

XIII. Appendix

EXHIBITS for CHIEF JUSTICE, CLERK OF CHIEF JUSTICE

Judicial Orders and Judgements for All Related Cases:

Exhibit 1: Rafael Cezar Danam vs. Arizona Board of Education, Petition for Writ of Certiorari from Court of Appeals of Arizona, Division One, SUPREME COURT OF THE UNITED STATES Case No. 20-5831. Denied Petition for Writ of Certiorari December 7, 2020

Exhibit A: Arizona State Board of Education (AZSBE) vs. Rafael C. Danam, AZSBE Admin. Case No.: C-2016- 585. Order entered October 23, 2017; Appeal rehearing denial order February 26, 2018

Exhibit B: Rafael Cezar Danam vs. Arizona Board of Education, Maricopa County Superior Court Case No.: LC2018-00093-001. Judgement entered March 2, 2018

Exhibit C: Rafael Cezar Danam vs. Garnett Winders, Maricopa County Superior Court Case No.: CV 2018-051493. Judgement entered 2018.

Exhibit D: Rafael Cezar Danam vs. Arizona Board of Education, U.S. District Court of Arizona Case No.: CV-18-1493-PHX-DGC. Judgement entered May 30, 2019.

Exhibit F: Rafael Cezar Danam vs. Arizona Board of Education, Court of Appeals- Division One Case No.: 1 CA-CV 18-0668. Judgement entered October 31, 2019; Finalized April 23, 2020.

Exhibit G: Rafael Cezar Danam vs. Arizona Board of Education, Arizona Supreme Court Case No.: CV-19-0284. Denial of review entered April 23, 2020.

Exhibit H: Rafael Cezar Danam vs. Arizona Board of Education, U.S. District Court of Arizona Case No. CV-20-02489-PHX-MTL. Judgement entered August 9, 2021.

Exhibit I: Rafael Cezar Danam vs. Elaine Kelley, U.S. District Court of Nevada Case No.: 2:19-CV-01606-JAD-DJA. Judgement entered April 14, 2020.

Exhibit J: Rafael Cezar Danam vs. Elaine Kelley, Supreme Court of the State of Nevada Case No.: 82036. Judgement entered

Exhibit K: National Association of State Directors of Teacher Education and Certification (“NASDTEC”)

Exhibit L: Arizona Department of Administration, Risk Management Division, *Rafael Cezar Danam vs. Arizona Board of Education*

SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

XIII. Appendix

EXHIBITS for CHIEF JUSTICE, CLERK OF CHIEF JUSTICE

Judicial Orders and Judgements for All Related Cases:

Exhibit 1: Rafael Cezar Danam vs. Arizona Board of Education, Petition for Writ of Certiorari from Court of Appeals of Arizona, Division One, SUPREME COURT OF THE UNITED STATES Case No. 20-5831. Denied Petition for Writ of Certiorari December 7, 2020

Exhibit A: Arizona State Board of Education (AZSBE) vs. Rafael C. Danam, AZSBE Admin. Case No.: C-2016- 585. Order entered October 23, 2017; Appeal rehearing denial order February 26, 2018

Exhibit B: Rafael Cezar Danam vs. Arizona Board of Education, Maricopa County Superior Court Case No.: LC2018-00093-001. Judgement entered March 2, 2018

Exhibit C: Rafael Cezar Danam vs. Garnett Winders, Maricopa County Superior Court Case No.: CV 2018-051493. Judgement entered 2018.

Exhibit D: Rafael Cezar Danam vs. Arizona Board of Education, U.S. District Court of Arizona Case No.: CV-18-1493-PHX-DGC. Judgement entered May 30, 2019.

Exhibit E: Rafael Cezar Danam vs. Arizona Board of Education, Court of Appeals- Division One Case No.: 1 CA-CV 18-0668. Judgement entered October 31, 2019; Finalized April 23, 2020.

Exhibit F: Rafael Cezar Danam vs. Arizona Board of Education, Arizona Supreme Court Case No.: CV-19-0284. Denial of review entered April 23, 2020.

Exhibit G: Rafael Cezar Danam vs. Arizona Board of Education, U.S. District Court of Arizona Case No. CV-20-02489-PHX-MTL. Judgement entered August 9, 2021.

Exhibit H: Rafael Cezar Danam vs. Elaine Kelley, U.S. District Court of Nevada Case No.: 2:19-CV-01606-JAD-DJA. Judgement entered April 14, 2020.

Exhibit I: Rafael Cezar Danam vs. Elaine Kelley, Supreme Court of the State of Nevada Case No.: 82036. Judgement entered

Exhibit J: National Association of State Directors of Teacher Education and Certification ("NASDTEC")

Exhibit K: Arizona Department of Administration, Risk Management Division, Rafael Cezar Danam vs. Arizona Board of Education

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: 1

Exhibit 1: Rafael Cezar Danam vs. Arizona Board of Education, Petition for Writ of Certiorari from Court of Appeals of Arizona, Division One, SUPREME COURT OF THE UNITED STATES Case No. 20-5831. Denied Petition for Writ of Certiorari December 7, 2020

Petitioner/Plaintiff presents APPENDIX 1: EXHIBIT (1) in accordance RULES 33, 34.4 cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

Scott S. Harris
Clerk of the Court
(202) 479-3011

December 7, 2020

Mr. Rafael Cezar Danam
P.O. Box 336707
North Las Vegas, NV 89033

Re: Rafael Cezar Danam
v. Arizona Board of Education
No. 20-5831

/ Dear Mr. Danam:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

Scott S. Harris, Clerk

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-5831.html#>

Supreme Court of the United States

1 First Street, NE

Washington, DC 20543

CASE No. 20-5831 RAFAEL CEZAR DANAM v. ARIZONA BOARD OF EDUCATION

| | |
|------------------------------------|---|
| No. 20-5831 | |
| Title: | Rafael Cezar Danam, Petitioner v. Arizona Board of Education |
| Docketed: | September 28, 2020 |
| Lower Ct: | Court of Appeals of Arizona, Division One |
| Case Numbers: | (1 CA-CV 18-0668) |
| Decision Date: | October 31, 2019 |
| Discretionary Court Decision Date: | March 31, 2020 |

| DATE | PROCEEDINGS AND ORDERS |
|-------------|--|
| Jul 13 2020 | Petition for a writ of certiorari and motion for leave to proceed in forma pauperis fil (Response due October 28, 2020) <u>Motion for Leave to Proceed in Forma PauperisPetitionAppendixProof of Service</u> |
| Oct 22 2020 | Waiver of right of respondent Arizona Board of Education et al. to respond filed. <u>Main Document</u> |
| Nov 12 2020 | DISTRIBUTED for Conference of 12/4/2020. |
| Dec 07 2020 | Petition DENIED. |

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-5831.html#>

Supreme Court of the United States

1 First Street, NE

Washington, DC 20543

CASE No. 20-5831 RAFAEL CEZAR DANAM v. ARIZONA BOARD OF EDUCATION

| NAME | ADDRESS | PHONE |
|---|---|--------------|
| Attorneys for Petitioner | | |
| Rafael Cezar Danam | P.O. Box 336707 North Las Vegas, NV 89033 | 909-297-0171 |
| Party name: Rafael Cezar Danam | | |
| Attorneys for Respondent | | |
| Kim S Anderson | Office of the Arizona Attorney General/Education and Health Section 2005 North Central Avenue Phoenix, AZ 85004-1592 educationhealth@azag.gov | 602-364-0402 |
| Party name: Arizona Board of Education et al. | | |

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: A

*Exhibit A: Arizona State Board of Education (AZSBE) vs. Rafael C. Danam, AZSBE Admin.
Case No.: C-2016- 585. Order entered October 23, 2017; Appeal rehearing denial order
February 26, 2018*

**Petitioner/Plaintiff presents APPENDIX A: EXHIBIT (A) in accordance RULES 33, 34.4
cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.**



Arizona State Board of Education

1700 W. Washington Street
Executive Tower, Suite 300
Phoenix, Arizona 85007
(602) 542-5057
FAX (602) 542-3046
azsbe.az.gov
inbox@azsbe.az.gov

March 2, 2018

Sent via USPS certified mail no.
7014 2120 0004 5952 7669

Rafael Danam
5635 Pasadena Rd
Fort Mohave, Arizona 86426

RE: Rafael Danam
Case No. C-2016-585
Educator 471-3856

Re: **BOARD ORDER TO DENY MOTION FOR REHEARING**

Dear Rafael Danam,

Attached please find the decision of the Arizona State Board of Education ("Board") in the above-referenced matter. The Board's consideration and discussion of this matter is available at <https://azsbe.az.gov/public-meetings>.

Please be advised that A.R.S. §15-534.02 (A)(2) and (C) state that a person shall not submit an application for certification with the State Board of Education for a period of five years from the date that the Board makes a final decision to revoke a certificate.

If you have any questions or concerns, please contact the State Board office at (602) 542-5057.

Respectfully,

Soyica White

Soyica White
Director of Special Projects
State Board of Education

enc.

Board Members:

President: Luke Narducci • **Vice President:** Dr. Daniel Corr
Superintendent of Public Instruction: Diane Douglas
Calvin Baker • Jill Broussard • Christine Burton • Dr. Rita Cheng • Janice Mak • Michele Kaye • Jared Taylor • Patricia Welborn
Executive Director: Alicia Williams

1 **BEFORE THE ARIZONA STATE BOARD OF EDUCATION**

2 In the Matter of:

Case No. C-2016-585

3 **Rafael Danam**

BOARD ORDER

4
5 Holder of Arizona Education Certificate(s),
6 Educator Identification No(s). 471-3856

7 Respondent.

8 On February 26, 2018, the Arizona State Board of Education (the "Board") met to
9 consider the Motion for Rehearing filed by Rafael Danam, who was in attendance at the
10 meeting.

11 The Board, having reviewed the administrative record, Mr. Danam's Motion for
12 Rehearing, "Appeal Brief" and exhibits, and the State's Response, determines that Mr.
13 Danam failed to establish any basis that would merit a rehearing under Board Rule R7-2-
14 709(B). The Board therefore denies Mr. Danam's Motion for Rehearing, and affirms its
15 October 23, 2017 decision in the above-captioned matter.

16
17 DATED this 2nd day of March, 2018.

18
19 

20 _____
21 Lucas Narducci, President
22 Arizona State Board of Education
23
24
25
26
27

ORIGINAL of the foregoing
filed this 5 day of March, 2018,
with:

Arizona State Board of Education
1700 W. Washington Street, Suite 300
Phoenix, Arizona 85007

COPY of the foregoing mailed
this 6 day of March, 2018, to:

Rafael Danam
6104 W. Townley Avenue
Glendale, Arizona 85007
Respondent

COPY of the foregoing mailed electronically
this _____ day of _____, 2018, to:

Eric Schwarz
Assistant Attorney General
Arizona Attorney General's Office
Education and Health Section
eric.schwarz@azag.gov
Attorneys for the State of Arizona

By KW

1 **BEFORE THE ARIZONA STATE BOARD OF EDUCATION**

2 In the Matter of:

Case No. C-2016-585

3 **RAFAEL DANAM,**

4 **FINDINGS OF FACT,**
5 **CONCLUSIONS OF LAW, AND**
6 **ORDER**

7 Holder of Arizona Education Certificate(s),
8 Educator Identification No. 471-3856,

9 Respondent.

10 On October 23, 2017, the Arizona State Board of Education (the "Board") met to
11 consider the recommended decision of the Professional Practices Advisory Committee
12 ("PPAC") in the above-captioned matter. The recommended decision is attached hereto and
13 incorporated herein by reference. Alicia Williams, Deputy Director of Board Policy and
14 Initiatives, addressed the Board. Rafael Danam represented himself and addressed the
15 Board.

16 The Board, having reviewed the administrative record and the attached PPAC's
17 recommended Findings of Fact, Conclusions of Law, and Recommendation in this matter,
18 and having considered the arguments of the parties and fully deliberating the same, takes the
19 following actions on the recommended decision and issues its order as set forth below:

20 **FINDINGS OF FACT**

- 21 1. Adopt Findings of Fact Nos. 1 through 4 in their entirety.
- 22 2. Modify¹ Finding of Fact No. 5 as follows:

23 Beginning in August of 2016, Respondent worked as a long-
24 term Substitute teacher for a 4th grade class at Diamondback
25 Elementary School ("Diamondback") in the BCESD. While
26 working in that position, Respondent did not have a contract
27 and he was paid the daily rate for a *long-term* Substitute
 teacher, which was \$130.00.

¹ Modifications to the Findings of Fact are indicated in italics.

1 This modification is made to accurately reflect the testimony of Principal Martin
2 Muecke. This modification is supported by the testimony of Mr. Muecke contained in the
3 Reporter's Transcript of Proceedings Re: Complaint Hearing, 09/12/17 ("Transcript"), at
4 31:2 to 32:2.

5 3. Adopt Findings of Fact Nos. 6 through 9 in their entirety.

6 4. Modify Finding of Fact No. 10 as follows:

7 The 4th grade students were already inside the classroom, and
8 Respondent began speaking to the students while Ms. Kapusta
9 observed. Respondent told the 4th grade students that he would not
10 be their teacher anymore, and he became very emotional and began
11 to cry. Respondent also told the students that he wanted them to go
12 home and tell their parents what Mr. Muecke and the school had
13 done to him.

14 This modification is made to accurately reflect the testimony of Laura Kapusta. This
15 modification is supported by the testimony of Ms. Kapusta contained in the Transcript at
16 54:13 to 56:4 at 61:15-22.

17 5. Adopt Findings of Fact Nos. 11 through 18 in their entirety.

18 6. Modify Finding of Fact No. 19 as follows:

19 Mr. Muecke and Mr. Hookstra felt threatened by Respondent's
20 statements in the email and fax described in paragraphs 17 and 18
21 above, and on September 28, 2016 Mr. Muecke went to the Bullhead
22 City Municipal Court and filed for an Injunction Against Workplace
23 Harassment ("Injunction") against Respondent. That Injunction was
24 granted on September 28, 2016, and Respondent then requested a
25 hearing regarding the Injunction. [Exh. 16]

26 This modification is made for the reason that there is a misstatement in the reference
27 to the numbered paragraphs of the PPAC's proposed Findings of Fact. This modification is

1 supported by the testimony of Mr. Muecke contained in the Transcript at 36:22 to 41:25 and
2 the testimony of Mr. Hookstra at 70:24 to 72:10.

3 7. Adopt Findings of Fact Nos. 20 through 30 in their entirety.

4 **CONCLUSIONS OF LAW**

5 1. Adopt Conclusions of Law Nos. 1 through 12 in their entirety.

6 **ORDER**

7 Adopt the recommended order of the PPAC that any and all teaching certificates held
8 by Rafael Danam be revoked and that all states and territories be so notified.

