

**Dr. Matthew Garrett Response to KCCD Notice of Unprofessional Conduct/90-day Notice
Issued by Mr. Richard McCrow on November 21, 2022**

The 90-day notice constitutes flagrant retaliation for Dr. Garrett’s ongoing First Amendment suit and other protected activities such as speaking out against employment discrimination and informing his employer of activities that Dr. Garrett genuinely believes to be unlawful and/or unprofessional (on protected political activities, see CA Labor Code section 1101 and 1102, CACI 2505; on whistleblower protections see CA Labor Code 1102.5, Government Code 8547 GC et seq, *Yanowitz v. L’Oreal USA, Inc.*, *Lawson v. PPG Architectural Finishes, Inc*). Indeed, the 90-day notice risks violation of federal and state codes as well as Board Policy 7700 (Whistleblower Protection) by explicitly citing Dr. Garrett’s submission of complaints as grounds for discipline (see 90-day notice points 2, 7, 8, and 10). In fact, Board Policy, state code and federal code make clear that the filing of complaints is a protected activity. Therefore, the 90-day notice essentially constitutes an admission of unlawful retaliation against Dr. Garrett.

In addressing other justifications for discipline, the KCCD 90-day notice relies upon the mischaracterization of protected speech as somehow “unprofessional” without providing any explanation to such claims. When quotes included in the notice are accurate (and they are not all accurate), those words fall clearly within the realm of protected speech because they are either (a) factually correct, or (b) statements of opinion. Indeed, the 90-day notice’s reoccurring claim that such statements are somehow “demonstrably false” is simply nonsensical. In fact, Dr. Garrett believes each of the accurately quoted statements recorded in the KCCD 90-day notice to be true and/or justified statements of opinion, and Dr. Garrett is prepared to provide sufficient evidence to that end. Additionally, in *Pickering vs. Board* (1968) the Supreme Court clearly outlined the right of faculty to address issues of public concern, as in the examples of allegedly “unprofessional” conduct cited in the KCCD 90-day notice. And though the Supreme Court did curtail public employee speech in *Garcetti* (2006), that ruling carved out rights for teachers employed by the state and thereafter the Ninth District has explicitly stated that academic speech is not subject to *Garcetti* but rather the *Pickering* test (*Demers v. Austin*, 2014). Therefore, the 90-day notice thus flagrantly violates Dr. Garrett’s well-established First Amendment rights by attempting to police his clearly protected speech.

Furthermore, the 90-day notice relies on several cases of uninvestigated hearsay and misquotes to misrepresent Dr. Garrett’s actual words and then threaten punitive action based on these incorrect or unsubstantiated allegations. Indeed, the attached exhibits make clear that several of the quotes attributed to Dr. Garrett in the 90-day notice were spoken by other(s). Other quotes attributed to Garrett are in fact questionable paraphrasing by an unknown scribe and never spoken from Dr. Garrett’s lips. Others are manufactured out of thin air.

The KCCD 90-day notice also relies on several other mischaracterizations of behavior as “unprofessional” without justifying those strange interpretation or applying that same standard to other employees in similar situations. In that way, the KCCD 90-day notice’s use of “unprofessional” is subjectively capricious and arbitrary and without steady meaning. Indeed, Dr. Garrett is to be punished for far less than those identified in his complaints, and as such the 90-day notice treads upon Dr. Garrett’s right to equal treatment and protection.

The KCCD 90-day notice also constitutes a brazen example of ongoing administrative retaliation through the dismissal of legitimate complaints, some of which are cited in the notice and appear in the addendum of exhibits. By dismissing or outright ignoring/refusing legitimate complaints filed by Dr. Garrett, KCCD administrators tacitly endorsed and promoted continued workplace hostilities toward Dr. Garrett by faculty, staff, and at times KCCD administrators themselves who actively engaged in such hostilities with self-assured immunity. In tandem with that practice, this 90-day notice seeks to further silence Dr. Garrett with restricted use to campus communication listservs, restriction of access to the standard system to submit complaints, ejection from committee service without justification, and expectations of compliance to undefined demands of a superior against whom Dr. Garrett has twice filed complaints of retaliation. The 90-day notice is thus an intense example of administrative retaliation in both direct injury (eg., removal from committee service) and in silencing Dr. Garrett even as he is smeared by colleagues who are emboldened by the administration's consistent neglect of or negligent investigations into complaints filed by Dr. Garrett. This notice thus contributes to the continued hostile working environment where Dr. Garrett is periodically harassed for protected categories (race/gender) and protected speech of dissenting viewpoints without any recourse and Dr. Garrett is now to be robbed of the ability to defend himself under threat of termination. This notice thus constitutes only the most recent example of administrative retaliation, following on the heels of a prior threat of termination for protected speech, spurious investigations into Dr. Garrett's private life (literally investigating what Facebook posts Dr. Garrett "likes"), and the sloppy mishandling and sharing of Dr. Garrett's social security number and other confidential information.

Finally, this 90-day notice also constitutes a unjustified deviation from Article 14.C of the KCCD-CCA faculty contract which outlines "Progressive Corrective Action" prior to a notice of unprofessional conduct, including "coaching and counseling meetings, oral warnings, written reprimands." While the contract does allow KCCD to "take action at a higher step" under special circumstances, it is quite bizarre that KCCD has leapt to the final step without any effort to remediate the gross majority of allegedly unprofessional examples listed in the notice all on the eve of court facilitated mediation for the aforementioned First Amendment suit. Indeed, the 90-day notice addresses years of allegedly unprofessional conduct that no administrator has ever addressed with Dr. Garrett and is now suddenly to serve as grounds for spontaneous termination without any explanation for the deviation in the "uniform and consistent" treatment promised to faculty in the KCCD-CCA faculty contract.

