

October 28, 2014

Direct (213) 452-6576

VIA U.S. MAIL AND ELECTRONIC MAIL

Tom Lackey
Lackey for Assembly 2014
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Re: Cease and Desist Demand - Immediate Response Required

Dear Mr. Lackey and Ms. Lawler:

We are writing on behalf of Assemblymember Steve Fox to demand that you and your campaign committee, Lackey for Assembly 2014, immediately cease and desist from broadcasting false and defamatory statements about Assemblymember Fox contained in a radio advertisement that you are currently running on High Desert Broadcasting LLC radio stations (KCEL-FM, KMVE-FM, KGMX-FM, KKZQ-FM, KOSS-AM, KQAV-FM and KUTY-AM) and Adelman Broadcasting radio stations (KGBB, KRAJ, KZIQ, KEPPD, KLOA-AM, KLOA-FM, KWDJ, and KTEA). Your failure to comply with this demand may result in the commencement of immediate legal action against you and your committee.

The advertisement in question contains blatantly false and defamatory statements against Assemblymember Fox concerning his legislative record, as follows:

[Speaker 1--Impersonating Speaker of the Assembly:] Okay . . . how about, a bill to protect students by making it easier to get rid of teachers accused of sex and drug crimes. Mr. Fox? Where is he?

[Speaker 2—Impersonating Steve Fox:] Oh, Madam Speaker, the people of the Antelope Valley really want this bill but the powerful leadership of the Teacher's Union wants to kill it . . . I'm not voting. It's an election year you know.

The message here is that Assemblymember Fox failed to vote on a bill "making it easier to get rid of teachers accused of sex and drug crimes." That statement is an outright lie. As you are well aware by now, there were two bills dealing with the teacher dismissal issue during the 2013-2014 legislative session, AB 215 and AB 375. Both bills sought to make changes to the suspension and dismissal hearing process for school employees. Assemblymember Fox voted in favor of both bills.

Specifically, on June 12, 2014, AB 215 was passed by the Assembly. Mr. Fox was one of 77 Assemblymembers who voted in favor of AB 215's passage. (See California Legislative Information: AB 215 Record of Votes, AB 215 Bill Analysis, copies of which are attached.) Moreover, on September 12, 2013, Assemblymember Fox was one of 52 Assemblymembers voting in favor of the passage of AB 375. (See California Legislative Information: AB 375 Record of Votes, AB 375 Bill Analysis, copies of which are attached.)

Thus, contrary to the claims made in the advertisement, Assemblymember Fox voted to support both bills that sought to make it easier to suspend or dismiss teachers charged with egregious misconduct. Consequently, the claim in the advertisement that Assemblymember Fox refused or failed to vote on the issue is plainly false.¹

The First Amendment provides some protections for political speech, but does not protect defamatory speech. (See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).) This is true even in cases where the plaintiff is a public figure and the element of "actual malice" needs to be established. The United States Supreme Court has conclusively and unequivocally stated, "[i]f a false and defamatory statement is published with knowledge of falsity or a reckless disregard for the truth, the public figure may prevail." (See *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989).) In addition, with respect to public figures, publishers of any type are liable for a "defamatory statement [made] with actual malice, i.e., with 'knowledge that it was false or with reckless disregard of whether it was false or not.'" (See *Masson v. New Yorker Magazine*, 501 U.S. 496, 510 (1991) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964); see also *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).)

In the present case, not only would a simple fact check have revealed the falsity of the advertisement's claims, you were already on notice that these statements were false because of our letters to broadcasters addressing the exact same falsehoods in an earlier radio advertisement. (See enclosed copies of 9/18/14 letters.) Those letters resulted in the earlier ad being pulled. You were, therefore, on notice of the advertisement's blatant untruthfulness.

Our client respects the First Amendment and the rights of citizens to engage in spirited debate and criticism, but we cannot allow Assemblymember Fox's character and reputation to be assailed by the repeated broadcast of false and defamatory claims. Therefore, should you continue to broadcast the false and defamatory allegations made in the advertisement described above, it will be with a knowing and reckless disregard for the truth that is sufficient to

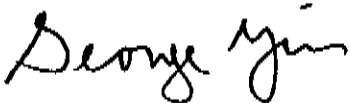
¹ We also note that the ad deliberately seeks to mislead voters into believing that the voices in the radio spot are those of Speaker Toni G. Atkins and Assemblymember Steve Fox. Regardless, the statements allegedly uttered by Speaker Atkins and Assemblymember Fox are blatantly and recklessly false and misleading.

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demonstrate "actual malice" towards our client. (*See St. Amant*, 390 U.S. at 730.) We therefore demand that you cease from knowingly perpetuating these falsehoods, and immediately remove this ad from all media outlets.

Please provide us with your written confirmation that you have ceased broadcasting this false and defamatory ad by the close of business tonight. We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "George Yin", with a stylized flourish at the end.

George M. Yin

Enclosures

cc: Mark Benevento, High Desert Broadcasting, LLC
Bob Adelman, Adelman Broadcasting

EXHIBIT 1



California LEGISLATIVE INFORMATION

AB-215 School employees: dismissal or suspension: hearings. (2013-2014)

