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September 29, 2021

Superintendent Theresa Kemper
Grossmont Union High School District
1100 Murray Drive
El Cajon, CA 92020

Re: *In Re Grossmont UHSD*
Date of Loss: August 31, 2021
Our File Number: 47500001

Dear Mrs. Kemper and the Board of Trustees:

I have been honored by the Grossmont Union High School District with the task of completing an independent investigation regarding the events that occurred on August 31, 2021 at Valhalla High School. My mandate was broad. This investigation focused not only on the incident itself, but given the parallels seen in the media between this incident and the infamous murder of the African-American George Floyd by a Caucasian police officer (Exhibit No. 8), the investigation also focused on whether race played any part in the incident. As you know, Campus Supervisor Employee A is Caucasian, and a former Sheriff Deputy, while Student B is African-American.

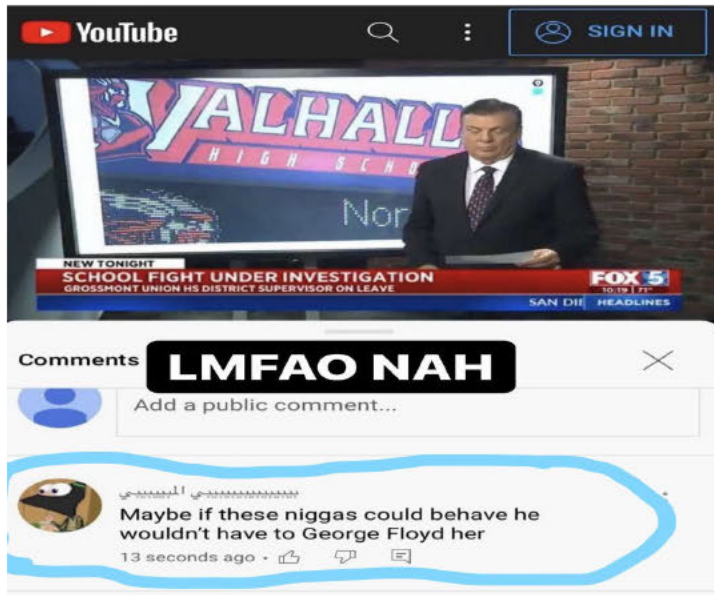
As a foreword, and as guidance to review this report, this document contains my findings and summary of facts relating to the incident, including the physical restraints used by Employee A, training received by the campus supervisors, and relevant background information on Employee A ("Employee A"), Student B ("Student B"), and student and fight participant Student A ("Student A"). Both Student B and Student A are 14-year-old 9th grade female students, while Employee A is 51 years of age, at least 208 lbs., and 5'11".

In addition, I provide information relating to negative events involving race. Finally, the report ends with my opinions and recommendations.

Attached hereto as Appendix A is a list of all of the evidence that I reviewed, and/or could not obtain, such as interviews of Ms. Student B and Ms. Student A despite intensive efforts. Appendix B contains my type-written notes from my interviews of several witnesses.

As a preview, it is my opinion that Employee A violated Administration Regulation 5131.41 in his response to, and interaction with, Student B. At the same time, however, his violation is in part due to a lack of training. I recommend that Employee A remain on paid administrative leave until he receives additional training. Further, he should be reassigned to a different school.

There is no evidence to suggest that Employee A's actions were based on race. However, it is my opinion, based upon the number of incidents involving race between 2019- present, that Valhalla High School students need to receive some form of cultural sensitivity training. For example, a student posted this on social media after the subject incident:



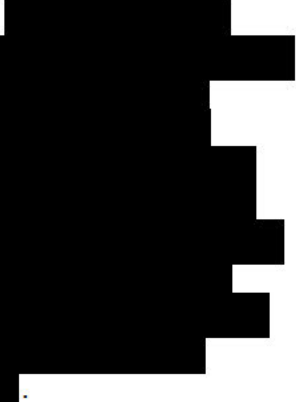
I. FACTS RELATING TO THE INCIDENT

A. The Incident

The following facts were compiled from several videos, identified by Exhibit Number, as well as from witness interviews:

Student B and Student A both lived together [REDACTED]. On the night of August 30, 2021, there was an altercation [REDACTED] involving Student B. Apparently, she was acting destructive and defiant, destroying [REDACTED] Student A's belongings. The Sheriffs

arrived for a potential *Welfare & Institutions Code §5150* hold, but declined to do so after a brief investigation.

Importantly, August 31st was Student B's first day of school at Valhalla. 

Student A can first be seen in Exhibit 1 at 11:43:35, walking west towards the cafeteria line. She is then approached by a female student and the pair appear to have a conversation. Allegedly, Student B made negative comments about Student A's family. In turn, an unidentified friend of Student A told Student B to "go to the pool" to fight.

At 11:43:53, Student B walks east from a lunch table towards Student A and breaches her personal space. At 11:43:59, Student B turns away and starts walking west. Student A can be seen making gestures, then she throws down her backpack to the ground and briskly walks west towards Student B, whose back was turned. Student A then pulls Student B's hair and begins to punch her. The pair continue to fight, as the fight moves west.

Meanwhile, Employee A was stationed at the lunch line. When the two girls were 50 feet away, Employee A spotted them fighting. He walked towards the two girls. As he approached, he called for assistance on the radio at 11:44:22. He then yelled, "stop fighting" as he continued to walk towards the girls.

Employee A first makes physical contact with the girls at 11:44:26. The fight is obscured at this point in Exhibit 1 by trees. Exhibit 2, a 39 second video, is the viral Twitter video which starts a few seconds before the trees obscure the altercation. The time stamp in Exhibit 2 at 4 seconds correlates to 11:44:26.

Employee A grabs both girls in an attempt to separate them. During this struggle, all three fell to the ground. Employee A alleges that he continued to verbally command the girls to stop and calm down. Multiple alleged guardians, attorneys, advocates, and social workers refused to assist with providing either of the two girls for an interview, so Employee A's statements that he continued to provide verbal commands cannot be corroborated.

While on the ground, the girls continue to fight, hitting Employee A. At the 15s mark in Exhibit 2, Employee A can be seen aggressively pushing Student B backwards and into the ground. On

the one hand, Employee A stated that he was not upset. At a different time, however, he stated that he was mad because Student B kicked his \$300 glasses off of his head. Regardless of the inconsistent statement, it is my opinion that Employee A appeared upset and he used more force than he had up that point in aggressively slamming Student B backwards.

At 30 seconds in Exhibit 2, Student B is lying on her back and Employee A is standing over her holding her legs. The intensity appeared to die down. At the same time, Marine Recruiter S.V. walked over to assist. He did so by separating Student A. S.V. characterized Student A as compliant as she stopped fighting as soon as he intervened.

S.V. indicates that it was so loud that he could not hear whether Employee A was talking. S.V. described the scene as chaotic, not like a school atmosphere. Instead, it felt like a fight club. There were many students located on different levels of the area throwing objects and banging against the walls and windows.

At 31 seconds, however, Student B kicks her left leg, which causes Employee A to fall onto her. Student B then starts hitting Employee A in the face. Employee A slowly flails his arms trying to grab Student B's wrist. A screenshot of this sequence was captured as it appeared that Employee A was hitting Student B. The screenshot mimics the movie *300*, and reads, "This is Valhalla."

At 11:44:55, Lead Supervisor O.E. ("O.E.") can be seen running to, and arriving at, the altercation. At 35 seconds in Exhibit 2, Employee A's right forearm can be seen pushing on the left side of Student B's face, which caused the right side of her face to appear smushed against the ground. It appears that his forearm remains in that position for the next 10 seconds. O.E. knelt next to Employee A and Student B and observed Employee A's actions. At that time, O.E. did not make any comment to Employee A about his use of force. Another angle of this portion of the altercation is captured in Exhibit 3.

