



December 17, 2024

Board of Education
Culver City Unified School District
4034 Irving Place
Culver, CA 90232

Sent via U.S. Mail and Electronic Mail (boardmembers@ccusd.org)

Dear Board Members:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit that defends free speech, is concerned with how the Board of Culver City Unified School District (CCUSD) is censoring virtual attendees at public meetings if their video backgrounds contain critical imagery or text, or for other viewpoint-based reasons. Censoring criticism violates CCUSD's obligations under the First Amendment and California law, which bar public officials from restricting speech based on viewpoint. FIRE thus calls on the Board to cease its censorship and to revise its bylaws to prevent viewpoint discrimination.

Specifically, one of your constituents, Melissa Sanders, reported to FIRE that on at least two occasions the Board disabled her video capabilities or virtually removed her from meetings when her Zoom background showed a "TIME TO RESIGN" graphic that referenced two board members by name.¹ Sanders' first removal (or video disconnection) came without explanation right after she logged on; but in subsequent instances, the Board characterized her background as "intimidation" before removing her or disabling her ability to display it. The Board also reportedly cut off video capabilities of other attendees with similar Zoom displays, stating it would not tolerate "intimidating" backgrounds.

Although the incidents involving Sanders occurred on May 1 and May 9 of 2023, the hostility between the Board and members of the public who share Sanders' views have only escalated, resulting in other Board attempts to silence public criticism. For instance, several parents in the district, including Sanders, received cease-and-desist emails from Sonia Tandon, an attorney who represents New Earth, a vendor the district hired to serve at-risk students, whom Sanders and other parents believed the district overpaid.² The Board has also removed Sanders

¹ See time-stamped screenshots (enclosed). The narrative in this letter represents our understanding of the pertinent facts, but we appreciate you may have additional information and invite you to share it with us.

² This \$1.5M contract appears to be the underlying contention between the Board and the constituents it is censoring. The objecting parents believed the district was grossly overspending public funds for the contract,

from other meetings after she stated unflattering facts about the Board or countered claims that Board members made. The Board even cited and censored parents for “intimidation” when they wore red in solidarity with unions during negotiations. And the Board regularly threatens to remove attendees from meetings with the justification that the public is “intimidating” Board members, even when the offending attendees appear virtually.³

Yet CCUSD Board Bylaw 9323, incorporating state law, specifically prohibits the Board from censoring criticism and narrowly limits circumstances in which it may remove an individual from a public meeting:

6. The Board president may rule on the appropriateness of a topic, subject to the following conditions.

...

- b. The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code 54954.3)
 - c. The Board shall not prohibit public criticism of district employees. However, whenever a member of the public initiates specific complaints or charges against an individual employee, the Board president shall inform the complainant of the appropriate complaint procedure.
7. The Board president shall not permit actual disruption of Board meetings. Actual disruption by an individual or group or any conduct or statement that threaten the safety of any person(s) at the meeting shall be grounds for the president to terminate the privilege of addressing the Board and remove the individual from the meeting.

...

Disrupting means engaging in behavior during a Board meeting that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law, or engaging in behavior that constitutes use of force or a true threat of force. (Government Code 54957.95)

that New Earth was failing to perform its contractual duties, and that conflicts of interest existed between the Board and New Earth. The parents publicly advocated cancellation of the contract in meetings and on the internet, including through an online petition that garnered 181 signatures and appears here: <https://www.change.org/p/cancel-ccusd-s-new-earth-contract-immediately-in-light-of-the-misuse-of-measure-k-funding>. Notably, public records (enclosed) reveal that Tandon received the parents’ email addresses from Board members, and that Tandon is now ineligible to practice law. The State Bar of California, Attorney Profile: Sonia Tandon #239614, <https://apps.calbar.ca.gov/attorney/Licensee/Detail/239614>.

³ Board Members also reportedly asked law enforcement to stop attendees from publicly handing out pamphlets advocating resignation of Board Members at a city-sponsored festival.

True threat of force means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat. (Government Code 54957.95)⁴

The removal of Sanders (and others) is thus not only constitutionally infirm, it does not even comport with the Board’s own rules.

