Case No. H049836

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

RAÚL RODRÍGUEZ AND HARTNELL
COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MONTEREY

Respondent,

JOSE ANDRES SANDOVAL a/k/a ANDREW SANDOVAL,

Real Party in Interest.

From the February 7, 2022 Order of the Superior Court of California,
Monterey County, Honorable Robert A. O'Farrell, Dept. 14,
Tel (831) 647-5800
[Case No. 21CV000070]

APPLICATION OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONERS; AND PROPOSED *AMICUS CURIAE* BRIEF

Spencer E. Covert, SBN 047633
Sarita T. Patel, SBN 251957
Parker & Covert LLP
17862 E. 17th Street
Suite 204, East Building
Tustin, CA 92780-2164
Telephone: (714) 573-0900
Facsimile: (714) 573-0998
E-mail: scovert@parkercovert.com
E-mail: spatel@parkercovert.com

Robert Tuerck, SBN 255741
Chief Legal Counsel/
ELA Director
California School Boards Assn.
3251 Beacon Boulevard
West Sacramento, CA 95691
Telephone: (800) 266-3382
Facsimile: (916) 371-3407
E-mail: rtuerck@csba.org

Attorneys for *Amicus Curiae*
California School Boards Association's
Educational Legal Alliance

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

TO THE HONORABLE PRESIDING JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL FOR THE SIXTH APPELLATE DISTRICT:

Leave is hereby requested to file the Brief of *Amicus Curiae* on behalf of the California School Boards Association's Education Legal Alliance ("CSBA," "ELA" or "*Amicus Curiae*") in this matter in support of Petitioners, Raúl Rodríguez and Hartnell Community College District Board of Trustees.

INTEREST OF *AMICUS CURIAE*

The California School Boards Association ("CSBA") is a California nonprofit corporation duly formed and validly existing under the laws of the State of California. CSBA is a member-driven association composed of the governing boards of over 960 school districts and county offices of education. CSBA's Educational Legal Alliance ("ELA") is composed of over 720 CSBA members and is dedicated to addressing public education legal issues of statewide concern to school districts and county offices of education.

One purpose of the ELA is to advocate for school districts and county offices of education on a broad spectrum of statewide public education interests before state and federal courts, state agencies and the Legislature. The members of the Education Legal Alliance have the dual responsibility to comply with the CPRA and at the same time as part of the process to protect the recognized right to privacy when they review public records requests prior to their release to the public. The ELA's activities include joining

in litigation where legal issues of statewide concern affecting public education are at stake.

This case presents two issues of statewide importance to *Amicus Curiae*'s school district and county office of education:

First, there is the issue of a public agency having to search its records or its employees' emails for records from another public agency that is separate and apart from the local school or community college district.

Second, there is the additional issue regarding our members who are charged with the accountability of employee personnel files and compliance with the California Public Records Act. (Government Code § 6250, et seq.; all sections hereinafter cited are to the Government Code, unless otherwise noted.)

BRIEF OF *AMICUS CURIAE* WILL ASSIST THE COURT

Amicus Curiae's Brief will assist the Court in recognizing that the charter school records are not producible as "public records" because they do not inform the public as to how the Hartnell Community College District performs the public's business. (Government Code §6252(e).)

A California community college president and the district's board of trustees have the responsibilities to protect the privacy rights of a community college employee who is not the college president, and before private complaints are publicly disclosed under the California Public Records Act. (Government Code § 6259(a).)

The mere allegation that the charges were "substantial in nature," is not the sole legal test that must be applied in order to protect the privacy interests of a mid-level

community college employee. Rather, the established test since *Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1046 requires that the complaint is substantial in nature **and** there is reasonable cause to believe the complaint is well founded. (See also *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913, 918 *(American Federation*).)

In these days and times when complaints are filed against public employees for any number of reasons, it is all the more important that the court below fulfill its responsibilities under the well-established line of court decisions interpreting the California Public Records Act and the proper balancing test for the section 6254(c) personnel file exemption.

CONCLUSION

For the foregoing reasons, *Amicus Curiae* respectfully requests that the Court accept the accompanying Brief for filing in this case.

Date: March 15, 2022 Respectfully submitted,

PARKER & COVERT LLP

/S/ Spencer E. Covert
Spencer E. Covert
Sarita T. Patel
Attorneys for *Amicus Curiae*
CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE

Case No. H049836

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

RAÚL RODRÍGUEZ AND HARTNELL
COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MONTEREY

Respondent,

JOSE ANDRES SANDOVAL a/k/a ANDREW SANDOVAL,

Real Party in Interest.