Exhibit 4 is yet another angle in which one can see Employee A's forearm pressing into Student B's face at the 19s-31s mark. At the 30s mark, a student can be heard stating "I can't breathe." From 32s to the end of this 1:06 video, O.E. and Employee A can be seen holding each of Student B's hands as she is laying on her back. She then sits up, with Employee A and O.E. leaning over her. It appears that both men are talking to Student B. This corresponds to 11:45:25 in Exhibit 1.

Supervisor P.S. can first be seen at 11:45:00, approaching from his station at the Science Quad to the southwest, where the altercation is taking place. P.S. has never been trained. When he heard the radio call, he did not hear the word fight, but only heard "pool deck." However, he saw students running towards the cafeteria and began to follow. It appeared that O.E. and Employee A had the situation under control. As he did not hear the word "fight" over the radio, P.S. was not aware of Student A's involvement, which means that he was not concerned about Student B running away and after Student A. Instead, he was focused on crowd control.

P.S. characterized the crowd as having a riotous atmosphere. He recalls seeing at least two bottles being thrown towards the altercation. During this time, O.E. called for administration assistance over the radio 4 times. Twice, O.E. had to tell Principal Froumis where the altercation was located. The supervisors were growing concerned because of the crowd of students surrounding them. Vice Principals Mohammadi and Wilson were absent that day, and Vice Principal Sandra White was involved with another student. White allegedly discussed with Froumis not allowing both Mohammadi and Wilson to be absent on the same day. Accordingly, the only administrator available was Principal Froumis.

School Resource Officer K.S. first appears in Exhibit 1 at 11:45:55, walking from the northwest, and through the crowd towards the altercation. Employee A told Student B, “relax, we are going to let you up.” At some point, Employee A stated out loud, “I am going to press charges,” a comment that surely escalated tensions with Student B.

At 11:46:44, Student B stood up, but instead of remaining calm, she thrust her left shoulder into O.E. and appears to push Employee A with her right arm. In response, Employee A and O.E. grabbed Student B. K.S. and P.S. then moved in closer, and at 11:46:52, Student B used her right foot to kick backwards, making contact with K.S. At that point, all four adult men begin to wrestle Student B, picking her up from the ground and eventually placing her back onto the ground.

The next close up video is Exhibit 5. Student B’s kick to K.S. occurs at the 5 second mark. Together, the 4 adult men pick up Student B, in a hog tie formation, and forcefully lay her down on the ground. At 10s, Employee A can then be seen placing his left knee on the right side of Student B’s neck, pushing the left side of her face into the ground. His left hand appears to also push down on the right side of Student B’s face. For the next 2-4 seconds, Employee A’s left knee remains on Student B’s neck – however, he quickly lifted his left hand from her face.

In Exhibit 6, Employee A also appears to have his knee on Student B’s neck for up to 4s. The students observed Employee A’s actions, and quickly closed in, presumably in an effort to protect and stand up for their classmate. In Exhibit 1 at 11:47:04, students can be seen pointing their fingers and moving in. Exhibit 1 is a bird’s eye view, so the scene is far more dramatic as dozens of students close in and encircle the employees and Student B.

Exhibit 7 is the screenshot of Employee A’s knee on Student B’s neck. This screenshot was taken from a video which we do not possess. Such video, taken from the front of Student B’s body, would have provided further examination of Employee A’s actions. *See also* Exhibit 8.

While on the ground, P.S. was holding down Student B’s ankles with his left hand. P.S. appears to be almost 6’ 8”. P.S. could hear Student B cursing at the employees. Student B was handcuffed by the SRO while she remained on the ground.

At 11:47:02, O.E. is seen waving the crowd back. The crowd obliges, but it appears as if all students are still in the area circling the employees and Student B.

For the next few minutes, Student B is sitting on the ground, with Employee A and K.S. leaning over her and talking to her. The consensus amongst these employees was to leave Student B in place because they did not want to risk walking her through the crowd. P.S., Employee A, and O.E. believe that Principal Froumis should have rang the lockdown bell to disperse the crowd.

Principal Froumis finally arrived at the scene at 11:51:33, casually walking from the northeast. It is unclear why it took her so long to arrive. Principal Froumis indicated that there was not enough time to ring the lockdown bell, because she would have had to walk back to the office, and by the time she would have arrived, lunch would have been over.

Upon arrival, she asked Student B, "are you ok pumpkin?" Each of the supervisors were annoyed that that was her first response. P.S. advised that several students have told him that they do not like when Froumis refers to them as "pumpkin."

Assistant Principal Sandra White arrived at 11:54:49. Recall that she was handling another situation. White recalls that when she saw Student B, her face was dirty and there was a knot on her head. White asked the visibly agitated Student B if she wanted to be touched. Student B responded, "no." Then Principal Froumis touched Student B, which re-agitated her. Student B can be seen furiously shaking her right leg while still seated on the ground (11:54:52). It is unclear if Principal Froumis heard Student B's response.

P.S. walked away from Student B's side and motioned the students to leave. He can be seen talking to an African-American employee (11:53 a.m.), J [REDACTED], who commented, "these kids are crazy." J [REDACTED] did not make any comments about any unfair or racist treatment towards Student B.

At 11:56:21, four other Sheriff Deputies arrived and thereafter escorted Student B away from the lunch area at 11:59 a.m. As fate would have it, one of the Deputies recognized Student B from the night before [REDACTED]. She can be seen kneeling down and talking to Student B at 11:58:25.

School Psychologist A. Everly-Byers walked out to the Sheriff's van to interview Student B. While White was also present, Student B said, "I'm sorry, I was angry. My eyes were closed and I was just hitting people. I didn't even realize who I was hitting." [REDACTED]

[REDACTED]

Later, Student A spoke to White and apologized. She indicated that the incident was her fault as she admittedly pulled Student B's hair.

During his interview, Employee A was asked if he was under any stress lately. He stated “no,” and that he had a normal preceding night and morning. However, I discovered [REDACTED] returning to the campus on August 30, 2021, the day before the incident.

Employee A returned to work on September 1, 2021. That morning, a student walked up to O.E. and showed him a meme of Employee A kneeling on Student B’s neck. Employee A observed this interaction and it made him uncomfortable. He then walked into the office and spoke with White, whom he asked if he could leave campus for the day. White obliged and sent him home.

At 5:47 p.m. on September 1, 2021, Laura Whitaker, Director of Human Resources, sent an email to Employee A informing him that he was on administrative leave. At 7:51 p.m., Kristen Wurtz, Administrative Assistant to Principal Froumis, emailed Employee A: “Just wanted to check in. Hope you’re feeling okay. Let me know if there’s anything I can do for you.”

At 9:37 p.m., Principal Froumis sent a school-wide email regarding the recent events. It was compassionate and sympathetic and offered assistance to students that needed to talk.

[REDACTED]

B. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
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	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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C. [REDACTED]

<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>

II. **ADMINISTRATIVE REGULATION 5131.41 - USE OF SECLUSION AND RESTRAINT**

Employee A violated AR 5131.41. As is relevant, AR 5131.41 reads:

“District staff shall enforce standards of appropriate student conduct in order to provide a safe and secure environment for students and staff on campus, but are prohibited from using seclusion and behavioral restraint to control student behavior except to the limited extent authorized by law.

Behavioral restraint includes mechanical restraint or physical restraint used as an intervention when a student presents an immediate danger to self or to others.

Physical restraint means a personal restriction that immobilizes or reduces the ability of a student to move the torso, arms, legs, or head freely. Physical restraint does not include ...the use of force by peace officers or security personnel for detention or for public safety purposes. (Education Code 49005.1)

Prone restraint means the application of a behavioral restraint on a student in a facedown position. (Education Code 49005.1)

In addition, staff shall not take any of the following actions: (Education Code 49005.2, 49005.8)...

