

FILED
MAR 26 2019

Clerk of the Court
Superior Court of CA County of Santa Clara
BY *Rita* DEPUTY
I. ARMENTA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

JANE DOE,

Petitioner,

vs.

PALO ALTO UNIFIED SCHOOL DISTRICT;
and DOES 1-5,

Respondents.

JOHN ROE,

Petitioner in Intervention,

vs.

PALO ALTO UNIFIED SCHOOL DISTRICT,
and DOES 1-5,

Respondents.

Case No. 19CV341533

ORDER PARTIALLY STAYING
ADMINISTRATIVE DIRECTIVE
PENDING DISPOSITION ON MERITS
(CCP § 1094.5, subd. (g).)

Petitioner Jane Doe's (ex parte) request under Code of Civil Procedure section 1094.5, subdivision (g) for a stay pending disposition of this mandate proceeding came on for a hearing (set by the court) on March 22, 2019, at 9:00 a.m. in Department 10, the Honorable Helen E. Williams, presiding. Crystal N. Riggins and Laura C. Riparbelli of Hoge, Fenton, Jones & Appel, Inc. appeared for petitioner Jane Doe; Alec Rose of the Law Office of Alec Rose, PC,

1 appeared for petitioner in intervention John Roe; and Mark E. Davis of Davis & Young, APLC
2 appeared for respondent Palo Alto Unified School District. After consideration of the papers,
3 supporting evidence, and arguments of counsel, the court grants in part the request for stay as
4 follows.¹

5 I. *Relevant Background*

6 Jane Doe, a minor student at Gunn High School, brings this petition for writ of
7 administrative mandate under Code of Civil Procedure section 1094.5. Her petition challenges
8 the administrative January 22, 2019 “Amended Safety Directive” of the Palo Alto Unified
9 School District, which directive altered a previous Permanent Safety Directive issued after the
10 District had concluded an investigation under Title IX of the Education Amendments of 1972 (20
11 U.S.C. § 1681 et seq.) (Title IX) concerning Jane Doe’s complaint of sexual assault and
12 harassment at school by another student, John Roe.² The District’s investigation found that John
13 Doe had indeed violated the District’s Policy 5145.7 (Sexual Harassment) by conduct
14 constituting sexual harassment of Jane Doe, because certain of his actions through oral speech
15 about Jane Doe in front of peers and text messages to her were “unwelcome, severe and created
16 an intimidating, hostile, or offensive educational environment and limited [Jane Doe]’s ability to
17 benefit from her participation in her educational pursuits.” In this latter regard, the District
18 specifically found that Jane Doe had “credibly reported that seeing [John Roe] caused her
19 distress” and that she had “suffer[ed] distress related to [John Roe] attempting to join the [Gunn
20 Robotics Team (GRT)], an environment that had previously been a safe place and the focus of
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22 ¹ Many of the documents filed by the parties in connection with Jane Doe’s stay request
23 were filed under seal. The court has considered all of these documents but has carefully
24 attempted not to discuss sealed matters in this order. Jane Doe’s two requests for judicial notice
25 in connection with her stay request are granted. The court is not in a position to rule on Jane
26 Doe’s hundreds of evidentiary objections. Although the objections to various matters are listed
27 numerically, each “objection” lists multiple grounds for objection to the same matter. And there
28 are many hearsay objections interposed to which there is an obvious applicable exception. The
court has considered the admissibility of evidence in ruling on the stay request.

² The alleged sexual assault took place off campus, and the District declined to
investigate that allegation as being outside the scope of Title IX. But the District did pursue its
investigation of Jane Doe’s allegations of ensuing sexual harassment by John Roe at school.

1 her academic interest.” The District also found in its investigation that John Roe had not
2 committed, i.e., did not do, other acts that Jane Doe had alleged he had done in violation of the
3 District’s interim no-contact directive, which had been implemented as a temporary measure to
4 minimize contact between the students pending completion of the District’s investigation.

5 In view of its findings of sexual harassment of Jane Doe by John Roe, the District
6 implemented a permanent no-contact directive for the remainder of the 2018-2109 school year,
7 and further directed that disciplinary action against John Roe would “be handled at the school
8 site.” Then, on November 5, 2018, the District implemented its initial Permanent Safety
9 Directive, stated to be effective for the balance of the 2018-2019 school year, which provided
10 that beginning January 2019, Jane Doe and John Roe would “attend their separate Robotics’
11 classes and will avoid each other when the classes follow each other in the schedule” and that
12 John Roe would “not be permitted to join the afterschool GRT Build Team” and would “not
13 participate in the afterschool GRT Build Team activities.”

