

1 GALENA WEST
Chief of Enforcement
2 RUTH YANG
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
1102 Q Street, Suite 3000
4 Sacramento, CA 95811
Telephone: (916) 322-7771
5 Email: ryang@fppc.ca.gov

6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission
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8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**
10

11 In the Matter of) FPPC No. 16/19863 and 17/521
12)
13)
13 CUPERTINO UNION SCHOOL) **STIPULATION, DECISION, AND ORDER**
14 DISTRICT,)
14)
15 Respondent.)
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17)

18 **INTRODUCTION**

19 Respondent Cupertino Union School District (the “CUSD”) operates public schools in Cupertino,
20 California and parts of the surrounding area. The Political Reform Act (the “Act”)¹ prohibits the sending
21 of a mass mailing featuring an elected official at public expense. The CUSD violated the Act by
22 producing and distributing over 200 copies of mass mailings, which featured elected officers, at public
23 expense.

24
25 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
26 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
27 Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
28 Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 The violation in this case occurred in 2016 and 2017, so all legal references and discussions of
3 the law pertain to the Act’s provisions as they existed at that time.

4 Need for Liberal Construction and Vigorous Enforcement of the Act

5 When enacting the Political Reform Act, the people of California found and declared that previous
6 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
7 For this reason, the Act must be construed liberally to accomplish its purposes.³

8 There are many purposes of the Act. One stated purpose of the Act is to abolish laws and practices
9 that unfairly favor incumbents so that elections may be conducted more fairly.⁴ Another is to provide
10 adequate enforcement mechanisms so the Act will be “vigorously enforced.”⁵

11 Mass Mailing Sent at Public Expense

12 No mass mailing may be sent at public expense.⁶ Specifically, a mailing is prohibited if all of the
13 following criteria are met:⁷

- 14 (1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of
15 business, or post office box. The item delivered to the recipient must be a tangible item, such
16 as a written document.
- 17 (2) The item sent features an elected officer affiliated with the agency which produces or sends
18 the mailing. An item features an elected officer when it includes, among other things, the
19 elected officer’s photograph or singles out the elected officer by the manner of display of her
20 name or office in the layout of the document, such as by captions.⁸ A mailing containing the
21 name, office, photograph, or any other reference to an elected officer who consults or acts in
22 concert with the agency to prepare or send the mailing also fulfills the second criteria.
- 23 (3) Any of the costs of distribution is paid for with public moneys or costs of design, production,
24 and printing exceeding \$50 are paid with public moneys and is done with the intent of sending
25 the item other than as permitted by Regulation 18901.
- 26 (4) More than 200 substantially similar items are sent in a calendar month.

23 ² Section 81001, subd. (h).

24 ³ Section 81003.

25 ⁴ Section 81002, subd. (a).

26 ⁵ Section 81002, subd. (f).

27 ⁶ Section 89001.

28 ⁷ Regulation 18901, subd. (a).

⁸ Regulation 18901, subd. (c)(2).

1 **SUMMARY OF THE EVIDENCE**

2 The CUSD mailed three mass mailings to residents. In June 2016 and October 2016, the CUSD
3 prepared and mailed its newsletter to local residents. Both issues featured members of the CUSD Board
4 of Education (“Board”), all elected officials, and included a message attributed to Josephine Lucey, the
5 Board’s president at the time. The June 2016 issue also contained self-referential statements regarding
6 the Board's accomplishments and a picture of members of the CUSD Board.

7 On or around May 27, 2017, the CUSD prepared and distributed a mass mailing regarding the
8 Citizens’ Parcel Tax Oversight Committee to residents. Two of the eight pages included pictures of Anjali
9 Kausar, Soma McCandless, Kristen Lyn, and Phyllis Vogel, who were all Board members at the time.

10 The CUSD used public moneys to pay for the cost of distribution and also used public moneys in
11 excess of \$50 to pay for the cost of design, production, and printing for these three mass mailings.
12 Furthermore, the CUSD produced more than 200 copies of each mass mailing.