9 **NOTICE**

10 The parties are hereby notified that, pursuant to A.R.S. §§ 15-203(A)(14) and (20)
11 and 41-1062(B), this Order shall be final unless a party submits a written motion for review
12 of the decision with the Board under A.A.C. R7-2-709(H) within twenty (20) days after
13 service of this Order; or a written motion for rehearing of the decision with the Board under
14 A.A.C. R7-2-709(A) within thirty (30) days after service of this Order. The motion for
15 review or rehearing must specify the particular grounds upon which it is based as stated in
16 Board rule. A copy must be served upon all other parties to the hearing. In the alternative,
17 the parties may seek judicial review of the Board's decision pursuant to A.R.S. § 12-904
18 within thirty five (35) days after service of this Order. A party is not required to file a
19 motion for review or rehearing of the Board's decision in order to exhaust the party's
20 administration remedies.

21 DATED this 23rd day of OCTOBER, 2017.

22
23
24 Tim Carter
25 Tim Carter, President
26 Arizona State Board of Education
27

1 **ORIGINAL** of the foregoing
2 filed this 31 day of October, 2017,
3 with:

4 Arizona State Board of Education
5 1700 W. Washington Street, Suite 300
6 Phoenix, Arizona 85007

7 **COPY** of the foregoing mailed
8 this 31 day of October, 2017, to:

9 Rafael Danam
10 ~~5635 Pasadena Rd.~~ 6104 W. Townley Avenue
11 ~~Fort Mohave, Arizona 86426~~ Glendale, AZ 85301
12 Respondent

13 **COPY** of the foregoing mailed electronically
14 this 31 day of October, 2017, to:

15 Eric Schwarz
16 Assistant Attorney General
17 Arizona Attorney General's Office
18 Education and Health Section
19 eric.schwarz@azag.gov
20 Attorneys for the State of Arizona

21 By KW
22
23
24
25
26
27

1 KAROL SCHMIDT
2 EXECUTIVE DIRECTOR
3 STATE BOARD OF EDUCATION
4 1700 W. Washington Street, Suite 300
5 Phoenix, Arizona 85007
6 Complainant

7 **BEFORE THE ARIZONA STATE BOARD OF EDUCATION**
8 **THROUGH THE PROFESSIONAL PRACTICES ADVISORY COMMITTEE**

9 In the Matter of:

Case No. C-2016-585

10 **RAFAEL DANAM,**

11 **FINDINGS OF FACT,**
12 **CONCLUSIONS OF LAW,**
13 **RECOMMENDATION**

14 Holder of Arizona Education Certificate(s),
15 Educator Identification No. 471-3856,

16 Respondent.

17 The Professional Practices Advisory Committee ("PPAC") hereby submits these
18 Findings of Fact, Conclusions of Law, and Recommendation regarding Rafael Danam to the
19 Arizona State Board of Education.

20 **I. FINDINGS OF FACT**

21 1. The Arizona State Board of Education ("Board") is the duly constituted
22 authority that supervises and controls the certification of persons engaged in instructional
23 work in Arizona public educational institutions below the community college, college, or
24 university level.

25 2. Rafael Danam ("Respondent") holds State of Arizona certificate(s) under
26 Educator Identification No. 471-3856. [Exh. 1]

1 3. Respondent holds a Substitute certificate, which expires January 8, 2022.
2 [Exh. 1]

3 4. From approximately September 1, 2015 through September 21, 2016,
4 Respondent was employed as a Substitute teacher by the Bullhead City Elementary School
5 District #15 ("BCESD") located in Bullhead City, Arizona. [Exhs. 2, 3]

6 5. Beginning in August of 2016, Respondent worked as a long-term Substitute
7 teacher for a 4th grade class at Diamondback Elementary School ("Diamondback") in the
8 BCESD. While working in that position, Respondent did not have a contract and he was
9 paid the daily rate for a Substitute teacher, which was \$90.

10 6. In September of 2016, Martin Muecke, the Principal at Diamondback, decided
11 that he was going to relieve Respondent of his long-term Substitute teacher assignment
12 because another Diamondback teacher who had been out on medical leave, but who was
13 fully certified and not just certified as a Substitute, was ready to return to work.

14 7. Mr. Muecke attempted to arrange a meeting with Respondent for 4:00 p.m. on
15 Wednesday, September 21, 2016, at which time he was going to inform Respondent that he
16 was being relieved of his Substitute teacher assignment with the 4th grade class. However,
17 Respondent informed Mr. Muecke that he would not be able to attend a meeting at that time.

18 8. Mr. Muecke then encountered Respondent during the lunch period on
19 September 21, 2016, shortly after noon, and at that time Mr. Muecke informed Respondent
20 that he was being relieved of his Substitute teacher assignment with the 4th grade class
21 effective at the end of the following school day, Thursday, September 22, which was the last
22 school day of the week.

23 9. Respondent then headed back to the 4th grade classroom where he had been
24 working, and along the way he encountered Instructional Aide Laura Kapusta. Respondent
25
26
27

1 told Ms. Kapusta that he needed her to come into his classroom because he needed "a
2 witness", and Ms. Kapusta followed Respondent into the classroom.

3 10. The 4th grade students were already inside the classroom, and Respondent
4 began speaking to the students while Ms. Kapusta observed. Respondent told the 4th grade
5 students that he would not be their teacher anymore, and he became very emotional and
6 began to cry. Respondent also told the students that he wanted them to go home and tell
7 their parents what Mr. Muecke and the school had done to him and to have their parents go
8 to the district and tell them how unfair this was.

9 11. The students became very upset after hearing Respondent's statements and
10 seeing him crying, and they began crying too. Mr. Muecke soon arrived in the classroom
11 and told Respondent to go home immediately. After Respondent left, Diamondback staff
12 took steps to calm the students down and to help them regain their composure.

13 12. After Respondent left the Diamondback campus, he went to the BCESD
14 district offices and met with Benje Hookstra, who was the BCESD Assistant Superintendent
15 at that time. Mr. Hookstra informed Respondent that he was aware that Mr. Muecke had
16 relieved Respondent of his Substitute teaching assignment and that he supported Mr.
17 Muecke's decision.

18 13. On September 22, 2016, Mr. Hookstra filled out and signed an "Employee
19 Separation Form" for Respondent indicating that Respondent was being involuntarily
20 terminated. The Involuntary Termination Codes cited by Mr. Hookstra on that form were
21 "Unsatisfactory Work Performance" and "Non Compliance with Rules". [Exh. 3]

22 14. Shortly after he was relieved of his Substitute teaching assignment by Mr.
23 Muecke, Respondent embarked on an email campaign against Mr. Muecke and Mr. Hookstra
24 that included emails sent to Mr. Muecke and Mr. Hookstra, as well to BCESD personnel,
25
26
27

1 Bullhead City officials, Bullhead City community leader, and parents of Diamondback
2 students. Included in those emails were demands for hearings and investigations regarding
3 Mr. Muecke and Mr. Hookstra, and threats of civil lawsuits against Mr. Muecke and Mr.
4 Hookstra. [Exhs. 4-14]

5 15. Among the emails that Respondent sent to parents of Diamondback students,
6 Respondent attempted to recruit parents to file complaints against Mr. Muecke and Mr.
7 Hookstra with such entities as the BCESD, the police, and the Arizona State Board of
8 Education. Additionally, Respondent told parents that he was going to file lawsuits against
9 Mr. Muecke and Mr. Hookstra and that he was going to give some of the money he received
10 from the lawsuits to their children. Respondent even suggested to parents that they could
11 receive large cash payments if a class action lawsuit was filed. Respondent also urged
12 parents to have their children examined by a doctor for alleged emotional and psychological
13 distress. [Exhs. 4-14]

14 16. Some excerpts from emails Respondent sent to parents of Diamondback
15 students include the following [quotations typed as written]:

16 a. "I am convinced upon thorough investigation serious violations on the part of
17 Martin Muecke and Benji Hookstra will reveal corrupt and unprofessional
18 practices directly violating principles of the United States Constitution and
19 Laws and of The Constitution of the State of Arizona and Laws." [Exh. 6]

20 b. "Additional amended request in accordance with discovery procedures,
21 proceedings in preparation of legal litigation and potential criminal and civil
22 prosecution arr formally in process against Martin Muecke and Benji Hookstra.
23 As civilians and authorities to your children I request you motion to Governing
24 Board of Bullhead City Elementary SD the suspension of Martin Muecke and
25
26
27

Benji Hookstra until completion of thorough process review of facts, evidence and proof admissible to Superior Court of Arizona." [Exh. 6]

c. "I have been specifically asked to assist with required procedures in initiating official complaint. . . . Parents you are authorized to officially request Peace Officers identified to initiate official report." [Exh. 8]

d. "(2) LEGAL ACTIONS:

1.) CIVIL LAWSUIT(S) against MARTIN MUECKE & BENJIE HOOKSTRA by RAFAEL C. DANAM for

Defamation of Character, Libel, and Emotional Distress AZ Tort Law

Amount(s): Each Defendant (MARTIN MUECKE & BENJIE HOOKSTRA)

\$9,999.99 maximum for tort violations in Small Claims Court. Total

compensation \$19,999.98

Distribution of Awarded Monetary Damages:

All (26) Students from current class will receive \$260.00 for a total of \$6,760.00

All (22) Students from former class will receive \$260.00 for a total of \$5,720.00

Combined Total for Students: \$12,480.00

...

3.) Parents it is highly recommended you are educated on compensation your child can be awarded from a civil lawsuit via CLASS ACTION LAWSUIT FIRM representing your collective interest for your child's emotional distress and psychological damages. Estimation of collective award can be from \$100,000.00 to over \$1,000,000.00-plus of monetary damages.

...

PLEASE review this email with scrutiny and thoroughness and I pray you are a diligent advocate for your child." [Exh. 10]

- e. "I am officially aware by multiple accounts by parents that my current and last year's 4th grade students are in serious emotional distress, my encouragement is get a medical record via doctor appointment for emotional and psychological distress, than as a parent to parent love them as you do. There are I believe over 200+ students from Diamondback Elementary School experience this which should be an immense warning sign something very bad happened. I would email all these individuals and keep records the way this is going the State of Arizona will investigate as soon as you the parents file complaints. For emails for immediate action email the following: [email addresses for Mayor of Bullhead City; Superintendent of BCESD; Manager of Bullhead City; Police detective] These people should give you all direct resources for official and formal complaint that warrants thorough investigation." [Exh. 11]
- f. "NOTE: I have initiated a complaint already, every parent should finalize official action by submitting investigation request." [Exh. 12]
- g. "(3) Affidavits & Official Statements required for my defense and future civil lawsuits: I have obtained Affidavits from prior and present 4th grade student parents. I am requesting additional for support to ensure justice and equality/equity under the law is applied to the malicious illegal actions of representatives of BCESD #15. The Affidavit attached for those completing needs to be completed by WEDNESDAY, OCTOBER 5, 2016 at 12 noon so I can register and submit my case. (4) Remaining legal and investigation actions

will include: State Board of Education Arizona, civil lawsuits by Mr. Danam against BCESD #15, Martin Muecke & Benje Hookstra.” [Exh. 13]

- h. “(2) I am aware some parents are uncomfortable getting involved, but I must emphasize not only was your child directly affected to cause ‘emotional distress’ and ‘psychological injury’ resulting in profuse tears (a lot of crying), that has affected your child’s health, and it is estimated that 200-300 of the 600+ students at Diamondback Elementary School suffered crying and depression because of the illegal actions of Martin Muecke & Benje Hookstra. . . . (6) Those completing Affidavits, I need them tomorrow, *Wednesday, October 5th, 2016* by 12 noon so I can file with court. THANKS!!! RAFAEL DANAM, The Jedi Master/Ninja Turtle” [Exh. 14]

17. In a 23-page attachment to an email that Respondent sent to numerous individuals, including Mr. Muecke and Mr. Hookstra, on September 24, 2016, Respondent devoted an entire section to directly addressing Mr. Muecke and Mr. Hookstra. Respondent began that section with the salutation “TO MARTIN MUECKE & BENJI HOOKSTRA”, and in that section Respondent wrote, in part, the following [quotations typed as written]:

- a. “Your personal and concurring collective actions, that have resulted in current circumstances are the direct consequence of your actions, as prescribed by the omnipotent standards of ethics, morals and professional conduct the Founding Fathers of the United States of America often alluded to in personal and public discourse citing the providential text of the Scripture, ‘Whoever sows injustice reaps calamity...’ (Proverbs 22:8, NIV)”
- b. “Be assured that exact and precise justice will be manifested”

- 1 c. "You will not escape the consequences you have permeated by removing all
2 internet access via my BCESD #15 assigned email domain"
- 3 d. "Be assured my resolve is as solid as Plymouth rock and I will endeavor to
4 right the wrongs you both have instigated and perpetrated against a citizen and
5 veteran of innocent virtues and ambitions"
- 6 e. "The emotional distress and harm you have caused minors in your care is
7 utterly reprehensible and worthy of the severest consequences to include your
8 own termination from Bullhead City Elementary School District #15."
- 9 f. "Lasciate ogne speranza, voi ch'intrate." [Which, according to Respondent's
10 footnote, translates to "abandon all hope, ye who enter here"]
11 [Exh. 7]

12 18. On or about September 27, 2016, Respondent sent a one-page fax to various
13 schools in BCESD, including Diamondback. That document states, in part [typed as
14 written]:

15 Justice, Vindication & Vengeance "Justitia, Vindicatia Et Vindicta" : Lesson 1

16 For

17 ***Martin Muecke "Actus Reus" & Benjie Hookstra "Actus Reus"***

18 References:

19 "EST ENIM MIHI VINDICTAM EGO RETRIBUAM DICIT DOMINUS"

20 ...

21 According to a footnote Respondent included at the bottom of that document, the phrase that
22 begins "EST ENIM MIHI ..." translates to "Vengeance is MINE, I will repay." [Exh. 15]

23 19. Mr. Muecke and Mr. Hookstra felt threatened by Respondent's statements in
24 the email and fax described in paragraphs 15 and 16 above, and on September 28, 2016 Mr.

1 Muecke went to the Bullhead City Municipal Court and filed for an Injunction Against
2 Workplace Harassment ("Injunction") against Respondent. That Injunction was granted on
3 September 28, 2016, and Respondent then requested a hearing regarding the Injunction.
4 [Exh. 16]

5 20. After a hearing in Bullhead City Municipal Court on October 6, 2016, at which
6 Respondent appeared, the Court ordered that the Injunction would remain in effect. To date,
7 that Injunction is still in effect. [Exh. 17]

8 21. On October 13, 2016, Investigator David W. Spelich of the Investigative Unit
9 of the Arizona Department of Education sent a "Notice of Investigation" letter to Respondent
10 notifying Respondent that he was the subject of an investigation of alleged misconduct.
11 [Exh. 18] The letter states, in part [typed as written]:

12 The Investigative Unit is investigating allegations that on 21 Sep. 2016,
13 you inflicted emotional distress on your class by involving them in a
14 private employment matter. It is further alleged that on the 24th and 28th
15 Sep. 2016, you sent threatening and menacing letters to the school
16 faculty and administration putting them in fear of their lives. The
17 allegations states that you may have acted in an unprofessional manner
18 in violation of the standards of conduct set by the Arizona State Board
19 of Education ("Board"). See Arizona Administrative Code R7-2-1308.

