

1 MICHAEL C. SULLIVAN (SBN 131817)  
msullivan@paulplevin.com  
2 JENNIFER M. FONTAINE (SBN 258901)  
jfontaine@paulplevin.com  
3 **PAUL, PLEVIN, SULLIVAN &  
CONNAUGHTON LLP**  
4 101 West Broadway, Ninth Floor  
San Diego, California 92101-8285  
5 Telephone: 619-237-5200  
Facsimile: 619-615-0700

6 Attorneys for Defendants Richard Barrera;  
7 Kevin Beiser; John Lee Evans; Michael  
McQuary; Sharon Whitehurst-Payne;  
8 Cynthia Marten

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 CITIZENS FOR QUALITY  
EDUCATION SAN DIEGO, an  
13 unincorporated nonprofit association;  
SAN DIEGO ASIAN AMERICANS  
14 FOR EQUALITY FOUNDATION, a  
nonprofit public-benefit corporation;  
15 SCOTT HASSON individually and as  
next friend on behalf of his minor child,  
16 C.H.; CHAOYIN HE, individually and  
as next friend on behalf of her minor  
17 child, B.H.; XUEXUN HU, individually  
and as next friend on behalf of his  
18 minor child, R.H.; KEVIN STEEL and  
MELISSA STEEL, individually and as  
19 next friends on behalf of their minor  
child, K.S.; JOSE VELAZQUEZ,  
20 individually and as next friend on  
behalf of his minor child, J.V.,

21 Plaintiffs,

22 v.

23 SAN DIEGO UNIFIED SCHOOL  
24 DISTRICT; RICHARD BARRERA, in  
his official capacity as Board President;  
25 KEVIN BEISER, in his official  
capacity as Board Vice President;  
26 JOHN LEE EVANS, in his official  
capacity as Board member; MICHAEL  
27 MCQUARY in his official capacity as  
Board member; SHARON  
28 WHITEHURST-PAYNE, in her official

Case No. 17CV1054 BAS JMA

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Judge: Hon. Cynthia Bashant  
Magistrate Judge: Hon. Jan M. Adler  
Trial Date: Not Set

1 capacity as Board member; CYNTHIA  
2 MARTEN, in her official capacity as  
3 Superintendent ,  
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Defendants.

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**I. INTRODUCTION**

Plaintiffs seek a preliminary injunction despite the fact that the Board of Directors (“Board”) of San Diego Unified School District (“SDUSD”) took clear action eight months ago to rescind the initiative that plaintiffs claim is unconstitutional. Indeed, SDUSD has affirmed its ongoing commitment to its religiously neutral anti-bullying policy that ensures its schools are safe for all students.

This is the heart of the issue before this Court – SDUSD’s public and affirmative commitment to a religiously neutral approach to preventing bullying that welcomes the input of all community organizations, of all faiths and creeds. Yet, plaintiffs relegate this issue, which is determinative of their motion, to a footnote. However, the Board’s action to insure religious neutrality was not a sham. Plaintiffs have provided no evidence that SDUSD has favored or disfavored any religion in its policies, educational materials or instruction of students after rescission of the challenged initiative. To the contrary, extensive evidence demonstrates that SDUSD has abided by the Board’s instructions and taken significant steps to implement the broad-based anti-bullying program through the Anti-Defamation League (“ADL”) and the intercultural committee directed by the Board. Thus, plaintiffs’ claims are moot and they have not shown a likelihood of success on the merits.

Additionally, plaintiffs have failed to show that they would suffer irreparable harm. The Board’s action makes SDUSD’s commitment to religious neutrality clear. Moreover, plaintiffs fail to explain their inexplicable delay in waiting over four months to file this motion after receiving the documents they rely upon if they were facing such harm.

The balance of equities and the public interest also weigh against an injunction here, as plaintiffs seek to eliminate the relationship between CAIR and SDUSD in violation of CAIR’s rights under the Free Exercise Clause and in contradiction of the Board’s policy to treat all members of the community equally.

1 Finally, the terms of plaintiffs’ proposed injunction are unnecessary, vague,  
2 overbroad, and further demonstrate why the extraordinary remedy of injunctive  
3 relief is not appropriate here. Indeed, plaintiffs’ request that SDUSD refrain from  
4 “permitting” CAIR to “advance their organizational objectives” reveals the  
5 underlying motivation for this lawsuit and this motion, which is a hostility to the  
6 Council on American-Islamic Relations (“CAIR”) and its agenda.

7 Thus, defendants respectfully request that the Court deny plaintiffs’ motion  
8 for a preliminary injunction.

9 **II. RELEVANT FACTUAL BACKGROUND**

10 **A. The Board Adopts Initiative to Combat Anti-Muslim Bullying**

11 In the wake of the increased instances of Islamophobia following Donald  
12 Trump’s election campaign,<sup>1</sup> the Board sought to develop an anti-bullying program  
13 to prevent such targeted bullying of Muslim students. On July 26, 2016, the Board  
14 directed the Superintendent to bring to the Board a “plan to address Islamophobia  
15 and the reports of bullying of Muslim students.” (Pltffs’ Ex. 2.) After formulating  
16 that plan for several months, SDUSD staff delivered a presentation to the Board on  
17 April 4, 2017 proposing several action steps that would be completed immediately,  
18 before the next school year, and over multiple years. (Anjan Decl. ¶ 3, Ex. A.) The  
19 Board approved the plan. (Anjan Decl. ¶ 3.)

