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February 15, 2024

Via Facsimile and U.S. Mail

**FAX: (626) 451-5494**

James Symonds, Superintendent  
Ross Perry, Assistant Superintendent of Human Resources  
Mr. Muhammad Abdul-Qawi, Former Del Mar High School Principal  
San Gabriel Unified School District  
408 Junipero Serra Drive  
San Gabriel, CA 91776

Re: *Demand for Reinstatement of Alyssa Esquivel to Aide Position*

Dear Superintendent Symonds, Assistant Superintendent Perry, and Mr. Abdul-Qawi:

Our office represents Alyssa Esquivel (“Client” or “Ms. Esquivel”). Please direct all correspondence to the undersigned.

Ms. Esquivel has been a dedicated and hard-working Special Education Instructional Aide in San Gabriel Valley Unified School District (“District”) since October 2022. She has provided American Sign Language translation services for students, working to provide a constructive, stable, and positive learning environment. Ms. Esquivel works one-on-one with an assigned deaf student and provides translation services in order to help the student meet objectives in his Individualized Education Program.

On or about May 2023, a classroom aide (“Aide 1”) began mistreating Ms. Esquivel with verbal insults. Ms. Esquivel often ignored these verbal insults, and at other times, reported them to the lead teacher and then-Principal Muhammad Abdul-Qawi (“Principal Abdul-Qawi”). This mistreatment continued without any resolution. Ms. Esquivel continued to fulfill her work objectives and responsibilities despite Aide 1’s mistreatment and verbal insults.

Aide 1’s mistreatment of Ms. Esquivel escalated on June 15, 2023, when Aide 1 moved Ms. Esquivel’s water bottle from a desk to a location that was out of reach for Ms. Esquivel. Ms. Esquivel respectfully asked that Aide 1 not move or touch her personal belongings. In response, Aide 1 told her to “shut up” and that she “didn’t want Trump looking at [her].” Ms. Esquivel’s water bottle has several stickers on it, including a sticker of former President Donald Trump. Another classroom aide (Aide 2) joined in and stated, “I asked you not to bring in political stuff, like a Trump bag.” Aide 2 was referring to Ms. Esquivel’s backpack which is a presidential souvenir backpack commemorating the 45th president. The backpack has an American flag pattern and “Trump” written across the front pocket. This altercation occurred in front of students. Ms. Esquivel reported this incident to the onsite coordinator.

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The next day, June 16, 2023, Aide 1 became more hostile toward Ms. Esquivel. Ms. Esquivel and the lead teacher came into the classroom just as Aide 1 flipped over a desk. Aide 1 began throwing files around, and referring to Ms. Esquivel's water bottle, she yelled, "She's [Ms. Esquivel] not going to put it on my desk and taunt me with him [Donald Trump]." Ms. Esquivel was not aware this desk belonged solely to Aide 1 and had repeatedly placed her belongings at or near this desk from the beginning of the school year with no issues. At this time, there were no students present, but the lead teacher witnessed the altercation. Our client has a portion of this altercation on video, and it can be made available upon request. Following this incident, Principal Abdul-Qawi arranged a staff meeting with Ms. Esquivel, the lead teacher, Aide 1, Aide 2, and another classroom aide. At the start of the meeting, Aide 1 asked, "Can she [Ms. Esquivel] stop bringing in the Trump stuff?" Principal Abdul-Qawi responded that Ms. Esquivel could continue to bring her water bottle and backpack because they were her personal belongings. There was no clear resolution following this meeting.

After this meeting, Ms. Esquivel continued to attend work daily, bringing her water bottle and backpack with her to work. During this time, the other aides ignored and ostracized Ms. Esquivel and often attempted to communicate with her deaf student by their own means rather than utilizing Ms. Esquivel's sign language translation services. On June 28, 2023, Ms. Esquivel filed a formal complaint with the District raising allegations of discrimination.

On July 5, 2023, Principal Abdul-Qawi pulled Ms. Esquivel aside and told Ms. Esquivel that she could no longer display her backpack in public. Ms. Esquivel requested a policy that prohibited District employees from bringing a personal item that commemorated a former president. Principal Abdul-Qawi did not provide a policy and told her that she would not be allowed to join the class's extracurricular activity planned for that day if she kept her backpack with her. In an effort to ensure that her assigned student did not miss out on any activities, Ms. Esquivel attempted to meet Principal Abdul-Qawi halfway by leaving her backpack in the classroom. As she placed her backpack back in the classroom, Principal Abdul-Qawi told Ms. Esquivel, "You're lucky I don't write you up with that."