20 This letter is to inform you that the Investigative Unit of the Arizona
21 Department of Education ("Department") is presently conducting an
22 investigation into this matter. After a comprehensive review of this
23 matter, the Department may pursue disciplinary action against your
24 certificate.
25
26
27

1 22. Respondent received that October 13, 2016 "Notice of Investigation" letter. In
2 an eight-page document dated October 14, 2016, Respondent acknowledged having received
3 the October 13, 2016 letter, and he offered written responses to the allegations contained in
4 the October 13, 2016 letter. [Exh. 19]

5 23. On October 14, 2016, Investigator Spelich interviewed Respondent regarding
6 the investigation.

7 24. On March 10, 2017, Respondent submitted an application for employment as a
8 teacher to the Laveen Elementary School District ("LESD").

9 a. On that LESD application form, Respondent answered "No" to the question
10 "Have you ever been the subject of a school district or Department of
11 Education (in any state) investigation, inquiry, or review of alleged
12 misconduct?"

13 b. Respondent affirmed his agreement with all of the terms contained in the
14 LESD application form, including the following: "I affirm that all information
15 set forth in this application is accurate, truthful and complete. . . . In the event
16 that I am employed by the District and in the further event that I have provided
17 false or misleading information in this application or in subsequent
18 employment interviews, I understand that my employment may be terminated
19 at any time after the discovery of the false or misleading information."

20 [Exh. 21]

21 25. On April 11, 2017, Respondent was hired as a teacher by LESD for the 2017-
22 2018 schoolyear beginning July 24, 2017 and ending May 24, 2018. The Certified
23 Employment Contract that Respondent signed on April 11, 2017, for the 2017-2018
24 schoolyear contains the following provision: "Teacher affirms that all Teacher's

1 representations in this Contract, the Teacher's employment application, and any other
2 document or oral statement submitted to the District concerning qualifications, fitness to
3 teach, and representations about arrest and conviction record are true and accurate." [Exh.
4 20]

5 26. On May 16, 2017, Holly King, LESD Human Resources Certified Specialist,
6 was notified that Respondent was under investigation by the Arizona Department of
7 Education. [Exh. 21]

8 27. On May 17, 2017, Ms. King and Dr. Jeffrey Sprout, LESD Assistant
9 Superintendent of Human Resources, spoke with Respondent to provide due process
10 regarding Respondent's answer of "No" to the question "Have you ever been the subject of a
11 school district or Department of Education (in any state) investigation, inquiry, or review of
12 alleged misconduct?" on his employment application. [Exh. 21]

13 28. On May 18, 2017, Dr. Sprout, Ms. King, and Respondent spoke again, and
14 Respondent requested to resign. Respondent submitted a letter of resignation to LESD via
15 email on May 18, 2017. [Exh. 21]

16 29. Aggravating factors include:

- 17 a. Multiple offenses
- 18 b. Submission of false evidence, false statements or other deceptive
19 practices during the disciplinary process
- 20 c. Refusal to acknowledge wrongful nature of conduct
- 21 d. Vulnerability of the victim(s)

22 30. Mitigating factors include:

- 23 a. Absence of prior discipline record

II. CONCLUSIONS OF LAW

1
2 1. Pursuant to Arizona Revised Statutes ("A.R.S.") § 15-203(A)(14) and (20), the
3 Board has the authority to supervise and control the certification of teachers and to "[i]mpose
4 such disciplinary action, including the issuance of a letter of censure, suspension, suspension
5 with conditions or revocation of a certificate, upon a finding of immoral or unprofessional
6 conduct."

7 2. Pursuant to Arizona Administrative Code ("A.A.C.") R7-2-1308(C),
8 "[i]ndividuals found to have engaged in unprofessional or immoral conduct shall be subject
9 to, and may be disciplined by, the Board." Certificate holders who violate A.A.C. R7-2-
10 1308 are deemed to have engaged in immoral or unprofessional conduct.

11 3. In deciding whether a teacher's conduct is immoral or unprofessional, such that
12 disciplinary action may be imposed, the Board must determine whether such conduct
13 "relate[s] to his/her fitness as a teacher and ... ha[s] an adverse effect on or within the school
14 community." *Winters v. Ariz. Bd. of Ed.*, 207 Ariz. 173, 178, 83 P.3d 1114, 1119 (2004).
15 Such adverse effect need not have caused actual harm; the Board may act "to prevent or
16 control predictable future harm." *Welch v. Bd. of Ed. of Chandler Unified School Dist. No.*
17 *80 of Maricopa Cty.*, 136 Ariz. 552, 555, 667 P.2d 746, 749 (1983). Moreover, "[t]here may
18 be conduct which by itself gives rise to reasonable inferences of unfitness to teach or from
19 which an adverse impact on students can reasonably be assumed." *Id.*

20 4. A.R.S. § 15-512(N) states: "A person who makes a false statement,
21 representation or certification in any application for employment with the school district is
22 guilty of a class 3 misdemeanor."

23 5. The facts above establish, by a preponderance of the evidence, that on
24 September 21, 2016, Respondent failed to make reasonable efforts to prevent pupils from
25
26
27

1 conditions harmful to learning, health, or safety when he made inappropriate and
2 unprofessional comments to 4th grade students that upset students, made students cry, and
3 interrupted the school day.

4 6. The facts above establish, by a preponderance of the evidence, that Respondent
5 sent numerous inappropriate and unprofessional emails to parents of 4th grade students
6 wherein he (1) attempted to recruit parents to file complaints against Mr. Muecke and Mr.
7 Hookstra with such entities as the BCESD, the police, and the Arizona State Board of
8 Education, (2) told parents that he was going to file lawsuits against Mr. Muecke and Mr.
9 Hookstra and that he was going to give some of the money he received from the lawsuits to
10 their children, (3) suggested to parents that they could receive large cash payments if they
11 filed a class action lawsuit against Mr. Muecke and Mr. Hookstra, (4) attempted to guilt
12 parents into taking action by telling them "I pray you are a diligent advocate for your child",
13 and (5) urged parents to "get a medical record via doctor appointment for emotional and
14 psychological distress."

15 7. The facts above establish, by a preponderance of the evidence, that Respondent
16 widely disseminated written communications that contained threats against Mr. Muecke and
17 Mr. Hookstra and that Mr. Muecke and Mr. Hookstra felt so threatened by Respondent's
18 written communications that Mr. Muecke went to court and obtained an Injunction Against
19 Workplace Harassment against Respondent.

20 8. The facts above establish, by a preponderance of the evidence, that Respondent
21 made a false statement, representation or certification in his March 10, 2017 application for
22 employment with LESD when he answered "No" to the question "Have you ever been the
23 subject of a school district or Department of Education (in any state) investigation, inquiry,
24
25
26
27

1 or review of alleged misconduct?" In October of 2016, Respondent knew that he was the
2 subject of a Department of Education investigation of alleged misconduct.

3 9. The facts above establish, by a preponderance of the evidence, that Respondent
4 violated the provisions of A.R.S. § 15-512(N) by making a false statement, representation or
5 certification in his application for employment with LESD on March 10, 2017.

6 10. The conduct and circumstances described above constitute unprofessional
7 conduct pursuant to A.A.C. R7-2-1308(A)(1), which states that certificate holders shall
8 "[m]ake reasonable efforts to prevent pupils from conditions harmful to learning, health, or
9 safety."

10 11. The conduct and circumstances described above constitute unprofessional
11 conduct pursuant to A.A.C. R7-2-1308(B)(6), which states that certificate holders shall not
12 "[f]alsify or misrepresent documents, records, or facts related to professional qualifications
13 or educational history or character."

14 12. The conduct and circumstances described above constitute unprofessional
15 conduct by Respondent pursuant to A.A.C. R7-2-1308(B)(15), which states that certificate
16 holders shall not "[e]ngage in conduct which would discredit the teaching profession."
17 Therefore, pursuant to A.R.S. § 15-203(A)(20) and A.A.C. R7-2-1308(C), Respondent is
18 subject to disciplinary action by the Board.

19 ///

20 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law above, the PPAC recommends that the Board take disciplinary action through revocation of any and all of Respondent's teaching certificates and that all states and territories be so notified.

Adopted by a vote of 4 to 0

DATED this 12 day of September, 2017.

Bonnie Sneed
Bonnie Sneed, Vice Chair
Professional Practices Advisory Committee

1 ORIGINAL of the foregoing
2 filed this 12 day of September, 2017,
3 with:

4 Arizona State Board of Education
5 1700 W. Washington Street, Suite 300
6 Phoenix, Arizona 85007

7 EXECUTED COPIES of the foregoing mailed
8 this 2 day of October, 2017, to:

9 Rafael Danam
10 ~~5635 Pasadena Rd.~~ 6104 W. Townley Avenue
11 ~~Fort Mohave, Arizona 86426~~ Glendale, AZ 85301
12 Respondent

13 Eric Schwarz
14 Assistant Attorney General
15 Arizona Attorney General's Office
16 Education and Health Section
17 1275 West Washington Street
18 Phoenix, Arizona 85007
19 Attorneys for the State of Arizona

20
21
22
23
24
25
26
27
Aw

Doc: PHX #6195751

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: B

Exhibit B: Rafael Cezar Danam vs. Arizona Board of Education, Maricopa County Superior Court Case No.: LC2018-00093-001. Judgement entered March 2, 2018

Petitioner/Plaintiff presents APPENDIX B: EXHIBIT (B) in accordance RULES 33, 34.4 cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

05/17/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT
C. Avena
Deputy

RAFAEL CEZAR DANAM

RAFAEL CEZAR DANAM
6104 W TOWNLEY AVE
GLENDALE AZ 85302

v.

ARIZONA BOARD OF EDUCATION (001)
PROFESSIONAL PRACTICES ADVISORY
COMMITTEE (001)
OFFICE OF ATTORNEY GENERAL STATE OF
ARIZONA (001)

KIM SUSAN ANDERSON

OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

MINUTE ENTRY

Pending before the Court are several motions, which the Court will address in turn.

Motion to Designate Complex

Citing Rule 8(h), Ariz. R. Civ. P., Appellant Danam has asked this Court to designate the matter complex. But the Arizona Rules of Civil Procedure do not apply in administrative appeals such as this one, unless specifically noted. See Rule 1(b), Rules of Procedure for Judicial Review of Administrative Decisions ("JRAD Rules"). Rule 8(h) is not one of the noted exceptions.

Therefore,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

05/17/2018

IT IS ORDERED denying the Motion to Designate Complex.

Motion to Strike Civil Complaint

Appellee the Arizona Board of Education filed a Motion to Strike the Civil Complaint filed contemporaneously with Danam's Notice of Appeal. Danam did not respond to the Motion. In any event, the JRAD Rules and applicable statutes, A.R.S. §§ 12-901 – 914, do not provide for the filing of a civil complaint, and do not provide for the award of monetary damages.

Thus,

IT IS ORDERED striking the civil complaint filed March 2, 2018.

To be clear, the Notice of Appeal filed that same date is appropriate and the appeal will proceed based on that Notice.

Motion for New Evidence and Witnesses

Danam filed a Motion for New Evidence and Witnesses, seeking to introduce new evidence on appeal. First, the Motion was not timely filed. Any request to admit exhibits or testimony not offered at the administrative hearing must be filed within 30 days after the filing of the notice of appeal. Rule 10(c), JRAD Rules. In an attempt to excuse his late filing, Danam points out that he is representing himself on appeal. But in Arizona, unrepresented litigants are held "to the same standards as attorneys." *Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017).

Moreover, Danam has not identified why new evidence and/or witnesses are required in order for the Court to make its determination on appeal. A.R.S. § 12-910(E).

Accordingly,

IT IS ORDERED denying the Motion for New Evidence and Witnesses.

Notice of Military Status

Finally, Danam has filed a Notice of Military Status Service and a request pursuant to the Servicemembers Civil Relief Act for the Court to adjust the briefing schedule in this matter. Counsel for Appellee has not responded to that request. The Court wishes to hear Appellee's position regarding the request.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

05/17/2018

IT IS ORDERED Appellee shall respond to the Notice of Military Status Service and request for a modified briefing schedule no later than June 1, 2018.

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. **Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.**

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

RAFAEL CEZAR DANAM

RAFAEL CEZAR DANAM

6104 W TOWNLEY AVE

GLENDAL AZ 85302

v.

ARIZONA BOARD OF EDUCATION (001)
PROFESSIONAL PRACTICES ADVISORY
COMMITTEE (001)
OFFICE OF ATTORNEY GENERAL STATE OF
ARIZONA (001)

KIM SUSAN ANDERSON

JUDGE STARR
OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Appellant Rafael Cezar Danam seeks reversal of the October 23, 2017 Decision of the Arizona State Board of Education ("the Board") revoking Danam's teaching certificate. For the following reasons, this Court affirms that Decision.

I. FACTS AND PROCEDURAL BACKGROUND

Danam held a substitute teaching certificate which expired in 2022. From 2015 through 2016, he worked as a substitute teacher at Bullhead City Elementary School. Beginning in August of 2016, Danam worked as a long-term substitute teacher at Diamondback Elementary School. He was paid the daily rate for a long-term substitute teacher and did not have a contract.

In September of 2016, the principal at Diamondback informed Danam that he would be relieved of his substitute teacher assignment. Danam then went to his class of 4th graders and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

told them he would not be their teacher anymore; while talking to the class, Danam became emotional and began to cry. Danam told the students to go home and tell their parents what had been done to him. Upon seeing Danam cry, the students became upset and began to cry as well. The principal then arrived and told Danam to leave immediately.

Danam began sending emails to district personnel, city officials, community leaders, and parents. Based on the content of some of the communications, the principal sought and obtained an Injunction Against Workplace Harassment.

In October of 2016, a Board investigator sent a Notice of Investigation letter to Danam. After receipt of the Notice, Danam responded in writing. The investigator later interviewed Danam.

In March of 2017, Danam applied for a job as a teacher with the Laveen Elementary School District. On the application, Danam answered “no” when asked if he had ever been the subject of a district or Department of Education investigation or inquiry. The Laveen District hired Danam to teach for the 2017-2018 school year. Shortly after he signed his employment contract, a human resources professional was notified that Danam was under investigation by the Department of Education. After he was confronted, Danam resigned.

On August 30, 2017, the Board served Danam with a Complaint, which alleged that he had engaged in unprofessional conduct by: (1) making inappropriate and unprofessional statements to his 4th grade class; (2) sending inappropriate and unprofessional communications to parents and school personnel; and (3) making a false statement, representation, or certification in an application for employment. The Board sought appropriate discipline for those violations.

