

3. Defendant, Rolando Aguilar, an individual and a citizen of the State of Texas, may be served with process at 1900 E. Price Road, Brownsville, Cameron County, Texas 78520 or at 43 Coria Street, Brownsville, Cameron County, Texas 78520.

4. Defendant, Joe Colunga, an individual and a citizen of the State of Texas, may be served with process at 1900 E. Price Road, Brownsville, Cameron County, Texas 78520 or at 5 Sifuentes, Brownsville, Cameron County, Texas 78526.

5. Defendant Ruben Cortez, an individual and a citizen of the State of Texas, may be served with process at 1900 E. Price Road, Brownsville, Cameron County, Texas 78520 or at 735 Habana Street, Brownsville, Cameron County, Texas 78526.

6. Defendant Rick Zayas, an individual and a citizen of the State of Texas, may be served with process at 1900 E. Price Road, Brownsville, Cameron County, Texas 78520 or at Zayas & Hernandez, 3100 E. 14th Street, Brownsville, Cameron County, Texas 78521..

7. Defendant Brett Springston, an individual and a citizen of the State of Texas, may be served with process at 1900 E. Price Road, Brownsville, Cameron County, Texas 78520.

B. JURISDICTION

8. This Court has jurisdiction over the lawsuit because the suit arises under the First Amendment Retaliation, 42 U.S.C. §1983.

9. State Courts have concurrent jurisdiction over federal claims with the Federal Courts. When filing a Civil Rights Act claim, 42 U.S.C. §1983, the Plaintiff has the option of choosing the forum, whether it be in State Court or Federal Court.

C. VENUE

10. Venue is proper in this district under 28 U.S.C. §1391(a)(1) and all defendants reside in Texas.

D. NATURE OF THIS SUIT

11. This is a suit for First Amendment Retaliation, 28 U.S.C. §1983, against Defendants. Defendants conspired, plotted and schemed against Plaintiff, in an attempt to silence and intimidate Plaintiff. Plaintiff would not keep silent on the abuse within his department of Special Services at BISD. He witnessed firsthand the deprivation of his students' constitutional due process rights and unjust harm being done to their physical and mental well being. Because of this, Plaintiff was harassed, defamed, investigated, placed on administrative leave with pay for an entire school year, and ultimately non-renewed from his position as Administrator of Special Services.

12. In addition, Plaintiff complains of Fourteenth Amendment Due Process violations concerning his contract with the District. Once Plaintiff began to speak out on matters he deemed to be illegal, the District conspired, plotted and orchestrated the non-renewal of his Chapter 21 Contract. Although numerous attempts were made to placate the matter, via the grievance process provided by the District, BISD ended Plaintiff's longstanding career as an educator and administrator at BISD.

13. Coupled with the complaints above, Plaintiff is complaining of Whistleblower Retaliation, a violation of the Texas Government Code, §554.002(a). Plaintiff contacted Hershel Price, a Medicaid Fraud Investigator with the Attorney General's Office, the Cameron County District Attorney's Office and Texas Ranger Roland Castaneda, voicing his concerns and fears of what he believed to be systemic fraud and abuse of the system. Plaintiff explained in detail and outlined his suspicions of how the system was being abused by BISD employees and its legal counsel, Walsh, Anderson, Brown, Gallegos and Green, P.C. ("Walsh"). In an effort to profit at the expense of children with special needs, and at the expense of taxpayers, BISD and Walsh

wanted Plaintiff to ignore the misdiagnoses of special needs students, the due process violations occurring in the Admission Review and Dismissal (“ARD”) conferences and the Due Process hearing violations. Essentially, BISD and Walsh wanted Plaintiff to ignore IDEA federal guidelines. Plaintiff explained that both State and Federal funds were being exploited at the expense of special needs children and wanted these authorities to put a stop to the abuse by punish those abusing the system. After the Cameron County District Attorney’s Office thwarted some of the key players, the due process hearing requests dropped immensely, thus freezing the once abundant flow of public funds into the pockets of Walsh attorneys, TEA mediators, Christopher Jonas, attorney for special need children, and Gloria Kury, a licensed professional counselor.

14. Because of this Plaintiff began to suffer disparate treatment. Plaintiff attempted to halt the harassment by following BISD local grievance process. Plaintiff was doing anything and everything reasonably necessary to save his twenty plus tenure at BISD; but, because the truth disclosed, the same led to Plaintiff’s non-renewal.

E. FACTS

15. Plaintiff was reassigned from being a principal to interim Administrator for Special Services in August, 2006. Upon arrival, Plaintiff immediately noticed how his department was financially plagued. Special Services had gone through numerous administrators in a short time span.