On July 6, 2023, Principal Abdul-Qawi requested a meeting with Ms. Esquivel. Ms. Esquivel spent nearly three hours inside and outside the principal's office, speaking to him intermittently as he attend to other matters. Principal Abdul-Qawi addressed Ms. Esquivel's personal belongings, but permitted Ms. Esquivel to return to class with her belongings. There was no clear resolution following this meeting.

On July 11, 2023, Human Resources Superintendent Ross Perry emailed Ms. Esquivel a copy of California Education Code 7054 which states,

(a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

(b) Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:

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(1) The informational activities are otherwise authorized by the Constitution or laws of this state.

(2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(c) A violation of this section shall be a misdemeanor or felony punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars (\$1,000), or by both, or imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years.

Ms. Esquivel then met Mr. Perry in the afternoon where he presented Education Code 7054 to her and told her that she is “directed not to display any political attire while the students are in session.” Education Code 7054 prohibits the use of District funds to urge the support or defeat of any ballot measure or candidate. At no point in time did Ms. Esquivel urge the support or defeat of any ballot measure or candidate, let alone use District funds to do so. Additionally, while not prohibited by Education Code 7054, Ms. Esquivel never wore any political attire while on school campus. When Mr. Perry saw Ms. Esquivel’s presidential souvenir backpack, Mr. Perry told her, “You can’t have that, but you can have the American flag.”

The District did not provide Ms. Esquivel with any policy indicating that a District employee is not allowed to display her political and religious beliefs on her personal items. Ms. Esquivel at no time forced her beliefs upon any other individual. Further, no student complained about Ms. Esquivel’s personal belongings. Any disruption to the workplace was due to Aide 1 and Aide 2’s unprofessional outbursts.

After seeking legal advice regarding the application of Education Code 7054 to her, Ms. Esquivel returned to the school campus on July 13, 2023, with her personal belongings, including her water bottle and backpack. To eliminate any additional disruption, Ms. Esquivel covered a portion of the “Trump” lettering on her backpack with a patch. Upon her arrival to the classroom, the lead teacher contacted Mr. Perry who threatened Ms. Esquivel with fines and prison time for bringing her water bottle and backpack to the school campus. After Ms. Esquivel again requested a written policy that prohibited District employees from displaying their political beliefs on their personal items, Mr. Perry contacted police alleging that Ms. Esquivel was acting insubordinate. Police arrived and escorted Ms. Esquivel off-campus. Ms. Esquivel was humiliated by this unnecessary treatment. Mr. Perry informed Ms. Esquivel that she was banned from returning to campus July 13, 2023 through July 14, 2023, and that he was placing her on leave with full pay and benefits.

On or about August 2023, at the start of the new academic school year, the District sent Ms. Esquivel a letter informing her that she was to continue administrative leave. The letter did not explain why she was continuing on administrative leave and did not give a date for when she would return to work.

On or about December 2023, the District dismissed Ms. Esquivel’s June 2023 complaint, finding no evidence of discrimination. In compliance with the 10-day period to appeal, Ms. Esquivel appealed the District’s decision. The District denied her appeal and closed her complaint on January 24th, 2024. To date, Ms. Esquivel is still on administrative leave, and the District has

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provided no explanation as to why she remains on administrative leave despite Ms. Esquivel's multiple requests. Further, the District has provided no date for her to return to work.

In addition to the District's illegal demand that Ms. Esquivel not bring her personal belongings to campus, the District also violated state law which requires the District to resolve a complaint within 60 days of receipt of the complaint. *See* Education Code 4631. Ms. Esquivel filed her complaint on June 28, 2023. The District provided a single status update letter on July 17, 2023, noting that the investigation was ongoing. The District provided no further update or communication until December 8, 2023, 144 days after Ms. Esquivel filed her complaint. This far exceeds state requirements to resolve complaints with 60 days of receipt of the complaint.

The San Gabriel Unified School District has retaliated against Ms. Esquivel for expressing her political beliefs on her own personal items, and seemingly for filing a complaint of discrimination. The District's actions violate the First and Fourteenth Amendments of the United States Constitution.

