couples. Finally, Murillo deemed a statement Ms. Frost had
2 posted on her Facebook page six months earlier “profane and unbecoming of her position,” even
3 though Ms. Frost had not identified her employer in the post and had restricted the post to be
4 viewable only by her personal friends, which did not include Ms. Murillo or other Sultana or
5 HUSD officials.

6 56. Ms. Frost submitted a written response to each critical allegation on or about
7 April 25, 2013, which response, among other things, pointed out that none of the administrators
8 who had participated in this negative performance evaluation should have been allowed to do so
9 because all of them were aware they had been personally criticized both in the ACLU letter of
10 March 18, 2013 and in Ms. Frost’s formal administrative complaints. Ms. Frost’s response also
11 pointed out that each of the four incidents identified as instances of Ms. Frost’s poor judgment
12 were the type of incidents that, if legitimately objectionable in the manner identified in the
13 evaluation, would have been cause for immediate reprimand, but that Sultana’s administrators
14 had said nothing to indicate any dissatisfaction with her professional conduct until after they had
15 been publicly criticized by the ACLU and personally named by Ms. Frost in her administrative
16 complaints. For example, the Facebook post identified in the evaluation had been posted in
17 October of 2012, yet no mention of it was made until the April 18 performance evaluation, after
18 the HUSD Board had decided to “non-reelect” Ms. Frost and shortly after she filed her
19 administrative complaints of discrimination, harassment, and retaliation. In her response Ms.
20 Frost also set forth facts demonstrating that each of the four incidents cited in the performance
21 evaluation of purportedly poor judgment on her part were mistaken factually.

22 57. On August 7, 2013, the HUSD sent a letter to the ACLU admitting that “there
23 have been isolated incidents and comments that seemingly were directed towards GSA students
24 and the GSA club by teachers and administrators,” and that “there were isolated incidents where
25 specific Sultana staff made insensitive comments regarding LGBT and gender non-conforming
26 students.” While claiming that “there is no overarching culture of discrimination towards LGBT
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1 or gender non-conforming students at Sultana High School,” HUSD agreed to implement an
2 array of policy changes at Sultana, including adding bullying, harassment and discrimination
3 policies and complaint procedures to the student handbook, a parents’ rights handout, and
4 HUSD’s website, providing “awareness training for teachers and staff, focusing on stereotypical
5 speech that is offensive and inappropriate,” and educating teachers, students and staff about the
6 Governing Board’s newly adopted administrative regulations and policies concerning
7 discrimination, harassment, and bullying.

8 58. Had Sultana allowed Ms. Frost to continue teaching, she would have obtained
9 tenure on the first day of her third school year. Instead, when her contract expired at the end of
10 the 2012-2013 school year, Ms. Frost lost her income, her teaching position, and the prospect of
11 greater professional security that would have come with tenure. Since then, Ms. Frost has faced
12 great difficulty in obtaining employment as a teacher in any other school district in the area,
13 because a non-reelect signals to other employers that misconduct or incompetence must have
14 occurred. Although she has applied for many teaching positions, Ms. Frost has not been offered
15 a job and continues to be unemployed.

16 59. As a direct and proximate result of the discrimination, harassment, retaliation,
17 and other unlawful conduct to which Ms. Frost has been subjected, Ms. Frost has suffered and
18 will continue to suffer economic damages, severe emotional distress, and physical manifestations
19 of said emotional distress and other injuries.

20 60. Ms. Frost’s Government Code claim filed March 21, 2013 tolled the claims set
21 forth therein. The Uniform Complaint filed March 22, 2013 and the DFEH charge filed April 5,
22 2013 have tolled and continue to toll the statute of limitations on each and every one of the
23 claims asserted therein.

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FIRST CAUSE OF ACTION

**Unlawful Discrimination on the Basis of Sexual Orientation and/or Association with LGBT
and/or Gender Non-Conforming Individuals
(California Government Code §12940(a);
Brought by Plaintiff against Defendant and Does 2-6)**

61. Plaintiff restates and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

62. At all times relevant herein, the California Fair Employment and Housing Act (“FEHA”), Government Code §12900 *et seq.*, was in full force and effect and binding upon Defendant, which regularly employs more than five individuals.

63. California Government Code §12940(a) deems it an unlawful employment practice to discharge an employee or otherwise discriminate against an employee with respect to the terms, conditions, or privileges of employment because of her sex, gender, gender identity, gender expression or sexual orientation. Cal. Gov. Code §12940(a). FEHA’s definitional section states that “sex” and “sexual orientation” include “a perception” that the person has a particular characteristic or characteristics or that the person “is associated with a person who has, or is perceived to have,” a particular characteristic or characteristics. Cal. Gov. Code §12926(n). Thus, California Government Code §12940(a) also deems it an unlawful employment practice to discharge an employee or otherwise discriminate against an employee with respect to the terms, conditions, or privileges of employment because of her association with others based on the sex or sexual orientation of those individuals.

64. California Government Code §12926 defines “sexual orientation” as “heterosexuality, homosexuality, and bisexuality,” and provides that “sex” includes a person’s gender. Cal. Gov. Code §12926(q)(2),(r). “Gender” includes “a person’s gender identity and gender expression. ‘Gender expression’ means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” Cal. Gov. Code §12926(q)(2).

1 65. Plaintiff is a lesbian, and in her capacity as faculty advisor to the GSA at Sultana,
2 associated with students who are and/or are perceived to be LGBT and/or gender non-
3 conforming, including but not limited to by allowing the GSA to meet in her classroom, advising
4 GSA members how to plan activities, explaining these students' legal rights to school
5 administrators, and advising individual students about the proper procedures for filing the
6 complaints they wished to file with Sultana's administration regarding discrimination and/or
7 harassment based on their LGBT and/or gender non-conforming status. The gender expression of
8 several of the students with whom Plaintiff associated differed from the gender-related
9 appearance and behavior stereotypically associated with those students' assigned sex at birth.
10 Gender non-conforming students with whom Plaintiff associated include, but are not limited to,
11 Felicitas Orozco, who is a lesbian and who wore clothing commonly considered masculine to the
12 Homecoming Dance for which she was elected Homecoming Queen, and Levi Smithson-
13 Johnson who is gay and who communicated to Sultana administrators his desire to wear high
14 heels to Sultana's prom.

15 66. Defendant, through its agents and/or employees, violated Government Code
16 §12940(a) in various ways, including, but not limited to: (a) repeatedly singling out Plaintiff for
17 interrogation concerning the activities of the GSA and her teaching activities; (b) investigating
18 Plaintiff based on allegations that she was "teaching homosexuality;" (c) criticizing Plaintiff for
19 giving an approved assignment based on a Newsweek article concerning the "Don't Ask Don't
20 Tell" military policy while not subjecting heterosexual teachers who utilized the same
21 assignment in their classrooms to criticism; (d) issuing Plaintiff a negative performance
22 evaluation prepared in bad faith which was replete with falsehoods, intentional
23 misrepresentations of her actions, and unfair criticism of her judgment; (e) violating school
24 policy regarding transferring of outside phone calls to teachers in their classrooms, facilitating an
25 obviously angry and prejudiced parent's verbal abuse and threatening of Plaintiff,
26 accommodating the prejudiced parent's improper request for transfer of his child out of

1 Plaintiff's classroom, and failing to take standard steps to inform Plaintiff of the police
2 investigation of the parent's threats and related conduct; and (f) electing at its March 4, 2013
3 Governing Board meeting not to renew Plaintiff's contract because of her sexual orientation
4 and/or because of her association with Sultana students who are or who are perceived to be
5 LGBT and/or gender non-conforming.

6 67. As a direct and proximate result of Defendant's conduct through its agents and/or
7 employees, Plaintiff suffered and continues to suffer economic loss and damages, physical
8 ailments, emotional distress, and attorneys' fees and costs in an amount to be proven at trial.

9
10 **SECOND CAUSE OF ACTION**

11 **Unlawful Harassment on the Basis of Sexual Orientation**
12 **(California Government Code §12940(j);**
13 **Brought by Plaintiff against Defendant and Does 2-6)**

14 68. Plaintiff restates and incorporates by reference each and every allegation
15 contained in the foregoing paragraphs as though fully set forth herein.

16 69. California Government § 12940(j)(1) makes it an unlawful employment practice
17 to harass any employee based on sex, gender, gender identity, gender expression, or sexual
18 orientation.

19 70. FEHA's definitional section states that "sex" and "sexual orientation" include "a
20 perception" that the person has a particular characteristic or characteristics or that the person "is
21 associated with a person who has, or is perceived to have," a particular characteristic or
22 characteristics. Cal. Gov. Code §12926(n). Thus, California Government Code §12940(j)(1)
23 also deems it an unlawful employment practice to harass an employee because of her association
24 with others based on the sex or sexual orientation of those individuals.

25 71. California Government Code §12926 defines "sexual orientation" as
26 "heterosexuality, homosexuality, and bisexuality," and provides that "sex" includes a person's
27 gender. Cal. Gov. Code §12926(q)(2),(r). "Gender" includes "a person's gender identity and
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1 gender expression. ‘Gender expression’ means a person’s gender-related appearance and
2 behavior whether or not stereotypically associated with the person’s assigned sex at birth.” Cal.
3 Gov. Code §12926(q)(2).

4 72. Plaintiff is a lesbian and, in her capacity as faculty advisor to the GSA at Sultana,
5 she associated with students who are and/or are perceived to be LGBT and/or gender non-
6 conforming, including but not limited to by allowing the GSA to meet in her classroom, advising
7 GSA members as to their planning of activities, explaining these students’ legal rights to school
8 administrators, and advising individual students about proper procedures for filing the
9 complaints students wished to file with Sultana’s administration regarding discrimination and/or
10 harassment based on their LGBT and/or gender non-conforming status. The gender expression
11 of several of the students with whom Plaintiff associated differed from the gender-related
12 appearance and behavior stereotypically associated with students’ assigned sex at birth. Gender
13 non-conforming students with whom Plaintiff associated include, but are not limited to, Felicitas
14 Orozco, who is a lesbian and who wore clothing commonly considered masculine to the
15 Homecoming Dance for which she was elected Homecoming Queen, and Levi Smithson-
16 Johnson who is gay and who communicated to Sultana administrators his desire to wear high
17 heels to Sultana’s prom.

18 73. Defendant, through its agents and/or employees, engaged in unlawful harassment
19 of Plaintiff based on her sexual orientation and/or based on her association with LGBT and
20 gender non-conforming students. This harassment was sufficiently pervasive and severe as to
21 alter the conditions of employment and create a hostile or abusive work environment for
22 Plaintiff. Defendant is liable for the harassing conduct of its agents with supervisory authority.
23 Cal. Gov. Code §§12926(d), 12940(j)(1). In addition, Defendant is liable for the harassing
24 conduct of its non-supervisory employees because it knew or should have known of the
25 harassment to which Plaintiff was subjected and failed to take immediate and appropriate
26 corrective action. Cal. Gov. Code 12940(j)(1).

1 74. The harassing conduct of Defendant’s agents with supervisory authority and its
2 non-supervisory employees included, but was not limited to: (a) repeatedly singling out Plaintiff
3 for interrogation concerning the activities of the GSA and her teaching activities; (b)
4 investigating Plaintiff based on allegations that she was “teaching homosexuality;” (c) criticizing
5 Plaintiff for giving an assignment based on a Newsweek article concerning the “Don’t Ask Don’t
6 Tell” military policy while not subjecting heterosexual teachers who utilized the same
7 assignment in their classrooms to similar criticism; (d) issuing Plaintiff a negative performance
8 evaluation prepared in bad faith which was replete with falsehoods and intentional
9 misrepresentations of her actions and unfair criticism of her judgment; (e) yelling at Plaintiff
10 over the phone that gay people should not be teaching, should not be allowed to protest on
11 campus, and are disgusting; (f) violating school policy regarding transferring of outside phone
12 calls to teachers in their classrooms, facilitating an obviously angry and prejudiced parent’s
13 verbal abuse and threatening of Plaintiff, accommodating the prejudiced parent’s improper
14 request for transfer of his child out of Plaintiff’s classroom, and failing to take standard steps to
15 inform Plaintiff of the police investigation of the parent’s threats and related conduct; (g)
16 censoring and otherwise refusing to allow the GSA to conduct its activities; (h) threatening to
17 reveal the sexual orientation of a student complaining of anti-LGBT harassment to her parent
18 against her wishes; and (i) allowing teachers to make homophobic remarks in the classroom
19 without repercussions. Defendant’s agents/supervisors’ and/or employees’ harassing conduct
20 targeting LGBT and/or gender non-conforming students contributed to the creation of a hostile
21 work environment for Plaintiff by communicating the message to Plaintiff that LGBT and/or
22 gender non-conforming people are inferior, unwanted, and deserving of scorn and ridicule, and
23 may be abused with impunity by Sultana administrators and other employees.

24 75. Plaintiff explained to Bird, Murillo and other administrators that she was being
25 subjected to unwarranted, discriminatory interrogations, that Sultana’s administration should not
26 legitimize the irrational, unlawful complaints of prejudiced parents nor pass those complaints on
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1 to her, that other teachers regularly made homophobic comments in the classroom, and that the
2 administration's failure to reprimand teachers for anti-LGBT harassing behavior and failure to
3 respond appropriately to student complaints of harassment based on sexual orientation and
4 gender identity created a work and educational environment hostile to LGBT and gender non-
5 conforming people at Sultana High School. Furthermore, members of the GSA complained
6 repeatedly to Sultana's administration about anti-LGBT harassment by teachers and other
7 students. Defendant knew or should have known of the rampant harassment, yet Defendant
8 failed to take immediate corrective action. Instead, Defendant elected not to renew Plaintiff's
9 employment and issued a negative performance evaluation of her prepared in bad faith and
10 containing intentionally false and retaliatory statements.

11 76. As a direct, foreseeable, and proximate result of Defendant's conduct through its
12 agents and/or employees, Plaintiff suffered and continues to suffer economic loss and damages,
13 physical ailments, emotional distress, and attorneys' fees and costs in an amount to be proven at
14 trial.

15 **THIRD CAUSE OF ACTION**

16 **Unlawful Retaliation in Violation of FEHA** 17 **(California Government Code §12940(h);** 18 **Brought by Plaintiff against Defendant and Does 2-6)**

19 77. Plaintiff restates and incorporates by reference each and every allegation
20 contained in the foregoing paragraphs as though fully set forth herein.

21 78. California Government Code §12940(h) makes it an unlawful employment
22 practice for an employer to discriminate against any person because that person has opposed any
23 practice or practices forbidden by FEHA. Employers are also liable under section 12940(h) for
24 retaliating against a third party for the actions of others opposing practices forbidden by FEHA.

25 79. Plaintiff opposed practices prohibited by FEHA by various actions, including but
26 not limited to: (a) reporting the harassing phone call she received from fellow teacher Harvey

1 Miller, in which Miller yelled at her and told her, among other things, that gay people are
2 disgusting and should not be teaching; (b) submitting a report to Assistant Principal Jennifer
3 Murillo regarding the anti-LGBT comments relating to Felicitas Orozco made by the
4 cheerleading coach and other teachers; (c) opposing the hostile work and educational
5 environment at Sultana, and particularly Sultana's failure to comply with laws prohibiting anti-
6 LGBT discrimination and harassment, including in her October 2012 meeting with Principal
7 Bird and Assistant Principal Murillo; (d) opposing the hostile work and educational environment
8 at Sultana by advising Amber Stanford and Felicitas Orozco about proper procedures for filing
9 the complaints they wished to file regarding homophobic remarks and remarks disparaging non-
10 conforming gender expression made by teachers; (e) opposing the hostile work and educational
11 environment at Sultana in the role she had been asked to fulfill as faculty advisor to the GSA,
12 including but not limited to by allowing the GSA to meet in her classroom as other teachers did
13 for the student clubs for which they were advisors, explaining to GSA members how to plan
14 and/or engage in activities designed to challenge anti-LGBT bias, explaining intended GSA
15 activities in meetings with school administrators, meeting with and answering the questions of
16 Tom Loomis, HUSD's Director of Curriculum, Instruction, and Student Services, and James
17 Fernow, HUSD's counsel, regarding problems identified in the ACLU's March 18, 2013 letter to
18 HUSD; and (f) advising individual students about how to file complaints with Sultana's
19 administration regarding discrimination and/or harassment based on their LGBT and/or gender
20 non-conforming status.

21 80. Members of the Sultana GSA sought to oppose unlawful harassment by actions
22 including, but not limited to, providing anti-bullying training according to an established
23 protocol during "Ally Week," attempting to participate in the "Think Before You Speak"
24 campaign against anti-LGBT slurs, attempting to screen films with content relating to anti-LGBT
25 bias, filing formal complaints of anti-LGBT/gender non-conforming harassment by teachers and
26 students, participating in the annual "National Day of Silence" protests; and by seeking and
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1 obtaining representation by the ACLU in order to complain formally to HUSD regarding
2 discrimination and harassment targeting LGBT and gender non-conforming students at Sultana
3 and to demand changes of various illegal policies and practices at Sultana.

4 81. Defendant retaliated against Plaintiff for her actions identifying, explaining, and
5 opposing practices forbidden by FEHA and/or for the actions of GSA members reporting and
6 opposing practices forbidden by FEHA by electing not to renew her employment for the 2013-
7 2014 school year.

8 82. Plaintiff further opposed Defendant's unlawful discrimination against her based
9 on her sex and/or sexual orientation and/or association with LGBT and/or gender non-
10 conforming students by filing a charge against Defendant and certain of its agents/employees
11 with the DFEH on April 5, 2013, filing a claim pursuant to Government Code sections 910 and
12 911.2 alleging, among other things, violations of FEHA on March 21, 2013, and by filing a
13 Uniform Complaint with HUSD on March 22, 2013 regarding Defendant's violations of
14 Education Code §220, which prohibits discrimination based on sexual orientation, gender,
15 gender identity, and gender expression.