I. The Board Violates Its Own Bylaws When It Censors Public Criticism

Pursuant to the bylaw, the Board had no grounds to remove Sanders from meetings or to turn off her Zoom video capabilities. Her Zoom background calling for certain board members to resign was protected “public criticism” under §§ 6(b) and (c), and that silent display of criticism does not constitute “intimidation” or any kind of threat or disruption.⁵ And regarding the extent to which other critical Zoom backgrounds or clothing colors were cited as intimidation” justifying removal from meetings (or that the Board solicited law enforcement to stop citizens from pamphleting at a city festival), those claims, if true, would indicate the Board is violating its bylaws in addition to the First Amendment, as discussed below.

II. The Board Engages in Unconstitutional Viewpoint Discrimination When It Censors Public Criticism

The Board unlawfully censored Sanders and others for criticizing and calling for resignations of Board members, in violation of the First Amendment’s bar against viewpoint discrimination. Such action undermines the “free flow of ideas and opinions on matters of public interest and concern” at “the heart of the First Amendment.”⁶

A board of education meeting that allows public comment is, at a minimum, a limited public forum, where any restrictions on constituents’ speech must be viewpoint-neutral *and* reasonable in light of the forum’s purpose.⁷ The Board may, for example, limit the amount of time for

⁴ CULVER CITY UNIFIED SCHOOL DISTRICT, Board Bylaw 9323 (revised April 9, 2024), *available at* <https://www.ccusd.org/pdf/policies/9000%20-%20Board%20Bylaws/BB%209323%20Meeting%20Conduct.pdf> (emphasis added).

⁵ We note subsection 6(c) could be read to direct the Board to assist the public with lodging formal complaints against “district employees” or to encourage use of that officially designated channel rather than informal comments at Board meetings. However, to the extent 6(c) could be read to require, rather than encourage, use of formal channels, it would be unconstitutional viewpoint discrimination, for the reasons explained below. Regardless, the Board members lacked authority under the bylaw to remove or censor Sanders. At no point was she ever apprised her of the “appropriate complaint procedure” and the Board members are not “district employees.” See CULVER CITY UNIFIED SCHOOL DISTRICT, Board Bylaw 9250(a) (revised March 8, 2010), *available at* https://www.ccusd.org/pdf/policies/9000%20-%20Board%20Bylaws/9250%20BB%20Remuneration_%20Reimbursement_%20and%20Other%20Benefits.pdf (referring to Board members and school district employees as distinguishable parties: “Board members may participate in the health and welfare benefits program provided for district employees.”)

⁶ *Hustler Magazine, Inc. v. Falwell*, 485 U. S. 46, 50 (1988).

⁷ See *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995); *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Emp. Rels. Comm’n*, 429 U.S. 167, 174–76 (1976) (recognizing the public’s right to speak at school board meetings “when the board sits in public meetings to conduct public business and hear the views of citizens”).

each public comment. But it may not, among other things, restrict criticism of government officials or other speech based on viewpoint. As held by the U.S. Court of Appeals for the Ninth Circuit, whose decisions bind Culver City, viewpoint-based restrictions receive the most stringent First Amendment scrutiny and are “presumed impermissible when directed against speech otherwise within the forum’s limitations.”⁸ And forbidding criticism of Board members is clearly viewpoint discriminatory in favoring noncritical comments over critical ones.⁹

In fact, the bar for the type of speech that *must* be tolerated by the Board is significantly higher than calls for resignation. The Ninth Circuit has struck down as unconstitutional prohibitions on “personal, impertinent, profane, insolent, or slanderous remarks” at public meetings.¹⁰ If the Board cannot censor caustic criticism or profanity, it certainly cannot censor a Zoom background merely calling for public resignation.

In 2022, the city of Eastpointe, Michigan, faced a lawsuit when its mayor repeatedly shut down critical comments at city council meetings but had no issue with constituents praising her. That disregard of constitutional standards compelled the city to enter a consent decree that, among other concessions, prohibits enforcing a limitation on public comments “directed at” elected officials, requires it to allow members of the public to criticize elected officials, and required an apology to citizens whose rights the mayor violated.¹¹ The Board’s actions here expose it to similar jeopardy.