20 **B. Minimal Action is Taken Pursuant to April 4, 2017 Board Directive**

21 The Family and Community Engagement Department (“FACE”) was tasked  
22 with implementing the action steps in the presentation. Between April 4 and July  
23 25, 2017, the only action taken to implement the Board’s decision was (1) the  
24 selection and distribution to school library staff of several third party books through  
25

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26 <sup>1</sup> *Hate Crimes Against American Muslims Most Since Post-9/11 Era*, New York  
27 Times, available at <https://www.nytimes.com/2016/09/18/us/politics/hate-crimes-american-muslims-rise.html>.  
28

1 the Instructional Resources and Materials Department in May 2017 and (2) holding  
2 two meetings with CAIR representatives. (Anjan Decl. ¶ 3.)

3 In May 2017, CAIR representatives suggested the purchase of several third  
4 party books to place in school libraries.<sup>2</sup> (Woehler Decl. ¶ 3.) The Instructional  
5 Resources and Materials Department vetted the books as required by California  
6 Education Code section 60040 and SDUSD procedures to ensure each “accurately  
7 portray the cultural and racial diversity of our society.” (*Id.* ¶ 3, Exs. B-C.) The  
8 books were then purchased directly from a third party vendor and distributed to  
9 school librarians without express authorization based upon a miscommunication.  
10 (*Id.* ¶ 4; Anjan Decl. ¶ 4.) The books were retrieved within approximately one week  
11 of distribution, and were not placed in school libraries or given to students before  
12 retrieval. (Woehler Decl. ¶ 4; Anjan Decl. ¶ 4.) The books were subsequently  
13 incorporated into a Multicultural Text Set that covered a variety of cultures and  
14 identity groups to support SDUSD’s goal of providing a supportive environment for  
15 all students that values diversity.<sup>3</sup> (Woehler Decl. ¶ 5; Anjan Decl. ¶ 4.)

16 FACE also met with CAIR twice between April 4 and July 25, 2017 to  
17 answer questions from CAIR and inform CAIR that SDUSD was putting a pause on  
18 any further actions taken pursuant to the April 4, 2017 Board meeting while SDUSD  
19 made a determination as to how best to move forward with the CAIR relationship.  
20 (Anjan Decl. ¶ 5, Ex. D.)

21 **C. SDUSD Board Rescinds Anti-Muslim Bullying Initiative and Directs**  
22 **Staff to Form Intercultural Committee**

23 In the wake of backlash from certain community members and this lawsuit  
24

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25 <sup>2</sup> The suggested books covered not only stories that raise awareness of Muslim  
26 culture, but also discussed immigrants and refugees from several cultures and  
27 Jewish-Muslim cooperation. (Woehler Decl. ¶ 3.)

28 <sup>3</sup> SDUSD libraries also contain books that provide information on many different  
world religions, consistent with state curriculum standards. (Woehler Decl. ¶ 6.)



1 (filed May 22, 2017), the Board “clarifie[d] that our Muslim students will be treated  
2 equally with respect to bullying.” (Anjan Decl. ¶ 6, Ex. E.) The Board affirmed “its  
3 commitment to ensure our schools are safe for all students and that the District will  
4 not tolerate the bullying of any student” and that SDUSD’s “anti-bullying program  
5 is developed to comprehensively address the issue of bullying of all students  
6 through the No Place for Hate program.” (*Id.*) Furthermore, “staff is redirected  
7 from forming a formal partnership with CAIR to forming an intercultural committee  
8 which shall include representatives of from all faiths and cultures and which shall  
9 provide input to District staff on issues of cultural sensitivities and the individual  
10 needs of various subgroups within our diverse community.” (*Id.*) Finally, the Board  
11 directed staff to “enter into a partnership with the Anti-Defamation League to assist  
12 in creating respectful, inclusive, and safe learning environments and communities.”  
13 (Anjan Decl. ¶ 6, Ex. F.)

14 **D. SDUSD Forms Intercultural Relations Community Council**

15 FACE was tasked with forming the intercultural committee directed by the  
16 Board, and subsequently formed the Intercultural Relations Community Council  
17 (“IRCC”). (Anjan Decl. ¶ 7.) The purpose of the IRCC is for SDUSD and FACE to  
18 obtain resources and input from diverse community groups regarding cultural  
19 sensitivities and needs of various diverse segments of the school population.  
20 (Santos Decl. ¶ 3.) On January 22, 2018, the IRCC held its first meeting for the  
21 purpose of having an open dialogue with community members and local  
22 organizations regarding safe and inclusive school environments for all students.  
23 (*Id.*; Anjan Decl. ¶ 7, Exs. G-H.) Several community organizations attended and it  
24 covers multiple identity groups. (Anjan Decl. ¶ 7; Santos Decl. ¶ 3.) The IRCC  
25 held its second meeting on March 19, 2018, and a third meeting is scheduled for  
26 May 21, 2018. (Santos Decl. ¶ 3, Ex. I.) FACE is in the process of incorporating  
27 input from the IRCC and its participants into district resources to support schools in  
28 creating safe and inclusive school environments for all students. (*Id.* ¶ 3.)

1 **E. SDUSD Enters Into Partnership with Anti-Defamation League**

2 SDUSD’s Counseling and Guidance Department was tasked with entering  
3 into a partnership with the Anti-Defamation League (“ADL”) as directed by the  
4 Board. (Villegas Decl. ¶ 3.) The Counseling and Guidance Department entered into  
5 a formal partnership with the ADL to implement the No Place for Hate program  
6 through a formal Memorandum of Understanding. (*Id.* ¶ 3, Ex. J.) The No Place for  
7 Hate program is a strong anti-bullying effort that highlights and fosters positive  
8 school environments, climates, and cultures for all students. (*Id.*) The program  
9 does not emphasize any one religion. (*Id.*)

10 **F. SDUSD Staff Meets with CAIR Multiple Times to Repair Relationship**  
11 **and Explain IRCC**

