Order prepared by the court

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

Dept. 301

ERIC GUSTAFSON,

Petitioner,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT and DR. MARIA SU, in her official capacity,

Defendants.

Case No. CPF-25-519159

ORDER GRANTING WRIT OF MANDATE AND STAYING WRIT

Petitioner's motion for writ of mandate is granted based on the court's conclusion that Petitioner was reassigned as journalism advisor solely for his protection of student journalists' expressive freedom.

Background and Governing Law

Pursuant to Code of Civil Procedure, § 1085, traditional mandate, petitioner Eric Gustafson seeks an order that: (1) reinstates him as the Journalism 1 and Journalism 2 teacher at Lowell High School; (2) reinstates him as the faculty advisor for the student news magazine, *The Lowell*; and (3) enjoins further violations of Education Code section 48907.

(Petition, 16:3-7.) Respondents are the San Francisco Unified School District and its superintendent, Dr. Maria Su, in her official capacity.[1]

Petitioner has been the Lowell High School journalism teacher, and the faculty advisor for *The Lowell*, since 2017. His most recent professional evaluation reflected an "Outstanding" rating, the highest rating available. In February 2023, *The Lowell* published a story regarding drug use by LHS students. The story was controversial, and the principal at the time asked for pre-publication review of *The Lowell* articles. Petitioner referred the question to his student editors, who declined. In October 2024, *The Lowell* published "Invasive and inappropriate," an article discussing student reports of sexual harassment by LHS teachers, including one report by a student that an unidentified teacher made harassing comments about her body. The article was controversial, and the Lowell High School principal again asked for advance review of *The Lowell* articles. Petitioner again referred the request to student editors, who again declined. In February 2025, Petitioner informed administrators that students were preparing an article concerning teachers' use of artificial intelligence to grade student assignments. This article was never published. In March 2025, the principal of Lowell informed Petitioner that he would be replaced as the journalism advisor the following year.[2]

Petitioner seeks writ relief to vindicate the provisions of Education Code, § 48907 ("Section 48907"). This provision affords broad free-expression protections to public school

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[1] The petition is formally brought against San Francisco Unified School District and its superintendent, Dr. Maria Su. Dr. Su is properly a respondent as the lead official of the district. (See *Barber v. Mulford* (1897) 117 Cal. 356, 358 [approving joinder of officials and district: "While with us the more general practice in mandamus has been to proceed against the officials only who, as representatives of a body politic, have refused performance of some duty owed to the plaintiff or relator, yet there seems no good reason why their principal, the legal entity which is commonly the real party to be affected by the writ, may not be joined as a defendant in the proceeding."].)

[2] The court does not include record citations in this section because these are background facts that are not in dispute.

students. (*Leeb v. Delong* (1988) 198 Cal.App.3d 47, 54 ["Section 48907 of the Education Code and California decisional authority clearly confer editorial control of official student publications on the student editors alone, with very limited exceptions."].) These protections extend to school employees to prevent indirect control of the students' expression rights. To that end, "Section 48907," subdivision (g), provides that an employee such as Petitioner "shall not be . . . reassigned . . . or otherwise retaliated against solely for acting to protect a pupil engaged in the conduct authorized under this section." The causation standard of this section is higher than a but-for causation standard. (Cf. *Schobert v. CSX Trans. Inc.* (S.D. Ohio 2020) 504 F.Supp.3d 753, 783 ["Unlike the ADA's 'but for' or 'because of' standard, the Rehabilitation Act requires 'solely by reason of' causation...This difference in language matters."]; *Gohl v. Livonia Pub. Schs. Sch. Dist.* (6th Cir. 2016) 836 F.3d 672, 682 ["The Rehabilitation Act sets the higher bar, requiring plaintiffs to show that the defendant's acts were done 'solely by reason of' the disability.' "] [citation simplified].)

Standard of Review

Petitioner's vehicle for seeking relief is traditional mandamus. "A writ of mandate under Code of Civil Procedure section 1085 is a legal tool to compel a public agency to perform a legal, typically ministerial, duty." (*California Privacy Protection Agency v. Superior Court* (2024) 99 Cal.App.5th 705, 721 [fn. omitted].) "A cause of action for traditional mandamus has two essential elements: (1) A clear, present and usually ministerial duty on the part of the respondent ... ; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty ....These elements imply a third requirement, which is the respondent's ability to perform the duty...In addition, the petitioner must ordinarily show there is not a plain, speedy, and adequate remedy, in the ordinary course of law." (*Water Audit California v. Merced Irrigation Dist.* (2025) 111 Cal.App.5th 1147, 1180 [citation simplified].)