16. Susan Fox was the previous administrator. Ms. Fox had been demoted from serving BISD, as an Area Superintendent, to Administrator of Special Services. Needless to say, Ms. Fox was not qualified to oversee the Special Services department and did not hold the requisite certificate to run this department.

17. One of Ms. Fox's first initiatives was to hire her friend Alice Terry. Ms. Terry was brought in from California at \$2000.00 a day, to provide 'leadership training' for Special Services Supervisors. Ms. Terry admitted to Plaintiff she was staying at Ms. Fox's house; yet, she received the full \$2000.00 per day for travel and lodging. This type of service is provided by Region One, for a fraction of that cost. From the onset, issues such as this, was what Plaintiff immediately questioned as Administrator of Special Services.

18. During the 2006-2007 academic school year, seven Due Process Hearing complaints were filed by Corpus Christi attorney, Christopher Jonas. Mr. Jonas is an attorney who represents BISD parents and their children with special needs, alongside a former BISD employee, Juanita Rodriguez.

19. Plaintiff became burdened with the poorly run department. Plaintiff addressed his concerns with Walsh, because he was becoming wary in the way the due processes hearing requests were being filed and processed.

20. After raising a red flag, Plaintiff learned from Walsh that the district's psychological and autism evaluations were not in compliance with current standards and practices in the field of educational psychology.

21. After Mr. Jonas filed two subsequent due process complaints, Walsh recommended that perhaps BISD should contract an external firm to audit the psychological and autism evaluations. At this point in time, BISD had approximately four-hundred identified emotionally disturbed and autistic students, but there only three Licensed Specialists in School Psychology ("LSSP").

22. In January, 2007, an educational consulting firm was contracted to review a sampling of the District's psychological and autism evaluations. This firm concluded that the district's

evaluations of students were not scientifically valid and did not comply with State and Federal law.

23. Once this was reported, Paula Roalson, an attorney with Walsh, provided training to the three LSSP, because Walsh determined these evaluations were 'legally indefensible.' The training was a *one* day workshop. Assistant Special Services Director, Dr. Lee Garcia, participated in this training.

24. In April, 2007, Dr. Terry Overton, Dr. Cheryl Fielding and Dr. Roman Garcia de Alba presented their findings, to BISD and general counsel, Mike Saldana. This became known as the "Overton Report."

25. Mike Saldana at this time was not affiliated with Walsh, as Walsh was only contracted to be the District's counsel for Special Education Matters. The "Overton Report" indicated that these evaluations reviewed, were very poorly produced and did not meet minimal standards, as set forth by state and national criteria. The report emphasized the fact that these LSSP *should not* continue to evaluate students, until they had been adequately trained.

26. One of the three, the late Roger Burns, was outraged and insulted. This resulted in Mr. Burns filing both a grievance and an EEOC complaint against Plaintiff. Walsh told Plaintiff not to worry, because Mr. Burns did not have any valid claims against Plaintiff.

27. To further allay Plaintiff's concerns, Walsh attorneys prepped Plaintiff for the grievance hearing and prepared the grievance response, prior to the grievance even occurring. Walsh's response essentially denied Mr. Burns of any relief requested.

28. Mr. Saldana, on the other hand, instructed Plaintiff to allow these three LSSP to continue for the rest of the year, but to "dilute" their work. Plaintiff disagreed and recommended that the district move quickly to open a new position for a Lead LSSP and Walsh wholly agreed.

29. By July 2007, Dr. Roman Garcia de Alba was recommended for the position of Lead LSSP. Dr. de Alba conducted a full and thorough assessment of the instruments the District had been using to perform these evaluations, and he was astonished to discover that the District did not have any appropriate instruments to evaluate students for either emotional disturbance or autism. Some of the instruments being used had limited reliability and validity, especially for Hispanic populations or populations with limited English proficiency.

30. By September of 2007, BISD contracted the SBS group, out of College Station, to perform evaluations on BISD students. This began the overhaul of the Special Services department, and outside trained professionals were contracted by BISD to conduct the psychological and autism evaluations.

31. While the three LSSP were trained extensively, Plaintiff began to recruit new LSSP for the district. Plaintiff also made sure the District purchased reliable and appropriate instruments, in order to evaluate and reevaluate each and every BISD student in Special Services. The SBS group also provides professional training for BISD personnel in the area of special education.

32. Plaintiff began implementing new policies in conjunction with fixing the damage done by prior administrators. During the 2007-2008 school year, there were a few key player who took advantage of Special Service's predicament.

33. Thirty Due Process Hearing ("DPH") complaints were filed by Mr. Jonas, with the assistance of local LPC/LSSP Ms. Kury.