16 83. Members of Sultana's GSA further opposed the hostile work and educational
17 environment to which Plaintiff and/or they were subjected by seeking and obtaining
18 representation by the ACLU, which wrote a letter on March 18, 2013 to HUSD detailing
19 Sultana's violations of the legal rights of LGBT and gender non-conforming students as well as
20 the improper, discriminatory decision not to renew Ms. Frost's employment, and by speaking
21 with news media about their experiences of harassment and discrimination at Sultana.

22 84. Defendant also retaliated against Plaintiff for actions identifying, explaining, and
23 opposing practices forbidden by FEHA and/or for the actions of GSA members reporting and
24 opposing practices forbidden by FEHA by compelling Plaintiff to attend a disciplinary
25 conference in which she was criticized for meeting with students in her classroom on March 25
26 and April 2, 2013, as well as for a discussion in Plaintiff's class allegedly addressing topics

1 raised in the ACLU letter. Defendant further retaliated against Plaintiff for actions opposing
2 practices forbidden by FEHA and/or for the actions of GSA members opposing practices
3 forbidden by FEHA by issuing her a negative performance evaluation prepared in bad faith and
4 containing intentionally false and retaliatory statements on or about April 18, 2013.

5 85. As a direct, foreseeable, and proximate result of Defendant's conduct through its
6 agents and/or employees, Plaintiff suffered and continues to suffer economic loss and damages,
7 physical ailments, emotional distress, and attorneys' fees and costs in an amount to be proven at
8 trial.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Prevent Discrimination in Violation of FEHA**
11 **(California Government Code §12940(k);**
12 **Brought by Plaintiff Against Defendant and Does 2-6)**

13 86. Plaintiff restates and incorporates by reference each and every allegation
14 contained in the foregoing paragraphs as though fully set forth herein.

15 87. California Government Code §12940(k) makes it an unlawful employment
16 practice for an employer to "fail to take all reasonable steps necessary to prevent discrimination
17 and harassment from occurring." In violation of California Government Code §12940(k),
18 Defendant failed to take all reasonable steps necessary to prevent discrimination and harassment
19 from occurring against Plaintiff and other LGBT and/or gender non-conforming staff and/or
20 students at Sultana.

21 88. In perpetrating the above-described misconduct, Defendant engaged in a pattern,
22 practice, policy and custom of unlawful discrimination and harassment directed against LGBT
23 and/or gender non-conforming staff and/or students at Sultana. Said misconduct on the part of
24 Defendant constituted a policy, practice, tradition, custom and usage which denied Plaintiff and
25 other LGBT and/or gender non-conforming staff and/or students at Sultana the protections of
26 California Government Code §12940. As a result, Defendant failed to prevent discrimination

1 against Plaintiff from occurring, including but not limited to: (a) by failing to provide adequate
2 education, training, and information to personnel concerning policies regarding discrimination
3 and harassment targeting LGBT and/or gender non-conforming staff and/or students and
4 regarding how to treat complaints or other resistance to the same; (b) by failing to utilize
5 Uniform Complaint Procedures to receive and investigate complaints of discrimination and
6 harassment by LGBT and/or gender non-conforming students and staff; (c) by failing to
7 adequately investigate complaints of discrimination and harassment by LGBT and/or gender
8 non-conforming students and staff; (d) by failing to adopt and publicize a comprehensive anti-
9 bullying policy that specifically addresses anti-LGBT harassment; (e) by failing to train
10 personnel regarding anti-LGBT bullying; (f) by failing to train about, and/or enforce, the
11 provision of Seth’s Law that requires all school staff members to intervene when they witness
12 acts of discrimination or harassment; (g) by failing to reprimand or otherwise discipline
13 personnel who discriminated against and/or harassed Plaintiff based on her sexual orientation
14 and/or association with LGBT and/or gender non-conforming students, or who harassed students
15 based on their actual or perceived sexual orientation, gender identity, or gender expression; (h)
16 by failing to reprimand or otherwise discipline personnel who intentionally and illegally
17 suppressed the free speech rights of GSA members, and (i) by imposing policies that openly and
18 brazenly discriminate against LGBT and gender non-conforming students, including threatening
19 to enforce gender-stereotypical dress code policies against LGBT and gender non-conforming
20 students at Sultana’s prom and excluding same-sex couples from candidacy for “favorite class
21 couple.”

22 89. At all relevant time periods there existed within the organization of Defendant a
23 pattern and practice of conduct by the administration and staff which resulted in discrimination
24 and/or harassment, including but not necessarily limited to, conduct directed at the Plaintiff and
25 other LGBT and/or gender non-conforming staff and/or students at Sultana. At all relevant time
26 periods Defendant failed to make an adequate response and investigation into the conduct of

1 Sultana administrators and teachers and the aforesaid pattern and practice, and thereby
2 established a policy, custom, practice or usage within the organization of Defendant which
3 condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in this
4 discrimination and harassment.

5 90. During all relevant time periods, Defendant failed to provide any or adequate
6 training, education, and information to its personnel and most particularly to its administrators
7 and other supervisory personnel with regard to policies and procedures regarding discrimination
8 and harassment directed at LGBT and/or gender non-conforming staff and students.

9 91. Defendant knew or reasonably should have known that the failure to provide any
10 or adequate education, training, and information as to Defendants' personnel policies and
11 practices regarding discrimination and harassment directed at LGBT and/or gender non-
12 conforming staff and students and regarding how to treat complaints or other resistance to such
13 discrimination and harassment, would result in discrimination, harassment and/or retaliation
14 directed at LGBT and/or gender non-conforming employees and students, including but not
15 limited to the Plaintiff, for complaining or resisting the same.

16 92. By the acts or failures to act of policy-making personnel within the organization
17 of Defendant, Defendant was deliberately indifferent to the need to provide any or adequate
18 training, education, and information to its supervisors and other personnel with regard to policies
19 and procedures regarding discrimination and harassment directed at LGBT and/or gender non-
20 conforming staff and students.

21 93. The failure of Defendant to provide any or adequate education, training, and
22 information to personnel concerning policies and practices regarding discrimination and
23 harassment directed at LGBT and/or gender non-conforming staff and students and regarding
24 how to treat complaints or other resistance to the same, constituted deliberate indifference to the
25 rights of employees, including but not limited to those of the Plaintiff and other LGBT and/or

1 gender non-conforming staff and students, under California Government Code § 12940 (a), (h),
2 (j), and (k).

3 94. The conduct set forth herein, including the failure to establish and/or enforce any
4 or an adequate policy and procedure regarding discrimination and harassment directed at LGBT
5 and/or gender non-conforming staff and students and regarding how to treat complaints or other
6 resistance to the same, established in the organization of Defendant a policy and custom of
7 ordering, ignoring, encouraging, improving, causing, tolerating, sanctioning, and/or acquiescing
8 in the violation by Defendant's personnel of the rights of Defendant's employees and students,
9 including but not limited to those of the Plaintiff and other LGBT and/or gender non-conforming
10 staff and students, under California Government Code § 12940 (a), (h), (j), and (k).

11 95. Due to Defendant's misconduct, Defendant, through its agents/employees,
12 discriminated against and/or harassed Plaintiff because of her sexual orientation and/or her
13 association with LGBT and/or gender non-conforming students in violation of California
14 Government Code §12940(a) in a number of ways set forth above, including but not limited to,
15 by electing not to renew her teaching contract and issuing her a negative performance evaluation
16 prepared in bad faith and containing intentionally false and retaliatory statements.

17 96. As a direct, foreseeable, and proximate result of Defendant's conduct through its
18 agents and/or employees, Plaintiff suffered and continues to suffer economic loss and damages,
19 physical ailments, emotional distress, and attorneys' fees and costs in an amount to be proven at
20 trial.

21 **FIFTH CAUSE OF ACTION**

22 **Failure to Prevent Harassment in Violation of FEHA**
23 **(California Government Code §12940(k);**
24 **Brought by Plaintiff Against Defendant and Does 2-6)**

25 97. Plaintiff restates and incorporates by reference each and every allegation
26 contained in the foregoing paragraphs as though fully set forth herein.
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1 98. California Government Code §12940(k) makes it an unlawful employment
2 practice for an employer to “fail to take all reasonable steps necessary to prevent discrimination
3 and harassment from occurring.” In violation of California Government Code §12940(k),
4 Defendant failed to take all reasonable steps necessary to prevent harassment from occurring
5 against Plaintiff and other LGBT and/or gender non-conforming staff and/or students at Sultana.

6 99. As a result, Defendant failed to prevent harassment against Plaintiff from
7 occurring, including but not limited to: (a) by failing to provide adequate education, training,
8 and information to personnel concerning policies regarding discrimination and harassment
9 targeting LGBT and/or gender non-conforming staff and/or students and regarding how to treat
10 complaints or other resistance to the same; (b) by failing to utilize Uniform Complaint
11 Procedures to receive and investigate complaints of discrimination and harassment by LGBT
12 and/or gender non-conforming students and staff; (c) by failing to adequately investigate
13 complaints of discrimination and harassment by LGBT and/or gender non-conforming students
14 and staff; (d) by failing to adopt and publicize a comprehensive anti-bullying policy that
15 specifically addresses anti-LGBT harassment; (e) by failing to train personnel regarding anti-
16 LGBT bullying; (f) by failing to train about, and/or enforce, the provision of Seth’s Law that
17 requires all school staff members to intervene when they witness acts of discrimination or
18 harassment; (g) by failing to reprimand or otherwise discipline personnel who discriminated
19 against and/or harassed Plaintiff based on her sexual orientation and/or association with LGBT
20 and/or gender non-conforming students, or who harassed students based on their actual or
21 perceived sexual orientation, gender identity, or gender expression, including but not limited to
22 failing to investigate and to discipline Harvey Miller for his harassing letter and phone call to
23 Plaintiff; (h) by failing to reprimand or otherwise discipline personnel who intentionally and
24 illegally suppressed the free speech rights of GSA members, and (i) by imposing policies that
25 openly and brazenly discriminate against LGBT and gender non-conforming students, including
26 threatening to enforce gender-stereotypical dress code policies against LGBT and gender non-

1 conforming students at Sultana’s prom and excluding same-sex couples from candidacy for
2 “favorite class couple.”

3 100. At all relevant time periods there existed within the organization of Defendant a
4 pattern and practice of conduct by Defendant’s administration and staff which resulted in
5 discrimination and/or harassment, including but not necessarily limited to, conduct directed at
6 the Plaintiff and other LGBT and/or gender non-conforming staff and/or students at Sultana. At
7 all relevant time periods Defendant failed to make an adequate response and investigation into
8 the conduct of Sultana administrators and teachers and the aforesaid pattern and practice, and
9 thereby established a policy, custom, practice or usage within the organization of Defendant
10 which condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in
11 this discrimination and harassment.

12 101. During all relevant time periods, Defendant failed to provide any or adequate
13 training, education, and information to its personnel and most particularly to its administrators
14 and other supervisory personnel with regard to policies and procedures regarding discrimination
15 and harassment directed at LGBT and/or gender non-conforming staff and students.

16 102. Defendant knew or reasonably should have known that the failure to provide any
17 or adequate education, training, and information as to its personnel policies and practices
18 regarding discrimination and harassment directed at LGBT and/or gender non-conforming staff
19 and students and regarding how to treat complaints or other resistance to such discrimination and
20 harassment, would result in discrimination, harassment and/or retaliation directed at LGBT
21 and/or gender non-conforming employees and students, including but not limited to the Plaintiff,
22 for complaining or resisting the same.

23 103. By the acts or failures to act of policy-making personnel within the organization
24 of Defendant, Defendant was deliberately indifferent to the need to provide any or adequate
25 training, education, and information to its supervisors and other personnel with regard to policies
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1 and procedures regarding discrimination and harassment directed at LGBT and/or gender non-
2 conforming staff and students.

3 104. The failure of Defendant to provide any or adequate education, training, and
4 information to its personnel concerning policies and practices regarding discrimination and
5 harassment directed at LGBT and/or gender non-conforming staff and students and regarding
6 how to treat complaints or other resistance to the same, constituted deliberate indifference to the
7 rights of employees, including but not limited to those of the Plaintiff and other LGBT and/or
8 gender non-conforming staff and students, under California Government Code § 12940 (a), (h),
9 (j), and (k).

10 105. The conduct set forth herein, including the failure to establish and/or enforce any
11 or an adequate policy and procedure regarding discrimination and harassment directed at LGBT
12 and/or gender non-conforming staff and students and regarding how to treat complaints or other
13 resistance to the same, established in the organization of Defendant a policy and custom of
14 ordering, ignoring, encouraging, improving, causing, tolerating, sanctioning, and/or acquiescing
15 in the violation by Defendant's personnel of the rights of employees and students, including but
16 not limited to those of the Plaintiff and other LGBT and/or gender non-conforming staff and
17 students, under California Government Code § 12940 (a), (h), (j), and (k).

18 106. Due to Defendant's misconduct, Defendant, through its agents/employees,
19 harassed Plaintiff because of her sexual orientation and/or her association with LGBT and/or
20 gender non-conforming students in violation of California Government Code §12940(a) in a
21 number of ways, including but not limited to those set forth in paragraph 74.

22 107. As a direct, foreseeable, and proximate result of Defendant's conduct through its
23 agents and/or employees, Plaintiff suffered and continues to suffer economic loss and damages,
24 physical ailments, emotional distress, and attorneys' fees and costs in an amount to be proven at
25 trial.

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1 113. Defendant violated section 220 in the manner set forth above, including but not
2 limited to by discriminating against Plaintiff and by harassing Plaintiff because of her sexual
3 orientation and/or her association with LGBT and/or gender non-conforming students, as more
4 fully described in paragraphs 61-76. Defendant and/or its agents/supervisors had actual
5 knowledge of the discrimination and/or harassment Plaintiff experienced because they
6 participated in it, and had actual knowledge of the hostile work and educational environment to
7 which Plaintiff was subjected because Plaintiff, her union representative, and various students
8 reported incidents of anti-LGBT harassment and/or harassment of gender non-conforming
9 students. Defendant acted with deliberate indifference in the face of this knowledge, electing not
10 to renew Plaintiff's contract of employment and to manufacture purported grounds for that
11 discriminatory employment decision instead of taking immediate corrective action.

12 114. California Education Code §262.3 provides that a person alleging a violation of
13 section 220 may seek civil remedies when at least 60 days have elapsed from the filing of an
14 appeal to the State Department of Education.

15 115. Plaintiff filed a Uniform Complaint Form with HUSD on or about March 22,
16 2013. On May 22, 2013 Plaintiff received a letter from Mark W. Thompson, counsel for HUSD,
17 indicating the Plaintiff's complaint had not been investigated and instead had been referred to the
18 California Department of Fair Employment and Housing. Plaintiff appealed HUSD's decision to
19 the Office of Equal Opportunity of the California Department of Education on June 5, 2013.
20 Because more than 60 days have elapsed since Plaintiff filed her appeal, Plaintiff may now seek
21 civil remedies in state court. Cal. Ed. Code §262.3(d).

22 116. As a direct, foreseeable, and proximate result of Defendant's conduct through its
23 agents and/or employees, Plaintiff has suffered and continues to suffer economic loss and
24 damages, physical ailments, emotional distress, and attorneys' fees and costs in an amount to be
25 proven at trial.

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1 **SEVENTH CAUSE OF ACTION**

2 **Unlawful Retaliation for Advising Pupils Concerning**
3 **Proper Exercise of Their Free Speech Rights**
4 **(California Education Code § 48907(g);**
5 **Brought by Plaintiff against Defendant and Does 2-6)**

6 117. Plaintiff restates and incorporates by reference each and every allegation
7 contained in the foregoing paragraphs as though fully set forth herein.

8 118. California Education Code § 48907(g) makes it unlawful to dismiss, suspend,
9 discipline, reassign, transfer or otherwise retaliate against an employee solely for acting to
10 protect a pupil engaged in exercising his or her free speech, as defined under California
11 Education Code § 48907(a), the First Amendment to the United States Constitution, or Section 2
12 of Article I of the California Constitution.

13 119. Pupils of public schools have the right to exercise freedom of speech and of the
14 press, including but not limited to “the use of bulletin boards, the distributions of printed
15 materials, the wearing of buttons, badges, and other insignia, and the right of expression in
16 official publications,” except when pupils’ speech is obscene, libelous, slanderous, or creates a
17 clear and present danger of unlawful acts on school premises or of the violation of lawful school
18 regulations, or of substantial disruption of the orderly operation of the school. U.S. Const. First
19 Amendment; Cal. Const. Art. I, §2 Sec. 2; Cal. Ed. Code § 48907(a).

20 120. GSA members exercised and attempted to exercise their statutory and
21 constitutional free speech rights at Sultana in numerous ways during the school years 2011-2012
22 and 2012-2013, including but not limited to by making announcements over Sultana’s public
23 address system, putting up posters as part of the national “Think Before You Speak” anti-
24 bullying campaign, holding club activities, participating in the national Day of Silence protest,
25 holding anti-bullying training for allies of LGBT and gender non-conforming students as part of
26 national Ally Week, and filing complaints reporting the harassment of LGBT and gender non-
27 conforming students. None of these expressive activities were obscene, libelous or slanderous,

1 nor did they create a clear and present danger of unlawful acts on school premises, the violation
2 of lawful school regulations, or substantial disruption of the orderly operation of the school.