12 On July 25, 2017, SDUSD spoke with CAIR before the Board meeting to  
13 explain the reason for the staff’s recommendations to the Board and answer  
14 questions. (Sharp Decl. ¶ 3.) SDUSD explained that the Board’s action on April 4,  
15 2017 had overstated CAIR’s role and the Board was taking steps to correct that  
16 misunderstanding. (*Id.*)

17 On August 31, 2017, SDUSD met with representatives from CAIR, Alliance  
18 San Diego and the American Civil Liberties Union at the suggestion of Alliance San  
19 Diego in light of CAIR’s disappointment with the Board’s July 25, 2017 action to  
20 move away from a formal partnership with CAIR. (*Id.* ¶ 4.) The meeting addressed  
21 airing CAIR’s concerns about the Board action and repairing the damage to SDUSD  
22 and CAIR’s relationship. (Sharp Decl. ¶ 4.) There was no discussion of CAIR  
23 providing any materials or generating any materials for SDUSD’s anti-bullying  
24 program. (Sharp Decl. ¶ 4.)

25 On November 9, 2017, CAIR and SDUSD held a restorative circle to discuss  
26 past damage to the relationship between SDUSD and CAIR, healing, and moving  
27 forward. (Anjan Decl. ¶ 8, Ex. K; Sharp Decl. ¶ 5.) Representatives from the  
28 National Center for Conflict Resolution and the San Diego County Office of

1 Education attended and facilitated this meeting. (Anjan Decl. ¶ 8; Sharp Decl. ¶ 5.)  
2 CAIR and SDUSD also met on December 11, 2017 to follow up from the  
3 restorative circle and to introduce the individual in charge of the IRCC. (Anjan  
4 Decl. ¶ 9; Santos Decl. ¶ 4.) SDUSD listened to concerns expressed by CAIR,  
5 explained the purpose of the IRCC, and informed CAIR that they were welcome to  
6 participate in the same way as any other community organization. (Anjan Decl. ¶  
7 10; Santos Decl. ¶ 4.) Another follow up meeting was held January 11, 2018 to plan  
8 for the upcoming January 22 IRCC meeting. (Anjan Decl. ¶ 9; Santos Decl. ¶ 5.)  
9 SDUSD listened to CAIR’s concerns and explained that the IRCC was the forum for  
10 accepting input from CAIR and other community organizations. (Anjan Decl. ¶ 9;  
11 Santos Decl. ¶ 5.) On February 8, 2018, SDUSD and CAIR met to follow up on the  
12 IRCC. (Santos Decl. ¶ 6.) SDUSD listened to CAIR’s concerns and informed them  
13 that the IRCC was the mechanism for accepting input and resources from all  
14 community groups for incorporation into district resources. (*Id.*)

15 **G. SDUSD Maintains a Relationship With CAIR Consistent With That of**  
16 **Other Community Organizations**

17 SDUSD held meetings with CAIR between July 25, 2017 and February 8,  
18 2018 as part of its standard procedure to address the concerns of and maintain its  
19 relationship with a community organization who was disappointed by SDUSD’s  
20 actions.<sup>4</sup> (Anjan Decl. ¶ 11; Sharp Decl. ¶ 6.) The current relationship between  
21 SDUSD and CAIR is the same as the relationship between SDUSD and any other  
22 community organization. (Anjan Decl. ¶ 11; Santos Decl. ¶ 7; Villegas Decl. ¶ 4.)  
23 No decision was made or communicated during SDUSD’s meetings with CAIR  
24 \_\_\_\_\_

25 <sup>4</sup> As a school district with constituents from multiple religious and cultural  
26 backgrounds, SDUSD respects and listens to all segments of its community  
27 regardless of their religious affiliation or cultural background. (Anjan Decl. ¶ 11;  
28 Sharp Decl. ¶ 6.) To learn about and meet the needs of its diverse population,  
SDUSD maintains a relationship with a long list of community and civil rights  
organizations. (Anjan Decl. ¶ 11.)

1 after July 25, 2017 to implement any program, curriculum, or materials created by  
 2 CAIR. (Anjan Decl. ¶¶ 9-10; Santos Decl. ¶¶ 4-6; Villegas Decl. ¶ 4.) Since July  
 3 25, 2017, SDUSD has not implemented any program, curriculum, or materials  
 4 created by CAIR or that favors any religion (including the Islamic religion). (Anjan  
 5 Decl. ¶ 12; Santos Decl. ¶ 7; Villegas Decl. ¶ 5.) Instead, SDUSD welcomes and  
 6 accepts input to its curriculum and anti-bullying programming from all community  
 7 organizations and individuals, and incorporates that input as appropriate, to ensure  
 8 its curriculum and programs are effective and valuable for all students. (Santos  
 9 Decl. ¶ 8; Villegas Decl. ¶ 6; Ranck-Buhr Decl. ¶ 3.)

### 10 **III. PLAINTIFFS HAVE NOT MET THEIR BURDEN TO SUPPORT A** 11 **PRELIMINARY INJUNCTION**

12 A preliminary injunction is an “extraordinary remedy that may only be  
 13 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v.*  
 14 *Nat. Res. Def. Council, Inc.*, 129 S.Ct. 365, 376 (2008); *Earth Island Inst. v.*  
 15 *Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (“[P]laintiffs face a difficult task in  
 16 proving that they are entitled to this ‘extraordinary remedy.’”). Plaintiffs face an  
 17 even higher burden when seeking an injunction that would alter the status quo by  
 18 requiring affirmative conduct, and must show that “the facts and law clearly favor  
 19 the moving party.” *Dahl v. HEM Pharmaceuticals Corp.*, 7 F.3d 1399, 1403 (9th  
 20 Cir. 1993). Here, plaintiffs seek to alter the status quo by requiring SDUSD to cease  
 21 all communications with CAIR and remove a portion of the Multicultural Text Set  
 22 placed in school libraries, so they are subject to this higher burden.