Date	Result	Location	Ayes	Noes	Y/N	Action
06/12/14	(PASS)	Assembly Floor	77	0	2	AB 215 BUCHANAN Concurrence in Senate Amendments
<p>Ayes: Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Jan Calderon, Campos, Chau, Chavez, Chesbro, Conway, Cooley, Dababneh, DeHia, Daly, Dickinson, Donnelly, Eggman, Fong, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gorell, Gray, Grove, Hagman, Roger Hernandez, Holden, Jones, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Malerschtein, Mansoor, Medina, Melendez, Mullin, Muretsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perez, John A. Perez, V. Manuel Perez, Quirk, Quirk-Silva, Rendon, Ridley-Thornes, Rodriguez, Salas, Skinner, Stone, Ting, Wagner, Waldron, Weber, Wiekowski, Wilk, Williams, Yamada, Atkins</p> <p>Noes:</p> <p>No Votes Recorded: Hall, Harkey</p>						
06/09/14	(PASS)	Senate Floor	33	0	7	Assembly 3rd Reading AB215 Buchanan By Padilla
<p>Ayes: Anderson, Beall, Block, Cannella, Corbett, Correa, De León, DeSaulnier, Evans, Fuller, Gaines, Galgiani, Hernandez, Hill, Hueso, Huff, Jackson, Knight, Lano, Liu, Mitchell, Monning, Morrell, Nielsen, Padilla, Pavley, Roth, Steinberg, Torres, Vidak, Walters, Wolk, Wyland</p> <p>Noes:</p> <p>No Votes Recorded: Berryhill, Calderon, Hancock, Lara, Lieu, Wright, Yee</p>						
06/23/14	(PASS)	Sen Appropriations	7	0	0	Do pass.
<p>Ayes: De León, Gaines, Hill, Lara, Padilla, Steinberg, Walters</p> <p>Noes:</p> <p>No Votes Recorded:</p>						
05/19/14	(PASS)	Sen Appropriations	7	0	0	Placed on Appropriations Suspense file.
<p>Ayes: De León, Gaines, Hill, Lara, Padilla, Steinberg, Walters</p> <p>Noes:</p> <p>No Votes Recorded:</p>						
04/30/14	(PASS)	Sen Education	9	0	0	Do pass as amended, and re-refer to the Committee on Appropriations.
<p>Ayes: Block, Correa, Galgiani, Hancock, Hueso, Huff, Liu, Monning, Wyland</p> <p>Noes:</p> <p>No Votes Recorded:</p>						
05/02/13	(PASS)	Assembly Floor	73	0	6	AB 215 CHESBRO Assembly Third Reading
<p>Ayes: Achadjian, Alejo, Allen, Ammiano, Bigelow, Bloom, Blumenfeld, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Jan Calderon, Campos, Chau, Chavez, Chesbro, Conway, Cooley, DeHia, Daly, Dickinson, Donnelly, Eggman, Fong, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gordon, Gorell, Gray, Grove, Hagman, Roger Hernandez, Holden, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Malerschtein, Mansoor, Medina, Melendez, Mitchell, Morrell, Mullin, Muretsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perez, V. Manuel Perez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Torres, Wagner, Waldron, Weber, Wiekowski, Wilk, Yamada, John A. Perez</p> <p>Noes:</p> <p>No Votes Recorded: Addis, Fox, Hall, Harkey, Jones, Williams</p>						
04/17/13	(PASS)	Sen Appropriations	17	0	0	Do pass.

Date	Result	Location	Ayes	Noes	NVR	Motion
		Ayes: Ambrino, Bigelow, Bocanegra, Bradford, Ian Calderon, Campos, Donnelly, Eggman, Getto, Gomez, Hall, Harkey, Holden, Under, Pan, Quirk, Wagner				
		Noes:				
		No Votes Recorded:				
04/03/12	(PASS)	Asm Natural Resources	9	0	0	Do pass and re-refer to Committee on Appropriations with recommendation: To Consent Calendar.
		Ayes: Bigelow, Chisbro, Garcia, Groves, Muratsuchi, Patterson, Skinner, Stone, Williams				
		Noes:				
		No Votes Recorded:				

CONCURRENCE IN SENATE AMENDMENTS

AB 215 (Buchanan)

As Amended May 20, 2014

Majority vote

ASSEMBLY: 73-0 (May 2, 2014) SENATE: 33-0 (June 9, 2014)

Original Committee Reference: NAT. RES.

SUMMARY: Makes changes to the suspension and dismissal hearing process for school employees, as specified.

The Senate amendments:

- 1) Remove "knowing membership by the employee in the Communist Party" from the list of reasons a permanent school employee can be dismissed or suspended and deletes incorrect code references.
- 2) Define egregious misconduct as immoral conduct that is the basis for the following offenses: sex offenses; controlled substance offenses; and, child abuse and neglect offenses, as specified.
- 3) Specify the following for dismissal or suspension proceedings based solely on charges of egregious misconduct:
 - a) Upon the filing of written charges with the governing board of a school district, or upon a written statement of charges formulated by the governing board of a school district, charging a permanent employee of the school district with egregious misconduct, the governing board of the school district may, if it deems such action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice of dismissal, he or she will be dismissed, unless he or she demands a hearing.
 - b) Upon the filing of written charges with the governing board of a school district, or upon a written statement of charges formulated by the governing board of a school district charging that there exists cause for the dismissal or suspension of a permanent employee of the school district, the governing board of the school district may, upon majority vote, except as provided, give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing.
 - c) Any written statement of charges of egregious misconduct shall specify instances of behavior and the acts or omissions constituting the charge so that the employee will be able to prepare his or her defense. It shall, where applicable, state the statutes and rules that the employee is alleged to have violated, and it shall also set forth the facts relevant to each occasion of alleged egregious misconduct.
 - d) The notice of suspension and intention to dismiss that is based exclusively on charges of egregious misconduct shall be in writing. If the employee does not demand a hearing

within the 30-day period, he or she may be dismissed upon the expiration of 30 days after service of the notice.

