

**ROBERT A. BERTSCHE**

*Admitted in New York,  
Massachusetts, Pennsylvania,  
and New Hampshire*

May 14, 2024

By email ([mike@consovoymccarthy.com](mailto:mike@consovoymccarthy.com))

**SENT VIA EMAIL**

J. Michael Connolly, Esq.  
Consovoy McCarthy PLLC  
1600 Wilson Boulevard, Suite 700  
Arlington, VA 22209

**Re: PDE's Misinformation Campaign Against Tutor.com**

Dear Mr. Connolly,

Our firm has been retained as litigation counsel to Tutor.com. We are contacting you on the understanding that you are litigation counsel to Parents Defending Education ("PDE"). If we are incorrect, kindly forward this letter to PDE's current counsel. (You will see we have also cc'd Nicole Neily, president and founder of PDE.)

We write regarding the ongoing campaign of Parents Defending Education to destroy Tutor.com and prevent it from carrying out its education services that benefit students across the United States. PDE and its representatives, including president and founder Nicole Neily, are wantonly publishing and disseminating inaccurate and incomplete information designed to imply that Tutor.com, Inc.—a U.S. company incorporated in Delaware and with its principal place of business in New York City—is somehow a puppet of the Chinese government and a threat to national security. Those implications are false, reckless, and malicious. Their continued dissemination by PDE constitutes actionable defamation and trade libel, as well as tortious interference with Tutor.com's existing contracts and ongoing business relations. PDE's campaign is already causing financial harm to Tutor.com, and, if it continues, poses an irreparable existential threat that Tutor.com cannot continue to ignore.

The truth is that Tutor.com supports the education of students by offering them on-demand tutoring and homework help 24 hours a day, seven days a week. Having conducted more than 26 million tutoring sessions over 24 years, Tutor.com has built a brand of unimpeached integrity, with demonstrated positive impacts on student outcomes. Tutor.com on average receives a 95 percent satisfaction rating from the students who utilize its services. It provides moment-of-need support that helps students with the ongoing work already assigned to them by their respective educational institutions. Tutor.com does not supply its own curriculum or materials, but rather helps students work through assignments from their teachers, employing Socratic questioning to encourage independent problem-solving and to reinforce schools' own curricula. Tutor.com maintains remarkably little personally identifiable information about the students it serves. And Tutor.com itself initiated a rigorous review by the federal

government through the Committee on Foreign Investment in the United States (“CFIUS”), which concluded that “there are no unresolved national security concerns” caused by its ownership status. As a result of the review, Tutor.com voluntarily subjected itself to strict, ongoing oversight of its educational services and data-protection protocols by the United States Departments of the Treasury and Defense—ensuring that Tutor.com cannot and will not act in a manner deemed to constitute a national security risk. As a result, its data protection measures are among the most stringent and well-enforced in the industry.

This letter is intended to provide PDE and its representatives, including Ms. Neily, with accurate, factual information to replace the falsehoods they have propagated to customers and the media. Armed with these true facts, PDE and Ms. Neily are hereby on notice that continued dissemination of misinformation about Tutor.com will be deemed evidence that PDE and its representatives are acting with knowledge of, and reckless disregard as to, the falsity of the statements and implications being conveyed. Tutor.com reserves its rights to take such actions as it deems necessary to prevent further harm to its reputation, customer base, and goodwill. These may include, but are in no way limited to, seeking significant monetary damages to account for the loss of business suffered as a result of PDE’s campaign.

### **PDE’s False Accusations**

PDE’s fallacious storyline casting Tutor.com as a villainous agent of the Chinese Communist Party seems to magnify the concerns expressed in a letter sent in February by Arkansas Senator Tom Cotton to the Department of Defense (“DoD”). In his letter, Sen. Cotton posed several questions about the acquisition of Tutor.com (from a Korean education company, ST Unitas) by the Primavera Capital Group investment firm (“Primavera”), which had occurred more than two years earlier. In particular, he questioned whether the DoD had conducted any independent security reviews prior to approving the acquisition by the Hong Kong-based firm, even though a [Wall Street Journal report](#) published in May 2023 noted there had been approval by the U.S. government. Building upon Sen. Cotton’s concerns about Tutor.com’s ownership status, PDE took to its website and social media platforms to fan the flames of controversy.

