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22STCP04310

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SF, a minor, by ER, SF's guardian ad litem; XT, a minor, by KR, XT's guardian ad litem; and JOHN SREBALUS, a California taxpayer,

Petitioners and Plaintiffs,

v.

THE STATE OF CALIFORNIA; TONY THURMOND, in his official capacity as the Superintendent of Public Instruction; THE CALIFORNIA DEPARTMENT OF EDUCATION; THE STATE BOARD OF EDUCATION, and DOES 1 through 100, inclusive,

Respondents and Defendants.

Case No.: 22STCP04310

PETITION FOR WRIT OF MANDATE (Cal. Code Civ. Proc. § 1085) AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs SF, a minor, by and through SF's guardian ad litem, ER, XT, a minor, by and through XT's guardian ad litem, KR, and John Srebalus, a California taxpayer, hereby petition and complain against Defendants the State of California; Tony Thurmond, in his official capacity as the Superintendent of Public Instruction; the California Department of Education; the State Board of Education; and Does 1 through 100 (collectively "Defendants"), and allege as follows:

GENERAL ALLEGATIONS

1. The California Constitution mandates the State of California to provide its children with a free public education. As a result, the law does not permit public school districts to charge its students tuition for summer school. To attempt to get around this bedrock principle of State constitutional law, many school districts, enrolling over at least two hundred thousand students each year, have publicly offered and outsourced summer school to outside entities, sometimes referred to as education foundations, which charge students tuition and then funnel monies received back to the district. These education foundations typically limit access to summer school programs to only those students whose families pay many hundreds of dollars per course. For all practical purposes, these education foundations function as fronts for school districts that, among other things, enable them to collect tuition from students for summer school offerings. The education foundations typically rent public school classrooms and facilities, hire public school teachers, teach school curricula for academic credit, expunge poor grades and award graduation credit for public schools. Then, when their revenues exceed program expenses, as they nearly always do, the education foundations cycle back money received from students' families to the public school district.

2. The State has never put an end to these unconstitutional and inequitable schemes, or indeed to any of them. This inaction is not because the State is not aware of the illegal scheme or reasonably should be aware. School district websites offer and promote the scheme to students and their families. This scheme is touted as giving students opportunities to gain a leg up to hone their skills with school faculty, cover school curricula, address academic

deficiencies, expunge failures, gain academic credit on official transcripts, facilitate taking higher-level courses, and boost chances for access to higher education.

3. In fact, the State has never stated on any of its websites, in webinars, in memoranda or other emails sent to school districts, county offices of education, school superintendents and school boards, or individual schools that this scheme for charging fees for summer schools offered and operated on public school campuses for academic credit on official transcripts is illegal. Nor has any school district or individual school ever informed students and their families or teachers that such charging of fees is illegal.

4. This inaction is not coincidental. The State has no accountability system in place to ensure detection of, enforcement against, and remediation for schemes by which local school districts authorize, promote, and benefit from "pay to learn" summer schools as the ones just described. There is no reporting requirement by which districts must seek State approval before their students are charged fees for summer school classes offered on their campuses and/or even report to the State that fees are collected. Unsurprisingly, the State has never identified any "pay to learn" scheme on its own. Indeed, the State refuses to do so.

5. Compounding the illegality, the State has nothing in place to provide compensatory education to those students whose families are not financially able to afford the tuition demanded, or to ensure full reimbursement to families suffering financial hardship from paying tuition. In other words, the State's deliberate indifference to "pay to learn" schemes on its own campuses handsomely rewards districts that flaunt the law and families with resources to give their children a competitive advantage our Constitution has proscribed.

6. Nor are "pay to learn" schemes within the statewide system of public education merely operating in a rogue school or two. To the contrary, a volunteer working with plaintiffs' counsel expended a few hours surfing websites of school districts in a number of cities and suburbs that he thought have populations of over 100,000 and compiled a list of seventeen high school districts that have operated this scheme for years. These districts alone collectively enroll over 200,000 students each year. It comes then as no surprise too that both within the offending schools and districts, and across California generally, the "pay to learn"

scheme disproportionately and severely disadvantages students of color from low-income families.

7. To describe one representative example, in 2020 (the last year data was publicly available), the South Pasadena Education Foundation ("SPEF") ran a tuition-based summer school, charging students seeking to enroll tuition of hundreds of dollars for courses. These courses took place on South Pasadena Unified School District's ("SPUSD") campus, using teachers employed by SPUSD, and awarding credits that students use toward graduation from SPUSD. To underscore how SPEF fronts for SPUSD to operate a tuition-based private summer school, in 2020, SPEF returned $666,016 to SPUSD from its operations. This "pay to learn" scheme has continued through the summer of 2022. Data from prior years approximates these results. The State has never conducted an audit of student tuition fees charged or received by districts for "pay to learn" schemes, nor does it have a policy or practice for doing so. It has no interest in doing so.

8. As Exhibit A shows, South Pasadena is no outlier, as other promotional materials posted on public school, school district, and educational foundation websites similarly advertise close relationships between public school systems and the educational foundations charging fees for opportunities to earn academic credit or remediate poor grades. For example:

- At least nine public schools or school districts – namely Arcadia USD, Irvine USD, Manhattan Beach USD, Palos Verdes Peninsula USD, San Marino USD, and Temple City USD, along with Beverly Hills High School, Carlsbad High School, Mira Costa High School, La Cañada High School, and Oak Park High School – include direct links to private educational foundations or summer school programs on their websites. Arcadia USD even advertises the Arcadia Educational Foundation's summer school with a promotional photo of the 2019 class and a banner that reads "AEF 2022 Summer School Program: What You Should Know."
- A 2019 letter written and signed by Arcadia High School's Principal and Dean of Students describes the Arcadia Educational Foundation's summer

program as an opportunity for students to "improve GPA for eligibility purposes, take elective courses for credit, reduce the workload for the upcoming school year, and accelerate progress toward graduation and college entrance requirements," and stipulates that summer credits earned through the Arcadia Educational Foundation ("AEF") are "acceptable for inclusion on the Arcadia High School transcript and will be counted for full credit based on student performance." Similarly, a letter written and signed by the Principal of La Cañada High School states that between 2019 and 2020, the La Cañada Flintridge Educational Foundation ("LCFEF") was "leasing the La Cañada High School Curriculum and ancillary materials," "hiring California State credentialed teachers to provide instruction," and allowing students to receive "full credit" for completed courses on La Cañada High's official transcripts.

- The San Marino USD website describes the K-8 "PT Affiliates" program as an opportunity for students to take courses "taught by the same fully credentialed instructors that teach within the district during the school year." With respect to the fees charged for such instruction, San Marino USD reassures parents that "the tuition dollar works twice: first to provide a topnotch curriculum taught by an unsurpassed teaching staff and then again to underwrite ongoing enrichment in the fall."
- The "Get In Touch" section of the San Marino PT Affiliates website lists the Principal of Valentine Elementary and a Secondary Principal for San Marino USD as contacts, and even provides their official San Marino USD email addresses for parents interested in learning more about the program.
- Temple City USD includes the Temple City Schools Foundation ("TCSF") on the "Community Partnerships" page of its website, and the Conejo Schools Foundation lists Conejo Valley USD as one of its "Sponsors."

9. California's public school districts have illegally charged students tuition for summer programs for years through the "pay to learn" scheme just described. The State's willful ignorance and deliberate inaction towards the violation of the free education guarantee proximately cause (indeed, encourage) this pervasive and highly public practice. Instead of taking simple and obvious common sense actions to prevent school districts from working with education foundations to charge tuition fees for summer school and directing provision of compensatory education and reimbursement to redress the constitutional injuries incurred, the State deliberately turns a blind eye. It thereby fails to fulfill its duty to develop and maintain a detection, monitoring and enforcement system to ensure that all children receive a free and equal public education. The State thus knowingly widens an already two-tier system of inequitable education.

10. As early as 1879, the People of this State recognized that "[a] general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people." Cal. Const. art IX, § 1. Accordingly, they amended the California Constitution to require the State to "provide for a system of common schools by which a free school shall be kept up and supported in each district." Cal. Const. art. IX, § 5 (emphasis added). As our Supreme Court has unequivocally pronounced: "This provision entitles 'the youth of the State ... to be educated at the public expense.'" *Hartzell v. Connell*, 35 Cal. 3d 899, 905 (1984) (quoting *Ward v. Flood*, 48 Cal. 36, 51 (1874)). "A school which [sic] conditions a student's participation in educational activities upon the payment of a fee clearly is not a 'free school.'" *Id*. at 911.

11. The pay to learn summer school scheme described herein is unquestionably an "educational activit[y]" within the meaning of the free education guarantee of the California Constitution. By comparison, in *Hartzell*, the Supreme Court held that a public school could not charge fees for participation in non-academic credit extracurricular activities like dramatic productions, musical performances, and athletic competition. *Id.* at 911.

12. The State's failure has also deprived students who are unable to pay tuition fees of their "fundamental right" to "basic educational equality" under the California Constitution.

Butt v. California, 4 Cal. 4th 668, 685-86 (1992); Cal. Const. art. I,§ 7(a) & art. IV, § 16(a). "The State itself bears the ultimate authority and responsibility to ensure that its district- based system of common schools provides basic equality of educational opportunity." *Butt*, 4 Cal. 4th at 685. By failing to take meaningful steps to prevent its public school districts from conditioning access to educational services and the quality of educational services offered to students dependent upon payment of tuition, the State fails to perform its constitutional duty of ensuring basic educational equality irrespective of economic status. By failing to ensure full remediation of such illegal imposition of fees, including reimbursement to families suffering economic hardship by paying fees and compensatory education for families unable to pay these fees, it makes worse its transgression. It propagates a dual school system that deliberately preferences students from families of means over students from financially disadvantaged households.

13. Just this week, results from the California Assessment of Student Performance and Progress ("CAASP") showed that two out of every three California students did not meet state math standards, and that more than half of students failed to meet standards in English and reading. *See* Paloma Esquivel and Howard Blume, *California Test Scores Show Deep Pandemic Drops; 2 in 3 Students Don't Meet Math Standards*, L.A. TIMES (Oct. 24, 2022), https://www.latimes.com/california/story/2022-10-24/california-test-scores-pandemic-drops. The 2022 CAASP results were especially dismal for Black, Latinx, low-income, and other historically underserved students, as 84% of Black students, and 79% of Latinx and low-income students failed to meet state math standards, representing a 5% decline in proficiency for Black students and a 7% decline for Latinos. *Id.* These deep learning slides resulting from the COVID-19 pandemic, as exacerbated by the State's failure to fulfill its constitutional responsibilities to mitigate and now redress its impact, thus make it more imperative than ever that summer school not be the preserve of the affluent, that it be made available to all students regardless of their race or family income, and that those students recently denied access to pay-to-learn programs on account of their race or wealth receive appropriate compensatory educational opportunities immediately.