III. Zoom Backgrounds Calling for Public Resignation Do Not Amount to Disruption

The Board cannot justify its actions by claiming critical Zoom backgrounds or wearing colors in solidarity with unions are acts of “intimidation.” While the Board can proscribe conduct that actually disrupts a meeting or falls into a category of unprotected speech like true threats or incitement, it must adhere to those terms’ precise legal meanings.¹² Calls for resignation fit

⁸ *Faith Ctr. Church Evangelistic Ministries v. Glover*, 462 F.3d 1194, 1207 (9th Cir. 2006) (quoting *Rosenberger*, 515 U.S. at 829-830); see also *Bible Believers v. Wayne Cnty., Mich.*, 805 F.3d 228, 248 (6th Cir. 2015) (*en banc*) (viewpoint discrimination is “censorship in its purest form,” and government action “that discriminates among viewpoints threatens the continued vitality of free speech”) (cleaned up).

⁹ See *Iancu v. Brunetti*, 588 U.S. 388, 394 (2019); see also *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (First Amendment reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials”).

¹⁰ *Acosta v. City of Costa Mesa*, 718 F.3d 800, 813 (9th Cir. 2013); see also *Cohen v. California*, 403 U.S. 15, 26 (1971) (holding First Amendment protected right to wear jacket reading “Fuck the Draft” in courthouse; recognizing that emotion behind words “may often be the more important element of the overall message” compared to purely “cognitive content”).

¹¹ See *VICTORY: Michigan town declares Sept. 6 ‘First Amendment Day’ after FIRE sues its mayor for shouting down residents*, FIRE (Apr. 17, 2024), <https://www.thefire.org/news/victory-michigan-town-declares-sept-6-first-amendment-day-after-fire-sues-its-mayor-shouting-0>.

¹² A “true threat” is a statement through which “the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). True threats do not include speech which amounts to a joke or rhetorical hyperbole. See, e.g., *Watts v. United States*, 394 U.S. 705, 708 (1969) (Man’s statement, after being drafted to serve in the Vietnam War—“If they ever make me carry a rifle the first man I want to get in my sights is L. B. J.”—was rhetorical hyperbole protected by the First Amendment, not a true threat to kill the president.)

into no category of unprotected speech and face a lawful ban only to the extent they actually disrupt proceedings. The Board may not lawfully stretch the meaning of “intimidation” to include what it perceives to be harsh or disrespectful criticism.¹³

As the Ninth Circuit explained, “disturbing or impeding a meeting means actual disruption” – “a municipality cannot merely define disturbance in any way it chooses, e.g., it may not deem any violation of its rules of decorum to be a disturbance.”¹⁴ In *Kindt v. Santa Monica Rent Control Board*, the Ninth Circuit upheld a spectator’s ejection from a public meeting only because he was “disrupting the proceedings by yelling and trying to speak when it was not time for” public discussion.¹⁵ Here, the bylaw defines “disruption” clearly and consistently with Ninth Circuit precedent. Sanders did not shout, make threats, or talk out of turn. To the extent the Board has faced *actual* disruptions or threats, it can take targeted action to address those, but it must distinguish between unlawful conduct and constitutionally protected criticism.

IV. The Bylaws Grant the Board Unconstitutional Discretion to Adjust Public Comment Time Limits in a Viewpoint Discriminatory Manner

Bylaw 9323 contains a provision which can and has led to viewpoint discrimination:

5. . . . In general, individual speakers will be allowed three minutes to address the Board on each agenda or non-agenda item, and [the] Board will limit the total time for public input to 20 minutes for on agenda items, and 20 Minutes for non-agenda items. However, in exceptional circumstances when necessary to ensure full opportunity for public input, the Board president may, with Board consent, adjust the amount of time allowed for public input and/or the time allotted for each speaker. Any such adjustment shall be done equitably so as to allow a diversity of viewpoints. The president may also ask members of the public with the same viewpoint to select a few individuals to address the Board on behalf of that viewpoint.¹⁶

Despite the bylaw’s stated intention of “equitable” application, giving the Board discretion over adjusting speakers’ time presents constitutional concerns because it “allows arbitrary application” with “the potential for becoming a means of suppressing a particular point of view” in violation of the First Amendment.¹⁷ The Board has already abused this discretion.