14 For the 2018-2019 school year, John Roe was and is enrolled in a specific course entitled
15 “Engineering Technology,” course number 8574, commonly known as “Robotics.” Jane Doe is
16 not enrolled in the same class but is enrolled in a different class of the same course. The course
17 has a “co-curricular” requirement of some participation in the after school, extra-curricular GRT
18 Build Team activity and provides that course participants “need to be selected as members of the
19 [GRT].” That requirement, per the Engineering Technology course description, is an average of
20 four hours per week in the fall semester and an average of 10 hours per week in the spring,
21 through April. But it appears that during the six weeks of the “Build Season” from January
22 through about mid-February, it is more like 12 hours outside of the Engineering Technology
23 course. This level of participation during “Build Season” is required to earn an “A” in the class.
24 The total available hours per week of the GRT Build Team activity is around 48 and, in the
25 spring, the activity also includes field trips and competitions that involve travel and overnight
26 stays.

27 Jane Doe has been engaged in robotics as an interest and a hobby for years now and is
28 passionate about it and the GRT Team Build. Through her leadership, devotion, and success, she

1 has attained a “Veteran” and Lead status in the program. She participates in the program for
2 virtually all the hours it is available. Leads have more responsibility in the program, but it is
3 designed so that at least two people on the team have the skills required to complete every
4 essential task. Jane Doe, as a “CNC Lead,” worked “two (2+) plus days a week during the Fall
5 semester and four (4+) plus days a week during the ‘Build Season.’ ” But this last fall, she also
6 trained another student on the “CNC,” and, according to the District, that other student is now
7 able to run it in the GRT shop in Jane Doe’s absence. Still, according to Jane Doe, her
8 participation for most of the available hours is indispensable to the team.

9 John Roe’s interest in GRT Team Build, in contrast, is more recent and budding. He is
10 not a lead or Veteran in the program but is a first year “Rookie” participant.

11 In response to the District’s initial Permanent Safety Directive issued on November 5,
12 2018, after the District’s Title IX investigation, John Roe, through his mother, informed the
13 District that his exclusion from GRT Team Build for the spring semester was counter to his
14 educational programming in that the Engineering Technology course in which he was enrolled
15 required participation in GRT Team Build, and also that this exclusion was harmful to John
16 Roe’s social, emotional, and educational health and well being. John Roe receives the benefit of
17 special education services under the Individuals with Disabilities Education Act (IDEA, at 20
18 U.S.C. 1400, et seq.) and has in place an Individual Education Plan (IEP).³ The current IEP does
19 not specify or call out for him to be enrolled in the Engineering Technology course or to
20 participate in the GRT Team Building activity, or “offer” these activities as part of a free
21 appropriate public education (FAPE) in the least restrictive environment (LRE). But this class
22 and related activity were cited several times as an important and positive development in his
23 curriculum.

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26 ³ An IEP “is a comprehensive statement of a disabled child’s educational needs and the
27 specifically designed instruction and related services that will meet those needs. [Citation.] It is
28 developed by a school official qualified in special education, the child’s teacher, and the parents.
[Citation.]” (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1067, fn. omitted.) “[A]n IEP is
reviewed at least annually and revised as necessary. (*Ibid.*, citing 20 U.S.C. § 1414(d)(4).)

1 After informing the District sometime in December 2018 of these negative exclusionary
2 effects on John Roe of its Permanent Safety Directive, John Roe and his mother filed a complaint
3 and requested an Expedited Due Process Hearing with the state Office of Administrative
4 Hearings (OAH). (See 20 U.S.C. § 1415(k).) They contended that the District's Permanent
5 Safety Directive violated John Roe's rights under IDEA and Education Code section 48915.5 in
6 that his conduct at issue in the District's investigation and findings of sexual harassment was a
7 manifestation of his specified disability, and, because the Permanent Safety Directive constituted
8 discipline exceeding 10 school days, it could not be implemented without a manifestation
9 hearing and without violating John Roe's guaranteed education rights under 20 U.S.C. section
10 1415(k). The District made a motion in the OAH proceeding to remove John Roe's complaint
11 from "expedited" status under 20 U.S.C. section 1415(e)(2)(F) on grounds that the complaint did
12 not raise "expedited" issues, including the assertion that the Robotics class and the related GRT
13 Team Build activity were not offered in the IEP as part of FAPE in the LRE and that the
14 Permanent Safety Directive did not constitute "discipline" of John Roe at all in that it was
15 instead a result of a Title IX investigation and was part of remedial measures implemented to
16 protect the complainant, Jane Doe.