3. Use a physical restraint technique that obstructs a student's respiratory airway or impairs a student's breathing or respiratory capacity, including a technique in which a staff member places pressure on the student's back or places his/her body weight against the student's torso or back
4. Use a behavioral restraint technique that restricts breathing, including, but not limited to, the use of a pillow, blanket, carpet, mat, or other item to cover a student's face
5. Place a student in a facedown position with the student's hands held or restrained behind the student's back
6. Use a behavioral restraint for longer than is necessary to contain the behavior that poses a clear and present danger of serious physical harm to the student or others

Seclusion or behavioral restraint may be used only to control student behavior that poses a clear and present danger of serious physical harm to the student or others, which cannot be prevented by a response that is less restrictive.

If a student is restrained, staff shall afford the student the least restrictive alternative and the maximum freedom of movement, and shall use the least number of restraint points, while ensuring the physical safety of the student and others. (Education Code 49005.8)

If a prone restraint technique is used on a student, a staff member shall observe the student for any signs of physical distress throughout the use of the restraint. Whenever possible, the staff member monitoring the student shall not be involved in restraining the student. (Education Code 49005.8).”

As a matter of interpretation, AR 5131.41 is not applicable to Employee A’s actions because he is security personnel. The definition and prohibition on physical restraints explicitly does not apply to actions by security personnel. However, Director of Student Support Services Mary Nishikawa has made AR 5131.41 applicable to campus supervisors by and through the District’s training and guidance to its campus supervisors. Without this implementation, campus supervisors would have carte blanche to respond to student altercations how they see fit with little oversight or ramification from a District policy perspective.

During the initial scuffle with Student B at approximately 11:44:55, while she was positioned on her right side on the ground, Employee A pushed and held his right forearm on the left side of Student B’s face, which caused the right side of her face to be smushed against the ground. Employee A held this position for approximately 12 seconds. A student can be heard stating “I can’t breathe.”

Employee A’s action in this regard was a physical restraint. In addition, this physical restraint 1) obstructed and impaired Student B’s respiratory airway, 2) restricted breathing as Employee A’s forearm covered Student B’s face, and 3) bordered on a prone restraint – Student B’s face was sideways, not completely facedown.

During the second scuffle, at approximately 11:46:44, which started after Student B was let up, Employee A, O.E., K.S., and P.S. all grabbed Student B, in a lifted hogtie position, after Student B thrust her shoulder into O.E. and kicked K.S. The four adult men then placed Student B onto the ground, at which time Employee A placed his left knee on the right side of Student B’s neck, pushing the left side of Student B’s face into the ground for approximately 4 seconds. The students observed Employee A’s actions, and quickly closed in, presumably in an effort to protect and stand up for their classmate.

Employee A’s action in this regard was a physical restraint. In addition, this physical restraint 1) obstructed and impaired Student B’s respiratory airway, 2) restricted breathing as Employee A’s forearm covered Student B’s face, 3) bordered on a prone restraint – Student B’s face was

sideways, not completely facedown, and 4) while Employee A's knee was on Student B's neck, both Employee A and O.E. were holding and pulling Student B's arms behind her.

Employee A indicates that it was not his intent to place his knee on Student B's neck, or to use his forearm to push Student B's head into the ground. First, AR 5131.41 and its predicate *Education Codes*, provides no exception for intent. Indeed, the regulation and law appear to be strict liability.

Second, Employee A used inappropriate force on two separate occasions. The first at 11:44:55 when he pushed his forearm into Student B's face for 10 seconds, and the second being when Employee A placed his knee on Student B's neck. The fact that the inappropriate restraint was used twice suggests either intent, recklessness, and/or a lack of training. As will be discussed below, Employee A's training was in fact deficient in that it did not prepare him to handle this situation. The lack of training is a mitigating factor.

Director of Student Support Services Mary Nishikawa oversees the campus supervisors and prepared their training. In reviewing videos of the incident with Nishikawa, she agreed that Employee A violated AR 5131.41 as stated. Nishikawa also believes that Employee A's initial solo interaction wherein he aggressively slammed Student B backward and into the ground was more reasonable given the fact that he was alone. However, once additional employees arrived, the level of force used by Employee A was not as necessary as when he made initial contact with the two girls.

Subdivision (6), regarding the length of time that a physical restraint is necessary, is subjective. Each of the employees involved had a good faith belief that their actions were justified. In addition, Employee A expressed concern that Student B would flee and seek to continue her fight with Student A. Employee A had observed the girls striking each other in the head and he was concerned. Student A had been removed from the area, but Employee A was not contemporaneously aware of this given his complete focus on the belligerent Student B and the riotous crowd.

For these same reasons, Employee A had a good faith belief that Student B remained a clear and present danger to Student A and the encroaching crowd of students. Indeed, once Employee A allowed Student B freedom of movement, she immediately assaulted Employee A and O.E., culminating in Employee A placing his knee on Student B's neck. As indicated, however, regardless of one's belief, AR 5131.41 prohibits the use of certain physical restraints, and one's subjective beliefs do not except AR 5131.41's prohibitions.

III. SUPERVISOR TRAINING

Senate Bill No. 390, signed October 2, 2019, requires campus supervisors, by and through *Education Code* §38001.5 and *Business & Professions Code* §7583.45, to complete "the latest course of training developed by the Bureau of Security and Investigative Services of the

Department of Consumer Affairs.” As indicated, Employee A received training February - March 2021.

A. Training on breaking up fights

The District’s training presentation consists of 350 Power Point slides and was quite thorough. However, the training lacked specific examples on how to break-up fights. The training did provide lessons on escalation versus de-escalation, and there was one test question regarding the initial response to a hypothetical fight. Here are two relevant test questions:

<p>You are assigned to monitor the cafeteria. Two students start fighting each other in the food line. What is your best tactic?</p> <ul style="list-style-type: none">a. Immediately call for assistance and attempt to break up the fight with voice commandsb. Summon the assistance of two students to help you break up the fightc. Get a good description of the students and call policed. Summon the help of other Campus Supervisors to break up the fight, so you will not have to leave your post	<p>A Campus Supervisor can mediate conflict by:</p> <p>maintaining personal space; mitigating their body language; lowering the volume of their voice and slowing down their speech.</p> <ul style="list-style-type: none">a. Trueb. False
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Despite being comprehensive, the training should include real-world examples on how to appropriately respond to student fights. This should also include training on defensive techniques. O.E. indicated that he received such training in 2017. Employee A received no such training.

The other issue is that there is a history of hiring retired law enforcement personnel to be campus supervisors. However, there were no slides regarding the different environments, school versus law enforcement, and no slides instructing former law enforcement how to adjust to their new roles. Nishikawa indicates that this topic was discussed orally.

Employee A indicated that he relied on his training from his time as a Sheriff Deputy and Coast Guard in handling the subject incident. This instinctual response was reasonable given that he was not provided specific training to transition him into his role as a campus supervisor, at least in terms of making physical contact with students. This lack of training mitigates Employee A’s actions during the incident.

It is also unclear if the latest course of training developed by the Bureau of Security and Investigative Services of the Department of Consumer Affairs was used and/or incorporated into the District's training presentation.

P.S. has not been trained. His continued active employment may violate SB390. He must be immediately trained.

B. Report Writing

Slide 216 of the SB 390 training teaches campus supervisors to prepare reports that contain all facts, are accurate, and concise. Employee A's statement regarding the incident violates his training because he fails to mention that his knee was on Student B's neck. P.S. and O.E. indicate that they did not see Employee A's knee on Student B's neck and their statements make no mention of the allegation. Given that Employee A is the subject of this investigation and was placed on leave, his report should have addressed the fact that his knee was on Student B's neck.