During its May 14 meeting, President Kelly Kent, upon realizing there were more speakers than time permitted, asked all speakers to indicate if they were there to speak on a widely circulated

¹³ See *Matal v. Tam*, 582 U.S. 218, 243 (2017).

¹⁴ *Acosta*, 718 F.3d at 811 (cleaned up); see also *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990) (speakers can be removed from city council meeting only when their speech “disrupts, disturbs, or otherwise impedes the orderly conduct of the Council meeting”).

¹⁵ 67 F.3d 266, 271 (9th Cir. 1995).

¹⁶ CULVER CITY UNIFIED SCHOOL DISTRICT, Board Bylaw 9323 (revised April 9, 2024), *available at* <https://www.ccusd.org/pdf/policies/9000%20-%20Board%20Bylaws/BB%209323%20Meeting%20Conduct.pdf>.

¹⁷ *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992).

petition critical of Kent.¹⁸ Kent reasoned that because it was not “clear” that the petition was “student-facing,” allowing comments from all speakers seeking to address it would disrupt the meeting’s flow. Nevertheless, the Board permitted all other commenters to speak by default and did not vet their intended comments to see if they were “student-facing.” In fact, two of those speakers addressed the district’s budget deficit, despite it being unclear how that is any more “student-facing” than parents expressing their concerns about a Board member. Kent’s decision thus had the effect of discriminating against her critics, and led to an arbitrary result.

The Board should amend the bylaw to narrow this discretion and establish viewpoint-neutral, “objective, workable standards.”¹⁹ For instance, the Board could have a first-come-first-serve policy that eliminates any potential viewpoint bias. But explicitly authorizing the Board to prioritize or deprioritize speakers based on their views violates the First Amendment’s bar on viewpoint discrimination.

V. Conclusion

FIRE calls on the Board to refrain from censoring or removing attendees from public meetings unless actual disruption occurs and to amend its bylaws to avoid viewpoint discrimination. FIRE frequently collaborates with elected officials to amend their regulations and ensure First Amendment compliance in their enforcement. We would be pleased to work with CCUSD, free of charge, to ensure its bylaws and enforcement likewise comply with the First Amendment.

We respectfully request a substantive response to this letter no later than January 3, 2025.