The matter proceeded to a hearing before the Professional Practices Advisory Committee (“PPAC”). Danam appeared at the hearing, at which he testified, examined witnesses, and submitted exhibits. After the hearing, the PPAC reached the following conclusions:

(1) On September 21, 2016, Danam “failed to make reasonable efforts to prevent pupils from conditions harmful to learning, health, or safety when he made inappropriate and unprofessional comments to 4th grade students that upset students, made students cry, and interrupted the school day.”

(2) Danam “sent numerous inappropriate and unprofessional emails to parents of 4th grade students . . .”

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

(3) Danam “widely disseminated written communications” containing threats.

(4) Danam made a false statement, representation or certification when he denied ever having been the subject of an investigation.

Accordingly, the PPAC found that Danam violated A.R.S. § 15-512(N) by making a false statement, representation or certification in his application for employment with the Laveen Elementary School District. The PPAC further found that Danam engaged in unprofessional conduct as defined by A.A.C. R7-2-1308(A)(1) (failing to make reasonable efforts to prevent pupils from conditions harmful to learning, health or safety), and A.A.C. R7-2-1308(B)(6) (falsifying or misrepresenting documents, records, or facts related to his professional qualifications, education history or character). Finally, the PPAC found that Danam engaged in unprofessional conduct in violation of A.A.C. R7-2-1308(B)(15) (engaging in conduct which discredited the teaching profession).

The PPAC recommended that the Board revoke Danam’s teaching license.

The Board considered the PPAC’s recommendation and heard argument from Danam at a public hearing. The Board modified some of the PPAC’s findings of fact, adopted the PPAC’s conclusions of law, and ordered that any and all teaching certificates held by Danam be revoked, and that all states and territories be notified.

The Board later denied Danam’s request for rehearing/reconsideration. Danam filed a timely appeal from that decision. This Court has jurisdiction pursuant to A.R.S. §§ 12-124(A) and 12-905(A).

II. STANDARD OF REVIEW

A reviewing court shall affirm the action of an agency unless, after reviewing the record, the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion. A.R.S. § 12-910(E).

A reviewing court must defer to the agency’s factual findings if they are supported by substantial evidence. *Gaveck v. Arizona State Bd. of Podiatry Examiners*, 222 Ariz. 433, 436, ¶ 11 (App. 2009). If the record supports two inconsistent factual conclusions, then there is substantial evidence to support an administrative decision that adopts either conclusion. *DeGroot v. Arizona Racing Comm’n*, 141 Ariz. 331, 336 (App. 1984).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

III. LEGAL ANALYSIS

1. Danam has not established that the Board wrongly excluded or refused to admit affidavits, evidence or testimony at the hearing.

Danam appeared at the hearing held by the PPAC, testified, examined witnesses, and provided exhibits. While he claims he was prevented from presenting affidavits, witnesses, and testimony, nothing in the record supports that assertion.

Danam's procedural due process rights were honored. "Procedural due process includes the right to notice and opportunity to be heard at a meaningful time and in a meaningful manner." *Salas v. Arizona Dept. of Econ. Sec.*, 182 Ariz. 141, 143 (App. 1995). Here, Danam had an opportunity to be heard in a meaningful time and manner: he received notice of the hearing, attended the hearing, participated in the hearing, and has now availed himself of his right of appeal. No more was required.

2. The Board did not violate Danam's constitutional rights.

Danam next argues that the Board violated his right to freedom of speech, and right to redress of grievances. But he provides no support for that assertion.

Here, the Board disciplined Danam based on unprofessional and inappropriate statements made to children, and threats made to school district personnel. Those facts distinguish this case from that of *Pickering v. Board of Education*, 391 U.S. 563 (1938), upon which Danam relies.

In *Pickering*, the teacher's statements could not be shown to have impeded the teacher's duties or interfered with the operation of the school. *Id.* at 572-73. The opposite situation is presented here. Moreover, Danam has not shown that any constitutional right he possesses was violated by the proceedings that took place here.

3. The Board's decision was not arbitrary, capricious, or an abuse of discretion.

The Court has reviewed the record to determine whether the Board's decision constituted an abuse of discretion, or was arbitrary and capricious.

An entity abuses its discretion when it exercises its discretion in a manner that is unreasonable, on untenable grounds, or for untenable reasons. *Tilley v. Delci*, 220 Ariz. 233, 238, ¶ 16 (App. 2009). An action is arbitrary and capricious if it is taken with a disregard for the facts and circumstances; when an action is taken honestly and upon due consideration, it is not

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

arbitrary and capricious. *Shaffer v. Arizona State Liquor Bd.*, 197 Ariz. 405, 411, ¶ 28 (App. 2000).

Here, the record establishes that the Board acted well within its statutory authority and rules when it revoked Danam's teaching certificate. Danam has presented no factual or legal argument that establishes an abuse of discretion, or that the Board's actions were arbitrary or capricious.

4. Substantial evidence supports the Board's decision to revoke Danam's license

Substantial evidence supports the Board's decision to revoke Danam's teaching license. Moreover, even if the record supported two inconsistent factual conclusions, there would be substantial evidence to support an administrative decision that adopts either conclusion. *DeGroot v. Arizona Racing Comm'n*, 141 Ariz. 331, 336 (App. 1984). In any event, in this case, the record only supports the conclusions reached by the Board.

5. The discipline imposed did not constitute an abuse of discretion.

On the record before it, the Court finds that the discipline imposed by the Board did not constitute an abuse of its discretion. In this case, the discipline imposed was within the statutory authority of the Board. *See* A.R.S. § 15-203(A)(20).

6. The Board acted within its authority when it denied Danam's motion for rehearing.

Finally, the Board appropriately denied Danam's motion for rehearing, because it failed to establish grounds for rehearing. *See* A.A.C. R7-2-709(B)(1-7) (grounds for rehearing).

IV. CONCLUSION

Based on the foregoing, this Court concludes there is substantial evidence to support the Board's decision, and that the decision was not contrary to law, was not arbitrary or capricious, and was not an abuse of discretion.

If any party wishes to appeal this decision, that party must do so pursuant to A.R.S. § 12-913 and Rule 9(a), Ariz. R. Civ. App. Proc.

IT IS THEREFORE ORDERED affirming the October 23, 2017 Decision of the Arizona State Board of Education revoking Danam's teaching license and informing all state and territories of that revocation.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000093-001 DT

09/27/2018

IT IS FURTHER ORDERED that this is a final judgment for purposes of appeal, as no further matters remain pending. See Rule 54(c), Ariz. R. Civ. P.

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. **Therefore, you will have to deliver to the Judge a conformed courtesy copy of any new filings.**

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: C

Exhibit C: Rafael Cezar Danam vs. Garnett Winders, Maricopa County Superior Court Case No.: CV 2018-051493. Judgement entered 2018.

Petitioner/Plaintiff presents APPENDIX C: EXHIBIT (C) in accordance RULES 33, 34.4 cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-051493

04/11/2018

HON. RANDALL H. WARNER

CLERK OF THE COURT
K. Ballard
Deputy

RAFAEL DANAM

RAFAEL DANAM
6104 W TOWNLEY AVE
GLENDALE AZ 85302

v.

GARNETT WINDERS

KARA LYNN KLIMA

JUDGE BRNOVICH
JUDGE HANNAH

CASE REASSIGNMENT - CIVIL PRESIDING JUDGE

—
—
This case was previously assigned to the Honorable Susan Brnovich, who has disqualified herself. The case was transferred to the Presiding Civil Judge for reassignment.

IT IS ORDERED reassigning this case to Civil Calendar CVJ-16, the Honorable John Hannah, for all further proceedings.

IT IS FURTHER ORDERED that any and all hearings set by the disqualified judge are vacated, to be reset by the new division.

IT IS FURTHER ORDERED that the parties shall jointly file within **10 days** of the date of this minute entry, a notice with the new division listing any outstanding motions (including the file dates), whether they are ripe for resolution, and any hearings that need to be reset.

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: D

*Exhibit D: Rafael Cezar Danam vs. Arizona Board of Education, U.S. District Court of Arizona
Case No.: CV-18-1493-PHX-DGC. Judgement entered May 30, 2019.*

**Petitioner/Plaintiff presents APPENDIX D: EXHIBIT (D) in accordance RULES 33, 34.4
cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.**



UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Sandra Day O'Connor United States Courthouse
401 West Washington Street, Suite 622, SPC 80
Phoenix, Arizona 85003-2156

G. Murray Snow
Chief United States District Judge

Chambers: (602) 322-7650
Fax: (602) 322-7659

September 18, 2019

Rafael Danam
P.O. Box 335707
N. Las Vegas, NV 89033

Re: Case No. CV-18-01493-PHX-DGC

Dear Mr. Danam:

I am in receipt of your September 5, 2019 letter with enclosures. The enclosures consist of previous letters from the Clerk of Court returning documents pursuant to Judge David G. Campbell's Order, (Doc. 44), instructing that no further filings be made in the case captioned above.

As the Chief Judge, I do not have the authority to intercede in or rule on a case that is assigned to another judge in the district.

Other than providing you with this information, I am unable to assist you. Additionally, I am returning the documents listed above back to you.

Sincerely,

G. Murray Snow
Chief United States District Judge

GMS:adg
Enclosures

BRIAN D. KARTH
District Court Executive / Clerk of Court
Sandra Day O'Connor U. S. Courthouse
Suite 130
401 West Washington Street, SPC 1
Phoenix, Arizona 85003-2118

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK**



MICHAEL S. O'BRIEN
Chief Deputy Clerk
Evo A. Deconcini U.S. Courthouse
405 W. Congress, Suite 1500
Tucson, Arizona 85701-5010

DEBRA D. LUCAS
Chief Deputy Clerk
Sandra Day O'Connor U. S. Courthouse
Suite 130
401 West Washington Street, SPC 1
Phoenix, Arizona 85003-2118

July 26, 2019

Rafael C Danam
PO Box 336707
North Las Vegas, NV 89033

RE: CV-18-1493-PHX-DGC - Danam v. Arizona Board of Education

Pursuant to the enclosed order, your documents submitted for the above-referenced case are being returned to your attention unprocessed.

Brian D. Karth
District Court Executive/Clerk of Court

By s/ Beth Stephenson
Deputy Clerk

Please send all correspondence to:

Customer Service ■ Sandra Day O'Connor U.S. Courthouse ■ Suite 130 ■ 401 W. Washington St., SPC 1 ■ Phoenix, AZ 85003-2118

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Rafael Cezar Danam,

10 Plaintiff,

11 v.

12 Arizona Board of Education, as individual
13 members of the Arizona Board of Education,

14 Defendants.
15

No. CV-18-1493-PHX-DGC

ORDER

16
17 Pro se plaintiff Rafael Cezar Danam filed this action against the 18 members of the
18 Arizona Board of Education, asserting various claims and seeking more than \$2 million in
19 damages. Doc. 25. Defendants previously moved to dismiss Plaintiff's first amended
20 complaint on several grounds, including failure to serve and to state a claim. Doc. 36.
21 Ruling on that motion and addressing other issues in the case, the Court ordered Plaintiff
22 to respond by Tuesday, July 16, 2019, and (1) show good cause why the Court should grant
23 an extension to serve all 18 Defendants under Rule 4, and (2) provide proof that he is in
24 fact a reserve member of the U.S. Armed Forces and has been deployed during the times
25 averred to the Court. Doc. 40.

26 Plaintiff failed to provide proof of service, and has now failed to show good cause
27 why the Court should grant an extension for him to properly serve Defendants. Since the
28 Court's May 31, 2019 order, Plaintiff has filed three documents. Docs. 41, 42, 43. None

1 addresses good cause for granting an extension to serve. The first, "Motion and Notice of
2 Verification of Military Status Service," appears to seek leave to amend Plaintiff's
3 complaint and lists eight documents purporting to show proof of military service, with no
4 explanation. Doc. 41 at 1-3. Attached are several documents from the Maricopa County
5 Sheriff's Office appearing to show returned service attempts, a returned summons from
6 the District Court Clerk of Court, a copy of a summons for this case, and various documents
7 related to Plaintiff's service history. *Id.* at 4-8. The second is a motion for leave to amend
8 his complaint, and does not address good cause or Plaintiff's failure to serve Defendants.
9 Doc. 24. The third filing appears to seek permission for the named Assistant Attorney
10 General on the case, or the Executive Director of the Arizona State Board of Education, to
11 accept service on behalf of all 18 Defendants. Doc. 43 at 1-2.

12 As noted in the Court's previous order, under Rule 4(m), "upon a showing of good
13 cause for the defective service, the court must extend the time period." *In re Sheehan*, 253
14 F.3d 507, 512 (9th Cir. 2001). "[I]f there is no good cause, the court has the discretion to
15 dismiss without prejudice or to extend the time period." *Id.*; *see also Tagata v. Schwarz*
16 *Pharma., Inc.*, No. CV 14-2238-TUC-JAS, 2014 WL 12642791, at *1 (D. Ariz. Dec. 8,
17 2014). The Court specifically warned Plaintiff that if he failed to make the good cause
18 showing explained in its May 31, 2019 order, the Court would dismiss the action for lack
19 of service. *See* Doc. 41. This case has been pending for more than 14 months with no
20 progress because Plaintiff has not served Defendants despite ample opportunity to do so.
21 Because Plaintiff has failed to show good cause for this failure, the Court will dismiss his
22 first amended complaint without prejudice and terminate this action.

23 **IT IS ORDERED:**

24 1. Plaintiff's first amended complaint is **dismissed without prejudice** for
25 failure to serve under Fed. R. Civ. P. 4(m).

26 2. Plaintiff's pending motions (Docs. 42, 43) are **denied** as moot.
27
28

4. Plaintiff shall make no further filings in this case.

David G. Campbell

David G. Campbell
Senior United States District Judge

Danam v. Ariz. Bd. of Educ.

Decided Jul 19, 2019

No. CV-18-1493-PHX-DGC

07-19-2019

Rafael Cezar Danam, Plaintiff, v. Arizona Board of Education, as individual members of the Arizona Board of Education, Defendants.

David G. Campbell Senior United States District Judge

ORDER

Pro se plaintiff Rafael Cezar Danam filed this action against the 18 members of the Arizona Board of Education, asserting various claims and seeking more than \$2 million in damages. Doc. 25. Defendants previously moved to dismiss Plaintiff's first amended complaint on several grounds, including failure to serve and to state a claim. Doc. 36. Ruling on that motion and addressing other issues in the case, the Court ordered Plaintiff to respond by Tuesday, July 16, 2019, and (1) show good cause why the Court should grant an extension to serve all 18 Defendants under Rule 4, and (2) provide proof that he is in fact a reserve member of the U.S. Armed Forces and has been deployed during the times averred to the Court. Doc. 40.

