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OUR FILE NUMBER:
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OF COUNSEL:
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October 5, 2007

Via U.S. Mail, Facsimile & Email

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 Commissioner
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Re: Franklin High School Football Program

Dear Messrs. Saco and Donald:

As you know, we represent the Stockton Unified School District ("the District") in connection with the investigation by the Sacramento-San Joaquin Valley Section ("the Section") of the California Interscholastic Federation ("CIF") of alleged violation of CIF bylaws by the football program for Franklin High School ("Franklin"), which is part of the Stockton Unified School District.

We are responding to the request of the Section for a response by the District to the allegations of the CIF as contained in the undated report by the unlicensed private detective Charles Smrt of the Compliance Group, received by us by Federal Express on the date of your "Power Point" press conference ("the press conference"), September 25, 2007.

- I. The CIF has deliberately denied the District the due process to which it is entitled.
 - A. The CIF has not provided the District sufficient time to respond to the allegations and in fact has deliberately manipulated disclosure of its report and the time for response to deprive them of that opportunity.

As a critical first point, the District notes that the Section is not providing us sufficient time to respond to these allegations. The Section first provided the District its report - undated "Report of the Compliance Group for CIF Sac-Joaquin Section" ("CIF report") - on September 25, 2007, the day of its press conference announcing those allegations.

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As the Section has repeatedly noted in the press, it has been investigating Franklin for the past six months, and in fact, allegedly first held suspicions regarding Franklin since well before nine months ago. CIF Report at 1-4. During this process, the District repeatedly requested notification of specific allegations against it. Letter dated August 13, 2007 from Danielle Houck to Charles Smrt, Exhibit A; Letter dated August 23, 2007 from David Lyon to Scott Donald, Exhibit B.¹ In response, the District was informed that no specific allegations would be disclosed, and that Franklin was being investigated regarding its football players from American Samoa. In fact, Mr. Donald refused to disclose to the District the report regarding Franklin he was sending to the Section for its closed meeting on September 21, 2007. Letter from Scott Donald to David Lyon, dated September 12, Exhibit C. And even when the Section executive board approved disclosure of the report to the District on September 21, 2007, the Section did not send it out until three days later, on September 24, 2007, and the District did not receive it until September 25, 2007.

There is no justification for this delay. The CIF's own report shows that it had concluded its interviews of all but District staff and students by July 19, 2007, *almost three months ago*. CIF Report at 3. While the CIF conducted its interviews of District staff on September 6, 2007, those interviews provide no grounds for the delay in disclosure of the allegations since the CIF report essentially disregards all of that testimony denying any improprieties at all.

Accordingly, the Section's demand that the District respond to those allegations by today's date of October 5, 2007, gave the District only *eight business days* to respond to the Section's *six-month investigation* of the Franklin High School program. Such discrepancy is manifestly unfair and a clear violation of basic standards of due process. *E.g., Mullane v. Central Hanover Bank & Trust Co. (1950) 339 U.S. 306, 314* (due process requires a reasonable time to respond); *Roller v. Holly (1900) 176 U.S. 398, 409* (due process requires a reasonable time to travel and prepare a defense). In addition, the delays and refusals provide ample evidence that the Section was behaving in an arbitrary and capricious manner, and deliberately seeking to impair the ability of the District to respond to the CIF's allegations.

The Section's manifest unfairness is magnified by the fact that the Section's report alone is over 70 pages long, and is accompanied by hundreds of pages of interview transcripts and summaries. It inquires into events occurring as early as 2004 and investigates 14 different students. The investigation included flying an attorney and an unlicensed private investigator to American Samoa, to conduct in-person interviews with a number of people, as well as interviews in California of former students, and current students and staff of Franklin High School.

At a minimum, the District should be provided an equal amount time as used by the Sacramento-San Joaquin Valley Section to conduct its investigation and procure its allegations. For example, the District must be afforded a reasonable opportunity to conduct its own in-person

¹ All exhibits are true and correct copies of the referenced documents.

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interviews of witnesses questioned by the Section, as well as those witnesses the Section chose to avoid. For the same reasons that the Section chose to interview individuals in person, we have a right to do the same.

Moreover, even prior to CIF's press conference, the District requested a number of documents from the Sacramento-San Joaquin Valley Section relating to the investigation. The Section has not prepared any formal response to those requests, and has not provided any documents on a number of relevant topics. Significantly, the CIF has not disclosed complete transcripts of all of the interviews it has conducted, but has cherry-picked those interviews which it feels support its allegations.

B. The CIF has utilized improper investigative techniques which render the statements they received unworthy of credibility.

Charles Smrt of the Compliance Group, the un-licensed private investigator hired by the Sacramento-San Joaquin Valley Section, harassed and threatened former students when they did not give him the answers he was seeking, *i.e.*, answers that would suggest a lack of eligibility and/or wrongdoing by Franklin High School.² For example, Mr. Smrt told several players that as a former National Collegiate Athletic Association ("NCAA") he could see to it that they would

² Two former Franklin High School students, [REDACTED] and [REDACTED] reported the same threats and harassment. Thus, [REDACTED] reported: "I feel that we are getting singled out and it is not fair. When I was being interviewed by Mr. Smrt, I remember feeling very uncomfortable with the questions that he was asking me. He asked the same question over and over again, and he would not stop asking until I felt like he got the answer he wanted to hear. When I didn't give him the answer he wanted to hear, Mr. Smrt told me that he was an NCAA officer and that this might affect me playing for a 4 year college. After telling Mr. Smrt that I moved here with my family to be with my other family he kept asking the same question. That is the only question I answered then I told Mr. Smrt I had to go." Affidavit of [REDACTED], former Franklin High School Student, and now a student at Delta College in Stockton, California, dated 9/24/07. A true and correct copy of this statement is attached as Exhibit D.

Similarly, [REDACTED] reported: "In my interview, I was asked a lot of questions that had to do with my years at Franklin High School. I told Mr. Smart and Mr. Scott that I moved here with my family, and occasionally stayed with my uncle who is a coach for Franklin High School when my parents had to leave town for either medical or personal reasons. In my interview, I can't remember which one of the men said it, but one of the men told me that if I didn't tell them the right thing that it could keep [me] from playing college football. They kept asking me if I stayed with my uncle, and I said yes when my parents were out of town. Yet they still asked several more times if I stayed with my uncle. I didn't and still don't see anything wrong with staying with my family."