34. During mediations, Mr. Jonas would recommend Ms. Kury to conduct independent evaluations on the students, students whom she was currently counseling for Medicaid reimbursement.

35. Plaintiff protested this recommendation, because he knew this was a conflict of interest, but legal counsel, Walsh, advised Plaintiff this was permissible. Plaintiff refused to allow Ms. Kury to perform these independent evaluations.

36. Plaintiff's suspicions of Ms. Kury's Medicaid abuse were heightened after he learned she was also utilizing a colleague from College Station, a Ph.D psychologist, to evaluate BISD students for Medicaid and BISD reimbursement. The parents of these children reported to Plaintiff that they had never seen this psychologist from College Station, although Ms. Kury billed for this person's services.

37. While attempting to resolve the DPH complaints, parents were instructed by Mr. Jonas not to resolve the matter at the lowest level, thereby manipulating the system and going straight to the mediation level. This allowed Mr. Jonas to bill extra hours and demand large settlement fees.

38. This arrangement also benefited Walsh, because the law firm began flying in attorneys from Austin and San Antonio to handle these mediations. Such mediations would last all day, and Plaintiff witnessed the abuse of said mediations.

39. BISD counsel, counsel for the child *and* the mediator continuously started late, took long lunches, talked about other matters not in relation to the mediation and sent outrageous bills for BISD to pay.

40. By this point, Mike Saldana, the former general counsel for BISD, joined Walsh as an associate and pressured Plaintiff to allow Walsh to be involved in all aspects of special education.

41. The billing of Walsh nearly tripled during this time, for they had hit a goldmine.

42. In November 2007, the SBS group conducted a second evaluation of BISD Emotionally

Disturbed and Autism evaluations. It concluded that these disturbing evaluations may have subjected BISD students to educational misdiagnosis.

43. This resulted in some students being labeled incorrectly, some students given a label when in fact they were not special needs children but most importantly some students were not given a label whatsoever, thus they were denied IDEA mandated support.

44. By December, 2007 and into January, 2008, Plaintiff decided to report these concerns to the Cameron County District Attorney of his suspicions, that Mr. Jonas, Ms. Kury and another cohort, Dr. Kim Arredondo, were involved in a scheme to profit from special needs children, Medicaid, and BISD, in a fraudulent manner.

45. Plaintiff also contacted the U.S. Attorney, in Corpus Christi and in Brownsville, and reported these same suspicions and concerns.

46. Following that, Plaintiff contacted Texas Ranger, Roland Castaneda, who recommended Plaintiff contact the state's Medicaid fraud division, in McAllen Texas. Plaintiff did so and reported these concerns to Hershel Price, a Medicaid investigator. Price immediately began to investigate Ms. Kury and her billing practices of BISD students.

47. On or about March or April, 2008, the Cameron County District Attorney's Office launched an investigation into the complaints raised by Plaintiff and issued subpoenas for BISD records. Mr. Saldana was notified of this matter, along with former Superintendent, Hector Gonzales.

48. Saldana made it clear to Plaintiff that he was upset that Plaintiff notified the District Attorney.

49. Plaintiff informed Mr. Saldana he would no longer look the other way. He further advised Saldana that he had reported to the Texas Education Agency ("TEA") that Mr. Jonas was advising parents not to settle the DPH complaints without mediation.

50. In addition, he reported the irregularities and unconventional handling of these mediations. Mr. Jonas' clients would attend a resolution meeting, and were instructed by Mr. Jonas to reject whatever offer was being made by the District.

51. After being forced into mediation, and after expending thousands of dollars of public funds toward legal fees for Mr. Jonas and Walsh, the parents settled the mediation by accepting what Plaintiff initially offered. The parents were never the recipients of any settlement fees.

52. In May, 2008, Plaintiff attended a focus group meeting in Austin with TEA. TEA invited Plaintiff because of the high number of DPH complaints that BISD received. Plaintiff conferred with TEA/IDEA general counsel, Sandy Lowe, and reported activities of Jonas, Kury, Walsh and the TEA hearing officers.

53. At the conclusion of the 2007-2008 school year, Plaintiff had to make arrangements to accommodate trustee Joe Colunga's special needs son in a program that had been in the same location for ten years.

54. Mr. Colunga did not approve of this program location, which was currently situated in a strip center off of the North Expressway and Price. Colunga insisted Plaintiff move the program to a new location.

55. The program was subsequently moved to the ITEC building, off of Mexico Boulevard. Two months after the program was moved, Colunga contacted Plaintiff, complaining he wanted the program relocated again.