13 **VIOLATION**

14 Count 1: Mass Mailing Sent at Public Expense

15 The Cupertino Union School District designed, printed, and distributed over 200 copies of mass
16 mailings at public expense, featuring a photograph, name, and/or title of elected officials, in violation of
17 Government Code sections 89001 and Regulation section 18901, subdivision (a).

18 **PROPOSED PENALTY**

19 This matter consists of one count. The maximum penalty that may be imposed is \$5,000.⁹

20 In determining the appropriate penalty for a particular violation of the Act, the Commission
21 considers the facts of the case, the public harm involved, and the purpose of the Act. Also, the
22 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
23 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or
24 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments

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⁹ Section 83116, subd. (c).

1 voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of
2 violations.¹⁰

3 The CUSD used public funds to pay for the design, production, and distribution of mass mailings
4 that featured elected officers. Evidence shows a pattern of violations, as the CUSD distributed the
5 newsletters in 2016 and the last mass mailing in 2017. However, no evidence indicated an intent to
6 deceive the public, the violation appeared to be inadvertent, and the CUSD does not have prior record of
7 violating the Act.

8 The Commission also considers penalties in prior cases with comparable violations. Recent cases
9 with a similar violation include the following:

10 *In the Matter of Madera Unified School District*; FPPC No. 18/632. (The Commission approved
11 a stipulated decision on February 21, 2019.) The Madera USD prepared and sent over 200 copies of the
12 its newspaper at public expense, featuring pictures and titles of the members of its Board of Education,
13 all elected officials. The newspaper also contained a message from the president of the Board. The
14 Commission approved a penalty of \$2,000 for this violation.

15 As in the aforementioned case, the CUSD sent over 200 copies of mass mailings at public expense
16 and featured a photograph, name, and/or title of Board members. However, unlike *Madera Unified*, the
17 CUSD sent multiple mass mailings. In mitigation, all of the featured elected officials, except Phyllis
18 Vogel, have departed from the Board. Furthermore, the CUSD contends that its staff at the time did not
19 understand that the mailings might violate the prohibition against sending mass mailings at public
20 expense. For the foregoing reasons, a penalty of \$2,500 for the violation is recommended.

21 CONCLUSION

22 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
23 Respondent Cupertino Union School District hereby agree as follows:

24 1. Respondent violated the Act as described in the foregoing pages, which are a true and
25 accurate summary of the facts in this matter.

26 ¹⁰ Regulation 18361.5, subd. (d).

1 2. This stipulation will be submitted for consideration by the Fair Political Practices
2 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
4 of reaching a final disposition without the necessity of holding an administrative hearing to determine
5 the liability of the Respondent pursuant to Section 83116.

6 4. Respondent has consulted with its attorney William B. Tunick of Dannis Woliver Kelley
7 and understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in
8 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not
9 limited to, the right to appear personally at any administrative hearing held in this matter, to be
10 represented by an attorney at the Respondent’s own expense, to confront and cross-examine all witnesses
11 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
12 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
13 reviewed.

14 5. Respondent agrees to the issuance of the decision and order set forth below. Also, the
15 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
16 \$2,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
17 Fund of the State of California—is/are submitted with this stipulation as full payment of the
18 administrative penalty described above, and same shall be held by the State of California until the
19 Commission issues its decision and order regarding the matter.

20 6. If the Commission declines to approve this stipulation—then this stipulation shall become
21 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
22 rejected, all payments tendered by the Respondent in connection with this stipulation shall be reimbursed
23 to the Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
24 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
25 Director, shall be disqualified because of prior consideration of this Stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
3 or as a PDF email attachment is as effective and binding as the original.

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Dated: _____
Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____
_____, on behalf of the Cupertino
Union School District

1 The foregoing stipulation of the parties “In the Matter of Cupertino Union School District,” FPPC No.
2 16/19863, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
3 effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____
8 Richard C. Miadich, Chair
9 Fair Political Practices Commission
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