23 A request for injunctive relief must be denied both when the plaintiff cannot  
 24 show he is likely to succeed on the merits **and** when he cannot show irreparable  
 25 harm. *Winter*, 129 S.Ct. at 375-76 (“Issuing a preliminary injunction based only on  
 26 a possibility of irreparable harm is inconsistent with our characterization of  
 27 injunctive relief as an extraordinary remedy that may only be awarded on a clear  
 28 showing that the plaintiff is entitled to such relief.”). A court ruling on an injunction

1 “must balance the competing claims of injury and must consider the effect on each  
2 party of the granting or withholding of the requested relief[;] ... a federal judge  
3 sitting as chancellor is not mechanically obligated to grant an injunction for every  
4 violation of law.” *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S.  
5 531, 542 (1987).

6 **A. Plaintiffs are Not Likely to Succeed on the Merits Because Their Claims**  
7 **are Moot.**

8 A case no longer satisfies the Article III standing requirement when it  
9 becomes moot, or “when the issues presented are no longer live or the parties lack a  
10 legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85,  
11 91 (2013) (internal quotations omitted). However, voluntary cessation of challenged  
12 conduct only moots a case “if subsequent events made it absolutely clear that the  
13 allegedly wrongful behavior could not reasonably be expected to recur.” *Rosebrock*  
14 *v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014). “We presume that a government  
15 entity is acting in good faith when it changes its policy ... but when the Government  
16 asserts mootness based on such a change it still must bear the heavy burden of  
17 showing that the challenged conduct cannot reasonably be expected to start up  
18 again.” *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014).

19 **1. The Ninth Circuit Has Established Five Factors to Determine**  
20 **Mootness Where Public Entity Changes Policy**

21 The Ninth Circuit has found that when a public entity makes a policy change  
22 that is not reflected in a statute, ordinance or regulation:

23 mootness is more likely if (1) the policy change is evidenced by language that  
24 is broad in scope and unequivocal in tone; (2) the policy change fully  
25 addresses all of the objectionable measures that [the Government] officials  
26 took against the plaintiffs in th[e] case; (3) th[e] case [in question] was the  
27 catalyst for the agency's adoption of the new policy; (4) the policy has been in  
28 place for a long time when we consider mootness; and (5) since [the policy's]  
implementation the agency's officials have not engaged in conduct similar to  
that challenged by the plaintiff[ ].

*Id.* (internal quotations and citations omitted).

1 SDUSD is a public entity. (CAL. CONST. art. IX, §§ 5, 14; CAL. EDUC. CODE  
2 §§ 12032, 33030 *et seq.*; CAL. EDUC. CODE § 35010.) Therefore, the *Rosebrook* test  
3 applies to determine whether SDUSD’s subsequent actions have mooted plaintiffs’  
4 claims.

5 **2. Defendants Have Established That Their Challenged Conduct**  
6 **Cannot Reasonably be Expected to Recur**

7 Plaintiffs assert that the Board’s action on July 26, 2016 directing the  
8 Superintendent to develop a plan to address Islamophobia and bullying of Muslim  
9 students, and the April 4, 2017 action steps adopted to implement that plan, violate  
10 several provisions of the California Constitution.<sup>5</sup> (Ps&As at 11-18; 21:13-14 [“The  
11 question before this Court is simple: Is the Anti-Islamophobia Initiative neutral  
12 toward religion?”].) However, this plan, and the action steps to implement this plan,  
13 were clearly reversed at a Board meeting on July 25, 2017. Analysis of the Board’s  
14 action under the *Rosebrook* factors support a finding that it is “absolutely clear that  
15 the allegedly wrongful behavior could not reasonably be expected to recur.”  
16 *Rosebrook*, 745 F.3d at 971.

17 First, the policy change was “broad in scope and unequivocal in tone.” *Id.*  
18 Following community backlash and the filing of this lawsuit, the Board realized that  
19 the staff plan overstated CAIR’s role and took corrective action on its own initiative.  
20 (Sharp Decl. ¶ 3.) The Board’s action on July 25, 2017 specifically referenced the  
21 plan adopted on April 4, 2017 and explained the purpose of the anti-Muslim  
22 bullying initiative. (Anjan Decl. Ex. E.) The Board then affirmed its commitment  
23 to an anti-bullying program benefiting all students, and “clarifie[d] that our Muslim  
24 \_\_\_\_\_

25 <sup>5</sup> Defendants understand that CAIR intends to file an amicus brief in this matter,  
26 asserting the argument that the Board’s July 26, 2016 and April 4, 2017 actions were  
27 constitutional. However, the Board rescinded those actions on July 25, 2017, and  
28 SDUSD is committed to its religiously neutral anti-bullying policy that ensures its  
schools are safe for all students. (Anjan Decl. ¶ 12; Villegas Decl. ¶ 5; Santos Decl.  
¶ 7.)

1 students will be treated equally with respect to bullying.” (*Id.*) The Board also  
 2 clearly “redirected [staff] from forming a formal partnership with CAIR to forming  
 3 an intercultural committee” that is all-inclusive, and directed an ADL partnership to  
 4 promote safety for all. (*Id.* Exs. E-F.) In light of this clear policy statement that  
 5 SDUSD will treat Muslim students equally and not enter into a formal partnership  
 6 with CAIR going forward, the first factor weighs in favor of mootness.