Plaintiff failed to provide proof of service, and has now failed to show good cause why the Court should grant an extension for him to properly serve Defendants. Since the Court's May 31, 2019 order, Plaintiff has filed three documents. Docs. 41, 42, 43. None *2 addresses good cause for granting an extension to serve. The first, "Motion and Notice of Verification of Military Status Service," appears to seek leave to amend

Plaintiff's complaint and lists eight documents purporting to show proof of military service, with no explanation. Doc. 41 at 1-3. Attached are several documents from the Maricopa County Sheriff's Office appearing to show returned service attempts, a returned summons from the District Court Clerk of Court, a copy of a summons for this case, and various documents related to Plaintiff's service history. *Id.* at 4-8. The second is a motion for leave to amend his complaint, and does not address good cause or Plaintiff's failure to serve Defendants. Doc. 24. The third filing appears to seek permission for the named Assistant Attorney General on the case, or the Executive Director of the Arizona State Board of Education, to accept service on behalf of all 18 Defendants. Doc. 43 at 1-2.

As noted in the Court's previous order, under Rule 4(m), "upon a showing of good cause for the defective service, the court must extend the time period." *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001). "[I]f there is no good cause, the court has the discretion to dismiss without prejudice or to extend the time period." *Id.*; see also *Tagata v. Schwarz Pharma., Inc.*, No. CV 14-2238-TUC-JAS, 2014 WL 12642791, at *1 (D. Ariz. Dec. 8, 2014). The Court specifically warned Plaintiff that if he failed to make the good cause showing explained in its May 31, 2019 order, the Court would dismiss the action for lack of service. See Doc. 41. This case has been pending for more than 14 months with no progress because Plaintiff has not served Defendants despite ample opportunity to do so. Because Plaintiff has failed to show good

cause for this failure, the Court will dismiss his first amended complaint without prejudice and terminate this action.

IT IS ORDERED:

1. Plaintiff's first amended complaint is **dismissed without prejudice** for failure to serve under Fed. R. Civ. P. 4(m).

2. Plaintiff's pending motions (Docs. 42, 43) are

3 **denied** as moot. *3

3. The Clerk is directed to terminate this case.

4. Plaintiff shall make no further filings in this case.

Dated this 19th day of July, 2019.

/s/_____

David G. Campbell

Senior United States District Judge

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: E

Exhibit E: Rafael Cezar Danam vs. Arizona Board of Education, Court of Appeals- Division One
Case No.: 1 CA-CV 18-0668. Judgement entered October 31, 2019; Finalized April 23, 2020

**Petitioner/Plaintiff presents APPENDIX E: EXHIBIT (E) in accordance RULES 33, 34.4
cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.**



Court of Appeals

AMY M. WOOD
CLERK OF THE COURT

STATE OF ARIZONA
DIVISION ONE
STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007



DIVISION ONE
FILED: 10/01/19
AMY M. WOOD,
CLERK
BY: JT

Phone: (602) 452-6700

Fax: (602) 452-3226

October 1, 2019

Rafael Cezar Danam
Petitioner Pro Per

RE: 1 CA-SA 19-0217 - DANAM v. ABOE
Maricopa County Case No. LC2018-000093-001

Mr. Danam:

This will acknowledge receipt of your *Motion For "Special Action" Of Relief In Violation Of 42 U.S.C. § 1983; A.R.S. § 12-541; 28 U.S. Code § 4101* filed on September 27, 2019. The petition has been filed and given the above number in the Court of Appeals, Division One.

For the Court of Appeals to review the decision of the Superior Court of Maricopa County, you must submit the filing fee of \$280.00, payable to the Clerk of the Court of Appeals, Division One. If you are unable to pay the fee, complete the enclosed *Application for Deferral or Waiver of Court Fees and/or Costs and Consent to Entry of Judgment* and file the original with this court on or before October 9, 2019, or the petition will be subject to dismissal.

AMY M. WOOD, CLERK
By

jt

Deputy Clerk

Enclosure (as noted)

Application for Deferral or Waiver of Court Fees and/or Costs and Consent to Entry of Judgment and additional forms are available for use (if applicable) by visiting <https://www.azcourts.gov/coal/Guide-for-Self-Representation> and selecting the Industrial Commission forms in Word link, or contact the Clerk's Office at 602.452.6700.

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 8/28/19
AMY M. WOOD,
CLERK
BY: RB

RAFAEL CEZAR DANAM,) Court of Appeals
) Division One
Plaintiff/Appellant,) No. 1 CA-CV 18-0668
)
v.) Maricopa County
) Superior Court
ARIZONA BOARD OF EDUCATION,) No. LC2018-00093-001
)
Defendant/Appellee.)
_____)

ORDER DENYING MOTION FOR TRANSFER

THIS COURT having been presented with Appellant Rafael C. Danam's "MOTION FOR CHIEF JUSTICE OF THE ARIZONA COURT OF APPEALS DIVISION ONE TO TRANSFER CASE TO THE SUPREME COURT OF THE STATE OF ARIZONA IN VIOLATION OF 42 U.S.C. § 1983: ARIZONA CONSTITUTION ARTICLE 2 § 3, 4, 5, 6 and 32 by authorization of ARCAP Rule 6, Rule 19(a)(3), with final authority and request pursuant to Rule 19(c)," and that Motion having been fully considered,

IT IS HEREBY ORDERED the above-referenced Motion is DENIED.

_____/S/
KENTON D. JONES, Presiding Judge

A copy of the foregoing
was sent to:

Rafael Cezar Danam
Kim S Anderson
Martha McSally (mailed)
Kyrsten Sinema (mailed)
Karen Fann (mailed)
Russell Bowers (mailed)
Mark Brnovich

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RAFAEL CEZAR DANAM,
Plaintiff/Appellant,

v.

ARIZONA BOARD OF EDUCATION,
Defendant/Appellee.

No. 1 CA-CV 18-0668
FILED 10-31-2019

Appeal from the Superior Court in Maricopa County
No. LC2018-000093-001
The Honorable Patricia A. Starr, Judge

AFFIRMED

COUNSEL

Rafael Cezar Danam, N. Las Vegas, NV
Plaintiff/Appellant

Arizona Attorney General's Office, Phoenix
By Kim S. Anderson
Counsel for Defendant/Appellee

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

MEMORANDUM DECISION

Judge Diane M. Johnsen delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge James B. Morse Jr. joined.

JOHNSEN, Judge:

¶1 Rafael Cezar Danam appeals from the superior court's judgment affirming a decision by the Arizona State Board of Education ("Board") to revoke his teaching certificates and to notify other states of that revocation. We conclude the Board's decision was supported by substantial evidence and was not contrary to law, arbitrary, capricious or an abuse of discretion. Accordingly, we affirm the superior court's judgment.

FACTS AND PROCEDURAL BACKGROUND

¶2 According to the record before the Board, Danam obtained a substitute teaching certificate and in August 2016, was working as a long-term substitute fourth-grade teacher at Diamondback Elementary School ("Diamondback") in the Bullhead Elementary School District. Danam did not have a contract for the school year, but rather worked on a "day-by-day basis." A month into the school year, the principal met with Danam outside his classroom and notified him that his substitute teaching assignment was ending and that a fully certified teacher would be returning to the school to replace him.

¶3 Immediately after the meeting, Danam asked an instructional aide to accompany him back to his classroom and be "a witness"; inside the classroom, Danam told his students "he would no longer be their teacher" and was "being asked to leave." As he spoke to the students, Danam became emotional and told them to "go home and tell your parents what [the principal] and the School Board is doing to me." This upset the students, some of whom became "very distraught" and began crying. The principal eventually arrived, calmed the students and sent Danam home.

¶4 Over the next few days, Danam repeatedly emailed the students' parents, the principal, the district assistant superintendent and others, demanding hearings and threatening litigation. Danam suggested parents could receive monetary damages if a lawsuit were filed and encouraged them to obtain medical attention for their children so they

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

could document "emotional and psychological distress." In one email, he suggested he would sue for \$19,999.98 in damages in small claims court and would distribute \$260 of that sum to each of his former students as compensation for their "emotional and psychological damages." Danam also recommended parents consider filing a class-action lawsuit for emotional and psychological damages exceeding one million dollars.

¶5 Danam also mailed a lengthy compilation of documents to the superintendent, with copies to the school board, other school administrators, parents, the Board, the mayor of Bullhead City and other municipal officials. The packet of documents purported to seek "Authorized & Sanctioned Board Review for Wrongful Termination" and to constitute "Official Notice of Pending Litigation & Preparation for Civil Proceedings, Notification of Multiple Federal & State Laws, Statutes and Regulations Violations." One page of the packet was directed to the principal and assistant superintendent. In it, Danam asserted that the "current circumstances" were the "direct consequence of" actions by the principal and assistant superintendent and asserted, "Whoever sows injustice reaps calamity," "Be assured that exact and precise justice will be manifested," and "You will not escape the consequences." Another document he later faxed to the school read "Justice, Vindication & Vengeance" and "Vengeance is MINE, I will repay." This last document prompted the principal to obtain an injunction against workplace harassment against Danam.

¶6 In October 2016, the Board notified Danam he was the subject of a formal professionalism investigation based on his conduct with the students on the day he was terminated and the threatening documents he sent to school officials thereafter. In March 2017, Danam applied for a teaching position at Laveen Elementary School District; on his application, he answered "[n]o" in response to the question, "Have you ever been the subject of a school district or Department of Education . . . investigation, inquiry, or review of alleged misconduct?" After the Laveen district hired Danam, it learned he was under Board investigation. When the district asked Danam about his apparent false statement, he resigned.

¶7 In August 2017, the Board served Danam with a complaint that alleged professional misconduct based on his statements to his students and their parents, his harassing communications to school officials and the misrepresentation on his application for employment in the Laveen district.

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

¶8 The Board's Professional Practices Advisory Committee ("Committee") conducted a hearing on the Board's complaint. In the hearing, Danam was permitted to testify, call and cross-examine witnesses and offer documents in evidence. After the hearing, the Committee concluded Danam engaged in three types of unprofessional conduct: (1) he failed to "make reasonable efforts to [protect] pupils from conditions harmful to learning, health, or safety," Arizona Administrative Code ("A.A.C.") R7-2-1308(A)(1); (2) he "[f]alsif[ied] or misrepresent[ed] documents, records, or facts related to professional qualifications or educational history or character," A.A.C. R7-2-1308(B)(6); and (3) he "[e]ngag[ed] in conduct which would discredit the teaching profession," A.A.C. R7-2-1308(B)(15).¹ The Committee recommended the Board discipline Danam by revoking his teaching certificates and informing "all states and territories" of the revocation.

¶9 The Board adopted the Committee's findings of fact with minor changes, adopted the Committee's conclusions of law, and ordered Danam's teaching certificates revoked and that other states and territories be notified of the revocation. Danam filed a motion for rehearing; the Board denied it, concluding he failed to establish any grounds for a rehearing as required by A.A.C. R7-2-709(B).

¶10 Danam filed a notice of appeal to the superior court, then, 55 days later, filed in that court a "Motion for New Evidence and Witnesses for Judicial Review of Administrative Decision." The superior court treated Danam's filing as a motion for an evidentiary hearing and denied it.

¶11 The superior court then affirmed the Board's decision. It concluded (1) the Board did not violate Danam's right to due process or his right to free speech, (2) the Board's decision was not arbitrary, capricious or an abuse of discretion, (3) substantial evidence supported the Board's decision and (4) the Board properly denied Danam's motion for rehearing.

¹ Absent material revision after the relevant date, we cite the current version of a statute or rule.

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

Danam timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2019) and -913 (2019).²

DISCUSSION

¶12 We will affirm an administrative agency's decision unless it is "contrary to law, is not supported by substantial evidence, is arbitrary and capricious or is an abuse of discretion." A.R.S. § 12-910(E) (2019). "We defer to the agency's factual findings if they are supported by substantial evidence, even if other evidence before the agency would support a different conclusion." *Waltz Healing Ctr., Inc. v. Ariz. Dep't of Health Servs.*, 245 Ariz. 610, 613, ¶ 9 (App. 2018). "We consider the evidence in a light most favorable to upholding the agency's decision." *Id.* Nonetheless, we apply our "independent judgment" to questions of law. *See Webb v. State ex rel. Ariz. Bd. of Med. Exam'rs*, 202 Ariz. 555, 557, ¶ 7 (App. 2002).

A. The Board Did Not Violate Danam's Due-Process Rights.

¶13 Danam argues the Board violated his due-process rights by denying, ignoring or omitting evidence he wanted to offer at the Committee hearing. *See generally* U.S. Const. amend. XIV; Ariz. Const. art. 2, § 4. We review questions of law *de novo*. *See Webb*, 202 Ariz. at 557, ¶ 7.

¶14 Board rules set out the procedures that govern disciplinary hearings. The Board established the Committee to "conduct hearings related to certification" issues involving unprofessional conduct and the revocation of certificates. A.A.C. R7-2-701(8); *see* A.A.C. R7-2-205(A) (Committee "shall act in an advisory capacity to the [Board] in regard to certification or recertification matters related to immoral conduct, unprofessional conduct, unfitness to teach, and revocation, suspension, or surrender of certificates."). At the hearing before the Committee, parties have the "right to submit evidence in open hearing and conduct cross examination." A.A.C. R7-2-705(C); *see also* A.A.C. R7-2-715(C). Upon request of a party, the Department of Education ("Department") may issue subpoenas for witnesses, documents and other evidence. A.A.C. R7-2-712(A). After the Committee issues its recommendation following a

² Although § 12-913 expressly allows a party to appeal to the "supreme court," we have construed this provision as "also allowing an appeal to the court of appeals, which was created after § 12-913 was enacted." *Svensen v. Ariz. Dep't of Transp., Motor Vehicle Div.*, 234 Ariz. 528, 533, ¶ 13 (App. 2014).

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

hearing, the Board reviews the hearing record and the Committee's recommendation and issues its decision. *See* A.A.C. R7-2-718.

¶15 The right to procedural due process "includes the right to notice and opportunity to be heard at a meaningful time and in a meaningful manner." *Salas v. Ariz. Dep't of Econ. Sec.*, 182 Ariz. 141, 143 (App. 1995). Here, the Board provided Danam with adequate opportunity to be heard at the hearing before the Committee. In its complaint, the Board notified Danam of the factual allegations against him, the three grounds on which the charges of unprofessional conduct were based, and the nature of the discipline the Board proposed to impose. The complaint also listed the witnesses and exhibits the Board anticipated offering at the hearing.

¶16 When the hearing commenced, the hearing officer asked Danam if he had any exhibits to offer; Danam replied that he had submitted documents to the Department's Investigation Unit, but "nothing has been done . . . on those at all." The hearing officer then told Danam he "ha[d] the opportunity to submit relevant documents." Danam then offered, and the hearing officer admitted, Danam's response brief and two letters signed by the Diamondback school principal. During the hearing, Danam testified and cross-examined each of the State's witnesses.

¶17 Although Danam expressed concern at the hearing that he was unfamiliar with the Committee's "protocol" and that he could not bring the students' parents to testify for lack of financial resources, Danam had the option to, and contends he did, obtain affidavits from some of the parents. He did not, however, offer the affidavits in evidence at the hearing.