Sincerely,

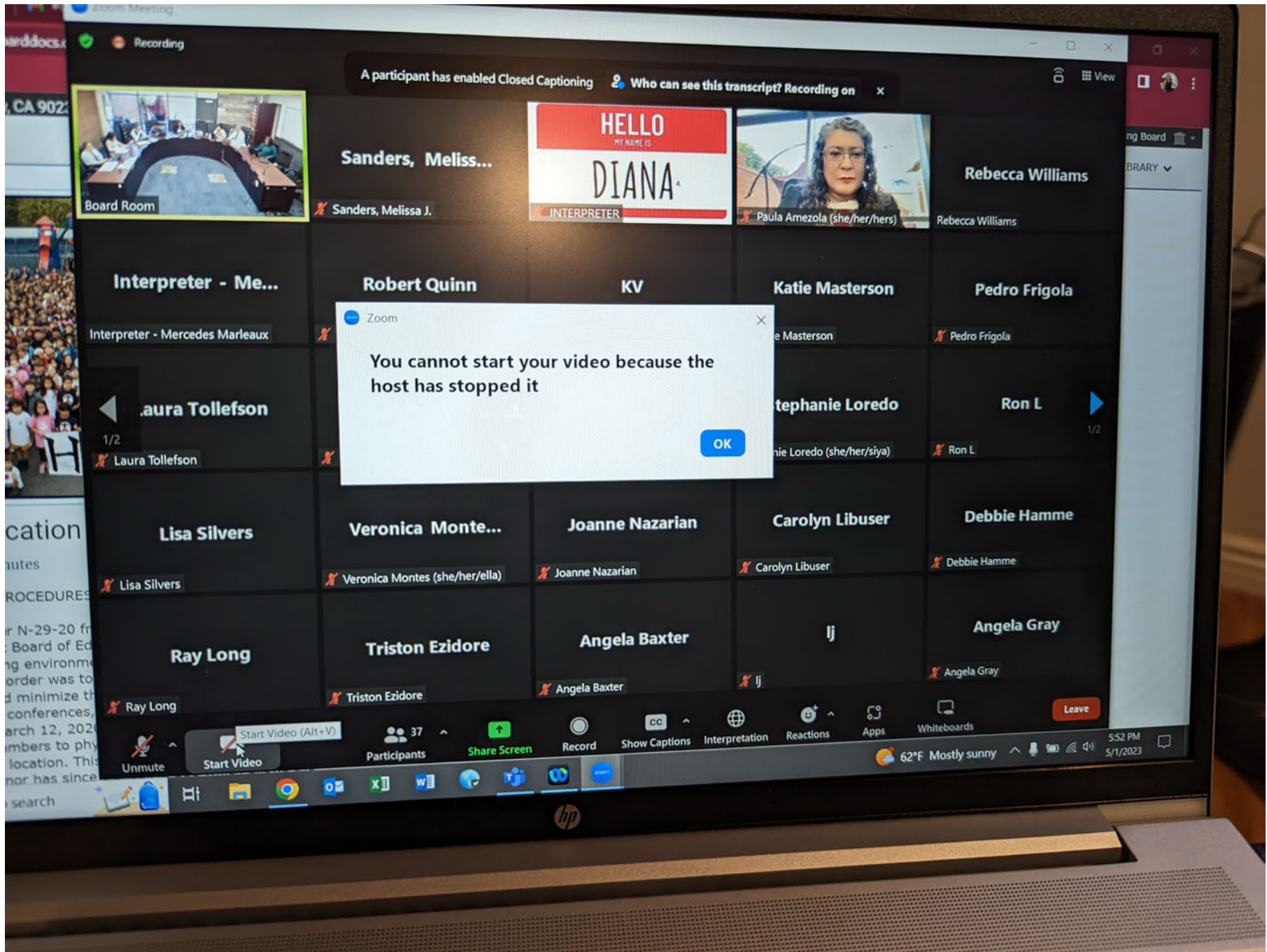


Stephanie Jablonsky, Esq.
Senior Program Officer, Public Advocacy

Encl.

¹⁸ Culver City Unified School District, *Regular Board Meeting 05-14-24*, at 27:40, https://www.ccusd.org/apps/pages/index.jsp?uREC_ID=42334&type=d&pREC_ID=video&showMore=1&titleREC_ID=373504. The petition garnered over 3,000 signatures and called on Kent to face accountability for “sharing antisemitic content” and blocking critical comments on social media. Change.org, *Demand Culver City School Leadership Be Accountable for Antisemitic Actions*, available at <https://www.change.org/p/demand-culver-city-school-leadership-be-accountable-for-antisemitic-actions>.

¹⁹ See *Minn. Voters All. v. Mansky*, 585 U.S. 1, 4 (2018).



A participant has enabled Closed Captioning Who can see this transcript? Recording on



Sanders, Meliss...



Rebecca Williams

Interpreter - Me...

Robert Quinn

KV

Katie Masterson

Pedro Frigola

Interpreter - Mercedes Marleaux

Zoom
You cannot start your video because the host has stopped it
OK

Laura Tollefson

Stephanie Loreda

Ron L

Laura Tollefson

Stephanie Loreda (she/her/siya)

Ron L

Lisa Silvers

Veronica Monte...