7 Second, the policy change “fully addresses all of the objectionable measures  
 8 that [the Government] officials took against the plaintiffs in th[e] case.” *Rosebrook*,  
 9 745 F.3d at 971. The Board has unequivocally reversed its actions taken on July 26,  
 10 2016 to develop a plan to address Islamophobia and Muslim student bullying and on  
 11 April 4, 2017 to implement action steps for that plan. (Anjan Decl. Exs. E-F.)  
 12 Indeed, the only actions taken to implement the April 4, 2017 action steps – the  
 13 purchase and distribution of library books (which were retrieved before ever being  
 14 placed in libraries) and two meetings with CAIR to explain that SDUSD was putting  
 15 a “pause” on further actions under the Board plan – did not even impact plaintiffs.<sup>6</sup>  
 16 (Anjan Decl. ¶¶ 3-5; Woehler Decl. ¶¶ 3-4.) Thus, the second factor weighs in favor  
 17 of mootness. *See Rosebrook*, 745 F.3d at 973 (policy change “fully address[ed] all  
 18 of the objectionable measures” because viewpoint discrimination no longer possible  
 19 where the government had closed the forum); *Karras v. Gore*, No. 14CV2564 BEN  
 20 KSC, 2015 WL 74143, at \*3 (S.D. Cal. Jan. 6, 2015) (second factor satisfied  
 21 because police department had permanently closed Facebook page and could no  
 22

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23  
 24 <sup>6</sup> Plaintiffs also take issue with SDUSD’s partnership agreement with CAIR that  
 25 predates the plan to address Islamophobia. Plaintiffs do not argue the  
 26 unconstitutionality of this agreement, and it is irrelevant in light of the Board’s July  
 27 25, 2017 action. Regardless, this was merely a standard agreement with a  
 28 community organization intended to utilize community resources to further its anti-  
 bullying program and ensure a safe and inclusive atmosphere for all students.  
 (Villegas Decl. ¶ 7.) SDUSD has entered into numerous such partnership  
 agreements with other community organizations. (*Id.*)

1 longer engage in viewpoint discrimination).

2 Third, this litigation was clearly the “catalyst” for the Board’s action, as it  
3 was entered into just over two months after this litigation was filed on May 22,  
4 2017.

5 Fourth, while the Board action has only been in place for just over eight  
6 months, “preliminary injunctive relief is sought to restrict objectionable conduct at  
7 the outset of litigation and any policy change prompted by the litigation could only  
8 be in place for a short period of time.” *Karras*, 2015 WL 74143, at \*1 (finding  
9 mootness even though policy change was only in effect for two months). Therefore,  
10 the length of time since the Board’s July 25, 2017 policy change does not weigh  
11 against a finding of mootness, and SDUSD has shown consistent commitment to  
12 that policy change in the last eight months.

13 Finally, SDUSD has not “engaged in conduct similar to that challenged by the  
14 plaintiff” since the Board made the policy change, and the Board’s action was not a  
15 “sham” as plaintiffs contend. Since July 25, 2017, SDUSD has not implemented  
16 any program, curriculum, or materials created by CAIR or that favors any religion  
17 (including the Islamic religion). (Anjan Decl. ¶ 12; Santos Decl. ¶ 7; Villegas Decl.  
18 ¶ 5.) SDUSD’s relationship with CAIR is the same as any other community  
19 organization, and it has held periodic meetings with CAIR as part of its standard  
20 procedure to address the concerns of and maintain its relationship with a community  
21 organization who was disappointed by SDUSD’s actions. (Anjan Decl. ¶ 11; Sharp  
22 Decl. ¶ 6.) SDUSD has shown its commitment to comply with the Board directive  
23 through these actions: (1) entering into a Memorandum of Understanding with the  
24 ADL for its anti-bullying program, (2) implementing the ADL’s anti-bullying  
25 program in two of SDUSD’s sixteen clusters and planning for all remaining clusters,  
26 and (3) forming the IRCC and holding meetings with a wide range of community  
27 groups. (Villegas Decl. ¶ 3; Anjan Decl. ¶ 7; Santos Decl. ¶ 3.) In light of these  
28 actions, it is “exceedingly unlikely” that SDUSD will reverse course and seek out a



1 formal relationship with CAIR or implement a new initiative focused solely on anti-  
2 Muslim bullying. *Walker v. San Francisco Unified Sch. Dist.*, 46 F.3d 1449, 1463  
3 (9th Cir. 1995) (finding it “absolutely clear that the allegedly wrongful behavior  
4 [cannot] reasonably be expected to recur” because defendant school district  
5 purchased its own equipment to provide services it had previously provided through  
6 lease from religious organization in violation of Establishment Clause).

7       The mere possibility that SDUSD could revert back to its prior policy is  
8 insufficient to refute mootness because of the “presumption that the Government  
9 acts in good faith.” *Rosebrook*, 745 F.3d at 974 (“[I]n light of the presumption that  
10 the Government acts in good faith, we have previously found the heavy burden of  
11 demonstrating mootness to be satisfied in ‘policy change’ cases without even  
12 discussing procedural safeguards or the ease of changing course.”). A similar  
13 argument was rejected in *Karras v. Gore*, where plaintiff claimed his posts were  
14 improperly removed from a police department’s Facebook page, and the police  
15 department permanently closed the Facebook page after plaintiff brought suit. 2015  
16 WL 74143, at \*1. The Court found the claims moot even though “the Department  
17 could reopen the page and resume the conduct alleged by Plaintiff,” because of the  
18 “presumption that the Government acts in good faith” and because it was unlikely  
19 defendant would commit to a permanent closure then reverse course. *Id.* at \*2-\*3.  
20 This is especially true here, where there is no long-term history of favoring or  
21 discriminating on the basis of religion. The Board implemented one policy to  
22 address rising Islamophobia in the current political climate, and immediately  
23 rescinded that policy in favor of neutrality as soon as community members spoke  
24 out and this litigation was filed.