Traditional writ relief is available where an entity has acted arbitrarily or illegally. (*Excelsior College v. Board of Registered Nursing* (2006) 136 Cal.App.4th 1218, 1238–1239 ["A writ cannot be used to control a matter of discretion. [Citation.] Where a statute leaves room for discretion, a challenger must show the official acted arbitrarily, beyond the bounds of reason or in derogation of the applicable legal standards."].) "Traditional mandamus may be used to compel an agency to exercise its discretion but not to control it, i.e., to force the exercise of discretion in a particular manner or to reach a particular result." (*Carrancho v. Cal. Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1268.) "Although administrative actions enjoy a presumption of regularity, this presumption does not immunize agency action from effective judicial review. It is well settled that mandamus will lie to correct an abuse of discretion by a public official or agency." (*California Assn. for Health Services at Home v. State Dept. of Health Care Services* (2012) 204 Cal.App.4th 676, 683 [citation simplified].)

Here, as noted, the governing law prohibits Respondents from reassigning Petitioner "solely for acting to protect" a student journalist's statutory free expression rights. (§ 48907, subd. (g).) Respondents unquestionably have broad discretion to reassign teachers, but they have no authority to reassign a journalism advisor solely for the motive forbidden by § 48907—or, to phrase it in the language of mandamus, they have a ministerial duty not to reassign teachers for that reason.

The issue thus presented by this petition is a factual one: did Respondents reassign Petitioner solely for protecting his students' expressive prerogatives? While the court must give a presumption of regularity to Respondents' personnel decisions, and credit their evidence where possible, it ultimately must ascertain based on the factual record before it whether Respondents acted from the motive that § 48907 forbids.[3]

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[3] With regard to the factual record, because there was no administrative hearing below, both parties offer declarations, depositions, and other extra-record evidence to the court. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 569 ["In a traditional mandamus action . . . the court is not limited to review of the administrative record, but may receive additional evidence."].) No party requested an opportunity to present live testimony.

Respondents disagree with this framing. Citing *Alameda Health Sys. v. Alameda County Employees' Retirement Association* (2024) 100 Cal.App.5th 1159, they essentially contend that if their declarations and other evidence provide substantial evidence for their position that the quality of *The Lowell* had slipped as measured by professional journalism standards, then the court's task is at an end, and it may not further consider or credit evidence of motive. This contention finds support in mandamus cases enforcing compliance with statutory directives that do not relate to motive. (See, e.g., *Alameda Health System v. Alameda County Employees' Retirement Assn.* (2024) 100 Cal.App.5th 1159, 1178 ["In an ordinary mandamus review of a legislative or quasi-legislative decision, courts decline to inquire into thought processes or motives, but evaluate the decision on its face because legislative discretion is not subject to judicial control and supervision."] [citation simplified]; *San Joaquin Local Agency Formation Commission v. Superior Court* (2008) 162 Cal.App.4th 159, 171.) But the court concludes these cases are inapposite; § 48907 expressly calls for an evaluation of motive, and it is motive that distinguishes a lawful act from an unlawful one under the statute.

Findings of Fact and Conclusions of Law

On review of the entire record, and giving Respondents' action the presumption of regularity, the court concludes that Petitioner persuasively demonstrates that his protection of student journalists' expressive rights solely caused his reassignment. The ultimate decisionmaker, Principal Bautista, admitted that the reason for the reassignment was Petitioner's involvement in the "Invasive and inappropriate" and proposed AI articles. (Gustafson Decl., pars. 42, 46; Moffitt Decl., Oct. 6, 2025, pars. 7-9.) At deposition, she did not deny that the "Invasive and Inappropriate" article played a role in the decision. (J.H. Lee Decl., Ex. B [Bautista Depo., p. 227:5–11 ["I'm not sure. Maybe. Probably. I don't know."]; 228:5–6 ["So if we got rid of the article, would the change still happen? Maybe."]].) When asked whether Petitioner had previously been subject to discipline at Lowell, she responded

that she "was informed of concerns that [her] predecessor had around . . . one of the articles that students had written." (Amended Simmons Decl., Ex. C, [Bautista Depo., p. 70:5-8].) Here, too, the principal's recollection of prior discipline related to a controversial piece of journalism rather than any decline in standards.

The court finds that Respondents' post-hoc explanations for the reassignment are not credible. Respondents claimed that the reassignment was part of regular scheduling and they wanted to bring in a teacher with more journalism experience and education. (West Decl., pars. 4-5, Ex. A.) But when pressed, Respondents explained that it did not know what the eventually-identified replacement teacher, whom the court will refer to as P.W., could teach that Petitioner could not, and respondent merely had a "hunch." (J. H. Lee Decl., Ex. C [Crabtree Depo., 165:13-25].) Respondents' substantive support for their position is largely found in declarations of Lowell staff, which were crafted with time for reflection. Petitioner's evidence of Respondents' motivations comes largely from their deposition testimony, which the court finds more trustworthy and credible because of the relative spontaneity of deposition testimony.

