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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

8 Attorneys for Petitioner RANDALL BURGESS

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO

11
12 RANDALL BURGESS,
13 Petitioner,
14 v.
15 CORONADO UNIFIED SCHOOL
16 DISTRICT,
17 Respondent.

37-2017-00022539-CU-WM-CTL
Case No. _____
PETITION FOR WRIT OF MANDATE
[CCP §§ 1085 and 1094.5]
DEPT:
JUDGE:
Action Filed: June 21, 2017

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1 **A. JURISDICTION AND PARTIES**

2 1. This court has jurisdiction over these proceeding pursuant to sections 1085 and
3 1094.5 of the California Code of Civil Procedure.

4 2. Petitioner Randall Burgess is a resident of San Diego County and is a credentialed
5 teacher and a permanent employee of the Respondent Coronado Unified School District.

6 3. Respondent Coronado Unified School District ("District") is a government agency
7 which is charged with operating the public schools in the City of Coronado.

8 **B. RELIEF SOUGHT**

9 4. Petitioner requests the court order the District to end Petitioner's illegal and
10 indefinite suspension which the District imposed and continues to enforce without following the
11 mandatory procedures provided by the collective bargaining agreement or Education Code.

12 5. Petitioner requests this relief without prejudice to the District seeking to impose
13 a new suspension in the manner required by the collective bargaining agreement or provisions
14 of the Education Code.

15 **C. PETITIONER'S EMPLOYMENT HISTORY WITH DISTRICT AND CLUB**
16 **OPERATIONS**

17 6. Petitioner graduated from University of California Santa Barbara in June, 1981.
18 with a degree in physical education and accepted a position as the coach of the water polo and
19 swimming teams at Coronado High School in August, 1981.

20 7. In June 1982, Petitioner started what was known as the Coronado Island Water
21 Polo Club, now known as Coronado Aquatics Club ("Club"), which has been in continuous
22 operation since then. Petitioner has always been and currently is the Executive Director of the
23 Club.

24 8. In September, 1982, Petitioner began working at Coronado Middle School
25 teaching a government funded health program.

26 9. Petitioner obtained a Master's Degree in Education while coaching the Mesa
27 College water polo and swim teams in 1985 and 1986.

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1 10. Petitioner became a full time teacher and the head aquatics coach at Coronado
2 High School in August 1987. Petitioner remained in those positions continuously from 1987
3 until November, 2015, when he resigned the head coaching position to mentor his replacements.
4 Petitioner retained his full-time teaching position and his position as Executive Director of the
5 Club.

6 11. In November, 2016, Petitioner was named as a "Coaching Legend" by the San
7 Diego Hall of Champions. This honor was based on Petitioner's highly-acclaimed 33-year
8 coaching career in which the athletes he coached enjoyed great success both in the sports he
9 coached and in the classroom. Among other accomplishments, Petitioner coached three students
10 who went on to distinguish themselves as members of the Olympic Men's Water Polo team,
11 playing in the Athens, Beijing, and London Games. Many of Petitioner's athletes were admitted
12 to, and had successful athletic and academic careers, at the most selective colleges and
13 universities in the country.

14 12. The Club has been in continuous operation since 1982 and serves more than 100
15 members in a year-round program. The Club is currently under contract with the District to use
16 the pool at the school facilities and has a full slate of planned activities for this Summer of 2017,
17 including daily practice, games, tournaments both at the facility and at other locations. The Club
18 sponsors trips to local and national tournaments.

19 13. As Executive Director, Petitioner supervises a coaching staff of approximately 10
20 people, and plans all training and competition schedules. Petitioner also personally evaluates
21 each staff member as well as the athletes (100+) during the summer season, the highest point in
22 activity for the calendar year. The summer season includes significant travel, the hosting of
23 domestic and international teams and players, running multi-day camps, and preparing for the
24 National Age-Group Championships. Most of this activity occurs at the school facilities under
25 contract with the Club.

26 14. Petitioner has also served as the Head and Assistant Coach for the USA National
27 Junior Team, has led the USA Water Polo coaching education programs, and has served as
28 Co-Director for the United States Naval Academy Water Polo Camp for more than 25 years.

1 **D. LEGAL SUSPENSION PROCEDURES UNDER EDUCATION CODE AND**
2 **THE COLLECTIVE BARGAINING AGREEMENT**

3 15. The retention, discipline, suspension and dismissal of credentialed teachers is
4 governed, in part, by the Education Code and, in part, by any collective bargaining agreement
5 which might be in place at the time relevant to the action.

6 16. Pursuant to Government Code section 3543.2, a school district and the
7 representative of teachers, such as a union, may bargain for certain of the terms of employment,
8 including a provision for a suspension of up to fifteen (15) days without the school district
9 resorting to the suspension and termination provisions of the Education Code.

10 17. Unless it invokes the 15-day suspension as part of a collective bargaining
11 agreement, the school district must follow Education Code section 44932(b) *et seq.* to suspend
12 a teacher. This statutory procedure requires, among other things, a written accusation by the
13 school board (section 44934) and the opportunity for the teacher to have the suspension
14 immediately reviewed by an administrative law judge under section 44939. The only exception
15 to this procedure is Education Code section 44940(a), which requires the school district to
16 suspend a teacher "when charged [with certain offenses] by complaint, information, or
17 indictment filed in a court of competent jurisdiction." There is no such charge here.