17 Before any formal decision on the District's motion, but apparently after some indication
18 that the District would not prevail in its effort to avoid expedited due process proceedings before
19 OAH on the issue, the District and John Roe and his mother participated in mediation in mid-
20 January 2019. John Roe's mother reiterated the serious negative effects on John Roe's education
21 and his well being of his exclusion from GRT Team Build. The District had investigated this
22 information after its disclosure in December 2018, and found it credible.

23 District officials also met numerous times before the mid-January mediation to address
24 the information John Roe's mother had provided and to discuss how to resolve the issues
25 presented by the information. The District considered and weighed a number of factors,
26 including the terms of the November Permanent Safety Directive that had allowed John Roe to
27 minimally participate in the GRT Team Build in the fall semester based on an alternating
28 schedule with Jane Doe; the investigation of Jane Doe's allegations that John Roe had violated

1 the interim no-contact order, which investigation had found her allegations unsubstantiated; the
2 number of hours that each student “needed” to attend the GRT Team Build activity in the spring
3 semester, which is 10-12 of the 48 offered per week, at least during the “Build Season”; the
4 possibility that each student could be present in a different location in the GRT Team Build
5 facility working in different areas and on different things; the possibility of crafting a schedule
6 whereby John Roe could meet the 12-hour per week requirement in the spring semester while
7 allowing Jane Doe the remaining 36 hours, and the District’s ability to provide an aide to shadow
8 John Roe for the 12 hours he would be present and to monitor the situation daily and make
9 appropriate adjustments as needed; and the impact on the two students.

10 After the mediation in mid-January, the District on the one hand, and John Roe and his
11 mother on the other hand, entered into a mediation agreement. The agreement concerns the
12 District’s implementation of the November 2018 Title IX Permanent Safety Directive, as it
13 affects John Roe’s participation in the Engineering Technology course and the related GRT
14 Team Build activities. The mediation agreement, entered into for the express purpose of avoiding
15 the time and expense of further litigation before the OAH, which concerns are seemingly
16 unrelated to Jane Doe, requires John Roe to be allowed to enroll in the Engineering Technology
17 class for the balance of the 2018-2019 school year and the ensuing 2019-2020 school year,
18 “including all components, subject to [John Roe] meeting the requirements which apply to all
19 students.” The agreement does not specifically mention his participation in the GRT Team Build
20 activity, but it is a component of the Engineering Technology course.

21 After entering into the mediation agreement, the District then issued its Amended Safety
22 Directive on January 22, 2019, in the Title IX proceeding involving Jane Doe. As concerns the
23 GRT Team Build, the Amended Safety Directive provides that John Roe “will be permitted to
24 join” through the end of the 2018-2019 school year but [Jane Doe] and [John Roe] will follow
25 alternate schedules Monday through Sunday” according to an attached weekly schedule.⁴ “With
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27 ⁴ It appears the attached schedule included several different options that equally split each
28 student’s time in the GRT Team Build activity. But the District’s papers sometimes appear to
suggest that under the Amended Safety Directive, Jane Doe may participate in GRT Team Build
for 36 hours per week of the available 48 while John Roe will be allocated only the minimal 12

1 regard to participation in any field trips, the District shall coordinate with the parties to support
2 both parties' participation; [¶] District shall provide additional supervision in after-school
3 activities and field trips to support both parties' participation." In other words, the Amended
4 Safety Directive equally split the available time in the GRT Team Build activity between Jane
5 Doe and John Roe, and further allowed him to participate in field trips and away competitions
6 with additional supervision provided by the District for Jane Doe's protection. Though not
7 specifically described in either Safety Directive, the District has also employed a variety of
8 oversight and supervision measures designed to monitor John Roe at school for the purpose of
9 ensuring that Jane Doe is provided an educational environment that is free from harassment and
10 that her contact with John Roe is minimized. According to the District, Jane Doe, whose
11 locations on campus are generally unrestricted as a result of the Title IX investigation,
12 sometimes "chooses" to be in locations where John Roe is directed to be such that their
13 proximity becomes unavoidable. And Jane Doe and John Roe each allege that the other has
14 violated the District's no-contact directive and each deny these respective allegations.