14. For the reasons set forth here, Plaintiffs respectfully requests that the Court enjoin Defendants from continuing to violate the California Constitution by failing to ensure that public school districts in California do not use entities like education foundations as fronts in order to charge students fees for summer school courses. Defendants seek too appropriate compensatory academic relief for students penalized for their inability to afford tuition and families suffering financial hardship by paying tuition in order that their children not be disadvantaged.

PARTIES

15. **Petitioner and Plaintiff SF** (hereinafter plaintiff) is a public school student who attends a school in one of the school districts set forth in paragraph 36 below. SF's parent has filed concurrently with this Petition and Complaint a petition to act as her guardian ad litem.

16. SF is a middle-school student who is learning Spanish at school, which means that the only way SF is able to take electives like theater or music during the school year is by participating in the school district's summer program. However, because the cost of participating in the district's summer program is so high, SF's family has to choose every year between sending SF to summer school, or allowing SF to participate in other activities over the summer such as theater workshops or music lessons. Given SF's dreams of becoming an actor, SF's family has always chosen the latter.

17. This Hobson's choice negatively affects SF's academic proficiency and performance. It also creates anxiety because SF sees classmates gaining academic opportunities and proficiency that are financially unavailable to SF.

18. By conditioning SF's academic performance and emotional well-being on SF's family's ability to pay for summer school, Defendants have deprived SF of constitutional rights to basic educational equality and a free public education.

19. **Petitioner and Plaintiff XT** (hereinafter plaintiff) is a public school student who attends school in one of the school districts set forth in paragraph 36 below. XT's parent has filed concurrently with this Petition and Complaint a petition to act as XT's guardian ad litem.

20. XT has participated in XT's school district's summer school program for years, as doing so has provided a rigorous course load throughout the year, and enabled fulfillment of essential credits towards graduation. Going to summer school is the only way XT can achieve academic goals and participate in the extracurricular activities XT most enjoys. But while some families at XT's school are able to pay for summer school without blinking an eye, XT's family has always had to budget for it, and recently had recently made the difficult choice not to participate for the first time in XT's high school career. XT has many friends who have never been able to participate in summer school, despite desiring to do so, because their families could not afford to pay the fees, which can exceed $500 per course in XT's district. Not being able to participate in summer school has not only hindered some of these friends' and classmates' academic performance and ability to participate in vital extracurricular activities, but has also evoked feelings of shame and resentment amongst the students whose families can't afford to participate in the "pay-to-learn" scheme described herein.

21. By conditioning XT's academic performance and ability to participate in extracurricular activities on XT's family's ability to pay for summer school, Defendants have deprived XT of XT's constitutional rights to basic educational equality and a free public education.

22. **Petitioner and Plaintiff John Srebalus** (hereinafter plaintiff) resides within the County of Los Angeles and is a taxpayer of the State of California. He has paid unlawful summer school tuition to one of the school districts set forth in paragraph 36 below.

23. **Respondent and Defendant State of California** (hereinafter defendant) is the legal entity with the ultimate authority and responsibility to guarantee free and equal public education under the California Constitution. *See* Cal. Const. art. IX, § 5; art. I, § 7 (a); & art. IV, § 16(a). The "permanent seat" of the California State government is Sacramento County. *See* Cal. Gov. Code§ 450.

24. **Respondent and Defendant Tony Thurmond** (hereinafter defendant), in his official capacity as the State Superintendent of Public Instruction, is the Director of Education, in whom all executive and administrative functions of the Department of Education vests, and

the Executive Officer of the State Board of Education. *See* Cal. Ed. Code§§ 33004, 33301-33303. As State Superintendent, Mr. Thurmond superintends public schools, executing the State Board of Education's policies, and enforcing its rules and regulations. *See* Cal. Ed. Code §§ 33111-33112. He is responsible for supervising and ensuring public school districts' compliance with State laws concerning education. In his official capacity, Mr. Thurmond's legal residence is Sacramento County. *See* Cal. Gov. Code §§ 1060, 11151.

25. **Respondent and Defendant State Department of Education** (hereinafter defendant) is responsible for administering and enforcing State laws concerning education. See Cal. Ed. Code §§ 33306, 33308. It is the State department charged with revising and updating budget manuals, forms, and guidelines; cooperating with federal and state agencies in prescribing rules and regulations, and instructions required by those agencies; and assessing the needs and methods of collecting and disseminating financial information. *See* Cal. Ed. Code § 33316. Defendant State Department of Education's legal residence is Sacramento County. *See* Cal. Gov. Code § 11151.

26. **Respondent and Defendant State Board of Education** (hereinafter defendant) is the governing and policy-determining body of the State Department of Education. *See* Cal. Ed. Code§ 33301. It is the State agency charged with determining educational policy; adopting rules and regulations governing public education; studying the State's educational conditions and needs; and making plans to improve the administration and efficiency of public schools. *See* Cal. Ed. Code §§ 33030-33032. Defendant State Board of Education is responsible for supervising and ensuring public school districts' compliance with State laws concerning education. Plaintiffs are informed and believe that Defendant State Board of Education's legal residence is Sacramento County.

27. In accordance with Code of Civil Procedure Section 401, venue is appropriate in any county in which the California Attorney General has an office.

28. Plaintiffs are ignorant of the names or capacities of other defendants responsible for the wrongs described in this Complaint and, pursuant to California Code of Civil Procedure section 474, sue such defendants under the fictitious names Does 1 through 100 inclusive.

THE CALIFORNIA CONSTITUTION GUARANTEES FREE AND EQUAL EDUCATION

29. Nearly 150 years ago, in 1879, the People of this State officially recognized in the California Constitution that '[a] general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people." Cal. Const. art IX, § 1. Accordingly, they amended the California Constitution to require the State to "provide for a system of common schools by which a free school shall be kept up and supported in each district." Cal. Const. art. IX, § 5 (emphasis added). "This provision entitles 'the youth of the State ... to be educated at the public expense.'" *Hartzell*, 35 Cal. 3d at 905 (quoting *Ward*, 48 Cal. at 51). In short, this section mandates that when it comes to public education, "free" means "free."

30. Under the California Constitution, public education cannot be contingent upon the payment of tuition fees: "A school which [sic] conditions a student's participation in educational activities upon the payment of a fee clearly is not a 'free school.'" *Hartzell*, 35 Cal.3d at 911. Summer school on district campuses as described herein is one such educational activity.

31. Neither a scholarship nor a fee-waiver policy for student fees can satisfy the requirements of the free school guarantee. *Hartzell*, 35 Cal. 3d at 911-13. "The constitutional defect in [student] fees cannot be corrected by providing waivers to indigent students." *Id.* at 913. "In guaranteeing 'free' public schools, article IX, section 5 [of the California Constitution] fixes the precise extent of the financial burden which may be imposed on the right to an education - none." *Id*. at 911. Moreover, a system of fee waivers for "needy" students is undeniably stigmatizing and degrading. *Id*. at 912. In any case, in many districts, there is no fee-waiver option for access to tuition-based summer school, and, instead, in a handful, students have to hope for some form of a partial scholarship—also stigmatizing and degrading – to help offset the cost. Making matters worse, some districts openly solicit donations from families paying tuition for their children, a practice that stigmatizes those families that do not so

contribute and communicates the unmistakable message that their children, unlike their more affluent counterparts who pay tuition, are getting a free ride at their peers' expense.

32. The equal protection clauses of the California Constitution (Cal. Const. art. I, § 7(a) & art. IV, § 16(a)) also prohibit conditioning public education on the payment of student tuition fees. "Basic educational equality" is a "fundamental right" under the California Constitution, and any disparate treatment having a real and appreciable impact on it is subject to "strict and searching judicial scrutiny." *Butt*, 4 Cal. 4th at 683-86 (quoting *Serrano v. Priest* (*Serrano II*), 18 Cal. 3d 728, 767-68 (1976)). Moreover, disparate treatment based on "wealth," at least in the context of public education, is subject to strict scrutiny as a "suspect classification." *See Serrano II*, 18 Cal. 3d at 765-66. Thus, the California Constitution forbids conditioning offers for access to educational activities or varying the quality of public education opportunities offered to students based on students' ability to pay fees.

33. Consistent with these constitutional mandates, several California statutes and regulations independently prohibit charging fees for public education. Enacted in 1976, California Education Code section 51004 reiterates that a state-provided "educational opportunity" is "a right to be enjoyed without regard to ... economic status." Enacted concurrently with section 51004, Education Code section 60070 provides that "[n]o school official shall require any pupil ... to purchase any instructional material for the pupils' use in school." And Title 5, section 350 of the California Code of Regulations provides more broadly that "[a] pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."

34. Finally, the ultimate responsibility to provide a free and equal education lies squarely and exclusively with the State. *Butt*, 4 Cal. 4th at 680-81. "Public education is an obligation which the State assumed by the adoption of the Constitution." *Butt*, 4 Cal. 4th at 680. "Local districts are the State's agents for local operation of the common school system, and the State's ultimate responsibility for public education cannot be delegated to any other entity." *Id* at 681. "The State itself bears the ultimate authority and responsibility to ensure that its district-

based system of common schools provides basic equality of educational opportunity." *Id*. at 685.

MANY PUBLIC SCHOOLS THROUGHOUT CALIFORNIA HAVE ILLEGAL TUITION-BASED SUMMER SCHOOL PROGRAMS

35. The charging of illegal summer school tuition is far too prevalent throughout California. As such, affluent students gain competitive advantages in seeking higher education over their peers at their schools and throughout the state. Public schools throughout California list on their websites tuition fees for summer school courses and other educational activities. Exhibit A attached hereto and incorporated by reference contains a sample of the ways in which "pay to learn" programs are promoted by public school districts.

36. Plaintiffs are informed and believe that the following seventeen California school districts offer, or have offered recently paid summer school programs: Alhambra Unified School District, Arcadia Unified School District, Beverly Hills Unified School District, Carlsbad Unified School District, Conejo Valley Unified School District, Glendale Unified School District, Irvine Unified School District, La Canada Flintridge Unified School District, Manhattan Beach Unified School District, Oak Park Unified School District, Palos Verdes Peninsula Unified School District, San Marino Unified School District, Redlands Unified School District, South Pasadena Unified School District, Temecula Valley Unified School District, Temple City Unified School District, and Walnut Valley Unified School District. These school districts collectively have an annual enrollment of over 200,000 children.