From the February 7, 2022 Order of the Superior Court of California,
Monterey County, Honorable Robert A. O'Farrell, Dept. 14,
Tel (831) 647-5800
[Case No. 21CV000070]

PROPOSED BRIEF OF AMICUS CURIAE CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE IN SUPPORT OF PETITIONERS

Spencer E. Covert, SBN 047633
Sarita T. Patel, SBN 251957
Parker & Covert LLP
17862 E. 17th Street
Suite 204, East Building
Tustin, CA 92780-2164
Telephone: (714) 573-0900
Facsimile: (714) 573-0998
E-mail: scovert@parkercovert.com
E-mail: spatel@parkercovert.com

Robert Tuerck, SBN 255741
Chief Legal Counsel/
ELA Director
California School Boards Assn.
3251 Beacon Boulevard
West Sacramento, CA 95691
Telephone: (800) 266-3382
Facsimile: (916) 371-3407
E-mail: rtuerck@csba.org

Attorneys for *Amicus Curiae*
California School Boards Association's
Educational Legal Alliance

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases Page

Statutes

Regulations

TO THE HONORABLE PRESIDING JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL FOR THE SIXTH APPELLATE DISTRICT:

Amicus Curiae California School Boards Association's Education Legal Alliance ("CSBA," "ELA," or "*Amicus Curiae*") submits this Brief in support of Petitioners Raúl Rodríguez and Hartnell Community College District Board of Trustees.

ARGUMENT

A. The Records Regarding a Charter School Have Nothing to do With the Hartnell Community College District and Therefore are not "Public Records" Within the Meaning of Government Code Section 6252(e).

Starting with the definition of public records in section 6252(e) the records regarding the charter school were not "prepared, owned, used" by the Hartnell Community College District. Rather, the issue is whether or not these records were "retained" by virtue of work done for the charter school by a mid-level employee of the community college district.

The documents at issue here materially differ from those sought in *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 825, where the court held that the requested documents were "unquestionably 'used' and/or 'retained' by the University as required under section 6252, subdivision (e)." The court held that the documents

"clearly relate to the conduct of the public's business, specifically, the operation of the Save Mart Center, a public facility on land owned by a public university. Further, the arena was financed, in part, by public funds to the tune of at least $8 million."

To the contrary in this case, the records in question do not meet the "used" and/or "retained" requirements of subdivision (e) of section 6252. Whereas the Save Mart Center was being built on land owned by the university, the only nexus between Hartnell and the charter school in the present case is the coincidental involvement of Mr. Rodriguez with two public entities.

Requiring schools and community colleges to have to search for another agency's records imposes the burden to search such records for required exemptions under the Public Records Act. A public employee who is serving as an officer of another public agency will have in their possession records that are confidential personnel records, attorney-client privilege records, and privileged student records. The attorney-client privilege and preventing an unwarranted invasion of personal privacy must be examined before a public agency releases records regarding those subjects. (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373; Government Code § 6254(c) and (k).)

For example, charter schools possess numerous student records, including student records pertaining to discipline as well as to special

education placement necessary to ensure a free appropriate public education ("FAPE") to individuals with exceptional needs. (20 U.S.C. 1412(a)(1); Education Code § 56040.) These are not imagined possibilities.

Public agencies are familiar with their own records. They are **not** familiar with the records of a different public agency that has no relationship whatsoever to the agency responding to the records request.

Furthermore, construing subdivision (e) to apply in this case would impose a burden upon a public education institution that was not envisioned in the Public Records Act. Government Code section 6254(k) exempts "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

With respect to student records, Education Code section 49076(a) provides, "A school district shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations." A similar section with respect to community colleges is provided in Education Code section 76240.

/ / /

/ / /

/ / /

B. Public School and Community College Districts Have an Obligation to Protect the Privacy of Their Employees Regarding Unfounded Complaints

CSBA urges this Court to correct the Order from the court below requiring the disclosure of the unfounded complaint against the college administrator. "[A] public sector employee, like any other citizen, is born with a constitutional right of privacy. A citizen cannot be said to have waived that right in return for the 'privilege' of public employment, or any other public benefit unless the government demonstrates a compelling need." (*Long Beach City Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 951-952.)

In cases such as this it is the responsibility of the community college to review and consider an individual's complaint against one of its employees. Having done so and determined that the complaint was not substantial in nature nor well founded, it is then the responsibility of the community college to protect the privacy rights of its employees. (*Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041, 1046; *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913, 918 *(American Federation)*.)

A review of the Preliminary Opposition at page 11 demonstrates that there was no judicial determination that the complaint was well founded

and substantial in nature. Instead, the citations to the record merely quote Petitioner's Opening Brief in Support of Petition for Writ of Mandate, filed August 5, 2021.