15 When the Amended Safety Directive was first implemented in January 2019, John Roe
16 overlapped with Jane Doe on one occasion within the GRT Team Building facility, accompanied
17 by an "escort" provided by the District for supervision.⁵ According to Jane Doe and her mother,
18 who was present at the site, the escort was distracted and on the phone and did not see John Roe
19 come within three feet of Jane Doe at one point. John Roe is not alleged to have engaged in
20 further harassing behavior on that occasion, and a faculty member who was present saw John
21 Roe immediately turn around and retreat when he encountered Jane Doe, but Jane Doe
22 nonetheless perceived his mere presence in her proximity, and the trauma that it caused her, as
23 interfering with her right of access to an education free from sexual harassment or a hostile
24 environment created by sexual harassment. Jane Doe further asserts that the physical facility
25 where the GRT Team Build activity takes place is such that no additional supervision of John
26
27 hours per week required during spring "Build Season," with any required overlap to trigger extra
28 supervision of John Roe provided by the District.

⁵ The Amended Safety Directive does apparently contemplate that there will be times that the students' presence at the GRT Team Build facility on campus will overlap.

1 Roe will entirely insulate her from contact with him (such as John Roe “staring” at her, an
2 allegation he also makes against her), and that no contact between them is likewise impossible to
3 achieve during field trips and away GRT competitions because of their inherent nature and the
4 way in which participants must interact as part of those activities.

5 The Amended Safety Directive in January 2019 thus precipitated Jane Doe’s petition for
6 writ of mandate by which she seeks to reinstate the prior November Permanent Safety Directive
7 to the extent it precluded John Roe’s participation in GRT Team Build for the remainder of the
8 2018-2019 school year. Through an ex parte application, on January 25, 2019, Jane Doe sought a
9 stay of the Amended Safety Directive pending disposition of the action under Code of Civil
10 Procedure section 1094.5, subdivision (g). The court temporarily granted that stay pending a
11 hearing, and the District honored that judicial stay by precluding John Roe’s current participation
12 in GRT Team Build, which is inconsistent with the District’s mediation agreement with John
13 Roe and his mother, of which the court was unaware when it issued the temporary stay pending a
14 hearing.

15 On February 11, 2019, John Roe, with leave of court, filed his petition in intervention,
16 likewise seeking relief in administrative mandamus. He seeks to enforce the terms of his
17 mediation agreement with the District, and his rights under IDEA and concomitant state law.

18 John Roe and the District both initially opposed Jane Doe’s request for a stay of the
19 Amended Safety Directive, filing papers in opposition. The District lightly argued that any
20 interim stay “*may ... be against the public interest.*” (Italics added.) At the hearing, the District
21 sought to “withdraw” its papers and submitted that it would abide by whatever interim order on
22 the requested stay that the court were to make. John Roe objected to any withdrawal of papers by
23 the District, as his own opposition was in part premised on what the District had asserted in its
24 papers. The court did not permit any papers to be “withdrawn,” as the court had already reviewed
25 and considered them.

1 II. *Legal Authority Governing Request For Stay in Mandamus Proceedings*

2 In requesting a stay pending the outcome of a mandamus proceeding, the burden is on the
3 petitioner to establish the relevant criteria. (*Medical Board v. Superior Court* (1991) 227
4 Cal.App.3d 1458, 1461; *Elizabeth D. v. Zolin* (1993) 21 Cal.App.4th 347, 354.)

5 Code of Civil Procedure section 1094.5, subdivision (g) provides that except in situations
6 not relevant here, “ ‘the court in which proceedings under this section are instituted may stay the
7 operation of the administrative order or decision pending the judgment of the court

8 However, no such stay shall be imposed or continued if the court is satisfied that it is *against the*
9 *public interest.*’ [Citation.] This statute ‘unequivocally requires the superior court [to] weigh the
10 public interest in each individual case.’ (*Sterling v. Santa Monica Rent Control Board* (1985)
11 168 Cal.App.3d 176, 187.)” (*American Indian Model Schools v. Oakland Unified School District*
12 (2014) 227 Cal.App.4th 258, 295, italics added.) Accordingly, it is the court’s duty here to weigh
13 any relevant “public interest” to determine if the interim stay Jane Doe requests is adverse or
14 against that interest in some way.