37. The following are just a few examples of illegal tuition fees posted on websites, as of November 4, 2021:

a. Beverly Hills High School (Beverly Hills Unified School District) in Los Angeles County charges students $798 for a U.S. history summer course;

b. La Canada High School (La Canada Unified School District) in Los Angeles County charges students $775 for a Spanish language summer course;

c. Arcadia High School (Arcadia Unified School District) in Los Angeles County charges students $605 for a creative writing course, in addition to a $25 registration fee.

38. A detailed example of the illegal summer school scheme is the program offered by SPEF. SPEF offers courses to current high school students within South Pasadena Unified School District, as well as eighth graders who will be entering high school the following academic year. SPEF offers courses that provide students with advanced credit and preparation. SPEF advanced credit courses include academic subjects such as "Chemistry-Honors" and "Prep. For Biology." In addition, students may enroll in practical courses such as "Driver's Education" or creative subjects like "Photography ½" or "Printmaking with Graphic Design." Students may also enroll in courses like "Career Essentials," "SAT Prep. Math or Verbal," or "Internship Program.".

39. SPEF also offers courses for "recovery" credit. "Recovery" classes exist for students who wish to improve upon the grades they earned during the ordinary school year. Students may be able to replace the letter grades earned during the academic year with higher grades earned over the summer.

40. SPEF's summer courses' transcript is identical to the ones used by SPUSD public schools

41. The courses offered by SPEF satisfy SPUSD high school graduation and elective requirements. Many courses also satisfy admission requirements for the University of California and California State University systems. In addition, courses such as "Academic Decathlon" and "Internship Program" offer enrolled students a range of professional and extracurricular opportunities.

42. The tuition charged by SPEF is in the hundreds of dollars. The cheapest course provided by the program is $150, for Driver's Education. The cheapest academic courses cost $180, for a course equivalent to one semester of Recovery Math, Recovery Science, or Recovery Social Science. Students from outside of SPUSD seeking to enroll in recovery courses are assessed a much higher fee at $280.

43. Most of SPEF advanced credit and preparation courses are even more costly. "Modern World History," intended for tenth grade students, costs $540. SPEF assesses the same fee for Photography. SAT preparation costs $350.

44. SPEF's partnership with FLEX CollegePrep provides paying students even more opportunities to enhance their college applications. These programs include SAT Prep, which costs $350 for 60 hours of preparation. Students may also enroll in a week long "UC Bootcamp" which prepares students to apply to the University of California. For $850, students receive a curriculum crafted by former UCLA Admissions Staff that helps them complete the UC application, write four personal application essays, and correct their grammar.

45. Students who can pay the high fees charged by SPEF stand to benefit tremendously compared with their classmates and public school peers across California.

46. Students who can afford to enroll in SPEF's advanced credit courses will be able to make speedy progress toward high school degree completion requirements and college pre-requisites. For example, by taking courses like Physical Education over the summer, students will have more room in their schedule to enroll in courses that cater to their individual interests during the school year. In addition, courses like Photography or Printmaking with Graphic Design both satisfy high school arts requirements while helping to signal to college admissions committees a student's passion in the creative arts.

47. SPEF's Recovery courses also offer paying students an enormous advantage over those unable to enroll. SPEF provides these students with the opportunity to purchase their way to an improved transcript. These improved grades will play a substantial factor in helping a student graduate on time. Paying students' opportunity to expunge unsatisfactory grades from their records will also significantly improve their college admission options compared with those who cannot afford to take advantage of this opportunity.

48. SPUSD and SPEF's "pay to learn" model discriminates against poor and minority students. In South Pasadena, poverty directly correlates with racial minority status. According to 2017 American Community Survey statistics, 6.6% of whites are below the poverty line, compared to 8.1% of Latinx, 9.3% of African-Americans, 10.1% of Asians, and

10.3% of some other race. In other words, there are 1,426 people of color who are poorly positioned to pay for summer school. In South Pasadena, when students are denied access or granted privilege based on their income, their futures are being influenced impermissibly in direct relation to their race. This is true in California as a whole as a matter of economic class, where poverty directly correlates with racial minority status. According to the California Poverty Measure, 12.1% of the White population lives in poverty compared with 14.5% for Asian/Pacific Islanders, 17.4% for Blacks, and 21.4% for Latinos.

49. Many districts list the educational foundation as the only summer school option. One district states the foundation offers no scholarships, but will discount a $600 class to $500 if the student is on a free or reduced price lunch program. One foundation's FAQ document states that it has a "strong partnership" with a particular district.

50. The inequalities have widened on account of the impact of the COVID-19 pandemic, when many students have suffered significant learning loss due to distance learning, with the greatest loss among low-income, black, and Hispanic students.[1] Summer schools become especially beneficial to provide remediation education. However, the same group of students of color and low-income students who suffer from the greatest learning loss receive less opportunity to remediate because they cannot afford to enroll in the tuition-based summer programs.

51. SF and XT's families are but two of many who are unable to pay summer school fees and purchase the required course materials in their district. SF and XT's families cannot afford to pay the hundreds of dollars that it would cost to send their child to fee-based summer school. This has caused both the students and their families much hardship and heartache. Their inability to enroll in summer school has put them at a significant disadvantage for high school graduation and college admission. The futures of millions of other students are fated by their inability to fund their public education.

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[1] "The average [learning] loss in our middle epidemiological scenario is seven months. But black students may fall behind by 10.3 months, Hispanic students by 9.2 months, and low-income students by more than a year." Emma Dorn, et al., *COVID-19 and student learning in the United States: The hurt could last a lifetime*, MCKINSEY & COMPANY (Jun. 1, 2020), at 5-6.

52. Defendants have not taken meaningful steps to ensure that school districts do not violate the constitutional right of students to a free and equal public education by charging illegal summer school tuition.

THE STATE OF CALIFORNIA IS ULTIMATELY RESPONSIBLE FOR ENSURING THE RIGHT TO A FREE PUBLIC EDUCATION IS NOT VIOLATED

53. As set forth below, defendants were informed that illegal summer school programs were occurring in at least 17 school districts. Based on information and belief, notwithstanding this information, defendants have not undertaken any independent investigation to determine the scope and extent of the practice, nor directed that the schemes end at once and that disadvantaged students and their families in these districts receive compensatory education and other appropriate remedies to cure the constitutional violations suffered.

54. By letter dated July 11, 2022, plaintiffs' counsel requested that defendants take immediate action to address the constitutional violations identified in this complaint.

55. Subsequently, on September 1, 2022, Abel Guillen, Deputy Superintendent, Operations and Administration Branch, California Department of Education (CDE), issued a "Fiscal Management Advisory" re "Summer School, Third Parties, and Tuition Fees." CDE did not send an advisory to individual public schools, nor were there directions to do so. The advisory stated that "[r]ecently questions have arisen regarding tuition fees for summer school programs that are charged by third parties, other than public schools, school districts, charter schools or county offices of education…." The advisory did not state that those questions specifically concerned any of the factors or circumstances described herein: e.g., funneling monies received back to school districts; offering curricular courses for academic credit, expungement of poor grades, meeting academic course requirements and gaining access to higher level courses; providing opportunities to improve academic performance, grade point averages, and access to higher education; and taking courses on district campuses taught by school faculty. It did not direct county and district superintendents and charter school

administrators to report whether any such summer school offerings exist on their campuses, or to investigate the existence thereof.

56. Instead, the fiscal management advisory listed nine factors that can be weighed to determine if the district offers educational activities within the meaning of the law *in the event* a pupil fees complaint is made pursuant to the local Uniform Complaint Procedures. It did not offer any guidance as to how these factors are weighed individually or in aggregate. The factors specified do not include any of the circumstances identified in the preceding paragraph.

57. Plaintiffs are not required to exhaust administrative complaint procedures. No meaningful complaint procedure exists to challenge the failure of the State defendants to meet their constitutional duties. The complaint processes available to bring complaints against local school districts are not exclusive. In connection with unlawful discrimination complaints, Education Code Section 262.3 states: "Nothing in this chapter shall be construed to require an exhaustion of the administrative complaint process before civil law remedies may be pursued." Likewise, California Education Code 49013(a) provides only that non-compliance complaints "*may* be filed under the Uniform Complaint Procedures . . . ." (Emphasis added.) Neither complaint process requires exhaustion for complaints brought under the California Constitution by aggrieved students or their families. Moreover, the time deadlines associated with this process, including an appeal process that can take up to 60 days and an option for extensions to this timeline, make this procedure patently unsuitable for obtaining quick and meaningful relief. California Education Code 49013(c). And this complaint process does not in any event ensure full reimbursement for all affected pupils, parents, and guardians, nor does it provide for any compensatory education for those students whose families could not financially afford the fees. The complaint process does not identify illegal schemes such as those described herein involving academic offerings for payment of fees to outside entities that then funnel back to the school district or school.

58. Requiring students, family members, and members of the public to file complaints with local school districts in order to trigger prevention and remediation of the scheme described herein abdicates the State's constitutional duty to provide a free education for

all educational activities and transfers that responsibility and accountability to students, parents, and guardians. It places the victims of the scheme in the untenable position of having to take on their local school districts and schools – deriving huge financial benefit from the illegal fees – in order that a constitutionally mandated free public school system be free. Throughout California, whether submitted under their names or anonymous, parents or their children reasonably fear embarrassment, stigmatization, bullying, and/or retaliation resulting from their identities being known or becoming discovered as footsoldiers bringing complaints to the attention of their own school and/or district officials or personnel that they operate an illegal money-making scheme that favors affluent students and families. The State does not fulfill its constitutional duties of ensuring free public schools by assigning low-income schoolchildren and their families the role and responsibilities of enforcers of the law against their affluent classmates and the teachers, administrators, and schools they love, need, and feel pride in.

CAUSES OF ACTION

First Cause of Action for Writ of Mandate Directed

Against All Respondents and Defendants

(Free School Guarantee; Cal. Const. art. IX, § 5)

59. Plaintiffs by this reference incorporate the foregoing paragraphs of this Complaint as though fully set forth here.

60. The California Constitution requires that the State "provide for a system of common schools by which a free school shall be kept up and supported in each district." Cal. Const. art. IX, § 5 (emphasis added). Under this provision, public education cannot be made contingent upon the payment of student fees. *Hartzell*, 35 Cal. 3d at 911. A fee-waiver policy does not satisfy the requirements of the free school guarantee. *Id*. at 911-13. A scholarship policy also does not satisfy the requirements of the free school guarantee.

61. Defendants have violated and continue to violate SF and XT's right to a free education under the California Constitution by failing to ensure that public school districts do not require students to pay tuition in order to attend summer schools that are in effect sponsored by public school districts through education foundations.

62. Defendants have a clear, present and ministerial duty to enforce the free education requirement of the California Constitution.

