

1 **2075**
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5 A Professional Corporation
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11 *Washoe County School District and*
12 *Washoe County School District*
13 *Board of Trustees*

8 **IN THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 PEDRO MARTINEZ, an individual and
11 Superintendent of the Washoe County
12 School District

CASE NO.: CV14-01617

12 Plaintiff,

DEPT. NO.: 9

13 vs.

14 WASHOE COUNTY SCHOOL DISTRICT;
15 WASHOE COUNTY SCHOOL DISTRICT
16 BOARD OF TRUSTEES,


16 Defendants.

17 **DEFENDANTS' MOTION FOR EXTENSION OF TIME TO FILE ANSWER OR**
18 **RESPONSIVE PLEADING TO VERIFIED COMPLAINT**

19 Defendants Washoe County School District and Washoe County School District Board of
20 Trustees ("WCSD") move this Honorable Court for its order extending the time required for
21 WCSD to file an answer or responsive pleading to the Plaintiff's Verified Complaint. WCSD
22 respectfully requests that the Court grant the Defendants additional time to and including October
23 15, 2014, in which to file a responsive pleading to the Verified Complaint on file herein. This
24 motion is based upon the attached points and authorities and affidavits and attachments thereto.

25 DATED this 29th day of July, 2014.

26 ROBISON, BELAUSTEGUI, SHARP & LOW
27 A Professional Corporation
28 71 Washington Street
Reno, Nevada 89503


KENT R. ROBISON
Attorneys for Defendants

1 POINTS AND AUTHORITIES

2 WCS D submits the following as and for its points and authorities in support of its Motion
3 for Extension of Time in which to file a response to the Verified Complaint filed herein.

4 **I. INTRODUCTION.**

5 The Verified Complaint filed herein by Pedro Martinez (“Plaintiff”) was filed on July 25,
6 2014. The Verified Complaint and Summons were served on WCS D on July 25, 2014. WCS D
7 is allowed 45 days in which to respond. NRC P 12(a)(3). Additional time is needed for the
8 following reasons:

9 1. The Plaintiff entered into an Employment Contract on or about August 1, 2012.
10 The Plaintiff presumably bargained in good faith when he entered into the Employment Contract.
11 The contract requires that the Plaintiff cooperate in good faith with WCS D and engage in
12 constructive, productive and cordial teamwork with WCS D. The Plaintiff has failed to do so.

13 2. The Plaintiff bargained for specific compensation, which includes a \$238,000
14 base salary. WCS D has complied in all respects with the contract.

15 3. The Plaintiff has been evaluated. Some of the findings were positive and some
16 were otherwise.

17 4. The Plaintiff bargained for specific termination provisions. The Plaintiff agreed
18 that he was and is an “at will” employee. The Plaintiff promised in his contractual commitments
19 that WCS D, through its Board of Trustees, could unilaterally terminate the Plaintiff’s contract.

20 5. The Plaintiff also contractually promised and agreed that his Employment
21 Contract could be terminated for cause. If the WCS D made the determination to terminate
22 Plaintiff’s contract for cause, Plaintiff contractually bound himself to an administrative process.
23 Plaintiff agreed that in such event he would have the right to written charges and the right to a
24 hearing before the Board. He further agreed to participate in a hearing before the Board of
25 Trustees of WCS D in which he could confront evidence justifying a termination for cause and in
26 which he could be represented by counsel, examine witnesses and produce testimonial and
27 documentary evidence.

28 6. On Tuesday, July 22, 2014, the Plaintiff and WCS D participated in legal meetings
concerning various issues related to potential litigation. In accordance with NRS
249.015(3)(b)(2), these legal meetings are not subject to or of Nevada’s Open Meeting Law.

7. In these legal meetings, Plaintiff displayed a hostile, belligerent, uncooperative
and defiant attitude and demeanor. The Plaintiff walked out of the legal discussions without

1 participating in the legal meetings in good faith and in accordance with his contractual promises
2 to cooperate with WCSD and his contractual promise to engage in good faith teamwork.

3 8. The Plaintiff is presently on administrative leave despite the incorrect allegations
4 in his Verified Complaint. Plaintiff has incorrectly alleged under oath that WCSD breached the
5 Employment Contract. This allegation is based on the Plaintiff's assertion that he was
6 terminated from his employment. The allegation is untrue.