3 121. Defendant, through its agents, supervisors, and/or employees, infringed upon
4 GSA members' freedom of speech in violation of California Education Code § 48907(a), the
5 First Amendment to the United States Constitution, and Section 2 of Article I of the California
6 Constitution by suppressing GSA members' speech about their club and about LGBT issues,
7 including by censoring their announcements, refusing to approve their promotional and
8 educational flyers, and by restricting their activities, including their ability to screen films with
9 LGBT-related content.

10 122. Plaintiff acted to protect GSA members' freedom of speech by explaining to
11 school administration the GSA members' right to have their announcements read, to engage in
12 educational activities, to participate in peaceful, orderly national protests and anti-bullying
13 campaigns, and to file complaints of anti-LGBT/gender non-conforming harassment, as more
14 fully described in paragraphs 2, 4, 8, 10, 21, 28, 30-31, 34, 37, 38, 44, 46 and 51.

15 123. Defendant disciplined and/or retaliated against Plaintiff in various unjustified
16 ways, culminating in Defendant's discriminatory decision not to renew her employment contract
17 and to issue her a negative performance evaluation prepared in bad faith containing intentionally
18 false and retaliatory statements because she acted to protect GSA members' freedom of speech.

19 124. As a direct, foreseeable, and proximate result of Defendant's conduct through its
20 agents and/or employees, Plaintiff suffered and continues to suffer economic loss and damages,
21 physical ailments, emotional distress, and attorneys' fees and costs in an amount to be proven at
22 trial.

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1 **EIGHTH CAUSE OF ACTION**

2 **Negligent Training And/Or Supervision**
3 **(California Common Law;**
4 **(Brought by Plaintiff against Defendant and Does 2-6)**

5 125. Plaintiff restates and incorporates by reference each and every allegation in the
6 foregoing paragraphs as though fully set forth herein.

7 126. Defendant has had and continues to have a duty of care under the common law
8 and under state statutes including but not limited to FEHA and Education Code §§220 and 260,
9 to exercise due care in its management of HUSD personnel. Such due care requires Defendant to
10 comply with state statutes prohibiting discrimination, harassment and retaliation, including but
11 not limited to FEHA and Education Code §§220 and 260.

12 127. Under the California Government Code, a public entity “is liable for injury
13 proximately caused by an act or omission of an employee of the public entity within the scope of
14 his employment if the act or omission would, apart from this section, have given rise to a cause
15 of action against that employee or his personal representative.” Cal. Gov. Code §815.2.

16 128. During all relevant time periods, Defendant knew or reasonably should have
17 known that its personnel, including but not limited to school administrators at Sultana, engaged
18 in unlawful harassment of, and discrimination against, Plaintiff because of her sexual orientation
19 and/or her association with LGBT and/or gender non-conforming students, and retaliated against
20 her when she complained about and attempted to challenge discrimination, retaliation and
21 harassment directed against her and others, and when she supported the legal rights and acted to
22 protect the health and safety of Sultana students who are, or were perceived to be LGBT and/or
23 gender non-conforming and those who associated with them. In the alternative, Defendant knew
24 or should have known that its personnel, including but not limited to school administrators at
25 Sultana, were ignorant as to the manner in which they must conduct themselves in order to
26 comply with state statutes and laws prohibiting such retaliation and/or discrimination and

1 harassment because of sexual orientation and/or association with LGBT and/or gender non-
2 conforming individuals.

3 129. Despite said knowledge, Defendant breached its duty of care by negligently,
4 willfully and/or recklessly failing to adequately train and/or supervise personnel and by
5 maintaining them, including but not limited to school administrators at Sultana in positions with
6 the responsibility to manage and supervise employees and to make personnel decisions regarding
7 such employees without providing such personnel with training, guidance, supervision, and/or
8 other direction about how to manage and supervise employees and/or to make personnel
9 decisions regarding such employees in compliance with any and all state statutes prohibiting
10 retaliation and/or harassment and discrimination because of sexual orientation or association
11 with LGBT and/or gender non-conforming individuals.

12 130. During all relevant time periods, Defendant knew or reasonably should have
13 known that its personnel, including but not limited to school administrators at Sultana, were
14 engaged in the incidents, conduct, acts, and failures to act described herein and that said
15 incidents, conduct, acts, and failures to act violated Plaintiff's rights under state statutory law and
16 common law.

17 131. At all times material herein, Defendant knew or reasonably should have known
18 that the incidents, conduct, acts, and failures to act as set forth herein would and did proximately
19 result in injury and damage to Plaintiff.

20 132. At all times material herein, Defendant knew, or in the exercise of reasonable care
21 should have known, that unless Defendant intervened to protect Plaintiff and to adequately train,
22 supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the conduct, acts, and
23 failures to act of its personnel, including but not limited to school administrators at Sultana as set
24 forth herein, said conduct, acts, and failures to act would continue, thereby subjecting Plaintiff to
25 injury, including economic losses and emotional distress.

1 133. Defendant knew, or in the exercise of reasonable care should have known, that
2 unless Defendant intervened to protect Plaintiff and to adequately train, supervise, prohibit,
3 control, regulate, discipline, and/or otherwise penalize the conduct, acts, and failures to act of its
4 personnel, including but not limited to school administrators at Sultana, Defendant's failure to so
5 protect, supervise and intervene would have the effect of encouraging, ratifying, condoning,
6 exacerbating, increasing and worsening said conduct, acts, and failures to act.

7 134. At all times material herein, Defendant had the power, ability, authority, and duty
8 to so intervene, train, supervise, prohibit, control, regulate, discipline, and/or penalize the
9 conduct of its personnel, including but not limited to school administrators at Sultana.

10 135. Despite said knowledge, power, and duty, Defendant breached and continues to
11 breach its duty of care by negligently, willfully and/or recklessly failing to act so as to intervene,
12 supervise, prohibit, control, regulate, discipline, and/or penalize such conduct, acts, and failures
13 to act or otherwise to protect Plaintiff.

14 136. As a direct and proximate consequence of the failure of Defendant to protect
15 Plaintiff and to adequately train, supervise, prohibit, control, regulate, discipline, and/or
16 otherwise penalize the conduct, acts, and failures to act of its personnel, including but not limited
17 to school administrators at Sultana, said conduct, acts, and failures to act were perceived by its
18 personnel as, and in fact had the effect of, ratifying, encouraging, condoning, exacerbating,
19 increasing, and/or worsening said conduct, acts, and failures to act.

20 137. At all times material herein, the failure of Defendant to protect Plaintiff and to
21 adequately train, supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the
22 conduct, acts, and failures to act of its personnel, including but not limited to school
23 administrators at Sultana, violated Plaintiff's rights under state statutory and common law.

24 138. As a direct, foreseeable, and proximate result of Defendant's conduct through its
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1 agents and/or employees, Plaintiff suffered and continues to suffer economic loss and damages,
2 physical ailments, emotional distress, and attorneys' fees and costs in an amount to be proven at
3 trial.

4 **NINTH CAUSE OF ACTION**

5 **Taxpayer Action for Declaratory and Injunctive Relief**
6 **(California Code of Civil Procedure § 526a;**
7 **Brought by Plaintiff against Defendant and Does 2-6)**

8 139. Plaintiff restates and incorporates by reference each and every allegation
9 contained in the foregoing paragraphs as though fully set forth herein.

10 140. Defendant's expenditure of county, state, school district, and/or municipal
11 taxpayers' funds for the implementation of the pattern, practice and/or policy of harassment,
12 discrimination and retaliation challenged herein is unlawful. Plaintiff, as a state, county, and/or
13 municipal taxpayer, and as a property taxpayer has an interest in enjoining the continued
14 unlawful expenditure of tax funds. Pursuant to California Code of Civil Procedure Section 526a
15 and this Court's equitable power, Plaintiff seeks declaratory and injunctive relief to prevent
16 continued harm and to protect herself, the students and staff of Sultana High School, and the
17 public, from Defendant's unlawful policies and practices which discriminate against Sultana
18 High students and staff based on their actual or perceived sexual orientation, gender identity,
19 and/or gender expression and/or their association with LGBT and/or gender non-conforming
20 persons, subject Sultana students to a hostile educational environment and staff to a hostile work
21 environment, and retaliate against them for their complaints about harassment and/or
22 discrimination within the school or within HUSD.

23 141. There is an actual controversy between Plaintiff and Defendant concerning their
24 respective rights and duties in that Plaintiff contends that the policies and practices of Defendant,
25 as described herein, are in violation of state law, whereas Defendant contends in all respects
26 otherwise. Plaintiff seeks a judicial declaration of the rights and duties of the respective parties.

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H. For such other and further relief as this court may deem just and proper.

DEMAND FOR JURY TRIAL

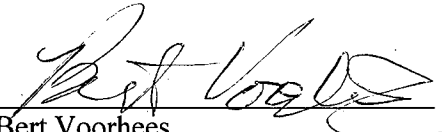
Plaintiff demands a jury trial on all claims and causes of action with respect to which she has a right to a jury trial.

Dated: November 19, 2013

Respectfully submitted,

TRABER & VOORHEES

By:


Bert Voorhees
Rebecca Peterson-Fisher
Attorneys for Plaintiff Julia Frost

LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.

Dated: November 19, 2013

By:

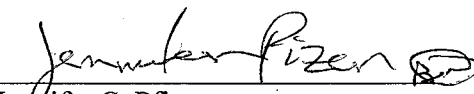

Jennifer C. Pfizer
Attorneys for Plaintiff Julia Frost

Exhibit A

THE LAW OFFICE OF
TRABER & VOORHEES

THERESA M. TRABER
BERT VOORHEES
LAUREN TEUKOLSKY
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March 21, 2013

VIA CERTIFIED MAIL

Governing Board
Hesperia Unified School District
15576 Main Street
Hesperia, California 92345

Re: Claims of Julia Frost

Dear Board of Hesperia United School District:

This letter constitutes a claim pursuant to Government Code Sections 910 and 911.2 for damages and injuries sustained by claimant Julia Frost arising out of violations of her statutory rights as set forth below. Claimant's address is P.O. Box 3519, Wrightwood, California 92397, but she may be contacted through this office.

Claimant's claim arises from the actions and/or omissions of Sultana High School, the Hesperia Unified School District Board, the Hesperia Unified School District and their representatives and agents, including but not limited to those persons mentioned by name below and others whose identities and/or the actions they took or failed to take with respect to Claimant are as yet unknown to Claimant, all of whom acted, or failed to act, beginning at least as early as August of 2011, and continuing through to the present time, in ways which discriminated against and harassed Claimant because of actual or perceived sexual orientation, lesbian, and/or failed to prevent such discrimination and harassment, and/or discriminated against and harassed Claimant because of her association with students at Sultana High School who are or are perceived to be lesbian, gay, bisexual, transgender, queer/questioning ("LGBTQ") or gender non-conforming, and/or discriminated against and retaliated against Claimant for engaging in political action or activity, and/or for protecting and/or refusing to infringe upon students' exercise of their rights of freedom of speech and association, and/or committed other acts or omissions in violation of Claimant's rights without provocation or legal justification.

In August of 2011, Claimant began her job as an English teacher at Sultana High School ("Sultana") in the Hesperia Unified School District. Claimant was already a veteran teacher with fourteen years of experience, including nine years of experiencing teaching English in the Fontana

Unified School District. However, because Sultana was located in the Hesperia Unified School District, Claimant began her employment as a probationary-status teacher with the expectation of obtaining tenure after two years.

Prior to the beginning of her first year at the school, Claimant attended a series of meetings required for new teachers in Hesperia Unified. At those meetings she met fellow teacher Christina Grizanti, who asked her if she would co-advise Sultana's Gay/Straight Alliance. Claimant agreed to be a faculty advisor along with Grizanti, who is heterosexual. When Grizanti began experiencing medical difficulties early in the school year, Jennifer Rhodus, another heterosexual teacher, agreed to be a co-advisor of the group.

The Sultana Gay/Straight Alliance ("GSA") is one of many student groups that meet at lunchtime in the room of a faculty advisor at Sultana High school. Student groups at Sultana plan a variety of activities, including social events, community service, and fundraisers. The stated goals of the GSA are to create a safe environment at Sultana by fighting discrimination, harassment, and violence, and for students to support each other and learn about homophobia, transphobia, and other oppressions. GSA student groups exist at hundreds of high schools across California and thousands throughout the nation.

At Sultana, all student groups must have at least one faculty advisor. If students wish to have announcements read to the school about their meetings or events over the public address system, they submit the text of the announcements to Angela Espinoza, secretary of the Associated Student Body. To request approval for an activity, student groups write the request in their meeting minutes and submit those minutes to Espinoza. Espinoza forwards all student group requests to H.R. Lugo, the Assistant Principal of Student Activities. Student groups are not permitted to hold events for which they have not received approval from Assistant Principal Lugo.

In August of 2011, her first month teaching at Sultana, Claimant was informed by another teacher that other teachers were discussing her sexual orientation, giving the example of a teacher who had stated, "She doesn't look like a lesbian," or words to that effect. Soon thereafter, Claimant was directly questioned about her sexual orientation by fellow teacher Leo Adkins, who asked Claimant, "So which one is the man and which one is the woman in your relationship?" or words to that effect.

Early in the school year, Assistant Principal Jennifer Murillo completed a classroom observation of Claimant's teaching and met with Claimant to discuss the observation. Murillo gave Claimant a very positive evaluation. During the meeting, Murillo discussed her husband and Claimant also discussed her partner Michelle. Shortly thereafter, in September 2011, Principal Larry Bird called Claimant into his office for a meeting with himself and Murillo. Visibly uncomfortable, early in the meeting Bird said, "Well, Jen told me you have a partner," or words to that effect. He

said that he had called the meeting to talk to Claimant about the parameters of being a GSA advisor, to ensure that the GSA was run by students and not by her, and to make sure she knew "what the Education Code protected," or words to that effect. Claimant assured him that students ran the GSA and that she was aware of the protections of the Education Code. When she asked why her GSA co-advisors were not in the meeting, Mr. Bird said he would be sure Claimant's co-advisors were similarly questioned and informed about the protections afforded by the Education Code, but this did not occur.

Around the same time, the GSA requested permission to hold a training as part of Ally Week. Ally Week is organized through the Gay, Lesbian and Straight Education Network (GLSEN), a national organization established in 1990 to ensure that schools are safe for all students. The purpose of Ally Week is for students to identify, support, and celebrate students and adults who are not LBGQT, but who are committed to opposing the bullying and harassment of LBGQT students. Sultana's GSA requested approval to hold a training about how to help stop bullying which was to take place over two lunch periods using a lesson plan provided by GLSEN to GSAs across the country. Although student-requested events are typically approved as a matter of course by the Associated Student Body (ASB) officers alone, in October of 2011 Claimant was summoned to meet with Principal Bird and Assistant Principal Murillo. When she arrived, she found that Kim Falahee, Head Counselor, and Vice Principal H.R. Lugo were also present. Claimant asked that Jennifer Rhodus, the GSA co-advisor, also be present and she soon arrived. Although they had already been provided with a copy of the lesson plan the students intended to use for the training as a part of Ally Week, Falahee and Lugo interrogated Claimant and Rhodus about Ally Week event and its purpose. The tone and content of this interrogation led Claimant to believe that Sultana's administrators were concerned the ally training was actually some sort of effort to "recruit" straight students into homosexuality. Claimant and Rhodus explained that the purpose was to help students learn tools to stop bullying. Claimant and Rhodus invited everyone in the meeting to attend the training to alleviate their concerns, but none of them came. Despite this meeting, the administration never officially responded to the GSA's request for approval for the event.

On April 10, 2012, Claimant received a performance evaluation from Principal Bird indicating that she had attained all performance goals. The evaluation further stated, "Ms. Julia Frost had a great first year as an English teacher at Sultana. It is clear she cares about her students and her new school. She works closely with her colleagues to create common assessments based on the essential standards they have developed. Ms. Frost uses the data from these and other forms of informal and formal assessments to plan and direct her instruction, reteaching, and review. We appreciate her hard work at Sultana this year! Nice job Ms. Frost!"

In the same month, the Sultana GSA decided to participate in a national event on April 20, 2012, called the "Day of Silence." On the Day of Silence, students in high schools across the nation take vows of silence to draw attention to the silencing of LBGQT youth by bullying and anti-LBGQT

harassment. Students pass out cards to others explaining their reasons for not speaking for the day. Once again, Bird and Murillo called Claimant in for a meeting about the Day of Silence without informing Jennifer Rhodus. Bird said that some teachers had questions about the Day of Silence and asked Claimant to draft information to be distributed to staff about the event. Bird also expressed concern that students would be rude to teachers, and Claimant indicated that she would herself write up any student who behaved in a rude or disrespectful way in conjunction with the event. Although Claimant soon thereafter submitted written information concerning the nature of the event, Bird never distributed it to the staff.

Another Sultana teacher, Harvey Miller, sent an email and letter to Claimant and Bird in April 2012 in which he argued that gays should protest at City Hall, but not be allowed to protest on campus. Miller then called Claimant on the phone and yelled at her, stating that gays should not be teaching or be allowed to protest on campus, and that it was disgusting. Claimant reported the harassing phone call to Bird's secretary Chris Chisholm, who said she would pass on the information to Principal Bird.

In May of 2012, Danny Polemounter, Vice Principal of Discipline, entered Claimant's classroom and informed her that he was there to investigate a parent complaint that she was "teaching homosexuality." Polemounter pointed to a sticker indicating her classroom was a safe space, a tolerance poster, and a rainbow flag on Claimant's wall given to her by a student, which was next to various other items which had also been given to her by her students, and said the presence of those items on her wall meant she must be teaching "gay things," or words to that effect. Claimant responded that she was teaching Julius Caesar and would be happy to give him her lesson plans. She also suggested that he could drop by and observe her class whenever he liked.