In addition to these general observations, below is a point-by-point rebuttal to each of the fifteen claims of "unprofessional" conduct outlined in the 90-day notice, preceded by excerpts from the notice.

1. "When the White Supremacist group 'Hundred-Handers' vandalized Bakersfield College with stickers targeting vulnerable students, you disregarded the impact of this attack on the student and the campus community. You...":
 - a. "disregarded impact of attack on the student and campus community"

- b. “took issue with BC’s characterization of the stickers as ‘hate speech’ and ‘vandalism’
- c. Authored an op-ed piece. . . [that] characterized the Hundred Handers as ‘an anonymous conservative group that opposes immigration and other modern liberal agendas.’”
- d. “critical of BC’s characterization of stickers and suggested their content was protected by the First Amendment”
- e. “suggest that certain terms like ‘Cultural Marxism’ weren’t ‘hate speech’ but instead speech that challenges a dominant agenda on campus, i.e. the social justice movement

This claim rest upon a false premise of “targeting” students with “hate speech.” In fact, the Supreme Court has consistently refuted the imposition of any such category (*RAV v. City of St. Paul*, 1991; *Virginia v. Black*, 2003; *Snyder v. Phelps*, 2011; *Matal v. Tam*, 2017) and there is no evidence that the aforementioned group conducted an “attack” anyone on campus. The allegation that Dr. Garrett “disregarded the impact of this attack on the students and campus community” is little more than a false premise to compel a particular response, in violation of the First Amendment.

Furthermore, this arbitrary standard of a proper regard – whatever that may be – is not merely an unenforceable attempt at illegal compelled speech, but also it is a standard that is not clearly defined nor equally applied to other KCCD employees. What is the proper regard that employees must articulate in response to dissenting political speech? An undefined standard is no standard at all but rather serves as cover for subjective justification for discipline. Furthermore, no such behavior as proper response to imagined “hate speech” is outlined in the KCCD-CCA Contract list of professional responsibilities (see Article 4.C), so no such expectation may be established (nor discipline issued) for failure to meet imagined expectations outside the contract parameters.

This claim further alleges that Garrett “took issue with BC’s characterization of the stickers as ‘hate speech.’” While Dr. Garrett did disagree with the characterization of the stickers as “hate speech,” so too did KCCD’s Office of General Counsel. How can Garrett be “unprofessional” for holding the same legal standard that KCCD General Counsel imposed (which is also the same legal standard held by the US Supreme Court)? The attempt to subjectively discipline Dr. Garrett for uttering a legal conclusion held by both KCCD Legal Counsel and the Supreme Court of the United States illustrates the subjective and retaliatory posture of the 90-day notice.

This claim further alleges that Garrett authored an op-ed piece that defined the organization that designed the stickers as “an anonymous conservative group” and that Dr. Garrett dared to discuss the concept of “Cultural Marxism” in that opinion piece. Broad philosophical and political discussion points, such as the political spectrum or meaning of cultural Marxism, are clearly a matter of public interest and also lies within Dr. Garrett’s academic purview as an actively publishing scholar in history and ethnic studies. The KCCD-CCA contract guarantees Dr. Garrett’s right to be “free from any censorship or restraint which might interfere with the faculty member’s obligation to pursue truth and maintain his/her intellectual integrity” (Article 4.A.4). More importantly, such speech falls squarely within the protected category outlined by *Pickering* and *Demers*.

Additionally, Dr. Garrett's opinion piece exists well outside KCCD's ability to regulate speech by "time, place and manner." Indeed, such regulation of activities outside the workplace are explicitly prohibited by the KCCD-CCA contract which states that "The personal life of a faculty member is not an appropriate concern of the District for the purposes of evaluation or disciplinary action unless it prevents the faculty member from performing his/her assigned duties or calls for discipline under the provision of the Educational Code (Article 4.B.1). KCCD may not simply imagine any private life behavior as "unprofessional" to invoke the Education Code (*Morrison v. State Board*, 1969). Therefore, KCCD has no legal right to regulate commentary in an editorial published in the local newspaper and this attempt to do so constitutes retaliation.

Furthermore, other employees likewise wrote op-ed pieces on this very subject and made similar or opposing claims, but they have not been designated as "unprofessional." Even if KCCD had legal authority to regulate such speech outside the classroom, which it does not, KCCD would be legally obligated to do so in a content-neutral manner; KCCD is not imposing content neutral regulation but rather specifically targeting Dr. Garrett while ignoring others' speech that takes a similar or opposing posture. This arbitrary and unequal treatment clearly violates Dr. Garrett's rights of equal treatment under the law and smacks of administrative retaliation.

2. Filed a complaint. . . with regard to violation of KCCD Board policy" and the district investigation found that Garrett made "recklessly made serious and misleading allegations that now can't be taken back."

This claim confounds two very different issues. First, it alleges misconduct for the act of filing a complaint. California whistleblower law clearly protects such activity, even if KCCD itself denies wrongdoing. California Labor Code 1102.5 and Government Code 8547 GC et seq explicitly identify the informing of an employer of potentially unlawful acts as protected activity. Furthermore, California caselaw has held that such protections exist even if that reported conduct turns out to be lawful; the complaint remains a protected activity nonetheless, and retaliation against such complaints are unlawful (*Yanowitz v. L'Oreal USA, Inc.*). Therefore, it is unlawful for KCCD to now punish Dr. Garrett for informing the district of potential misconduct that he sincerely believes to be an issue, and thus the 90-day notice (with its outright identification of complaints as cause for restricted privileges and transfer of removal from a committee) constitutes indisputable evidence of unlawful retaliation by KCCD administrators. The 90-day notice's stretch of the definition of "unprofessional" to include explicitly protected activity (notifying an employer of potential misconduct) exemplifies the administration's continued attempts to intimidate and retaliate against Dr. Garrett.