- e) Once the governing board of the school district has initiated dismissal or suspension proceedings, the process described in this section shall be the exclusive means of pursuing a dismissal or suspension against the certificated employee until a written decision has been reached by the administrative law judge (ALJ), the charges have been dismissed, or the dismissal or suspension proceeding has been settled or otherwise resolved. If a suspension initiated against an employee is upheld, and a dismissal was not pursued on the same charges, the entry of judgment of the suspension may be considered as evidence to support a subsequent notice of dismissal based on other charges. If a suspension initiated against an employee is upheld, but the employee prevailed on the dismissal proceeding based on the same charges, the entry of judgment of the suspension shall not be considered as evidence to support a subsequent notice of dismissal based on other charges.
- f) If a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated and conducted, and a decision made by an ALJ. The hearing date shall be established after consultation with the employee and the governing board, or their representatives, except that, if the parties are not able to reach agreement on a date, the Office of Administrative Hearings (OAH) shall unilaterally set a date. The OAH shall prioritize the scheduling of dismissal or suspension proceedings over other proceedings related to certificated school employees.
- g) The right of discovery of the parties shall not be limited to those matters set forth in Government Code Section 11507.6 but shall include the rights and duties of any party in a civil action brought in a superior court under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to the continuance. The continuance or continuances granted, if any, shall not extend by more than a total of 30 days the deadline.
- h) If the right of discovery is denied by either the employee or the governing board, the exclusive right of a party seeking an order compelling production of discovery shall be pursuant to Government Code Section 11507.7.
- i) No testimony shall be given or evidence introduced relating to matters that occurred more than four years before the date of the filing of the notice, except evidence of egregious misconduct, which shall not be excluded based on the passage of time.
- j) The ALJ shall prepare a written decision containing findings of fact, determinations of issues, and a disposition that shall be, solely, one of the following:
 - i) That the employee should be dismissed.

- ii) That the employee should be suspended for a specific period of time without pay.
 - iii) That the employee should not be dismissed or suspended.
 - k) The decision of the ALJ that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or the governing board of the school district unless the errors are prejudicial errors; and, the ALJ shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions.
 - l) The state board may adopt from time to time rules and procedures as may be necessary to effectuate this provision.
 - m) The administrative costs of the hearing shall be paid according to the outcome of the hearing, as specified.
- 4) Specify the following for suspension and dismissal proceedings for all charges *except* those solely involving egregious misconduct:
- a) Authorize an employee who has been suspended to request a motion for immediate reversal of the suspension before an ALJ; and, specify the review of a motion shall be limited to a determination as to whether the facts as alleged in the charges, if true, are sufficient to constitute a basis for immediate suspension, as specified.
 - b) Specify that a suspension or dismissal hearing shall commence within six months of the employee's request for a hearing; specifies the start of the hearing may not be continued beyond six months except for extraordinary circumstances as deemed by the ALJ; require OAH to set a date for the hearing if both parties cannot agree; requires the hearing to be completed within seven months; and, specify when substantial progress has been made within the seven month timeline but the hearing cannot be completed, for good cause shown, the hearing may be extended by the ALJ.
 - c) Authorize testimony and evidence relating to matters that occurred more than four years in the past that involve any act as described in Education Code (EC) Section 44010 (sexual offenses) and Penal Code Sections 11165.2 to 111652.6 (child abuse offenses).
 - d) Authorize suspension and dismissal hearings to be presided over by an ALJ alone, instead of the full Commission on Professional Competence (CPC), if both parties agree in writing.
 - e) Specify that members of the CPC shall have three years of experience in the last 10 years in the same discipline of the teacher being suspended or dismissed; requires the members of the CPC to be selected 45 days prior to the hearing date; and, specify that if a party believes that a selected commission member is not qualified, that party may file an objection with OAH within 10 days of their selection and within seven days of that objection an ALJ shall rule on the objection.
 - f) Define "discipline" for purposes of appointing members of a CPC as follows:

- i) For an employee subject to dismissal whose most recent teaching assignment is in kindergarten or any of the grades 1 to 6, inclusive, "discipline" means a teaching assignment in kindergarten or any of the grades 1 to 6, inclusive.
 - ii) For an employee subject to dismissal whose most recent assignment requires an education specialist credential or a services credential, "discipline" means an assignment that requires an education specialist credential or a services credential, respectively.
 - iii) For an employee subject to dismissal whose most recent teaching assignment is in any of the grades 7 to 12, inclusive, "discipline" means a teaching assignment in any of grades 7 to 12, inclusive, in the same area of study as the most recent teaching assignment of the employee subject to dismissal.
- g) Specify that a member of the CPC who is retired shall receive pay at the daily substitute teacher rate.
- h) Delete the requirement that the employee pay the expenses incurred by the district at the hearing if a court overturns the decision of a CPC; conversely delete the requirement that the district pay the expenses incurred by the employee at the hearing if a court overturns the decision of a CPC; and, require the state and the school district to share the costs of a hearing if an employee is dismissed or suspended by a CPC.
- i) Delete the existing discovery process and instead creates a new discovery process where the school district and the employee must disclose information within 45 days of the employee's demand for a hearing; and, specifies all disclosures must be made no later than 60 days before the start of the hearing, as specified.
- 5) Specify that once a governing board has given notice to suspend or dismiss an employee, the charges may be amended less than 90 days before the hearing upon motion before an ALJ of the OAH; specify that the employee shall be given meaningful opportunity to respond to the amended charges; and, specify that notice to the employee shall be sufficient to initiate a hearing.
- 6) Require that a notice of suspension or dismissal involving only unsatisfactory performance be given during the instructional year of the school site where the employee is physically employed; authorize a notice of suspension or dismissal to be given at any time of year for other suspension or dismissal reasons; and, specify the notice of dismissal or suspension given outside the instructional year shall be in writing and be served upon the employee personally at his or her last known address.
- 7) Prohibit school districts, county offices of education, and charter schools from entering into an agreement that would prevent a mandatory report of egregious misconduct to the Commission on Teacher Credentialing or any other state or federal agency; and, prohibit school districts, county offices of education, and charter schools from entering into an agreement that would authorize expunging from a school employee's personnel file credible complaints of substantiated investigations into, or discipline for, egregious misconduct, unless those claims have been proven to be false.