Employee A's statement reads, in pertinent part:

My duties at this time was to monitor the safety of students during lunch break (1130-1200) at the main cafeteria site located at the pool desk, which is outside of the main building. I was wearing black and white tennis shoes, black shorts, orange Valhalla staff polo shirt with "Campus Supervision" stitched to the left front, blue and white Valhalla baseball hat, and my department employee badge with nametag on a lanyard around my neck. Approximately 50 feet away from my location witnessed two female students standing face to face punching each other with open and closed hands to their face. Both students had been later identified as, student (A) [Student A] & student (B) [Student B]. After witnessing student (A) & student (B) punching each other I used my school issued handheld radio and broadcasted on channel "1" which is the schools primary channel, "I have two students fighting on the pool deck." A small group of student had already started to yell, "Fight" as I proceeded across the pool deck. Verbally yelled at both student (A) & student (B) to stop fighting and tried to get in between both of them to stop the mutual battery. Both student (A) & student (B) continued to use closed fists to strike each other in the face and head. I continued to give verbal command to stop fighting with negative results and I was being struck in the head by both students.

I feared that both students (A) and (B) continued to punch each other in the face and head someone would sustain a serious injury. I used both my hands on the back shoulder blades and pushed both Students (A) & (B) to the ground and continued to advise them to stop fighting. Once on the ground a Marine Recruiter (unknown name) that was also at the pool deck came and asked if he could help. I replied, "Yes", because at that point I was getting struck in the right side of my head from Student (B) and possibly kicked in the head by Student (A) as the Marine pulled Student (A) away.

Student (B) was yelling, "let me the fuck go" and was looking right at me and could see I was school staff and not another student or Student (A). Student (B) was on her back and I was trying to control her arms as she had a hold of student (A) hair. As student (A) was being pulled away by the Marine, student (B) used her left leg and with an upward motion kicked me in the upper body. I used my body weight and open hands and lunged forward to close the gap between me and student (B). I felt for my safety if I could close the gap between me and student (B) her punches would have less chance of connecting with my face and head. Student (B) used both hands with a closed fist and continues to swing at my head. With open hands I attempted to gain control of student (B) hands multiple times.

Once other staff member's showed up I was able to control student (B) from her assaultive behavior.

I kept student (B) on her side so she could breath and start to relax. Student (B) continued to try and force her way up off the ground and refused to follow verbal commands from me and other staff members. I knelt down next to her with my weight on the balls of my feet and my knee near her should blade. At no point was their any body weight place on student (B) back or should from this position.

School resource Officer (SRO) K.S. arrived and attempted to hand cuff student (B) but was resisting verbal commands and would not comply with his commands. I witnessed student (B) kick. Deputy K.S. was able to handcuff student (B). Deputy K.S. had to call for more deputies to respond to Valhalla High School due the large number of students surrounding student (B) and other Valhalla staff.

Once the situation was contained and student (B) was place under arrest for Assaulting School Staff and Resisting Arrest I was evaluated by San Miguel Fire Department. I sustained contusions to my left knee, right knee, left elbow, and soreness to my head and neck. I estimate that I was struck by student (B) 5 to 6 times tin the upper body, arms, head and face and kicked in the upper body once by Student (B)."

Employee A initially prepared his report on August 31st after the incident on a desktop computer on campus. He returned to campus on September 1st and was shown memes of his knee on Student B's neck. Exh. 8. He left before lunch. Later, he asked O.E. to submit his statement, which O.E. did on September 2nd.

At no point has Employee A revised or added to his report to address the allegation that his knee was on Student B's neck. This is glaring given the fact that he specifically addressed whether or not he was on Student B's shoulder:

"I knelt down next to her with my weight on the balls of my feet and my knee near her should blade. At no point was their [sic] any body weight place[sic] on student (B) back or should[sic] from this position."

C. De-Escalation Training

Slide 246:

Escalation vs. De-Escalation

De-escalation is the use of strategies and/or techniques to gain voluntary compliance from an individual in order to gain or maintain control of an incident, while attempting to establish effective communication.

Your actions can escalate or de-escalate a crisis based on:

- Demeanor
- Voice
- Body language

Slide 252:

Respect Personal Space

Be aware of your proximity to the other person. Allowing personal space shows respect. Maintaining personal space keeps you safer and tends to decrease a person's anxiety.

If you must enter someone's personal space to provide care, explain what you're doing so the person feels less confused and frightened.

Slide 254:

Keep Your Emotional Brain in:

- Remain calm, rational, and professional
- While you can't control the other person's behavior, your response to their behavior will have a direct effect on whether the situation escalates or defuses.
- Positive thoughts like "I can handle this" and "I know what to do" will help you maintain your own rationality and calm the person down

At some point during the incident, but before Employee A placed his knee on Student B's neck, he stated, "I am going to press charges." This comment, if heard by Student B, could have escalated tensions.

After Employee A and O.E. initially was able to calm Student B, evidenced by her sitting on the ground, both continued to hover over, and in the personal space of, Student B. As indicated in

the training, “Allowing personal space shows respect. Maintaining personal space keeps you safer and tends to decrease a person’s anxiety.”

In addition to not following the training, it turns out that Student B suffered from emotional disturbance. The training focused on special needs students. Although Slide 252 does not specifically mention special needs students, it likely factored into its lesson consideration of vulnerable students and their potential reactions to limited personal space.

In addition, Employee A became upset when Student B kicked off his \$300 glasses and aggressively slammed her backwards into the ground. This act was contrary to the training provided in Slide 254.

D. Prior Incident – M ██████████ Campus Supervisor at Grossmont High School

On December 2, 2020, M ██████████ saw two students making out. The boy tried to run, and Mr. M ██████████ grabbed the boy’s hoodie and used a leg sweep to bring him to the ground. He also attempted to hold the student’s shoulders to keep him on the ground. The female grabbed the boy’s backpack and ran. The boy then tried to get up and run after her when M ██████████ physically forced the boy to a seated position. Again, the boy got up and started to run when M ██████████ chased him and grabbed his hoodie again, which caused the boy to come out of his sweatshirt which ended up being shirtless.

M ██████████ was not trained on restraining students and he did not attend CPI training, formerly known as Pro Act since he had been hired in May 2019.

Dr. Stanfill indicates that “no physical contact is [to be] made unless breaking up a fight.”

In a January 20, 2021 letter, Notice of Immediate Suspension without Pay, Recommendation to Dismiss in the Statement of Charges, authored by Director of Resources Randy Montessanto, two of the relevant causes of dismissal were Administrative Regulations 4218(1)(a), (e). His “conduct was grossly excessive given the situation.”

The letter indicates that on March 14, 2019, M ██████████ was verbally counseled after another incident where he laid hands on a student. **Assistant Principal, Donnie Carroll explained that he needed to take a softer approach as a Campus Supervisor than he did while he was in law enforcement.**

On December 19, 2019, M ██████████ injured a student while trying to break up a fight. Specifically, while moving toward the fight, he grabbed two students who were not involved in the fight, leaving visible bruises on one of the students’ arms. His actions were cited as “overly aggressive.”

M■■■■'s incident, which is similar to the subject incident, highlights the need for additional training for former law enforcement officers such as Employee A.

IV. RACE ISSUES

A. Employee A

As indicated, there have been parallels drawn between this and the George Floyd incident which have caused people to claim that Employee A acted in the manner that he did because of Student B's race. Other than the fact of their race, there is no evidence to suggest Employee A responded in the manner that he did due to race.

Assistant Principal Sandra White is an African-American female who attended Tuskegee, a historically black college located in Alabama. She appeared more in tune with racial issues than some of the other witnesses, including Froumis and Nishikawa.