Second, this claim relies on the institution's own investigation of itself to allege Dr. Garrett's September 2019 address made "reckless" and "misleading" allegations but provides no evidence to support KCCD's widely disputed claim (other than KCCD's own assertion of such). Indeed, for the past two years Dr. Garrett has litigated KCCD over this exact issue and KCCD has yet to provide any statement from Dr. Garrett's address that was "reckless" or "misleading" or in any

way incorrect or unprofessional. KCCD may not imagine dissenting speech to be “unprofessional” in order to justify discipline.

3. “attempted to violate campus COVID policies by circumventing standard events scheduling protocol and threatening your dean. You further mischaracterized your situation as an attempt to censor your event. . . . You accused the District of cancelling your event after you unilaterally switched the event to face-to-face format, which would violate COVID policies. This allegation is demonstrably false.”

This claim falsely alleges misconduct by way of imagined behavior or actions that never occurred. First, it imagines that Dr. Garrett “attempted to violate campus COVID policies,” when in fact Dr. Garrett did not violate any policies. Dr. Garrett attempted to reschedule a zoom event as an in-person event, much as other campus programs were permitted to host, and when rejected by his academic dean (Mr. Richard McCrow), Dr. Garrett pleaded his case but ultimately followed the administration’s strangely inconsistent restrictions. Dr. Garrett did not host the event on campus or with any college endorsement, nor did Dr. Garrett use the funds housed in the Bakersfield College Foundation (which Dr. Garrett had raised for said event). Dr. Garrett independently hosted the event off campus without association of the college and at Dr. Garrett’s own personal expense. Dr. Garrett rightfully submitted a complaint to the institution outlining the unequal treatment and retaliatory behavior. This 90-day notice strangely mischaracterizes Dr. Garrett’s compliance with retaliatory and selectively enforced Covid protocols in order to allege unprofessional conduct by Dr. Garrett. On the contrary, compliance with Mr. McCrow’s unjustified restrictions exhibited upstanding conduct despite alleged administrative retaliation.

Second, this claim alleges that Dr. Garrett engaged in “threatening” Mr. McCrow. Dr. Garrett made no such threat, and the only communication that might possibly be misrepresented that way was Dr. Garrett’s clear instruction to Mr. McCrow that his refusal to allow an in-person lecture from a conservative speaker—even as the campus hosted other in-person events including a progressive speaker (Democrat Assemblyman Rudy Salas on the eve of announcing his candidacy)—would clearly not sit well with the local community and event co-sponsor(s). Such a statement is not a threat, and as the event organizer it was Dr. Garrett’s duty to warn the administration of the likely consequences of partisan imposition of Covid restrictions on the event which already enjoyed substantial community interest. The community would certainly wonder why the conservative speaker was not permitted even as Bakersfield College hosted multiple in-person speaking events and a banquet. Indeed, co-sponsors were upset that Bakersfield College obstructed an in-person event for a conservative speaker while allowing Rudy Salas two speaking events on campus. Rather than disciplined, Dr. Garrett should be commended for navigating the situation and independently hosting the conservative guest speaker off campus without campus support.

4. “repeatedly made demonstrably false and misleading claims to disrupt district and college work by submitting public accusations, frivolous complaints of misconduct without providing any factual basis as follows”
 - a. “publicly falsely accused the college of violating the Education code despite not providing evidentiary support. This allegation is demonstrably false.” (refers to exhibit featuring remarks to senate stating admin was circumventing 10+1 to shop around for faculty without consulting senate and provides examples of EODAC and district EEO committee).
 - b. “falsely accused the EODAC co-chairs of convening ‘secret meetings.’ This allegation is demonstrably false.”
 - c. “falsely alleged that the EODAC ‘has been consistently staffed by the administration with faculty who hold one particular point of view.’ This allegation is demonstrably false.”

Each of these statements are drawn from comments Dr. Garrett made during the public comment portion of the Bakersfield College Academic Senate, which is a Brown Act bound public meeting wherein the balance test required by *Pickering* clearly favors Dr. Garrett’s right to address matters of public interest. None of the three examples provided in this claim are false or misleading but are in fact demonstrably true which adds additional protection to Dr. Garrett’s speech, and makes more bizarre the 90-day notices’ repeated assertion after each example that “this allegation is demonstrably false.” Furthermore, the KCCD-CCA contract guarantees faculty the “freedom of investigation” (Article 4.A.2) and freedom “from any censorship or restraint which might interfere with the faculty member’s obligation to pursue truth and maintain his/her intellectual integrity” (Article 4.A.4). This allegation of unprofessional conduct is thus a violation of both the KCCD-CCA contract and Dr. Garrett’s First Amendment rights.

- a. The first allegedly “false” statement regarding Education Code occurred in Dr. Garrett’s public statement to the Academic Senate in which Garrett outlined two very clear examples of the administration encroaching on 10+1 faculty rights. The statements are provided in the notice’s addendum exhibits (and the Academic Senate webpage). Furthermore, the accuracy of one such is example (administration selection of faculty to serve on a district diversity committee without consultation of the Academic Senate) is manifest in the fact that (i) the Senate entertained a resolution to demand the Board of Trustees cease violating faculty 10+1 prerogatives related to appointments to that very committee and (ii) the Board’s response wherein it changed Board Policy to correct the deficiency to comply with 10+1, just as Dr. Garrett had requested. Dr. Garrett’s comment was not “demonstrably false” but rather perceptively accurate and beneficial in changing district policy for the better, for which he deserves accommodation rather than scorn.
- b. The second allegedly “false” statement centers on Dr. Garrett’s assertion that the EODAC (diversity committee) co-chairs held “secret meetings” to complete committee work. This statement too is indeed factual. Indeed, Dr. Garrett is prepared to provide witnesses and other evidence if necessary. Furthermore, it may even constitute a Brown Act violation if that committee is in fact bound by the Brown Act.