- 8) Specify that a school district, county office of education, or charter school that has made a report of an employee's egregious misconduct to the Commission on Teacher Credentialing shall disclose this fact to a school district, county office of education, or charter school considering an application for employment from the employee, upon inquiry.
- 9) Specify that any school employee who alleges that another school employee has engaged in egregious misconduct, knowing at the time of making the allegation that the allegation was false, shall be subject to certificate revocation, if applicable.
- 10) Add murder and attempted murder to the list of mandatory leave of absence offenses; and, remove marijuana, mescaline, peyote, and tetrahydrocannabinols as exceptions to the controlled substance offenses for which a certificated employee may be charged with a mandatory or optional leave of absence offense.
- 11) Make findings and declarations that pupils, educators, administrators, school boards, and school district employees need a teacher dismissal process that is both fair and efficient; and, that this measure is intended to revise existing statutes in a manner that will update and streamline the procedures for teacher discipline and dismissal, making it more cost effective and reducing the time necessary to complete the teacher dismissal process.

EXISTING LAW:

- 1) Prohibits the dismissal of permanent employees except for one or more of the following causes:
 - a) Immoral or unprofessional conduct;
 - b) Commissioning, aiding or advocating the commission of acts of criminal syndicalism;
 - c) Dishonesty;
 - d) Unsatisfactory performance;
 - e) Evident unfitness for service;
 - f) Physical or mental condition unfitting him or her to instruct or associate with children;
 - g) Persistent violation of or refusal to obey the school laws of the state by the State Board of Education or by the local governing board employing him or her;
 - h) Conviction of a felony or any crime involving moral turpitude;
 - i) Advocating for or teaching communism with the intent of indoctrinating the mind of any pupil;
 - j) Knowing membership by the employee in the Communist Party; or,
 - k) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children. (EC Section 44932)

- 2) Prohibits the notice of dismissal or suspension of a teacher from being given between May 15th and September 15th in any year. (EC Section 44936)
- 3) Authorizes the governing board of any school district to immediately suspend a certificated employee, if it deems such action necessary, on charges of:
 - a) Immoral conduct;
 - b) Conviction of a felony or of any crime involving moral turpitude;
 - c) Incompetency due to mental disability;
 - d) Willful refusal to perform regular assignments without reasonable cause;
 - e) With violation of teacher or inculcating Communism; or,
 - f) With knowing membership by the employee in the Communist Party. (EC Section 44939)
- 4) Requires that if a dismissal or suspension hearing is requested by an employee, the hearing shall commence within 60 days from the date of the employee's demand for a hearing and specifies the following:
 - a) Prohibits testimony or evidence relating to matters that occurred more than four years prior to the date of the filing of the notice; and, prohibits a decision relating to the dismissal or suspension of any employee from being made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.
 - b) Requires that the hearing be conducted by a CPC made up of three members: one member to be selected by the certificated employee; one member to be selected by the governing board; and, one member to be an ALJ from the OAH.
 - c) Provides that the decision made by the CPC is made by majority vote and shall be deemed to be the final decision of the governing board. (EC Section 44944)

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill has the potential to result in both costs and savings to the state and to local education agencies (LEAs). The costs and savings realized will depend on the actions of individual parties in specific cases, and will vary by action and year (as is true under existing law). It is unclear whether a streamlined dismissal process will increase the number of cases brought forth. OAH: approximately \$2 million annually in ongoing personnel costs for 13 personnel years. The OAH estimates it would require 8 additional ALJs, three additional clerical staff, one associate governmental programs analyst, and one additional legal support supervisor, to complete the substantial additional workload imposed by this bill. The cost of the ALJs' time related to these hearings would be billed by the OAH to the involved LEAs and the General Fund, depending on the dispensation of the case. See staff comments. LEAs: significant increased workload and costs to abide by new rules. Potentially substantial savings in reduced liability (in civil

litigation) to the extent that certified employees who commit egregious acts of misconduct against children can be dismissed more quickly and with reduced incentive to appeal. Mandate: potentially significant reimbursable mandate on LEAs, to the extent that certificated employees are accused of committing controlled substance offenses involving marijuana, mescaline, peyote, or tetrahydrocannabinols, and placed on mandatory leave.

COMMENTS: This measure was substantially amended in the Senate and the amendments reflect a bipartisan agreement. This bill is substantially similar to AB 375 (Buchanan), which was passed by the Assembly in 2013. The policy issues in this measure have been heard by the Assembly Education Committee over the last few years.

According to the author, the current teacher discipline and dismissal process is outdated and cumbersome. The law has not kept pace with today's school calendars or practice. In addition, there is no deadline for completion of the dismissal appeal process and continuances can allow costly litigation to drag on for 12-18 months, or longer. This bill updates and streamlines the teacher discipline and dismissal process, saving school districts time and money while at the same time ensuring due process. In addition, the bill removes outdated references to code and clarifies the responsibilities of both school districts and teachers with respect to appeals.

This bill increases protections for children by defining a subset of immoral conduct as egregious misconduct, which encompasses sexual abuse, child abuse and specific drug crimes and, establishes a separate and streamlined hearing process for cases in which an employee is accused of egregious misconduct. This streamlined process will allow a hearing based on charges of egregious misconduct to be conducted by a single ALJ instead of a three-person panel. The bill requires egregious misconduct hearings to commence within 60 days. The bill allows, and in some cases requires, school districts to place employees on leave when they have been criminally charged with certain drug offenses. The bill requires school districts to place an employee on leave should he or she be criminally charged with homicide or attempted homicide. The bill allows evidence more than four years old to be presented at hearing in cases of child abuse or sexual abuse. The bill maintains the ability of a district to immediately remove a teacher accused of child abuse or sexual abuse from the classroom; and, authorizes dismissals to take place at any time of year for all other charges except unsatisfactory performance, which shall be given during the school year. This bill clarifies current law by updating the grounds for dismissal and removing the ground for membership in the Communist Party; removing duplicative notice requirements; and, removing a provision that has been deemed unconstitutional by the California Supreme Court.