15 III. *Analysis of the Public Interest Here*

16 The District’s opposition papers, from which it has backed away, point out that any
17 interim stay of the January Amended Safety Directive “*may*” be against the public interest, here
18 the broad discretion and flexibility accorded the District to manage its programs under Education
19 Code sections 35160 and 35160.1. (Italics added.) This latter section at subdivision (a) reflects
20 legislative findings that “school districts, county boards of education, and county superintendents
21 of schools have diverse needs unique to their individual communities and programs. Moreover,
22 in addressing their needs, common as well as unique, school districts, county boards of
23 education, and county superintendents of schools should have the flexibility to create their own
24 solutions.” Likewise, Education Code section 35160.1, subdivision (b) expresses legislative
25 intent to provide broad authority for school districts, county boards of education, and county
26 superintendents of schools to carry on activities and programs and to construe section 35160
27 broadly to effect this objective. Education Code section 35160, in turn, provides that “the
28 governing board of any school district may initiate and carry on any program, activity, or may

1 otherwise act in any manner which is *not in conflict with or inconsistent with, or preempted by,*
2 *any law* and which is not in conflict with the purposes for which school districts are established.”
3 (Italics added.) Thus, though broad, a school board’s authority is not unlimited; a school board
4 may not initiate policies or programs or activities in conflict with the law. But the judicial role in
5 this realm is also limited. Courts determine the legality of a school board’s policy or exercise of
6 discretion, not its wisdom.

7 These Education Code sections and underlying policies have been interpreted by courts to
8 recognize that “[a]bsent a specific statutory limitation, a school district ‘is free to act as it sees fit
9 within the purposes for which it was established.’ (*Las Virgenes Educators Assn. v. Las Virgenes*
10 *Unified School Dist.* (2001) 86 Cal.App.4th 1, 12; see § 35160; *Dawson v. East Side Union High*
11 *School Dist.* (1994) 28 Cal.App.4th 998, 1017-1019.) ‘[C]ourts should give substantial deference
12 to the decisions of local school districts and boards within the scope of their broad discretion,
13 and should intervene only in clear cases of abuse of discretion’ where the acts are *clearly*
14 *inconsistent with state law or constitutional principles.* [Citation.]” (*T.H. v. San Diego Unified*
15 *School Dist.* (2004) 122 Cal.App.4th 1267, 1281-1282, italics added.)

16 The United States Supreme Court discussed the importance of education in *Brown v.*
17 *Board of Education* (1954) 347 U.S. 483, 493, espousing that it “is perhaps the most important
18 function of state and local governments. Compulsory school attendance laws and the great
19 expenditures for education both demonstrate our recognition of the importance of education to
20 our democratic society. It is required in the performance of our most basic public responsibilities,
21 even service in the armed forces. It is the very foundation of good citizenship. Today it is a
22 principal instrument in awakening the child to cultural values, in preparing him [or her] for later
23 professional training, and in helping him [or her] to adjust normally to his [or her] environment.
24 In these days, it is doubtful that any child may reasonably be expected to succeed in life if he [or
25 she] is denied the opportunity of an education. Such an opportunity, where the state has
26 undertaken to provide it, is a right which must be made available to all on equal terms.” This
27 proposition applies to each student here.

1 In enacting what is now IDEA, Congress found, among other things, that “Improving
2 educational results for children with disabilities is an essential element of our national policy of
3 ensuring equality of opportunity, full participation, independent living, and economic self-
4 sufficiency for individuals with disabilities.” (20 U.S.C. § 1400(c)(1).)