- c. The third alleged allegedly “false” statement that EODAC “has been consistently staffed by the administration with faculty who hold one particular point of view” is also quite obviously true, and that longstanding practice continues in this notice’s demand that Dr. Garrett cease serving on that committee. Dr. Garrett is prepared to provide evidence of this longstanding practice. Furthermore, this speaks to a larger issue of administrative intention to drive campus policies in a particular direction, which is certainly an element of public interest and thus subject to *Pickering*.

The 90-day notice’s attempt to misrepresent Dr. Garrett’s obviously protected comments as “demonstrably false” is clearly a false pretext for unjust disciplinary action for protected speech, and thus yet another example of flagrant administrative retaliation against Dr. Garrett.

5. “You replied to all recipients, ‘I am horrified to see the faculty chair continue that attack [on Ximena da Silva] in email.’ You continued, ‘I believe the committee chair owes the distinguished representative from chemistry an apology.’ These claims are demonstrably false.”

This claim mischaracterizes a statement of opinion – that one faculty member insulted another and owes an apology – as a (false) statement of fact; it is not. As such, it cannot be demonstrably true or false, except if to question if Dr. genuinely believes that one faculty owed an apology to another (and Dr. Garrett does believe that to be true).

Furthermore, Dr. Garrett was one of perhaps half a dozen faculty to engage in that email chain, many similarly rebuking Ms. Andrea Thorson for her needless attempt to smear of Dr. Ximena da Silva, and yet no other faculty has been disciplined for such comments. Additionally, the original email sent by Ms. Andrea Thorson (to which Dr. Garrett replied) included particularly caustic messaging in an attempt to rally hostilities toward Dr. da Silva; Ms. Thorson has repeatedly engaged in still more caustic language (chiefly directed at Dr. da Silva and/or Dr. Garrett) in public campus meetings and the KCCD administration has permitted this to continue without any discipline for Ms. Thorson. This empowerment of Mr. Thorson to malign her colleagues while KCCD threatens Dr. Garrett with discipline for opposing such comments constitutes selective enforcement of the most unjustified sort. Again, KCCD is clearly engaging in unequal treatment and retaliation against Dr. Garrett for protected speech.

6. “you sent an email to the Curriculum Committee intended to be your ‘Public Comment’ regarding the Cesar E. Chavez Leadership Certificate and Landmarks in California courses. You made the following comments that many students and faculty at Bakersfield College desired:”
 - a. “[I]t is a high school field trip.”
 - b. “The course presents as openly partisan training for children.”“Each of these allegations is demonstrably false.”

As in point 4, Dr. Garrett again contributed to a public comment portion of a public meeting and expressed his professional opinion on a matter of public interest (indeed, the media attended the meeting for this very issue). Furthermore, this issue (proposed ethnic studies history curriculum) is both a matter of public interest and one for which Dr. Garrett is exquisitely qualified to speak, again giving Dr. Garrett the balance of authority in any *Pickering* test. Dr. Garrett stands by his professional assessment of the two courses. Again, the KCCD-CCA faculty contract also guarantees Dr. Garrett the right to pursue truth and be free from any censorship in that pursuit (Article 4.A.1; 4.A.4). To threaten discipline for such obviously protected speech is a clear example of administrative retaliation and censorship,

Additionally, California Labor Code 1101 and 1102 protect employees from retaliation for political activity, and in repeated caselaw courts have extended that protection to social issues (*Nava v. Safeway*; *Gay Law Students Ass'n v. Pac. Tel. & Tel. Co.*). The 90-day notice explicitly threatens discipline for Dr. Garrett's comments alleging "partisan training," that is, KCCD is interpreting Dr. Garrett's political critique as grounds for discipline despite protections offered by CA Labor Code 1101 and 1102. Additionally, the KCCD-CCA contract likewise protects faculty from the use of political activities as grounds for discipline (Article 4.B.2).

7. "you submitted an EthicsPoint report. . . containing unsupported conclusions about fellow colleagues" including:
 - a. "Individual African American employees (mostly women) continued to impugn Dr. da Silva's reputation with false claims that she said they could not think for themselves"
 - b. "Ms. Thorson also stoked racial undercurrents by referring to her love for an African American employee (Angela Craft) who retired several years ago."
 - c. "I do believe it underscores my concern that racial tensions did exist, and that African American employees snapped at Dr. da Silva in part for racial reasons, making the attack a form of racial harassment."
 - d. "I sense some of the classified staff have some insecurity that they are projecting on Dr. da Silva in this effort to smear and win favor to discipline her."
 - e. "I believe Ms. Andrea Thorson has been key in manipulating and creating the crisis. . . I would suspect that Ms. Andrea Thorson helped the classified staff make their Board remarks because (a) Ms. Andrea Thorson specializes in rhetoric, (b) she despises myself and others who she sees as political advisories, and (c) the Board remarks were more articulate than during the committee comments, particularly in the case of Ms. Elizondo."

"You pointed the investigation to Andrea Thorson, without any substantive evidence. Additionally, you diminished classified employees' ability to be 'articulate' before a committee. These allegations are demonstrably false."

Similar to point two of the 90-day notice, this point erroneously attributes wrongdoing to earnestly reported ethnics point complaints, in violation of Board Policy and state labor codes.