[REDACTED] statement, a true and correct copy of which is attached as Exhibit E.

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lose their eligibility to play football at the college level.³ Such inappropriate pressure tactics show that the investigation was not a search for truth, but rather a witch-hunt. In any event, subjecting any witness, much less minors and those who have just attained majority to such tactics is indefensible.

None of CIF's witness statements can be believed due to inappropriate pressure tactics. The accusatory witnesses are all inaccessible, while all local and California witnesses deny these charges. In addition, there is a remarkable lack of documentary evidence regarding alleged payments for transportation expenses. As for the three current students, the students' family members told the CIF investigators they paid for air fare and expenses, and did not accept payment from anyone. SUSD 00054-55.. Another of these students reported that he traveled with his mother to obtain treatment for her breast cancer. SUSD 00112-115. And the third was living with his grandparents in American Samoa, and his move brought him closer to his mother's residence. SUSD 00060.

In addition, Mr. Smrt and Mr. Donald were not properly licensed or registered to interview witnesses or otherwise conduct investigation in American Samoa. As an attorney, Mr. Donald was required to register with the American Samoa attorney general, and to inform each witness that he was an attorney, and to ensure that they did not seek the assistance of personal counsel. Mr. Smrt's failure to be properly licensed in California where this investigation began meant that he was not authorized to conduct investigations in American Samoa either.

Given the improper interrogation techniques used, all of the witness statements obtained by the CIF of former students and their parents are entirely lacking in credibility and may not be properly relied upon by the CIF in reaching any decision regarding its allegations.

C. CIF's prosecution of the district in the press.

The inappropriate manner in which CIF conducted this investigation is also displayed by its determination to convict Franklin in the press prior to any opportunity by the District to investigate and respond to CIF's allegations.

The District was warned of this tack by Mr. Donald, the attorney for the Sacramento-San Joaquin Valley Section, on approximately September 12, 2007. In that conversation, Mr. Donald represented that their investigation and allegations would turn into a "media circus."³ In

³ In that same conversation, Mr. Donald represented that he would disclose to us his report on the same day that he submitted it to the Section, but then, by letter within three hours, informed us that he was not going to disclose the report. As noted above, the Section eventually sent us the report in such a manner that we received it two hours prior to their carefully crafted "Power Point" press conference, an obvious ploy to preclude any

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fulfillment of this threat, the CIF conducted an hour-long press conference on September 25, 2007, complete with hand-outs and a "Power Point" presentation, on their allegations. At this press conference, Mr. Saco presented the allegations, as though they were established facts.⁴

These allegations included accusations regarding students' living arrangements and allegations that the students had submitted fraudulent reports. The students were identified as currently participating in the Franklin High School program and thus were readily identifiable.⁵ Such exposure of the confidential familial and personal affairs of minors is not only offensive in itself, it also runs afoul of substantial protections afforded under state and federal law to student's educational records, as well as general privacy rights.

One will search in vain any CIF guideline, bylaw, or principle of action that mandates the CIF broadcast to the world mere allegations in such a blatantly public manner. Such broadcast is particularly inappropriate where those allegations directly impact the lives of several young men, all under the age of 18, by invading their privacy and holding them up to ridicule, harassment and other forms of undue distress.

D. Mr. Saco is not qualified or capable of acting as an impartial decision maker in this matter.

The foregoing three points all provide substantial evidence in support of our fourth objection, that you Mr. Saco are not qualified nor capable of acting as an impartial decision maker in this matter.

³(...continued)

response to their publicized allegations.

⁴ A video of portions of Mr. Saco's press conference can be viewed at the following web-page: <http://online.recordnet.com/projects/franklin2/project.html>. The District held its own press conference on September 19, 2007, in response to 1) the threatened "media circus," 2) numerous inquiries by the press regarding reports of the investigation, and 3) Sacramento-San Joaquin Valley Section's announcement that it would hold a press conference following its closed session meeting on September 21, 2008. Curiously, while the CIF decided at its September 21, 2008 closed session that it would disclose the report to the District, the CIF did not send out that report until the following Monday, September 24, 2004, ensuring that the District received it on the same day they held their carefully prepared September 25, 2008 "Power Point" press presentation.

⁵ Indeed, the local paper, in an article entitled "Probe Alleges Franklin Recruited Athletes from Samoa" Stockton Record, September 26, 2007, published the names of the three current American Samoan students while simultaneously accepting the CIF's allegations as true. A true and correct copy of this article is attached hereto as Exhibit F.

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It is well-established that "[i]n an administrative action, procedural due process entitles a party to a hearing 'before a reasonably impartial, noninvolved reviewer....'" *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 812. Circumstances indicating a likelihood of bias or creating an appearance of bias, as well as actual bias, disqualify a hearing officer. *Id.* at 813-14. Thus, it is well recognized that impartiality demands a separation of prosecutory from adjudicatory functions. *Id.* at 814.

You have been integrally involved in this investigation from its inception and thus hold personal responsibility for each of the disturbing breaches of due process noted above. You have, if you insist upon this October 5, 2007 deadline, denied the District an adequate opportunity to respond. You have overseen the hiring of an unlicensed detective who uses inappropriate threats and harassing techniques in his "investigation." And you have made a personal decision to turn this matter, which is of serious concern to the students and staff of the District, into a media "circus," and to broadcast damaging and hurtful allegations regarding minor students and their private lives to the public. Even if these disturbing circumstances had not occurred, your role as judge, jury and executioner, as well as prosecutor, alone violates fundamental principles of due process.

Moreover, your numerous statements to the press confirm that you have already made up your mind in this matter. Thus, as reported by News 10, the American Broadcasting Company station in Sacramento on its website, Mr. Saco stated, "This is very shocking to me. With 30 years in this profession – an administrator for 13 years and commissioner for 17. This is not what we're all about." "Franklin High Accused of Recruiting," Exhibit G. Similarly, Ms. Saco stated, "Who knows where [the Franklin High School football team] would have been if they hadn't had those kids." Associated Press Article, September 28, 2007, Exhibit H. Having presented your allegations as fact to the public in your September 25th press conference, and having spent tens of thousands of dollars for the CIF's investigation, you have a vested interest in validating those allegations and imposing a penalty upon Franklin.