While P.W., who was a probationary teacher, had a master's degree in journalism and was an assistant instructor for a short period of time, he had no professional experience as a journalist and limited public school teaching experience. (J. H. Lee Decl., Ex. C [Crabtree Depo., 166:20-167:7; Ex. C-16 at 898, 900].) Respondents even assigned three mentors to P.W. (J. H. Lee Decl., Ex. C [Crabtree Depo., 183:24-184:13].) Petitioner, on the other hand, had extensive experience as a professional journalist and teacher. (Gustafson Decl., par. 5, Ex. B.) P.W. did not seek the assignment and asked to keep teaching his English classes. (J. H. Lee Decl., C-18 [p. 616 of the document's electronic pagination].) Petitioner's first choice was to continue his journalism assignment. (*Id.* [electronic pagination p. 617].) Despite those requests, the reassignment occurred. The record demonstrates that there was no precedent for an involuntary reassignment of the journalism teacher. (Moffitt Decl., pars. 2, 5; J. H. Lee Decl., Ex. C [Crabtree Depo., 210:2-9].)

The changing nature of Respondents' justification for the reassignment also casts substantial doubt on the rationale they proffer here. After Petitioner challenged the reassignment in further meetings with Principal Bautista and expressed the view that it violated Section 48907, the principal told Petitioner that he was not actually being reassigned under the definition of reassignment adopted in his union's collective bargaining agreement with the school district. This contention goes to the applicability of Section 48907 and does not dispute that the content of *The Lowell*'s articles motivated the change. (Gustafson Decl., pars. 49-50; J.H. Lee Decl., Ex. B [Bautista Depo., 202:9-14].) The subsequent letter by Principal Bautista also relied on this justification, which Respondents do not rely on here. (*Id.*, Ex. T.) That Principal Bautista relied on this reassignment justification contemporaneously suggests a misunderstanding of Section 48907 and the obligations it imposed. The letter also stated that the reassignment was not retaliatory or disciplinary, but it did not offer the justifications that respondent relies on here (perceived declining standards with *The Lowell*, or simply change for its own sake).

In arguments to this court, Respondents contend that the decision to replace Petitioner as the journalism advisor was made by the English Department heads rather than the principal. At no point in the Lowell administrators' conversations with Petitioner after the notice of reassignment did anyone attribute the decision to the heads of the English Department. Furthermore, those teachers' deposition testimony demonstrated the same impermissible concerns about the content of student articles as the principal and assistant principal had expressed. (J.H. Lee Decl., Ex. C [Crabtree Depo., p. 60:1-12 [concerns about content of drug article]]; *id.*, p. 80:15-81:8 [content of sexual harassment article]; J.H. Lee Decl., Ex. D [Carney Depo., p. 64:25-65:3 ["Q. And so is it fair to say that your evaluation of *The Lowell* was based on the content that was published in *The Lowell*? A. Yes."].) Section 48907 makes clear that concerns about content of a student publication cannot form the basis for a decision to reassign a journalism advisor, short of the limited exceptions laid out in the statute that Respondents do not invoke or rely on here.

Respondents also argue that Petitioner never acted to protect or refuse to infringe student journalists' rights, and thus the decision challenged here cannot amount to retaliation for an act protected by Section 48907. The court disagrees. The record is clear that Petitioner acted to protect students' control over the content of *The Lowell*, including by referring administration requests for review of controversial articles to students, and by permitting students the editorial freedom that Section 48907 requires. The court concludes that the motivation for Respondents' reassignment decision was to impact the editorial content of *The Lowell* in a way that they could not accomplish directly.

Based on these findings, the court concludes that Respondents violated Section 48907 when they reassigned Petitioner.

The court exercises its discretion to consider Respondents' amended opposition brief; Petitioner demonstrates no prejudice.

The court overrules Respondents' hearsay objections to paragraphs 42, 46, and 50 of the Gustafson Declaration as these are statements of a principal of SFUSD about a matter within her authority offered against a party opponent. (Evidence Code, § 1220; *id.*, § 1222.) The court overrules Respondents' hearsay and foundation objections to paragraph 7 of the October 6, 2025 Moffitt Declaration. Moffitt attended the April 8 meeting (see J.H. Lee Decl., Ex. B [Bautista Depo., p. 187:9-14]), and the statements of Gustafson that she recounts in paragraph 7 are a question that is answered (in a representation by a party opponent) in paragraph 8, to which there is no objection. The court does not rule on the parties' remaining evidentiary objections as they are not material to the disposition of the motion.

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Order

The court issues the writ of mandate and orders respondent to (1) reinstate him as the Journalism 1 and Journalism 2 teacher at Lowell High School; (2) reinstate him as the faculty advisor for *The Lowell*. The court does not enjoin further violations of Section 48907 because Petitioner has not shown an imminent threat of this harm.

Because this writ orders administrative action that may take intermediate steps to effectuate, the court stays its order for 30 days.

Petitioner is ordered to give notice to Respondents.

Dated: January 26, 2026

Christine Van Aken
Judge of the Superior Court

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I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on January 26, 2026 I served the foregoing on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: January 26, 2026 By: ERICKA LARNAUTI

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