7 9. The WCSD is proceeding with a Notice of Corrective Action addressed to the
8 Nevada Attorney General's office as permitted and authorized by NRS 241.0365. The Notice is
9 attached hereto as **Exhibit 1**. This process involves the following steps and procedures:

- 10 (a) Plaintiff will be notified of a date and time in which he may appear at a
11 public hearing before the Board of Trustees of WCSD.
- 12 (b) Before this public hearing, yet to be scheduled, the Board will provide
13 notice to the public and to the Plaintiff that the Plaintiff's performance under
14 his contract has been deficient and is deficient in the following respects:
- 15 • Plaintiff repeatedly represented himself in print on the District
16 website and verbally confirmed in public settings that he is a CPA. The Board of Trustees, District staff and the public were led to
17 believe that Plaintiff was a CPA in good standing. Plaintiff now
18 acknowledges that he has never been a registered or licensed CPA
19 under Illinois law or any other law. The representation, suggestion
20 or innuendo that Plaintiff is or has been a registered or licensed
21 CPA is inaccurate and untrue.
 - 22 • Copies of Plaintiff's biography authored by the Plaintiff and
23 published on the District's website and Davidson Academy
24 biography are attached hereto as **Exhibits 2 and 3**.
 - 25 • During Plaintiff's 2009 interview with the Board of Trustees,
26 Plaintiff expressly represented to the Board that he was a CPA. To
27 qualify as a CPA in the State of Illinois, one must be registered or
28 licensed by the State of Illinois, regardless of what credentials the
applicant possesses from any university.
 - On July 22, 2014, Plaintiff refused to explain these discrepancies,
refused to address the serious nature of his previous

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misrepresentations and refused to cooperate with the Board of Trustees in the legal meetings that were conducted on Tuesday, July 22, 2014.

- Plaintiff refused to discuss or acknowledge the Board’s concern about the seriousness of the requirements of the State of Illinois and reacted to the Board’s inquiries in a beligerant and defiant manner.
- Plaintiff intentionally and willfully disobeyed a Board directive in May of 2014. When questioned about his disobedience, the Plaintiff misrepresented facts concerning the directive.
- The Plaintiff has mishandled various personnel issues in a manner contrary to the terms of his Employment Agreement. Despite contractual promises that he would seek and obtain the advice and support of the Board on personnel issues, Plaintiff has intentionally and purposefully excluded the Board from various considerations on substantial and important personnel decisions.
- Contrary to his contractual obligation to coordinate his effort with the Board, to cooperate with the Board and to be involve in good faith teamwork with the Board, Plaintiff purposefully and intentionally refused to consult the Board when he made substantial increases to the executive leadership staff in 2013.
- Contrary to his contractual promises to work with the Board in good faith in cooperation and with a true spirit of teamwork, Plaintiff refused to work with the Board when he unilaterally transferred approximately 12 principals in 2013 without providing the Board with the courtesy of notification and opportunity to consult.
- The Board requested and approved the 2014/2015 budget in May of 2014. The Board included in the budget additional positions for counseling services. The additional counselors were needed given recent developments. The counselors were needed to provide much needed support to Washoe County Schools. Despite

1 repeated requests from the Board, the Plaintiff willfully and
2 intentionally refused to move forward on the Board's request to
3 have the School District receive the benefit of additional
4 counselors.

- 5 • The Board has received repeated complaints from parents to which
6 the Plaintiff has been chronically nonresponsive. These problems
7 were especially serious concerning the District's Special Education
8 population. The Plaintiff's refusal to be responsive to the high
9 profile nature of these Special Education issues has placed the
10 Board and WCSD on a critical and negative public light.
- 11 • Plaintiff has made material misrepresentations to the Board
12 regarding recent high profile personnel decisions. Plaintiff's
13 misrepresentations and malfeasance in handling these personnel
14 positions has subjected the Board to unjustified and otherwise
15 unwarranted criticisms.

16 (c) Once the public hearing on the Notice of Corrective Action has been
17 conducted and both parties have had an adequate opportunity to fully vet,
18 investigate and scrutinize WCSD's assertions and the Plaintiff's responses,
19 WCSD will then consider its options, which include, but are not limited to the
20 following:

- 21 • Reinstatement by lifting the leave of absence;
- 22 • Perpetuating the leave of absence or suspending the Plaintiff's
23 employment;
- 24 • Termination for cause; or
- 25 • Termination without cause.

26 10. The process under which these considerations will be made and considered will,
27 in all likelihood, take more than 45 days from the date hereof.