For example, I asked Nishikawa about race relations at Valhalla and at the District. She responded by stating that her children attended Valhalla and thus she had more foundation than most to respond. Nishikawa indicated that there were no race issues that stood out to her.

I interviewed Froumis right after Nishikawa, and Froumis informed me of two incidents, discussed below. One included students dressing in blackface on Snapchat in August 2020, and another involves a student posting the n-word in reference to this incident, the picture inserted on page 1. Exh. 9. Nishikawa was involved in investigating the first incident, and provided guidance to Froumis on the second. Later, I discovered a third incident wherein student Z■■■■, also discussed below, was the subject of racial harassment on Instagram in March 2020. Nishikawa was also involved in investigating this incident.

Meanwhile, White recalled a number of instances of students using the "n-word" and at least two employees making racist comments. White also recalled a recent incident involving a parent. White was handling disciplining a student, and spoke to that student's parent. The parent arrived at the school and asked for White. After the parent saw White, the parent immediately asked to speak with the Principal instead. White believes that the parent's reaction was because White was African-American.

White does not believe that Employee A has racist tendencies. In fact, on September 1st, Employee A first saw a meme about the incident which made him sick. He wanted to leave work that day. He approached White and expressed his feelings, and asked for her permission for him to leave.

During his interview, Employee A repeatedly expressed concern for the well-being of the two girls, both of whom were African-American. His focus was on not allowing Student B to leave to attack Student A, as he had seen the girls exchange blows to the head.

Similarly, O.E. expressed that he loves the kids and would “take a bullet for any of them,” at which time he started crying.

It is more likely that Employee A’s actions were caused by an instinctual reliance on his law enforcement training and history. To be sure, Employee A had not previously intervened in a fight on campus, so there is no comparison in that regard. One can look to the M [REDACTED] situation to see the parallels – both are former law enforcement and both acted aggressively in breaking up a fight.

B. Required report on the use of physical restraints

AR 5131.41 tracks AB 2657, which enacted *Education Code* §§ 49005, *et. seq.* As the preamble to this law, Section 49005 reads, in pertinent part:

“The Legislature finds and declares all of the following:

(a) While it is appropriate to intervene in an emergency to prevent a pupil from imminent risk of serious physical self-harm or harm of others, restraint and seclusion are dangerous interventions, with certain known practices posing a great risk to child health and safety.

(f) Pupils with disabilities and pupils of color, especially African American boys, are disproportionately subject to restraint and seclusion.”

To keep track of the use of physical restraints, the Section 49006 requires annual reporting. This requirement is incorporated into AR 5131.41:

“Reports

The Superintendent or designee shall annually collect data on the number of times that seclusion, mechanical restraint, and physical restraint were used on students and the number of students subjected to such techniques. The data shall be disaggregated by race/ethnicity and gender, and reported for students with a Section 504 plan, students with an individualized education program, and all other students.

This report shall be submitted to the California Department of Education no later than three months after the end of each school year, and shall be available as a public record pursuant to Government Code 6250-6270.”

The District’s data for the 2019/2020 school year is publicly available on the California Department of Education website. The total number of reported physical restraints for that school year was 17. All 17 were students with disabilities; 12 were male. There was no number for females, so we can assume that it is 5.

There were no reported physical restraints for African-Americans. However, the data is incomplete. Specifically, although the 17 students were identified as students with disabilities, clearly these students have an ethnicity, which was not reported. Therefore, this report does not comply with the Administrative Regulations or the *Education Code*. Therefore, one cannot determine whether one race as opposed to another was subject to an excessive amount of physical restraints.

C. Other Incidents involving race

We received evidence of several incidents involving race. We highlight below in chronological order:

No.	Date	Incident
1.	December 11, 2019	<p>Handwritten statement from student [REDACTED] and typed statement from unknown student author. On December 11, 2019, employee P [REDACTED] said the “N” word in front of this student and other teachers’ assistants.</p> <p>A couple of weeks prior, she said that “Chaldeans are just a bunch of in-breeds” and she had used the term “boater” on different occasions to describe people. In addition, a friend told her that she was going to Iraq and P [REDACTED] responded in a disgusted tone. When parents leave voicemails with heavy accents, she does not try to understand them but delete the message and says, “I don’t have time for this.”</p> <p>One time, [REDACTED] P [REDACTED] asked the teacher’s assistant students why she cannot use the word “boater,” and they said that it is offensive. In response, she asked, “If you guys can say it, why can’t I?”</p> <p>On this particular day, the two students referred to each other as “boater,” and in a sense of irony, [REDACTED] P [REDACTED] told them “You can’t call someone a “boater”, it’s like calling a black person a “nigger.” This student is apparently Chaldean.</p> <p>P [REDACTED] was recognized by the PTO as Staff of the Month at some point later.</p>
		Mary Beth Kastan was the Principal at Valhalla until March 15, 2021. She had served as Principal for the preceding 13 years.

		<p>In reviewing the issue, there were two statements, one handwritten and one typed. She only recalled seeing the typed statement. The two statements were similar, but could have been submitted by two different students.</p> <p>As part of her response, she asked [REDACTED] P [REDACTED] if she had used the “n-word” or “boater.” [REDACTED] P [REDACTED] responded by stating, “that does not sound familiar.” Ms. Kastan then asked if she could recall a situation where she could have used such language, and she responded by saying no.</p> <p>The authors of the statements were Chaldean and were Teacher’s Assistants in that office. Ms. Kastan did not interview any of the TAs, as the author of the type-written statement did not affix his/her name to the report. In addition, Ms. Kastan’s office is in a different location, so she was not intimately familiar with the TAs. In other words, she could not interview all Chaldean TAs because she did not see the TAs on a daily basis. Further, the school’s system identifies middle-eastern students as “white,” so looking at student records would not have assisted her in her search for the author.</p>
2.	August 30, 2019	<p>Student W [REDACTED] reported that student Y [REDACTED] had called a few classmates “niggers.” Y [REDACTED] apparently found out that someone told on him and approached student A [REDACTED] and called her a “snitch.” To their credit, students were standing up for A [REDACTED] telling Y [REDACTED] that he should not be using the “N-word” in the first place.</p> <p><u>W [REDACTED] was one of the students in the August 2020 black face video, discussed below</u></p>
3.	September 20, 2019	<p>In response to several student complaints, Kastan investigated alleged racist language by teacher [REDACTED]. The following excerpt is from an October 7, 2019 Conference Summary:</p> <p>“You explained that you made comments about Chaldean culture. You said you had moved a disruptive student to the front of the classroom. When the disruption continued, you asked the student, “Don’t you want to graduate from high school?” You indicated the student said, “I don’t need to, I’m going to own a liquor store,” to which you responded, “This is not a negotiation. It’s not Chaldean culture.” The comment was directed at one student, but was heard by others.</p>