56. Costing taxpayers an abundance of money, the program was relocated again, at the urging of Colunga. Colunga's constant harassment of Plaintiff was also witnessed by the BISD maintenance director, Rey Arteaga, who complained on more than one occasion, about the inappropriateness of Colunga's behavior to Plaintiff, the Superintendent and Dr. Sal Cavazos.

57. Once Plaintiff spoke to outside authorities, the DPH filings practically ceased. The CCDA office ran Jonas out of town.

58. On or about June, 2008, Ruben Cortez, a sitting School Board member of BISD, contacted Plaintiff directly via telephone. He instructed Plaintiff to hire his sister, Linda Aguilar, for summer school employment as a Special Education teacher.

59. Plaintiff informed Mr. Cortez that BISD had hiring policies in place and instructed him that the hiring applications for the summer of 2008 had already been accepted and processed.

60. Cortez sent Plaintiff his sister's application and insisted Plaintiff call her in immediately and give her a job. Plaintiff set up a meeting between Cortez' sister, Linda, Ana Lerma, who was a Special Education supervisor, and Dr. Lee Garcia, Assistant Director for Special Services. At this meeting, Ruben Cortez' orders were followed, and Linda Aguilar was given a job for the summer of 2008.

61. The first week of November, 2008, the BISD Trustee elections formed a new majority on the school board. The new majority is led by local attorney, Rick Zayas. Mr. Zayas had made it clear to everyone that if he was elected, his first priority would be to get rid of Plaintiff and Gonzalez.

62. Prior to being elected, Zayas was in possession of BISD documents, expenditure reports, budgets and e-mails, all involving Special Services department. It is unknown who was providing Zayas this information from the inside, but Zayas was determined to use employees to his fullest advantage.

63. One employee working closely with Zayas and the other trustees is Tony Fuller, Budget Coordinator at BISD. Mr. Fuller privately met Zayas at Zayas' office, prior to the first school board meeting.

64. At the School Board meeting, it was obvious that Mr. Zayas and Mr. Fuller had been meeting, evidenced by the orchestrated dialogue and premeditated responses Mr. Fuller was forced to answer; not to mention, Fuller admitted to these meeting sessions on record at Gonzalez' termination hearing.

65. On December 2, 2008, Plaintiff was discussed by Board Members Rolando Aguilar, Ruben Cortez, Rick Zayas and Joe Colunga, regarding agenda item 6.

66. Mr. Zayas, specifically, plotted with individuals in the budget department to discredit Plaintiff's department. Mr. Zayas purported Plaintiff illegally disbursed funds, from inappropriate accounts. Mr. Fuller insinuated Plaintiff mismanaged his department.

67. At this meeting, these four board members urged Hector Gonzalez to terminate Plaintiff. Mark Stevens, who works in the Finance Department for BISD, contacted Plaintiff's supervisor, Dr. Cavazos. Mr. Stevens admitted Mr. Fuller was not being honest in his presentation to the board, regarding the finances of Special Services.

68. After that Board Meeting, Plaintiff filed a grievance on December 15, 2008, which was later consolidated with another grievance on January 6, 2009.

69. Plaintiff was untimely given a negative evaluation by Supervisor Sal Cavazos, six months late. Plaintiff was given a low mark in the area of managing finances for the department.

70. This occurred despite the fact that in Plaintiff's first year as Administrator, 06-07 school year, he had reported in writing to his supervisors that the department was excessively staffed with both support staff and certified teachers.

71. Plaintiff also instructed BISD not to hire any new staff until all existing staff could be balanced district wide. This recommendation was ignored and BISD continued to hire Special Education staff for the 2007-2008 school year.

72. During the 2008-2009 school year, BISD finally accepted Plaintiff's recommendation and did not hire new staff. Instead, BISD began to balance existing staff district wide, in order to reduce budget, and froze all vacancies on the job listings.

73. On January, 27 2009, former Superintendent, Hector Gonzalez, was placed on administrative leave, and Attorney Rick Navarro was hired to investigate special services and superintendent.

74. During the course of Mr. Navarro's investigation, Plaintiff participated in two sworn depositions along with one informal meeting.

75. At each meeting with Mr. Navarro, Plaintiff provided extensive information, data, evidence regarding his outcry to the District Attorney, FBI, Texas Rangers and local law enforcement and the Medicaid Investigator, Hershel Price.

76. Plaintiff also gave Mr. Navarro five binders containing legal bills from Walsh, in order to show the exorbitant amount of money being billed by Walsh's exploitation of BISD.

77. By January 2009, BISD learns from Walsh lawyers that Mr. Jonas had been involved in a major automobile accident and was incapacitated. Despite this, Mr. Jonas represented two BISD parents with Ms. Kury's assistance.