PDE launched its campaign by publishing a “non-exhaustive list of school districts that give students access to Tutor.com.” Had PDE been interested in promoting an objective investigation into Tutor.com, it might have recognized that the length of Tutor.com’s customer list is evidence not only that the company has succeeded in providing effective high-quality educational services, but also that it has earned the trust and respect of school districts across the United States. Further good-faith research would have revealed that Tutor.com has worked diligently with the federal government to address and resolve any potential national security concerns arising out of Primavera’s investment in the company.

Unfortunately, PDE has chosen instead to use Tutor.com as a stalking horse to advance the advocacy group’s broader political agenda. It published its “non-exhaustive list” with the obvious aim of undermining Tutor.com’s standing with educators throughout the United States. In doing so, PDE has ignored facts inconvenient to its narrative and resorted to a misleading blend of baseless innuendo, histrionic speculation, and unfounded scenarios. And in its single-minded bid to incite public frenzy against Tutor.com, PDE has mounted a fact-free miseducation campaign that feeds on public fears and conspiracy theories.

PDE's circulation of its list of Tutor.com customers was only the first step in a carefully coordinated effort to sully the reputation of Tutor.com and disrupt its established business relationships. PDE and its founder, Nicole Neily, have since taken the campaign much further, engaging in a cannily misleading program of media outreach.

PDE's president and founder Nicole Neily told [Fox News Digital](#) on March 13, 2024 that her organization decided to zero in on Tutor.com because "school districts around the country have been far too cavalier in their treatment of student data." Without providing any facts to support that alarmist conclusion, Ms. Neily accused school districts of "collecting detailed information about students and families, improperly storing sensitive personal information, and greatly expanding the number of 'EdTech' vendors who can access these files." She then singled out Tutor.com as "the latest—but without a doubt, far from the last—concerning firm with access to student information," adding, "It's unlikely that most American families would be comfortable with a foreign-owned company maintaining this data."

Underlying PDE's histrionic media campaign has been the false assertion that Tutor.com has in some way hidden the facts of its ownership status in order to clandestinely enter the U.S. market. On March 16, Ms. Neily appeared on "Fox & Friends," falsely asserting that the Korean owner's sale of Tutor.com to Primavera was "not brought to anyone's attention" and that the U.S. government had not informed the public about the sale. "This is something that most American families have no idea is in their back yards and on their children's iPads," she declared. That same week, she repeated this knowingly false assertion to whatever outlets would host her. These included the evening news show of [New Tang Dynasty Television](#), a station that targets viewers in China, and a commentary program on [Real America's Voice](#) ("your number one source for patriotic daytime news and analysis"), where she posited that Primavera's investment in Tutor.com "is something that just seemed to have slipped past the goalies." These accusations ignore the facts that PDE and Ms. Neily know full well: that Tutor.com's ownership status is prominently disclosed on the home page of its website; that the sale had received federal approval after undergoing a rigorous review process; and that Tutor.com had disclosed the transaction in the publicly accessible federal contractor registration system, SAM.gov.

Another feature of PDE's media campaign has been to peddle the notion, unanchored to reality, that Tutor.com has close ties to China—and thereby to exploit Americans' legitimate concerns about the Chinese government's activities on the world stage. On the social media platform called "X" (formerly Twitter), Ms. Neily falsely [called Tutor.com](#) a "company now headquartered in China." (Tutor.com is headquartered in New York City and has no presence in China.) She even suggested ominously (albeit unpersuasively) that Tutor.com should be avoided because its new owner had "ties" to entities that were "linked" to Chinese groups that in turn were "tied" to the United Front. She insinuated, falsely, that Tutor.com was an operative somehow involved in the [Chinese government-affiliated "Confucius Classrooms" cultural exchange program, now largely defunct](#), which PDE had controversially dubbed "[Little Red Classrooms](#)"; in fact, there is no such connection.

Yet another theme of PDE's misinformation campaign has been its purposeful exaggeration of Tutor.com's degree of access to student data. To "Fox & Friends," Ms. Neily repeated her blanket assertion that "this platform has access to sensitive student data," going so far as to "absolutely" agree with her questioner's suggestion that "this company is perhaps using the data, *or stealing the data*, from children." She claimed that Tutor.com collects a vast amount of information—often in "violation of federal law"—regarding student achievement, location, and personally identifying information, and postulated that the

company plants malware on educational institutions' servers. She went so far as to tell "Real America's Voice" that it "seems to be the plan" that the Chinese government, via Tutor.com, is building a file on every American child. She then added, to One America News, that a vast amount of information "is being sucked in and then transmitted to the Chinese government, [to] be used against us." Those charges, which she does not support with even a shred of evidence, are simply preposterous.

