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12 **UNITED STATES DISTRICT COURT**  
13 **EASTERN DISTRICT OF CALIFORNIA (BAKERSFIELD)**  
14

15	WENDY WALSH, individually and as Successor-in-Interest to S. W., Deceased,	)	CASE NO. 1:11-CV-01489-LJ0-JLT
16		)	<i>[Assigned to U.S. District Judge</i>
17	Plaintiff	)	<i>Lawrence J. O'Neill; U.S. Magistrate</i>
18		)	<i>Judge Jennifer L. Thurston]</i>
19	v.	)	
20	TEHACHAPI UNIFIED SCHOOL DISTRICT; SUPERINTENDENT SWANSON; SUSAN ORTEGA; MR. KAMINSKY; MS. KIRBY; MS. HAIGHT; MRS. KABONIC; MR. FEEHAN; and DOES 1 through 100, Inclusive,	)	<b>STIPULATION AND ORDER</b>
21		)	<b>TO PROTECT CONFIDENTIAL</b>
22	Defendants.	)	<b>INFORMATION</b>
23		)	
24		)	

25  
26 Subject to the approval of this Court, the parties hereby stipulate to the  
27 following protective order:  
28

1           1.     In connection with discovery proceedings in this action, the parties may  
2 designate any document, thing, material, testimony or other information derived  
3 therefrom, as “Confidential” under the terms of this Stipulated Protective Order  
4 (hereinafter “Order”) Confidential information is information which has not been  
5 made public and which concerns or relates to (1) students or former students of  
6 Tehachapi Unified School District (TUSD); and (2) TUSD employee personnel  
7 matters or the identity of employees or officers of TUSD.

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9           2.     By designating a document, thing, material, testimony or other  
10 information derived therefrom as “confidential,” under the terms of this order, the  
11 party making the designation is certifying to the court that there is a good faith basis  
12 both in law and in fact for the designation within the meaning of Federal Rule of  
13 Civil Procedure 26(g). Confidential documents shall be so designated by stamping  
14 copies of the document produced to a party with the legend “CONFIDENTIAL.”  
15 Stamping the legend “CONFIDENTIAL” on the cover of any multi-page document  
16 shall designate all pages of the document as confidential, unless otherwise indicated  
17 by the producing party.

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19           3.     Testimony taken at a deposition, conference, hearing or trial may be  
20 designated as confidential by making a statement to that effect on the record at the  
21 deposition or other proceeding. Arrangements shall be made with the court reporter  
22 taking and transcribing such proceeding to separately bind such portions of the  
23 transcript containing information designated as confidential, and to label such  
24 portions appropriately.

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26           4.     Material designated as confidential under this Order, the information  
27 contained therein, and any summaries, copies, abstracts, or other documents derived  
28 in whole or in part from material designated as confidential (hereinafter

1 “Confidential Material”) shall be used only for the purpose of the prosecution,  
2 defense, or settlement of this action, and for no other purpose.

3  
4 5. Confidential Material produced pursuant to this Order may be disclosed  
5 or made available only to the Court, to counsel for a party (including the paralegal,  
6 clerical, and secretarial staff employed by such counsel), and to the "qualified  
7 persons" designated below:

8  
9 (a) a party, or an officer, director, or employee of a party deemed  
10 necessary by counsel to aid in the prosecution, defense, or  
11 settlement of this action;

12  
13 (b) experts or consultants (together with their clerical staff) retained  
14 by such counsel to assist in the prosecution, defense, or  
15 settlement of this action;

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17 (c) court reporter(s) employed in this action;

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19 (d) a witness at any deposition or other proceeding in this action;  
20 and

21  
22 (e) any other person as to whom the parties in writing agree.

23  
24 Prior to receiving any Confidential Material, each “qualified person” shall be  
25 provided with a copy of this Order and shall execute a nondisclosure agreement in  
26 the form of Attachment A, a copy of which shall be provided forthwith to counsel  
27 for each other party and for the parties.

1           6.       Depositions shall be taken only in the presence of “qualified persons.”