5 At the same time, Title IX, federal law to which the District is subject, provides in
6 relevant part that “[n]o person ... shall, on the basis of sex, be excluded from participation in, be
7 denied the benefits of, or be subjected to discrimination under any education program or activity
8 receiving Federal financial assistance.” (20 U.S.C. § 1681(a).) Sexual harassment is a form of
9 discrimination based on sex. Through its Title IX investigation, the District has *already* factually
10 determined that Jane Doe suffered sexual harassment at John Roe’s hands in violation of District
11 policy, that the harassment was “unwelcome, severe, and created an intimidating, hostile, or
12 offensive educational environment and limited [Jane Doe]’s ability to benefit from her
13 participation in her educational pursuits,” which limitation was specifically related to John Roe
14 “attempting to join the GRT, an environment that had previously been a safe place and the focus
15 of her academic interest.” The District’s November Permanent Safety Directive excluding John
16 Roe’s participation from GRT Team Build for the spring semester appears to reflect the
17 District’s recognition of the greater importance to Jane Doe of the GRT Team Build activity and
18 the need to impose remedial measures that are necessary to protect her and provide her with
19 educational access free from sexual harassment or a hostile environment. As Jane Doe argues,
20 the District was already aware of John Roe’s special education status and the content of his
21 IEP—which does not mandate that he be offered enrollment in the Engineering Technology
22 course or the GRT Team Build activity—when the District exercised its discretion by issuing its
23 November Permanent Safety Directive.

24 But it’s also true that after the District issued this Permanent Safety Directive that
25 excluded him GRT Team Build, it acquired information about John Roe that it determined was
26 credible and that caused it to reweigh and reconsider the conflicting needs of the two students,
27 each of whom is entitled to access to education, considering a variety of factors involving both of
28 them. Notwithstanding the District’s motion in the OAH proceeding and its legal positions taken

1 there, it chose to exercise its discretion to avoid further expense and litigation with John Roe by
2 entering into a mediation agreement with him and his mother, which is arguably a different
3 exercise of discretion involving different considerations that do not include the interests of Jane
4 Doe. Importantly though, the mediation agreement merely provides that John Roe must be
5 allowed to enroll in the Engineering Technology class, “including all components,” subject to
6 him meeting ordinary course requirements applicable to all students. The mediation agreement
7 does *not* require that John Roe be given full access to all available extra-curricular hours in the
8 GRT Team Build activity, or even equal access to that of Jane Doe. Instead, it obligates the
9 District to provide John Roe access to the GRT Team Build to the extent required for him to
10 fully participate and earn a passing grade in the Engineering Technology course—12 hours per
11 week in the spring semester and arguably some participation in the field trips and away
12 competitions.

13 Exercising its discretion to balance the needs of both students once fully apprised of the
14 competing concerns, the District appears to have been open to implementing different time
15 allocations between them in terms of access to GRT Team Build before it issued its Amended
16 Safety Directive. One of the options was to provide 36 of the weekly available 48 hours to Jane
17 Doe with the remaining 12 to John, and this allocation appears consistent with the mediation
18 agreement because it allows John Roe to satisfy the Engineering Technology course
19 requirements. But Jane Doe and her family appear to have rejected that allocation, or any
20 allocation that allowed John Roe any access at all. In terms of Title IX, the District’s obligations
21 are to take *reasonable* measures to ensure that Jane Doe has equal access to her education free
22 from sexual harassment and from a hostile work environment made so by pervasive sexual
23 harassment, which access the District has already found is compromised by John Roe’s
24 participation in the GRT Team Build, absent reasonable and appropriate supervision. Jane Doe is
25 thus not entitled to insist on John Roe’s exclusion from access to his own educational
26 opportunities or benefits.

27 While, as noted, Code of Civil Procedure section 1094.5, subdivision (g) permits a stay of
28 an administrative order pending disposition of a writ petition as long as the stay is not against the

1 public interest, the court perceives the relevant identified public interest here to be the broad
2 discretion afforded the District over its educational programs and activities. But that discretion
3 may not be exercised inconsistently with law. The court perceives some inconsistency with
4 law—Title IX—in the Amended Safety Directive in that the District’s investigative factual
5 findings suggest that a different and unequal level of access of each student to GRT Team Build
6 is warranted to avoid impairing Jane Doe’s right to an equal education free of discrimination
7 based on sex in the form of sexual harassment and the ramifications of harassment already found
8 to exist. This is especially so given the relative levels of demonstrated interest and participation
9 in GRT Team Build of each student; it is manifest that Jane Doe holds and has earned a
10 prominent and leading role in this activity, which is thus demonstrated to be a critical aspect of
11 her chosen educational curriculum. While this activity may now be important to John Roe, the
12 evidence shows that it has not had the same predominance and priority for him, and that it is *his*
13 past conduct that presents the need for the District to implement non-punitive but remedial
14 measures to protect Jane Doe in the first place. Moreover, the District appears by its
15 abandonment of opposition to Jane Doe’s interim stay request to, in the exercise of its discretion,
16 submit to the judgment of the court on this question of the stay, thus eliminating or mitigating
17 any possibility of judicial interference with its otherwise chosen exercise of discretion.