63. Defendants have refused and are continuing to refuse to perform their mandatory duty to enforce the free education requirement of the California Constitution, allowing a system of fee-based summer school programs to flourish in numerous school districts.

64. At all times relevant hereto, defendants have been able to perform their statutory duties. Notwithstanding such ability, defendants continue to refuse to perform their duty by failing to take action to halt fee-based summer school programs.

65. Plaintiffs are beneficially interested in the issuance of the writ sought because they have clear, present and substantial rights to the performance by defendants of their statutory obligations. Plaintiffs desire to ensure that defendants enforce the free school guarantee in the California Constitution. In addition, as taxpayers, Petitioner are interested in the proper performance of the constitutional duties of defendants.

66. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course of law other than the relief sought in this petition in that a writ of mandate is the appropriate remedy to comply the performance of ministerial duties by defendants.

Second Cause of Action for Declaratory and Injunctive Relief

Against All Defendants

(Free School Guarantee; Cal. Const. art. IX, § 5)

67. Plaintiffs by this reference incorporate the foregoing paragraphs of this Complaint as though fully set forth here.

68. The California Constitution requires that the State "provide for a system of common schools by which a free school shall be kept up and supported in each district." Cal. Const. art. IX, § 5 (emphasis added). Under this provision, public education cannot be made contingent upon the payment of student fees. *Hartzell*, 35 Cal. 3d at 911. A fee-waiver policy does not satisfy the requirements of the free school guarantee. *Id*. at 911-13. A scholarship policy also does not satisfy the requirements of the free school guarantee.

69. Defendants have violated and continue to violate SF and XT's right to a free education under the California Constitution by failing to ensure that public school districts do not require students to pay tuition in order to attend summer schools that are in effect sponsored by public school districts through education foundations.

70. Unless enjoined, Defendants will continue to violate the right to a free education under the California Constitution, and Plaintiffs and the general public will suffer irreparable harm.

71. Declaratory relief is proper here because Plaintiffs are informed and believe that Defendants will deny that they have violated and continue to violate the right to a free education under the California Constitution.

Third Cause of Action for Declaratory and Injunctive Relief

Against All Defendants

(Equal Educational Opportunity; Cal. Const. art. I, § 7(a) & art. IV, § 16(a))

72. Plaintiffs by this reference incorporate the foregoing paragraphs of this Complaint as though fully set forth here.

73. "Basic educational equality" is a "fundamental right" under the California Constitution, and any disparate treatment having a real and appreciable impact on it is subject to "strict and searching judicial scrutiny." *Butt*, 4 Cal. 4th at 683-86 (quoting *Serrano II*, 18 Cal. 3d at 767-68). The equal protection clauses of the California Constitution (Cal. Const. art. I, § 7(a) & art. IV, § 16 (a)) prohibit varying the quality of public education based on students' ability to pay fees or obtain waivers.

74. Defendants have violated and continue to violate Plaintiffs SF and XT's right to basic educational equality under the California Constitution by failing to ensure that public school districts do not vary the quality of public education based on students' ability to pay fees or obtain waivers.

75. Unless enjoined, Defendants will continue to violate the right to basic educational equality under the California Constitution, and Plaintiffs and the general public will suffer irreparable harm.

76. Declaratory relief is proper here because Plaintiffs are informed and believe that Defendants will deny that they have violated and continue to violate the right to basic educational equality under the California Constitution.

Fourth Cause of Action for Declaratory and Injunctive Relief

Against All Defendants

(Wealth and Race Discrimination; Cal. Const. art. I, § 7(a) & art. IV, § 16(a))

77. Plaintiffs by this reference incorporate the foregoing paragraphs of this Complaint as though fully set forth here.

78. Under the equal protection clauses of the California Constitution (Cal. Const. art. I,§ 7(a) & art. IV,§ 16(a)), disparate treatment based on race or "wealth" in the context of public education, is subject to strict scrutiny as a "suspect classification." *Serrano II*, 18 Cal. 3d at 765-66. The equal protection clauses prohibit, as impermissible wealth-based discrimination, varying the quality of public education based on students' ability to pay fees or obtain waivers. It likewise prohibits tuition-based summer schools which have a disproportionate impact on students because of their race.

79. Defendants have violated and continue to violate Plaintiffs' right to receive equal protection of the laws under the California Constitution by failing to ensure that public school districts do not vary the quality of public education based on students' ability to pay fees to access summer school programs run by education foundations, resulting in impermissible race and wealth-based discrimination.

80. Unless enjoined, Defendants will continue to violate the right to receive equal protection of the laws under the California Constitution, and Plaintiffs and the general public will suffer irreparable harm.

81. Declaratory relief is proper here because Plaintiffs are informed and believe that Defendants will deny that they have violated and continue to violate the right to receive equal protection of the laws under the California Constitution.

Fifth Cause of Action for Declaratory and Injunctive Relief

Against All Defendants

(Taxpayer Action by John Srebalus)

82. Plaintiffs by this reference incorporate the foregoing paragraphs of this Complaint as though fully set forth here.

83. Plaintiff John Srebalus has been assessed and found liable to pay taxes to the State of California and the United States of America.

84. Defendants' expenditure of federal, state, county, and/or municipal funds to administer and implement a system of public education that engages in unconstitutional discrimination, as challenged herein, is unlawful. Plaintiff John Srebalus, as a state taxpayer, has an interest in enjoining the unlawful expenditure of tax funds. Pursuant to California Civil Procedure Code section 526a and this Court's equitable power, Plaintiff John Srebalus seeks declaratory and injunctive relief to prevent continued harm and to protect the public from Defendants' unlawful policies, practices, and deliberate indifference, as alleged herein. The taxpayer claim is based on the State's illegal expenditure of funds to administer an education system that engages in both racial and wealth discrimination, and that fails to provide equal access to a basic education in violation of the state constitution. Declaratory relief is proper here because Plaintiffs are informed and believe that Defendants will deny that they have violated and continue to violate their constitutional obligations.

85. Unless and until Defendants' unlawful policies and practices, as alleged herein, are enjoined by order of this Court, they will continue to cause great and irreparable injury to Plaintiff John Srebalus and other taxpayers.

REQUEST FOR RELIEF

Plaintiffs respectfully request the following relief:

1. For a peremptory writ of mandate commanding respondents to rescind fee-based summer school programs in California school districts.

2. A declaratory judgement that Defendants' conduct described in this Complaint violate the following laws:

a. Article IX, section 5 of the California Constitution,

b. Article I, section 7(a) of the California Constitution,

c. Article IV, section 16(a) of the California Constitution,

3. An injunction directing Defendants to develop a monitoring and enforcement system to prevent the imposition of unconstitutional tuition for summer school through Education Foundation and to make whole parents who were unconstitutionally charged tuition;

4. An award of reasonable attorney fees to Plaintiff's counsel;

5. Costs of suit;

6. Any other equitable or legal relief that the Court deems just and proper.

DATED: November 30, 2022

PUBLIC COUNSEL

By: Mark Rosenbaum

MARK ROSENBAUM

Attorney for Plaintiffs

VANAMAN GERMAN LLP

By: _____

DAVID GERMAN

Attorney for Plaintiffs

Lawyaw Package ID: 400e7e0d-74a0-4509-80fb-4abdc794f97d

VERIFICATION

I, ER, am a petitioner in the above-entitled action. I have read the foregoing petition and I verify that the factual allegations therein are true and correct.

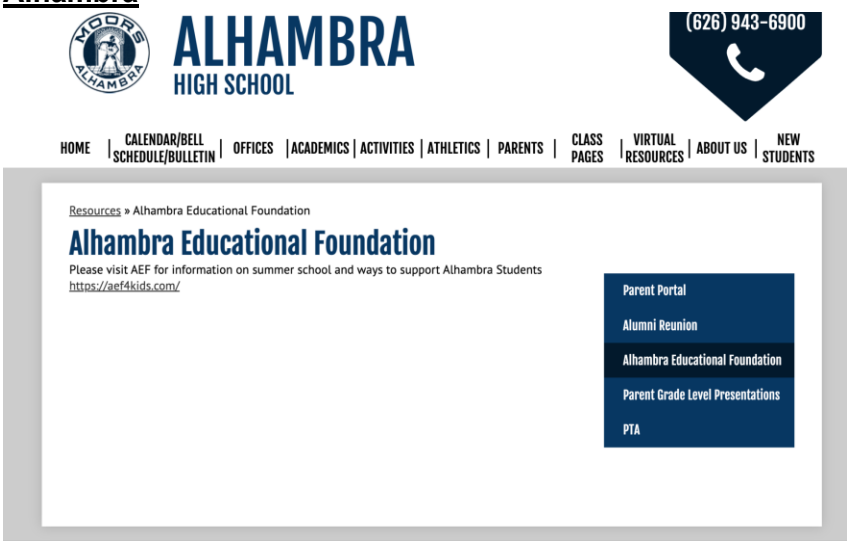
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/02/2022

E.R.

EXHIBIT A

Alhambra



https://www.ahsmoors.org/apps/pages/index.jsp?uREC_ID=309914&type=d&pREC_ID=713439

Arcadia

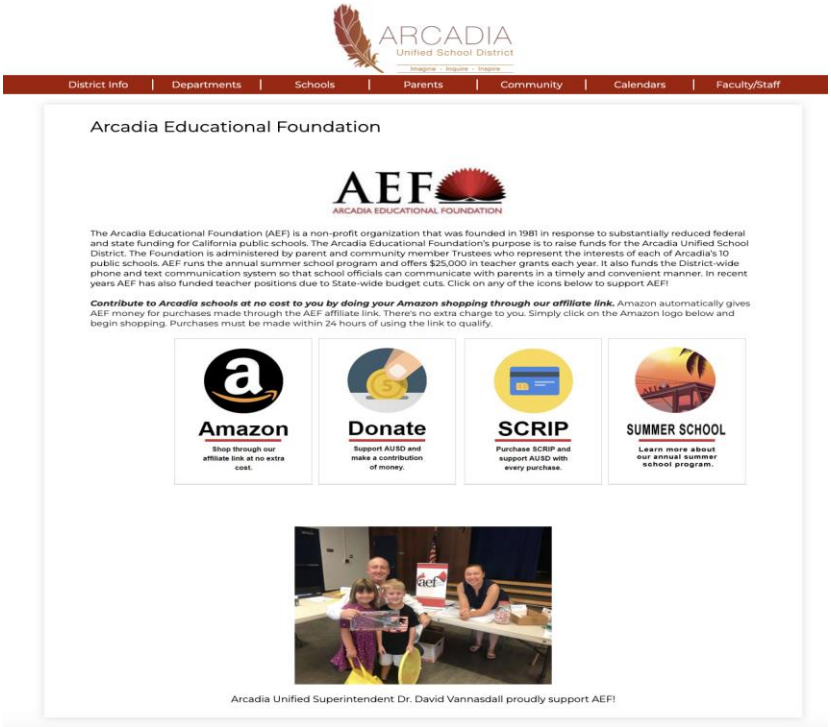
AEF 2022 Summer School Program: What You Should Know

By AUSD Digital Communications Intern Sofia Nagy

First day of AEF Summer School 2019 at Arcadia High School
Courtesy Photo from AEF Summer School

For the first time in two years, the Arcadia Educational Foundation (AEF) Summer School Program for 2022 will happen in person for all grade levels. With summertime right around the corner and the temperature rising, questions arise as well: "What will summer school look like this year?" "How is it similar and different from previous years?" "What about future years?" "Where and how can one register?" "What are the key dates to keep in mind?" Here's what you should know.

https://www.ausd.net/apps/pages/AEFSummerSchool2022



https://www.ausd.net/apps/pages/aef

Arcadia Unified School District
ARCADIA HIGH SCHOOL
180 Campus Drive Arcadia, CA 91007
Angela Dillman, Principal
Email: ahs@ausd.net

March 8, 2021

To Whom It May Concern:

Arcadia Educational Foundation (AEF) is a non-profit organization that was founded in 1981 to provide financial support to Arcadia Unified School District. In addition to raising funds to support Arcadia Unified, the Foundation operates the AEF Summer School program that is held at Arcadia High School each summer.