In Claimant's second year of teaching at Sultana, the administration explicitly refused to approve various GSA activities and posters. They censored GSA posters by disallowing the use of certain words, including "gay," "transgender," and "queer." Some of the GSA students met with Mr. Lugo to discuss posting flyers from the Think Before You Speak campaign, a national campaign against anti-LGBTQ slurs. Lugo said, "If we can't have a discussion in a classroom saying queer, gay or lesbian, why should they put them on posters?" or words to that effect. The GSA was not allowed to post these flyers. The administration also began to censor the GSA's public address system announcements to omit references to sexual orientation and gender identity. For example, the GSA submitted an announcement which read, "Do you identify as straight, lesbian, bisexual, gay, or are you questioning everything? Come join Sultana's Gay Straight Alliance on Wednesdays at lunch in room w-11. Join a group of students here on campus that support each other and want to make a difference for others." The announcement was instead broadcast as, "GSA meeting in W-11." Other announcements submitted have not been broadcast at all. Moreover, the GSA was excluded from the "School Clubs and Organizations" listing in Sultana's 2012-2013 Student Handbook & Planner. When the GSA requested permission to screen a film, as several other student

groups regularly do, GSA members were told by Sultana administrators that the content of their movies was "inappropriate." When the students asked for guidance as to what the administration would consider "appropriate," none was provided. The GSA made a request to screen a different film, which request was denied based on "copyright concerns." Even though GSA members then obtained a written release to screen a film entitled "Out in Silence," Principal Bird refused to grant permission, stating that he would consult the District, which he claimed was considering banning movie nights altogether. To Claimant's knowledge, the District has never adopted such a policy and other school clubs continue to screen films. The treatment of the GSA as compared to other student groups has sent a clear message to LBGTQ students and to Claimant that Sultana's administration disapproves of LBGTQ people and of discussing LBGTQ issues.

In September of 2012, the students of Sultana voted Felicitas Orozco, a lesbian student, their Homecoming Queen. Vice Principal Lugo tried to discourage at least one student from voting for her and referred to her nomination as a "joke." Orozco accepted the award wearing a collared shirt and jeans and wore a suit to the Homecoming Dance. Multiple faculty members expressed to their students and to Claimant that they disapproved of Ms. Orozco and her decision to wear a suit. For example, a few days after the Homecoming Dance, Claimant was confronted by Wanda Lambdin, the cheerleading coach. Ms. Lambdin said she was appalled that Orozco had not worn a dress to homecoming, demanded to know what Orozco had said about her and her cheerleaders, and referred to LBGTQ individuals as "those people."

At about the same time, Ms. Orozco told Claimant that teachers were harassing and ridiculing her about her sexual orientation and her gender expression. Claimant asked Orozco a series of questions to ascertain that she was not in immediate physical danger, advised her to file a report immediately, and offered to accompany her to Assistant Principal Murillo's office, which Ms. Orozco asked her to do. When Claimant went to get Ms. Orozco from her fourth-period video production class to accompany her to Ms. Murillo's office, the teacher of the class asked Ms. Orozco, in a condescending and derogatory tone, "Why do *you* need to see *her*?" referring to Claimant. He then laughed at Orozco.

Claimant accompanied Orozco to Murillo's office, where Orozco completed a written report regarding incidents of harassment. At the same time, Claimant wrote a report regarding what Orozco had reported to her, the behavior of Orozco's video production teacher, and Lambdin's anti-LGBT comments to Claimant. Assistant Principal Murillo told Ms. Orozco and Claimant that the filing of any formal complaint would force her to discuss Ms. Orozco's sexual orientation with her father, purportedly as a result of some unspecified "safety issue." Claimant told Murillo that Orozco was not out to her father, and that her father was extremely conservative and might kick her out of the house when he learned she was a lesbian. Claimant further told Murillo that, since there was no threat to Orozco's physical safety, there was no reason to disclose her sexual orientation to her father. Murillo insisted she would do so anyway. As a result, Orozco was forced to tell her father

that she is a lesbian immediately after school, before he learned her sexual orientation from Murillo. Orozco requested a copy of her complaint but was never given one. Neither Orozco's complaint nor Claimant's complaint were ever investigated or otherwise addressed. On another occasion, when a male student attempted to report bullying, Vice Principal Polemounter similarly threatened to call the boy's parents and tell them that he is gay.

Also in October of 2012, contrary to school policy, a phone call was transferred from the counseling department to Claimant's classroom without identifying the caller or to which student he was connected. On the other end of the line was an enraged man who claimed to be a parent and refused to give his name. The man accused Claimant of having a "GSA gay agenda" and yelled that he would stop her any way he could, and that he would find someone to help him stop her. During the call, Claimant advised the man several times that he should take the matter up with Principal Bird, but the man repeatedly said he only wanted to talk with Claimant. At the point the man was close to screaming and Claimant felt he had threatened her, Claimant again told him he should speak to Mr. Bird and hung up the phone. She immediately made a report of the threat, and Bird's office called the school police in an effort to identify the parent. Claimant was so upset that she could not go to work the next day. Although she requested information about the status of the investigation and whether the man had been identified so that she could protect herself, she received no response for a full week. She was eventually told the identity of the parent and that he had removed his daughter from her class.

Claimant was once again summoned to a meeting with Murillo in October 2012. Vice Principal Polemounter was also present. They told Claimant that a parent had complained about an article from Newsweek regarding the military's "Don't Ask Don't Tell Policy" which she had assigned the students to read. Although Polemounter and Murillo admitted they had not read the article, they told Claimant that she had to present "the other side of the issue" to her students. Claimant explained that the assignment she had given the students was not to take a political position, but to identify the author's claim and the support the author had articulated for their claim. Claimant pointed out that the article was used by other teachers and was from a website that Sultana had encouraged its English teachers to utilize for resources. She also pointed out that although other teachers used the same article, she was the only teacher summoned to a meeting and criticized.

After the meeting regarding the Newsweek article, Claimant contacted her union representative, Jim Resvaloso. Mr. Resvaloso arranged a meeting between himself, Principal Bird, Assistant Principal Murillo, and Claimant. In that meeting, Resvaloso told Murillo and Bird that it was not appropriate for them to bring the concerns of homophobic parents to Claimant unless there was a safety issue for Claimant, and that such complaints should be given no legitimacy as Claimant's sexual orientation could not be a topic of legitimate criticism for parents or others. Claimant told Mr. Bird and Ms. Murillo that she would be happy to meet with any parents who had a legitimate question about her lessons at any time and that parents were always welcome to drop into her classroom or to ask for lesson plans but that singling her out on the basis of her sexual

orientation or because of parental homophobia and bias had to stop. Mr. Resvaloso also explained to Murillo and Bird that they had to comply with the Fair, Accurate, Inclusive, and Respectful Education Act ("FAIR Act"), the California School Safety and Violence Prevention Act ("AB 537"), and Seth's Law. Resvaloso and Claimant talked with Bird and Murillo about the bad atmosphere on campus and growing homophobic behavior in the wake of homecoming and that this had created and/or increased the hostile environment of the school. Claimant and Resvaloso also discussed the impact this hostile environment was having on LGBTQ students, and requested a change in policy to ensure that all students and staff were treated fairly.

The FAIR Act requires the inclusion of the political, economic, and social contributions of people with disabilities and LGBT people in educational texts and social studies curricula. AB 537 added actual or perceived sexual orientation and gender identity to the Education Code's nondiscrimination policy, mandating that Uniform Complaint Procedures be available to LGBTQ students to file complaints of discrimination or harassment. Seth's Law required California School Districts to adopt comprehensive anti-bullying policies that address bullying based on sexual orientation and gender identity and expression, and school staff members to intervene when they witness acts of discrimination or harassment.

Sultana administrators have done no more than pay lip service to these legal mandates. They have failed to make Sultana staff and students aware their legal obligations toward LGBTQ and gender non-conforming students, or of the process for making or resolving complaints. Although the District has a form for complaints of discrimination and harassment, instead of directing students to that form, Sultana administrators have attempted to discourage students from filing complaints and/or instructed students to fill out an incident report form. Moreover, Sultana administrators have failed comply with the mandates of Seth's Law and train staff and students not only on bullying generally, but specifically on anti-LGBTQ bullying. Rather than intervene in acts of discrimination and harassment, several Sultana teachers have made homophobic remarks in the classroom without repercussions. As faculty advisor of the GSA, Claimant was made aware by students that various teachers made openly homophobic remarks in their classrooms and that GSA members had overheard Vice Principal H.R. Lugo saying, "That's so gay," and referring to his own son disdainfully as a "vagina," apparently to criticize him for behaving in a feminine manner. Students have further reported to Claimant that, when they attempted to report peer harassment based on sexual orientation or gender expression to the school administration, the complaints were not taken seriously and the issues went unresolved.

In February of 2013, Amber Stanford, a student at Sultana, approached Claimant and asked her to print out a Uniform Complaint Procedure Discrimination/Harassment Complaint Reporting Form from the website of the GSA Network, a nonprofit organization that provides support to high school and middle school Gay Straight Alliances across the nation. Claimant printed the form, which Stanford used to make a complaint about homophobic comments her anatomy teacher had

made. She complained that this teacher instructed a student, "Take the gay headband off," and commented "that's so gay" in front of his students. Prior to this, Stanford had also complained to Bird about a woodshop instructor who freely made homophobic remarks in class, including "that's gay" or "you're gay," but no action had been taken. When she submitted her complaint about her anatomy teacher to Bird on or about Friday, February 8, 2013, Principal Bird interrogated Stanford about who had printed the form for her. In response, Stanford told him that Claimant had printed the form at her request.

On or about Wednesday, February 13, 2013, just days after Stanford told Principal Bird that Claimant had provided her with the complaint form, Bird informed Claimant in a meeting that she was a "non-reelect", meaning her employment contract would not be renewed for the following school year. Sultana and the district took this action despite the fact that Claimant had received uniformly positive teaching evaluations. In doing so, Principal Bird stated, "You are just not a good fit here," or words to that effect. Claimant informed her union representative Mr. Resvaloso about the decision, who soon thereafter approached Karen Kelly, the Assistant Superintendent of Personnel Services for Hesperia Unified School District. Kelly was empowered to rescind the non-reelect decision. However, she refused to do so even when told by Resvaloso that there were clear issues of discrimination. During the conversation, Ms. Kelly said that she did not believe that the District would ever discriminate, despite the fact that she herself had litigated a discrimination case against the Hesperia School District for years, eventually settling the case for reinstatement to her former position and \$500,000.

As GSA advisor, Claimant has continued to support GSA members' exercise of their constitutional rights in opposing sexual orientation discrimination and sex discrimination. Specifically, GSA students have opposed Sultana's exclusion of same sex couples from the competition for "favorite couple" in the yearbook and Sultana's gendered dress code.

Had Sultana allowed her to continue teaching, Claimant would have obtained tenure on the first day of her third school year. Instead, when her contract expires at the end of this school year, Claimant will lose her income and will be ineligible for unemployment. Moreover, she will face great difficulty obtaining employment in any other school district, because a non-reelect is seen as a very black mark on a teacher's work history, especially when it comes during the second year of probation.

As a direct and proximate result of the discrimination, harassment, retaliation, and other unlawful conduct to which Claimant has been subjected, Claimant has suffered and will continue to suffer economic damages, severe emotional distress, and physical manifestations of said emotional distress.

The negligent, malicious, intentional, willful, and/or wanton acts of Sultana High School, the Hesperia Unified School District Board, the Hesperia Unified School District and their agents and representatives, including those described herein, have resulted in the denial of Claimant's constitutional, statutory, and common law rights and have caused her great emotional pain and suffering and other injuries and damages.

The actions and/or omissions of Sultana High School, the Hesperia Unified School District Board, the Hesperia Unified School District and their agents and representatives as described herein have been negligent, and grossly so, in failing to train and/or supervise its teachers, school administrators, and other employees regarding equal treatment of employees and students regardless of actual or perceived sexual orientation, gender identity, or gender expression.

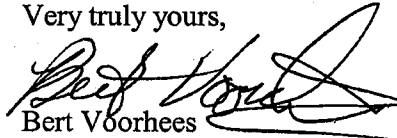
The actions and/or omissions of Sultana High School, the Hesperia Unified School District Board, the Hesperia Unified School District through their agents and representatives as described herein result from a conspiracy among the various actors discussed above and others whose identities or roles in the conspiracy are not yet known to claimant, which conspiracy persists up to and includes the present time.

Claimant's theories of liability include, but are not limited to: unlawful discrimination and harassment on the basis of sexual orientation in violation of the Fair Employment and Housing Act; unlawful retaliation for personally opposing discrimination and/or harassment on the basis of sexual orientation, sex, gender, gender identity, and/or gender expression in violation of the Fair Employment and Housing Act; unlawful retaliation for GSA members' opposition to discrimination and/or harassment on the basis of sexual orientation, sex, gender, gender identity, and/or gender expression in violation of the Fair Employment and Housing Act; failure to prevent discrimination, retaliation, and harassment in violation of the Fair Employment and Housing Act; unlawful adoption of a policy controlling or directing, or attempting to control or direct, the political activities or affiliations of employees in violation of California Labor Code § 1101, including, but not limited to, by means of discrimination and harassment on the basis of sexual orientation; unlawful attempt to coerce or influence an employee by means of threat of loss of employment to refrain from adopting or following a particular course or line of political action or political activity in violation of California Labor Code § 1102, including, but not limited to, by means of discrimination and harassment on the basis of sexual orientation; unlawful retaliation against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, or a violation of or noncompliance with a state or federal rule or regulation in violation of California Labor Code § 1102.5; discrimination and harassment on the basis of sexual orientation and/or on the basis of association with lesbian, gay, bisexual, transgender, and gender non-conforming students in violation of California Education Code § 220; unlawful retaliation for acting to protect students engaged in constitutionally-protected speech or refusing to infringe on students' constitutionally-protected speech in violation of California Education Code § 48950(g); unlawful use of official authority or

Governing Board
March 21, 2013
Page 10

influence for the purpose of intimidating, threatening, coercing, commanding, or threatening to intimidate Claimant for the purpose of interfering with Claimant's right to disclose to an official agent improper governmental activities and/or conditions posing a significant threat to the health or safety of employees or students in violation of California Education Code § 44113 and California Government Code § 8547.3; discrimination and harassment on the basis of actual or perceived sexual orientation in violation of the Equal Protection Clause of the United States Constitution, in violation of 42 U.S.C. §1983; violation of First Amendment rights to freedom of speech and association, in violation of 42 U.S.C. §1983; conspiring to deprive Claimant of equal protection or equal privileges and immunities under the law in violation of 42 U.S.C. § 1985; unlawful retaliation for personally opposing sex discrimination in violation of Title IX and/or retaliation for GSA members' opposition to sex discrimination in violation of Title IX; common law intentional infliction of emotional distress; and common law negligent training, retention and/or supervision of managers, supervisors and employees. This matter will be filed as an unlimited civil case.

Very truly yours,


Bert Voorhees

BV/cys

cc: David McLaughlin, Interim Superintendent
Principal Larry Bird

Exhibit B

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

CERRITOS
(562) 653-3200
FAX (562) 653-3333
FRESNO
(558) 225-6700
FAX (558) 225-3416
IRVINE
(949) 453-4260
FAX (949) 453-4262

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
3450 FOURTEENTH STREET, SUITE 420
RIVERSIDE, CALIFORNIA 92501-3862
(951) 683-1122
FAX (951) 683-1144
WWW.AALRR.COM

PLEASANTON
(925) 227-9200
FAX (925) 227-9202
SACRAMENTO
(916) 923-1200
FAX (916) 923-1222
SAN DIEGO
(619) 485-9526
FAX (619) 485-9412

OUR FILE NUMBER:
005043.00082
11269317.1

May 22, 2013

VIA FACSIMILE AND FIRST CLASS MAIL

Julia Frost
c/o Bert Voorhees, Esq.
The Law Office of Traber & Voorhees
128 North Fair Oaks Avenue
Pasadena, CA 91103

Re: Notice of Denial of Claim

Dear Ms. Frost:

On behalf of the Governing Board of the Hesperia Unified School District, notice is hereby given that the claim you served on the District on or about April 4, 2013, was denied by the Governing Board on May 8, 2013.

WARNING
(Government Code § 913)

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code section 945.6.

This letter serves to notify you that you may seek the advice of your attorney in connection with this matter. If you desire to consult your attorney, you should do so immediately.

Sincerely,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Mark W. Thompson
Attorneys for Hesperia Unified School District

cc: Karen Kelly-Pelayes, Assistant Superintendent, Personnel Services

Exhibit C

HESPERIA UNIFIED SCHOOL DISTRICT

E 1312.3

Community Relations

Uniform Complaint Procedures

HESPERIA UNIFIED SCHOOL DISTRICT
15576 MAIN STREET
HESPERIA, CA 92345
(760) 244-4411

UNIFORM COMPLAINT FORM

OFFICIAL USE ONLY Issue #
Date Issued: Time:
School/Site
Signature of Admin.
Date Returned: Time: Signature of Admin:

NAME Julia Frost
(please print)

ADDRESS P.O. Box 3519, Wrightwood, CA 92397

HOME PHONE (909) 200-9913 WORK PHONE (760) 947-6777

DATE March 22, 2013

1. My concern is: See Attached

2. I have taken the following steps to inform the local education officials about the problem (phone calls, conferences, letters – when and with whom?): See Attached

Community Relations

Uniform Complaint Procedures (Con't)

3. I have received the following response(s): See Attached

4. My relationship to the problem is (Describe your interest as a parent, teacher, administrator, agency employee or student): See Attached

5. I think the following should be done: See Attached

Request for action: See Attached

The foregoing statements are true to the best of my knowledge. I request the Hesperia Unified School District conduct an investigation to resolve the issue(s) identified.