In addition, you continue to be advised by Mr. Donald, the attorney who conducted the investigation of this matter and participated and assisted at the "Power Point" press conference. That continued assistance violates the impartiality requirements inherent in due process, as requirement for impartiality extends to attorneys advising the decision-maker as well. *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2007) 153 Cal.App.4th 202, 210.

In light of these circumstances, principles of professional responsibility require that you recuse yourself from determining this matter.

- E. The CIF is barred from imposing any penalties for actions which occurred more than a year prior to the announcement of its allegations.**

CIF is deemed a state actor. *E.g., Jones v. California Interscholastic Federation* (1988) 197 Cal.App.3d 751, 756-757, 243 Cal.Rptr. 271, 274. Thus claimed violations of CIF bylaws are governed by the statute of limitations applicable to statutory penalties or forfeitures are

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governed by a one year statute of limitations provided by Code of Civil Procedure §340. Accordingly, the CIF's allegations based on activities that occurred prior to September 25, 2006 are barred by the applicable statute of limitations.

II. The CIF bylaws regarding undue influence and transfer eligibility are so ambiguous, incoherent, and inconsistently enforced that they violate the due process rights of students and the school district.

The District has also been denied due process due to the fact that the CIF bylaws which the District is alleged to have violated fail to fairly inform the District of what it can and cannot properly. Instead, the CIF's by-laws are inconsistent, ever-changing, ambiguous and subject to arbitrary, inconsistent and corrupt enforcement. And as noted, in the instant circumstances, they trod upon far more important principles of personal liberty and freedom guaranteed American Samoans by the United States Constitution.

A. CIF's transfer eligibility rules are not consistent.

It was only in July of this year, almost half a year after the three students moved here, that the CIF even bothered to have a uniform rule across the state regarding transfer eligibility. Prior to that, there was no consistency at all. As explained by Kathy Wheeler, CIF President in The CIF News, September 2007, vol XXVIV, No. 1, p. 2, Exhibit I, *Continuing to Move Forward*, "Another big accomplishment for our Federation was the development of the statewide eligibility policy. While most agreed that we need to move to a statewide policy, it was hard for Sections to let go of their polic[ies], as it was working well for them." The new effort at attaining uniformity was also confirmed by CIF's Executive Director, Marie M. Ishida, in her article in The CIF News, September 2007, vol XXVIV, No. 1, p. 2, Exhibit I, *Implementing the New Transfer Rule*, "Only time will tell if the CIF can gain statewide consistency with regard to its decisions on transfer student eligibility."

As you know, prior to the rule enacted on July 1st of this year, the Sacramento-San Joaquin Section operated under the so-called "30 day rule," which provided that on transfer into a new school district, a player was required to sit out for thirty days and could then play.

The new rules, in contrast, implement distinctions which confirm the arbitrariness of the rules, and how they are not well suited to attaining their stated goals. Thus, in the same article mentioned before Ms. Ishida, noted that "one major change" of the new transfer rule is the "provision that 9th grade students can transfer schools prior to the beginning of their third semester (usually the 10th grade year) without a change in residence and maintain eligibility..." Ishida, M. *Implementing the New Transfer Rule*, The CIF News, September 2007, vol XXVIV, No. 1, p. 2.

Another major inconsistency of the CIF's transfer eligibility and undue influence rules, is that they have not been enforced against private and parochial schools which also compete in CIF tournaments.

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There are also inconsistencies in exemptions provided for foreign exchange students. Here, American Samoa's unusual status as a United States territory appears to preclude treatment of these American Nationals as eligible for foreign exchange, despite the fact that they hail from farther than away than most foreign countries, have a unique language and culture, and face substantial barriers to attending school in the mainland United States. In this case, it thus appears that American nationals are being afforded less rights and privilege than is afforded foreign nationals, a result directly contrary to the rights to which they are entitled under the United States Constitution.

B. The rules are fatally ambiguous.

The prohibition on "undue influence" fails to provide adequate notice of what conduct is prohibited and fails to provide adequate guidance to those charged with enforcing it.

It is a fundamental requirement of all penal states that they provide adequate notice of the behavior they proscribe. As explained by the United States Supreme Court many years ago, "The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. General Const. Co.*, 269 U.S. 385 (1926); accord, *U.S. v. Simms*, 508 F.Supp. 1179, 1182 (1979); *Buckley v. Valeo*, 424 U.S. 1, 77 (1976) (quoting *United States v. Harriss*, 347 U.S. 612, 617 (1954)). As summarized by the Court in *Smith v. Goguen*, 415 U.S. 566, 574 (1974) (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) and *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926)), "men of common intelligence" [should] not be forced to guess at the meaning of the criminal law."

By-law 510's use of the term "undue influence" is inherently ambiguous. It implies that there is influence which is "due," but provides no guidance as to making that determination. By-law 510's further definition of "undue influence" as "material inducement" similarly fails to either put members on notice or guide administrators regarding what is and what is not proper conduct. As a legal matter, the failure of CIF bylaws to provide any examples to assist an administrator with these ambiguous terms renders them invalid.

The fatal ambiguity of these terms is driven home by the allegations at issue here. Thus, Franklin is faulted for having given lets its staff provide students rides to school and meeting common relatives at the airport. We are confident that most high school athletic officials in this state would be shocked to learn that such alleged actions puts their school in violation of the CIF's "undue influence" rules. In fact, we are confident that the vast majority of CIF Sections in this state would not deem such basic human courtesies as inappropriate.

Similarly, no guidance is provided to elucidate the ambiguous term "material inducement." For example, here the allegation is that an American Samoan woman, who

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happens to be the mother of an American Samoan assistant coach, provide or offered to provide travel expenses, or in some cases merely had a conversation with community members about moving to the United States. The provision of such expenses, however, cannot properly be deemed an "inducement" as such payments merely neutralize the cost of such a move for parents who might otherwise keep their child in American Samoa. An inducement or influence implies something above and beyond a neutralization of transition costs. Such expenses cannot constitute an "inducement," since they provide no reason in themselves for the students to move here. Moreover, members of any extended family or community would be surprised to learn that their community and familial relationships must be curbed or restrained if they have anywhere have a relative whose employment is subject to CIF by-laws.