25       Plaintiffs have provided no evidence that SDUSD has favored or disfavored  
26 any religion in its policies, educational materials or instruction of students after July  
27 25, 2017. Rather, plaintiffs claim that the mere fact that CAIR made allegations that  
28 the April 4, 2017 action steps were “still in effect” and continued to send resources

1 to SDUSD for review means that the July 25, 2017 Board action was a “sham.”  
2 However, merely accepting resources from a community organization and  
3 considering them for inclusion in the anti-bullying program or the curriculum does  
4 not go against the broad directive from the Board to treat Muslim students equally  
5 and ensure that schools are safe for all students. Rather, SDUSD welcomes  
6 feedback on its curriculum and anti-bullying programming from many community  
7 organizations and individuals to ensure these materials are effective for all students.  
8 (Santos Decl. ¶ 8; Villegas Decl. ¶ 6; Ranck-Buhr Decl. ¶ 3.) Furthermore, while  
9 CAIR may have sought to reinterpret the Board’s action (Pltffs’ Ex. 33), the  
10 evidence establishes that SDUSD has followed the Board’s clear directive to move  
11 from a CAIR partnership to an intercultural committee and ADL partnership.  
12 (Anjan Decl. ¶ 7; Santos Decl. ¶ 3; Villegas Decl. ¶ 3.)

13 Therefore, defendants have met their burden to show that the “allegedly  
14 wrongful behavior could not reasonably be expected to recur,” and the case is moot.  
15 As such, plaintiffs have failed to show that the “facts and law clearly favor” them  
16 and that they are likely to succeed on the merits (*Dahl*, 7 F.3d at 1403) and  
17 plaintiffs’ motion must be denied. *Winter*, 129 S.Ct. at 375-76 (“Issuing a  
18 preliminary injunction based only on a possibility of irreparable harm is inconsistent  
19 with our characterization of injunctive relief as an extraordinary remedy that may  
20 only be awarded on a clear showing that the plaintiff is entitled to such relief.”).

21 **B. Plaintiffs Have Failed to Demonstrate Irreparable Harm**

22 A plaintiff must come forward with evidence sufficient to demonstrate a  
23 “significant threat of irreparable injury.” *Arcamuzi v. Continental Air Lines, Inc.*,  
24 819 F.2d 935, 937 (9th Cir. 1987). A “long delay before seeking a preliminary  
25 injunction implies a lack of urgency and irreparable harm.” *Oakland Tribune, Inc. v.*  
26 *Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). In particular, “courts  
27 typically decline to grant preliminary injunctions in the face of unexplained delays  
28 of more than two months.” *Gidatex, S.r.L. v. Campaniello Imports, Ltd.*, 13 F. Supp.

1 2d 417, 419 (S.D.N.Y. 1998); *see also Playboy Enters., Inc. v. Netscape Commc'ns*  
2 *Corp.*, 55 F. Supp. 2d 1070, 1090 (C.D. Cal. 1999) (finding five month delay in  
3 seeking injunctive relief “demonstrates the lack of any irreparable harm”); *AK*  
4 *Metals, LLC v. Norman Indus. Materials, Inc.*, No. 12cv2595-IEG (WVG) 2013 WL  
5 417323, at \*10 (S.D. Cal. Jan. 31, 2013) (given the “almost two month delay,” court  
6 found “delay in filing the motion for emergency relief weighs against the immediacy  
7 of the harm”).

8 Preliminarily, there is no threat of irreparable injury to plaintiffs because their  
9 constitutional claims were mooted by the Board’s clear policy change rescinding the  
10 July 2016 and April 2017 actions to develop and implement an initiative to counter  
11 Muslim bullying, which SDUSD has followed. (See Section III(A)(2), *supra.*)  
12 Furthermore, plaintiffs argue that it is imperative that the Court grant this  
13 extraordinary relief, but they have not taken actions consistent with that argument.  
14 Plaintiffs received the documents that they claim support the need for injunctive  
15 relief in response to a California Public Records Act Request between September 14  
16 and October 4, 2017. (Pltffs’ Ex. 42.) At the latest, plaintiffs were aware of the  
17 contents of these document by November 3, 2017 when they served the amended  
18 complaint. (Ps&As at 9:19-10:3.) However, plaintiffs inexplicably waited four and  
19 half months after receiving the documents, and three and a half months after  
20 deciding to move forward with service, to file this motion. Therefore, their delay  
21 demonstrates the lack of irreparable harm, and their motion should be denied on this  
22 basis alone. *See Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374,  
23 1378 (9th Cir. 1985) (“The district court’s finding that plaintiff failed to show a  
24 significant threat of irreparable injury is not clearly erroneous. Because such a  
25 showing is a prerequisite to a preliminary injunction, we need not decide whether  
26 plaintiff will eventually prevail in its claims.”).

27 **C. The Balance of Equities and the Public Interest Favors Denial of the**  
28 **Injunction**

1 In exercising their sound discretion, courts of equity “pay particular regard for  
 2 the public consequences in employing the extraordinary remedy of injunction.”  
 3 *Winter*, 129 S.Ct. at 376-77. Here, the terms of the proposed preliminary injunction  
 4 would cause harm to SDUSD, third party CAIR, and the community members  
 5 represented by CAIR, because plaintiffs seek to prevent SDUSD from  
 6 communicating with CAIR at all. (Ps&As at 21:24-23 [seeking to prevent  
 7 defendants from “[p]ermitting [CAIR] ... to advance their organizational objectives  
 8 within the District”].) SDUSD has constituents in its schools from multiple  
 9 religious and cultural backgrounds, and respects and listens to all segments of its  
 10 community. (Sharp Decl. ¶ 6; Anjan Decl. ¶ 11.) In furtherance of that goal,  
 11 SDUSD maintains a relationship with a long list of community and civil rights  
 12 organizations. (Anjan Decl. ¶ 11.) Plaintiffs seek to sever SDUSD’s relationship  
 13 with CAIR – the representative for a segment of the community. This would harm  
 14 SDUSD, CAIR, and the community members that CAIR represents.