This year the AEF Summer School program will offer tuition-based courses for credit and non-credit in a virtual distance learning format. Successful achievement in summer school may accomplish the following: improve GPA for eligibility purposes, take elective courses for credit, reduce the workload for the upcoming school year, and accelerate progress toward graduation and college entrance requirements.

To facilitate the summer program, Arcadia Educational Foundation leases Arcadia Unified facilities, equipment, and ancillary materials owned by the Arcadia Unified School District. Arcadia Educational Foundation hires California credentialed teachers, who are credentialed in the subject they teach at the high school level.

Credit courses offered in the 2021 AEF High School Summer School Catalog have been deemed acceptable for inclusion on the Arcadia High School transcript and will be counted for full credit based on student performance.

Sincerely,

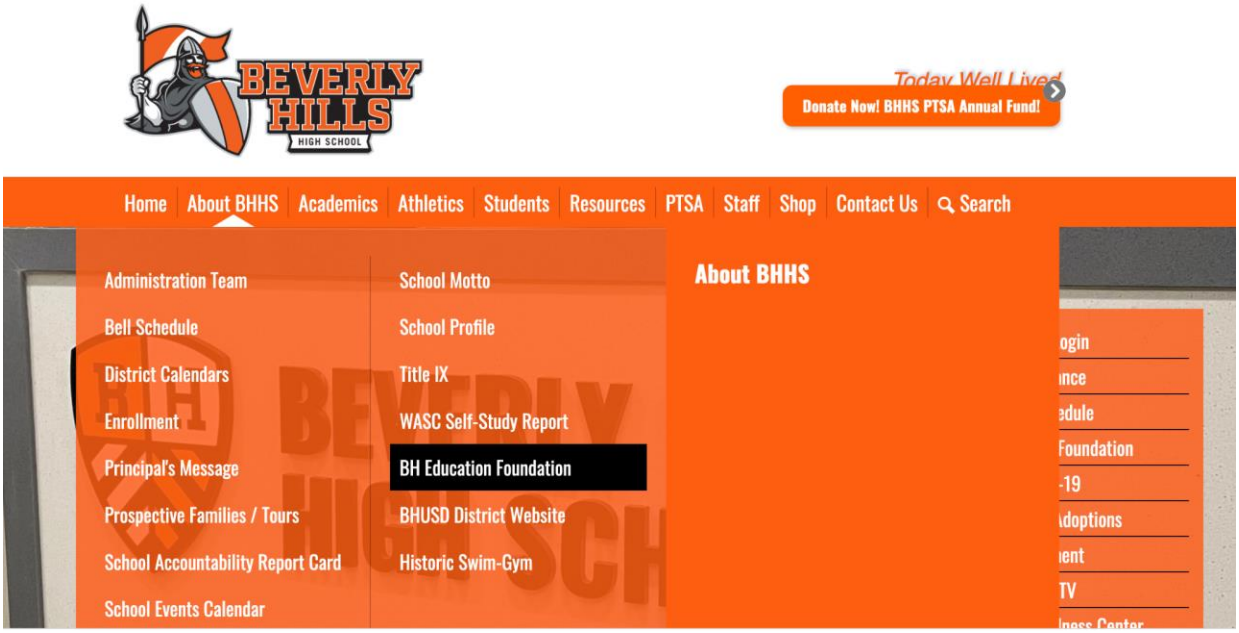
Angela Dillman

Ms. Angie Dillman
Principal
Arcadia High School

Keith Kerney

Mr. Keith Kerney
Dean of Students, Arcadia High School
AEF Summer School Principal

Beverly Hills



https://bhhs.bhusd.org/

JAN
31
MON

BHEF Summer Program for 2022 registration opens
(Virtual) Events

BHHS Sophomore fundraiser at Fresh Brothers
Events

Welcome Night/Open House (day schedule)
8:30 AM – 1:32 PM Events

BHHS Senior fundraiser at Ubatuba Açaí
3 PM – 6 PM (Ubatuba Açaí - Beverly Grove, 8318, 1/2 W 3rd St, Los Angeles, CA 90048, USA) Events

Welcome Night/Open House
5:15 PM – 8 PM (BHHS via zoom: https://bhhs.bhusd.org/openhousemap2022/) Events

https://bhhs.bhusd.org/apps/events/2022/1/?id=0

Carlsbad

https://carlsbadhs.schoolloop.com/pf4/cms2/view_page?d=x&group_id=1540279524227&vdid=i13b1wthb40n

Student Behavior

A student's misconduct will not be tolerated in or out of the high school classroom or any P.E. location. Summer Academy follows the CUSD policies and procedures of the CUSD High School Parent / Student Handbook, linked here or located on the CUSD website for students and parents to review prior to the start of school. Copies can also be obtained in the Carlsbad Educational Foundation Summer Academy office.

https://docs.google.com/document/d/1wJbqvgGK6lhM2q7C5CBlDUJ6VJDVW92fz-2vDOi63Xw/edit

- See p. 15

Conejo Schools Foundation

CVUSD
CONEJO VALLEY UNIFIED SCHOOL DISTRICT

Parent & Student Resources

- Board Meetings
- BreakThrough Student Assistance Program
- Bus Information/Schedules
- Child Care (K-5)
- Child Nutrition/School Lunch
- Conejo Council PTA
- Conejo Schools Foundation

https://www.conejousd.org/Parents

SUMMER SCHOOL OPPORTUNITIES

Conejo Valley Unified School District is proud to support its students' diverse academic needs and ambitions. The following are popular accredited summer school options, although the list is not exhaustive. Coursework completed at other accredited institutions will be eligible for placement on the high school transcript.
Students may choose to enroll in a summer school program for acceleration and/or credit recovery purposes.
Students cannot enroll in two public high school programs concurrently for the purpose of credit recovery.
Students may enroll in any accredited summer school program and earn up to 20 credits towards graduation.
Examples of available programs are listed below.

CVUSD Credit Recovery Summer School

Students may enroll in CVUSD's free credit recovery summer school, if they qualify, with guidance from their assigned high school counselors. Any student who earns a D or F in a graduation-required course should enroll in the CVUSD Credit Recovery Summer School program. This program is for students that need to repeat one or two semesters of a course in order to raise their grade.

APEX Learning

APEX is an online high school and a fully accredited, private, high school academy that offers full- and part-time options to students who need a high quality, alternative education.
Learn more:
apexlearningvs.com

IvyTech Charter

IvyTech Charter School is modifying and advancing the educational paradigm for the 21st century learner. The "Blended Learning Model" provides students with the opportunity to participate in a traditional classroom setting, a virtual classroom with online instruction,

BYU High School Courses *

BYU Independent Study courses offer opportunities for credit recovery at the high school level. Course enrollment is open to anyone, at any time of year, with a year to complete most courses. Because of BYU accreditation and quality courses, credits from Independent Study can be transferred to most educational institutions across the nation and around the world.
Learn more:
is.byu.edu

Method Schools

Methods schools is a public charter school that is K-12 offering online instruction with a focus on high academic growth.

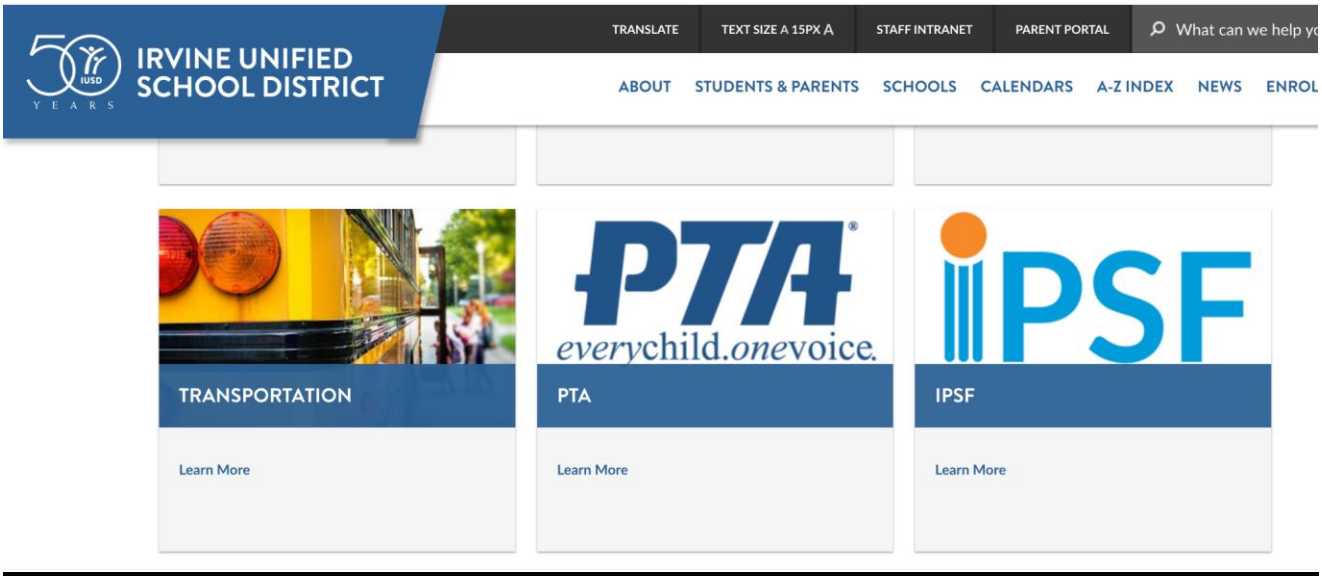
Conejo Schools Foundation Get Ahead Program *