		<p>You indicated you heard an audible response from students after you made the comments. You noticed the student you directed the comment at had packed up his belongings early, and had “shut down.” You said you were worked up at the moment, and gave an angry apology. You also expressed concern that since the incident on September 20, you have felt an undercurrent in the class and disruptive behavior has continued. You acknowledged the comments were wrong and “knew there were going to be phone calls.” You expressed embarrassment and apologized for your behavior.”</p>
4.	September 27, 2019	<p>Statement from student [REDACTED]. He and a friend J [REDACTED] were joking when a Caucasian student approached them and said, “You’re a stupid ass black kid and we’re going to rule the world over your race.”</p> <p>S [REDACTED] admitted to making this statement but claims that it was a joke. He promised to not make this statement again.</p>
5.	October 7, 2019	<p>Statement from student Z [REDACTED]. Student [REDACTED] F [REDACTED] approached Z [REDACTED] and her friends who were watching videos and made a comment. In response, Z [REDACTED] asked him “What?” F [REDACTED] responded, “Geez calm down, nigger.” She asked him to not say that and he said it to her several more times.</p> <p>Statement from W [REDACTED]. He corroborated Z [REDACTED] statement and indicated that the “N-word” was used 4-5 times before F [REDACTED] got in his mother’s car and left.</p> <p><u>Z [REDACTED]’s mother, [REDACTED], is a school employee. She filed an OCR complaint in March 2020 due to racial harassment of Z [REDACTED]</u></p>
6.	October 24, 2019	<p>Student J [REDACTED] indicates that was walking in the hallway and he accidentally bumped into a student who in turn called him a “nigga.”</p>
7.	February 14, 2020	<p>Statement from J [REDACTED]. During passing period, a student named [REDACTED] B [REDACTED] called him the “N-word” and punched him in the back of his head.</p> <p>[REDACTED] B [REDACTED] claims that J [REDACTED] ran up to him and said, “Watch out, nigger.” In response, B [REDACTED] hit J [REDACTED] in the back of the head.</p>
8.	March 6, 2020	<p>Statement from student J [REDACTED]. While in theater class, student N [REDACTED] approached J [REDACTED] who apparently had talked rudely to a female. In response, J [REDACTED] told N [REDACTED] “Mind your own business, nigga.” N [REDACTED] in response said, “Shut up, nigga.” They then had a physical altercation.</p>

9.	March 13, 2020	<p>Complaint by Valhalla High Employee [REDACTED]:</p> <p>In or around March 2020, Z [REDACTED] received numerous direct messages to her Instagram account in a group chat entitled "Fuck Ugly Bitches." The direct messages came from three different Instagram accounts. The Instagram users sent messages to Z [REDACTED] calling her "slave," "gorilla," and "nasty ass bitch," as well as using the "n" word in at least one message. The Instagram users also directed Z [REDACTED] to "kys," which appears to mean kill yourself and stated, "we have a gas chamber just for you". Employee alleged that the Instagram accounts belonged to the two Valhalla High School students with whom Z [REDACTED] had previous negative interactions.</p> <p>Specifically, Z [REDACTED] reported two students who set a doll on fire in October 2019 and another incident in January 2020, when Z [REDACTED] engaged in a verbal altercation with the same students.</p> <p>Although acknowledging the incident was vile and racist, the investigation did not yield sufficient evidence to connect the Instagram posts to any District student.</p> <p>During the pendency of the investigation, Employee disenrolled Z [REDACTED] from the District [REDACTED].</p>
10.	June 18, 2020	<p>Community Letter from Principal Kastan:</p> <p>The past several months have been difficult, stressful, and exhausting. I don't have to tell you that. You've all experienced it firsthand. We had hoped that maybe, just maybe, some of the difficulties, stress and exhaustion of learning to live through a pandemic would dissipate as the school year officially came to a close when we celebrated the Class of 2020 at our first ever graduation parade and diploma pick up. And just as that celebration came to a close, we were reminded of the biases, inequities, and social injustices that still exist today as we saw demonstration after demonstration in our community, country and the world competing for air time with the updates of the COVID-19 pandemic.</p> <p>Our students are hurting. They are hurting because of the images they see and the words of hate they hear. Those images and words are so inconsistent with what our students may have known and felt in their hearts to be what is right and just. More than ever, it is</p>

		<p>difficult to be separated from our students. We want to reassure them that they are valued and respected for who they are, despite what they may see and hear in social media posts or other sources of information. The greatest strength of the Orange Nation is its diversity. We know we haven't reached perfection yet, and as a school community, we need to continue working toward that ideal. The San Diego County Office of Education provides us with a wealth of resources as we do.</p>
11.	August 2020	<p>Reported by E.D.</p> <p>Two girls, one of whom was "W" from the August 30, 2019 incident, posted a Twitter video which appear to be black face. The video is to a rap song and it starts off by saying "Big booty bitches." One girl has on heavy dark makeup whereas the other girl's face appears to be pale. The hashtags and comments are not explicitly or even implicitly racist. Parents state that the girls were being zombies. The girls are hopping back and forth in the video. Even if they were trying to be zombies the black face makeup would be inappropriate. Zombies are typically pale because they are dead so it is unclear why the Caucasian girl would put black makeup on her face to be a zombie.</p> <p>Kastan and Nishikawa spoke with the parents who were not receptive to the fact that wearing black face is offensive. However, the students, one of whom is W [REDACTED] from the August 13, 2019 incident, seemed to understand the issue.</p>
12.	August 17, 2020	<p>Thor's Report by Principal Kastan:</p> <p>Social Media and Cyberbullying</p> <p>With students on technology every day, there is opportunity to easily share and post things that are inappropriate, unkind or unsafe. Many teenagers are impulsive and quick to do or say things without thought of how their actions will be seen or perceived. We want to remind all students to think before you act. Think before you respond. And if you have to think about it for more than a few seconds, it might be wise not to continue. Teenagers may be impulsive sometimes, but they are also smart enough to stop and think first. If you are still unsure, seek guidance from those that may have experiences. Everyone has made mistakes in their lives that they can help share and educate others to keep them from making a similar mistake. For more information, CLICK HERE to visit guidance from SDCOE on the topic.</p>

13.	February 23, 2021	<p>Statement from student M [REDACTED] I [REDACTED] spit in D [REDACTED]'s face and called D [REDACTED] the "N-word." This resulted in a fight between the two boys.</p> <p>Statement from A [REDACTED] corroborated witnessing the fight between D [REDACTED] and I [REDACTED]. Also heard I [REDACTED] call D [REDACTED] the "N-word."</p>
14.	August 23, 2021	<p>Statement from student D [REDACTED] This statement vaguely states that as he was walking, a student called him the "N" word. In response, he said, "Excuse me?" and then the student called him "fat."</p> <p>Student D [REDACTED] indicates that he was at P.E. and one of his friends said the "N" word. A girl behind him started getting angry and threatened him and there was a verbal altercation.</p>
15.	September 7, 2021	<p>Complaint from student E.D.</p> <p>[REDACTED]</p> <p>She submitted a complaint regarding student J [REDACTED]. J [REDACTED] posted a comment on a YouTube video regarding the incident stating:</p> <p>"Maybe if these niggas could behave he wouldn't have to George Floyd her." (Exhibit 9)</p> <p>She indicates that there were several statements regarding race and bigotry at school as a result of the subject incident. She sounded quite exasperated.</p> <p>First thing in the morning on September 8, 2021 Principal Froumis responded to E [REDACTED] expressing her concerns about the incident. She then again followed up on September 16, 2021 indicating that the student would be disciplined. The student, J [REDACTED] was required to attend Mending Matters.</p> <p>In addition, Ms. Froumis put together a student message of which we received a draft. To highlight the student message:</p> <p>"Sadly, hateful/racist images have been shared on social media recently. This has never been, and never will be okay. As human beings, we all experience pain. And it is never okay to</p>

		<p>cheer, laugh, post about, or like someone else's pain."</p> <p>In addition, Principal Froumis indicated in her response to E.D. that she spoke to Associate Superintendent Mary Kastan regarding the need for staff and student training.</p>
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D. Demographics

African-Americans comprise 2.27% of the student population at Valhalla whereas they comprise 5.45% of the total District population. African-Americans make up 4% of certificated staff District-wide, a number consistent with the ratio of the student population. At Valhalla, there are three African-American certificated staff, or 2.8% which reflects the student population at Valhalla.

V. OPINIONS/CONCLUSIONS

1. Employee A violated AR 5131.41

As indicated, during the initial scuffle with Student B at approximately 11:44:55, while she was positioned on her right side on the ground, Employee A pushed and held his right forearm on the left side of Student B's face, which caused the right side of her face to be smushed against the ground. Employee A held this position for approximately 12 seconds. A student can be heard stating "I can't breathe."