[Signature]
SIGNATURE

3/27/13
DATE

HUSD FORM

1. My concern is:

As an English teacher at Sultana High School, I have been discriminated against and harassed based on my sexual orientation in violation of Education Code § 220. Moreover, at the recommendation of Sultana High School Principal Larry Bird the Hesperia Unified School District has decided not to renew my employment contract for the 2013-2014 school year. This adverse employment action violates Education Code §§ 220 and 48950(g) because it is motivated by discrimination based on my sexual orientation, lesbian, and/or by the intent to retaliate against me for:

- (1) protecting the constitutional rights of students to free speech and association and refusing to infringe on those constitutional rights;
- (2) personally opposing harassment and discrimination based on sexual orientation, gender, gender identity, and/or gender expression;
- (3) my support for and association with the actions of students who are members of the Sultana High School Gay/Straight Alliance in opposing discrimination and harassment based on sexual orientation, gender, gender identity, and/or gender expression; and/or the actions of the students themselves in opposing discrimination and harassment based on sexual orientation, gender, gender identity, and/or gender expression.

In August of 2011, I began my job as an English teacher at Sultana High School ("Sultana") in the Hesperia Unified School District. I was already a veteran teacher with fourteen years of experience, including nine years of experiencing teaching English in the Fontana Unified School District. However, because Sultana was located in the Hesperia Unified School District, I began my employment as a probationary-status teacher with the expectation of obtaining tenure after two years.

Prior to the beginning of my first year at the school, I attended a series of meetings required for new teachers in Hesperia Unified. At those meetings I met fellow teacher Christina Grizanti, who asked me if I would co-advise Sultana's Gay/Straight Alliance. I agreed to be a faculty advisor along with Grizanti, who is heterosexual. When Grizanti began experiencing medical difficulties early in the school year, Jennifer Rhodus, another heterosexual teacher, agreed to be a co-advisor of the group.

The Sultana Gay/Straight Alliance (“GSA”) is one of many student groups that meet at lunchtime in the room of a faculty advisor at Sultana High school. Student groups at Sultana plan a variety of activities, including social events, community service, and fundraisers. The stated goals of the GSA are to create a safe environment at Sultana by fighting discrimination, harassment, and violence, and for students to support each other and learn about homophobia, transphobia, and other oppressions. GSA student groups exist at hundreds of high schools across California and thousands throughout the nation.

At Sultana, all student groups must have at least one faculty advisor. If students wish to have announcements read to the school about their meetings or events over the public address system, they submit the text of the announcements to Angela Espinoza, secretary of the Associated Student Body. To request approval for an activity, student groups write the request in their meeting minutes and submit those minutes to Espinoza. Espinoza forwards all student group requests to H.R. Lugo, the Assistant Principal of Student Activities. Student groups are not permitted to hold events for which they have not received approval from Assistant Principal Lugo.

In August of 2011, my first month teaching at Sultana, I was informed by another teacher that other teachers were discussing my sexual orientation, giving the example of a teacher who had stated, “She doesn’t look like a lesbian,” or words to that effect. Soon thereafter, I was directly questioned about my sexual orientation by fellow teacher Leo Adkins, who asked I, “So which one is the man and which one is the woman in your relationship?” or words to that effect.

Early in the school year, Assistant Principal Jennifer Murillo completed a classroom observation of my teaching and met with me to discuss the observation. Murillo gave me a very positive evaluation. During the meeting, Murillo discussed her husband and I also discussed my partner Michelle. Shortly thereafter, in September 2011, Principal Larry Bird called me into his office for a meeting with himself and Murillo. Visibly uncomfortable, early in the meeting Bird said, “Well, Jen told me you have a partner,” or words to that effect. He said that he had called the meeting to talk to me about the parameters of being a GSA advisor, to ensure that the GSA was run by students and not by me, and to make sure I knew “what the Education Code protected,” or words to that effect. I assured him that students ran the GSA and that I was aware of the protections of the Education Code. When I asked why my GSA co-advisors were not in the meeting, Mr. Bird said he would be sure my co-advisors were similarly questioned and informed about the protections afforded by the Education Code, but this did not occur.

Around the same time, the GSA requested permission to hold a training as part of Ally Week. Ally Week is organized through the Gay, Lesbian and Straight Education Network (GLSEN), a national organization established in 1990 to ensure that schools are safe for all students. The purpose of Ally Week is for students to identify, support, and celebrate students and adults who are not LBGQTQ, but who are committed to opposing the bullying and harassment of LBGQTQ students. Sultana's GSA requested approval to hold a training about how to help stop bullying which was to take place over two lunch periods using a lesson plan provided by GLSEN to GSAs across the country. Although student-requested events are typically approved as a matter of course by the Associated Student Body (ASB) officers alone, in October of 2011 I was summoned to meet with Principal Bird and Assistant Principal Murillo. When I arrived, I found that Kim Falahee, Head Counselor, and Vice Principal H.R. Lugo were also present. I asked that Jennifer Rhodus, the GSA co-advisor, also be present and she soon arrived. Although they had already been provided with a copy of the lesson plan the students intended to use for the training as a part of Ally Week, Falahee and Lugo interrogated Rhodus and I about Ally Week event and its purpose. The tone and content of this interrogation led me to believe that Sultana's administrators were concerned the ally training was actually some sort of effort to "recruit" straight students into homosexuality. Rhodus and I explained that the purpose was to help students learn tools to stop bullying. Rhodus and I invited everyone in the meeting to attend the training to alleviate their concerns, but none of them came. Despite this meeting, the administration never officially responded to the GSA's request for approval for the event.

On April 10, 2012, I received a performance evaluation from Principal Bird indicating that I had attained all performance goals. The evaluation further stated, "Ms. Julia Frost had a great first year as an English teacher at Sultana. It is clear she cares about her students and her new school. She works closely with her colleagues to create common assessments based on the essential standards they have developed. Ms. Frost uses the data from these and other forms of informal and formal assessments to plan and direct her instruction, reteaching, and review. We appreciate her hard work at Sultana this year! Nice job Ms. Frost!"

In the same month, the Sultana GSA decided to participate in a national event on April 20, 2012, called the "Day of Silence." On the Day of Silence, students in high schools across the nation take vows of silence to draw attention to the silencing of LBGQTQ youth by bullying and anti-LBGQTQ harassment. Students pass out cards to others explaining their reasons for not speaking for the day. Once again, Bird and Murillo called me in for a meeting about the Day of Silence without informing Jennifer Rhodus. Bird said that some teachers had questions about the Day of Silence and asked me

to draft information to be distributed to staff about the event. Bird also expressed concern that students would be rude to teachers, and I indicated that I would write up any student who behaved in a rude or disrespectful way in conjunction with the event myself. Although I soon thereafter submitted written information concerning the nature of the event, Bird never distributed it to the staff.

Another Sultana teacher, Harvey Miller, sent an email and letter to me and to Bird in April 2012 in which he argued that gays should protest at City Hall, but not be allowed to protest on campus. Miller then called me on the phone and yelled at me, stating that gays should not be teaching or be allowed to protest on campus, and that it was disgusting. I reported the harassing phone call to Bird's secretary Chris Chisholm, who said she would pass on the information to Principal Bird.

In May of 2012, Danny Polemounter, Vice Principal of Discipline, entered my classroom and informed me that he was there to investigate a parent complaint that I was "teaching homosexuality." Polemounter pointed to a sticker indicating her classroom was a safe space, a tolerance poster, and a rainbow flag on my wall given to her by a student, which was next to various other items which had also been given to me by my students, and said the presence of those items on my wall meant I must be teaching "gay things," or words to that effect. I responded that I was teaching Julius Caesar and would be happy to give him my lesson plans. I also suggested that he could drop by and observe my class whenever he liked.

In my second year of teaching at Sultana, the administration explicitly refused to approve various GSA activities and posters. They censored GSA posters by disallowing the use of certain words, including "gay," "transgender," and "queer." Some of the GSA students met with Mr. Lugo to discuss posting flyers from the Think Before You Speak campaign, a national campaign against anti-LGBTQ slurs. Lugo said, "If we can't have a discussion in a classroom saying queer, gay or lesbian, why should they put them on posters?" or words to that effect. The GSA was not allowed to post these flyers. The administration also began to censor the GSA's public address system announcements to omit references to sexual orientation and gender identity. For example, the GSA submitted an announcement which read, "Do you identify as straight, lesbian, bisexual, gay, or are you questioning everything? Come join Sultana's Gay Straight Alliance on Wednesdays at lunch in room w-11. Join a group of students here on campus that support each other and want to make a difference for others." The announcement was instead broadcast as, "GSA meeting in W-11."

Other announcements submitted have not been broadcast at all. Moreover, the GSA was excluded from the "School Clubs and Organizations" listing in Sultana's 2012-2013 Student Handbook & Planner. When the GSA requested permission to screen a film, as several other student groups regularly do, GSA members were told by Sultana administrators that the content of their movies was "inappropriate." When the students asked for guidance as to what the administration would consider "appropriate," none was provided. The GSA made a request to screen a different film, which request was denied based on "copyright concerns." Even though GSA members then obtained a written release to screen a film entitled "Out in Silence," Principal Bird refused to grant permission, stating that he would consult the District, which he claimed was considering banning movie nights altogether. To my knowledge, the District has never adopted such a policy and other school clubs continue to screen films. The treatment of the GSA as compared to other student groups has sent a clear message to LGBTQ students and to me that Sultana's administration disapproves of LGBTQ people and of discussing LGBTQ issues.

In September of 2012, the students of Sultana voted Felicitas Orozco, a lesbian student, their Homecoming Queen. Vice Principal Lugo tried to discourage at least one student from voting for her and referred to her nomination as a "joke." Orozco accepted the award wearing a collared shirt and jeans and wore a suit to the Homecoming Dance. Multiple faculty members expressed to their students and to me that they disapproved of Ms. Orozco and her decision to wear a suit. For example, a few days after the Homecoming Dance, I was confronted by Wanda Lambdin, the cheerleading coach. Ms. Lambdin said she was appalled that Orozco had not worn a dress to homecoming, demanded to know what Orozco had said about her and her cheerleaders, and referred to LGBTQ individuals as "those people."

At about the same time, Ms. Orozco told me that teachers were harassing and ridiculing her about her sexual orientation and her gender expression. I asked Orozco a series of questions to ascertain that she was not in immediate physical danger, advised her to file a report immediately, and offered to accompany her to Assistant Principal Murillo's office, which Ms. Orozco asked me to do. When I went to get Ms. Orozco from her fourth-period video production class to accompany her to Ms. Murillo's office, the teacher of the class asked Ms. Orozco, in a condescending and derogatory tone, "Why do *you* need to see *her*?" referring to me. He then laughed at Orozco.

I accompanied Orozco to Murillo's office, where Orozco completed a written report regarding incidents of harassment. At the same time, I wrote a report regarding what Orozco had

reported to her, the behavior of Orozco's video production teacher, and Lambdin's anti-LGBT comments to I. Assistant Principal Murillo told Ms. Orozco and I that the filing of any formal complaint would force her to discuss Ms. Orozco's sexual orientation with her father, purportedly as a result of some unspecified "safety issue." I told Murillo that Orozco was not out to her father, and that her father was extremely conservative and might kick her out of the house when he learned she was a lesbian. I further told Murillo that, since there was no threat to Orozco's physical safety, there was no reason to disclose her sexual orientation to her father. Murillo insisted she would do so anyway. As a result, Orozco was forced to tell her father that she is a lesbian immediately after school, before he learned her sexual orientation from Murillo. Orozco requested a copy of her complaint but was never given one. Neither Orozco's complaint nor my complaint were ever investigated or otherwise addressed. On another occasion, when a male student attempted to report bullying, Vice Principal Polemounter similarly threatened to call the boy's parents and tell them that he is gay.

Also in October of 2012, contrary to school policy, a phone call was transferred from the counseling department to my classroom without identifying the caller or to which student he was connected. On the other end of the line was an enraged man who claimed to be a parent and refused to give his name. The man accused me of having a "GSA gay agenda" and yelled that he would stop me any way he could, and that he would find someone to help him stop me. During the call, I advised the man several times that he should take the matter up with Principal Bird, but the man repeatedly said he only wanted to talk with me. At the point the man was close to screaming and I felt he had threatened me, I again told him he should speak to Mr. Bird and hung up the phone. I immediately made a report of the threat, and Bird's office called the school police in an effort to identify the parent. I was so upset that I could not go to work the next day. Although I requested information about the status of the investigation and whether the man had been identified so that I could protect myself, I received no response for a full week. I was eventually told the identity of the parent and that he had removed his daughter from my class.

I was once again summoned to a meeting with Murillo in October 2012. Vice Principal Polemounter was also present. They told me that a parent had complained about an article from Newsweek regarding the military's "Don't Ask Don't Tell Policy" which I had assigned the students to read. Although Polemounter and Murillo admitted they had not read the article, they told me that I had to present "the other side of the issue" to my students. I explained that the assignment I had given the students was not to take a political position, but to identify the author's claim and the support the author had articulated for their claim. I pointed out that the article was used by other

teachers and was from a website that Sultana had encouraged its English teachers to utilize for resources. I also pointed out that although other teachers used the same article, I was the only teacher summoned to a meeting and criticized.

After the meeting regarding the Newsweek article, I contacted my union representative, Jim Resvaloso. Mr. Resvaloso arranged a meeting between himself, Principal Bird, Assistant Principal Murillo, and me. In that meeting, Resvaloso told Murillo and Bird that it was not appropriate for them to bring the concerns of homophobic parents to me unless there was a safety issue for me, and that such complaints should be given no legitimacy as my sexual orientation could not be a topic of legitimate criticism for parents or others. I told Mr. Bird and Ms. Murillo that I would be happy to meet with any parents who had a legitimate question about my lessons at any time and that parents were always welcome to drop into my classroom or to ask for lesson plans but that singling me out on the basis of my sexual orientation or because of parental homophobia and bias had to stop. Mr. Resvaloso also explained to Murillo and Bird that they had to comply with the Fair, Accurate, Inclusive, and Respectful Education Act ("FAIR Act"), the California School Safety and Violence Prevention Act ("AB 537"), and Seth's Law. Resvaloso and I talked with Bird and Murillo about the bad atmosphere on campus and growing homophobic behavior in the wake of homecoming and that this had created and/or increased the hostile environment of the school. Resvaloso and I also discussed the impact this hostile environment was having on LBGTQ students, and requested a change in policy to ensure that all students and staff were treated fairly.

The FAIR Act requires the inclusion of the political, economic, and social contributions of people with disabilities and LGBT people in educational texts and social studies curricula. AB 537 added actual or perceived sexual orientation and gender identity to the Education Code's nondiscrimination policy, mandating that Uniform Complaint Procedures be available to LBGTQ students to file complaints of discrimination or harassment. Seth's Law required California School Districts to adopt comprehensive anti-bullying policies that address bullying based on sexual orientation and gender identity and expression, and school staff members to intervene when they witness acts of discrimination or harassment.

Sultana administrators have done no more than pay lip service to these legal mandates. They have failed to make Sultana staff and students aware their legal obligations toward LBGTQ and gender non-conforming students, or of the process for making or resolving complaints. Although the District has a form for complaints of discrimination and harassment, instead of directing students to that form, Sultana administrators have attempted to discourage students from filing complaints

and/or instructed students to fill out an incident report form. Moreover, Sultana administrators have failed comply with the mandates of Seth's Law and train staff and students not only on bullying generally, but specifically on anti-LBGTO bullying. Rather than intervene in acts of discrimination and harassment, several Sultana teachers have made homophobic remarks in the classroom without repercussions. As faculty advisor of the GSA, I was made aware by students that various teachers made openly homophobic remarks in their classrooms and that GSA members had overheard Vice Principal H.R. Lugo saying, "That's so gay," and referring to his own son disdainfully as a "vagina," apparently to criticize him for behaving in a feminine manner. Students have further reported to me that, when they attempted to report peer harassment based on sexual orientation or gender expression to the school administration, the complaints were not taken seriously and the issues went unresolved.

In February of 2013, Amber Stanford, a student at Sultana, approached me and asked me to print out a Uniform Complaint Procedure Discrimination/Harassment Complaint Reporting Form from the website of the GSA Network, a nonprofit organization that provides support to high school and middle school Gay Straight Alliances across the nation. I printed the form, which Stanford used to make a complaint about homophobic comments her anatomy teacher had made. She complained that this teacher instructed a student, "Take the gay headband off," and commented "that's so gay" in front of his students. Prior to this, Stanford had also complained to Bird about a woodshop instructor who freely made homophobic remarks in class, including "that's gay" or "you're gay," but no action had been taken. When she submitted her complaint about her anatomy teacher to Bird on or about Friday, February 8, 2013, Principal Bird interrogated Stanford about who had printed the form for her. In response, Stanford told him that I had printed the form at her request.

On or about Wednesday, February 13, 2013, just days after Stanford told Principal Bird that I had provided her with the complaint form, Bird informed me in a meeting that I was a "non-reelect", meaning my employment contract would not be renewed for the following school year. Sultana and the district took this action despite the fact that I had received uniformly positive teaching evaluations. In doing so, Principal Bird stated, "You are just not a good fit here," or words to that effect. I informed my union representative Mr. Resvaloso about the decision, who soon thereafter approached Karen Kelly, the Assistant Superintendent of Personnel Services for Hesperia Unified School District. Kelly was empowered to rescind the non-reelect decision. However, she refused to do so even when told by Resvaloso that there were clear issues of discrimination. During the conversation, Ms. Kelly said that she did not believe that the District would ever discriminate, despite the fact that she herself had litigated a discrimination case against the Hesperia School

District for years, eventually settling the case for reinstatement to her former position and \$500,000.