C. The CIF rules do not serve their goals but merely enforce burdens and obstacles for the poor.

Wealthy families who can afford to pay for flights and lodging will never face accusation of undue influence by the CIF as set forth in its allegations. In this case for example, it is poor American Samoans who are prohibited from traveling to the mainland to attend school and improve their chances of continuing onto college. As written and applied, the CIF by-laws broad interpretation of its undue influence and material inducement rules, which includes mere transportation and lodging costs for students merely constitutes a penalty against those who lack independent means.⁶

The practical effects of the CIF's rules are absurd. Consequence of this year long ban would be that any parent wishing to give their child these opportunities would have to send them away from home a year earlier. No doubt sending their child away for their senior year was painful, but sending them away for another year is an excruciating burden.

III. These American Samoan students transferred primarily for educational and economic opportunities.

A. These Are Legitimate Students of Franklin High School

The three current students subject to the CIF's accusations are properly enrolled in the Franklin High School District. Each of these students has a familial relationship as well as a legal guardianship with [REDACTED] with whom they live. Attached hereto as Exhibit

⁶ The CIF's own records confirm this disparity. For example [REDACTED], the sister of former student [REDACTED], and a teacher at Leoni High School in American Samoa testified that even though she wanted her brother to move to Stockton, she was not personally capable of paying the full cost of ticket for him to travel to the mainland. SUSD00183-184. The District has numbered the transcript pages provided to them, and all referenced excerpts to those transcripts are attached hereto as Exhibit CC. These pages will hencefore be referenced as "SUSD[number]."

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J is a true and correct copy of the guardianship order for [REDACTED] attached hereto as Exhibit K is a true and correct copy of the guardianship order for [REDACTED] and attached hereto as Exhibit [REDACTED] is a true and correct copy of the guardianship order for [REDACTED] Exhibit L.⁷ The students are healthy, and happy, and fully participating in the educational programs at Franklin, as well as participating on the football team.

The consistent evidence shows that the students traveled here with their parents.⁸

The CIF report acknowledges that it was the parents made the decision about where their children would enroll in school. See, e.g. SUSD00139-142 ([REDACTED] the Head Football Coach of Fagitua High School in American Samoa, admitted that it was the students' parents who made the decision that the students should move to Stockton, and that decision was based on educational opportunities); SUSD00164-165 ([REDACTED] who already has two children in college in Fresno, believed moving to Stockton would be a good educational opportunity for [REDACTED] and would help him prepare for college; SUSD00169 ([REDACTED] mother [REDACTED] explained that while [REDACTED] didn't start on the football team, but he did well in school.)

All three students testified that they first heard of Franklin only *after* arriving in California. SUSD00112 [REDACTED], SUSD00058 [REDACTED] SUSD00061 [REDACTED]. To the same effect, Tom Verner, Franklin's football coach testified that he

⁷ [REDACTED] explained to the CIF investigators that [REDACTED] is his mother's sister. SUSD00113. [REDACTED] explained that [REDACTED] is his mother's stepsister. SUSD00057. And [REDACTED] explained that [REDACTED] is his mother's cousin. SUSD00060. These relationships were further confirmed by the testimony of [REDACTED] father, that he is related to [REDACTED] (SUSD00053), and thus by extension, her sons [REDACTED] and daughter-in-law [REDACTED] and that [REDACTED] and [REDACTED] are first cousins. SUSD00054.

⁸ Joe Martin, Administrator of Athletics for the District explained that in February 2007, four Samoan parents dropped in to see him at the District offices, asking how they could enroll their children in the District. SUSD 00066. Mr. Martin checked their residency at Student Services, and based on that information determined that they were in the Franklin district. SUSD00067. It is his experience based on working with American Samoans since he coached for Berkeley High School in Berkeley, California, that American Samoans transfer to the mainland primarily for a better education, as well as football. SUSD00069. Mr. Martin routinely asks about student's residency, checks the student's academic eligibility, and ensures that CIF forms 510 and 214 are filled out regardless of whether they are required. SUSD00069. Mr. Martin says he reviewed these forms for completeness. SUSD00072.

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never contacted these players or their families about coming to Franklin to play football.⁹
 Assistant Coach [REDACTED]'s testimony was to the same effect.¹⁰

Coach Verner noted that American Samoan students appear to transfer into Franklin every year and that not all of them play football. SUSD00202. He never had a conversation with anyone in American Samoa related to a football player transferring to Franklin. SUSD00211. Coach Verner testified that he has never spoken to [REDACTED] about contacting football players in American Samoa to play at Franklin. Coach Verner has never contacted any football coaches in American Samoa and does not know any coaches in American Samoa. Indeed, Coach Verner explained that he has not contacted anyone else in American Samoa, either - "I wouldn't know who to call." SUSD00217. His understanding of why so many American Samoan football players transfer to Franklin after their junior year is that "the families over there save up and save up and the dream is to get to the United States to play football. Having said that, we probably, we certainly don't get as many football players from Samoa their senior year as Grant High School, Elk Grove High School, Long Beach Poly, Palo Alto High School, the big one in Los Angeles..." Coach Verner explained that he has never paid for and did not arrange for any American Samoan students or their parents to come to Stockton. SUSD00218. Coach Verner testified that he does not and has not used L&L Travel in the last two years, that he has never used any travel agency to have American Samoan families travel to the United States. Coach Verner explained that he has never talked to parents of [REDACTED] Coach Verner explained that the house on [REDACTED] Street is rented to [REDACTED]. SUSD00219.