18 18. In this instance, the District and the Coronado Teachers Association
19 ("Association") entered into a collective bargaining agreement ("Agreement") which contains
20 a 15-day suspension provision authorized by Government Code section 3543.2.

21 19. Article XXIV of the Agreement entitled "Just Cause Discipline" provides a
22 detailed procedure for the District to impose the 15-day suspension starting with advance notice
23 to the teacher approved by four of the five members of the School Board followed by a detailed
24 statement of the basis for the proposed suspension. Petitioner's suspension, if imposed under
25 this Article, would have ended no later than April 18, 2017.

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1 20. As more fully described in the following section, the District suspended Petitioner
2 on April 3, 2017, and has continued the suspension to the present. The suspension violates both
3 the Education Code and Article XXVI of the Agreement. Petitioner seeks court intervention as
4 his only available remedy to end this illegal suspension and the irreparable damage it has caused
5 and will continue to cause.

6 **E. DISTRICT'S CONTINUING ILLEGAL SUSPENSION**

7 21. On April 3, 2017, without any prior notice, Rita Beyer, the Assistant
8 Superintendent of the District, removed Petitioner from his classroom, confiscated his keys and
9 computers and ordered him off school property.

10 22. The District did not provide Petitioner any written notice of the grounds for this
11 suspension, the duration of the suspension, or how Petitioner might have it reviewed or
12 terminated. The District violated, and continues to violate, Article XXIV of the Agreement and
13 the Education Code in imposing this involuntary and open-ended suspension.

14 23. Instead of providing notice of the suspension and its terms, the District invented
15 what it labeled as "conditions" as it went along, including reprimanding Petitioner for sending
16 an email to the Coronado High School Principal, Jenny Moore, pleading with her to return to the
17 classroom, and later threatening further discipline for texting students congratulating them for
18 a successful swim season. The District continuously threatened Petitioner with termination if
19 he did not comply with the District's (unstated) demands and "conditions" of his suspension.

20 24. The illegal suspension came at a critical juncture for Petitioner's students given
21 the curriculum and the end-of-the year testing. Yet, given the so-called "conditions" imposed
22 by the District, Petitioner could not even communicate with a substitute teacher to attempt to
23 mitigate his unannounced removal from the classroom. The District threatened Petitioner with
24 termination if he communicated with anyone at the school, including his fellow teachers.

25 25. The District continued its illegal suspension and threats of termination through the
26 end of the school year. The suspension remains indefinite.

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1 26. Knowing the summer Club program was scheduled to start on June 19, 2017,
2 Petitioner sought to clarify that the suspension and its unstated "conditions" would not apply to
3 the activities of this Club scheduled to start after the end of the school year pursuant to the
4 contract between the Club and District.

5 27. Instead of confirming that Petitioner could proceed with his normal duties on
6 behalf of the Club after the school year had concluded, the District, through its counsel, Sam
7 Sherman, and later through Ms. Beyers, instructed Petitioner -- again under another threat of
8 termination -- that he could not be present at the pool for any reason, including the Club
9 activities.

10 28. The latest version of this instruction and threat came in an email sent on June 18,
11 2017, at 8:58 p.m. from Ms. Beyers, the night before the Club program was set to begin the
12 following morning at 5:00 a.m. Because of the threat of termination, Petitioner did not enter the
13 pool facilities.

14 **F. THE DISTRICT WILL NOT REMOVE THE ILLEGAL SUSPENSION**

15 29. On June 19, 2017, Petitioner, through counsel, demanded that the District remove
16 this suspension and restore Petitioner to his regular duties as a teacher and no longer exclude him
17 from performing his role with the Club. The District has refused the demand for reinstatement.

18 30. Absent court intervention, this illegal suspension and the ongoing threats of
19 termination, will continue through the Summer and into, and possibly through, the 2017-18
20 school year and beyond, causing continuing irreparable harm to Petitioner, his students, and the
21 members of the Club.

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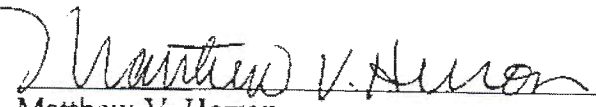
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G. PRAYER FOR RELIEF

WHEREFORE, Petitioner requests the court issue a writ of mandate to order the District to terminate the suspension and restore Petitioner to his regular duties as a teacher at Coronado High School, without prejudice to the District following Article XXIV of the Agreement should it seek a new suspension, and to cease interfering with Petitioner's duties as a teacher and as the Executive Director of the Club. Petitioner also requests an award of attorney's fees and costs and such other and further relief as the court may find appropriate.

Dated: June 21, 2017

herronlaw, apc

By: 
Matthew V. Herron
Attorneys for Petitioner RANDALL
BURGESS

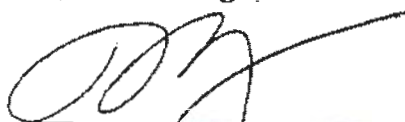
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VERIFICATION

I, Randall Burgess, declare and state:

I am the Petitioner herein. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this Verification was executed on June 21, 2017, at San Diego, California.



Randall Burgess