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January 20, 2023

**By U.S. Mail and E-mail: [gsestraro@fuhsdistrict.net](mailto:gsestraro@fuhsdistrict.net) & [mapafford@kern.org](mailto:mapafford@kern.org)**

Glen Senestraro, Superintendent  
Fortuna Union High School District  
735 13th Street  
Fortuna, CA 95540

Mark Pafford, Attorney at Law  
Schools Legal Services  
1300 17th Street, Unit 7  
Bakersfield, CA 93301

Re: Notice Regarding Academy of the Redwoods Dispute; Anticipated Litigation; Offer to Discuss Resolution without Litigation; and Related Issues

Dear Superintendent Senestraro and Mr. Pafford:

As you know, we represent the Eureka City Schools (“District”). This is with regard to the Fortuna Union High School District (“Fortuna”) and Academy of the Redwoods High School (“Academy”). We include Mr. Pafford in this communication to the extent he has been our point of contact as Fortuna’s legal counsel relative to the District’s Public Records Act requests pertaining to the Academy since the early fall of 2022. We specifically address below the pending disputes between the District and Fortuna regarding the latter’s operation of the Academy and related issues.

- **Fortuna’s Operation of Academy of the Redwoods**

Following review of applicable laws, the Academy’s operations, and documents disclosed by Fortuna, the Humboldt County Office of Education, and the College of the Redwoods, the District has concluded with little doubt that Fortuna’s operation of the Academy within the District’s geographic boundaries has been and is unlawful.

Education Code section 35271 addresses a school district’s operation of a program/school outside the boundaries of the school district. It authorizes the governing board of any school district to “acquire property, construct buildings, and maintain classes outside its boundaries *on sites **immediately adjacent to school sites of the district** within its boundaries.*” (Ed. Code, § 35271, subd. (a), emphasis added.) The Academy, located and operated on the College of the

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Redwoods campus, entirely within the District's boundaries, unquestionably fails to comply with section 35721. As the Attorney General long ago opined, section 35271 prohibits a school district under *any circumstances* from maintaining classes outside its boundaries on sites that are not immediately adjacent to school sites of the district within its boundaries. (81 Ops. Cal. Atty. Gen. 80 (1998).)

In addition, Education Code section 35540 provides that the "boundaries of *each high school district* shall be coextensive with the boundaries of the component districts included within it." Consistent with the common understanding of the term "coextensive," Fortuna's boundaries necessarily *do not overlap or extend into* the District's boundaries, as none of the District's elementary schools are part of the component elementary school districts included within Fortuna. Additionally, pursuant to the CDE's categorization of the Academy, it identifies the school as an alternative school of choice under Education Code sections 58500 et seq. In pertinent part, Education Code section 58500 states that "the governing board of any school district may establish and maintain one or more alternative schools *within the district*." (Emphasis added.) All told, the Academy is a classic example of action by a school district (Fortuna) that runs afoul of express Education Code provisions setting express limits on Fortuna's jurisdiction, authority, and discretion.

Because the law is clear on point, the District believes that the most efficient and least disruptive path to resolve this dispute is that the District and Fortuna coordinate with each other, and ultimately their Humboldt County Office of Education and College of the Redwoods partners, to transition the Academy's operations from Fortuna to the District, ideally before the commencement of the 2023-2024 school year. The District thus invites Fortuna to discuss these matters by February 15, 2023, with the districts' respective Superintendents, Board Presidents, and legal counsel participating. Conducting such discussions on this timeline is imperative in light of any impacts or interactions with the March 15, 2023 layoff and non-reelection deadline.

Absent such discussions and resolution of this matter, the District is prepared to initiate litigation against Fortuna in Humboldt County Superior Court to compel Fortuna's compliance with the law. In such litigation, the District would seek a writ of mandate commanding Fortuna cease operation of the Academy. Upon the granting of such relief by the court, the District is prepared to cooperate and work closely with the College of the Redwoods on the seamless continuation of the Academy's operations, simply under the District's lawful jurisdiction and authority. The District will also seek recovery of its attorneys' fees pursuant to Code of Civil Procedure section 1021.5

**Please provide a response to this request to meet by February 1, 2023.** Without a response by that time, the District will assume that Fortuna has elected to require litigation between the parties to resolve this dispute.

- **Pending Interdistrict Transfer Appeals**

As described above, Fortuna cannot lawfully operate the Academy based upon its status as a public high school located within the District's boundaries. This said, the District believes the Academy is a valuable program for youth within the District's boundaries and the broader Humboldt County community, and unquestionably commends and supports the College of the

Redwoods partnership and facilitation of the school's program. Because the District sees it as inevitable that the legally proper and best solution as to this dispute is for the seamless transfer of operations of the Academy to the District, the District believes that in the short term the District's operation of the Academy will clear the way for regular and lawful enrollment of students residing within the District into the Academy.

*It is for the above reasons that the District **will not challenge or oppose** the four (4) pending interdistrict transfer appeals brought by students residing within in the District and who seek to enroll in the Academy—for which the underlying permit denials by the District were based upon the absence of any governing or agreed to interdistrict transfer agreement between the District and Fortuna under Education Code section 46600 et seq., and the District's knowledge of Fortuna's history of unlawful enrollment of District students without compliance with applicable laws.*

Again, for the reasons stated above, the District will not oppose the pending interdistrict transfer appeals before the Humboldt County Board of Education. This aside, the District maintains that there are other students who reside within the District's boundaries who have been unlawfully enrolled in the Academy by Fortuna over the years, including recent schools years. If litigation between the District and Fortuna becomes necessary as to the Academy overall, the District intends to simultaneously pursue claims against Fortuna for the unlawful enrollment of District students in the absence of compliance with the interdistrict transfer laws.

- **Related Public Records Act Request Issues**

As you are aware, the District originally submitted to Fortuna a primary Public Records Act ("PRA") request regarding the Academy on September 1, 2022. While the District also made two other narrower PRA requests to Fortuna since that time, which Fortuna responded to, not until just this week—over four months following what is a fairly simple PRA request—did the District receive what Fortuna purports to be the final "set" of records responsive to the September 1, 2022, PRA request. Prior to this week, Fortuna's other disclosures in response to the PRA have been tardy and limited. This week's disclosure was after the District's very patient and gracious extensions of time for Fortuna to respond, and without the District proceeding to Humboldt County Superior Court to force an actually reasonable and timely response to the PRA.

Having now received the purported emails responsive to the District's PRA request, we have determined that Fortuna has disclosed approximately *300,000 emails* totaling approximately *1 million pages* of content. We find it hard to believe that Fortuna's disclosure in this regard was done in good faith and reasonably calculated to provide records actually responsive to the District's PRA request.

In order to avoid the District's initiation of a legal action under the PRA to compel Fortuna to reasonably respond to the District's PRA, we ask that you immediately provide clarity as to the search terms used to capture and collect the emails delivered this week. Absent such good faith explanation to assist in understanding how and why what has been provided this week in terms of purported responsive emails is of the size it is, the District may be required to initiate legal action to compel a good faith response by Fortuna—whether or not in tandem with potential

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litigation regarding Fortuna's operation of the Academy and/or compliance with the interdistrict transfer statutes. As you are aware, were the District to prevail in a legal action under the PRA, it would be entitled to attorneys' fees and costs as well.

Sincerely,

LOZANO SMITH



Sloan R. Simmons

SRS/DCA/re

cc: Michael Davies-Hughes, Humboldt County Superintendent of Schools  
Dr. Keith Flamer, President/Superintendent, College of the Redwoods