28 **II. ANALYSIS.**

Extensions of time to file responsive pleadings should be freely given. WCDR 11
provides that requests for extensions of time shall be in writing filed with the Court.

Because the Plaintiff has not exhausted an administrative remedy which might apply in
the event WCSD terminates the Plaintiff's employment for cause as specified in paragraph 14-D.

1 of his Employment Contract, responsive pleadings are at this time premature and the Plaintiff's
2 Verified Complaint may very well be subject of a mandatory dismissal because the Plaintiff has
3 not exhausted these contractually negotiated and agreed upon administrative remedies.

4 Typically, extensions of time are negotiated between or among counsel of record.
5 Plaintiff's counsel is a distinguished and experienced lawyer whose integrity is beyond question.
6 However, given the public nature of this case and in light of the Plaintiff's accusations that
7 "closed door" agreements are objectionable, this motion is made without conferring with
8 Plaintiff's counsel.

8 **III. CONCLUSION.**

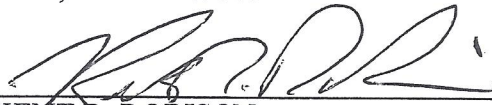
9 For the reasons stated, WCSO respectfully asks that it be permitted by Court order to
10 have until October 15, 2014, in which to file a responsive pleading to the Plaintiff's Verified
11 Complaint.

12 **AFFIRMATION**
13 **Pursuant to NRS 239B.030**

14 The undersigned does hereby affirm that this document does not contain the social
15 security number of any person.

16 DATED this 29th day of July, 2014.

17 ROBISON, BELAUSTEGUI, SHARP & LOW
18 A Professional Corporation
19 71 Washington Street
20 Reno, Nevada 89503

21 
22 _____
23 KENT R. ROBISON
24 Attorneys for Defendants

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AFFIDAVIT OF RANDY DRAKE

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Randy A. Drake, being first duly sworn on oath, deposes and says under penalty of perjury that the following assertions are true and correct.


1. I am Chief General Counsel for the Washoe County School District and serve as counsel to the members of the Board of Trustees of the Washoe County School District.

2. Attached as **Exhibit 1** is a true and accurate copy of a Notice of Corrective Action that we intend to process with the Nevada Attorney General's office.

3. Attached as **Exhibit 2** is a true and accurate copy of the biography of the Plaintiff that was placed on the WCSD's website.

4. The Plaintiff is a Board member of the Davidson Academy. Attached as **Exhibit 3** is the Plaintiff's biography associated with his Board position with the Davidson Academy.

DATED: This 29th day of July, 2014.



RANDY A. DRAKE

Subscribed and Sworn to Before me
this 29th day of July, 2014, by
Randy A. Drake.



NOTARY PUBLIC



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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused to be served a true copy of **DEFENDANTS' MOTION FOR EXTENSION OF TIME TO FILE ANSWER OR RESPONSIVE PLEADING TO VERIFIED COMPLAINT** on all parties to this action by the method indicated below:

_____ by placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada, addressed to the following:

by using the Court's CM/ECF electronic service system addressed to:

WILLIAM E. PETERSON, ESQ.
Snell & Wilmer L.L.P.
50 W. Liberty Street, suite 510
Reno, NV 89501
Email: wpeterson@swlaw.com
Attorneys for Plaintiff

_____ by electronic transmission to the above listed

_____ by personal delivery/hand delivery to:

_____ by facsimile (fax)

_____ by Federal Express/UPS or other overnight delivery

DATED: This 29th day of July, 2014.



V. JAYNE BERRETTO

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EXHIBIT LIST

<u>No.</u>	<u>Description</u>	<u>Pages</u>
1	Notice of Corrective Action	2
2	WCSC Biography of Pedro Martinez	1
3	Davidson Academy Biography of Pedro Martinez	2

EXHIBIT 1

EXHIBIT 1

Office of the General Counsel



Washoe County School District
Every Child, By Name And Face, To Graduation

Randy A. Drake, Esq., Chief General Counsel
Christopher B. Reich, Esq., General Counsel
Sara K. Almo, Esq., Associate General Counsel
P.O. Box 30425, Reno, NV 89520-3425
Phone (775) 348-0300 / Fax (775) 333-6010
Legal@washoeschools.net

July 29, 2014

Via United States First Class Mail and email to gtaylor@ag.nv.gov

George Taylor, Sr. Deputy Attorney General
Attorney General's Office
100 N. Carson St
Carson City, Nevada 89701

Re: Open Meeting Law Complaint against Washoe County School District

Dear Deputy Attorney General Taylor:

As you know, this office represents the Washoe County School District (District). This letter is a follow-up to our recent telephone conversations.