¶18 As noted, Danam filed a "Motion to Rehear Case," but he did not argue in that motion that the hearing officer rebuffed any attempt he had made to call witnesses or offer affidavits at the hearing. The same day Danam filed his motion for rehearing, he also filed with the Board an "Appeal Brief" to which he attached several documents he characterized as affidavits. But he did not argue the hearing officer had precluded him from calling witnesses on his behalf. Nor did he argue that the hearing officer refused to admit or the Committee or the Board failed to consider any affidavits he offered in evidence. Instead, in his "Appeal Brief," Danam cited as an error the Department's "[f]ailure . . . to provide official record of affidavits obtained by current and former parents of Diamondback Elementary School." But it was Danam's choice to offer evidence on his behalf, not the Board's obligation to do so. When a party is provided the opportunity to be heard and "chooses not to exercise it," that party cannot later claim to have been denied procedural due process. *Watahomigie v.*

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

Ariz. Bd. of Water Quality Appeals, 181 Ariz. 20, 27 (App. 1994). Moreover, unrepresented parties such as Danam are held "to the same standards as attorneys." *Flynn v. Campbell*, 243 Ariz. 76, 83, ¶ 24 (2017).

¶19 Because the Board provided Danam with meaningful notice and opportunity to be heard at the hearing, it did not violate his due-process rights.³

B. Substantial Evidence Supported the Board's Factual Findings.

¶20 "We will not disturb an agency's factual findings that the evidence substantially supports." *JH2K I LLC v. Ariz. Dep't of Health Servs.*, 246 Ariz. 307, 310, ¶ 8 (App. 2019). "If two inconsistent factual conclusions could be supported by the record, then there is substantial evidence to support an administrative decision that elects either conclusion." *DeGroot v. Ariz. Racing Comm'n*, 141 Ariz. 331, 336 (App. 1984) (citation omitted).

¶21 The Board found Danam (1) upset his students by emotionally telling them that he would no longer be their teacher, (2) later sent emails to parents encouraging litigation and documents to school officials threatening vengeance, then (3) still later, lied on an employment application about not having been under Department investigation.

¶22 In support of those findings, Diamondback's principal testified that after he told Danam his teaching assignment was ending, the principal entered Danam's classroom and found the fourth-grade students "look[ing] disheveled" and saw "a lot of kids crying, a lot of people upset [and] a few kids yelling." The instructional aide in the classroom testified that Danam became "emotional" when telling the students he would "no longer be their teacher" and was "being asked to leave." She testified that an "agitated" Danam then insisted the students "go home and tell their parents what [the principal] and the School Board was doing to him," and that the students "were very distraught" and started crying. The aide

³ Danam also argues the Board violated due process by relying on "false and perjured testimony," but for that proposition he relies only on evidence not offered at the hearing. See A.R.S. § 12-910(D) (review by appellate court limited to "record of the administrative proceeding" unless superior court holds evidentiary hearing or trial *de novo*); *GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4 (App. 1990) ("An appellate court's review is limited to the record before the trial court."). He also argues that the Board and the superior court violated due process because they were biased, but he offers no evidence to support this argument.

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

explained she then took the students to the bathrooms to "calm themselves down."

¶23 Further evidence showed Danam sent written threats to the school principal and the district's assistant superintendent, which prompted the principal to obtain a workplace harassment injunction against Danam. *See supra* ¶ 5. Danam also repeatedly emailed parents, urging them to seek medical attention for the emotional distress their children purportedly experienced and encouraging a multimillion-dollar lawsuit on their behalf. One parent testified Danam left her multiple late-night voicemails and asked her to "set fire on his behalf" and "write papers."

¶24 Finally, the Committee heard evidence that in Danam's 2017 application to Laveen Elementary School District, he falsely answered "[n]o" when asked whether he has "ever been the subject of a school district or Department of Education . . . investigation, inquiry or review of alleged misconduct." At the hearing, Danam admitted he received and responded to the Department's "Notice of Investigation" letter in 2016.

¶25 As reflected by this account of the evidence, the Board's factual findings were amply supported by substantial evidence. *See* A.R.S. § 12-910(E).

C. The Board's Legal Conclusions and the Discipline It Imposed Were Not Arbitrary, Capricious or an Abuse of Discretion.

¶26 We also conclude that based on the Board's factual findings, its conclusions that Danam acted unprofessionally under R7-2-1308(A)(1), (B)(6), and (B)(15) and its decision to revoke his teaching certificates were not arbitrary, capricious or an abuse of discretion. *See* A.R.S. § 12-910(E). A decision is "arbitrary" if it is "unreasoning action, without consideration and in disregard of the facts and circumstances." *Maricopa County Sheriff's Office v. Maricopa County Emp. Merit Sys. Comm'n*, 211 Ariz. 219, 222, ¶ 14 (2005) (citation omitted). "An 'abuse of discretion' is discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Torres v. N. Am. Van Lines, Inc.*, 135 Ariz. 35, 40 (App. 1982). "A decision supported by substantial evidence may not be set aside as being arbitrary and capricious." *Smith v. Ariz. Long Term Care Sys.*, 207 Ariz. 217, 220, ¶ 14 (App. 2004).

¶27 On the record presented, the Board did not err by concluding Danam acted unprofessionally by failing to "[m]ake reasonable efforts to prevent pupils from conditions harmful to learning, health, or safety," R7-2-1308(A)(1); "[f]alsify[ing] or misrepresent[ing] documents, records, or

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

facts related to professional qualifications or educational history or character," R7-2-1308(B)(6); and "[e]ngag[ing] in conduct which would discredit the teaching profession," R7-2-1308(B)(15). The Board's decision was reasonable and well-supported by the evidence. *See Smith*, 207 Ariz. at 220, ¶ 14; *Torres*, 135 Ariz. at 40.

¶28 The Board also did not err in revoking Danam's teaching certificates and notifying other states of the revocation. Contrary to Danam's contention that the revocation violated A.R.S. § 15-203(A)(20) (2019) as an excessive penalty, the Board's discipline fell squarely within its statutory authority to "supervise and control the certification of persons engaged in instructional work" and "[i]mpose such disciplinary action, including the . . . revocation of a certificate, on a finding of immoral or unprofessional conduct." A.R.S. § 15-203(A)(14), (20); *see also* A.A.C. R7-2-1308(C) ("Individuals found to have engaged in unprofessional or immoral conduct shall be subject to, and may be disciplined by, the Board."); *Petras v. Ariz. State Liquor Bd.*, 129 Ariz. 449, 452 (App. 1981).

¶29 In sum, we conclude the Board's conclusions and the discipline it imposed were not arbitrary, capricious or an abuse of discretion.⁴

D. The Board Did Not Abuse Its Discretion in Denying Danam's Motion for Rehearing.

¶30 Danam argues the Board improperly denied his motion for rehearing. We review the Board's denial of a motion for rehearing for abuse of discretion. *See O'Neal v. Indus. Comm'n*, 13 Ariz. App. 550, 552 (1971).

⁴ Danam also argues the decisions of the Board and the superior court defamed him in violation of his constitutional rights under 42 U.S.C. § 1983 (2018). Any cause of action for defamation or claim under § 1983 falls outside the scope of our review. *See* A.R.S. § 12-910(E) (limiting superior court review to whether agency action was "contrary to law, . . . not supported by substantial evidence, . . . arbitrary and capricious or . . . an abuse of discretion"); A.R.S. § 12-913. In any event, to be defamatory, a publication must be false, *Turner v. Devlin*, 174 Ariz. 201, 203 (1993), and we already have determined that substantial evidence supported the Board's factual findings. *See supra* ¶¶ 21-25.

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

¶31 Arizona Administrative Code R7-2-709(B) provides:

A rehearing of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
2. Misconduct of the hearing body or the prevailing party.
3. Accident or surprise which could not have been prevented by ordinary prudence.
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
7. That the decision is not justified by the evidence or is contrary to the law.

¶32 A motion for rehearing must "specify[] the particular grounds therefor." A.A.C. R7-2-709(A). Here, Danam's motion for rehearing did not cite any grounds under R7-2-709(B); rather, it generally alleged due-process violations and discrepancies in the hearing. As we discussed above, *see supra* ¶¶ 13-19, no due-process violation occurred. In the "Appeal Brief" he filed at the same time, Danam offered an extensive list of evidence he wanted to use at the rehearing but failed to show any of it was "[n]ewly

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

discovered material evidence" that he could not have discovered and offered at the original hearing with reasonable diligence. A.A.C. R7-2-709(B)(4).⁵ Danam also failed to substantiate the other numerous grounds he cited for rehearing.

¶33 Because Danam failed to establish any grounds for a rehearing under R7-2-709(B), the Board did not abuse its discretion by denying his motion for rehearing.

E. The Superior Court Did Not Abuse Its Discretion by Denying Danam's Motion for an Evidentiary Hearing.

¶34 Danam argues the superior court erred by denying his motion for an evidentiary hearing. We review the court's denial of a motion for an evidentiary hearing for abuse of discretion. *Am. Power Prods., Inc. v. CSK Auto, Inc.*, 239 Ariz. 151, 154, ¶ 10 (2016).

¶35 The superior court properly denied Danam's motion as untimely. Arizona Rule of Procedure for Judicial Review of Administrative Decisions 10(c) required Danam to file his motion for an evidentiary hearing "within 30 days after the filing of the notice of appeal." Danam filed his motion 55 days after filing his notice of appeal. Even though he was representing himself, he still was required to comply with applicable procedural rules. *See Flynn*, 243 Ariz. at 83, ¶ 24.

¶36 Timeliness aside, the superior court also did not abuse its discretion by denying Danam's motion because he failed to "identif[y] why new evidence and/or witnesses [were] required in order for the Court to make its determination on appeal." *See* A.R.S. § 12-910(A) (instructing court to hold evidentiary hearing "to the extent necessary to make the determination required by subsection E") (emphasis added).

⁵ We note that the affidavits Danam attached to his motion for rehearing did not refute any material findings of fact underlying the Board's decision. The affidavits purportedly were authored by students and their parents or caretakers; they said Danam was a good, well-liked teacher and that students were sad and upset when he left. They also expressed displeasure at Danam's termination. These affidavits were not material to the issues of whether Danam acted unprofessionally after he was terminated and what discipline, if any, was appropriate. *See* A.A.C. R7-2-709(B)(4).

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

F. The Board and the Superior Court Did Not Violate Danam's Free-Speech Rights.

¶37 Danam argues the Board and superior court violated his rights to free speech under the federal and state constitutions. *See generally* U.S. Const. amend. I; Ariz. Const. art. 2, § 6. Specifically, he contends that because his statements addressed issues of public concern and he was not unprofessional in criticizing Diamondback's principal, the Board's discipline violated his free-speech rights. In support of this argument, he cites *Pickering v. Board of Education of Township High School District 205*, 391 U.S. 563 (1968). We review questions of law *de novo*. *See Webb*, 202 Ariz. at 557, ¶ 7.

¶38 Danam's reliance on *Pickering* is misplaced. In that case, the board of education fired a teacher after the local newspaper published the teacher's letter criticizing the board's handling of bond proposals and resource allocation and accused the superintendent of preventing teachers from criticizing the bond proposal. 391 U.S. at 564-66. The Court held the board violated the teacher's First Amendment rights by firing him for the letter. *Id.* at 565.

¶39 In concluding that the teacher's letter constituted protected speech, the Court made clear that the teacher's statements concerned school funding, an issue of "legitimate public concern," and were "neither shown nor [could] be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally." *Id.* at 569, 571-73 (footnote omitted). Thus, as Danam himself acknowledges, the proper free-speech analysis under *Pickering* hinges on whether the speech at issue was "inappropriate and unprofessional."

¶40 Here, Danam's statements are a far cry from the teacher's letter to the editor in *Pickering*. First, the statements Danam made to his students, the threatening documents he sent to school officials and his communications to parents all concerned a private employment matter, not an issue of public concern. Second, the evidence showed Danam interrupted and impeded the school day by making students distraught, required the instructional aide to calm the students down by taking them outside and forced the principal to have a discussion with students about the situation in the middle of the school day. Further, Danam's threatening communications to school officials prompted the principal to obtain an injunction against workplace harassment, and Danam's emails, late-night calls and voicemails to parents were inappropriate and caused concern.

DANAM v. AZ BOARD OF EDUCATION
Decision of the Court

¶41 In short, the Board disciplined Danam not for what he said, but for what he *did*: He failed to protect students from "conditions harmful to learning, health, or safety," he lied on his 2017 employment application about having been under Department investigation, and he acted in a manner which "discredit[ed] the teaching profession." A.A.C. R7-2-1308(A)(1), (A)(6), (B)(15). For these reasons, Danam's claimed free-speech violation fails.⁶

CONCLUSION

¶42 We conclude substantial evidence supported the Board's decision and the decision was not contrary to law, arbitrary, capricious or an abuse of discretion under A.R.S. § 12-910(E). Accordingly, we affirm the superior court's judgment upholding the Board's decision.



AMY M. WOOD • Clerk of the Court
FILED: AA

⁶ Danam also argues the Board and the superior court violated his right to petition for redress of grievances. *See generally* U.S. Const. amend. I; Ariz. Const. art. 2, § 5. As relevant here, this right "bars state action interfering with access to . . . the judicial branch." *Ruiz v. Hull*, 191 Ariz. 441, 457, ¶ 61 (1998). Danam offers no evidence that the administrative or appellate process unconstitutionally interfered with his access to the judicial branch. As we have discussed, *see supra* ¶¶ 13-19, Danam received adequate opportunity to be heard at the Committee hearing and he has availed himself of his right to appeal the Board's decision.

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: F

Exhibit F: Rafael Cezar Danam vs. Arizona Board of Education, Arizona Supreme Court Case No.: CV-19-0284. Denial of review entered April 23, 2020.

Petitioner/Plaintiff presents APPENDIX F: EXHIBIT (F) in accordance RULES 33, 34.4 cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

JANET JOHNSON
Clerk of the Court

April 1, 2020

RE: RAFAEL CEZAR DANAM v ARIZONA BOARD OF EDUCATION
Arizona Supreme Court No. CV-19-0284-PR
Court of Appeals, Division One No. 1 CA-CV 18-0668
Maricopa County Superior Court No. LC2018-000093-001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on March 31, 2020, in regard to the above-referenced cause:

ORDERED: Motion to Present Witness List = DENIED.

FURTHER ORDERED: Petition for Review from Appeals Court of Arizona - Division One to Supreme Court of Arizona = DENIED.

Janet Johnson, Clerk

TO:
Rafael Cezar Danam
Kim S Anderson
Amy M Wood
jd

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: G

*Exhibit G: Rafael Cezar Danam vs. Arizona Board of Education, U.S. District Court of Arizona
Case No. CV-20-02489-PHX-MTL. Judgement entered August 9, 2021.*

**Petitioner/Plaintiff presents APPENDIX G: EXHIBIT (G) in accordance RULES 33, 34.4
cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.**

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Rafael Cezar Danam,
10 Plaintiff,

11 v.