A fourth theme of PDE's campaign to defame Tutor.com is the allegation that Tutor.com is a front for a Chinese plan to indoctrinate American children or, as she put it to "Real America's Voice," "a proactive effort to win hearts and minds." (She nodded in agreement when the show's host suggested the goal was "to scope and to mold the thinking and the thought processes of those that it gets its dirty little hands on.") On "Fox & Friends," Ms. Neily linked Primavera's acquisition of Tutor.com to "a soft power element going on with the Chinese government putting teachers and curriculum into our schools through the Confucius Classroom Program"—an initiative with which Tutor.com has absolutely no connection. To the One America News Network, she held up Tutor.com as an example of "Chinese technological infiltration of America."

In sum, the degree of misinformation being purposefully conveyed by PDE is striking. Despite PDE's claims to the contrary, Tutor.com does not "have ties to the United Front"; does not "put teachers and curriculum into U.S. schools through the Confucius Classroom Program"; and does not share any U.S. student data with Primavera, regardless of Primavera's financial interest in the company. Ample evidence conclusively establishes that, in peddling such canards, PDE is acting with knowing, or utterly reckless, disregard for the truth. The facts, taken in turn, are these:

#### **Tutor.com Publicly Announced its Acquisition by Primavera**

In January 2022, Tutor.com was purchased from ST Unitas by the Primavera Capital Group, a leading global investment firm with offices in Silicon Valley, Hong Kong, Singapore, and Beijing. As noted above, Tutor.com not only disclosed the acquisition to the Committee on Foreign Investment in the United States, but it also voluntarily submitted to CFIUS's rigorous process for ensuring that foreign investments in U.S. companies pose no national security risk. In addition, the home page of Tutor.com's [website](#) contains the unambiguous disclosure the company agreed to with CFIUS: "Tutor.com is controlled by Primavera Holdings Limited, a firm owned by Chinese nationals with a principal place of business in Hong Kong, China."

Primavera's relationship with Tutor.com was and remains financial, and Primavera is not involved in the day-to-day activities of Tutor.com. Rather, Primavera's goal is no different than that of any other investment firm: to achieve a financial return for the benefit of its investors. In the case of Primavera, those investors are blue-chip financial institutions located in the United States, Europe, and around the world.

#### **Tutor.com Has No Relationship With the People's Republic of China**

There is no ambiguity here. Tutor.com is an American company, incorporated in Delaware and headquartered in New York City. All student data is housed in the United States. As an American company, Tutor.com cannot be compelled to release U.S. student data to China. The company has no physical presence, assets, employees, or business operations in China. It abides by U.S. state and federal laws. In

no way does it report to the Chinese government or the Chinese Communist Party. The curricula with which the company's tutors help U.S. students are determined by the students' own (United States) schoolteachers, or by the students themselves—not by Tutor.com.

### **Primavera Has No Ability to Access Tutor.com's Student Data**

Tutor.com voluntarily filed a notice of review<sup>1</sup> of the proposed acquisition to the Committee on Foreign Investment in the United States, an inter-agency committee made up of representatives from over a dozen federal agencies and White House offices, including the Department of Defense, Department of State, and Department of Homeland Security, with the authority to review, investigate, block, or implement mitigation efforts in connection with any transaction or investment with a foreign entity that could raise national security concerns. *See* 50 U.S.C. § 4565. CFIUS's decisions to block transactions, or to demand mitigation measures, are final, not subject to legislative, executive, or judicial review.

CFIUS conducted an in-depth investigation into Primavera's acquisition. As a condition of approval, it requested that Tutor.com implement several mitigation measures, to which the company readily agreed. Those conditions, along with Tutor.com's express agreement to comply, are memorialized in a confidential National Security Agreement ("NSA") executed by Primavera, Tutor.com, and the U.S. Government, represented by the U.S. Department of Defense and the U.S. Department of the Treasury as the CFIUS monitoring agencies. These conditions, compliance with which the government may examine at any time, include the following:

- All personal data of U.S. users collected by Tutor.com for the purpose of providing its service (or otherwise) is and will remain stored exclusively in the United States. Primavera may not access, share, receive, observe or otherwise control such data at any point. **To repeat: No personal information of U.S. students or families is or has ever been shared with Primavera.**
- Primavera does not and will not have access to Tutor.com's information technology systems.
- Tutor.com may not and does not share personal data of U.S. users with the government of China or grant the government of China access to its IT systems.
- Primavera and its representatives are barred from accessing any of Tutor.com's brick-and-mortar facilities except its New York City headquarters, and even then only in accordance with a strict visitation policy with pre-approval by Tutor.com's security officer and a close escort. (No such visits have occurred since the acquisition, and none are contemplated.)
- Tutor.com established and manages a comprehensive data security policy for purposes of preventing unauthorized access to personal data of U.S. users or unauthorized use and

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<sup>1</sup> Not all companies acquired by foreign entities are required proactively to file a notice of review with the CFIUS. If a filing is not proactively submitted, it is up to CFIUS to determine whether a post-transaction review is warranted. (For example, TikTok's parent company, ByteDance, elected not to notify CFIUS of ByteDance's proposed acquisition of Musical.ly, which later merged with TikTok. Instead, CFIUS independently decided to review the "non-notified transaction.")

disclosure of such data. The policy is subject to ongoing review and approval by the Department of Defense and the Department of the Treasury.

- Tutor.com and Primavera will continue to operate as separate legal entities and will not integrate any of their operations, facilities, personnel, or operating locations, each of which shall remain independent of the other.

Thus, despite PDE's suggestions to the contrary, Tutor.com's NSA with the federal government mandates that Primavera shall have **no access** to any U.S. user data collected in connection with Tutor.com's services. Moreover, the U.S. government prohibits Primavera from gaining such access. In accordance with that prohibition, Tutor.com has a designated security officer, vetted and approved by the U.S. government, to continuously monitor and ensure compliance with data-protection measures, as well as two independent Tutor.com board directors, also vetted and approved by the U.S. government, whose foremost duty is to ensure that personal data of U.S. users is safeguarded. All these individuals are U.S. citizens and security and compliance experts.

PDE also engages in malicious falsehood when it suggests that "sensitive" personal data obtained by Tutor.com was somehow "stolen" from users. Tutor.com is forthright about its data collection in its [privacy policy](#), which clearly discloses the limited use of personal data for specified purposes. Much of the data is provided to Tutor.com by the organizations through which students access Tutor.com's services. These organizations help decide what types of personal data Tutor.com will receive, but in most cases, the only data available to Tutor.com is the student's name, student's email address, student's IP address, the identity of the school district or sponsoring institution, and a transcript of the text-based tutoring session.<sup>2</sup> At no point is any data surreptitiously collected or used for any purpose that has not been previously disclosed to customers. Personal data is stored and processed within the United States, and Tutor.com is in compliance with the framework in the National Institute of Standards and Technology (NIST) Special Publication 800-171, which provides a set of cybersecurity guidelines and requirements designed to safeguard sensitive information. Moreover, Tutor.com deletes student data whenever requested to do so by a client and at regular intervals.

As an American company, Tutor.com remains dedicated to the values, goals, and practices that it has championed over two decades of serving institutions and learners—foremost among which is protecting customer and learner data. Tutor.com has no physical presence, assets, employees, or business operations in China, and Primavera is barred from any access to personal data of Tutor.com's U.S. customers. There is nothing tying Tutor.com to the Chinese government and no legal mechanism—domestic or international—that could compel Tutor.com, an American company, to provide personal data of U.S. customers to the Chinese government. Even if, for argument's sake only, *Primavera* could be somehow compelled to disclose such data to the Chinese government, it does not have in its possession any such data to share.

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<sup>2</sup> Other information obtained—but not sought—by Tutor.com includes whatever information students may voluntarily provide on their own initiative, such as an essay submitted by a student for review.

### **Tutor.com Does Not, and Could Not, Engage in “Indoctrination” of Students**

PDE’s allegation that Tutor.com has somehow turned into an agent of Communist indoctrination would be laughable if it were not so reckless. Indeed, the implication that Tutor.com may be facilitating some sort of backdoor mind-control mechanism reveals how fundamentally PDE misconstrues the business of this effective and valuable educational service.