As GSA advisor, I have continued to support GSA members' exercise of their constitutional rights in opposing sexual orientation discrimination and sex discrimination. Specifically, GSA students have opposed Sultana's exclusion of same sex couples from the competition for "favorite couple" in the yearbook and Sultana's gendered dress code.

2. I have taken the following steps to inform the local education officials about the problem (phone calls, conferences, letters – when and with whom?):

As described in detail in my answer to question 1, I have met with Sultana administrators on numerous occasions to discuss the activities of the GSA. I have verbally complained to Principal Larry Bird and/or Vice Principal Jennifer Murillo about discriminatory treatment based on my sexual orientation, a threat from a parent, harassment by other teachers, homophobic remarks by teachers, homophobia on campus and its effect on LBGTQ students, and the Sultana administration's failure to comply with AB 537, Seth's Law, and the FAIR Act. I have complained in writing to Principal Larry Bird concerning teacher harassment of LBGTQ students and anti-LBGTQ remarks made to me by a fellow teacher. My union representative has complained on my behalf to Karen Kelly, Assistant Superintendent of Personnel of the Hesperia Unified School District, concerning the discriminatory and retaliatory non-renewal of my teaching contract. On March 21, 2013, I filed a claim pursuant to California Government Code §§ 910 and 911.2, which was sent by certified mail to Dave McLaughlin, Interim Superintendent of the Hesperia Unified School District, the Governing Board of the Hesperia Unified School District, and Principal Larry Bird of Sultana High School.

3. I have received the following response(s):

To my knowledge, there was no investigation of my verbal or written complaints concerning the harassment and mistreatment of LBGTQ students by teachers at Sultana High School. The only action Sultana administrators have taken in response to any of my complaints was to file a report with the school police when a parent threatened me. As described in my answer to question 1, the Sultana administration has increasingly restricted the activities of the Gay/Straight Alliance. Sultana administrators took no steps to ensure compliance with AB 537, Seth's Law or the FAIR Act after my complaint. Sultana administrators took no action against Harvey Miller after my complaint about his homophobic harassment. Finally, despite my positive performance evaluations, just days after

learning that I had downloaded a complaint form for a member of the GSA, Principal Larry Bird responded to my complaints by deciding to recommend to the Governing Board of Hesperia Unified School District that my teaching contract not be renewed for the next academic year. The Governing Board took that action on March 4, 2013.

4. My relationship to the problem is (Describe your interest as a parent, teacher, administrator, agency employee or student):

I am a teacher at Sultana High School. As described above, my teaching contract was not renewed for the 2013-2014 school year for discriminatory and retaliatory reasons.

5. I think the following should be done:

Sultana High School and the Hesperia Unified School District should comply with Education Code §§ 220 and 48950, AB 537, Seth's Law, and the FAIR Act by taking action, including but not limited to:

- training teachers, staff, and students on a comprehensive anti-discrimination and anti-bullying policy that specifically addresses anti-LGBT discrimination and bullying;
- making teachers, students, and staff aware of the protections of Education Code § 220 and the process for making and resolving complaints of discrimination and harassment;
- ceasing the discriminatory and unlawful treatment of the Gay/Straight Alliance, including censorship of its announcements and materials and refusal to approve its proposed activities;
- ensuring that the social studies curricula and education texts utilized at Sultana High School include the political, economic and social contributions of LGBTQ people;
- investigating LGBTQ students' complaints of harassment and take appropriate disciplinary action against teachers and students who harass students based on sexual orientation, gender, gender identity, and/or gender expression;
- rescinding the decision not to renew my teaching contract, and renewing my contract to teach English at Sultana High School for the 2013-2014 school year;
- paying my attorneys' fees for their work to oppose the unlawful acts described in this complaint; and
- compensating me for the emotional distress I have suffered as a result of the unlawful acts described in this complaint.

Exhibit D

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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OUR FILE NUMBER:
 005043.00082
 11248478.1

May 22, 2013

Department of Fair Employment & Housing
 1055 West 7th Street, Suite 1400
 Los Angeles, CA 90017

Re: Notice of Claim for Discrimination

To Whom It May Concern:

This office represents the Hesperia Unified School District. Please be advised that on or about April 4, 2013, the District received the enclosed Uniform Complaint submitted by District employee Julia Frost. Although the Complaint was filed under the District's Uniform Complaint procedures, Title 5, California Code of Regulations, Section 4611, which is mirrored in District Board Policy and Administrative Regulation 1312.3, requires complaints alleging employment discrimination to be referred to DFEH.

Accordingly, we enclose Ms. Frost's Complaint for your handling and response. The District believes Ms. Frost may have already filed a complaint with DFEH, but is unable to confirm this information at this time.

Your attention to this matter is greatly appreciated. Feel free to contact me if you have any questions.

Sincerely,



Mark W. Thompson

Enclosure

cc: Karen Kelly-Pelayes, Assistant Superintendent of Personnel Services
 Bert Voorhees, Esq.

Exhibit E

THE LAW OFFICE OF
TRABER & VOORHEES

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LAUREN TEUKOLSKY
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June 5, 2013

By Overnight Mail

Office of Equal Opportunity
California Department of Education
1430 N Street
Room 4206
Sacramento, CA 95814

Re: Appeal of Hesperia Unified School District Decision Re: Julia Frost Uniform Complaint

To whom it may concern:

The Law Office of Traber & Voorhees represents Julia Frost, and files this appeal pursuant to 5 CCR §4632 on her behalf. On or about March 22, 2013, Ms. Frost filed a Uniform Complaint Form ("Uniform Complaint") with the Hesperia Unified School District ("HUSD"), attached hereto as Exhibit A. As a probationary English teacher at Sultana High School in the Hesperia Unified School District, Ms. Frost acted as the faculty advisor to a Gay/Straight Alliance ("GSA"). Despite positive performance evaluations, her contract was not renewed after she assisted GSA members to file complaints with Sultana's administration about anti-LGBTQ comments by other teachers. The contract non-re-election followed a series of events in which Sultana administrators demonstrated their animus toward Ms. Frost based on her sexual orientation, her association with lesbian, bisexual, gay, transgender, and queer or questioning ("LGBTQ") students, and her opposition to discrimination and harassment.

On May 22, 2013, we accepted service of a letter from Mark W. Thompson, counsel for HUSD, indicating that Ms. Frost's Uniform Complaint was not investigated and instead was referred to the California Department of Fair Employment and Housing pursuant to 5 C.C.R. §4611 and District Board Policy/Administrative Regulation 1312.3. At the same time, Mr. Thompson's letter, attached hereto as Exhibit B, went on to assert that her non-re-election was not discriminatory and was based on performance issues.

Ms. Frost is appealing HUSD's decision on her Uniform Complaint, to the extent that Mr. Thompson's May 22, 2013 letter can be construed as a decision, on the grounds that (1) HUSD failed to meet its obligations to investigate Ms. Frost's complaint under 5 CCR §4631, (2) Mr. Thompson's May 22, 2013 letter does not meet the standards of 5 CCR §4631(e) for a Local

Educational Agency decision (“LEA Decision”), and (3) Mr. Thompson’s May 22, 2013 letter contains both incorrect statements of fact and incorrect statements of law.

A. HUSD Failed to Meet Its Obligations to Investigate Ms. Frost’s Complaint

Under 5 CCR §4631(b), a Local Educational Agency (“LEA”)’s investigation of a Uniform Complaint must include “an opportunity for the complainant, or the complainant’s representative, or both, to present the complaint(s) and evidence or information leading to evidence to support the allegations of non-compliance with state and federal laws and/or regulations.” 5 CCR §4631(b). HUSD never contacted Ms. Frost to schedule an interview with her or to give her an opportunity to submit evidence in support of her allegations. Instead, HUSD referred Ms. Frost’s Uniform Complaint to the California Department of Fair Employment and Housing (“DFEH”), citing 5 CCR §4611 and District Board Policy/Administrative Regulation 1312.3.

HUSD’s contention that it had no obligation to investigate Ms. Frost’s Uniform Complaint because it raised issues of employment discrimination is meritless. Although 5 CCR §4611(c) states that “[e]mployment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to *title 22, CCR, section 98410*,” this regulation cannot be reasonably interpreted to extinguish HUSD’s obligation to investigate Ms. Frost’s claims. 22 CCR §98410 states that “[t]o the extent that a complaint alleges *only* employment discrimination, DFEH shall have the exclusive authority to investigate and FEHC shall have the exclusive authority to adjudicate such a complaint.” 22 CCR §98410 (emphasis added). DFEH does not have the authority to investigate complaints alleging violations of the Education Code. Cal. Gov. Code §12930(f) (DFEH’s authority limited to investigating FEHA and Unruh Act claims).

Ms. Frost’s complaint specifically alleged violations of Cal. Ed. Code §§220 and 48950(g). Although some of the underlying facts would also support a DFEH charge, Ms. Frost’s rights and remedies under the Education Code are distinct. Cal. Gov. Code §12930(g)(2) (DFEH remedies and procedures are independent of others that may apply); Cal. Ed. Code §§262.3, 262.4. The plain language of Education Code §220, “No *person* shall be subjected to discrimination,” indicates that it protects not only students, but also school employees. Cal. Ed. Code §220 (emphasis added). Education Code §48950(g) specifically protects employees from retaliation for refusing to infringe on students’ First Amendment rights or protecting students from such infringement, a protection the Fair Employment and Housing Act (“FEHA”) does not provide. More broadly, Ms. Frost’s Uniform Complaint alleged that Sultana High School and HUSD failed to comply with the FAIR Act, AB 537, and Seth’s Law. Because the Department of Fair Employment and Housing does not have jurisdiction to investigate any of these claims, 5 CCR §4611(c) does not require the referral of Ms. Frost’s Uniform Complaint to DFEH, and HUSD had an obligation to complete an investigation and issue an LEA Decision.

B. HUSD Failed to Issue a Valid LEA Decision Pursuant to 5 CCR §4631(e)

Mr. Thompson's May 22, 2013 letter does not satisfy the requirements for an LEA Decision set forth in 5 CCR §4631(e). First, section 4631 requires that an LEA Decision be "based on the evidence." This presupposes that the LEA has followed mandatory investigative procedures and given the complainant the opportunity to present evidence, which did not occur here. Therefore, the conclusions stated in Mr. Thompson's letter cannot be "based on the evidence" within the meaning of the regulation. Furthermore, Mr. Thompson's letter fails to state any conclusions of fact or law concerning Ms. Frost's allegations that HUSD and Sultana did not comply with the FAIR Act, AB 537, or Seth's Law as required by section 4631(e)(1)-(2). The letter also does not explain the disposition of the complaint or the rationale therefore, only stating that it has been referred to the DFEH. 5 CCR §§4631(e)(3)-(4). Nor does the letter discuss whether corrective actions are warranted. *Id.* at subsection (e)(5). Finally, the letter fails to notify Ms. Frost of her right to appeal to the Department of Education, or to explain the procedures to be followed for initiating an appeal. 5 CCR §§4631(e)(6)-(7).

C. Mr. Thompson's Letter Contains Incorrect Statements of Fact and Law

Although HUSD never interviewed Ms. Frost, and referred her claim to the DFEH, Mr. Thompson nevertheless asserts in his letter that her non-reelection was nondiscriminatory and was based on performance deficiencies. The letter cites allegations made in a retaliatory performance evaluation completed by a school administrator named in Ms. Frost's separate Government Code claim and DFEH charge, indicating that HUSD provided Sultana administrators with an opportunity to present evidence while denying the same opportunity to Ms. Frost. Ms. Frost's response disputing that retaliatory performance evaluation is attached hereto as Exhibit D.

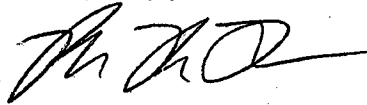
Mr. Thompson's letter is peppered with incorrect factual statements, including but not limited to, (1) that Ms. Frost directed students in her English class to state and defend their personal opinions on a controversial socio-political issue, (2) that Ms. Frost's posting on a Facebook page showed poor judgment and a lack of professionalism, (3) that Ms. Frost inappropriately discussed confidential personnel matters with students during class time, (4) that Ms. Frost's performance was not "thoroughly satisfactory," and (5) that Ms. Frost was non-reelected "because she failed to meet the District's standards for permanent employment, and not due to... nefarious or unlawful reasons[.]"
Ex. B.

Moreover, Mr. Thompson's assertion that "school districts have complete discretion regarding the reelection of probationary employees" is an incorrect statement of law. School districts are subject to Education Code §§220 and 48950(g), as well as the Fair Employment and Housing Act, and cannot choose not to reelect a teacher for a reason prohibited by any of those statutes.

Office of Equal Opportunity
June 5, 2013
Page 4

In accordance with the requirements of 5 CCR §4632(c), Exhibit A attached hereto is a copy of Ms. Frost's locally filed Uniform Complaint, and Exhibit B is a copy of Mr. Thompson's May 22, 2013 letter, the only response she has received from HUSD. A letter dated May 22, 2013 from Mr. Thompson on behalf of HUSD to the Department of Fair Employment and Housing is attached as Exhibit C, and Ms. Frost's response to her most recent, retaliatory performance evaluation is attached as Exhibit D.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Peterson-Fisher', written in a cursive style.

Rebecca Peterson-Fisher

Enclosures

Cc: Mark Thompson, Esq.

Exhibit F

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

CERRITOS
(562) 653-3200
FAX (562) 553-3322

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

IRVINE
(949) 453-4250
FAX (949) 453-4252

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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RIVERSIDE, CALIFORNIA 92501
(951) 683-1122

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

SACRAMENTO
(916) 922-1200
FAX (916) 923-1222

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

OUR FILE NUMBER:

005043.00082
11416323.1

July 26, 2013

VIA FAX AND OVERNIGHT MAIL

California Department of Education
Office of Equal Opportunity
1430 N. Street, Room 4206
Sacramento, CA 95814

Re: Julia Frost/Hesperia Unified School District, et. al.

To Whom It May Concern:

This office represents the Hesperia Unified School District in the above referenced matter. This letter serves to clarify the issues and correct any misinformation asserted in the appeal submitted by Julia Frost on or about June 5, 2013.

On or about March 22, 2013, Ms. Frost submitted a Uniform Complaint with the District asserting, "As an English teacher at Sultana High School, I have been discriminated against and harassed based on my sexual orientation." Specifically, Ms. Frost's Complaint challenged the District's decision not to renew her employment contract, claiming, "This adverse employment action violates Education Code §§ 220 and 48950(g) because it is motivated by discrimination based on my sexual orientation, lesbian, and/or by the intent to retaliate against me..." Because Ms. Frost was challenging her nonreelection, and identified her concern as relating to an "adverse employment action," her claims clearly fell within the definition of "employment discrimination." As such, the District forwarded her Complaint to the California Department of Fair Employment and Housing ("DFEH") for handling, as mandated by Title 5, California Code of Regulations ("CCR"), section 4611, and District Board Policy and Administrative Regulation 1312.3. In a letter dated May 22, 2013, the District notified Ms. Frost that her Complaint had been forwarded to DFEH, and assured her that her nonreelection was accomplished in accordance with the Education Code, and was not based on any unlawful motive.

Title 5, CCR, section 4610 sets forth the purpose and scope of the uniform complaint procedures, and specifies these procedures apply to complaints regarding an alleged violation of federal or state law or regulations governing educational "programs or activities that receive state or federal funding." Under Section 4610, the uniform complaint procedures also apply to "unlawful discrimination against any protected group ... in any program or activity conducted by a local agency, which is funded by, or that receives or benefits from any state financial assistance." To

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

California Department of Education
July 26, 2013
Page 2

maintain the purpose and scope of the uniform complaint procedures, Section 4611 specifically excludes employment discrimination complaints. Section 4611 expressly states:

The following complaints shall be referred to the specified agencies for appropriate resolution and are not subject to the local and Department complaint procedures set forth in this chapter ...

- (c) Employment discrimination complaints shall be sent to the State Department of Fair Employment and Housing (DFEH) pursuant to title 22, CCR, section 98410. (Emphasis added).

Following Section 4611, District Board Policy 1312.3 states, "These uniform complaint procedures **DO NOT** apply to ..., employment discrimination." (Emphasis contained in original). The California Department of Education's ("CDE") Uniform Complaint Procedures brochure recognizes the exclusion of employment discrimination claims, stating, "The California Code of Regulations, Title 5, Section 4610 authorizes CDE, through the UCP to process only complaints regarding student discrimination." (Emphasis added).

Ms. Frost self-identified her Complaint as arising from an "adverse employment action." She asserted her own sexual orientation as the alleged basis for discrimination. Although Ms. Frost's Complaint discusses incidents of alleged discrimination against students, these facts are asserted only to support Ms. Frost's personal complaint for retaliation relating to her nonreelection from employment. In fact, in her Complaint, Ms. Frost identified her relationship to the problem as follows: "I am a teacher at Sultana High School. As described above, my teaching contract was not renewed for the 2013-2014 school year for discriminatory and retaliatory reasons." Ms. Frost's characterization of her claims as anything other than a complaint for employment discrimination is misleading, and is simply an attempt to bootstrap her claims to the separate claims of the students to garner support.

It is plainly apparent that Ms. Frost's Complaint was not filed on behalf of students. She was obviously aware of the student claims submitted by the American Civil Liberties Union ("ACLU"). Despite Ms. Frost's contrary assertion, the District interviewed Ms. Frost on or about May 29, 2013, as part of its investigation into the ACLU claims relating to students. Acknowledging and asserting the separation between Ms. Frost's individual employment claims and the students' claims, counsel for Ms. Frost characterized the District's May 22, 2013, letter as a decision "not to conduct any investigation of Ms. Frost's employment claims" (emphasis added), and objected to our office attending the May 29, 2013, interview. Even counsel recognizes the different jurisdiction for her employment claims.