12 Arizona Board of Education, et al.,
13 Defendants.
14

No. CV-20-02489-PHX-MTL

ORDER

15 Before the Court is Defendants Arizona Board of Education, Diane Douglas, Tim
16 Carter, Lucas J. Narducci, Dr. Rita H. Cheng, Dr. Daniel P. Corr, Michelle Kaye, Janice
17 Mak, Calvin Baker, Chuck Schmidt, Jaren Taylor, Patricia Welborn, Prudence Lee,
18 Melissa Sadorf, Jay Cryder, Bonnie Sneed, Claudio Coria, Garnett Winders, David W.
19 Spelich, and Alicia Williams (collectively, “Defendants”) Motion to Dismiss Plaintiff’s
20 First Amended Complaint (the “Motion”) (Doc. 23). The Motion is fully briefed.
21 (Docs. 34, 36.) For the reasons stated below, the Court grants the Motion.¹

22 **I. BACKGROUND**

23 Plaintiff Raphael Danam earned his substitute teaching certificate in August 2015.
24 (Doc. 11 ¶ 8.) A year later, Diamondback Elementary School hired him as a long-term
25 substitute teacher. (*Id.* ¶ 12.) On September 21, 2016, the school’s principal told Plaintiff
26 that his substitute teaching assignment was being terminated. (*Id.* ¶ 21.) On October 13,

27
28 ¹ Both parties have submitted legal memoranda and oral argument would not have aided
the Court’s decisional process. *See Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998);
see also LRCiv 7.2(f); Fed. R. Civ. P. 78(b).

1 2016, the Arizona Board of Education (the “Board”) notified Plaintiff that it was
 2 investigating his conduct following his termination. (*Id.* ¶ 27); *see Danam v. Ariz. Bd. of*
 3 *Educ.*, No. 1 CA-CV 18-0668, 2019 WL 5617577, at *2 (Ariz. App. Oct. 31, 2019).² The
 4 Board’s investigation and pre-trial procedures took place through September 12, 2017.
 5 (Doc. 11 ¶ 37.) The Board held a trial hearing on September 13, 2017. (*Id.*) Soon thereafter,
 6 the Board ordered that Plaintiff’s teaching certificate be revoked and that all states be
 7 notified (the “Decision”). (*Id.* ¶ 38); *Danam*, 2019 WL 5617577, at *2.

8 Plaintiff then filed a motion for rehearing, which the Board denied on February 26,
 9 2018. (Doc. 11 ¶¶ 39, 40.) Plaintiff appealed the Board’s decision and requested a new trial
 10 in the Arizona Superior Court. (*Id.* ¶ 42.) That court denied his request and affirmed the
 11 Board’s decision on September 27, 2018. (*Id.*) Plaintiff appealed to the Arizona Court of
 12 Appeals, which affirmed the Superior Court’s decision. *See Danam*, 2019 WL 5617577.
 13 Plaintiff’s petition for review to the Arizona Supreme Court was denied on April 1, 2020.
 14 (Doc. 11 ¶ 45.) Plaintiff’s petition for certiorari to the Supreme Court of the United States
 15 was also denied. (*Id.* ¶ 46.)

16 Plaintiff filed a case in this District on May 16, 2018, against the same Defendants
 17 and alleging the same claims as are currently before this Court. *See Danam v. Ariz. Bd. of*
 18 *Educ.*, No. CV-18-1493-PHX-DGC (D. Ariz.). On July 19, 2019, the court dismissed the
 19 case for lack of service pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. He
 20 then filed this instant action in December 2020. (Doc. 1.)

21 **II. LEGAL STANDARD**

22 A complaint must set forth a “short and plain statement of the claim showing that
 23 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “To survive a motion to dismiss, a
 24 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief
 25 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
 26 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff

27
 28 ² The Court may take judicial notice of matters of public record without converting a
 motion to dismiss into a motion for summary judgment. *See Lee v. City of Los Angeles*,
 250 F.3d 668, 689 (9th Cir. 2001).

pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). Only if the complaint fails to state a cognizable legal theory or fails to provide sufficient facts to support a claim is dismissal appropriate. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010). In deciding a Rule 12(b)(6) motion, the Court must take all allegations of material fact as true and construe them in the light most favorable to the nonmoving party. *Marcus v. Holder*, 574 F.3d 1182, 1184 (9th Cir. 2009) (citation omitted). Courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

III. DISCUSSION

Plaintiff’s claims all arise out of the Board’s investigation, hearing, and Decision. (Doc. 11.) Defendants argue that Plaintiff’s claims are barred by the statute of limitations. (Doc. 23 at 1.) Alternatively, Defendants assert that they have absolute immunity pursuant to A.R.S. § 12-820.01 and that the State of Arizona is not liable for putative damages. (*Id.*) Plaintiff responds, contending that his complaint is timely due to equitable tolling and the continuing violation doctrine. (Doc. 34 at 10–11, 13.) Plaintiff also argues that Defendants do not have absolute immunity because A.R.S. § 12-820.01 is unconstitutional. (*Id.* at 14–16.) The Court will address each argument.

A. Plaintiff’s § 1983 Claims

Plaintiff first asserts several claims under 42 U.S.C. § 1983, alleging that Defendants violated his First, Fifth, Sixth, and Fourteenth Amendment rights between September 21, 2016, and February 26, 2018. (Doc. 11 ¶ 58.) “Section 1983 does not contain its own statute of limitations.” *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999); *see* 42 U.S.C. § 1983. Absent a federal limitations period, this Court must “borrow the statute of limitations for § 1983 claims applicable to personal injury claims in the forum state.” *TwoRivers*, 174 F.3d at 991. Arizona is the forum, and Arizona courts “apply a two-year statute of limitations to § 1983 claims.” *Id.*; *see also Marks v. Parra*, 785 F.2d 1419, 1420

(9th Cir. 1986) (citing A.R.S. § 12-542). “When federal courts borrow a state statute of limitations, they also apply the state’s tolling law if it is not inconsistent with federal law.” *Retail Clerks Union Loc. 648, AFL-CIO v. Hub Pharmacy, Inc.*, 707 F.2d 1030, 1033 (9th Cir. 1983) (citing *Board of Regents v. Tomanio*, 446 U.S. 478, 485–86 (1980)). The Court will therefore address the accrual date and equitable tolling.

1. Accrual

To be timely, Plaintiff’s claims must have accrued on or after December 28, 2018, two years before he filed his Complaint. (Doc. 1.) Although Arizona law supplies the limitations period, “federal, not state, law determines when a civil rights claim accrues.” *TwoRivers*, 174 F.3d at 991. “Under federal law, a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action.” *Id.* Here, Plaintiff’s § 1983 claims are identical to those alleged in his first district court case. *See Danam*, No. CV-18-1493-PHX-DGC, Doc. 25. Plaintiff filed that case on May 16, 2018. (Doc. 11 ¶ 44.) Plaintiff therefore knew of the injury, at the latest, on that date when he filed his complaint in May 2018.

Plaintiff argues, however, that his claims accrued later because of the continuing violation doctrine. (Doc. 34 at 13.) To satisfy the doctrine, a plaintiff must allege a “series of related acts, one or more of which falls within the limitations period.” *Maguire v. Coltrell*, No. CV-14-01255-PHX-DGC, 2015 WL 470204, at *2 (D. Ariz. Feb. 4, 2015) (citing *Green v. L.A. Cnty. Superintendent of Schs.*, 883 F.2d 1472, 1480 (9th Cir.1989)). “A continuing violation is occasioned by continual unlawful acts, not by continual ill effects from an original violation.” *Ward v. Caulk*, 650 F.2d 1144, 1147 (9th Cir. 1981) (citation omitted). Contrary to Defendants’ contention, the Ninth Circuit did not reject this doctrine in *Ngo v. Woodford*, 539 F.3d 1108, 1109–10 (9th Cir. 2008). (*See* Doc. 36 at 4.) There, the court found that the continuing violation doctrine is a valid legal theory, but it did not apply to the facts of that specific case. *Ngo*, 539 F.3d at 1109–10.

In this case, Plaintiff’s claims all arise out of Defendants’ acts surrounding their decision to revoke his teaching certificate, such as Defendants “denying evidence provided

by Plaintiff.” (Doc. 11 ¶¶ 60, 64.) Plaintiff asserts that Defendants’ actions injured him as recently as September 2019 and September 2020, when he was denied employment or terminated due to his revoked teaching license. (Doc. 11 ¶¶ 48, 74; Doc. 34 at 4.) But Plaintiff does not allege that Defendants committed a new violation at that time. Instead, the injury arose from Defendants original violation of issuing the Decision revoking his teaching license. This is insufficient to invoke the continuing violation doctrine. *See Ward*, 650 F.2d at 1147; *see also Ngo*, 539 F.3d at 1110 (finding that “any continuing effects which are ‘the delayed, but inevitable, consequences of the initial determination’” do not give life to a new limitations period) (citation omitted). Ultimately, the continuing violation doctrine is inapplicable here because Plaintiff does not allege a series of related acts by Defendants, at least one of which occurred during the statute of limitations period. The Court therefore finds that Plaintiff’s claims accrued on May 16, 2018, when Plaintiff filed his case in another federal court.

2. Equitable Tolling

As discussed above, Plaintiff’s § 1983 claims are subject to a two-year statute of limitations. Plaintiff’s claims became untimely on May 16, 2020, two years after they accrued and several months before Plaintiff filed the case before this Court. (Doc. 1.) Plaintiff’s claims, however, may be timely if equitable tolling is appropriate.³ To decide this issue, a court must consider certain factors, such as whether (1) the plaintiff acted reasonably and in good faith, (2) he prosecuted his case diligently and vigorously, (3) a procedural impediment exists that affects his ability to file a second action, and (4) either party will be substantially prejudiced. *Jepson v. New*, 164 Ariz. 265, 272 (1990); *see also Frederick v. Buckeye Valley Fire Dist.*, No. 2 CA-CV 2019-0135, 2020 WL 3303080, at *3 (Ariz. App. June 18, 2020). Equitable tolling does not apply when a plaintiff failed to

³ As noted above, federal courts apply state tolling law if it is not inconsistent with federal law.” Under federal law, “a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.” *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005). The state law discussed herein is not inconsistent with this federal standard, so the Court will apply state law. *See, e.g., White v. Aurora Loan Servs. LLC*, No. CV-14-01021-PHX-JAT, 2016 WL 3653958 (D. Ariz. July 6, 2016) (applying Arizona equitable tolling principles in federal court).

1 “exercise due diligence in preserving his [or her] legal rights.” *Irwin v. Dep’t of Veterans*
 2 *Affs.*, 498 U.S. 89, 97 (1990). The plaintiff bears the burden to prove that equitable tolling
 3 is warranted. *McCloud v. State, Ariz. Dep’t of Pub. Safety*, 217 Ariz. 82, 85 (App. 2007).

4 Plaintiff argues that equitable tolling is warranted because he diligently “pursued
 5 administrative grievance procedures against Defendants.” (Doc. 34 at 11.) Those
 6 proceedings were limited in scope to the Board’s decision to “revoke his teaching
 7 certificates and notify other states of that revocation.” *Danam*, 2019 WL 5617577, at *1.
 8 Any argument that Plaintiff’s failure to pursue his § 1983 claims in federal court “may have
 9 been induced by faith in the adequacy of [the administrative] remedy is of little relevance
 10 inasmuch as the two remedies are truly independent.” *Johnson v. Ry. Express Agency, Inc.*,
 11 421 U.S. 454, 466 (1975); *see also Harding v. Ariz. Bd. of Dental Exam’rs*, No. 1 CA-CV
 12 18-0597, 2019 WL 6713433, at *3 (Ariz. App. Dec. 10, 2019) (finding that tolling did not
 13 apply where the plaintiff’s “disciplinary proceeding required exhaustion of administrative
 14 remedies before judicial review” but his state-law claim did not). As the Arizona Court of
 15 Appeals stated in its December 10, 2019 decision, Plaintiff’s § 1983 claims were outside
 16 the scope of the administrative proceedings and subsequent appeals. *Danam*, 2019 WL
 17 5617577, at *5 n.4. Plaintiff was put on notice that the administrative proceedings would
 18 not resolve his § 1983 claims months before the statute of limitations expired on May 16,
 19 2020. Plaintiff’s diligence in pursuing his administrative claims therefore does not save his
 20 failure to timely bring his § 1983 claims.

21 The Court also finds “no policy reason that excuses [Plaintiff’s] failure to take the
 22 minimal steps necessary to preserve each claim independently.” *Johnson*, 421 U.S. at 466.
 23 Considering a plaintiff’s diligence in pursuing a claim “furthers the purposes of the statute
 24 of limitations and ensures that [the remedy] is not abused by dilatory litigants.” *Jepson*,
 25 164 Ariz. at 273. Thus, “to obtain relief . . . where the [original] action has abated and been
 26 terminated, the plaintiff must show that despite diligent efforts, he was unable to effect
 27 service.” *Id.* Here, Plaintiff’s original case was dismissed on July 19, 2019, for lack of
 28 service. *Danam*, No. CV-18-1493-PHX-DGC, Doc. 44. Plaintiff has not shown this Court

1 that he was diligent in his attempts to litigate that case, which was ultimately dismissed for
2 lack of service. After that, he waited almost a year and a half to then file this suit. Policy
3 considerations weigh against equitably tolling the statute of limitations for Plaintiff's
4 § 1983 claims.

5 Upon consideration of the equitable tolling factors, the Court finds that Plaintiff has
6 not acted reasonably to preserve his claims, prosecuted his claims diligently, or been
7 prevented from timely filing his claims by a procedural impediment. Although Plaintiff
8 would be more prejudiced than Defendants because his claims are time-barred without
9 equitable tolling, this sole factor does not tip the scales in his favor. *See Jepson*, 164 Ariz.
10 at 274. The Court will not toll the statute of limitations for Plaintiff's § 1983 claims because
11 Plaintiff has not met his burden.

12 3. Conclusion

13 In sum, Plaintiff's § 1983 claims are time barred because the two-year statute of
14 limitations expired before he filed his claims in this Court. Equitable tolling also does not
15 apply. The Court therefore finds that Plaintiff is barred from bringing each federal cause
16 of action (Counts 1–6).

17 B. State-Law Claims

18 Plaintiff's § 1983 claims formed the basis of the Court's subject-matter jurisdiction.
19 (Doc. 11 ¶ 1.); *see also* 28 U.S.C. §§ 1331, 1343. Because Plaintiff's § 1983 claims are
20 dismissed, the Court must now determine whether to exercise supplemental jurisdiction
21 over Plaintiff's remaining state-law claims.