This bill saves time and money by requiring, for all charges except for egregious misconduct, that the hearing commence within six months and the entire appeal process be completed within seven months. The bill removes the ability of litigants to take discovery disputes and suspension appeals to Superior Court and establishes a limited discovery process for all charges except egregious misconduct. The bill requires the parties to nominate their respective members of the CPC 45 days prior to the date set for hearing. Further this bill increases the number of teachers eligible to serve on the CPC by lowering from five to three the number of years of teaching experience the panel member must have in the discipline of the teacher subject to dismissal.

EXHIBIT 2



California

LEGISLATIVE INFORMATION

AB-375 School employees: dismissal or suspension: hearing. (2013-2014)

Date	Result	Location	Ayes	Noes	NVR	Motion
08/12/13	(PASS)	Assembly Floor	52	22	4	AB 375 BUCHANAN Concurrence in Senate Amendments
<p>Ayes: Alejo, Atkins, Becanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Cooley, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gray, Hall, Roger Hernández, Holden, Jones-Sawyer, Lowenthal, Medina, Mitchell, Mullin, Muratsuchi, Nazarian, Nestande, Pan, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Sales, Skinner, Stone, Ting, Weber, Wiedowski, Williams, Yamada, John A. Pérez</p> <p>Noes: Achedjian, Allen, Bigelow, Conway, Dahle, Donnelly, Beth Gaines, Goralt, Grove, Hagman, Harkney, Jones, Linder, Logue, Malenschein, Matsuo, Melendez, Morrell, Patterson, Wagner, Waldron, Witt</p> <p>No Votes Recorded: Amodeo, Bloom, Levine, Olsen</p>						
09/12/13	(PASS)	Senate Floor	25	13	1	Assembly 3rd Reading AB375 Buchanan By Padilla
<p>Ayes: Beall, Block, Corbett, De León, DeSaulnier, Evans, Galgiani, Hancock, Hernandez, Hill, Hueso, Jackson, Lara, Leno, Liu, Liu, Monning, Padilla, Pavley, Roth, Steinberg, Torres, Wolk, Wright, Yee</p> <p>Noes: Anderson, Berryhill, Cannella, Correa, Emerson, Fuller, Gaines, Huff, Knight, Nicken, Vidak, Walters, Wyland</p> <p>No Votes Recorded: Calderon</p>						
09/11/13	(PASS)	Sen Appropriations	5	2	0	Do pass.
<p>Ayes: De León, Hill, Lara, Padilla, Steinberg</p> <p>Noes: Gaines, Walters</p> <p>No Votes Recorded:</p>						
09/10/13	(PASS)	Sen Education	5	0	4	Do pass, but re-refer to the Committee on Appropriations.
<p>Ayes: Hancock, Hueso, Liu, Monning, Torres</p> <p>Noes:</p> <p>No Votes Recorded: Block, Correa, Huff, Wyland</p>						
07/03/13	(PASS)	Sen Education	9	0	0	Set; first hearing. Failed passage in Committee. Reconsideration granted.
<p>Ayes: Block, Correa, Hancock, Hueso, Huff, Liu, Monning, Torres, Wyland</p> <p>Noes:</p> <p>No Votes Recorded:</p>						
07/03/13	(FAIL)	Sen Education	4	0	5	Do pass, but re-refer to the Committee on Appropriations.
<p>Ayes: Block, Hueso, Monning, Torres</p> <p>Noes:</p> <p>No Votes Recorded: Correa, Hancock, Huff, Liu, Wyland</p>						
05/29/13	(PASS)	Assembly Floor	64	11	4	AB 375 BUCHANAN Assembly Third Reading
<p>Ayes: Achedjian, Alejo, Amodeo, Atkins, Bloom, Blumenfeld, Becanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chávez, Chesbro, Cooley, Daly, Dickinson, Eggman, Fong, Fox, Frazier, Beth Gaines, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gray, Hall, Roger Hernández, Jones-Sawyer, Levine, Linder, Logue, Lowenthal, Malenschein, Medina, Melendez, Mitchell, Morrell, Mullin, Muratsuchi, Nazarian, Nestande, Olsen, Pan, Patterson, Perea, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Sales, Skinner, Stone, Ting, Weber, Wiedowski, Williams, Yamada, John A. Pérez</p>						

