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July 29, 2022

## ***VIA EMAIL and UNITED STATES MAIL***

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Re: **Reply to Demand to Chelsea Boyle to Cease and Desist**

Dear Mr. Merwin,

As we have previously informed you in our letter dated June 22, 2022 (the "Representation Letter") my office represents Mrs. Chelsea Boyle ("Mrs. Boyle") in connection with the matters that are the subject of this correspondence. In the event that you did not receive the Representation Letter, this correspondence serves as notice that my office is Mrs. Boyle's legal representative. All future correspondence regarding this matter must be directed to my office.

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My office has received a letter from you dated July 22, 2022 with the subject “Demand to Cease and Desist Spreading False Information/Request for Consent to Release Student Education Records” (the “Demand Letter”). A true and correct copy of the Demand Letter is attached hereto for your reference as Exhibit “A.” In the Demand Letter, among other things, you deny Mrs. Boyle’s claim that her daughter was punished and/or harassed and/or compelled to apologize by the Capistrano Unified School District (“CUSD”) for writing the phrase “any life” on a drawing she made for a friend and you ask that Mrs. Boyle consent to the disclosure of her daughter’s personally identifiable information for the purposes of discrediting the aforementioned claim. The purpose of this correspondence is to address the various improprieties of the Demand Letter, reiterate Mrs. Boyle’s position, and inform you that Mrs. Boyle will not consent to disclosure of her daughter’s confidential records.

**A. CUSD Has Not Demonstrated the Falsity of Mrs. Boyle’s Claims, Which Remain Uncontested.**

Mrs. Boyle’s claims regarding the treatment of her daughter are detailed at length in the Claim for Damages Form (the “Claim for Damages”) filed with CUSD on July 13, 2022. A true and correct copy of the Claim for Damages is attached hereto for your reference as Exhibit “B.” In summary, Mrs. Boyle represents that Jesus Becerra (“Becerra”), principal of Viejo Elementary School (“Viejo”), subjected Mrs. Boyle’s Daughter (hereinafter referred to as “Jane” to protect her identity) to various forms of discrimination and harassment, ostensibly as punishment for drawing a picture with the words “black lives mater [sic.]” followed by “Any life” (the “Picture”). Specifically, Jane was made to publicly apologize, forced to sit out recess, and told not to draw any additional pictures for her friends (the “Incident”).

As it stands, this is the only side of the story regarding the Incident. There are no competing narratives. Mrs. Boyle does not rule out the possibility that there may be errors or mistakes of fact in her daughter’s account of the Incident. She recognizes that children often misunderstand or embellish. However, to date, no alternative account of the Incident has been offered by anyone, either within or outside of CUSD. Mrs. Boyle does not and should not feel any qualms about repeating her daughter’s story until at least some facts have been introduced to contradict it. At this time, that is simply not the case.

I limit the review of the facts herein discussed solely to those addressed in CUSD’s internal complaint process, not because that is the only evidence produced to date. Mrs. Boyle has dozens of email records from CUSD administrators, accounts of eyewitnesses, and other records which substantially corroborate Jane’s account of the Incident. Rather, I limit my review to CUSD’s responses to show the dearth of evidence upon which CUSD bases its conclusion, none of which contradicts Jane’s account, either implicitly or explicitly.

In a letter dated March 15, 2022 with the subject line “Your Level 1 Complaint Dated: 3/8/2022” (the “Level 1 Response”), Becerra explicitly acknowledges that he does not recall the facts and circumstances of the Picture and that he has no written record of the incident. A true and correct copy of the Level 1 Response is attached hereto for your reference as Exhibit “C.” Becerra (who inexplicably was appointed to investigate allegations of his own misconduct) states that he is “confident” that he notified Mrs. Boyle in some manner of the Picture, but he apparently does not remember how or what he said, nor did he keep any records of having contacted Mrs. Boyle. Despite these obvious gaps, Becerra has no qualms with assuring Mrs. Boyle that he is “confident” that Jane was not “punished” for the Picture. This, he states not from recollection, but from confidence about what his actions *would* be in those circumstances (“nor would she be made to apologize for it”). He makes no effort to explain the obvious discrepancy – parents are not routinely notified of pictures their

children have drawn, yet he claims that he did so here, despite there being no apparent reason to do so, if the Picture was not the subject of discipline. Becerra clearly remembers the picture, and, indeed, has a copy of the Picture in the school's possession (despite it not having been produced as a school assignment), and even claims to have notified Mrs. Boyle about the Picture, yet he has no apparent recollection of the action he took with respect to the picture, apart from a vague impression that he must have informed Mrs. Boyle at some point. It is not clear how Becerra can conclude that no disciplinary action was taken when, by his own admission, he does not recall the exact circumstances of or actions taken with respect to the Picture. Nevertheless, he finds himself blameless of any wrongdoing. This is not an alternative account of the Incident from Jane's, but rather, it is an absence of an account.