78. These cases were not settled for at least three months. Walsh insisted that BISD pay settlement fees to Jonas, despite the fact that Plaintiff reported to Walsh that the parents had never seen Mr. Jonas.

79. Plaintiff also informed Walsh that after investigating the matter, he discovered Mr. Jonas was in a rehabilitation center.

80. Plaintiff e-mails interim superintendent, Springston, and advised him of the situation. Plaintiff contended that committing public funds under such circumstances could place the

district in an uncompromising situation, should it later surface that Mr. Jonas in fact was actually extorting money from BISD.

81. When Plaintiff requested itemized billing from Mr. Jonas, Walsh advised BISD that Mr. Jonas refused to provide the requested billing information to justify his settlement fee demands.

82. By April, 2009, Walsh lawyer, Paula Roalson, complained to Mr. Springston about Plaintiff's job performance.

83. Despite this, Plaintiff was given a new one year contract, for the 2009-2010 school year, on April 16, 2009. This contract was effectively signed by Mr. Springston and Mr. Aguilar, Board President, on May 6, 2009.

84. On May 15, 2009, the Board majority voted to propose termination of Hector Gonzalez as Superintendent of BISD.

85. On June 11, 2009, while Plaintiff was emailing a memo to his supervisor outlining harassment from the district, Plaintiff was contacted at home by BISD peace officers, with a letter from the School District, signed by Interim Superintendent Brett Springston.

86. This letter informed Plaintiff that he had been placed on administrative leave with pay, due to alleged unprofessional conduct.

87. On June 16, 2009, BISD Board of Trustees had a consultation with Ms. Eileen Leeds, the attorney hired to handle the investigation of Plaintiff.

88. Meanwhile, Kathleen Jimenez, a person with no administrative experience or holder of a proper certificate, was placed as interim Administrator for Special Services.

89. This did not shock the Special Services department, for Ms. Jimenez' husband, Dr. Jose Jimenez, was a contributor to Mr. Zayas' campaign.

90. During the summer of 2009 and throughout the 2009-2010 school year, Mr. Zayas began meeting with Ms. Jimenez frequently, in what was still considered Plaintiff's office, and it was no surprise that all of Plaintiff's personal documents and belongings were tampered with and destroyed.

91. In August of 2009, Mr. Gonzalez' Chapter 21 termination hearing was held. It lasted a week, and although the investigation was of the Special Services department, neither the Plaintiff nor Dr. de Alba was ever called to testify.

92. All of the exhibits produced by both Plaintiff and Dr. de Alba were never seen by the public, to refute the lies and false allegations concocted by the Board majority, Mr. Fuller, Mr. Saldana and Mr. Navarro.

93. At the beginning of the 2009-2010 school year, Ms. Leeds informed Plaintiff she was unaware of anything pertaining to Plaintiff's situation and would get some answers in the near future.

94. The response given by Ms. Leeds was after Mr. Gonzalez' received a response from the hearing examiner that his contract was effectively terminated. Plaintiff never heard from Ms. Leeds again.

95. By November 2009, a BISD board member confers with interim superintendent on the status of Plaintiff and asks that an agenda item be posted to review his status.

96. Superintendent Springston refused to post this as an agenda item. Instead, a new item was posted. This item proposed to hire Navarro to conduct an investigation of Plaintiff and Special Services.

97. Plaintiff then learned that Ms. Leeds informed the District she did not want to partake in this matter, and withdrew as Legal Counsel.

98. On November 17, 2009, Rick Navarro was voted, by the majority, Aguilar, Cortez, Colunga, Zayas, “finish up” the investigation. Mr. Navarro did not contact Plaintiff once for additional questioning. As a matter of fact, none of the key players were ever contacted again.

99. On March 30, 2010, Mr. Springston, Superintendent, sent Plaintiff notice of a recommendation for proposed non-renewal of term contract.

100. On April 6, 2010, the School Board had a meeting, at which the majority, Aguilar, Colunga, Cortez and Zayas voted to propose non-renewal of Plaintiff’s contract.

101. By this point, Plaintiff had yet to be informed of a legitimate reason for the administrative leave or the proposed non-renewal of his contract.

102. On April 12, 2010, Plaintiff received a detailed letter, with the *alleged* violations he committed. Plaintiff found this odd consider he never worked a day during the 2009-2010 school year, and considering he had not been formally evaluated by a Supervisor for over a year.

103. Plaintiff filed a Whistleblower grievance, still hoping to resolve this matter internally. The BISD Board of Trustees flat out denied Plaintiff any remedy at the Level III grievance on June 1, 2010.