Get Ahead Program courses will be held in either a Synchronous Learning Model, which will utilize a set schedule of class meeting times each day through a virtual online platform, or in an Asynchronous Model, which will allow students to access, complete, and submit course materials within a daily schedule that the student sets for themselves. These learning models will utilize a virtual, online platform to support the instruction and delivery of material by the instructor.
Learn more:
conejoschools.org

https://www.conejoschools.org/conejo-valley-unified-school-district/

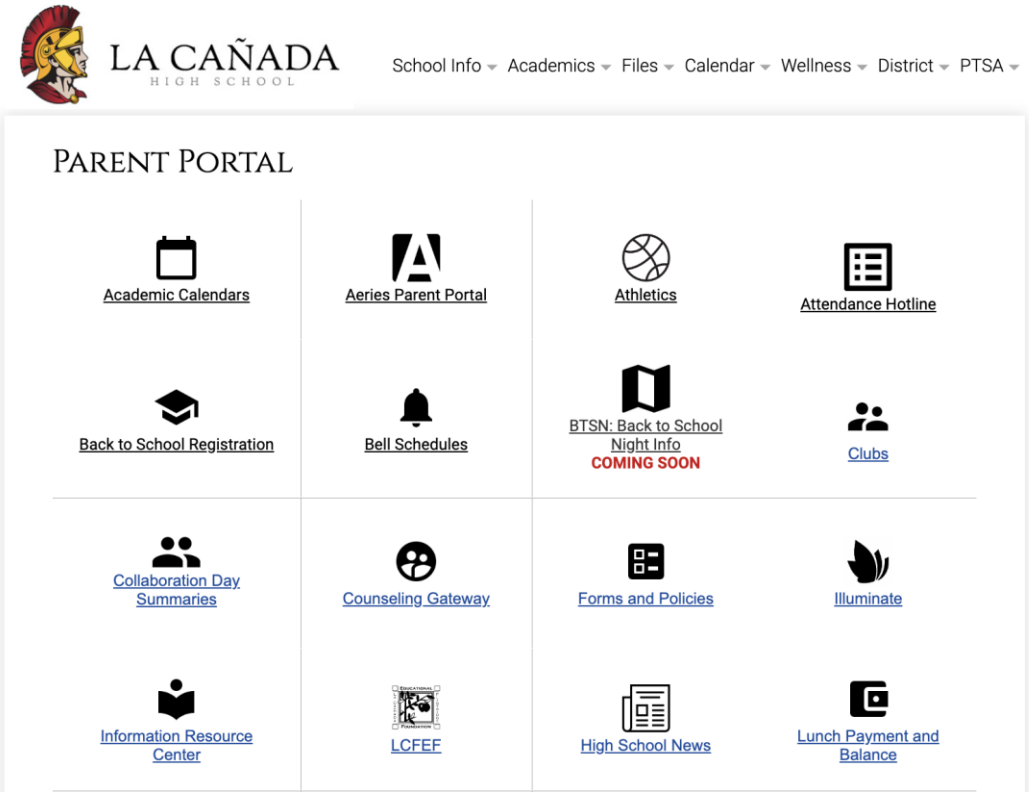
https://www.conejousd.org/Portals/0/pdfs/2022/Summer%20School%20Flyer%202022%20English%202.pdf?ver=2022-03-22-150133-367

Irvine Public Schools Foundation

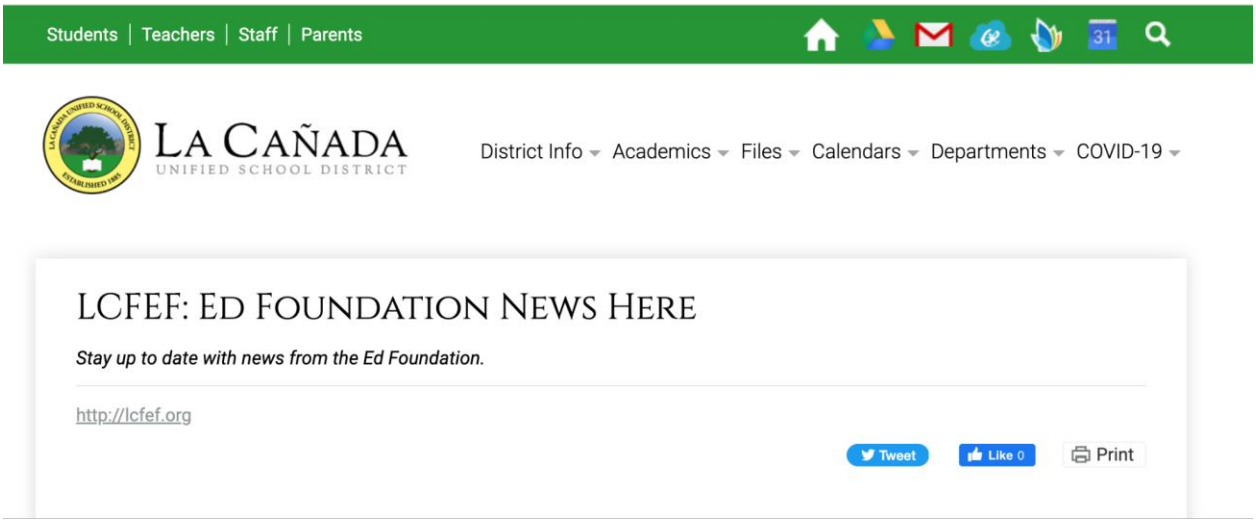


https://iusd.org/parents-1

La Canada Flintridge Ed Foundation



https://www.lchsspartans.net/apps/pages/parent-portal



https://www.lcusd.net/apps/news/article/476488

LA CAÑADA HIGH SCHOOL

A National Blue Ribbon School

JAMES CARTNAL
9-12 PRINCIPAL

DR. JARRETT GOLD
7/8 PRINCIPAL

KRISTINA KALB
ASSISTANT PRINCIPAL

JASON ITO
ASSISTANT PRINCIPAL

September 23, 2019

To Whom It May Concern:

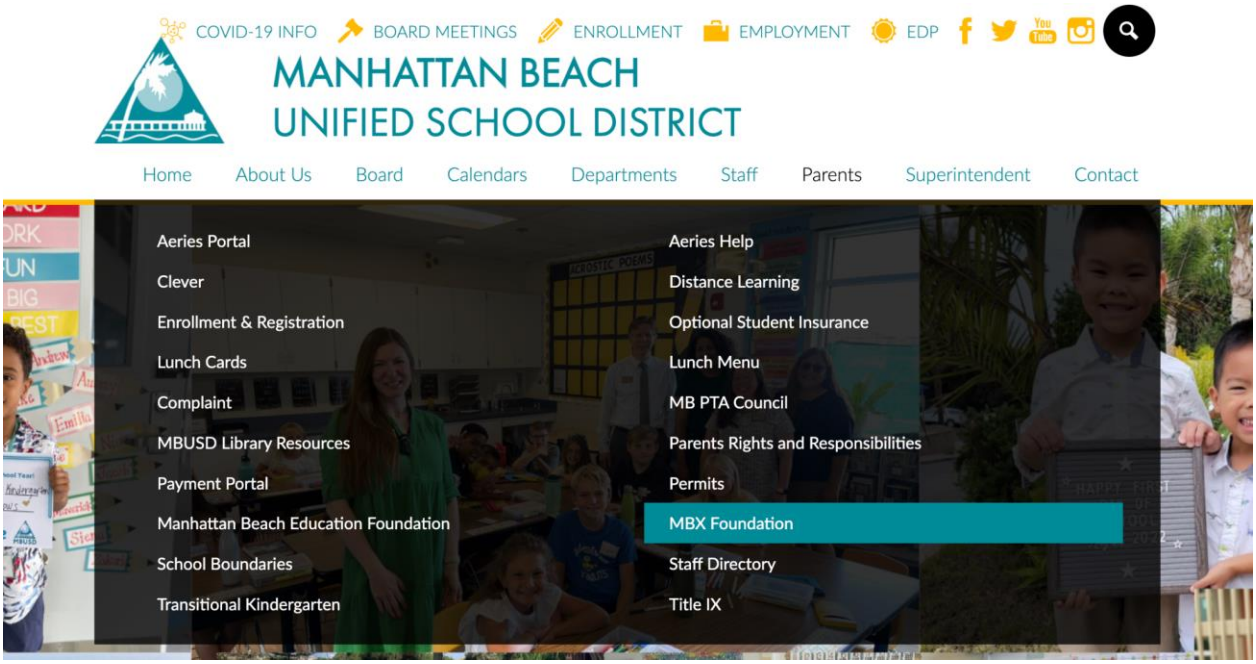
The 2020 La Cañada Flintridge Education Foundation (LCFEF) summer school, is leasing the La Cañada High School Curriculum and ancillary materials and is hiring California State credentialed teachers to provide instruction. Courses offered by the 2019 LCFEF summer school have been deemed acceptable for inclusion on the La Cañada High School transcript and will be counted for full credit based on student performance.