15 Furthermore, the relationship would be severed **solely** because of CAIR’s  
 16 identity as a religious organization. This illustrates plaintiffs’ bias against CAIR  
 17 and its agenda (and potentially all Muslims),<sup>7</sup> and infringes on CAIR’s rights under  
 18 the Free Exercise Clause by requiring that SDUSD discriminate against CAIR  
 19 because it has a religious mission. *See Church of Lukumi Babalu Aye, Inc. v.*  
 20 *Hialeah*, 508 US 520 (1993) (“[T]he protections of the Free Exercise Clause pertain  
 21 if the law at issue discriminates against some or all religious beliefs or regulates or  
 22 prohibits conduct because it is undertaken for religious reasons.”). There is an  
 23 inherent tension between the Establishment Clause and the Free Exercise Clause.  
 24 *Walz v. Tax Comm’n of New York City*, 397 U. S. 664, 668-669 (1970) (“The Court  
 25 has struggled to find a neutral course between the two Religion Clauses, both of  
 26 which are cast in absolute terms, and either of which, if expanded to a logical  
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28 <sup>7</sup> Islamophobia is indeed alive and well in San Diego. (Sharp Decl. ¶ 7, Ex. L.)

1 extreme, would tend to clash with the other.”). The law “will not tolerate either  
2 governmentally established religion or governmental interference with religion.”  
3 (*Id.* at 669.) However, the Supreme Court imposes guidelines that are “productive  
4 of a **benevolent neutrality** which will permit religious exercise to exist without  
5 sponsorship and without interference.” *Id.* (emphasis added). Thus, SDUSD must  
6 not be hostile to religion, or refuse to interact with an organization **because** they are  
7 religious. Requiring SDUSD to discriminate against CAIR because of their  
8 religious mission runs counter to the Free Exercise Clause and the precise purpose  
9 of the July 25, 2017 Board action – to implement a neutral anti-bullying policy and  
10 ensure all students have a safe and inclusive school environment regardless of faith  
11 or identity group.

12 When the harm to SDUSD is weighed against the harm to plaintiffs – which  
13 is little to none because their constitutional claims were mooted – the balance of  
14 equities weighs against an injunction. So too does the public interest, given the  
15 potential harm to CAIR, including violation of CAIR’s constitutional rights, and  
16 harm to the community members CAIR serves, if the requested injunction is  
17 entered.

18 **IV. THE TERMS OF THE REQUESTED INJUNCTION ARE**  
19 **IMPERMISSIBLE**

20 Orders granting an injunction must be “specific and reasonably detailed.”  
21 *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424, 439 (1976). A preliminary  
22 injunction “must be narrowly tailored ‘to affect only those persons over which it has  
23 power,’ [], and to remedy only the specific harms shown by the plaintiffs, rather  
24 than ‘to enjoin all possible breaches of the law.’” *Price v. City of Stockton*, 390 F.3d  
25 1105, 1117 (9th Cir. 2004) (internal citations omitted).

26 Plaintiffs request an injunction preventing defendants from:

- 27 1. Implementing and executing the Initiative as detailed in the Policy’s  
28 “Action Steps” or any similar policy;

- 1           2. Permitting the Council on American-Islamic Relations, its employees,  
2           agents, and representatives to advance their organizational objectives  
3           within the District; and
- 3           3. Adopting and implementing the CAIR Committee’s “Islamophobia  
4           Toolkit” and all related online resources, recommended books, and  
5           instructional materials, together with all such materials currently in use  
6           in the District.

5 (Ps&As at 21:15-22:4.) The terms of the preliminary injunction requested by  
6 plaintiffs suffer from numerous deficiencies and further demonstrate why this  
7 extraordinary relief is not warranted here.

8 **A. Plaintiffs First Category is Unnecessary, Overbroad and Vague**

9           Plaintiffs seek to stop SDUSD from “implementing and executing” its plan to  
10 address Islamophobia through the action steps laid out in three slides approved by  
11 the Board on April 4, 2017 (Pltffs’ Ex. 6, at 8-10) or “any similar policy.” This  
12 relief is unnecessary since the Board abandoned the plan on July 25, 2017. (Anjan  
13 Decl. Exs. E-F.) The relief is also overbroad because it seeks to prevent any policy  
14 that is “similar” to the three slides of action steps. Some of the action steps contain  
15 very general guidance, including: “continue the collaboration with community  
16 partners and district departments” and “identify areas of prevention, intervention,  
17 and restoration.” Many SDUSD policies involve collaboration with the community  
18 and within SDUSD, and this would include policies that plaintiffs did not assert  
19 violated their constitutional rights.

20           Finally, this relief is vague as “similar policy” is not defined and it would be  
21 very difficult to determine precisely which policies this prohibits. *See Thomas v.*  
22 *County of Los Angeles*, 978 F.2d 504 (9th Cir. 1992) (injunction did not specify the  
23 acts sought to be restrained because it required compliance “with all department  
24 policies and guidelines for conducting searches and for the use of force” without  
25 “defin[ing] what the policies are, or how they can be identified”); *Brumby Metals,*  
26 *Incorporated v. Borgen*, 275 F.2d 46, 49 (7th Cir. 1960) (striking “or any variation  
27 thereof” from injunction covering “school desks and chairs incorporating  
28

1 [defendant's designs] ... or any variation thereof” as lacking specificity).