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3           7.       The parties may also seek, by stipulation or court order, a further  
4 designation of certain discovery material or testimony as “Attorney’s Eyes Only  
5 Material.” To obtain a court order designating material as Attorney’s Eyes Only  
6 Material, the party seeking the designation must show that (a) the material is  
7 confidential, and (b) specific harm may result from disclosing the material to  
8 persons other than those listed below in this paragraph. If that party makes this  
9 showing, the party opposing the designation shall have the burden of showing that  
10 the burden of the designation on the party’s ability to pursue or defend the case  
11 outweighs the harm of disclosing the material. If material is designated Attorney’s  
12 Eyes Only Material, it, and the information contained therein, shall be disclosed  
13 only to the Court, to counsel for the parties (including the paralegal, clerical, and  
14 secretarial staff employed by such counsel), and to the “qualified persons” listed in  
15 subparagraphs 5(b) through (e) above, but shall not be disclosed to a party, or to an  
16 officer, director or employee of a party, unless otherwise agreed or ordered. If  
17 disclosure of Attorney’s Eyes Only Material is made pursuant to this paragraph, all  
18 other provisions in this order with respect to confidentiality shall also apply.

19

20           8.       Nothing herein shall impose any restrictions on the use or disclosure by  
21 a party of material obtained by such party independent of discovery in this action,  
22 whether or not such material is also obtained through discovery in this action, or  
23 from disclosing its own Confidential Material as it deems appropriate.

24

25           9.       If Confidential Material, including any portion of a deposition  
26 transcript designated as Confidential or Attorney’s Eyes Only, is included in any  
27 papers to be filed in Court, such papers shall be labeled “Confidential – Subject to  
28 Court Order” and filed under seal until further order of this Court. The party

1 seeking the filing of Confidential Material shall first obtain an order for the sealing  
2 the material pursuant to Local Rules 141 and 141.1(e).

3  
4 10. In the event that any Confidential Material is used in any court  
5 proceeding in this action, it shall not lose its confidential status through such use,  
6 and the party using such shall take all reasonable steps to maintain its confidentiality  
7 during such use.

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9 11. This Order shall be without prejudice to the right of the parties (i) to  
10 bring before the Court at any time the question of whether any particular document  
11 or information is confidential or whether its use should be restricted or (ii) to present  
12 a motion to the Court under FRCP 26(c) for a separate protective order as to any  
13 particular document or information, including restrictions differing from those as  
14 specified herein.

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16 11.1 Timing of Challenges.

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18 Any party or non-party may challenge a designation of confidentiality at any  
19 time. Unless a prompt challenge to a designating party's confidentiality designation  
20 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
21 burdens, or a significant disruption or delay of the litigation, a party does not waive  
22 its right to challenge a confidentiality designation by electing not to mount a  
23 challenge promptly after the original designation is disclosed.

24  
25 11.2. Meet and Confer.

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27 The challenging party shall initiate the dispute resolution process by  
28 providing written notice of each designation it is challenging and describing the

1 basis for each challenge. To avoid ambiguity as to whether a challenge has been  
2 made, the written notice must recite that the challenge to confidentiality is being  
3 made in accordance with this specific paragraph of this protective order. The parties  
4 shall attempt to resolve each challenge in good faith and must begin the process by  
5 conferring directly (in voice to voice dialogue; other forms of communication are  
6 not sufficient) within 14 days of the date of service of notice. In conferring, the  
7 challenging party must explain the basis for its belief that the confidentiality  
8 designation was not proper and must give the designating party an opportunity to  
9 review the designated material, to reconsider the circumstances, and, if no change in  
10 designation is offered, to explain the basis for the chosen designation. A  
11 challenging party may proceed to the next stage of the challenge process only if it  
12 has engaged in this meet and confer process first or establishes that the designating  
13 party is unwilling to participate in the meet and confer process in a timely manner.