Again, the district's self-assertion of innocence when confronted with substantial evidence does not disprove Dr. Garrett's complaint nor prove such complaints to be insincere. KCCD's self-interested dismissal of Dr. Garrett's complaint does not prove professional misconduct on the part of Dr. Garrett. If anything, that dismissal of the complaint may serve as evidence of continued administrative retaliation against Dr. Garrett.

Furthermore, this 90-day notice claim alleges several supposedly "unsupported conclusions" which are in fact well supported in the complaint filed by Dr. Garrett or could be sustained by the most basic investigation which the district refused to complete prior to issuing this 90-day notice. Dr. Garrett believes each of the five allegedly "knowing false comments" cited in the complaint to be accurate and truthful claims to which witnesses would readily testify and which physical evidence confirms, including the alleged recording of the meeting. Indeed, the email thread mentioned in point five clearly suggests that the bulk of faculty in the meeting similarly believed Ms. Andrea Thorson played a key role in exacerbating the conflict. KCCD's refusal to investigate solid indications of wrongdoing does not constitute unprofessional conduct on the part of Dr. Garrett; on the contrary, it underscores the reoccurring pattern of administrative neglect and retaliation directed at Dr. Garrett.

8. "In your EthicsPoint Report... you made a demonstrably false and misleading complaint demanding an investigation against another faculty member without any substantial evidence of wrongdoing. You alleged, without evidence, that the faculty member being concerned about racism on campus is 'racial harassment' towards you."

Like points two and seven of the 90-day notice, this claim alleges misconduct for filing an ethics point complaint that Dr. Garrett continues to believe is true and correct. Furthermore, this claim alleges that Dr. Garrett submitted the complaint "without evidence" when in fact the submitted complaint contains detailed description of the harassment and KCCD Human Resources never asked Dr. Garrett for evidence within any investigation (nor did HR conduct any sort of investigation into the observations of other faculty prior to issuing this 90-day notice).

This claim illustrates the continued effort by KCCD to retaliate against Dr. Garrett by consistently enabling those who harass and disrupt Dr. Garrett's workplace and workplace relationships. Dr. Garrett has submitted good faith examples of racial harassment and other unprofessional behavior but the district has consistently dismissed or even refused to investigate complaints into such allegations, further emboldening bad actors. Indeed, during the Academic Senate meeting of 30 Nov 2022, many of those same bad actors lashed out in spontaneous attacks on Dr. Garrett during the public comment section of the meeting, even citing the aforementioned complaints as evidence of their righteousness. This is the climate KCCD has created though an extended informal policy of unequal enforcement and retaliation against Dr. Garrett.

9. “you sent an email to Bakersfield College faculty making several false allegations and implications. You alleged that members of the Curriculum Committee ‘have worked to intimidate others to ensure they get the right votes. We also saw the administration secretly withholding public comments from the committee members until community members demanded the Trustees intervene; the administration is preparing to violate Brown Act on three different accounts when they meet tomorrow to force through contested curriculum that in all truth deserves a much more robust conversation but, according to the COR, the chancellor wants it STAT, and anyone who questions may also find their names smeared in the newspaper.’ You alleged, ‘[T]he administration is preparing to violate Brown Act on three different accounts.’ This allegation is demonstrably false.”

This claim issues a false assertion that Dr. Garrett “alleged that members of the Curriculum committee ‘have worked to intimidate others to ensure they get the right votes.’” The quote conveniently begins after omitting the subject of the quote, which Dr. Garrett never identified as “members of the curriculum committee.” Regardless, each of Dr. Garrett’s assertions in that public comment are factually true and Dr. Garrett is prepared to provide witness testimony and physical evidence to substantiate any claim that KCCD would like to challenge as “demonstrably false.”

And as with points four and six, this comment was issued as public comment to the Academic Senate and only distributed by email when the Academic Senate secretary Dr. Paula Parks sent a faculty-wide email misrepresenting Dr. Garrett’s remarks, to which Dr. Garrett replied and attached the full text of the Senate comments. As such, this conversation on an issue of public interest occurred outside the classroom where the *Pickering* test again favors faculty right to free speech. Therefore, this point constitutes yet another example of retaliation for obviously protected speech.

It is additionally ironic that rather than address the individuals engaged in intimidation and bullying KCCD has opted to allege Dr. Garrett engaged in “unprofessional” conduct for gently pointing out their unprofessional conduct. This also exemplifies the consistent pattern of selective enforcement through which KCCD targets and retaliates against Dr. Garrett through the empowerment of bad actors.

10. “you repeatedly filed frivolous complaints. . . wasting District resources and aggrieving your colleagues for what the investigations uniformly found to be baseless allegations.”

Similar to points two, seven and eight in the 90-day notice, this claim mischaracterizes genuine concerns and complaints as somehow baseless abuses. It also falsely misrepresents the total number of complaints at thirty-six by counting each person Dr. Garrett identified within a single incident as a separate complaint. In fact, exhibit 12 of the 90-day notice addendum provided by KCCD indicates that Dr. Garrett filed only nine complaints, eight of which were filed after Dr. Garrett himself was the target of nine spurious complaints himself. Simply put, this claim relies on a *post hoc* fallacy; Dr. Garrett’s colleagues were clearly aggrieved and lashing out at Dr. Garrett in advance of complaints filed by Dr. Garrett.

Also, the abundance of unsubstantiated claims filed against Dr. Garrett have not resulted in threats of termination to those faculty. Again, KCCD appears to engage in unequal treatment for the purpose of retaliating against Dr. Garrett.

Furthermore, the wave of debunked complaints against Dr. Garrett (preceding Dr. Garrett's complaints) testify to the hostile working conditions Dr. Garrett must endure in part due to the KCCD administration's wrongful upholding of the first unjust complaints filed against Dr. Garrett (which Dr. Garrett is currently litigating). KCCD has emboldened a small cadre of employees to lash out at Dr. Garrett in a variety of ways, including by way of baseless complaints, even as KCCD seeks to discipline Dr. Garrett for submitting justified complaints. KCCD administrators have repeatedly exhibited both tacit approval and engaged in overt collusion with these bad actors to retaliate against Dr. Garrett, and then provided themselves and their collaborators coverage in rejecting any complaints Dr. Garrett submits on such instances.