Accordingly, insofar as Section 4611 excludes employment discrimination claims from the uniform complaint procedures, the District was not obligated to comply with the requirements of 5 CCR section 4631. Apart from the DFEH investigation, no separate investigation was required

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

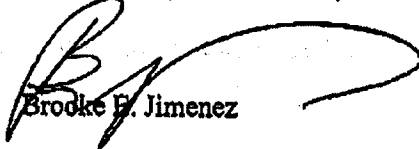
California Department of Education
July 26, 2013
Page 3

by the District. The District was also not required to issue a decision based on evidence, or conclusions of fact or law, or provide Ms. Frost notice of her right to appeal to the CDE. No jurisdiction exists for such an appeal, as jurisdiction for this employment matter rests with DFEH.

Thank you for your attention to this matter. Feel free to contact me if you have any questions.

Sincerely,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Brooke E. Jimenez

cc: Karen Kelly-Pelayes, Assistant Superintendent of Personnel Services (via email)
Rebecca Peterson-Fisher, Esq. (via fax)

Exhibit G

**COMPLAINT OF DISCRIMINATION UNDER THE PROVISIONS OF THE
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**DFEH NUMBER
105579-47104EEOC NUMBER
37A-2013-18881-CCOMPLAINANT
Julia Frost

NAMED IS THE EMPLOYER, PERSON, AGENCY, ORGANIZATION OR GOVERNMENT ENTITY WHO DISCRIMINATED AGAINST ME

RESPONDENT	ADDRESS	PHONE
Sultana High School	17311 Sultana Street Hesperia CA 92345	

AGENT FOR SERVICE	ADDRESS	PHONE
-------------------	---------	-------

CO-RESPONDENT(S)	ADDRESS	PHONE
------------------	---------	-------

Sultana High School Sultana High School	Sultana High School Hesperia CA 92345-6597	(760) 947-6777
---	--	----------------

Larry Bird Sultana High School	Sultana High School Hesperia CA 92345-6597	(760) 947-6777
--------------------------------	--	----------------

Jennifer Murillo Sultana High School	Sultana High school Hesperia CA 92345-6597	(760) 947-6777
--------------------------------------	--	----------------

H. R. Lugo Sultana High School	Sultana High School Hesperia CA	(760) 947-6777
--------------------------------	---------------------------------	----------------

Daniel Polemounter Sultana High School	Sultana High School Hesperia CA 92345-6597	(760) 947-6777
--	--	----------------

Hesperia Unified School District Hesperia Unified School District	15576 Main Street Hesperia CA 92345-3482	(760) 244-4411
---	--	----------------

Governing School Board of Hesperia Unified School District	Hesperia Unified School District Hesperia CA 92345-3482	(760) 244-4411
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DATE FILED Apr 05, 2013

REVISED JUNE 2013
PAGE 1/3

**COMPLAINT OF DISCRIMINATION UNDER THE PROVISIONS OF THE
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**DFEH NUMBER
105579-47104EEOC NUMBER
37A-2013-18881-CTYPE OF EMPLOYER
Public Elem/Secondary SchoolNO. OF EMPLOYEES
150COUNTY OF VIOLATION
San Bernardino - SI ALLEGE THAT I EXPERIENCED
ON OR BEFORE
BECAUSE OF MYDiscrimination, Harassment, Retaliation
Apr 04, 2013

Association with a member of a protected class, Engagement in Protected Activity, Sex - Gender identity or Gender expression, Sexual Orientation, Other Retaliation, discrimination and harassment for personally opposing harassment and discrimination based on sexual orientation, gender, gender identity, and/or gender expression, Third-party retaliation & harassment for the actions of students, and for being associated with the actions of students, who are members of the Sultana High School Gay/Straight Alliance opposing harassment and discrimination based on sexual orientation, gender, gender identity, and/or gender expression.

AS A RESULT, I WAS

Asked impermissible non-job-related questions, Denied a work environment free of discrimination and/or retaliation, Denied employment, Laid-off, Other See attached upload.

STATEMENT OF FACTS

Please refer to uploaded DFEH complaint [which includes a list of Respondents and Witnesses, since the functionality of that portion of the website was somewhat limited], Government Code Claim, ACLU letter on behalf of GSA at Sultana High School my uploaded performance evaluations. My partner Michelle is a witness to the emotional distress I have suffered as a result of Respondents' misconduct. As an English Teacher at Sultana High School, I have been harassed based on my sexual orientation and based on my association with students who are or who are perceived to be gay, lesbian, bisexual, transgender and/or gender non-conforming in violation of the Fair Employment and Housing Act. Moreover, at the recommendation of Sultana High School Principal Larry Bird, the Hesperia Unified School District has decided not to renew my employment contract for the 2013-2014 school year. This adverse employment action violate the Fair Employment and Housing Act because it is motivated by: 1] Discrimination based on my sexual orientation [lesbian], 2] Discrimination based on my association with students who are or who are perceived to be lesbian, bisexual, gay, transgender, and/or gender non-conforming, 3] Retaliation for personally opposing harassment and discrimination based on sexual orientation, gender, gender identity, and/or gender expression, 4] Third-party retaliation for actions of students who are members of the Sultana High School Gay/Straight Alliance opposing harassment and discrimination on sexual orientation, gender identity, and/or gender expression.



COMPLAINT OF DISCRIMINATION UNDER THE PROVISIONS OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

DFEH NUMBER
105579-47104


EEOC NUMBER
37A-2013-18881-C

SIGNED UNDER PENALTY OF PERJURY

By submitting this complaint I am declaring under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters stated on my information and belief, and as to those matters I believe them to be true.

Signature of Complainant or Complainant's Legal Representative:

Date:



11/11/13

Printed Name

Julia Frost

As an English teacher at Sultana High School, I have been harassed based on my sexual orientation and/or based on my association with students who are or who were perceived to be gay, lesbian, bisexual, transgender (“LGBTQ”), and/or gender non-conforming (“GNC”), in violation of the Fair Employment and Housing Act. Moreover, at the recommendation of Sultana High School Principal Larry Bird the Hesperia Unified School District has decided not to renew my employment contract for the 2013-2014 school year. This adverse employment action violates the Fair Employment and Housing Act because it is motivated by:

- (1) discrimination based on my sexual orientation, lesbian;
- (2) discrimination based on my association with students who are or who were perceived to be lesbian, bisexual, gay, transgender, and/or gender non-conforming;
- (3) retaliation for personally opposing harassment and discrimination based on sexual orientation, gender, gender identity, and/or gender expression; and/or
- (4) third-party retaliation for actions of students who are members of the Sultana High School Gay/Straight Alliance opposing harassment and discrimination based on sexual orientation, gender, gender identity, and/or gender expression.

My employer failed to prevent the harassment and discrimination that I experienced. The following statement of facts describes the bases for my claims:

A. Beginning Job at Sultana High School

In August of 2011, I began my job as an English teacher at Sultana High School (“Sultana”) in the Hesperia Unified School District. I was already a veteran teacher with fourteen years of experience, including nine years of experiencing teaching English in the Fontana Unified School District. However, because Sultana was located in the Hesperia Unified School District, I began my employment as a probationary-status teacher with the expectation of obtaining tenure after two years.

Prior to the beginning of my first year at the school, I attended a series of meetings required for new teachers in Hesperia Unified. At those meetings I met fellow teacher Christina Grizanti, who asked me if I would co-advise Sultana’s Gay/Straight Alliance. I agreed to be a faculty advisor along with Grizanti, who is heterosexual. When Grizanti began experiencing medical difficulties early in the school year, Jennifer Rhodus, another heterosexual teacher, agreed to be a co-advisor of the group.

In August of 2011, my first month teaching at Sultana, I was informed by another teacher that other teachers were discussing my sexual orientation, giving the example of a teacher who had stated, "She doesn't look like a lesbian," or words to that effect. Soon thereafter, I was directly questioned about my sexual orientation by fellow teacher Leo Adkins, who asked I, "So which one is the man and which one is the woman in your relationship?" or words to that effect.

B. Sultana High School Gay/Straight Alliance

The Sultana Gay/Straight Alliance ("GSA") is one of many student groups that meet at lunchtime in the room of a faculty advisor at Sultana High school. Student groups at Sultana plan a variety of activities, including social events, community service, and fundraisers. The stated goals of the GSA are to create a safe environment at Sultana by fighting discrimination, harassment, and violence, and for students to support each other and learn about homophobia, transphobia, and other oppressions. GSA student groups exist at hundreds of high schools across California and thousands throughout the nation.

At Sultana, all student groups must have at least one faculty advisor. If students wish to have announcements read to the school about their meetings or events over the public address system, they submit the text of the announcements to Angela Espinoza, secretary of the Associated Student Body. To request approval for an activity, student groups write the request in their meeting minutes and submit those minutes to Espinoza. Espinoza forwards all student group requests to H.R. Lugo, the Assistant Principal of Student Activities. Student groups are not permitted to hold events for which they have not received approval from Assistant Principal Lugo.

C. Harassing Interrogations by Sultana Administrators Concerning the Gay/Straight Alliance's Activities and My Role

Early in the school year, Assistant Principal Jennifer Murillo completed a classroom observation of my teaching and met with me to discuss the observation. Murillo gave me a very positive evaluation. During the meeting, Murillo discussed her husband and I also discussed my partner Michelle. Shortly thereafter, in September 2011, Principal Larry Bird called me into his office for a meeting with himself and Murillo. Visibly uncomfortable, early in the meeting Bird said, "Well, Jen told me you have a partner," or words to that effect. He said that he had called the meeting to talk to me about the parameters of being a GSA advisor, to ensure that the GSA was run

by students and not by me, and to make sure I knew “what the Education Code protected,” or words to that effect. I assured him that students ran the GSA and that I was aware of the protections of the Education Code. When I asked why my GSA co-advisors were not in the meeting, Mr. Bird said he would be sure my co-advisors were similarly questioned and informed about the protections afforded by the Education Code, but this did not occur.

Around the same time, the GSA requested permission to hold a training as part of Ally Week. Ally Week is organized through the Gay, Lesbian and Straight Education Network (GLSEN), a national organization established in 1990 to ensure that schools are safe for all students. The purpose of Ally Week is for students to identify, support, and celebrate students and adults who are not LBGTQ, but who are committed to opposing the bullying and harassment of LBGTQ students. Sultana’s GSA requested approval to hold a training about how to help stop bullying which was to take place over two lunch periods using a lesson plan provided by GLSEN to GSAs across the country. Although student-requested events are typically approved as a matter of course by the Associated Student Body (ASB) officers alone, in October of 2011 I was summoned to meet with Principal Bird and Assistant Principal Murillo. When I arrived, I found that Kim Falahee, Head Counselor, and Vice Principal H.R. Lugo were also present. I asked that Jennifer Rhodus, the GSA co-advisor, also be present and she soon arrived. Although they had already been provided with a copy of the lesson plan the students intended to use for the training as a part of Ally Week, Falahee and Lugo interrogated Rhodus and I about Ally Week event and its purpose. The tone and content of this interrogation led me to believe that Sultana’s administrators were concerned the ally training was actually some sort of effort to “recruit” straight students into homosexuality. Rhodus and I explained that the purpose was to help students learn tools to stop bullying. Rhodus and I invited everyone in the meeting to attend the training to alleviate their concerns, but none of them came. Despite this meeting, the administration never officially responded to the GSA’s request for approval for the event.

D. Positive First-Year Probationary Performance Evaluation

On April 10, 2012, I received a performance evaluation from Principal Bird indicating that I had attained all performance goals. The evaluation further stated, “Ms. Julia Frost had a great first year as an English teacher at Sultana. It is clear she cares about her students and her new school. She works closely with her colleagues to create common assessments based on the essential standards they have developed. Ms. Frost uses the data from these and other forms of informal and

formal assessments to plan and direct her instruction, reteaching, and review. We appreciate her hard work at Sultana this year! Nice job Ms. Frost!”

E. Harassing Interrogation by Sultana Administrators Re: GSA Day of Silence Activity

In the same month, the Sultana GSA decided to participate in a national event on April 20, 2012, called the “Day of Silence.” On the Day of Silence, students in high schools across the nation take vows of silence to draw attention to the silencing of LGBTQ youth by bullying and anti-LGBTQ harassment. Students pass out cards to others explaining their reasons for not speaking for the day. Once again, Bird and Murillo called me in for a meeting about the Day of Silence without informing Jennifer Rhodus. Bird said that some teachers had questions about the Day of Silence and asked me to draft information to be distributed to staff about the event. Bird also expressed concern that students would be rude to teachers, and I indicated that I would write up any student who behaved in a rude or disrespectful way in conjunction with the event myself. Although I soon thereafter submitted written information concerning the nature of the event, Bird never distributed it to the staff.

F. Homophobic Harassment by Teacher Harvey Miller

Another Sultana teacher, Harvey Miller, sent an email and letter to me and to Bird in April 2012 in which he argued that gays should protest at City Hall, but not be allowed to protest on campus. Miller then called me on the phone and yelled at me, stating that gays should not be teaching or be allowed to protest on campus, and that it was disgusting. I reported the harassing phone call to Bird’s secretary Chris Chisholm, who said she would pass on the information to Principal Bird. To my knowledge, no investigation was conducted and Miller experienced no consequences for his homophobic harassment.

G. Harassing Investigation of Parent Complaint of “Teaching Homosexuality”

In May of 2012, Danny Polemounter, Vice Principal of Discipline, entered my classroom and informed me that he was there to investigate a parent complaint that I was “teaching homosexuality.” Polemounter pointed to a sticker indicating her classroom was a safe space, a tolerance poster, and a rainbow flag on my wall given to her by a student, which was next to various other items which had also been given to me by my students, and said the presence of those items on my wall meant

I must be teaching “gay things,” or words to that effect. I responded that I was teaching Julius Caesar and would be happy to give him my lesson plans. I also suggested that he could drop by and observe my class whenever he liked.

H. Disparate Treatment of GSA

In my second year of teaching at Sultana, the administration explicitly refused to approve various GSA activities and posters. They censored GSA posters by disallowing the use of certain words, including “gay,” “transgender,” and “queer.” Some of the GSA students met with Mr. Lugo to discuss posting flyers from the Think Before You Speak campaign, a national campaign against anti-LGBTQ slurs. Lugo said, “If we can’t have a discussion in a classroom saying queer, gay or lesbian, why should they put them on posters?” or words to that effect. The GSA was not allowed to post these flyers. The administration also began to censor the GSA’s public address system announcements to omit references to sexual orientation and gender identity. For example, the GSA submitted an announcement which read, “Do you identify as straight, lesbian, bisexual, gay, or are you questioning everything? Come join Sultana’s Gay Straight Alliance on Wednesdays at lunch in room w-11. Join a group of students here on campus that support each other and want to make a difference for others.” The announcement was instead broadcast as, “GSA meeting in W-11.” Other announcements submitted have not been broadcast at all. Moreover, the GSA was excluded from the “School Clubs and Organizations” listing in Sultana’s 2012-2013 Student Handbook & Planner. When the GSA requested permission to screen a film, as several other student groups regularly do, GSA members were told by Sultana administrators that the content of their movies was “inappropriate.” When the students asked for guidance as to what the administration would consider “appropriate,” none was provided. The GSA made a request to screen a different film, which request was denied based on “copyright concerns.” Even though GSA members then obtained a written release to screen a film entitled “Out in Silence,” Principal Bird refused to grant permission, stating that he would consult the District, which he claimed was considering banning movie nights altogether. To my knowledge, the District has never adopted such a policy and other school clubs continue to screen films. The treatment of the GSA as compared to other student groups has sent a clear message to LGBTQ students and to me that Sultana’s administration disapproves of LGBTQ people and of discussing LGBTQ issues.

I. Teacher Harassment of Lesbian Student Elected Homecoming Queen, Failure to Respond to Complaints

In September of 2012, the students of Sultana voted Felicitas Orozco, a lesbian student, their Homecoming Queen. Vice Principal Lugo tried to discourage at least one student from voting for her and referred to her nomination as a “joke.” Orozco accepted the award wearing a collared shirt and jeans and wore a suit to the Homecoming Dance. Multiple faculty members expressed to their students and to me that they disapproved of Ms. Orozco and her decision to wear a suit. For example, a few days after the Homecoming Dance, I was confronted by Wanda Lambdin, the cheerleading coach. Ms. Lambdin said she was appalled that Orozco had not worn a dress to homecoming, demanded to know what Orozco had said about her and her cheerleaders, and referred to LGBTQ individuals as “those people.”

At about the same time, Ms. Orozco told me that teachers were harassing and ridiculing her about her sexual orientation and her gender expression. I asked Orozco a series of questions to ascertain that she was not in immediate physical danger, advised her to file a report immediately, and offered to accompany her to Assistant Principal Murillo’s office, which Ms. Orozco asked me to do. When I went to get Ms. Orozco from her fourth-period video production class to accompany her to Ms. Murillo’s office, the teacher of the class asked Ms. Orozco, in a condescending and derogatory tone, “Why do *you* need to see *her*?,” referring to me. He then laughed at Orozco.

I accompanied Orozco to Murillo’s office, where Orozco completed a written report regarding incidents of harassment. At the same time, I wrote a report regarding what Orozco had reported to her, the behavior of Orozco’s video production teacher, and Lambdin’s anti-LGBT comments to I. Assistant Principal Murillo told Ms. Orozco and I that the filing of any formal complaint would force her to discuss Ms. Orozco’s sexual orientation with her father, purportedly as a result of some unspecified “safety issue.” I told Murillo that Orozco was not out to her father, and that her father was extremely conservative and might kick her out of the house when he learned she was a lesbian. I further told Murillo that, since there was no threat to Orozco’s physical safety, there was no reason to disclose her sexual orientation to her father. Murillo insisted she would do so anyway. As a result, Orozco was forced to tell her father that she is a lesbian immediately after school, before he learned her sexual orientation from Murillo. Orozco requested a copy of her complaint but was never given one. Neither Orozco’s complaint nor my complaint were ever investigated or otherwise addressed. On another occasion, when a male student attempted to report

bullying, Vice Principal Polemounter similarly threatened to call the boy's parents and tell them that he is gay.