[REDACTED] explained that he was born in California, but went to American Samoa for high school, and graduated from Leone High School in 1997. SUSD00104. He graduated from Utah State in 2002. He is an assistant coach at Franklin, and works through the year. SUSD00105. His brother [REDACTED], and [REDACTED], [REDACTED], also live in Stockton. Mr. [REDACTED]'s brother [REDACTED] used to live in Stockton, but is now back in American Samoa. SUSD00105-00106. Mr. [REDACTED] testified that he did not make any contact with parents of any Samoan kids who transferred to Stockton before they arrived in Stockton. SUSD00107. Mr. [REDACTED] also testified that he did not arrange for air travel for any kids or parents from American Samoa to California. SUSD00107. Mr. [REDACTED] testified that he did not know if his mother made contact with any families of any kids who transferred. SUSD00108. Mr. [REDACTED] explained that he has never watched videotapes of American Samoan football players with Coach Verner, has never informed Coach Verner of any promising players. Coach [REDACTED] testified that Coach Verner has never asked Mr. [REDACTED] to contact any football players family in American Samoa. SUSD00108. Mr. [REDACTED] explained that [REDACTED] occasionally stayed with him when [REDACTED] parents were out of town and that [REDACTED] father was living in Stockton since he saw him at some games. SUSD00108-09. Mr. [REDACTED] explained that [REDACTED] and [REDACTED] did

(continued...)

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Moreover, there is not a scintilla of evidence that the District had any involvement in the parents' decision to return to American Samoa.

Finally, District employees, Scott Luhn, Franklin's principal, and Joe Martin, both testified that they consulted with the CIF about the eligibility of these three players and were informed that they were eligible to play.

B. The Students Moved To Stockton Primarily For Educational and Economic Opportunities And Not Athletic Reasons.

The alleged provision of transportation costs and lodging to some American Samoan students or parents by an American Samoan relative of a Franklin assistant coaches falls far short of explaining why these American Samoan families would wish for their children to move to Stockton. Mere provision of transportation and lodging provides no net benefit to these students, it merely neutralizes the costs of such a move. As such, it offers no explanation as to why these students would want to move.

Instead, the true motivation for this move is undeniable: the educational and economic advantages available to them by moving to the mainland United States generally, and Stockton specifically. As confirmed by the CIF's own attorney, Mr. Donald, "I was impressed with how candid the parents were that I spoke with... All of [the parents of the students] clearly viewed this opportunity to come to the U.S. as a step up in their lives." *Franklin Football: American Samoa Pipeline?*, Lodi News, September 29, 2007, a true and correct copy of which is attached hereto as Exhibit L.

Indeed, the CIF's own investigation confirms that these students moved to the Franklin School District for educational and economic opportunities, and not primarily for athletic reasons.

¹⁰(...continued)

not live with him. SUSD00109. Mr. [REDACTED] explained that he has never arranged for transportation between airport and Stockton for any parents of American Samoan athletes, except maybe for graduation. Mr. [REDACTED] explained that he does not know how the students and their parents travel back to American Samoa. SUSD00109. Mr. [REDACTED] explained that he does not know if [REDACTED] parents live here. SUSD00109. He gave his family members a ride for graduation; he never arranged or made reservations for any family members. SUSD00109-00110. Coach [REDACTED] explained that he did not arrange for the [REDACTED] or [REDACTED] stay in a hotel in Stockton. He did not use L&L Travel. SUSD00110. Coach [REDACTED] explained that does not believe that the number of kids who transferred to Franklin from Samoa is unusually high. SUSD00110. Mr. [REDACTED] explained that there are quite a few American Samoan communities in California. SUSD00110.

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- 1) [REDACTED] Director of the American Samoa Department of Education told your investigators that she supported transfers of students to school in the mainland United States because it was of benefit to them. SUSD00101.
- 2) [REDACTED] the father of former student [REDACTED] testified that he felt moving to Stockton would be a good educational opportunity for his son and would assist his son in preparing for college. SUSD00164-165. Mr. [REDACTED] already has two children who are in school at California State University in Fresno. SUSD00164.
- 3) [REDACTED] the sister of former student [REDACTED] and a teacher at Leoni High School in American Samoa testified that she encouraged her brother to go to Stockton, because she thought it would be a good experience for him to further his education and get into college, and because she felt he'd have more opportunities "stateside." SUSD00170-171, 175. She visited Franklin with her brother when he first moved to Stockton and talked to the coaches, teachers and vice principals. SUSD00172-00173. She also checked out the music program because her brother had an interest in music. *ib.* She explained that her brother did well on the SAT and had a good GPA, and is now attending college. SUSD00180.
- 4) [REDACTED] student [REDACTED] mother, proudly explained that while [REDACTED] didn't start on the football team, but he did well in school. SUSD00169.
- 5) Even [REDACTED], the Head Football Coach of Fagitua High School in American Samoa, and allegedly the prime instigator of the CIF's investigation, admitted that it was the students' parents who made the decision that the students should move to Stockton, and that the parents "main objective" was educational advantage. SUSD00139-142.

Moreover, a simple comparison of basic economic, educational and other social factors between Stockton and American Samoa provides ample evidence of the reasons for these students' migration.

1. American Samoa

American Samoa comprises a group of seven small islands, isolated within the vastness of the Pacific Ocean. As explained by the United States Department of Interior (<http://www.doi.gov/news/archives/somoa.html>):

American Samoa is made up of seven islands with a total land area of 76 square miles. The chain of islands is located 2,300 miles southwest of Hawaii and over 4,100 miles southwest of San Francisco. Sydney, Australia is about 2,700 miles further to the southwest, while Auckland, New Zealand is about 1,600 miles

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southwest. American Samoa is the only United States territory south of the equator. The seven islands are dispersed over 150 miles of water. Tutuila, the main island, is the center of government and business. Tutuila has a land area of 56 square miles, with an estimated 95 percent of the 56,000 total population living there. The remaining 20 square miles include the islands of Ofu, Olsoega, and Ta'u of the Manu'a group located 60 miles east of Tutuila; Aunu, a small island 1/4 mile off the Eastern shore of Tutuila; Rose Atoll, a wildlife refuge 60 miles east of Manu'a; and Swain's Island, 200 miles north of Tutuila.

The physical isolation of American Samoa is compounded by its poverty, which further isolates and deprives its residents. As compared to the average per capita income in Stockton, California of \$15,405, based on the 2000 census,¹¹ the calculated per capita income in American Samoa is estimated to be less than a third of that, at about \$4,357.¹² The United States Environmental Protection Agency has put these figures in context¹³:

The per capita income of American Samoa is only \$4,357, by far the lowest in the U.S., putting it in an economic tier similar to Botswana. 61% of residents live below the U.S. Poverty Line.

American Samoa faces significant environmental and public health challenges:

Almost 40% of residents do not have adequate indoor plumbing (piped water, a toilet or both).