11. "The District received several student complaints caused by your conduct during an EODAC meeting"
 - a. "As an African American student, I felt that our safety and education here on campus was not important to a few people inside of the room. I also felt that if I went to register for any of those professors' classes that I would fail in the classes because of the color of my skin"
 - b. "After hearing Professor Catherine Jones telling Professor Matt Garrett, 'why the fuck are they coming in here? . . . It made me feel like we weren't supposed to be in that meeting.
 - c. "Professor Matt Garrett. . . went as far as to insult Dr. Parks and her way of teaching. . . While he was saying this, I felt as mixture of confusion and concern. . . . In the end, I did not feel safe in that room. Even though nothing was said towards me directly, the feeling I was getting was enough. Something needs to be done. People like that cannot be left to make decisions for students."

This claim falsely alleges that the district received student complaints regarding Dr. Garrett's behavior, when in fact the notice and included exhibit quote from public comments issued at Academic Senate by students who were clearly coached and marched in front of a zoom screen to assail the faculty who questioned their mentor's agenda during the preceding EODAC (diversity committee) meeting.

Furthermore, the comments had little to do with Dr. Garrett, who is only accused by one student who alleges that "Professor Matt Garrett. . . went so far as to insult Dr. Parks and her way of teaching." Dr. Garrett made no such comment and at no point mentioned Dr. Parks, her students or teaching; this allegation is simply false and speaks to the effort of Dr. Park's students to misrepresent and smear faculty who Dr. Parks deems her political rivals.

Overall, the use of obviously coached students' comments directed at other faculty (specifically the students criticized Dr. Ximena Da Silva and Ms. Catherine Jones) without any investigation into those claims is irresponsible. In what appears a gross betrayal of due process, neither Dr.

Garrett nor other faculty were asked to confirm or deny these spurious student comments prior to the production of this 90-day notice. It is widely absurd to place weight on accusations of racism hurled by students who Dr. Garrett has never before met or seen, but who are closely mentored by Dr. Paula Parks who has a documented history of animosity toward Dr. Garrett. Upholding such accusations without any due process exemplifies the sort of irresponsible and retaliatory tactics of KCCD's treatment of Dr. Garrett.

Furthermore, the disputed facts of that heated EODAC meeting could easily be made bare if faculty committee chair Ms. Andrea Thorson – notably the most vocal individual accusing Dr. da Silva of misconduct – would simply release her alleged recording of the meeting to affirm her allegations. Oddly, Ms. Thorson has been unwilling to release her alleged recording to substantiate her outlandish claims of misconduct on the part of faculty who articulated opposition to her (and Dr. Parks') preferences, and KCCD has made no effort to discipline Ms. Thorson for her persistent baseless caustic smearing of her colleagues, including Dr. Garrett and Dr. da Silva, which again illustrates the retaliatory antics of the KCCD administration.

12. "you made demonstrably false and misleading claims inciting distrust. . . . On Terry Maxwell's Show, you:"

- a. "Claimed Bakersfield College funds 'fake news' websites;"
- b. "Claimed that sociology, ethnic studies, anthropology are producing bad information and poor narratives grounded in history"
- c. "claimed that diversity trainings are just ways to figure out how to legally discriminate"
- d. "Compared the conditions at Bakersfield College to 'how the Nazis got started'"
- e. "Claimed that Bakersfield College staff are trying to quiet you"
- f. "Claimed Bakersfield College pays students to write propaganda pieces"
- g. "Claimed that Bakersfield College has 'racial preference in hiring.'"

"Each of these claims is demonstrably false."

This claim alleges a variety of statements which Dr. Garrett never made, and a simple review of the addendum materials provided by the district (Exhibit 16) make clear that these are not quotes from Garrett but rather summary comments from some unknown party who often attributes those very summary comments to radio host Terry Maxwell and not Dr. Garrett. Simply put, Dr. Garrett did not make many of these comments that are falsely attributed to him nor does KCCD's own addendum exhibit provide evidence to support that assertion.

Furthermore, any comments Dr. Garrett did make on the Terry Maxwell show address matters of public interest and are well protected speech (as per *Pickering*), either as rational opinions or demonstrably true claims for which Garrett is prepared to provide physical evidence. Additionally, KCCD has no authority to discipline speech made outside the classroom, off KCCD property, and outside of working hours, all of which also enjoy protections in the KCCD-CCA faculty contract (Article 4.A & 4.B). This sloppy and baseless allegation constitutes yet

another flagrant violation of the First Amendment for the purposes of retaliation against Dr. Garrett.

Last, it is ironic that KCCCD would threaten to terminate Dr. Garrett for making the “demonstrably false” statement that the college seeks to “quiet” Dr. Garrett.

13. “You repeatedly failed, as the Faculty Lead for the Renegade Institute for Liberty, to restrict baseless attacks on the District and your colleagues on RIFL’s social media. For example, you allowed the following to be posted:”
- a. “In this case the state (BC) is organizing a student racial group and giving special perks to that one racial group.”
 - b. “The chronic management of Measure J expenditures is a consistent embarrassment.”
 - c. “Bakersfield College isn’t the only school to pay student activists.”
 - d. “BC Curriculum Committee approved giving away participation certificates (trophies).”
- “Each of these allegations is demonstrably false.”