J. Threatening Phone Call From Homophobic Parent

Also in October of 2012, contrary to school policy, a phone call was transferred from the counseling department to my classroom without identifying the caller or to which student he was connected. On the other end of the line was an enraged man who claimed to be a parent and refused to give his name. The man accused me of having a "GSA gay agenda" and yelled that he would stop me any way he could, and that he would find someone to help him stop me. During the call, I advised the man several times that he should take the matter up with Principal Bird, but the man repeatedly said he only wanted to talk with me. At the point the man was close to screaming and I felt he had threatened me, I again told him he should speak to Mr. Bird and hung up the phone. I immediately made a report of the threat, and Bird's office called the school police in an effort to identify the parent. I was so upset that I could not go to work the next day. Although I requested information about the status of the investigation and whether the man had been identified so that I could protect myself, I received no response for a full week. I was eventually told the identity of the parent and that he had removed his daughter from my class.

K. Harassing Interrogation About Use of Newsweek Article Regarding Don't Ask Don't Tell Policy in Lesson

I was once again summoned to a meeting with Murillo in October 2012. Vice Principal Polemounter was also present. They told me that a parent had complained about an article from Newsweek regarding the military's "Don't Ask Don't Tell Policy" which I had assigned the students to read. Although Polemounter and Murillo admitted they had not read the article, they told me that I had to present "the other side of the issue" to my students. I explained that the assignment I had given the students was not to take a political position, but to identify the author's claim and the support the author had articulated for their claim. I pointed out that the article was used by other teachers and was from a website that Sultana had encouraged its English teachers to utilize for resources. I also pointed out that although other teachers used the same article, I was the only teacher summoned to a meeting and criticized.

L. Meeting with Sultana Administrators and Union Regarding Harassing Interrogations and School's Failure to Comply with Laws Protecting LBGTO Students

After the meeting regarding the Newsweek article, I contacted my union representative, Jim Resvaloso. Mr. Resvaloso arranged a meeting between himself, Principal Bird, Assistant Principal Murillo, and me. In that meeting, Resvaloso told Murillo and Bird that it was not appropriate for them to bring the concerns of homophobic parents to me unless there was a safety issue for me, and that such complaints should be given no legitimacy as my sexual orientation could not be a topic of legitimate criticism for parents or others. I told Mr. Bird and Ms. Murillo that I would be happy to meet with any parents who had a legitimate question about my lessons at any time and that parents were always welcome to drop into my classroom or to ask for lesson plans but that singling me out on the basis of my sexual orientation or because of parental homophobia and bias had to stop. Mr. Resvaloso also explained to Murillo and Bird that they had to comply with the Fair, Accurate, Inclusive, and Respectful Education Act ("FAIR Act"), the California School Safety and Violence Prevention Act ("AB 537"), and Seth's Law. Resvaloso and I talked with Bird and Murillo about the bad atmosphere on campus and growing homophobic behavior in the wake of homecoming and that this had created and/or increased the hostile environment of the school. Resvaloso and I also discussed the impact this hostile environment was having on LBGTO students, and requested a change in policy to ensure that all students and staff were treated fairly.

The FAIR Act requires the inclusion of the political, economic, and social contributions of people with disabilities and LGBT people in educational texts and social studies curricula. AB 537 added actual or perceived sexual orientation and gender identity to the Education Code's nondiscrimination policy, mandating that Uniform Complaint Procedures be available to LBGTO students to file complaints of discrimination or harassment. Seth's Law required California School Districts to adopt comprehensive anti-bullying policies that address bullying based on sexual orientation and gender identity and expression, and school staff members to intervene when they witness acts of discrimination or harassment.

Sultana administrators have done no more than pay lip service to these legal mandates. They have failed to make Sultana staff and students aware their legal obligations toward LBGTO and gender non-conforming students, or of the process for making or resolving complaints. Although the District has a form for complaints of discrimination and harassment, instead of directing students to that form, Sultana administrators have attempted to discourage students from filing complaints

and/or instructed students to fill out an incident report form. Moreover, Sultana administrators have failed comply with the mandates of Seth's Law and train staff and students not only on bullying generally, but specifically on anti-LBGTQ bullying. Rather than intervene in acts of discrimination and harassment, several Sultana teachers have made homophobic remarks in the classroom without repercussions. As faculty advisor of the GSA, I was made aware by students that various teachers made openly homophobic remarks in their classrooms and that GSA members had overheard Vice Principal H.R. Lugo saying, "That's so gay," and referring to his own son disdainfully as a "vagina," apparently to criticize him for behaving in a feminine manner. Students have further reported to me that, when they attempted to report peer harassment based on sexual orientation or gender expression to the school administration, the complaints were not taken seriously and the issues went unresolved.

L. Amber Stanford Complaint

In February of 2013, Amber Stanford, a student at Sultana, approached me and asked me to print out a Uniform Complaint Procedure Discrimination/Harassment Complaint Reporting Form from the website of the GSA Network, a nonprofit organization that provides support to high school and middle school Gay Straight Alliances across the nation. I printed the form, which Stanford used to make a complaint about homophobic comments her anatomy teacher had made. She complained that this teacher instructed a student, "Take the gay headband off," and commented "that's so gay" in front of his students. Prior to this, Stanford had also complained to Bird about a woodshop instructor who freely made homophobic remarks in class, including "that's gay" or "you're gay," but no action had been taken. When she submitted her complaint about her anatomy teacher to Bird on or about Friday, February 8, 2013, Principal Bird interrogated Stanford about who had printed the form for her. In response, Stanford told him that I had printed the form at her request.

M. Discriminatory and Retaliatory Non-Renewal of Employment Contract

On or about Wednesday, February 13, 2013, just days after Stanford told Principal Bird that I had provided her with the complaint form, Bird informed me in a meeting that I was a "non-reelect", meaning my employment contract would not be renewed for the following school year. Sultana and the district took this action despite the fact that I had received uniformly positive teaching evaluations. In doing so, Principal Bird stated, "You are just not a good fit here," or words to that effect. I informed my union representative Mr. Resvaloso about the decision, who soon thereafter approached Karen Kelly, the Assistant Superintendent of Personnel Services for Hesperia

Unified School District. Kelly was empowered to rescind the non-reelect decision and indicated she had the final say regarding rescinding the decision within the District prior to the Board taking action. However, she refused to rescind the decision even when told by Resvaloso that there were clear issues of discrimination. During the conversation, Ms. Kelly said that she did not believe that the District would ever discriminate, despite the fact that she herself had litigated a discrimination case against the Hesperia School District for years, eventually settling the case for reinstatement to her former position and \$500,000.

I was informed by letter that the Hesperia Unified School District Governing Board decided not to renew my contract on March 4, 2013. As GSA advisor, I have continued to support GSA members' exercise of their constitutional rights in opposing sexual orientation discrimination and sex discrimination. Specifically, GSA students have opposed Sultana's exclusion of same sex couples from the competition for "favorite couple" in the yearbook and Sultana's gendered dress code.

N. Further Acts and Evidence of Discrimination and Retaliation

On March 18, 2013, the American Civil Liberties Union of Southern California ("ACLU") sent a letter to HUSD on behalf of the GSA, alleging, among other things, pervasive discrimination against LGBTQ and GNC students at Sultana and illegal suppression of speech regarding the GSA and LGBTQ issues, and stating that the illegal actions taken against the LGBTQ, GNC and/or GSA member students included Sultana's decision to "non-reelect" me. The ACLU's letter generated significant media coverage, and prompted the HUSD Governing Board to adopt revised policies regarding bullying and to open an investigation into the ACLU's allegations.

On March 21, 2013, I filed a claim pursuant to California Government Code §§ 910 and 911.2 by certified mail, notifying David McLaughlin, Interim Superintendent of the HUSD, the Governing Board of the HUSD, and Principal Larry Bird of Sultana High School of the facts set forth in this complaint. On March 22, 2013, I utilized Uniform Complaint Procedures to file a Uniform Complaint with HUSD describing the aforementioned facts, and alleging violations of Education Code §220, which prohibits discrimination and harassment based on sexual orientation in schools, and Education Code §48907(g), which prohibits retaliation against teachers who protect the First Amendment rights of students. My Uniform Complaint also alleged that Sultana High School had violated the FAIR Act, AB 537, and Seth's Law. On or about April 5, 2013, I filed initial charges with the DFEH against Sultana High School and the HUSD and its School Board, and against Principal Bird, Assistant Principal Murillo, Vice Principal Polmounter, and Assistant Principal Lugo.

On April 15, 2013, in an after-the-fact attempt to justify HUSD's discriminatory and retaliatory decision not to renew my teaching contract and to retaliate against me, Principal Bird and Assistant Principal Murillo met with me and Mr. Resvaloso, who attended the meeting as my union representative. In this disciplinary conference, Bird and Murillo criticized me for meeting with students in my classroom on March 25 and April 2, 2013, as well as for a classroom discussion in my class allegedly addressing topics raised in the ACLU letter, including HUSD's decision not to renew my teaching contract.

On April 18, 2013, in a further attempt to discriminate and retaliate against me and to justify the illegal decision not to reelect me, Assistant Principal Murillo issued a negative performance evaluation to me. In that evaluation, although Murillo generally commended my teaching, Murillo accused me of having, "on several occasions, exhibited poor judgment," and detailed four such instances. These allegations of "poor judgment" were obviously manufactured as a pretext for discrimination and retaliation.

For example, Murillo accused me of improperly meeting with students for non-instructional reasons during my a prep period in March 2013, knowing that the students had approached me for help because one of them had been kicked out of his house for being gay and had a history of suicidal ideation. Murillo also reprimanded me for using class time to discuss the letter the ACLU had sent HUSD, even though I had only a cursory discussion of the letter during my class time, whereas other teachers and administrators used large sections of and/or entire class periods to have detailed conversations about the letter and, upon information and belief, were not similarly reprimanded. Although fully aware I had never done so, Murillo accused me of giving an assignment to students asking them to defend their positions for or against same-sex marriage. Finally, Murillo referenced one of my social media posts on Facebook as "profane and unbecoming of her position," even though I never identified my employer on the post, and the post was viewable only privately by my personal friends, which did not include Ms. Murillo.

I submitted a written response to each allegation on or about April 25, 2013, which response, among other things, pointed out that each of the administrators who participated in this negative performance evaluation were aware they had been personally criticized both in the ACLU letter of March 18, 2013 and in my various administrative complaints, yet were improperly allowed to participate in my performance evaluation. My response also pointed out that each of the four incidents identified as instances of my "poor judgment" were the type of incidents that, if legitimately objectionable in the manner identified in the evaluation, would have been cause for immediate reprimand, but that Sultana's administrators waited until after they had been publicly criticized by the ACLU and personally named by me in my administrative complaints before providing me with any formal notice of their dissatisfaction with my handling of any of the incidents.

For example, the Facebook post identified in the evaluation I had posted in October of 2012, yet no mention of it was made until the April 18 performance evaluation, approximately 45 days after the HUSD Board had decided to “non-reelect” me. In my response I also set forth facts demonstrating that I had not utilized poor judgment in any of the four incidents cited in the performance evaluation. I provided this response to DFEH.

On August 7, 2013, the HUSD sent a letter to the ACLU admitting that “there have been isolated incidents and comments that seemingly were directed towards GSA students and the GSA club by teachers and administrators,” and that “there were isolated incidents where specific Sultana staff made insensitive comments regarding LGBTQ and GNC students.” While claiming that “there is no overarching culture of discrimination towards LGBTQ or GNC students at Sultana High School,” HUSD agreed to implement an array of policy changes at Sultana, including adding bullying, harassment and discrimination policies and complaint procedures to the student handbook and parents’ rights handout and to HUSD’s website, providing “awareness training for teachers and staff, focusing on stereotypical speech that is offensive and inappropriate,” and educating teachers, students and staff about the Governing Board’s newly adopted administrative regulations and policies concerning discrimination, harassment, and bullying.

O. Respondents

The following should be listed as Respondents to this complaint: Hesperia Unified School District; the Governing School Board of the Hesperia Unified School District; and District Assistant Superintendent of Personnel Karen Kelly. These respondents may be contacted via mail at 15576 Main Street, Hesperia, CA 92345-3482. The District’s phone number is (760) 244-4411. Ms. Kelly’s email address is Karen.Kelly@hesperiausd.org. The following should also be listed as Respondents to this complaint: Sultana High School; Sultana High School Principal Larry Bird; Assistant Principal Jennifer Murillo; Vice Principal H. R. Lugo; and Assistant Principal Danny Polemounter. These respondents may all be contacted via mail through Sultana High School, located at 17311 Sultana Street, Hesperia, CA 92345-6597. The phone number at Sultana High School is (760) 947-6777. Mr. Bird’s email address is Larry.Bird@hesperiausd.org. Ms. Murillo’s email address is Jennifer.Murillo@hesperiausd.org. Mr. Lugo’s email address is H.R.Lugo@hesperiausd.org. Mr. Polemounter’s email address is Danny.Polemounter@hesperiausd.org.

P. Witnesses

In addition to those witnesses described above in the various incidents, I believe all of the following are witnesses to some of the incidents and/or can testify regarding my skill as a teacher and/or my activities as the advisor to the GSA: (1) James Resvaloso (teacher and my union representative); (2) Jennifer Wiedeman (teacher); (3) Seta Ghazarian (teacher); (4) Brett Simmons (teacher); (5) Orozco Felicitas (Sultana High School student); (6) Amber Stanford (Sultana High School student); Levi Smithson-Johnston (Sultana High School student); and (7) Kyle Bodda (Sultana High School student). All these witnesses may be reached through Sultana High School, located at 17311 Sultana Street, Hesperia, CA 92345-6597. The phone number at Sultana is (760) 947-6777. Mr. Resvaloso may also be contacted via email at James.Resvaloso@hesperiausd.org. Ms. Wiedeman may also be contacted via email at Jennifer.Wiedeman@hesperiausd.org. Seta Ghazarian may also be contacted via email at Seta.Ghazarian@hesperiausd.org. Mr. Simmons may also be contacted via email at Brett.Simmons@hesperiausd.org.

Q. Damages

As a direct and proximate result of the unlawful conduct to which I have been subjected, I have suffered both economic damages, including lost earning capacity, attorneys fees and costs and other economic damages, as well as severe emotional distress and physical manifestations of said emotional distress. Had my employment contract been renewed, I would have gained tenure in the Hesperia Unified School District and all of the benefits that come with that status. Instead, at the end of this school year I will become unemployed and will be ineligible for unemployment benefits. Moreover, because a “nonrelect” is a very black mark on a teacher’s resume, I will have great difficulty finding another position in the field in which I have worked for over fifteen years.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

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800-884-1684 | Videophone 916-226-5285 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

November 13, 2013

Julia Frost
P.O. Box 3519
Wrightwood, CA 92397

RE: Notice of Case Closure and Right to Sue

DFEH Number: 105579-47104

EEOC Number: 37A-2013-18881-C

Frost/ Hesperia Unified School District

Dear Julia Frost:

The Department of Fair Employment and Housing (DFEH) has closed your case for the following reason: Withdrawn – Intend to File a Lawsuit.

This is your Right to Sue Notice. According to Government Code section 12966, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. This is also applicable to DFEH complaints that are filed under, and allege a violation of, Government Code section 12948, which incorporates Civil Code sections 51, 51.7, and 54. The civil action must be filed within one year from the date of this letter. However, if your civil complaint alleges a violation of Civil Code section 51, 51.7, or 54, you should consult an attorney about the applicable statutes of limitation.

Please note that if a settlement agreement has been signed resolving the complaint, you may have waived the right to file a private lawsuit. Should you decide to bring a civil action on your own behalf in court in the State of California under the provisions of the California Fair Employment and Housing Act (FEHA) against the person, employer, labor organization or employment agency named in your complaint, below are resources for this.

Finding an Attorney

To proceed in Superior Court, you should contact an attorney. If you do not already have an attorney, the organizations listed below may be able to assist you:

- The State Bar of California has a Lawyer Referral Services Program which can be accessed through its Web site at www.calbar.ca.gov or by calling (866) 442-2529

(within California) or (415) 538-2250 (outside California).

- Your county may have a lawyer referral service. Check the Yellow Pages of your telephone book under "Attorneys."

Filing in Small Claims Court

- The Department of Consumer Affairs (DCA) has a publication titled "The Small Claims Court: A Guide to Its Practical Use" online at of "The Small Claims Court: A Guide to Its Practical Use" online at http://www.dca.ca.gov/publications/small_claims/. You may also order a free copy of "The Small Claims Court: A Guide to Its Practical Use" online, by calling the DCA Publication Hotline at (866) 320-8652, or by writing to them at: DCA, Office of Publications, Design and Editing; 1625 North Market Blvd., Suite N-112; Sacramento; CA; 95834.
- The State Bar of California has information on "Using the Small Claims Court" under the "Public Services" section of its Web site located at www.calbar.ca.gov.

Sincerely,



Lenuz Chico
Consultant II
510 789 1044

cc: Mark W. Thompson, Attorney for Hesperia Unified School District
Sultana High School
Larry Bird
Jennifer Murillo
H. R. Lugo
Daniel Polemounter
Governing School Board of Hesperia Unified School District

Notice of Case Closure and Right to Sue
November 13, 2013
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