The District is aware of two complaints filed with your office alleging that the District Board of Trustees (BOT) violated the Open Meeting Law on July 22, 2014 when Pedro Martinez was placed on administrative leave with pay. As a "public body" under the OML (NRS 241.015 (4)), the District has the right to correct an alleged violation of the OML within 30 days of the alleged violation. In pertinent part, the OML provides:

Except as otherwise provided in subsection 4, if a public body, after providing the notice described in subsection 2, takes action in conformity with this chapter to correct an alleged violation of this chapter within 30 days after the alleged violation, the Attorney General may decide not to commence prosecution of the alleged violation if the Attorney General determines foregoing prosecution would be in the best interests of the public.

NRS 241.0365 (1).

Except as otherwise provided in subsection 4, before taking any action to correct an alleged violation of this chapter, the public body must include an item on the agenda posted for the meeting at which the public body intends to take the corrective action in conformity with this chapter. The inclusion of an item on the agenda for a meeting of a public body pursuant to this subsection is

Deputy Attorney General Taylor

Re: Open Meeting Law Complaint against Washoe County School District

July 29, 2014

Page 2

not an admission of wrongdoing for the purposes of civil action,
criminal prosecution or injunctive relief.

NRS 241.0365 (2).

The District BOT intends to take corrective action according to NRS 241.0365 (1) and (2) within 30 days from July 22, 2014.

The District requests that any action or investigation being conducted by the Attorney General's Office regarding this matter be stayed for 30 days from July 22, 2014. Your granting this request is supported by OML at NRS 241.0365 (3), which tolls the limitation period for 30 days within which the Attorney General may bring suit under NRS 241.037. The OML also provides that "Except as otherwise provided in NRS 241.0365, the Attorney General shall investigate and prosecute any violation of this chapter." NRS 241.039(1) (emphasis added). These two statutory provisions read together, along with the apparent overarching policy consideration to give public bodies a manner in which to take corrective action without fear of confounding themselves with an investigation or prosecution, support a stay in the Attorney General's proceedings for 30 days from the alleged violation.

Therefore, in sum, the District's BOT will take corrective action in this matter according to the OML and the District requests that the Attorney General's Office stay any proceedings in this matter until after 30 days from July 22, 2014.

Thank you for your time and consideration in this matter.

Very truly yours,



Randy A. Drake, Esq.
Chief General Counsel

RAD/bnr

EXHIBIT 2

EXHIBIT 2

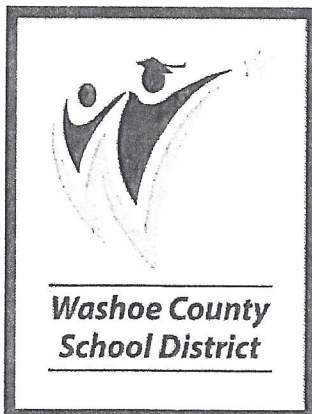
Pedro Martinez
Superintendent
Washoe County School District



Pedro Martinez serves as the superintendent for the Washoe County School District, overseeing the success of the District's 93 schools and the reform efforts in *Envision WCSD 2015 – Investing In Our Future*. Martinez previously worked for WCSD between 2009 and 2011 as deputy superintendent when he was at the forefront of the development and implementation of the District's strategic plan. During his time as deputy superintendent, Martinez led the implementation of the *Pathway to College and Highly-Skilled Career Readiness*, which identifies academic milestones for student success from pre-kindergarten to high school graduation. Additionally, Martinez played a leading role in developing the District's graduation initiative that resulted in the District's graduation rate climbing 14 percentage points (56 percent to 70 percent) in a two year period and every WCSD high school increasing its graduation rate.

Prior to becoming WCSD superintendent, Martinez served as the deputy superintendent of the Clark County School District (CCSD), the nation's 5th largest school district serving 310,000 students. He oversaw the district's 357 schools and academic departments. Under his leadership, CCSD implemented academic reforms across all levels, including the largest graduation initiative in the District's history that resulted in all 49 high schools making gains and the District surpassing its graduation rate goal. During his time in CCSD, Martinez led efforts that focused on college and career readiness, including the increase of student participation and performance rates in acceleration classes, Advanced Placement courses, and dual enrollment programs. He also led the implementation of the Common Core State Standards and the CCSD's new accountability system.