Joanne Nazarian

Carolyn Libuser

Debbie Hamme

Lisa Silvers

Veronica Montes (she/her/ella)

Joanne Nazarian

Carolyn Libuser

Debbie Hamme

Ray Long

Triston Ezidore

Angela Baxter

lj

Angela Gray

Ray Long

Triston Ezidore

Angela Baxter

lj

Angela Gray

Unmute Start Video (Alt+V) Start Video Participants 37 Share Screen Record Show Captions Interpretation Reactions Apps Whiteboards Leave

62°F Mostly sunny 5:52 PM 5/1/2023

Sanders, Meliss...

Sanders, Melissa J.

Podium_camera room

Maria Elena Alv...

Maria Elena Alvarez

Rebecca Williams

Rebecca Williams

Melissa's iPhone

Melissa's iPhone

Co-Host has stopped your video

Heidi Eberle (she/her)

Maria Elena Alv...



RESIGN
CCUSD Board Member
KELLY KENT
Sanders, Melissa J.



Rebecca Williams Maria Elena Alv... Heidi Eberle (sh... Paula Amezola (...
Rebecca Williams Maria Elena Alvarez Heidi Eberle (she/he) Paula Amezola (she/he...

Recording

PAULA AMEZOLA
BOARD MEMBER

Boardroom



62°F Mostly cloudy 6:24 PM 5/9/2023



TIME TO RESIGN

CCUSD BOARD MEMBERS

KELLY KENT

PAULA AMEZOLA

HAVE FAILED OUR SCHOOLS!



SAVE
CCUSD

On Wed, Apr 12, 2023 at 2:11 PM Yana Simone [REDACTED]@earthlife.org> wrote:

Thank you so much Paula, it was so great to meet with you too. I'll be talking to our attorney today as well. If you have a good marketing/PR person that you like, and trust please send them our way.

Also please take a look at this video we created as per the request of Admin to help share what we do at the school...

I'll be sharing it with them today as well.

[REDACTED]

Let's stay in touch!

Thanks,
Yana

<image001.png>

From: Amezola, Paula [REDACTED]@ccusd.org>

Date: Wednesday, April 12, 2023 at 1:57 PM

To: Yana Simone [REDACTED]@earthlife.org>

Subject: Media

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Yana,

It was a pleasure to meet with you today. Here are the links:

1. <https://www.culvercitynews.org/open-letter-to-school-board-president-paula-amezola/>
2. <https://culvercitycrossroads.com/2023/03/10/dear-editor-community-concerns-over-parcel-tax-funds-ccusd/>
3. <https://www.change.org/p/cancel-ccusd-s-new-earth-contract-immediately-in-light-of-the-misuse-of-measure-k-funding>

Best,

Paula Amezola, MPH
School Board President,
Board of Education Trustee
First Bilingual Latina Elected to the CCUSD School Board

[REDACTED]
Website: www.ccusd.org

Re: Confirming Emails

From: Yana Simone [REDACTED]@newearthlife.org>

To: Smith, Jennifer [REDACTED]@ccusd.org>

Mon, May 22, 2023 at 3:31 PM PDT (GMT-07:00)

Brian signed on to that letter and was behaving badly on social media

Get [Outlook for iOS](#)

From: Smith, Jennifer [REDACTED]@ccusd.org>

Sent: Monday, May 22, 2023 3:30:04 PM

To: Yana Simone [REDACTED]@newearthlife.org>

Subject: Re: Confirming Emails

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: Carolyn Libuser [REDACTED]

Cc: Bryan Sanders [REDACTED] Melissa Sanders

[REDACTED] Jay Antani [REDACTED]

This is what I have - don't know who Brian Saunders is?

LC is correct

MStucky is correct

That Melissa Sanders email is weird - probably send to both

On Mon, May 22, 2023 at 3:22 PM Yana Simone [REDACTED]@newearthlife.org> wrote:

Can you confirm that the emails we have are correct ..? This is the list that is getting an attorney letter today..

Lindsay Carlson's email: [REDACTED]

Melissa Stucky's email: [REDACTED]

Jay Antani [REDACTED]

Brian Saunders [REDACTED]

Melissa Sanders [REDACTED]

Carolyn Libuser [REDACTED]

Howard Adelman. [REDACTED]