Tutor.com works by providing each student with tutoring services on topics and questions *initiated directly by the student*. Students sign in to their accounts and select a topic from a dropdown menu (e.g., “Math”). They are then prompted to enter their own specific pre-session questions, such as a homework problem or writing assignment, in order for the system to connect each student with the tutor best suited to their individual level and needs. Tutors—none of them residents of China—do not determine the subject matter of their sessions with students. In fact, Socratic questioning is the core instructional methodology that tutors employ, so students typically do most of the texting as their tutors help the students figure out on their own how to solve questions from their teachers’ assignments. Tutor.com has no way to insert “curriculum into U.S. schools” (whether through the “Confucius Classroom Program” or otherwise), because the student/tutor interactions on the platform are initiated by the students themselves, who are matched with tutors conversant with the subject matter to be studied.

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Tutor.com has no desire to pick a fight with Parents Defending Education. Instead, Tutor.com wants to continue helping institutions—as it has for more than 24 years and 26 million tutoring sessions—to provide on-demand homework help for all their students, so that learners get the moment-of-need support to pass their classes, persist in their studies, improve their confidence, and achieve ambitious educational goals. Urging institutions to remove a trusted, effective source of academic support—due to completely untrue claims about Tutor.com—is not just harmful to Tutor.com; it is also detrimental to students, families, teachers, and administrators. For many students and families, access to 24/7, on-demand tutoring is a lifeline that helps learners improve their grades.<sup>3</sup> Tutor.com is also a trusted tool for teachers, one that greatly eases the considerable strain on our nation’s educators. For administrators, any cessation of services disrupts entire learning communities and places an undue burden on their day-to-day work. The prospective removal of a valued resource poses a threat to the educational attainment of students already adversely affected by pandemic-related learning loss.

Tutor.com cannot stand by idly while PDE and Ms. Neily malign its integrity and scare away the very customers who have benefited from its educational services for decades. Actionable defamation arises not merely from outright falsehoods, but also from “false suggestions, impressions and implications arising from otherwise truthful statements.” *Armstrong v. Simon & Schuster*, 85 N.Y.2d 373, 381 (1995). Where otherwise true statements can be “reasonably read both to impart a defamatory inference and to affirmatively suggest that the author intended or endorsed that inference,” those statements are libel. *Stepanov v. Dow Jones and Co., Inc.*, 120 A.D.3d 28, 35 (N.Y. 2014). “Indeed, defamation by implication

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<sup>3</sup> Recent independently conducted effectiveness studies showed a statistically significant positive impact on student GPA, grades, and school attendance for Tutor.com users. The positive impact on GPA and grades was especially marked for students with GPAs in the bottom quartile.

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can include statements whose falsity is based not on what was said, but rather 'by omitting or strategically juxtaposing key facts.'" *Martin v. Hearst Corp.*, 777 F.3d 546, 552 (2d Cir. 2015).

There is no question that PDE and Ms. Neily have implied that Tutor.com is somehow compromised, nefarious, and unsafe in its business practices, and have affirmatively endorsed that inference through a spirited campaign based on misinformation, rumor, and innuendo. Under the guise of protecting American students from Chinese influence, PDE is destroying Tutor.com's reputation by falsely and unfairly mischaracterizing its business, intentions, and legitimacy in the eyes of its customers. PDE's media campaign has already resulted in lost business. Armed with the facts set out in this letter, PDE can no longer claim ignorance, nor resort to innuendo. The misinformation campaign must end, and the [inaccurate articles about Tutor.com](#) should be removed from PDE's website. If PDE does not take these steps, then Tutor.com will have little choice but to seek to recoup its damages through litigation.

This letter in no way represents a complete recitation of all facts in this matter or all of our client's legal positions, rights, or remedies, nor does it waive any such position, right, remedy, or privilege, all of which are expressly reserved.

#### **Document Retention Notice**

Finally, PDE and Ms. Neily have now been put on notice of the possibility of litigation if they continue their misinformation campaign. Accordingly, they now have a legal duty to preserve, and not delete, destroy, or hide, all documents, communications, and materials, in both physical and electronic form, that refer or relate in any way to their campaign against Tutor.com. We call upon you to instruct PDE'S principals, agents, employees, and other individuals under their supervision to preserve and retain all such materials, including emails, text messages, recordings, drafts, notes, communications, documents, data, and electronically stored information of any kind. Please confirm to me that you have required your clients to do so.

Very truly yours,



Robert A. Bertsche

cc: Nicole Neily, President,  
Parents for Defending Education  
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