104. Meanwhile, Plaintiff was assigned an attorney, Mr. Tony Connors, of Brim, Arnett, Robinett, Connors & McCormick, P.C. Plaintiff had been paying the Association of Texas Professional Educators part of his pay check throughout his tenure in the district, and Mr. Connors was one of the few attorneys *approved* to represent educators.

105. After realizing Mr. Connors was in cahoots with Mr. Navarro and Mr. Saldana, Plaintiff informed Mr. Connors he was going to have Mr. Perez, Ms. Jones and Mr. Neece assist him in this matter.

106. Upon review of the documents and e-mails exchanged between Mr. Navarro, Mr. Conners and Mr. Saldana, Plaintiff realized this whole 'due process' Ch. 21 non-renewal hearing was just as premeditated as the '*investigation*' conducted by Mr. Navarro.

107. Plaintiff filed a Motion to Disqualify Mr. Navarro. The following points were argued to the administrative judge: a) On behalf of BISD, Mr. Navarro was hired to do a 'neutral' investigation of the Special Services Department b) Mr. Navarro took two sworn statements from Plaintiff c) Plaintiff complied with every request in the production of documents to Mr. Navarro d) Former Superintendent, Hector Gonzalez, was terminated after Mr. Navarro prosecuted the matter e) Mr. Navarro was hired to finish up said 'neutral' investigation of Special Services and f) Mr. Navarro was hired to prosecute Mr. Rendon in the non-renewal hearing.

108. Plaintiff did not stand a fighting chance in winning this hearing, because Mr. Saldana had "run the traps" on the hearing examiner, whom Mr. Saldana and Mr. Navarro ultimately "approved."

109. Plaintiff non-suited this matter, because he witnessed how a Chapter 21 hearing detrimentally affects any hopes of obtaining employment with a school district.

F. COUNT ONE: 42 U.S.C. §1983

110. On June 13, 2009, Plaintiff was a public employee by the Brownsville Independent School District and served the District as Administrator of Special Services.

111. Brett Springston, the interim Superintendent and current Superintendent for BISD, Rick Zayas, sitting Board Member, Ruben Cortez, sitting Board Member, Joe Colunga, sitting Board Member, Rolando Aguilar, sitting Board Member, Susan Fox, Administrator of Human Resources and Tony Fuller, Budget Coordinator, were all public officials of BISD, when they

deprived Plaintiff of his rights under the First and Fourteenth Amendments to the U.S. Constitution in violation of 42 U.S.C. §1983.

112. Each person listed above was acting under color of the laws and regulations of the State of Texas and BISD. BISD has a policy which encourages employees to resolve matters within the District via its grievance procedures. If an employee has a complaint against a supervisor, it encourages the employee to bring said complaint to the Superintendent or Superintendent designee. These grievances never resolve anything, but it was unheard of for any employee to attempt to take such complaints and put them in the public eye. The exercise of this established policy, to keep quiet and resolve things via a grievance proceeding, resulted in the violation of Plaintiff's right of free speech.

G. COUNT TWO: VIOLATION OF CONSTITUTIONAL RIGHTS

113. Plaintiff has suffered adverse employment action. Plaintiff was harassed, defamed, investigated, put on administrative leave with pay for an entire school year and ultimately terminated from his position as Administrator of Special Services by BISD.

114. Plaintiff's statements to local authorities were a matter of public concern and are constitutionally protected under the First Amendment. During his employment, Plaintiff became aware of what he believed was systemic fraud. Plaintiff noticed irregularities in the Due Process Claims filed and suspected Medicaid fraud and abuse of the federal and state funds. This fraudulent scheme involved BISD and its legal counsel, Walsh, Anderson, Brown, Gallegos and Green, P.C., as well as Jonas and LPC Kury.

115. Plaintiff's interest in his statements and decision to inform local authorities outweighs any interest of BISD in promoting the efficient operations and administration of government

services. Plaintiff spoke out against this as a concerned citizen, in hopes that the public officials, law enforcement and the community would stop this abuse of the system. Plaintiff, as Administrator of Special Services, informed BISD and its legal counsel the severe and detrimental harm being caused to BISD students with special needs and the violations Plaintiff expressed concern about federal and state funds fraudulently being depleted, at the expense of the students under his care. Realizing BISD and its legal counsel were not going to stop this abuse, Plaintiff, a concerned citizen, contacted multiple authorities to help stop the systemic fraud taking place within the BISD District.

116. Plaintiff contacted Hershel Price, Medicaid Fraud Investigator with the Attorney General's Office, Cameron County District Attorney's Office and Texas Ranger, Roland Castaneda. In addition, Plaintiff implemented numerous changes within the Special Services Department, after numerous reports were produced by outside sources, affirming what Plaintiff suspected. Plaintiff's outcry to authorities, coupled with the changes made by Plaintiff within the department, drastically reduced the number of Due Process Complaints filed that year, cutting off the funds to those who tried to silence Plaintiff. Because of this, Plaintiff began to suffer disparate treatment and was plagued by Defendants' constant harassment and insults. Plaintiff's speech was a substantial and motivating factor in defendant's decision to non-renew Plaintiff's contract.