Date	Result	Location	Ayes	Noes	NVX	Motion
						<p>Noes: Allen, Bigelow, Conway, Donnelly, Grove, Hagman, Jones, Mansoor, Wagner, Waldron, Wilk</p> <p>No Votes Recorded: Dahlé, Gorell, Harkey, Holden</p>
03/29/13	(PASS)	Assembly Floor	51	24	4	<p>AB 375 BUCHANAN Assembly Third Reading Amend By WILK Set #1</p> <p>Motion to Lay on the Table By ATKINS</p> <p>Ayes: Achadjian, Alejo, Ammiano, Atkins, Bloom, Blumenfeld, Bocanegra, Bonilla, Bonta, Bradford, Buchanan, Ian Calderon, Campos, Chau, Chedaro, Cooley, Daly, Dickinson, Eggman, Fong, Frazier, Garcia, Gatto, Gomez, Gonzalez, Gordon, Gray, Hall, Roger Hernandez, Jones-Sawyer, Levine, Lowenthal, Medina, Mitchell, Mullin, Nazarian, Pan, Perez, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Salas, Skinner, Stone, Ting, Weber, Wicksowski, Williams, Yamada, John A. Pérez</p> <p>Noes: Allen, Bigelow, Chávez, Conway, Dahlé, Donnelly, Beth Gaines, Gorell, Grove, Hagman, Harkey, Jones, Under, Logue, Malenchuk, Mansoor, Melendez, Monell, Nestande, Olsen, Patterson, Wagner, Waldron, Wilk</p> <p>No Votes Recorded: Brown, Fox, Holden, Muratsuchi</p>
05/24/13	(PASS)	Asm Appropriations	13	0	4	<p>Do pass.</p> <p>Ayes: Ammiano, Bocanegra, Bradford, Ian Calderon, Campos, Eggman, Gatto, Gomez, Hall, Under, Pan, Quirk, Weber</p> <p>Noes:</p> <p>No Votes Recorded: Bigelow, Donnelly, Harkey, Wagner</p>
04/30/13	(PASS)	Asm Judiciary	7	1	2	<p>Do pass as amended and be re-referred to the Committee on Appropriations.</p> <p>Ayes: Alejo, Chau, Dickinson, Garcia, Muratsuchi, Stone, Wicksowski</p> <p>Noes: Gorell</p> <p>No Votes Recorded: Malenchuk, Wagner</p>
04/02/13	(PASS)	Asm Education	7	0	0	<p>Do pass as amended and be re-referred to the Committee on Judiciary.</p> <p>Ayes: Buchanan, Campos, Chávez, Nazarian, Olsen, Weber, Williams</p> <p>Noes:</p> <p>No Votes Recorded:</p>

GOVERNOR'S VETO

AB 375 (Buchanan)

As Amended September 6, 2013

2/3 vote

ASSEMBLY: 64-11 (May 29, 2013) SENATE: 25-13 (September 12, 2013)

ASSEMBLY: 52-22 (September 12, 2013)

Original Committee Reference: ED.

SUMMARY: Makes changes to the suspension and dismissal hearing process for school employees, as specified.

The Senate amendments:

- 1) Specify that the notice of dismissal or suspension given during the instructional year of the schoolsite where the employee is physically employed shall be in writing and be served upon the employee personally or by United States registered mail addressed to him or her at his or her last known address; and, specify that a notice of dismissal or suspension given outside of the instructional year of the schoolsite where the employee is physically employed shall be in writing and shall be served upon the employee personally.
- 2) Specify that a motion for immediate reversal of suspension shall have no bearing on the authority of a school district to determine the assignment of an employee who is suspended or placed on administrative leave while dismissal charges are pending.
- 3) Specify that a continuance shall not extend the date for the commencement of a dismissal hearing more than six months from the date of the employee's request for a hearing, except for extraordinary circumstances, as determined by the administrative law judge (ALJ); specify that if extraordinary circumstances are found that extend the date for the commencement of the hearing, the deadline for concluding the hearing and closing the record shall be extended for a period of time equal to the continuance; and, specify that, if the parties are not able to reach agreement on a date, the Office of Administrative Hearings (OAH) shall unilaterally set a date.
- 4) Specify that a continuance shall not extend the date for the close of the record more than seven months from the date of the employee's request for a hearing, except for good cause; and, specify that when substantial progress has been made in completing the dismissal hearing within the seven-month period but the hearing cannot be completed, for good cause shown, the period for completing the hearing may be extended by the presiding ALJ.
- 5) Authorize testimony and evidence more than four years old at a hearing if they are allegations of an act described in Section 44010 (sex offenses) or Sections 11165.2 to 11165.6, inclusive, of the Penal Code (child abuse).
- 6) Specify that evidence of records regularly kept by the governing board concerning the employee may be introduced during a dismissal hearing, but no decision relating to the

dismissal or suspension of an employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years before the filing of the notice, except allegations of specified sex offenses and child abuse offenses.

- 7) Specify that if the parties elect to waive a hearing before the Commission on Professional Competence (CPC), the hearing shall be initiated and conducted, and a decision made, and the ALJ conducting the hearing shall have all the powers granted to a CPC, as specified.
- 8) Define "discipline" for purposes of appointing members of a CPC as follows:
 - a) For an employee subject to dismissal whose most recent teaching assignment is in kindergarten or any of the grades 1 to 6, inclusive, "discipline" means a teaching assignment in kindergarten or any of the grades 1 to 6, inclusive.
 - b) For an employee subject to dismissal whose most recent assignment requires an education specialist credential or a services credential, "discipline" means an assignment that requires an education specialist credential or a services credential, respectively.
 - c) For an employee subject to dismissal whose most recent teaching assignment is in any of the grades 7 to 12, inclusive, "discipline" means a teaching assignment in any of grades 7 to 12, inclusive, in the same area of study as the most recent teaching assignment of the employee subject to dismissal.

EXISTING LAW:

- 1) Prohibits the dismissal of permanent employees except for one or more of the following causes:
 - a) Immoral or unprofessional conduct;
 - b) Commissioning, aiding or advocating the commission of acts of criminal syndicalism;
 - c) Dishonesty;
 - d) Unsatisfactory performance;
 - e) Evident unfitness for service;
 - f) Physical or mental condition unfitting him or her to instruct or associate with children;
 - g) Persistent violation of or refusal to obey the school laws of the state by the State Board of Education or by the local governing board employing him or her;
 - h) Conviction of a felony or any crime involving moral turpitude;
 - i) Advocating for or teaching communism with the intent of indoctrinating the mind of any pupil;