"It is well settled that the state may not abuse its position as employer to stifle 'the First Amendment rights [its employees] would otherwise enjoy as citizens to comment on matters of public interest.'" *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir.2009) (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)) To establish a prima facie First Amendment retaliation claim, a plaintiff must prove that (1) she engaged in protected speech; (2) the defendants took an 'adverse employment action' against her; and (3) her speech was a substantial or motivating factor for the adverse employment action." *Howard v. City of Coos Bay*, 871 F.3d 1032, 1044 (9th Cir. 2017). Ms. Esquivel easily satisfies all these elements.

First, Ms. Esquivel engaged in protected speech, as the issue of displaying support for former elected officials and their messages are issues of "political, social, or other concern to the community." *Dodge v. Evergreen Sch. Dist. #114*, 56 F.4th 767, 777 (9th Cir. 2022) (holding that the display of Donald Trump's presidential campaign slogan on a red hat is protected speech); *Anthoine v. N. Cent. Cty. Consortium*, 605 F.3d 740, 748 (9th Cir. 2010). Indeed, two of the classroom aides viewed Ms. Esquivel's backpack and the sticker on her water bottle as a comment for what former President Trump seemingly represents in terms of his policies, which are also matters of public concern. Further, Ms. Esquivel's speech is protected because she "had no official duty to make the questioned statements . . . [and] the speech was not the product of perform[ing] the tasks [she] was paid to perform." *Dodge*, 56 F.4th at 778 (cleaned up). Ms. Esquivel had no official duty to utilize a personalized water bottle or commemorative backpack, and neither were required to perform her job. There are no facts present that indicate that her personal belongings would be reasonably viewed by students and parents as officially promoted by the school. *Id.* In fact, no student or parent complained about Ms. Esquivel's personal belongings.

Second, the District placement of Ms. Esquivel on involuntary paid leave is an adverse employment action. *See Dahlia v. Rodriguez*, 735 F.3d 1060, 1078 (9th Cir. 2013) (en banc).

Finally, Ms. Esquivel's speech was a motivating factor for the adverse employment action, as after Ms. Esquivel returned to campus with her water bottle and backpack, the District contacted police to have Ms. Esquivel escorted off campus. Both Aide 1 and Aide 2 communicated their own political views as evidenced by their statements about Ms. Esquivel's water bottle and backpack, but neither were reprimanded or punished. Ms. Esquivel's water bottle and backpack reflected her personal political beliefs, yet, she suffered the adverse employment action. Additionally, the

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District forced Ms. Esquivel to go on administrative leave, and has refused to allow her to return to her aide position. *See Anthoine v. N. Cent. Ctys. Consortium*, 605 F.3d 740, 750 (9th Cir. 2010) (holding that retaliation was a substantial or motivating factor behind adverse employment when the speech and adverse action were proximate in time or when the employer expresses opposition to the speech).

The District's actions also constitute unconstitutional content and viewpoint discrimination in violation of the First and Fourteenth Amendments. The government engages in viewpoint discrimination when it "targets ... particular views taken by speakers on a subject." *Ctr. for Bio-Ethical Reform, Inc. v. City and County of Honolulu*, 455 F.3d 910, 921 (9th Cir. 2006). Ms. Esquivel's support for former political leaders is protected by the First Amendment. *Dodge*, 56 F.4th at 778. The District placed Ms. Esquivel on involuntary leave from her aide position for expressing this protected view. The District did not take any disciplinary action against teachers or students who took views opposite of Ms. Esquivel, including those who expressed statements noting their disapproval of former President Donald Trump. By taking adverse action against Ms. Esquivel for expressing her protected views, the District engaged in content and/or viewpoint discrimination in violation of the First and Fourteenth Amendments.

Ms. Esquivel has retained Advocates for Faith and Freedom. The organization requests, on behalf of Ms. Esquivel, that the District immediately reinstate Ms. Esquivel to her aide position. The organization also requests that there exists no permanent record of this incident or Ms. Esquivel's leave. Our office is monitoring this matter closely and is exploring all legal options. A response is requested on or before February 23, 2024.

Sincerely,

**ADVOCATES FOR FAITH & FREEDOM**



Julianne Fleischer  
Legal Counsel