Sincerely,

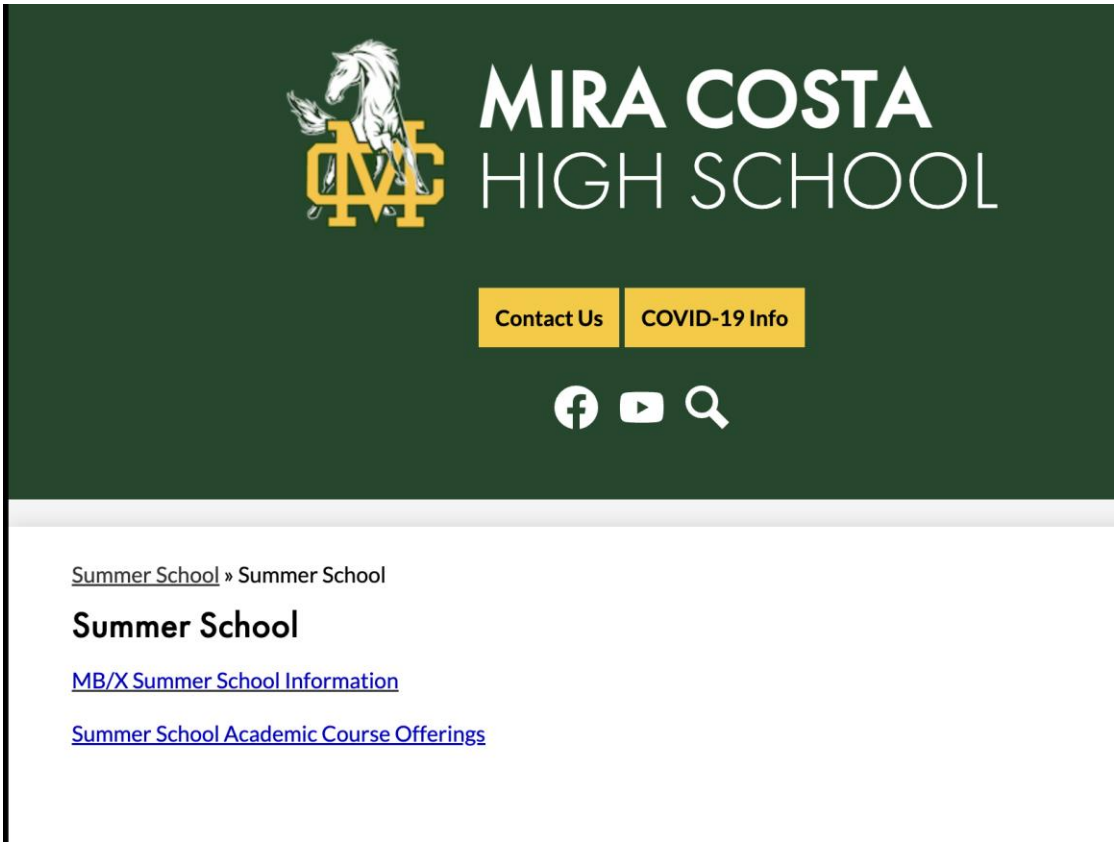
James Cartnal

9-12 Principal

MBX Foundation (Manhattan Beach)

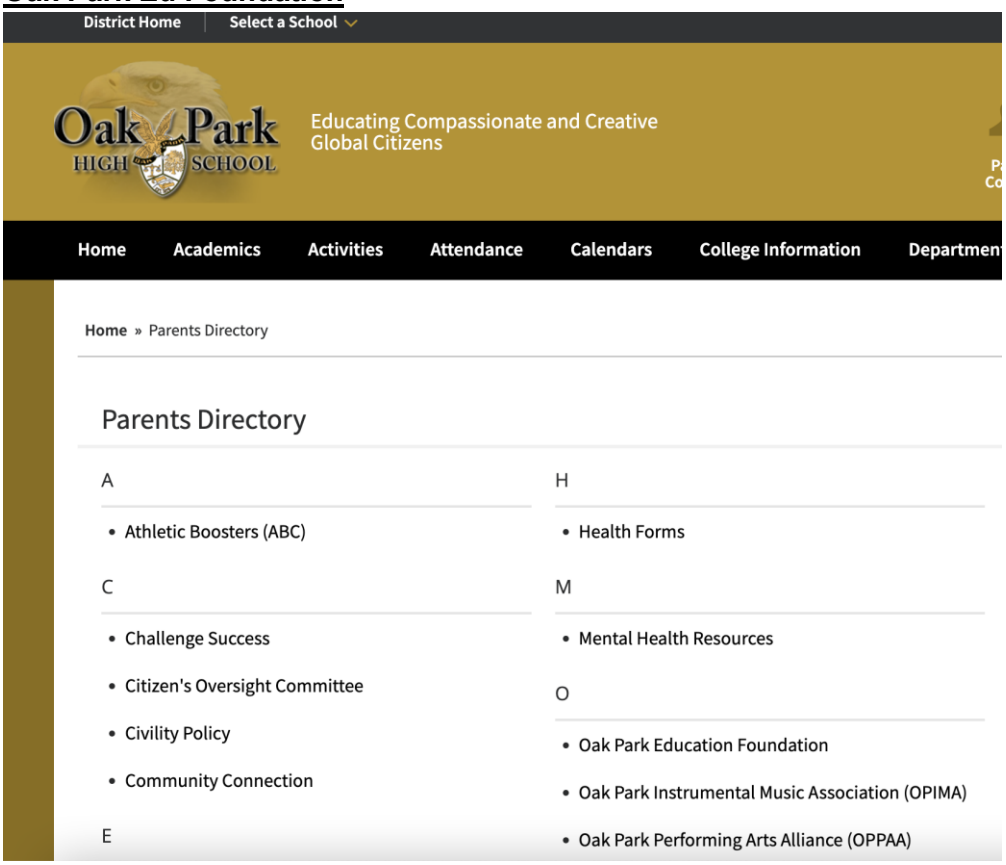


https://www.mbusd.org/#



https://www.miracostahigh.org/apps/pages/index.jsp?uREC_ID=249840&type=d&pREC_ID=910888

Oak Park Ed Foundation



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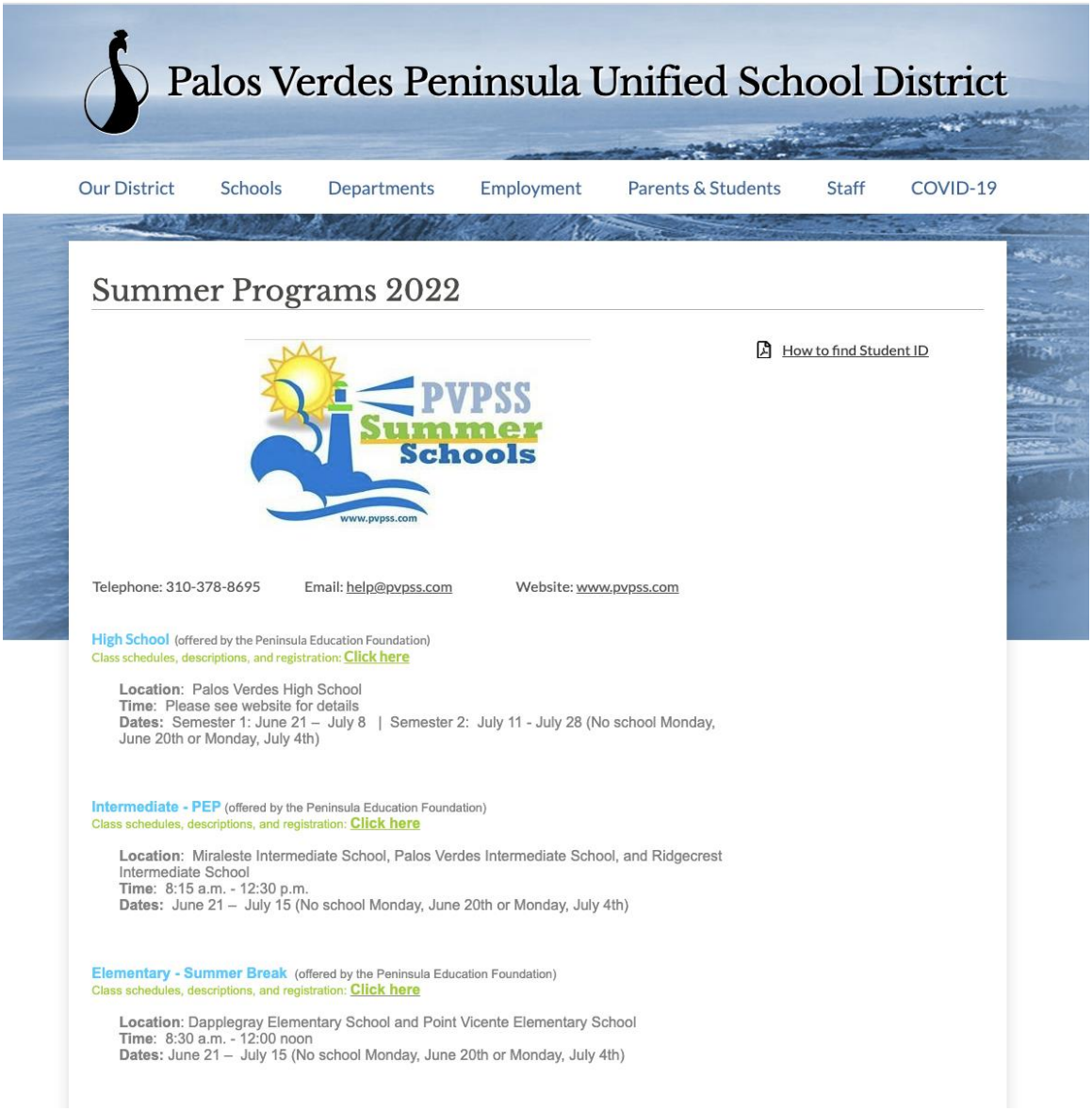
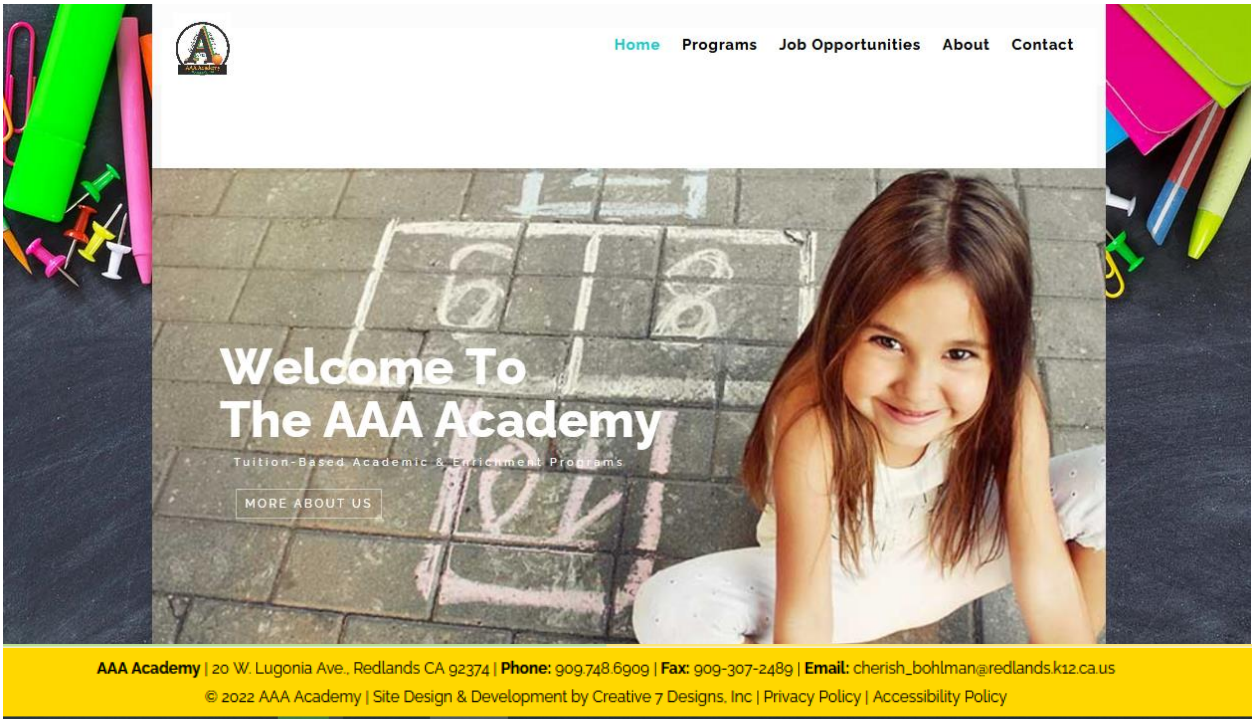
Palos Verdes Peninsula Ed Foundation



https://www.pvpusd.net/apps/pages/index.jsp?uREC_ID=419449&type=d&pREC_ID=916749

Redlands AAA Academy



San Marino PT Affiliates

https://www.smusd.us/apps/events/item/?REC_ID=273692&id=2&d=2008-4-8

SAN MARINO
Unified School District

District | Parents & Community | Students | Schools | COVID-19 Safety | Contact Us

PT Affiliates Summer School Program K-8

What: PT Affiliates Summer School Program K-8
Where: Huntington Middle School

PT Affiliates is a non-profit organization whose goal is to provide support to the students and schools of the San Marino Unified School District. Every year the PT Affiliates contributes countless hours of volunteer services and significant financial support to the community's schools.