The same is true of CUSD's Level 2 Complaint Response dated March 24, 2022 (the "Level 2 Response"). A true and correct copy of the Level 2 Response is attached hereto for your reference as Exhibit "D." There, CUSD's "thorough investigation" seems to have consisted solely of speaking with the parent of the child for whom Jane had drawn the Picture ("Parent B"), despite Jane's and Mrs. Boyle's account of the punishment and/or harassment and/or compelled apology including no details to suggest that Parent B had been present at the time or, indeed, that she had been involved in the conduct complained of in any way whatsoever. Indeed, by CUSD's own account, Parent B seems not to have been, as the only relevant details recounted in the Level 2 Response are that Parent B, at some unspecified date, had a conversation with Becerra wherein she acknowledged that the Picture was not drawn with "ill intent." This conversation is also apparently undocumented. The remainder of the Level 2 Response consists of a cherry-picked selection of unauthenticated text messages, all of which were allegedly sent long after the events to which Mrs. Boyle's complaint relates, and a series of disparaging remarks regarding same. One is hard pressed to see any purpose whatsoever to recounting these text messages, except as an apparent attempt to improperly discredit Mrs. Boyle, or worse, to embarrass and harass Mrs. Boyle into dropping her complaint. Again, nothing produced in the Level 2 Response contradicts Jane's account of what happened.

The letter dated July 21, 2022 with the subject "Your Complaint Dated: March 30, 2022" (the "Level 3 Response"), a true and correct copy of which is attached hereto as Exhibit "E" for your reference, acknowledges some wrongdoing with respect to the prior investigations. It offers no further evidence regarding the Incident but nevertheless concludes that it did not take place. There is *some* reason why CUSD has the Picture in its possession. Becerra clearly remembers *some* issue relating to the Picture, and even vaguely recalls the matter being sufficiently serious to warrant contacting Mrs. Boyle. *Something* happened, whether or not what happened precisely matches Jane's description. However, as CUSD has failed to investigate the Incident with any rigor, Jane's account is the *only* account of the Incident. Unless and until *some* evidence has been put forward to oppose Mrs. Boyle's account of the Incident, she is justified in repeating it as unopposed.

Again, the evidence put forth by CUSD in its internal investigation process is not the only evidence available. Far from it. However, Mrs. Boyle has not been asked to produce her evidence. We limit our review to CUSD's own internal investigation documents simply to show that, from what CUSD has produced, there is no evidence that contradicts Jane's account of the Incident, much less to justify CUSD's demand that Mrs. Boyle cease and desist from repeating her account of the Incident.

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**B. The Demand Letter Constitutes Intimidation, Harassment, and Retaliation for the Exercise of First Amendment Rights.**

CUSD is or should be well aware that my office represents Mrs. Boyle and her daughter with respect to the Incident. As such, it is totally inappropriate to contact Mrs. Boyle directly regarding this matter. CUSD was informed of Mrs. Boyle's representation in the Representation Letter and the Board of Trustees was informed of her representation a second time by Ryan Heath of the Gavel Project during their July 12 meeting. Continued direct contact of Mrs. Boyle constitutes intimidation and/or harassment and retaliation for the exercise of her First Amendment rights. Moreover, the Demand Letter purports to be a demand and/or cease and desist letter, however, its presentation as such is entirely spurious. The Demand Letter was not signed by an attorney, and thus does not constitute a legal demand. If, in fact, the Demand Letter was written by CUSD and/or its representatives' attorney, or if CUSD and/or its representatives' attorney was in any way involved in its creation, the author of the Demand Letter is subject to discipline pursuant to the California Rules of Professional Conduct 1.8 and 2.2. Rather, the Demand Letter misappropriates legal language to improperly intimidate Mrs. Boyle into silence. This letter serves as final notice that all contact with Mrs. Boyle regarding the Incident should be directed to my office. If CUSD or its representatives continue to contact Mrs. Boyle directly regarding the Incident, we will be forced to take legal action.

**C. Mrs. Boyle Refuses to Consent to the Disclosure of Her Daughter's Confidential Records, the Publicity of Which are the Entire Issue of This Case.**

CUSD has provided no legal reason why Mrs. Boyle should disclose her daughter's confidential records. It has simply tried to bully her into doing so by using legal language to imply a threat. Unwanted and undeserved attention toward a seven-year-old minding her own business is the central matter of this case. We do not see how any legitimate purpose is served by further attention. If there is any compelling legal reason why Mrs. Boyle should consent to disclosure, please inform my office in a reply to this letter.

**Conclusion**

The Demand Letter is totally inappropriate under the circumstances and any similar communications in the future will be met with appropriate legal action. Mrs. Boyle does not consent to the disclosure of Jane's confidential records, nor will she, absent a compelling legal reason to do so. To date, Jane's account is the only account of the Incident. Should CUSD wish to provide evidence to contradict this account, they are free to do so. Until that time, Mrs. Boyle and her legal representatives are fully within their rights to speak about what they know and believe to be true.

Very truly yours,

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By:   
Alexander H. Haberbush, Esq.