**H. COUNT THREE: FOURTEENTH AMENDMENT DENIAL OF DUE
PROCESS 42 U.S.C. §1983**

117. Plaintiff has had a contract with BISD for twenty-four years. Prior to reporting what Plaintiff believed to be state and federal violations to law enforcement, Plaintiff intended and assumed he would be with the district for at least eight more years, prior to retiring. Plaintiff's contract contends that his contract could be non-renewed for good cause, upon showing of said

good cause. In addition, BISD local and legal policy, DCB, states that every employee must be evaluated annually, but the Texas Education Agency urges Districts to have said evaluations done more frequently.

118. Plaintiff was placed on administrative leave June, 11, 2009, although his contract had been renewed less than one month earlier. He was not allowed on school grounds and could not contact any employee of BISD for the 2009-2010 school year. An evaluation was never done and the alleged investigation, conducted on two separate occasions by Navarro, was never conducted in a neutral manner.

119. BISD spent the entire 2009-2010 school year plotting and manipulating 'evidence' against Plaintiff, because BISD, the Board majority, Springston and Navarro knew they would be non-renewing Plaintiff at the end of the year. Upon the proposed non-renewal letter sent to Plaintiff, Plaintiff immediately filed a whistleblower grievance. Plaintiff still hoped to be afforded due process with BISD, although, he knew from past experience that none of the grievances filed against BISD had worked out before in his favor. Plaintiff was denied any relief at every level of the Whistleblower grievance.

120. Meanwhile, Plaintiff was preparing for the Chapter 21 non-renewal hearing. He was afforded no Due Process in this matter as well, and he saw how Springston, Saldana, Navarro and the Board majority manipulated the whole hearing process, leaving Plaintiff no imaginable way to overcome these orchestrated efforts of the District. Although Navarro had more than one year to plan for this non-renewal hearing, Plaintiff was burdened with the impossibility of trying to defend himself and sort through thousands of documents produced by BISD, all in one month's time. In addition, BISD made excessive discovery requests, but Plaintiff was not even allowed on campus to retrieve any documents or proof, to aid in his defense. Saldana, who was

essentially a witness for this hearing, was involved with Plaintiff's counsel, Tony Conners, and Navarro in selection of an independent hearing examiner, although Plaintiff requested for one to be appointed. Formally or informally, Plaintiff has never been given a fair, just hearing.

121. The Chapter 21 non-renewal hearing was Plaintiff's last chance of possibly receiving Due Process and vindicating himself. But after seeing that this was just as manipulated and concocted as the informal grievance hearings provided by the district, Plaintiff knows that as long as you are a school employee for BISD, Due Process does not exist.

I. COUNT FOUR: WHISTLEBLOWER CLAIM

122. Plaintiff was employed by defendant, Brownsville Independent School District, an entity of the local government.

123. Plaintiff became aware that three psychologists of BISD were violating federal regulations, such as Individuals with Disabilities Education Act (IDEA) and State Laws regarding Special Education. One of the employees, Roger Burns, who is now deceased, along with Legal Counsel, were especially aware of said violations.

124. Plaintiff, in good faith, reasonably believed that the psychologists' involvement in violations, and unwillingness to rectify said violations, coupled with the District's legal counsel, violated the law. When Plaintiff took over the Special Services department, his first mission was to ensure that the students were being properly tested and evaluated. While attempting this, Plaintiff became suspicious of a spike in Due Process Hearing Complaint filings.

125. Plaintiff reported the activity to Texas Ranger, Roland Castaneda, the Cameron County District Attorney's Office, Hershel Price, an investigator for the Attorney General's Medicaid Fraud unit and eventually the FBI in Brownsville.

126. Plaintiff's report resulted in constant harassment, administrative leave with pay for an entire year and ultimately the non-renewal of his contract.

127. Defendant's acts against Plaintiff were in retaliation for plaintiff's report and would not have occurred when they did but for the report. Numerous employees within the BISD district have specifically told Plaintiff of the corrupt events, within his department, they have witnessed in the year he was on administrative leave. Not one of these employees will speak out, because they know the same outcome will happen to them, they will be terminated.