This claim assumes Dr. Garrett is responsible for exercising censorship upon other faculty who write constitutionally protected speech. Each of the included examples are clearly items of public interest and fall within the realm of protected speech, as defined by *Pickering*. Additionally, Dr. Garrett has no contractual obligation to censor other employees. Dr. Garrett has no authority, nor would it be lawful for Dr. Garrett to censor the protected speech of other faculty.

Indeed, California Labor Code 1102.5 (c) makes clear that “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute.” Therefore, KCCCD cannot lawfully obligate Dr. Garrett to censor the protected speech of other individuals under threat of termination.

Furthermore, the censoring of other faculty is not one of the outlined responsibilities of faculty in the KCCCD-CCA faculty contract (Article 4.C). This alleged dereliction of an imagined professional responsibility that openly violates federal law cannot serve as grounds for discipline and attempts to discipline Dr. Garrett for failure to complete unspecified and illegal tasks. KCCCD’s attempt to imagine failure to illegally censor others exemplifies the administration’s utter disregard for the First Amendment and misguided rationale of the 90-day notice.

14. “You repeatedly published baseless accusations against the college and your fellow colleagues on your social media account. For example:”
- a. “you made the following public accusations against the college in your social media accounts”
 - i. “The college threatened discipline if I didn’t stop requesting records and criticizing social justice expenditures. They then escalated by threatening to terminate me. As a public institution their financials should be open to public

criticism. The administration's attempt to silence that discussion with threats of termination is illegal."

- b. "you made the following public accusations against the college on your social media account:"
 - i. "Bakersfield College paid for a UFW propaganda page to write a hit piece calling me something horrible."
 - ii. "I made public the otherwise unnoticed practice of BC funneling money to the UFW propaganda page."
 - iii. "The BC admin also attempted to block my teaching duties and even leaked my social security number."

"Each of these allegations is demonstrably false."

Similar to point twelve in the 90-day notice, this claim assumes that KCCD has authority to discipline Dr. Garrett for statements made outside the campus on his personal social media account. Indeed, the KCCD-CCA contract explicitly states that "The personal life of a faculty member is not an appropriate concern of the District for the purposes of evaluation or disciplinary action" (Article 4.B.1).

Also, unless KCCD monitors and disciplines allegedly incorrect posts on other employees personal social media accounts (many of which have publicly smeared Dr. Garrett) it has no legal standing to selectively target and discipline Dr. Garrett.

Furthermore, each of the examples provided in this claim are demonstrably true claims on matters of public interest, and therefore enjoy additional protection of the law as per *Pickering*. KCCD's attempt to regulate and restrict protected speech in Dr. Garrett's personal social media account constitutes yet another flagrant violation of the First Amendment by the KCCD administration.

- 15. "As Faculty Lead for the Renegade Institute for Liberty, you failed to ensure that your chosen group name does not infringe on anyone's intellectual property."

While it is true that the Texas based First Liberty Institute requested the Bakersfield College Liberty Institute change its name to avoid confusion with the Texas based institution, that request does not demonstrate unprofessional conduct on the part of Liberty Institute faculty chair/lead Dr. Garrett or founding admin chair Vice President Billie Jo Rice. Indeed, there is no contractual expectation for faculty to fulfil this expectation (See KCCD-CCA contract Article 4.C) and no precedent exists for characterizing such instances as evidence of "unprofessional" conduct, so this is a rather creatively imagined pretext for such an accusation. Dr. Garrett may not be disciplined for not completing tasks that are not related to his contractual duties.

Also, this strange characterization is not equally applied to all involved parties. If the potentiality of encroachment on intellectual property is indeed grounds for a designation as "unprofessional" conduct it is deeply alarming that Ms. Rice (in her official duties as administrative lead over the

launch of the group) was not issued any disciplinary action for this oversight. In fact, as the administrative lead she was arguably more responsible for clearing any administrative issues that might arise. However, she has not received any notice of discipline for having “failed” in this instance. Therefore, this attempt to imagine non-duties as a professional responsibility and then discipline Dr. Garrett for dereliction of still more fictional duties is yet another example of both imagined unprofessionalism and selective enforcement. The attempt to redefine such incident as “unprofessional” conduct and only apply that designation to Dr. Garrett while ignoring Ms. Rice speaks to the selective hostility and retaliatory posture of KCCD.

Furthermore, Dr. Garrett worked collaboratively with then KCCD Counsel Chris Hine to change the name of the Bakersfield College Liberty Institute to appease the Texas based Liberty Institute. Rather than define Dr. Garrett’s actions as “unprofessional” KCCD could just as easily characterized them as exceptional and worthy of commendation for safely navigating the college through a potential issue outside the scope of Dr. Garrett’s contractual duties.

Finally, though the Texas based group alleged encroachment, no ruling ever confirmed the veracity of their claim so it cannot be assumed that the name “Bakersfield College Liberty Institute” would have been found to encroach on the Texas based “First Liberty Institute.” Indeed, more recently the University of Texas launched its own “Liberty Institute” which has not changed its name to accommodate the First Liberty Institute. It is quite possible that the term “Liberty Institute” is sufficiently different from First Liberty Institute that that the court would not obligate a change of name, and thus no error (and certainly no wrongdoing) should be assumed. Nevertheless, KCCD does make that bold assumption in yet another characteristic attempt to retaliate against Dr. Garrett.

In addition to the fifteen alleged examples of unprofessional conduct, the 90-day notice also included six directives/demands which in general are oddly detached from the above examples.