Before moving to Nevada, Martinez previously served as a regional superintendent of Chicago Public Schools (CPS), the nation's 3rd largest district serving 409,000 students. He also was the chief financial officer for CPS for six years overseeing a \$5.2 billion operating budget and a \$1 billion capital budget. Under his leadership, the District increased its financial reserves from \$200 to more than \$430 million, received bond rating upgrades, and implemented academic initiatives that resulted in significant student achievement and graduation gains.



Before joining Chicago Public Schools, Martinez was the director of finance and technology at the Archdiocese of Chicago and also an audit manager at Deloitte & Touche and Price Waterhouse Coopers. He is a certified public accountant and holds a bachelors degree in accounting from the University of Illinois at Urbana-Champaign and a master's degree with highest honors in business administration from DePaul University. Martinez is a graduate of the 2009 class of The Broad Superintendents Academy.

EXHIBIT 3

EXHIBIT 3

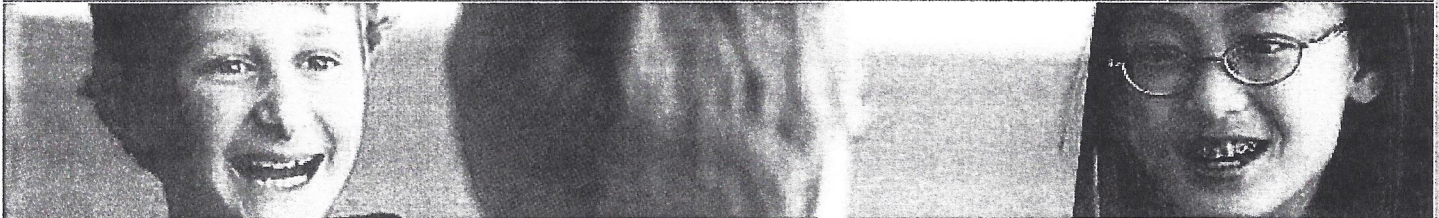
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Pedro Martinez, Washoe County School District Superintendent



Pedro Martinez serves as the superintendent for the Washoe County School District, overseeing the success of the District's 93 schools and the reform efforts in Envision WCSD 2015 – Investing In Our Future. Martinez previously worked for WCSD between 2009 and 2011 as deputy superintendent when he was at the forefront of the development and implementation of the District's strategic plan. During his time as deputy superintendent, Martinez led the implementation of the Pathway to College and Highly-Skilled Career Readiness, which identifies academic milestones for student success from pre-kindergarten to high school graduation. Additionally, Martinez played a leading role in developing the District's graduation initiative that resulted in the District's graduation rate climbing 14 percentage points (56 percent to 70 percent) in a two year period and every WCSD high school increasing its graduation rate.

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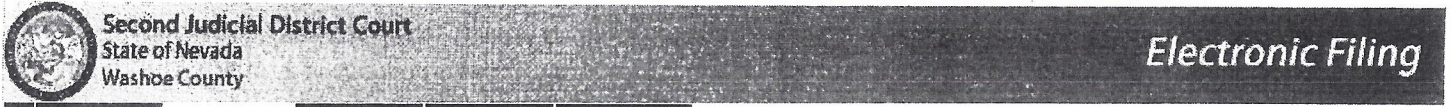
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Jayne Ferretto

From: eflex@washocourts.us
Sent: Tuesday, July 29, 2014 1:20 PM
To: Kent Robison
Cc: Jayne Ferretto
Subject: Received Notice: Your filing, Re: CV14-01617 - Contract Case: Employment Contract - EC - Mtn for Extension of Time, was received

To: Kent R. Robison krobison@rbslattys.com
From: eflex@washocourts.us
Date: 2014-07-29 13:19:23.0
Subject: Your electronic filing, Re: CV14-01617 - Contract Case: Employment Contract - EC - Mtn for Extension of Time, was received by SECOND JUDICIAL DISTRICT COURT - STATE OF NEVADA.

Case Number: CV14-01617
Case Type: Contract Case: Employment Contract - EC
Document Type: Mtn for Extension of Time
Document Type: **Continuation
Document Type: **Continuation
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