- j) Knowing membership by the employee in the Communist party; or,
 - k) Alcoholism or other drug abuse which makes the employee unfit to instruct or associate with children. (Education Code (EC) Section 44932)
- 2) Prohibits the notice of dismissal or suspension of a teacher from being given between May 15th and September 15th in any year. (EC Section 44936)
- 3) Authorizes the governing board of any school district to immediately suspend a certificated employee, if it deems such action necessary, on charges of
- a) Immoral conduct;
 - b) Conviction of a felony or of any crime involving moral turpitude;
 - c) Incompetency due to mental disability;
 - d) Willful refusal to perform regular assignments without reasonable cause;
 - e) With violation of teacher or inculcating Communism; or,
 - f) With knowing membership by the employee in the Communist party. (EC Section 44939)
- 4) Requires that if a dismissal or suspension hearing is requested by an employee, the hearing shall commence within 60 days from the date of the employee's demand for a hearing and specifies the following:
- a) Prohibits testimony or evidence relating to matters that occurred more than four years prior to the date of the filing of the notice; and, prohibits a decision relating to the dismissal or suspension of any employee from being made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.
 - b) Requires that the hearing be conducted by a CPC made up of three members:
 - i) One member to be selected by the certificated employee;
 - ii) One member to be selected by the governing board; and,
 - iii) One member to be an ALJ from the OAH; and, assigns this person to be the chairperson and a voting member of the commission responsible for assuring that legal rights of all parties involved are protected.
 - c) Provides that the decision made by the CPC is made by majority vote and shall be deemed to be the final decision of the governing board. (EC Section 44944)

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill has the potential to result in both costs and savings to the state and to local education agencies (LEAs).

The costs and savings realized will depend on the actions of individual parties in specific cases, and will vary by action and year (as is true under existing law). It is unclear whether a streamlined dismissal process will increase the number of cases brought forth. Approximately \$1.86 million annually in ongoing personnel costs for OAH. The OAH estimates it would require eight additional ALJs, four additional clerical staff, and one additional legal support supervisor, to complete the substantial additional workload imposed by this bill. It is unclear whether LEAs would be responsible for the OAH costs; to the extent that they are, those costs would likely be mitigated by savings in court costs. Significant increased workload and costs to abide by new rules for LEAs. Potentially substantial savings in reduced liability (in civil litigation) to the extent that certified employees who commit egregious acts of misconduct against children can be dismissed more quickly. Potentially significant reimbursable mandate on LEAs, to the extent that certificated employees are accused of committing controlled substance offenses involving marijuana, mescaline, peyote, or tetrahydrocannabinols, and placed on mandatory leave.

COMMENTS: According to the author, the current teacher discipline and dismissal process is outdated and cumbersome. The law has not kept pace with today's school calendars or practice. In addition, there is no deadline for completion of the dismissal appeal process and continuances can allow costly litigation to drag on for 12-18 months, or longer. This bill updates and streamlines the teacher discipline and dismissal process, saving school districts time and money while at the same time ensuring due process. In addition, the bill removes outdated references to code and clarifies the responsibilities of both school districts and teachers with respect to the appeal process.

This bill increases protections for children by allowing, and in some cases requiring, school districts to place employees on leave when they have been criminally charged with certain drug offenses. The bill requires school districts to place an employee on leave should he or she be criminally charged with homicide or attempted homicide. The bill allows evidence more than four years old to be presented at hearing in cases of child abuse or sexual abuse. The bill maintains the ability of a district to immediately remove a teacher accused of child abuse or sexual abuse from the classroom and issue a notice of dismissal at any time, including the summer months; and, authorizes dismissals to take place at any time of year for all other charges except unsatisfactory performance, which shall be given during the school year.

This bill saves time and money by requiring the entire appeal process to be complete within seven months. The bill allows the parties to stipulate to a hearing with an ALJ only. The bill removes the ability of litigants to take discovery disputes and suspension appeals to Superior Court and establishes a limited discovery process. The bill requires the parties to nominate their respective members of the CPC 45 days prior to the date set for hearing. Further the bill increases the number of teachers eligible to serve on the CPC by lowering from five to three the number of years of teaching experience the panel member must have in the discipline of the teacher subject to dismissal.

This bill clarifies current law by updating the grounds for dismissal and removing the ground for membership in the Communist Party; removing duplicative notice requirements; and, removing a provision that has been deemed unconstitutional by the California Supreme Court.

GOVERNOR'S VETO MESSAGE:

The goal of this bill is to simplify the process for hearing and deciding teacher dismissal cases. I have listened at great length to arguments both for and against this measure. While I agree that it makes worthwhile adjustments to the dismissal process, such as lifting the summer moratorium on the filing of charges and eliminating some opportunities for delay, other changes make the process too rigid and could create new problems.

I am particularly concerned that limiting the number of depositions to five per side, regardless of the circumstances, and restricting a district's ability to amend charges even if new evidence comes to light, may do more harm than good.

I share the authors' desire to streamline the teacher discipline process, but this bill is an imperfect solution. I encourage the Legislature to continue working with stakeholders to identify changes that are balanced and reduce procedural complexities.

Analysis Prepared by: Chelsea Kelley / ED. / (916) 319-2087

FN: 0002896

EXHIBIT 3

KAUFMAN LEGAL GROUP
A PROFESSIONAL CORPORATION

September 18, 2014

Direct (213) 452-6550

**VIA CERTIFIED MAIL, FACSIMILE
AND ELECTRONIC MAIL**

Mark Benevento, Operations Manager
High Desert Broadcasting, LLC
570 E. Ave. Q-9
Palmdale, CA 93550

Re: Cease and Desist Demand - Immediate Response Required

Dear Mr. Benevento:

We are writing on behalf of Assemblymember Steve Fox and his campaign committee, Steve Fox for Assembly 2014. Assemblymember Fox was elected to the California State Assembly in 2012, and is now seeking re-election in the upcoming Statewide General Election on November 4, 2014. This letter serves as a formal demand that you immediately cease and desist from broadcasting false and defamatory statements about Assemblymember Fox on your radio stations (i.e., KCEL-FM, KMVE-FM, KGMX-FM, KKZQ-FM, KOSS-AM, KQAV-FM and KUTY-AM), on any affiliated websites, and on any affiliated media/social media outlets. Your company's failure to comply with this demand may result in the commencement of immediate legal action against you.