These contributions have helped to make the schools of San Marino among the best to be found. SMUSD's students consistently score at the top of any standardized test. The District supports vibrant performing arts programs, active athletics, as well as a broad range of co-curricular programs. After receiving a rich and broad based education, most San Marino students go on to excel at our nation's most prestigious colleges and universities.

The PT Affiliates summer school program contributes to this excellence. Most of our summer courses are taught by the same fully credentialed instructors that teach within the district during the regular school year. By our charter, all proceeds after costs are returned to the individual school sites. This makes the tuition dollar work twice: first to provide a topnotch curriculum taught by an unsurpassed teaching staff and then again to underwrite ongoing enrichment in the fall.

http://www.san-marino.k12.ca.u...

Contacts for San Marino PT Affiliates Contacts are SMUSD teachers (see below)

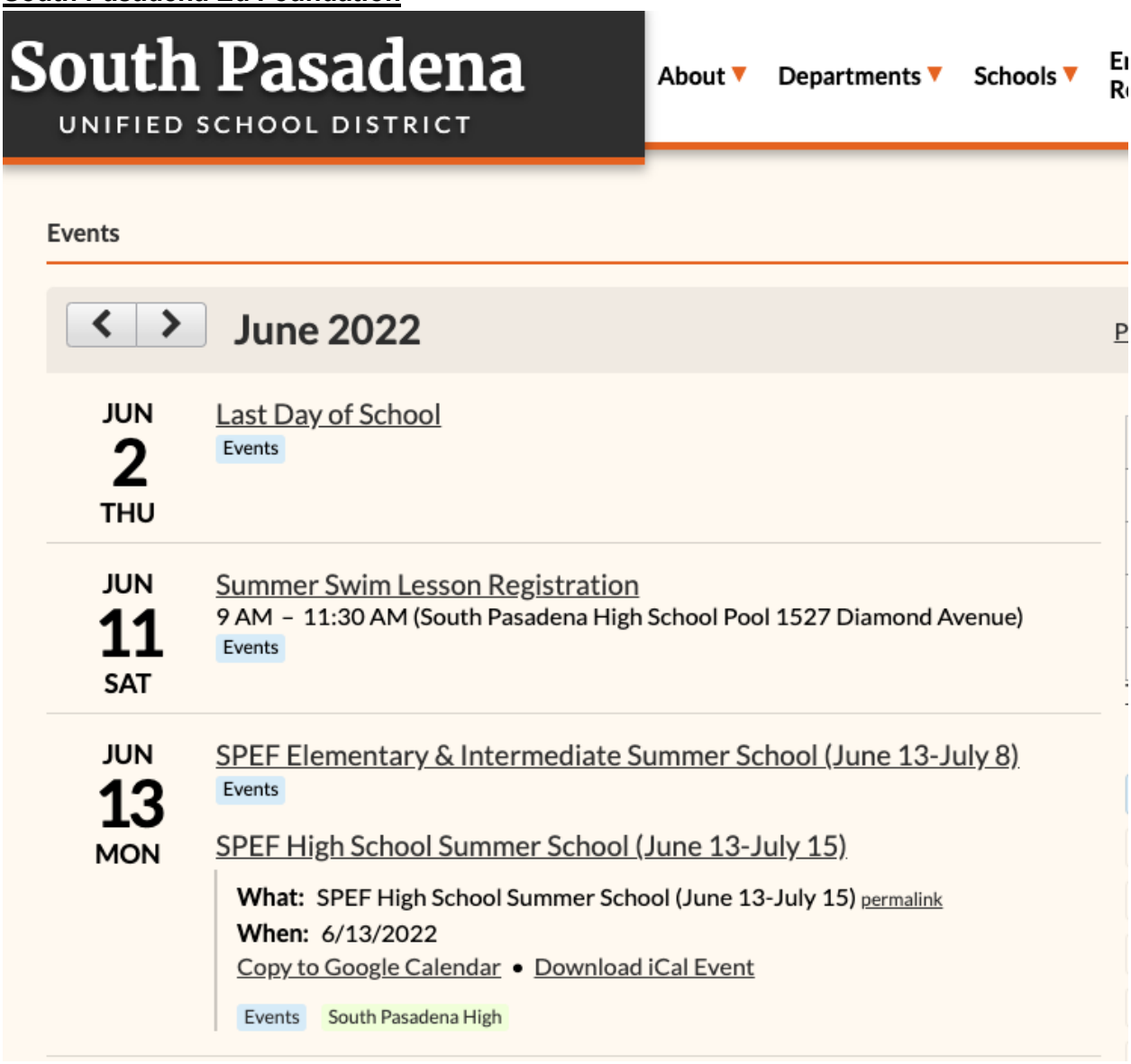
Get In Touch

Grades K-7
Valentine Elementary
Principal: Kelly Duncan
kduncan@smusd.us
626-299-7062
Address
1650 Huntington Drive
San Marino, CA 91108

Grades 8-12
San Marino Unified School District
Secondary Principal: Danielle Blatchley
dblatchley@smusd.us
626-299-7000 x1312
Address
1665 West Drive
San Marino, CA 91108

https://www.smsummer.us/

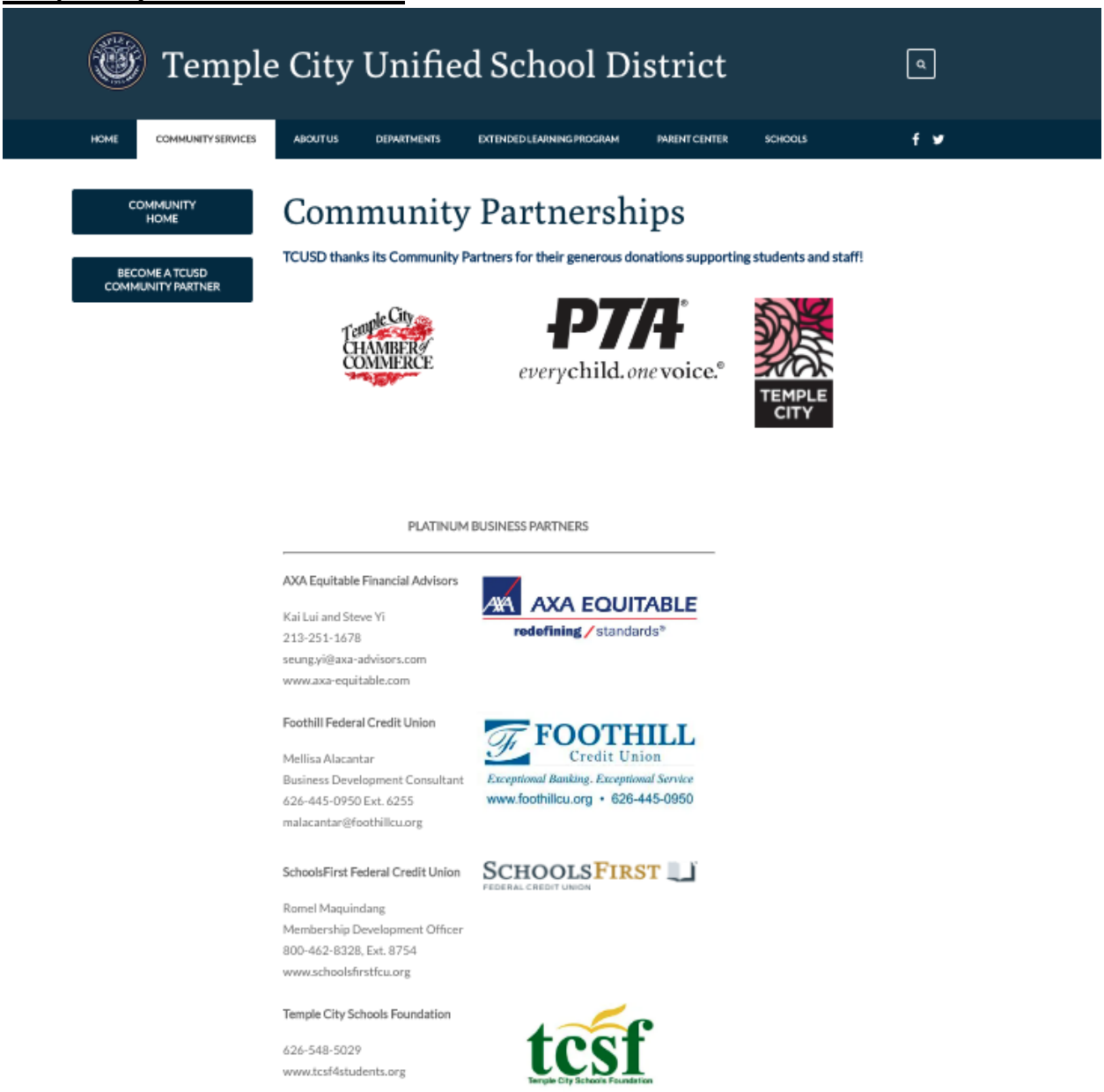
South Pasadena Ed Foundation



https://www.spusd.net/apps/events/2022/6/?id=0

Temecula Ed Foundation

Temple City Schools Foundation



https://www.tcusd.net/community/business-partners