17% have tested positive for leptospirosis, a serious waterborne disease associated with improperly managed pig waste.

Heavy metals and other toxics in the inner portion of Pago Pago Harbor make fish unsafe to eat.

Indeed, because of the limited economic opportunities, American Samoan is specifically exempted from the federal minimum wage laws applicable to the mainland, and instead has minimum wage rates in the range of four to four a half dollars an hour.

¹¹ http://en.wikipedia.org/wiki/Stockton%2C_California, Exhibit M.

¹² <http://www.doi.gov/oia/Islandpages/asgpage.htm>; a true and correct copy of this document is attached hereto as Exhibit N.

¹³ <http://www.epa.gov/region09/islands/samoa.html>; *see also* <http://www.doi.gov/oia/Islandpages/asgpage.htm> (United States Department of Interior figures indicating that pursuant to the 1990 census 56.5% of the population lives below the poverty line. A true and correct copy of this document is attached hereto as Exhibit O.

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Consistent with the grim economic conditions, employment opportunities are limited in American Samoa. Approximately one third of the labor force works for the American Samoan government, and another third work for the two fish canneries on Tutuila. Another major employer on the island, a textile shop, was shut down in 2000 for imprisoning, starving and beating its workers and exposing them to sweatshop type conditions.¹⁴

2. Stockton

Stockton, with an area of 54 square miles, comprises about two-thirds the surface area of American Samoa, and roughly equals the size of Tutuila, the largest island, which is home to 95% of the island's population. At about 300,000 people, Stockton has a population about five times the size of American Samoa.¹⁵

As noted above, the average per capita income in Stockton, California of \$15,405, based on the 2000 census, almost three times the per capita income in American Samoa.¹⁶

Stockton is currently the 13th largest city in California, and has been recently undergoing rapid growth and development. Such growth is not surprising given that it is strategically located less than an hour from Sacramento, an hour and fifteen minutes from San Francisco, and about five hours from Los Angeles. Stockton is remarkable for having an inland port and is accessed by several major freeways. According to the City of Stockton's Office of Economic Development, Forbes ranked Stockton 10th nationwide in job growth in their "Best Places in America to do Business 2005 Survey," Inc.com ranked Stockton eighth in its 2005 list of the "Top U.S. Cities for Doing Business," the U.S. Census Bureau in 2005 ranked Stockton fifth in the country and first in California for growing metropolitan areas, and the Milken Institute in 2004 ranked Stockton 11th in job growth for the country.

There are 16,000 businesses licensed within City of Stockton, as contrasted with the two fish canneries and the government which employ two thirds of the American Samoan workforce. Larger businesses in Stockton include St. Joseph's medical center with 2800 employees, Dameron Hospital with 1200 employees, Washington Mutual with 1000 employees, University of the Pacific with 974 employees, Pacific Gas & Electric with 879 employees, Kaiser Permanente with 760 employees, Diamond Walnut with 715 employees, San Joaquin Delta

¹⁴ Honolulu Star Bulletin, March 24, 2001, *Feds uncover American Samoa sweatshop*[:] a report details physical beatings, inhumane conditions and forced labor," <http://starbulletin.com/2001/03/24/news/story2.html>, Exhibit P

¹⁵ Stockton's population in 2005 was determined to be 279,513 (<http://www.stocktongov.com/EconDev/pages/population.cfm>, Exhibit Q), while the population of American Samoa is approximately 56,000 people (<http://www.doi.gov/news/archives/somoa.html>, Exhibit R).

¹⁶ http://en.wikipedia.org/wiki/Stockton%2C_California, Exhibit S.

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College with 650 employees, The Grupe Company, a real estate developer with 500 employees, AT&T with 500 employees. In addition, Stockton is also home to a number of other manufacturing, office, distribution and high technology companies.

IV. The CIF has no authority to penalize the exercise of Franklin students' constitutional rights to equal protection, travel, and family privacy.

The CIF's allegations are based on and thus improperly seek to impede upon the American Samoan students fundamental constitutional rights to equal protection and freedom from race based discrimination, right to privacy, and right to travel.

A. American Samoans are entitled to be free of race and ethnicity based suspicions, investigations, and burdens.

This investigation was specifically brought and specifically based upon the race and ethnicity of the subject students. Letter dated August 24, 2007, from Scott Donald to David Lyon, Exhibit T.¹⁷ Needless to say, state action based upon such suspect classifications runs afoul of very serious legal and ethical obligations reflected in the United States and California state constitutions, as well as a number of federal and state statutes and regulations.

As a school district, the district has a profound obligation to treat all of our students equally, without regard to their race, ethnicity, or place of origin. The federal Civil Rights Act, 42 U.S.C.A. § 2000d ("Title VI") specifically provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

To similar effect, California Government Code §11135 provides:

No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is

¹⁷ The Section seeks to disarm this problem by suggesting that they were merely responding to inquiries by coaches from American Samoa. That argument does not obviate the racial/ethnic focus of this investigation, however, which extended back over several years and included numerous students who have long since graduated from high school. Instead, the argument only confirms inconsistent and erratic enforcement of CIF's transfer eligibility rules, which were only made uniform in July of this year, almost half a year after the three current American Samoan students moved into the Franklin district.

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conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

California Education Code also § 220 reiterates these same fundamental principles:

No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, ... in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

And California Education Code §4925 provides:

"A local agency shall not provide or otherwise carry out any of its extracurricular programs or activities separately, or require or refuse participation therein by any of its students on the basis of sex, sexual orientation, gender, ethnic group identity, race, ancestry, national origin, religion, color, or mental or physical disability."

The Sacramento-San Joaquin Section, through its investigation, findings, and even its by-laws, improperly seeks to compel the District to violate its serious moral, ethical and legal obligations to treat each of its students with equal respect under the law.

B. American Samoans Are Entitled To Freedom From Government Intrusion Into Decisions Regarding Family Relationships, Residency, Child-Rearing and Education.

The CIF has no right to penalize the decisions of Franklin students, their parents and their families as to decisions falling within their fundamental rights of privacy, including decisions regarding familial relationships, residency, child rearing and education. Such prerogative specifically includes decisions by American Samoan families regarding where and how to educate their children or provide for their care.