- Directive “B” requires that Dr. Garrett abide Board Policies and Administrative Procedures is particularly strange given that the aforementioned examples include no indication that Dr. Garrett ever violated any Board Policy or Administrative Procedures. This constitutes only one of several demands that are oddly disconnected from any allegedly unprofessional behavior and therefore is unjustified. It is also so extremely vague as to be of little use for any expectation of remediation, except to enable allegations of failure to achieve an ill-defined standard.
- Directive “C” directs Dr. Garrett to limit use of district resources to district interests, suggestion Dr. Garrett has done something to the contrary. However, none of the above examples even allege that Dr. Garrett has used district resources for anything other than district interests, and therefore the demand is unjustified. Furthermore, the 90-day notice fails to define what “personal interests” would entail, or how Dr. Garrett is to separate out the intertwined nature of his professional and personal work. Was Dr. Garrett’s criticism of proposed history curriculum district interest (as KCCD employs Dr. Garrett in part because he is a nationally recognized scholar in history and ethnic studies) or is that to be

interpreted as “personal interests”? Should Dr. Garret host another guest lecture on free speech in the academy would that constitute district or personal interests? Is it district or personal interest when the Social Justice Institute affiliated faculty host events advocating partisan viewpoints, and is it appropriate to permit such activities while prohibiting alternative viewpoints? This directive creates an undefined standard that makes compliance a purely subjective decision of the administration regardless of what actions Dr. Garrett choses to take, essentially forcing complete self-censorship. As with the prior directive, this demand is so extremely vague as to be of little use for any expectation of remediation, except to enable allegations of failure to achieve an ill-defined standard.

- Directive “D” calls for civility and yet none of the aforementioned examples ever allege Dr. Garrett engaged in incivility. This constitutes only one of several demands that are oddly disconnected from any allegedly unprofessional behavior and therefore is unjustified. As with the two preceding directives, this demand is so extremely vague as to be of little use for any expectation of remediation, except to enable allegations of failure to achieve an ill-defined standard.
- Directive “E” obligates Dr. Garrett to cease use of the established ethics point reporting system and “address all grievances and complaints to appropriate college administrators.” First, this demand robs Dr. Garrett of the KCCD-CCA contractual right to file grievances with his union (Article 16.C); second, it fails to define just who would be the “appropriate” college administrator, as the longstanding practice used by KCCD is to submit complaints to the ethics point system. Is the “appropriate” administrator Mr. McCrow, the very dean who has now repeatedly engaged in allegedly retaliatory tactics against Dr. Garrett? Is the “appropriate” administrator Ms. Billie Jo Rice who inappropriately shared Dr. Garrett’s socially security number and confidential records and is a named defendant in Dr. Garrett’s existing First Amendment case? Or is some other individual the “appropriate” administrator, and does that individual have the power to investigate, discover, or correct the violation or noncompliance, as required by California Labor Code 1102.5? Finally, because filing sincere complaints are a protected activity, KCCD is not justified in using that activity as grounds to apply any discipline, including denial or restriction of Dr. Garrett’s ability to file future complaints, and so there is no justification for this disciplinary action.
- Directive “F” prohibits Dr. Garrett from use of district listerv for his “personal agenda” but no examples above allege Dr. Garrett’s use of any listervs for a “personal agenda.” This constitutes only one of several demands that are oddly disconnected from any allegedly unprofessional behavior and therefore is unjustified. Furthermore, as in directive “C”, Demand “F” it relies on vague and undefined notion of “personal agenda” that is inherently intertwined with the work faculty do. This demand creates an undefined standard that makes compliance a purely subjective decision of the administration regardless of what actions Dr. Garrett choses to take, essentially forcing complete self-censorship on any district listerv which has already denied Dr. Garrett the opportunity to correspond with his colleagues on pressing matters.
- Directive “G” removes Dr. Garrett from service on the campus diversity committee without justification. No investigation has found Dr. Garrett behaved in any way

unprofessional in that committee, thought Dr. Garrett has alleged an effort by administration to control the committee membership, which this demand seems to substantiate. And though Dr. Garrett was fairly quiet and reserved in the recent controversial diversity meeting, several other classified staff lashed out in unprofessional bursts for which they do not appear to be disciplined, again exhibiting subjective standards and enforcement for the purpose of retaliation against Dr. Garrett.

- Finally, directive “A” obligates Dr. Garrett to mindlessly comply with all directives of his supervisor (Mr. McCrow) who allegedly has engaged in multiple counts of retaliation against Dr. Garrett and even in this notice has threatened punitive measures for Garrett’s failure to engage in unlawful behavior of censorship of other faculty. That aside, the charge to defer to a supervisor’s judgement on all issues is vague and creates an undefined standard that makes compliance a purely subjective decision of the administration regardless of what actions Dr. Garrett chooses to take, essentially forcing complete self-censorship. May Dr. Garrett send emails? May Dr. Garrett attend campus events? May Dr. Garrett answer direct questions about controversial issues? May Dr. Garrett speak at committee meetings? Will posting to his own social media endanger Dr. Garrett’s employment? This 90-day notice calls into question the most basic right to speech and thereby creates an impossible standard for which Dr. Garrett must either expansively self-censor all behavior or risk termination. In that way, the 90-day notice constitutes a gross violation of the First Amendment. As with several other directives, this demand is so extremely vague as to be of little use for any expectation of remediation.

In summation, the 90-day notice exemplifies flagrant administrative retaliation for not only unjustified causes but statutorily protected activities and allegedly unprofessional conduct that is completely divorced from professional duties outlined in Article 4.C of the KCCD-CCA faculty contract. The 90-day notice then demands vague and unjustified remediation with little to no relevance to alleged misconduct in order to silence rather than remediate. The 90-day notice is, in effect, an open admission of retaliation and the intent to continue the attack on Dr. Garrett’s First Amendment rights. Therefore, Dr. Garrett recommends the immediate withdraw of the 90-day notice and that KCCD issue a public apology to Dr. Garrett and any others whose speech may have been chilled by such a wildly unjustified threat of termination.