18 IV. *Conclusion*

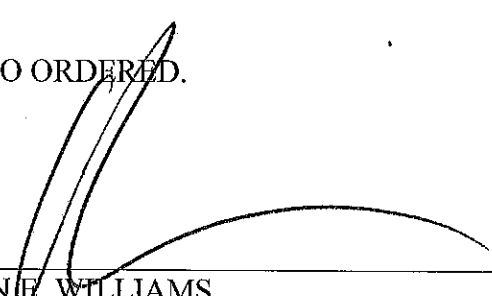
19 The court exercises its discretion to grant a limited and partial stay under Code of Civil
20 Procedure section 1094.5, of the District’s January 22, 2019 Amended Safety Directive *to the*
21 *extent* it equally allocates weekly available hours in the GRT Team Build activity. Pending
22 disposition of this writ proceeding, Jane Doe will be allocated 36 of the available 48 weekly
23 extracurricular hours in the activity while John Roe will be allocated 12 for the remainder of this
24 academic year, which is sufficient to satisfy the requirements of his Engineering Technology
25 course and which is not inconsistent with the terms of the mediation agreement. Jane Doe will
26 have preference as to the scheduling of hours but the District, in cooperation with the students
27 and their families, is to manage and coordinate scheduling and to provide, in its discretion,
28 reasonable and appropriate supervision of John Roe to the extent that physical proximity and

1 contact between the students while participating in GRT Team Build is unavoidable. The court
2 declines to stay the Amended Safety Directive to the extent it addresses the students'
3 participation in "field trips" that remain for the balance of the school year, which will be subject
4 to the District's coordination with the parties "to support [each of their] participation," as the
5 Amended Safety Directive provides. Likewise, the District will "provide additional supervision
6 in after-school activities and field trips to support both parties' participation." This order is
7 subject to modification or clarification on a legitimate showing of circumstances that would
8 warrant it.

9 As noted at the hearing, the parties have agreed to participate in mediation to resolve the
10 respective petitions, the disposition of which is likely to affect not just this academic year but
11 2019-2020 as well. As Abraham Lincoln advised in an 1850 law lecture, "Discourage litigation.
12 Encourage your neighbors to compromise whenever you can. Point out to them how the nominal
13 winner is often a real loser—in fees, expenses, and waste of time." Add to this list here the
14 distraction of the students from their academic pursuits and the misplaced focus on matters of
15 litigation instead of education, though there are certainly lessons to learn here too. Lincoln's
16 advice is ever true today and especially in a case like this. The parties (and their families) are
17 encouraged to participate in good faith in the mediation process and to thereby have a chosen say
18 in the solution and outcome of the delicate but intense conflicts presented here. In this regard,
19 this order should not be construed as an indicator of success on the merits, as the issues present
20 qualitative differences.

21
22 IT IS SO ORDERED.

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25 Dated: March 26, 2019


26 HELENE E. WILLIAMS
27 Judge of the Superior Court
28



**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA CLARA
 DOWNTOWN COURTHOUSE
 191 NORTH FIRST STREET
 SAN JOSE, CALIFORNIA 95113
 CIVIL DIVISION**

FILED
 MAR 26 2019

Clerk of the Court
 Superior Court of CA County of Santa Clara
 BY *[Signature]* DEPUTY
I. ARMENTA

RE: **Jane Doe vs Palo Alto Unified School District**
 Case Number: **19CV341533**

PROOF OF SERVICE

ORDER PARTIALLY STAYING ADMINISTRATIVE DIRECTIVE PENDING DISPOSITION ON MERITS was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on March 26, 2019. CLERK OF THE COURT, by Ismael Armenta, Deputy.

- cc: Laura C Riparbelli 60 S Market St #1400 SAN JOSE CA 95113
 Alec Rose 12121 Wilshire Blvd Suite 740 Los Angeles CA 90025
 Mark Ernest Davis 1960 The Alameda Ste 210 San Jose CA 95126