As the United States Supreme Court explained in *Carey v. Population Services, Intern.* (1977) 431 U.S. 678, 684-685 (citations omitted), "it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage, procreation, contraception, family relationships, and child rearing and education..." The CIF has no right to impose special burdens on students based on their families' choices regarding these issues of private concern and prerogative.

CIF's allegations of undue influence and recruiting are based upon a tunnel vision related to its regulations which interprets all actions of student athletes as based on athletics. CIF analysis thus becomes a self-fulfilling prophecy, since CIF assumes the very conclusion it

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pretends to investigate. This is demonstrated clearly in its interpretation of the actions of the American Samoan families who decided to send their children to attend school in Stockton.

In this matter for example, the three current students are all under legal guardianships with an American Samoan woman to whom they are related. In addition, the CIF investigators acknowledge that in all cases, the decision to educate their children was made by the parents, not the student.

A broad concept of family and mutual support are central elements of American Samoan culture. American Samoans tend to move where other American Samoans are located. There is a relatively large American Samoan community in Stockton, primarily concentrated within the Franklin High School area. Migration to be with relatives and other American Samoans is encouraged by American Samoans' strong belief in an extended family which comprises the entire community, and fulfillment of that duty through mutual assistance. American Samoans are noted for their strong tendency to preserve their sense of community and culture even when living far from their native islands. The United States Department of Interior has defined and recognized this central aspect of American Samoan culture:

The American Samoans, together with the Hawaiians, Maoris, Tongans, and Tahitians are among the last remaining true Polynesians. Despite the strong influence of western industrial culture, the American Samoans, more than other Pacific Islanders, seem to hold more tenaciously to their ancient tradition. Fa'a Samoa, meaning the Samoan way of life, is often heard in American Samoa. Fa'a Samoa has kept Samoans conscious of their ethnic traditions and cautious about changes that might threaten the traditional structure of their society. However, fa'a Samoa has inherent flexibility which has allowed its people to withstand and absorb the ways of foreign traders, missionaries, and military forces. *Samoan tradition revolves around the aiga, the extended family. For the aiga to exist and function, every member plays a part in contributing to the welfare of the group.* At the head of each aiga is the matai, a position which connotes authority. The matai is responsible for the well-being of the family as well as for its representation in the village and district councils. Several matai ranks are intertwined throughout the village systems which result in complex traditional and political hierarchies. Samoan and English are both spoken in American Samoa; most people are bi-lingual. Samoan is related to Hawaiian and other Polynesian languages.

United States Department of Interior's "Island Pages," <http://www.doi.gov/oia/Islandpages/asgpage.htm> (emphasis added), Exhibit U.

Researchers into Samoan culture affirm that these principals of extended family and mutual support are maintained even when Samoan's migrate to other parts of the world:

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Samoans have demonstrated an obdurate capacity to confront forces of transformation and make strategic adaptations. In their effort to negotiate the global economy they have created a meta-Samoa with links across a well-established diaspora. Their competitive edge is founded on two key aspects of Samoan life. First, Samoans appear to embrace mobility. Since the settlement of Samoa, mobility has been acculturated; people are free to take advantage of labour market opportunities 'off-shore' while at the same time reinforcing their culture through the creation of vibrant Samoan diasporic communities. Secondly, Samoans abroad remain true to one of the key tenets of *fa'aSamoa*, that is, the welfare of the collective is paramount and primary to that of the individual. By participating in Samoan life across the diaspora, Samoans reinforce their relationship and fulfill their obligations and commitment to extended family and village. At the same time, they are reproducing the social relations that ensure the reproduction of *fa'aSamoa*.

Gough, Deborah, *Mobility, Tradition and Adaptation: Samoa's Comparative Advantage in the Global Market Place*, 4:1 Graduate Journal of Asia-Pacific Studies (2006) 31, 39 (italics in original), Exhibit V.

These same cultural principles mean that American Samoan children are often highly mobile and often are cared for by relatives other than their parents as well as by friends:

Samoans have an expansive view of familial bonds. A Samoan a'iga or family, includes all individuals who descend from a common ancestor. Samoan familial ties are complex and high interwoven, but also very important; all Samoans are expected to support and serve their extended families.

Children are warmly welcomed into a family and are frequently raised by grandparents or other relatives as their own offspring. In general, children within the Samoan family have a great deal of mobility. It is not uncommon in Samoa for children to be raised by people other than their biological parents. In many cases, children are raised by members of extended family or even friends.

Thomson Gale research, <http://www.everyculture.com/multi/Pa-SP/Samoan-Americans.html>, Exhibit X.

The Samoan "family" works on extended socialist principles with wealth and food being distributed according to need, and honor and social standing being shared or shouldered by all members of the *aiga*.¹⁸ As is common in many Pacific Island cultures, Samoans commonly view

¹⁸ *American Samoa - Culture*, http://www.pacificislandtravel.com/samoa/about_destin/culture_as.asp (accessed Aug.

(continued...)

"discovered" by European explorers. Due to their strong cultural identification to the *aiga* way of life, it is common for Samoans living away from American Samoa to assist each other and provide networking opportunities, especially in the areas of education and employment.¹⁹ As Mathias Vavao, an assistant coach for the Stockton Lightning who is of Samoan decent, summarized, "No matter where [Samoans] are . . . we will still be the same. If I'm in South Dakota and I run into another Samoan at the supermarket, it would be like we're on the island. And within a day or two, [I'd] be eating dinner with them."²⁰

Moreover, the CIF allegations entirely fail to acknowledge that the individuals they accuse of using undue influence are themselves American Samoans, are members of that community and share in and participate in that culture. [REDACTED] lives in American Samoa, is American Samoan, and holds a prominent position in that community. [REDACTED] the assistant coach, his brother, [REDACTED] and his sister-in-law, [REDACTED], are all three American Samoan. They are all bound by a cultural obligation to aid and assist one another, an obligation which remains no matter how far they might travel from the islands themselves.