2 Therefore, the first category of relief requested by plaintiffs is unnecessary,  
3 overbroad and vague.

4 **B. Plaintiffs Second Category of Relief is Vague, Overbroad, and Violates**  
5 **CAIR’s First Amendment Rights**

6 Plaintiffs seek to prevent SDUSD from “permitting” CAIR to “advance their  
7 organizational objectives” within SDUSD. This requested relief is vague because  
8 “advance” is not defined. Therefore, it is unclear what activities taken by CAIR  
9 would “advance” their “organizational objectives” (which are also not defined). It is  
10 also unclear what is considered “permitting” CAIR to advance its objectives. This  
11 could require blocking emails and phone calls from CAIR and banning CAIR from  
12 SDUSD events and meetings (including the IRCC).

13 This request is also overbroad because it goes well beyond preventing the  
14 implementation of the Board’s plan to address Islamophobia and bullying of Muslim  
15 students, which plaintiffs assert is unconstitutional. (Ps&As at 21:13-14 [“The  
16 question before this Court is simple: Is the Anti-Islamophobia Initiative neutral  
17 toward religion?”].) There is no need to prevent **all instances** in which CAIR seeks  
18 to advocate for Muslim students, or any of its other organizational objectives.

19 Furthermore, as discussed in Section III-C, *supra*, this requested relief seeks  
20 to sever the relationship between CAIR and SDUSD, and prohibit CAIR from  
21 engaging in speech, solely because CAIR is a religious organization. Therefore, this  
22 requested relief is impermissible. *Madsen v. Women's Health Ctr.*, 512 U.S. 753,  
23 765-66 (1994) (“the injunction [should] burden no more speech than necessary to  
24 serve a significant government interest. . . .”); *Walker v. City of Birmingham*, 388  
25 U.S. 307, 315 (1967) (injunction which improperly constrains otherwise permissible  
26 free speech is error).

27 Therefore, the second category of requested relief is vague, overbroad, and  
28 violates CAIR’s first amendment rights.

1 **C. Plaintiffs Third Category of Relief is Unnecessary, Overbroad and Vague**

2 This category of relief is unnecessary. As previously discussed, no materials  
3 created by CAIR have been implemented into SDUSD’s anti-bullying program or  
4 curriculum. (Anjan Decl. ¶ 12; Santos Decl. ¶ 7; Villegas Decl. ¶ 5.) Rather,  
5 SDUSD considers input from all groups and individuals to its curriculum and anti-  
6 bullying programming, and incorporates the input as appropriate. (Villegas Decl. ¶  
7 6; Santos Decl. ¶ 8; Ranck-Buhr Decl. ¶ 3.) The only steps taken with regard to the  
8 April 4, 2017 action steps were to purchase and distribute third party books  
9 suggested by CAIR to librarians and hold two meetings. (Woehler Decl. ¶¶ 3-4;  
10 Anjan Decl. ¶¶ 3-5.) The books were retrieved within approximately one week of  
11 distribution, and were not placed in school libraries or given to students before  
12 retrieval. (Woehler Decl. ¶ 4; Anjan Decl. ¶ 4.)

13 The books were subsequently incorporated into a Multicultural Text Set that  
14 covered a variety of cultures and identity groups to support SDUSD’s goal of  
15 providing a supportive environment for all students that values diversity. (Woehler  
16 Decl. ¶ 5; Anjan Decl. ¶ 4.) Therefore, this requested relief would require SDUSD  
17 to pull a small subset of the Multicultural Text Set from schools, merely because  
18 CAIR suggested them<sup>8</sup> and CAIR has a religious agenda. This would also require  
19 that SDUSD reject any suggestion to use third party online resources in its  
20 curriculum or anti-bullying program, merely because CAIR suggested it. Thus, this  
21 requested relief is overbroad and goes beyond the alleged actions plaintiffs’ claim to  
22 be unconstitutional.

23 This request is also vague, as it seeks to preclude use of all materials that are  
24 “related” to CAIR’s “Islamophobia Toolkit.” It would be very difficult to determine  
25 the scope of this proposed category.

26 \_\_\_\_\_

27 <sup>8</sup> The suggested books covered not only stories that raise awareness of Muslim  
28 culture, but also discussed immigrants and refugees from a variety of cultures and  
Jewish-Muslim cooperation. (Woehler Decl. ¶ 3.)





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**PROOF OF SERVICE**

**Citizens for Quality Education San Diego et al. v. San Diego Unified School District et al.  
Case No. 17cv01054-BAS JMA**

**STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On April 9, 2018, I served true copies of the following document(s) described as:

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION;**

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS' EVIDENCE IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION;**

**DECLARATION OF STANLEY ANJAN IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION;**

**DECLARATION OF WENDY RANCK-BUHR IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION;**

**DECLARATION OF MARIA ANGELA SANTOS IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION;**

**DECLARATION OF ANDREW SHARP IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION;**

**DECLARATION OF NOEMI VILLEGAS IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; and**

**DECLARATION OF CHRISTOPHER WOEHLE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

///  
///  
///  
///  
///

1 Charles S. LiMandri  
Paul M. Jonna  
2 Teresa L. Mendoza  
Jeffrey M. Trissell  
3 Freedom of Conscience Defense  
Fund  
4 P.O. Box 9520  
Rancho Santa Fe, CA 92067  
5 Telephone: (858) 759-9948  
Facsimile: (858) 759-9938  
6 E-Mail: cslimandri@limandri.com  
Attorneys for Plaintiffs  
7

8  
9 **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed  
the document(s) with the Clerk of the Court by using the CM/ECF system.  
10 Participants in the case who are registered CM/ECF users will be served by the  
CM/ECF system. Participants in the case who are not registered CM/ECF users will  
be served by mail or by other means permitted by the court rules.  
11

12 I declare under penalty of perjury under the laws of the United States of  
America that the foregoing is true and correct and that I am employed in the office  
of a member of the bar of this Court at whose direction the service was made.  
13

14 Executed on April 9, 2018, at San Diego, California.

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17 Amy R. Dickey

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