22 Plaintiff alleges an Arizona Constitution claim and a defamation claim (Counts 7
23 and 8).⁴ (Doc. 11 ¶¶ 65–68.) A district court has discretion to decline exercising

24 ⁴ Plaintiff asserts his Arizona Constitution and defamation claims under § 1983. (Doc. 11
25 ¶¶ 65–68.) Section 1983, however, only provides a cause of action for violations of the
26 United States Constitution and federal law. *See Buckley v. City of Redding*, 66 F.3d 188,
27 190 (9th Cir. 1995). It “does not provide a cognizable cause of action for vindicating
28 violations of state constitutional rights.” *Douglas v. City of Mesa*, No. CV-17-04686-PHX-SMB,
2020 WL 1033128, at *6 n.8 (D. Ariz. Mar. 3, 2020) (citation omitted). Plaintiff
therefore cannot seek relief for violation of an Arizona Constitution provision under
§ 1983. As to Plaintiff's defamation claim, there is no federal defamation statute, and the
Supreme Court has rejected the contention that “defamation, standing alone, deprives an
individual of any ‘liberty’ protected by the Due Process Clause.” *Dube v. Contractor*, 363

1 supplemental jurisdiction over state-law claims if it “has dismissed all claims over which
 2 it has original jurisdiction.” 28 U.S.C. § 1367(c). When exercising its discretion, the Court
 3 considers the interest in “economy, convenience, fairness, and comity.” *Acri v. Varian*
 4 *Assocs., Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997). These factors may weigh toward
 5 exercising supplemental jurisdiction if there is considerable procedural advancement, such
 6 that it would be a waste of judicial resources or unfair to the parties to remand the matter.
 7 *See, e.g., In re Nucorp Energy Sec. Litig.*, 772 F.2d 1486, 1491 (9th Cir. 1985) (finding
 8 that the district court “was right in not imposing unnecessarily on a state court . . . repetition
 9 of pleadings, motions, discovery and other pre-trial proceedings”). But “in the usual case
 10 in which all federal-law claims are eliminated before trial, the balance of factors . . . will
 11 point toward declining to exercise jurisdiction over the remaining state-law claims.”
 12 *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988).

13 Economy and convenience do not warrant exercising supplemental jurisdiction
 14 here. There has been almost no time expended over the state-law claims. The complaint
 15 was filed a few months ago, Defendants have not yet filed an answer, and discovery has
 16 not yet commenced. This case has therefore not advanced so far procedurally that it would
 17 be a waste of judicial resources or unfair to the parties for the Court to decline exercising
 18 supplemental jurisdiction.

19 The principles of comity and federalism also weigh against the Court exercising
 20 supplemental jurisdiction. To resolve the state-law claims, the Court would need to analyze
 21 and interpret both the Arizona Constitution and A.R.S. § 12-821, which supplies the statute
 22 of limitations for claims brought against a public entity or employee in Arizona. The Court
 23 believes that the state court is better equipped to handle these claims. *United Mine Workers*
 24 *of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) (“Needless decisions of state law should be
 25 avoided both as a matter of comity and to promote justice between the parties, by procuring

26
 27 F. App’x 890, 891 (9th Cir. 2009) (citing *Paul v. Davis*, 424 U.S. 693, 708–10 (1976)).
 28 Plaintiff does reference 28 U.S.C. § 4101 to support his defamation claim, but that “does
 not create a federal cause of action for defamation.” *Jacobs v. Arizona Dep’t of Econ. Sec.*,
 No. CV-20-01713-PHX-SMB, 2020 WL 7059561, at *2 (D. Ariz. Dec. 2, 2020). Thus,
 Plaintiff’s Arizona Constitution and defamation claims are state-law claims.

1 for them a surer-footed reading of applicable law.”). Therefore, the Court declines to
 2 exercise supplemental jurisdiction. *See Daghlawi v. Juilin Hung*, No. CV-19-05824-PHX-
 3 DWL, 2020 WL 224362, at *1 (D. Ariz. Jan. 15, 2020) (“[C]onsiderations of federalism
 4 and comity are best served by allowing Arizona state courts to address state-law claims.”).
 5 The Court will dismiss Plaintiff’s state-law claims without prejudice.

6 **C. Leave to Amend**

7 Federal Rule of Civil Procedure 15(a) provides that leave to amend should be freely
 8 granted “when justice so requires.” Fed. R. Civ. P. 15(a)(2). “The power to grant leave to
 9 amend . . . is entrusted to the discretion of the district court, which ‘determines the propriety
 10 of a motion to amend by ascertaining the presence of any of four factors: bad faith, undue
 11 delay, prejudice to the opposing party, and/or futility.’” *Serra v. Lappin*, 600 F.3d 1191,
 12 1200 (9th Cir. 2010) (quotation omitted). District courts properly deny leave to amend if
 13 the proposed amendment would be futile or the amended complaint would be subject to
 14 dismissal. *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

15 Plaintiff did not seek leave to amend in the event the Motion was granted.
 16 Regardless, because Plaintiff’s claims are time-barred, amendment would be futile. *See*
 17 *Andrich v. Maricopa Cnty.*, No. CV-19-05628-PHX-GMS-MTM, 2021 WL 2451653, at
 18 *10 (D. Ariz. May 13, 2021) (finding the plaintiff’s time-barred claims could not be cured
 19 by amendment). This Court has already given Plaintiff opportunity to amend his original
 20 complaint. (Doc. 5.) Although Plaintiff litigated this same case in state and federal court
 21 before bringing this action, he continues to fail to allege facts that would excuse the
 22 untimely filing of his federal causes of actions. Indeed, at least one other court dismissed
 23 an amended complaint on these same facts and claims. *See Danam*, No. CV-18-1493-PHX-
 24 DGC, Doc. 40. Plaintiff has also continually failed to assert facts that would meet his
 25 burden to prove the continuing violations doctrine or equitable tolling. The Court therefore
 26 will not grant Plaintiff leave to amend because any amendment would be futile. For these
 27 reasons, the First Amended Complaint will be dismissed with prejudice.

1 **IV. CONCLUSION**

2 Accordingly,

3 **IT IS ORDERED granting** Defendant's Motion to Dismiss (Doc. 23) as follows:

4 (1) Plaintiff's § 1983 claims (Counts 1–6) are **dismissed with prejudice**.

5 (2) The Court declines to exercise supplemental jurisdiction over Plaintiff's
6 state-law claims. Therefore, Plaintiff's Arizona Constitution claim (Count 7) and his
7 defamation claim (Count 8) are **dismissed without prejudice** for refile in state court.

8 **IT IS FURTHER ORDERED denying** the pending motions (Docs. 18, 20, 35, 37,
9 38, 39) **as moot**.

10 **IT IS FINALLY ORDERED** that the Clerk of the Court shall enter judgment
11 accordingly and close this case.

12 Dated this 9th day of August, 2021.

13
14 

15 Michael T. Liburdi
16 Michael T. Liburdi
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: H

Exhibit H: Rafael Cezar Danam vs. Elaine Kelley, U.S. District Court of Nevada Case No.: 2:19-CV-01606-JAD-DJA. Judgement entered April 14, 2020.

Petitioner/Plaintiff presents APPENDIX H: EXHIBIT (H) in accordance RULES 33, 34.4 cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.

Danam v. Kelley

Decided Apr 14, 2020

Case No. 2:19-cv-01606-JAD-DJA

04-14-2020

Rafael Danam, Plaintiff v. Elaine Kelley, et al.,
Defendants

U.S. District Judge Jennifer A. Dorsey

Order Adopting Report and Recommendation and Dismissing Case

[ECF No. 34]

Rafael Danam sues Elaine Kelley, the principal of his former employer, the Somerset Academy Aliante Charter School, asserting constitutional and employment-related claims. Because Danam was granted *in forma pauperis* status, the court screened his complaint; upon doing so, it dismissed that complaint with a detailed explanation of its deficiencies and gave Danam leave to amend—twice.¹ The magistrate judge has screened Danam's second-amended complaint² and concluded that, despite the court's guidance, Danam remains unable to state a claim for relief under federal law.³ Deeming any further attempt at amendment futile, the magistrate judge recommends that I dismiss this action, leaving open Danam's opportunity to bring his state-law claims in state court.⁴ The deadline for objections to that recommendation passed without objection or any request to extend the deadline to file one. "

[N]o review is required of a magistrate judge's report and recommendation unless objections are filed."⁵ *2

¹ ECF Nos. 5, 23.

² ECF No. 24.

³ ECF No. 34.

⁴ *Id.* at 4.

⁵ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also* *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). -----

IT IS THEREFORE ORDERED that the magistrate judge's report and recommendation [ECF No. 34] is **ADOPTED** in full.

IT IS FURTHER ORDERED THAT **this case is DISMISSED**. The Clerk of Court is directed to ENTER JUDGMENT ACCORDINGLY and CLOSE THIS CASE. If Danam wishes to pursue his state-law claims, he must file them in state court.

Dated: April 14, 2020

/s/ _____

U.S. District Judge Jennifer A. Dorsey

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: I

Exhibit I: Rafael Cezar Danam vs. Elaine Kelley, Supreme Court of the State of Nevada Case No.: 82036. Judgement entered

Petitioner/Plaintiff presents APPENDIX I: EXHIBIT (I) in accordance RULES 33, 34.4 cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAFAEL CEZAR DANAM,
Petitioner,

vs.

ELAINE KELLEY, IN HER OFFICIAL
CAPACITY AS PRINCIPAL ALIANTE
SOMERSET CHARTER,
Respondent.

No. 82036

FILED

DEC 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Yau
DEPUTY CLERK

ORDER DENYING PETITION

This is an original pro se "Petition for Extraordinary Writ for U.S. Constitution Violation from U.S. District Court of Nevada." Having considered the petition, we are not persuaded that writ relief is warranted because petitioner has a plain, speedy, and adequate remedy available to him either by way of filing a civil complaint in the Eighth Judicial District Court, or an appeal to the United States Court of Appeals for the Ninth Circuit to the extent he seeks to challenge the dismissal of his federal complaint. See NRS 34.170; *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (writ relief is proper only when there is no plain, speedy, and adequate remedy at law and petitioner bears the burden of demonstrating that writ relief is warranted). Accordingly, we

ORDER the petition DENIED.¹

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Silver, J.
Silver

¹Petitioner's December 4, 2020, motion for summary judgment is denied.

cc: Rafael Cezar Danam
Law Office of Gary P. Sinkeldam APC

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: J

Exhibit J: National Association of State Directors of Teacher Education and Certification
("NASDTEC")

**Petitioner/Plaintiff presents APPENDIX J: EXHIBIT (J) in accordance RULES 33, 34.4 cf.
Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.**



May 30, 2018

By Electronic and First-Class Mail

Rafael Danam
6104 W. Townley Avenue
Glendale, AZ 85302

Re: Subpoena

Dear Mr. Danam:

This letter is in response to your e-mail request "for all negative records submitted by AZSBE" assumedly related to your Arizona certification. I note that your request does not meet the standard for a document subpoena as it was not issued by a court with jurisdiction over the above-referenced matter or an officer of the court, or in compliance with the Uniform Interstate Depositions and Discovery Act, which governs subpoenas to out-of-state non-parties. Further, the 'subpoena' was not served in conformity with Arizona law or served upon the other parties to the litigation.

Consequently, NASDTEC, an out-of-state non-party has no obligation to respond to your request. Without waiving our objections; however, NASDTEC provides the following background information to help you understand the nature of our organization. NASDTEC, the National Association of State Directors of Teacher Education and Certification, is a membership organization representing professional standards boards and commissions and state departments of education in all 50 states, the District of Columbia, the Department of Defense Education Activity, the U.S. Territories, and Ontario that are responsible for the preparation, licensure, and discipline of educational personnel. Associate members include constituent organization with an interest in the preparation, continuing development, employment, and certification of educational personnel. The purpose of this Association, which was founded in 1928, is to exercise leadership in matters related to the preparation, certification and professional practice of professional school personnel.

One of the privileges of jurisdictional membership is participation in the NASDTEC Educator Identification Clearinghouse. The NASDTEC Clearinghouse is a database repository that reflects all disciplinary actions reported by NASDTEC member jurisdictions. The goal of the Clearinghouse is to provide each NASDTEC member

state/jurisdiction with a notification of an action taken against the certificate/license of an educator by other member states/jurisdictions and in doing so, to protect the interests of children served by the professional education community within the United States and beyond.

The NASDTEC Clearinghouse serves merely as the repository for the data entered by its member jurisdictions. The information reported to the Clearinghouse is the sole responsibility of the reporting member jurisdiction. NASDTEC does not audit, edit or otherwise alter the information that is inputted into the Clearinghouse. Members jurisdictions report the status of the action taken (i.e. certificate/license denied or invalidated annulled, revoked, suspended, and/or voluntarily surrendered) and the nature of the denial/invalidation. Reasons for disciplinary action vary depending on the laws and regulations of the reporting member state or jurisdiction and can range from convictions for criminal offenses to contract abandonment.

The database reflects that on October 24, 2017, Arizona reported that your Arizona certification had been revoked/invalidated on October 23, 2017, based upon the general category of non-sex related acts or crimes committed against a child. The notice in the Clearinghouse serves as a 'red flag' to other jurisdictions that Arizona has taken action against your certificate. Further information about the revocation/invalidation is only available to member jurisdictions from the submitting state, in this case Arizona.

If you have any other questions, please let me know.

Sincerely,


/s/ Carolyn Angelo
NASDTEC Legal Counsel

cc: Philip Rogers
Alicia Williams, Esquire

**IN THE SUPREME COURT
OF THE UNITED STATES**

RAFAEL CEZAR DANAM,

Petitioner.

Vs.

**ARIZONA BOARD OF
EDUCATION,**

Respondents.

EXHIBIT DOCUMENT: K

Exhibit K: Arizona Department of Administration, Risk Management Division, Rafael Cezar Danam vs. Arizona Board of Education

Petitioner/Plaintiff presents APPENDIX K: EXHIBIT (K) in accordance RULES 33, 34.4 cf. Fed. R. Civ. P. Rules 26; Federal Rules of Evidence Rules 702, 703, or 705.

Douglas A. Ducey
Governor



Andy Tobin
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

RISK MANAGEMENT DIVISION
Property, Liability and Insurance Section
100 NORTH FIFTEENTH AVENUE • SUITE 301
PHOENIX, ARIZONA 85007
(602) 542-2180

October 23, 2020

Rafael Danam
Po Box 336707
N Las Vegas, Nevada 89033

RE: **Our Claim Number:** G202020850-1
Incident Date: January 1, 2020

We are writing to acknowledge your correspondence dated October 17, 2020.

Please be advised it has been referred to the Department of Administration's Risk Management Section and assigned to Scott Reid.

If you have any additional supporting documentation to provide you may either email it to plexistingclaims@azdoa.gov with our claim number in the subject line, or mail the documentation to Arizona Department of Administration, Risk Management Division, 100 North Fifteenth Avenue, Suite 301, Phoenix, Arizona, 85007. Our claim number must be referenced on your correspondence.

By acknowledging your correspondence, we expressly do not waive, nor do we intend to waive, any defenses the State may have (including under A.R.S. 12-821.01, nor are we acknowledging that your correspondence meets all requirements of this statute).

Sincerely,

Risk Management Division
Phone # (602) 542-2180