The CIF improperly seeks to compel the District to interfere in and create burdens for these American Samoans regarding culture based decisions they have made regarding living arrangements, child rearing and education. The fundamental constitution right of privacy, however, forbids this intrusion into their family affairs, and forbids the CIF from creating burdens upon them for their exercise of their constitutional prerogatives. It is entirely inappropriate for the CIF to seek to penalize American Samoans for continuing to fulfill the most fundamental precepts of their culture. In that sense, this investigation, allegations, and any adverse findings are, in a very real and immediate sense, nothing more than an attack upon these students and their families culture and way of life.

C. American Samoans Are Entitled To Enjoy Their Fundamental Right of Travel.

The CIF improperly seeks to penalize District students for exercise of their fundamental

¹⁸(...continued)

28, 2007), Exhibit Y.

¹⁹

Cancer in American-Samoan Women,

<http://wincart.fullerton.edu/Images/NCI&20American%20Samoan%20%20chapter.pdf>,
Exhibit Z.

²⁰

Roger Phillips, *Polynesian Roots Run Deep for Lightning,*

http://www.recordnet.com/apps/pbcs.dll/article?AID=/20070714/A_SPORTS/707140331/-1/a_sports05 (accessed Aug. 27, 2007), Exhibit AA.

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right to travel freely within the United States. Depriving newly arrived students of the opportunity to participate in any sport would constitute a substantial and inappropriate burden on his/her right to travel, particularly as applied to a specific racial and ethnic minority. *See, e.g., Saenz v. Roe* (1999) 526 U.S. 489, 505; *Shapiro v. Thompson* (1969) 394 U.S. 618, 631-32.

As explained by the United States Supreme Court in *Shapiro, supra*, 394 U.S. at 629-630:

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Tancy in the Passenger Cases: 'For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.'

Accordingly, in *Shapiro* the court held that a state could not impose a one year residency requirement for receipt of welfare benefits, noting that such a rule would discourage poor families from exercising their right of travel. The court explained:

We do not doubt that the one-year waiting period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.

Shapiro, supra, 394 U.S. at 629.

In reaching this conclusion, the court clear held that the fact that there was no right to welfare benefits, did not excuse the state's denial of that privilege based upon poor family's exercise of their constitutional right. *Shapiro, supra*, 394 U.S. at 627 and fn. 6. The same principals protect the American Samoan students here. While there might not be a constitutional right to play football, *per se*, the state is not free to grant or withhold privilege of participating in high school athletics as punishment for or in derogation of American Samoan's exercise of their right to travel.

This fundamental right to travel is particularly important to American Samoans who have deep-seated cultural tradition of migration and travel stretching back at least hundreds of years. As a result, today substantially more American Samoans live overseas – an estimated 500,000 worldwide – than live in American Samoa itself, which has a population of about 60,000

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people.²¹ The United States Department of the Interior reports "a large out-migration of Samoans to the United States (a continuous out-migration trend of about 382 migrants per year since 1974). It is estimated that 15,000 Samoans reside in Hawaii and 32,000 in California and 4,000 in Washington (1990)."²²

CIF's own records reveal that almost all of the students and parents interview reported that siblings of the students and other relatives live in California:

- 1) [REDACTED] mother, testified that she has brothers and cousins who live in California, including Stockton, Sacramento and Los Angeles.. SUSD00129.
- 2) Former student [REDACTED] (2005-2006) explained that he decided to attend junior college in Santa Rosa, California, because he has an aunt who lives there. SUSD00092.
- 3) [REDACTED] father of current student [REDACTED] testified that the family has relatives who live in California, Arizona, and Washington. SUSD00053-SUSD00054. Mr. [REDACTED] that his son gets "spending money" from his brothers and sisters and that they have opened up a bank account in California for Storm. SUSD 00054-55.
- 4) [REDACTED] explained that [REDACTED] his guardian and with whom he currently lives in Stockton is his mother's stepsister and that he has an aunt who lives in Southern California. SUSD00057-58.
- 5) [REDACTED] explained that [REDACTED] with whom he resides in Stockton is his mother's cousin, and that his mother lives in Dixon. SUSD00060.
- 6) [REDACTED] Director of the American Samoa Department of Education High School Program testified that American Samoan students have also transferred to schools in Hawaii. SUSD00102.
- 7) [REDACTED] explained that in addition to his brother and sister-in-law who currently live in Stockton, another brother of his, [REDACTED] lived in Stockton and has subsequently returned to American Samoa.. SUSD00105-00106.

²¹ Ted Miller, American Football, Samoan Style, <http://espn.go.com/gen/s/2002/0527/1387562.html>, Exhibit W.

²² <http://www.doi.gov/oia/Islandpages/asgpage.htm>, Exhibit BB.

The CIF's failure to provide the Stockton Unified School District a reasonable time to respond to its allegations is calculated and inappropriate denial of fundamental due process. In addition, the manner in which the CIF has conducted its investigation, in violation of legal requirements, through inappropriate harassment and threats, and through selective disclosure of its records, also invalidate any conclusions the CIF might otherwise reach. Finally, these violations of basic due process, as well as your role as investigator, prosecutor and judge, all indicate that you are not the proper person to be determining the truth of the allegations contained in the CIF Report, much less the proper person to be determining a penalty.

In addition, the guidelines the CIF seeks to enforce are inconsistent and incoherent. They provide no notice of the contours of interdicted behavior and are not consistently applied. The by-laws themselves thus violate due process protections.

As to the evidence itself, the CIF consistently ignores the abundant exonerative evidence from District employees and students, as well as the evidence that the migration patterns targeted by the CIF investigation reflect deeply ingrained American Samoan cultural attitudes, behavior, and migration habits. Instead, the CIF report relies upon evidence that was improperly obtained and is hearsay, often of multiple degree, was based on threat. Moreover, the CIF report glibly and improperly characterizes non-employees as "Franklin representatives" based upon mere family relation. The credible evidence demonstrates that the students' parents chose to send their students to live with relatives in the Franklin school district for substantial educational and economic benefits, and not for athletic reasons.

The CIF's allegations are based on and thus seek to place improper burdens on these American Samoan families' exercise of fundamental constitutional rights to equal protection, family privacy, and travel.

Based on the foregoing, the allegations of the CIF report must be rejected, and the District exonerated of all allegations of wrongdoing. This should be done in as open and public a manner as these unfounded allegations were first alleged less than a week and a half ago.

Very truly yours,

RUIZ & SPEROW, LLP

David E. Lyon

del/gmt