Employee A's action in this regard constituted a physical restraint. In addition, this physical restraint 1) obstructed and impaired Student B's respiratory airway, 2) restricted breathing as Employee A's forearm covered Student B's face, and 3) bordered on a prone restraint – Student B's face was sideways, not completely facedown.

During the second scuffle, at approximately 11:46:44, which started after Student B was let up, Employee A, O.E., K.S., and P.S. all grabbed Student B, in a lifted hogtie position, after Student B thrust her shoulder into O.E. and kicked K.S. The four adult men then placed Student B onto the ground, at which time Employee A placed his left knee on the right side of Student B's neck, pushing the left side of Student B's face into the ground for approximately 4 seconds. The students observed Employee A's actions, and quickly closed in, presumably in an effort to protect and stand up for their classmate.

Employee A's actions constitute an inappropriate physical restraint because he 1) obstructed and impaired Student B's respiratory airway, 2) restricted Student B's breathing, 3) bordered on a

prone restraint – Student B’s face was sideways, not completely facedown, and 4) while Employee A’s knee was on Student B’s neck, both Employee A and O.E. were holding and pulling Student B’s arms behind her.

2. The employees’ response appears to be excessive

Student B is a 14-year-old girl, yet there are 4 men, one of whom is almost 7 feet, holding her down, and at one point holding her in an elevated hogtie position. To be sure, the students themselves immediately perceived the excessiveness of the employees’ actions which is why they immediately closed in on the altercation presumably to protect their classmate from further harm. Once they closed in, Employee A moved his knee from Student B’s neck.

In addition to the listed violations, Employee A aggressively slammed Student B backwards and into the ground as a response to his anger from Student B knocking his \$300 glasses off his head.

3. There is no evidence to conclude that Employee A’s actions were motivated by race

There is no evidence to suggest that Employee A’s actions were motivated by race. Instead, he expressed a concern to protect Student A. Further, his actions were likely an instinctual reliance upon his former career as a Sheriff Deputy.

4. The incident was in part caused by lack of training

The SB390 training was quite thorough and comprehensive. Unfortunately, essentially the only thing that it was lacking was a contributing factor to the incident. Specifically, there should be additional training focused on applying principles to real-world examples. This should include defensive techniques, focused on responding to and breaking up fights.

Given that the District appears to frequently hire former law enforcement officers, these supervisors need training focused on leaving their former career behind in favor of appropriate responses on campus with minor children.

5. [REDACTED]

[REDACTED]

[REDACTED]

6. Slow response from Principal Froumis

After the initial radio call, it took Principal Froumis almost 8 minutes to arrive on scene. Meanwhile, in addition to dealing with the agitated Student B, the supervisors had to also consider and monitor the crowd, which was described as riotous, loud, and students were throwing objects.

To compound the slow response, two assistant principals were allowed to be absent on that same day.

Supervisors contend that the lockdown bell should have been rung. Froumis contends there was not enough time. It is unclear if another administrator had the authority to ring the bell. Either way, it is also speculative that the bell would have dispersed the crowd.

7. Employee A should be transferred and re-trained

I am a civil defense attorney who mostly represents school districts. I conduct investigations on a continuous basis as part of litigation, and thus am intimately familiar with the potential for liability relating to any potential future physical altercations which may involve Employee A.

With reference to established case law, the District has a duty to properly supervise its employees that it wishes to retain, such as Employee A, if the District has actual or constructive knowledge that the employee has the propensity to engage in conduct harmful to students. *C.A. v. William S. Hart Union High Sch. Dist.*, 53 Cal.4th 861 (2012); *Z.V. v. Cty. of Riverside*, 238 Cal.App.4th 889, 902 (2015).

The applicable Administrative Regulation regarding potential discipline is AR 4218. Subdivision (1) applies to potential discipline, as relevant:

Permanent classified employees shall be subject to personnel action (suspension without pay, demotion, reduction of pay, step in class, dismissal) only for cause.

1. Causes

a. Incompetency, inefficiency, inattention to or dereliction of duty; lack of ability or failure to perform assigned duties in an acceptable manner.

b. Insubordination, failure to obey reasonable directions or observe reasonable rules of District supervisors, willful or persistent violation of the Education Code.

Note that M [REDACTED]'s Notice of Termination relied upon 4218 (a) (1) (a), (b), & (e).

In addition, I reviewed the CSEA Agreement to determine its applicability to resolution of Employee A's employment status. This agreement does not contain a section on employee discipline. The agreement does not contain any procedures for progressive discipline, or grounds or guidance for a particular type of discipline. Instead, all the agreement contains is ARTICLE 5 - DISTRICT RIGHTS, which reads, in pertinent part:

“In addition, the District retains the right to hire, classify, transfer, assign, evaluate, promote, terminate, and discipline employees.

The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the District, the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and are expressly excluded from the provisions of Article 6, Grievances.”

Therefore, AR 4218 governs any potential discipline.

It is my recommendation that Employee A should be re-trained, assigned to a different school, and a Conference Summary should be placed in his personnel file. It is not my recommendation to terminate Employee A. Recall that Grossmont HS campus supervisor M [REDACTED] was terminated, but he had been disciplined for two prior similar incidents. In addition, Employee A's actions were in part due to a lack of training. I also note that the CSEA Agreement provides no guidance on when and under what circumstances a letter of reprimand can be placed in a personnel file.

Employee A must remain on leave until he receives additional training. The CSEA agreement does not address paid versus unpaid leave. Employee A has endured embarrassment, threats, fear, and ridicule – therefore, I do not recommend transferring his leave to unpaid status. As a point of speculation, transferring his leave to unpaid may cause him to quit – he is already a retired Sheriff Deputy, so his position as campus supervisor is likely only for benefits. It would be more beneficial and in the interests of justice to keep him employed and retrain him. The best way to do that is to keep him on paid leave status.

Employee A sees himself as the victim. He took lots of pictures of his injuries, which consisted of scrapes and abrasions which were sustained during his altercation with the student. He did not believe that he did anything wrong, and stated that he “did the best he could.” [REDACTED] [REDACTED] the SB 390 training taught supervisors expected reactions from immature students and holds supervisors to a higher standard. Social and emotional immaturity is to be expected from high school students, hence the need for supervisors to serve as “role models.” By portraying himself as the victim, it does not appear that he understands his superior standing on campus.

Accordingly, Employee A should again receive the SB 390 training, but focused on [REDACTED], and the superior role of the supervisor on campus.

In addition, Employee A should receive specific training on how to break up fights on campus as a supervisor, leaving his law enforcement training behind.

Further, Employee A failed to prepare an accurate report, and failed to prepare a supplemental statement regarding his placement of his knee on Student B's neck. He needs to be re-trained on this topic as well. This is especially true since District policy requires the immediate preparation of a General Behavior Report Form. It has been my experience that most lawsuits against school districts are filed by parents seeking to obtain reports, or to gain clarity on inaccurate reports.

8. P.S. must be trained

P.S. has not received any training in violation of SB 390. He should be placed on paid administrative leave pending training.

9. District's Seclusion and Restraint report for 2019-20 is not in compliance

Education Code § 49006 and AR 5131.41 together require that the District publish annual reports identifying the number of physical restraints used on its students. The reports must be disaggregated by race/ethnicity and gender.

The 2019-20 report provides no data by race. In addition, the report identifies 12 boys as being subject to restraints, but does not identify the number of girls as "5." Therefore, the 2019-20 report does not comply with the applicable statute or regulation. The 2021-22 report should be prepared in compliance with *Education Code* § 49006 and AR 5131.41.