Currently, KCEL-FM, KMVE-FM, KGMX-FM, KKZQ-FM, KOSS-AM, KQAV-FM and KUTY-AM, are all airing an advertisement against Assemblymember Fox that is being paid for by Tom Lackey for Assembly 2014. This advertisement contains blatantly false and defamatory statements against Assemblymember Fox and his legislative record, including the following spurious claims:

And then last May, Fox had the opportunity to add felony child abuse, human trafficking, and possession of weapons of mass destruction to the list of crimes that qualify under the Three Strikes Law. Fox didn't even bother to vote. Later Fox had the chance to protect students from abusive teachers, by making it easier for schools to get rid of teachers accused of sex and drug crimes. Guess what? Fox failed to vote on this one too.

As discussed below, these statements are patently false; consequently, your stations must immediately cease and desist from broadcasting the advertisement containing them.

With regard to the first claim that Assemblymember Fox "didn't even bother to vote" on a bill to expand the offenses covered by the "Three Strikes Law," that statement is untrue. No such bill

came up for a vote in the State Assembly in May 2014 – or, for that matter, at any time since Assemblymember Fox took office. Indeed, the only bill even addressing that issue during the legislative session never made it to the full Assembly for a vote. (See California Legislative Information: Text of AB 1321, AB 1321 Record of Votes, AB 1321 Bill Analysis; true and correct copies are attached hereto as Exhibit 1.) In fact, the bill was introduced in the Assembly Public Safety Committee, but never was voted out of that committee. Assemblymember Fox did not sit on that committee. Thus, Assemblymember Fox never had an opportunity to vote on this bill. Therefore, it is clearly misleading, untrue and unfair to say that Assemblymember Fox had an “opportunity” to vote on the bill and did not “bother to vote.”

With regard to the claim that Assemblymember Fox failed to vote on a bill making it easier to “to get rid of teachers accused of sex and drug crimes,” that statement is an outright lie. There were two bills dealing with the teacher dismissal issue during the 2013-2014 legislative session, AB 215 and AB 375. Both bills sought to make changes to the suspension and dismissal hearing process for school employees. In fact, Assemblymember Fox voted in favor of both bills.

Specifically, on June 12, 2014, AB 215 was passed by the Assembly. Mr. Fox was one of the 77 Assemblymembers who voted in favor of AB 215’s passage. (See California Legislative Information: AB 215 Record of Votes, AB 215 Bill Analysis; true and correct copies are attached hereto as Exhibit 2.) Moreover, on September 12, 2013, Assemblymember Fox was one of 52 Assemblymembers voting in favor of the passage of AB 375. (See California Legislative Information: AB 375 Record of Votes, AB 375 Bill Analysis; true and correct copies are attached hereto as Exhibit 3.) Thus, contrary to the claims made in the advertisement, Assemblymember Fox voted to support both bills that sought to make it easier to suspend or dismiss teachers charged with egregious misconduct. Consequently, the statement in the advertisement that Assemblymember Fox “failed” to vote on the issue is plainly false.

As you know, while the First Amendment protects some political speech, it does not protect the type of defamatory speech described above. (See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).) This is true even in cases where the plaintiff is a public figure and the element of “actual malice” needs to be established. The United States Supreme Court has conclusively and unequivocally stated, “[i]f a false and defamatory statement is published with knowledge of falsity or a reckless disregard for the truth, the public figure may prevail.” (See *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 688 (1989).) Supreme Court precedent also makes abundantly clear that with respect to public figures, publishers of any type are liable for a “defamatory statement [made] with actual malice, i.e., with ‘knowledge that it was false or with reckless disregard of whether it was false or not.’” (See *Masson v. New Yorker Magazine*, 501 U.S. 496, 510 (1991) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964); see also *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).) In the present case, a simple fact check would have revealed the falsity of the advertisement’s claims. In any case, your company is now on notice of the advertisement’s blatant untruthfulness.

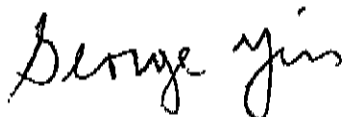
Our client respects the First Amendment and the rights of citizens to engage in spirited debate and criticism, but we cannot allow Assemblymember Fox’s character and reputation to be assailed by repeated broadcast of false and defamatory claims. Should you choose to rebroadcast the false and defamatory allegations made in the advertisement described above, it will be with a

Mark Benevento, Operations Manager
September 18, 2014
Page 3 of 3

knowing and reckless disregard for the truth that will be sufficient to demonstrate "actual malice" towards our client. (*See St. Amant*, 390 U.S. at 730.) We therefore demand that you cease from knowingly perpetuating these falsehoods, and immediately remove this ad from your rotation.

Please provide us with your written confirmation that you have ceased broadcasting this false and defamatory ad by tonight. We await your immediate response.

Very truly yours,

A handwritten signature in cursive script that reads "George Yin".

George M. Yin

GMY:ssn

Enclosures

KAUFMAN LEGAL GROUP
A PROFESSIONAL CORPORATION

September 18, 2014

Direct (213) 452-6550

**VIA CERTIFIED MAIL, FACSIMILE
AND ELECTRONIC MAIL**

Bob Adelman, President
Adelman Broadcasting
731 N. Balsam Street
Ridgecrest, CA 93555

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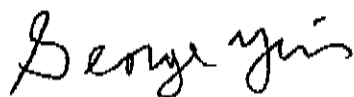
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Bob Adelman, President
September 18, 2014
Page 3 of 3

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Very truly yours,

A handwritten signature in cursive script, appearing to read "George Yin".

George M. Yin

GMY:ssn

Enclosures