

VIA EMAIL

May 16, 2023

Dr. Vivian Ekchian
Superintendent GUSD
223 North Jackson St.
Glendale, CA 91206-4334
vekchian@gusd.net

Re: GUSD's Unconstitutional Retaliation Against Ray Shelton

Dear Dr. Ekchian,

I represent Mr. Ray Shelton, a teacher at Mark Keppel Elementary, who was unlawfully retaliated against by the Glendale Unified School District (the "District" or "GUSD") for his speech as a private citizen during an open school board meeting.

The purpose of this letter is to clearly and concisely communicate a demand that the District immediately and unconditionally rescind any and all disciplinary action taken against Mr. Shelton and allow him to return to the classroom, where his absence has been deeply felt by his students. We also require that the District—and Principal Kristine Tonoli personally—issue a public apology to Mr. Shelton for violating his constitutional rights and knowingly issuing a false and inflammatory statement about him to the Keppel community.

Facts

Ray Shelton is a highly regarded fifth grade teacher at Keppel Elementary, which he has called home for over 25 years. Mr. Shelton has been honored for his service many times over the years, most recently winning the 2023 "Golden Oak Service Award," California's most prestigious PTA distinction.

On April 18, 2023, Mr. Shelton spoke as a private citizen during the public comment period of a school board meeting in opposition to District policies that outlaw biological reality and allow the secret transing of children behind their parents' backs. While quietly sitting in the audience, waiting for his chance to speak, Mr. Shelton held a small sign, composed of LGBT/transgender pride flags, in his lap. The sign was meant to be a satirical commentary on how policies like the District's were enforced with a sense of hectoring authoritarianism.

The next morning, Principal Tonoli pulled Mr. Shelton from his class and ordered him into her office where an administrator from the District sat in waiting. Mr. Shelton was placed on administrative leave and given a letter stating he was under investigation for unspecified “misconduct” with no further detail. Later that day, Principal Tonoli circulated an email to the entire Keppel community openly disparaging Mr. Shelton with defamatory allusions to “hate speech and hate symbols.”

Legal Analysis

For over 50 years, it has been the law of the land in this country that a public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment. *Pickering v. Board of Ed.*, 391 U.S. 563, 574 (1968) (“a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.”). Indeed, employees may speak on matters of public concern in their private capacities, even if the subject touches on their employment. See *id.*

Mr. Shelton’s passionate expression on an issue of public importance during the open comment period of a school board meeting is the very definition of the free speech right that has been enshrined in our Constitution and fortified by the Supreme Court. *Id.* (teacher’s public expression regarding school board action is protected speech); see also, *Meriwether v. Hartop*, 992 F.3d 492, 508 (6th Cir. 2021) (a person’s choice to use certain words, phrases, or pronouns “concerns a struggle over the social control of language in a crucial debate about the nature and foundation, or indeed real existence, of the sexes.”). This does not change even if the particular mode of expression is allegedly “offensive” to some unnamed accuser. *Texas v. Johnson*, 491 U.S. 397 (1989) (Supreme Court case law makes it quite clear that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”)

Dragging a teacher out of his classroom mere hours after his constitutionally protected expression, suspending him, and making a public announcement of an investigation that you simultaneously use as a vehicle to viciously malign him as a hate-monger would make any reasonable person afraid of ever speaking out again. See *Dodge v. Evergreen School District #114*, 56 F.4th 767, 778 (9th Cir. 2022) (the test of an adverse action is whether the employer's conduct “was reasonably likely to deter [plaintiff] from engaging in constitutionally protected speech.”); see also, *Dahlia v. Rodriguez* 735 F.3d 1060, 1079 (9th Cir. 2013) (paid administrative leave in retaliation for plaintiff’s exercise of First Amendment rights constitutes an adverse action).

Such conduct by government officials is the stuff of petty tyranny and an abomination to any free-thinking American.

Conditions

To avoid further legal action, we demand that you immediately, (1) rescind any disciplinary action taken against Mr. Shelton, (2) reinstate him so that he can return to his classroom on Tuesday, May 23, 2023, (3) remove any reference to this investigation or suspension from Mr. Shelton's personnel file, (4) have the District, and Principal Tonoli, issue a public apology to Mr. Shelton for their retaliatory conduct and false accusations. This apology should be disseminated to the community using the same email distribution list that Principal Tonoli used to defame Mr. Shelton after forcing him out of his classroom, and (5) refrain from any future retaliation.

Deadline to Accept Demand

Please respond by **5:00 p.m. on Friday, May 19, 2023**, notifying me that you will comply completely, not just substantially, with the above conditions. Our sincere desire is to not have to escalate this further.

Thank you for your anticipated cooperation.

Yours Truly,

A handwritten signature in black ink, appearing to read 'DAVID PIVTORAK', with a large, loopy flourish at the end.

DAVID PIVTORAK

DP:na

cc: Kristine Tonoli
Principal
ktonoli@gusd.net