128. Plaintiff's report to officials caused the eventual non-renewal of his contract. Plaintiff had worked as an educator in the district for over twenty years without one write up or negative evaluation. It was not until Plaintiff took over the Special Services Department and halted the illegal practices within, that he experienced two years of harassment and personal attacks. Although Plaintiff was told on numerous occasions to keep his mouth shut, Plaintiff did the opposite, crying out to officials for help. As soon as the District became aware Plaintiff had spoken with the District Attorney's Office, an orchestrated scheme by Zayas, Colunga, Aguilar, Cortez and Saldana began to play out in their favor. Once they rid themselves of Gonzalez, who would not support their request to terminate Plaintiff, they brought in Springston. In order to successfully finish up their dirty work, Navarro was hired on two different occasions to conduct a neutral investigation of the Special Services department, yet Navarro was the lead attorney in prosecuting both the termination of Gonzalez and the non-renewal of Plaintiff. If Plaintiff had allowed the district to keep the compadre system in place or if Plaintiff had turned a blind eye to the individuals billing the district for millions of dollars, Plaintiff would still be employed at BISD.

129. Defendant's conduct caused injury to plaintiff, which resulted in the following damages: past and future economic damages and past and future mental anguish damages,

130. Plaintiff seeks unliquidated damages within the jurisdictional limits of this court.

131. Attorney fees. Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Government Code section 554.003(a)(4).

J. COUNT FIVE: DEFAMATION

132. In addition to the other counts, defendant defamed plaintiff.

133. Defendants published statements by oral communication asserting as fact that Plaintiff misappropriated funds and committed illegal acts as an employee of BISD.

134. Defendants' statements involved a public issue, funds used for special needs children.

135. Defendants' statements were defamatory because it unambiguously alluded that Plaintiff misappropriated governmental funds, thus committing an illegal act.

136. In the alternative, Defendants' statements were defamatory by implying Plaintiff misappropriated governmental funds, if not criminally, then negligently. Tony Fuller, Budget Coordinator for BISD, conspired with Mr. Zayas, in attacking the credibility of Plaintiff's morale and conduct as an employee of BISD. Fuller insinuated on more than one occasion that Plaintiff committed an illegal act, in relation to his title as Administrator of Special Services. Mr. Zayas specifically said on the record, which is broadcasted via KBSD television, that Plaintiff misappropriated millions and millions of dollars, which could have subjected Plaintiff to criminal penalties, had that statement been true. Mr. Zayas also made a comment to sitting Board

Member Minerva Pena that he was going to get rid of Plaintiff at the very first Board meeting. Mr. Zayas was telling Ms. Pena that Plaintiff was a political appointment and was not the right person for the job. By the third Board meeting, Mr. Zayas told the minority Board Members that he did not want Plaintiff in that position because of his unethical behavior.

137. Since these initial statements were made, Defendants, especially the majority Board Members, have brought up Plaintiff on numerous occasions at the Board meetings, discussing the alleged misconduct and his unethical behavior. On more than one occasion they have attacked his credibility in relation to the spending of governmental money and his ability to run a department such as Special Services.

138. Defendant's statement referred to plaintiff directly, as Art Rendon, Administrator of Special Services.

139. Defendants' statements were libel per se as defined by Texas Civil Practices and Remedies Code Section 73.001. Defendants' statements injured Plaintiff's reputation and exposed Plaintiff to public hatred, contempt, ridicule and financial injury.

140. Defendants' statements were false, because Plaintiff never misappropriated funds and never committed any illegal acts as Administrator of Special Services.

K. DAMAGES

141. As a direct and proximate result of defendant's conduct, Plaintiff suffered the following injuries and damages:

- a) Lost earnings.

- b) Loss of earning capacity.
- c) Damage to reputation in the past and future.
- d) Mental anguish in the past and future.
- e) Loss of pension or retirement benefits.

L. ATTORNEYS' FEES

142. Plaintiff is entitled to an award of attorney fees and costs under 42 U.S.C. 1983.

143. Plaintiff is entitled to an award of attorney fees and costs under the Whistleblower statute.

M. PRAYER

144. For these reasons, plaintiff asks for judgment against defendant for the following:

- a) Economic damages, past and future: Plaintiff's salary was \$102,000.00 at the time the adverse action was taken against Plaintiff; therefore, damages would be that period of time, times \$102,000.00 annually. Plaintiff is entitled to future economic earnings of \$102,000.00 from the date of trial until the end of Plaintiff's work life, which would be approximately eight more years.
- b) Mental anguish, past and future, at an amount determined by the jury.
- c) General damages.
- d) Reinstatement of position.
- e) Reasonable attorney's fees of \$250.00 per hour.
- f) Costs of suit.
- g) All other relief the court deems appropriate.
- h) Pre-judgment and post-judgment interest as allowed by law.

Respectfully submitted,

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