10. Valhalla should have more robust cultural sensitivity training

Even with COVID-19 having closed Valhalla, there were 13 incidents involving race since August 2019, a high number. Assistant Principal White indicates that she hears the "n-word" every other day, a decline from once per day during the 2019-20 school year. E [REDACTED] D [REDACTED] sent an emotional email recently lamenting a hostile environment. Z [REDACTED] was disenrolled by her mother, who is currently school employee, due to racial harassment.

The District should take action not only because it is the right thing to do, but also to avoid litigation. Given the number of incidents detailed herein, coupled with the comments from Ms. White, a future plaintiff could allege a hostile environment of which the District has been aware, given that my recitation of facts came directly from student statements as opposed to mere hearsay.

Superintendent Kemper
In Re Grossmont UHSD
September 29, 2021
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In section IV (C) above, I highlighted a few excerpts regarding race contained in the weekly student newsletter. However, those responses from Valhalla in the weekly student newsletter were general and vague. I recommend more robust training, such as a short assembly. Principal Froumis has been advised by Nishikawa and Kastan to consult with SDCOE for resources on this topic.

Further, Valhalla uses Mending Matters to address students individually. However, it appears that simple opposition from parents causes the District to not follow through, and it is unclear if there is other punishment in lieu of Mending Matters.

Very truly yours,

McCUNE & HARBER, LLP



DOMINIC A. QUILLER

APPENDIX – EVIDENCE REVIEWED

I. NEWS REPORTS

A. VHS Incident News Roundup (as of 9/11/21)

1. [NBC 7](#) (9/2/21)
2. [ABC 10](#) (Krista Summerville, 9/2/21)
3. [NBC 7](#) (Rory Devine, 9/3/21)
4. [ABC 10](#) (Michael Chen, 9/3/21):
5. [ABC 10](#) (Sophia Hernandez, 9/3/21):
6. [Fox 5](#) (9/3/21)
7. [Fox 5](#) (Clara Benitez, 9/3/21):
8. [CBS 8](#) (Keristen Holmes, 9/3/21)
9. [SDUT](#) (Kristen Taketa, 9/3/21) – **Unable to access, subscription required.**
10. [Times of San Diego](#) (9/3/21)
11. [KPBS](#) (M.G. Perez video included, 9/3/21)
12. [East County Magazine](#) (Miriam Raftery, 9/4/21)
13. [KUSI](#) (9/4/21)
14. [KPBS](#) (9/6/21)
15. [ABC 10](#) (Mary McKenize, 9/7/21)
16. [McClatchy](#) (Vandana Ravikumar, 9/7/21)
17. [KPBS](#) (M.G. Perez, 9/7/21)
18. [Fox 5](#) (Misha DiBono, 9/7/21)
19. [KUSI](#) (9/9/21)
20. [Fox 5](#) (Dillon Davis, 9/9/21)
21. [ABC 10](#) (Krista Summerville, 9/9/21)
22. [SDUT](#) (Editorial, 9/9/21)
23. [San Diego Voice & Viewpoint](#) (K.H Hamilton Op-Ed, 9/9/21)
24. [NBC 7](#) (9/10/21)
25. [SDUT](#) (Kristen Taketa, 9/12/21)
26. [NoticiasYa](#) (Guillermo Mendez, 9/9/21, translated)

B. GUHSD Public Statements:

27. [Initial Statement from Superintendent](#) (Video statement linked in release, 9/2/21)
28. [Announcement of Independent Investigator](#) (Video statement linked in release, 9/9/21)

II. WRITTEN STATEMENTS

29. Statement from Employee A
30. Statement for O.E.
31. Statement from Student A
32. Statement from Student B
33. Statement from S.V.
34. August 23, 2021 statement of D [REDACTED]
35. August 23, 2021 statement of D [REDACTED]
36. October 24, 2019 student J [REDACTED]
37. August 30, 2019 student W [REDACTED]
38. September 20, 2019 from C [REDACTED]
39. September 27, 2019 statement from I [REDACTED]
40. September 27, 2019 statement from S [REDACTED]
41. October 7, 2019 statement from Z [REDACTED]
42. October 7, 2019 statement from W [REDACTED]
43. February 14, 2020 statement from J [REDACTED]
44. February 14, 2020 statement from J [REDACTED]
45. February 18, 2020 statement from K [REDACTED]
46. March 6, 2020 statement from student J [REDACTED]
47. February 23, 2021 statement from M [REDACTED]
48. February 23, 2021 statement from A [REDACTED]

III. INTERVIEWS

49. September 15, 2021 interview of Mary Nishikawa
50. September 15, 2021 interview of Brianne Froumis
51. September 15, 2021 interview of Sandra White
52. September 17, 2021 interview of S.V.
53. September 17, 2021 interview of Maria Wood
54. September 17, 2021 interview of Employee A
55. September 17, 2021 interview of O.E.
56. September 17, 2021 interview of P.S.
57. September 20, 2021 conference call with Mary Nishikawa
58. September 20, 2021 conference call with Sandra White
59. September 22, 2021 conference call with Mary Beth Kastan

IV. INTERVIEW ATTEMPTS OF STUDENTS A AND B

60. I was unable to interview Student A or B. [REDACTED]
[REDACTED]. I detail my efforts to communicate with both girls below.

[REDACTED]
A [REDACTED] is listed as a guardian. I spoke with her on September 14, 2021 at 11:00 a.m. Ms. A [REDACTED] referred me to Anne Ford to inquire about speaking with Student A and B. Ms. A [REDACTED] was out of town for the preceding two weeks and had no information about the incident.

At approximately 11:15 a.m. on September 14, 2021, I called Anne Ford and left a voicemail. I also sent a text message and email. Ms. Ford's name was mentioned in two news articles, identifying her as the guardian. She never called me back.

Instead, at 12:30 I received a phone call from Dr. K [REDACTED], [REDACTED]. He refused to provide assistance but indicated he would forward my information to the social worker.

I received an email on September 16, 2021 from Morgan D. Ross indicating that he represents "one of the girls," likely Student A, and that he would assist in potentially providing Student A for interview. I responded to the email that same day. I followed up on September 20, 2021. I never received a response from Ross.

At approximately 7:30 p.m. on September 16, 2021, I spoke with Ryan Shroads [REDACTED] [REDACTED]. He let me know that he would look into assisting me. On September 21st, he provided contact information for [REDACTED] [REDACTED] S [REDACTED] and [REDACTED] V [REDACTED]. I immediately called both.

V [REDACTED] returned my phone call, and then provided me the information for Kierre Coghill, Student B's lawyer. I called and emailed Ms. Coghill on September 21st. I never received a response to my inquiries.

Reverend Shane Harris spoke to several media outlets, and contacted the District, claiming that he was "retained" by the girls. However, I called and emailed Rev. Harris twice and never received a response.

V. VIDEOS/STILL IMAGES

61. 15 videos of the incident.
62. video of the August 2020 black face incident.
63. I reviewed several memes/image stills regarding the incident.
64. Screenshot of comments by J [REDACTED] on YouTube post

VI. LAW/REGULATIONS

65. Assembly Bill 2657 & *Education Code* § 49005, et. seq.
66. GUHSD AR 5131.41
67. Senate Bill No. 390, *Education Code* §38001.5 and *Business & Professions Code* §7583.45

VII. MISCELLANEOUS

68. Campus supervisor – Special Education Training
69. Final Campus Supervisor SB390 Exam
70. GUHSD SB390 Training (Final Version)
71. CSEA Agreement
72. Racial/ethnic demographics for GUHSD
73. [REDACTED]
74. [REDACTED]
75. December 11, 2020 Investigation file regarding Campus Supervisor M [REDACTED]
76. April 28, 2021 investigation of Campus Supervisor K [REDACTED]
77. Spring 2021 SP390 training sign-in sheets
78. Many emails from multiple District employees
79. Relevant emails with keyword input of Employee A email account
80. Relevant emails with keyword input of Froumis email account