The Court justified its conclusion by labeling the administrator "a 'relatively high-ranking' position as Hartnell's Director of Student Affairs and there is a sufficient showing that describes activity that raises significant concerns." (Exhibit W, p. 482 [Order].) Suffice it to say that a "Director of Student Affairs" is not comparable to the position of a school superintendent who was accused of working out a "sweetheart deal" with the local school board as in *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742,759 (BRV). Furthermore, the Court in *Marken* cited *BRV* regarding the "public's interest in judging how the elected board had treated the situation 'far outweighed' any privacy interest. . ." (*Marken v. Santa Monica-Malibu School Dist.* (2012) 202 Cal.App.4th 1250, 1273-74.) Here, in sharp contrast, there are no allegations of any "sweetheart deal" between the college administrator and either the College President or the Board of Trustees. As a result, the required balancing of the Constitutional right of privacy of a public employee outweighs the requestor's interest in disclosure of the records. (Government Code § 6254(c).)

Public school and community college districts are called upon to perform their responsibilities to release disclosable records. In performing the required review, consideration should be given to the understanding

that, "We start with the safe assumption that a public interest is not the same as a private interest. Otherwise, the adjectives 'public' and 'private' would be unnecessary. It follows, therefore, that just because a member of the public has an interest in something does not necessarily make that interest one of public concern." (*Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222, 240.)

The release of complaints that are not substantial in nature and where there is no reasonable cause to believe the complaint is well founded will not further the public interest in the performance of the community college or public school district and the performance of its employees. Where, after review of alleged complaints, it is determined that there is no reasonable cause to believe that the employee failed to perform his/her duties and responsibilities on behalf of their public agency employer, then no public interest is served by their release. To the contrary, substantial detriment will occur to the employee's reputation and ability to perform their duties and responsibilities on behalf of the public.

CONCLUSION

Real Party in Interest implicitly recognizes that the court below failed to articulate the reasons for its order. Instead, Real Party in Interest merely cites allegations in its Opening Brief to the court below. (Real Party in Interest's Preliminary Opposition, p. 11.) Consequently, this Court should issue an immediate stay and writ of mandate so that Petitioner will

not be required to disclose the records and create the impression of affirming mere allegations against one of its employees.

Date: March 15, 2022 Respectfully submitted,

PARKER & COVERT LLP

/S/ Spencer E. Covert
Spencer E. Covert
Sarita T. Patel
Attorneys for *Amicus Curiae*
CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, counsel hereby certifies that the word count of the Microsoft® Word for Microsoft 365 word-processing computer program used to prepare this application and brief (excluding the cover, tables, and this certificate) is 1,955 words.

Date: March 15, 2022 Respectfully submitted,

PARKER & COVERT LLP

/S/ Spencer E. Covert
Spencer E. Covert
Sarita T. Patel
Attorneys for *Amicus Curiae*
CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE

PROOF OF SERVICE

I, Sandi Boulin, am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is 17862 E. 17th Street, Suite 204, Tustin, California 92780.

On March 15, 2022, I served the following:

APPLICATION OF THE CALIFORNIA SCHOOL BOARDS ASSOCIATION'S EDUCATION LEGAL ALLIANCE FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONERS; AND PROPOSED *AMICUS CURIAE* BRIEF

on the interested parties in said cause, by causing delivery to be made by the mode of service indicated below:

By FedEx Overnight and Electronic Service

Manual F. Martinez
Attorney for Petitioners
2001 North Main St., Suite 500
Walnut Creek, CA 94596
Tel: (925) 953-1620
E-mail: mmartinez@lozanosmith

Chad D. Morgan
40729 Village Drive, Suite 8
Big Bear Lake, CA 92315
Tel: (951) 667-1927
E-mail: chad@chadmorgan.com

By FedEx Overnight Only

Monterey County Superior Court
Monterey Courthouse
Dept. 14 Clerk
1200 Aguajito Road
Monterey, CA 93940

[X] (**By Federal Express/Overnight Mail**) on all parties in said action by depositing a true and correct copy thereof in a sealed envelope/packet for overnight mail delivery, with charges thereon fully paid, in a Federal Express Collection box, at Sacramento, California, and addressed as set forth above.

[X] (**By Electronic Filing Service Provider**) By transmitting a true and correct copy thereof by electronic filing service provider (EFSP), TrueFiling, to the interested party(s) or their attorney of record to said action at the e-mail address(es) of record and contained within the relevant EFSP database listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication from the EFSP that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 15, 2022, at Tustin, California.

/s/ Sandi Boulin
Sandi Boulin