14

### 15 11.3 Judicial Intervention.

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17 If the parties cannot resolve a challenge without court intervention, the  
18 designating party shall file and serve a motion to retain confidentiality within 21  
19 days of the initial notice of challenge or within 14 days of the parties agreeing that  
20 the meet and confer process will not resolve their dispute, whichever is earlier. Each  
21 such motion must be accompanied by a competent declaration affirming that the  
22 movant has complied with the meet and confer requirements imposed in the  
23 preceding paragraph. Failure by the designating party to make such a motion  
24 including the required declaration within 21 days (or 14 days, if applicable) shall  
25 automatically waive the confidentiality designation for each challenged designation.  
26 In addition, the challenging party may file a motion challenging a confidentiality  
27 designation at any time if there is good cause for doing so, including a challenge to  
28 the designation of a deposition transcript or any portions thereof. Any motion

1 brought pursuant to this provision must be accompanied by a competent declaration  
2 affirming that the movant has complied with the meet and confer requirements  
3 imposed by the preceding paragraph. The burden of persuasion in any such  
4 challenge proceeding shall be on the designating party. Frivolous challenges, and  
5 those made for an improper purpose (e.g., to harass or impose unnecessary expenses  
6 and burdens on other parties) may expose the challenging party to sanctions. Unless  
7 the designating party has waived the confidentiality designation by failing to file a  
8 motion to retain confidentiality as described above, all parties shall continue to  
9 afford the material in question the level of protection to which it is entitled under the  
10 producing party's designation until the court rules on the challenge.

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12       12. This Order is entered solely for the purpose of facilitating the exchange  
13 of documents and information between the parties to this action without involving  
14 the Court unnecessarily in the process. Nothing in this Order nor the production of  
15 any information or document under the terms of this Order nor any proceedings  
16 pursuant to this Order shall be deemed to have the effect of an admission or waiver  
17 by either party or of altering the confidentiality or nonconfidentiality of any such  
18 document or information or altering any existing obligation of any party or the  
19 absence thereof.

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21       13. This Order shall survive the final termination of this action, to the  
22 extent that the information contained in Confidential Material is not or does not  
23 become known to the public, and the Court shall retain jurisdiction to resolve any  
24 dispute concerning the use of information disclosed hereunder.

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26       14. If a party produces information in discovery without designating that  
27 information as confidential, the party may subsequently make a claim that the  
28 information is confidential. The party making the claim of confidentiality may

1 notify any party that received the information of the claim and the basis for it. After  
2 being notified, a party must promptly sequester, return, or destroy the specified  
3 information and any copies the party has; must not use or disclose the information,  
4 except in the manner set forth in paragraphs 1-13 above, until the claim is resolved;  
5 must take reasonable steps to retrieve the information if the party disclosed it before  
6 being notified; and may promptly present the information to the court under seal for  
7 a determination of the claim pursuant to the procedures in Local Rule 141. The  
8 producing party must preserve the information until the claim is resolved.

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Upon termination of this case, counsel for the parties shall assemble and return to each other all documents, material and deposition transcripts designated as confidential and all copies of same, or shall certify the destruction thereof.

SO STIPULATED:

RODRIGUEZ & ASSOCIATES

By: \_\_\_\_\_/S/\_\_\_\_\_  
John A. Kawai  
Attorneys for Plaintiff, Wendy Walsh

ROBINSON & KELLAR

By: \_\_\_\_\_/S/\_\_\_\_\_  
Michael C. Kellar  
Attorneys for Defendants Tehachapi  
Unified School District, Dr. Richard Swanson,  
Susan Ortega, and Paul Kaminski



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POLLAK, VIDA & FISHER

By: \_\_\_\_\_/S/\_\_\_\_\_  
Daniel P. Barer  
Attorneys for Defendant Tehachapi  
Unified School District

**ORDER**

IT IS SO ORDERED.

Dated: January 23, 2012

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

1 **NONDISCLOSURE AGREEMENT**

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3 I, \_\_\_\_\_, do solemnly swear that I am fully familiar  
4 with the terms of the Stipulated Protective Order entered in Wendy Walsh v.  
5 Tehachapi Unified School District, United States District Court for the Central  
6 District of California, Civil Action No. 1:11-CV-01489-LJO-JLT, and hereby agree  
7 to comply with and be bound by the terms and conditions of said Order unless and  
8 until modified by further Order of this Court. I hereby consent to the jurisdiction of  
9 said Court for purposes of enforcing this Order.

10  
11 DATED:

\_\_\_\_\_  
xxx