

S. Nelson Dec. 11, 2018
1404 Bonita Avenue
Mountain View, CA 94040

Mountain View Whisman Board of Education

RE: Closed Session "Negotiations" 4/19/2018, Brown Act violation, cease and desist

To MVWSD Governing Board Clerk and Secretary (T. Wilson and A. Rudolph):

Under the terms set forth in Gov Code section 54960.2 I am filing this formal letter requesting you to cease and desist from violating the Brown Act in your future descriptions of Agenda Closed Session items. On two occasions in early 2018, you did not explain what "Negotiations" meant [4/19/2018 item III. B. and 1/4/2018 item III. A.]. **To be specific, you did not use either *safe harbor language* to explain what exemption you are claiming and/or you did not explain clearly what the topic was. There was no attempt to explain the topic. There were no words at all to describe the topic of "Negotiations".**

What topic is covered is usually explained as: "**described in substantial compliance with this section. Substantial compliance is satisfied by including the information below ...**" but you might further find some good writing on this explained by a panel of lawyers in Open & Public V, A Guide to the Ralph M. Brown Act, Chapter 5 on Closed Sessions (particularly footnote 5, **Gov Code 54854.5**). Or similar wording in Ed Code 89305.5 ("including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.") and various other *similar legal wording* in the Gloria Romero Open Meetings Act of 2000. The CSBA also has a booklet advising on The Brown Act/open meeting laws for LEAs.

To review for you, here is the course I am now taking:

1) Within 9 months of the violation, a complainant must file a "cease and desist" letter with the government entity "clearly describing the past action of the legislative body and nature of the alleged violation." Gov Code sec. 54960.2(1) [the last violation was April 19, 2018, Agenda III. B.]

I hope you, in the legislative body, will take these steps:

2) The legislative body has 60 days to respond with "an unconditional commitment to cease, desist from, and not repeat the past action." Gov Code sec 54960.2(a)(4). (If it makes such a commitment within 30 days, the government body will immunize itself against any claim, in the course of litigation, for payment of the complainant's attorney's fees or costs, Gov Code Sec. 54960.2(b))
3) If the Government body responds with a timely and unconditional commitment, that will be the end of the dispute (unless, subsequently, the agency reneges on its commitment). However, if the government doesn't respond, or responds unsatisfactorily or conditionally, the complainant may file suit, and must do so within 60 days. Gov Code Sec. 54960.2(a)(4).

For purposes of your review, I have attached the part of Gov Code that explains what the general form of the response should be and how it should be done.

best,



Steven E. Nelson, retired MVWSD Trustee

[Attachment 1] 2018, April 19, posted pre-meeting Agenda
[Attachment 2] 2018, April 19, posted adopted Minutes
[Attachment 3] Gov Code response part of section 54960.2.(b)



**Mountain View
Whisman
School District**

**Mountain View Whisman School District
Board of Trustees - Regular Meeting**

1175 Castro Street (Graham MUR)
April 19, 2018
6:30 PM

(Live streaming available at www.mvwsd.org)

As a courtesy to others, please turn off your cell phone upon entering.

Under Approval of Agenda, item order may be changed. All times are approximate.

I. CALL TO ORDER (6:30 p.m.)

- A. Pledge
- B. Roll Call
- C. Approval of Agenda

II. OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD CONCERNING ITEMS ON THE CLOSED SESSION AGENDA

III. CLOSED SESSION

- A. Public Employee Employment: Graham Principal, Mistral Principal, Theuerkauf Principal
- B. Negotiations
- C. Public Employee Discipline/Dismissal/Release

IV. RECONVENE OPEN SESSION (7:45 p.m.)

- A. Closed Session Report

V. CONSENT AGENDA

The following items will be handled with one action; however, any item may be removed from consideration by individual Board Members or the Superintendent.

- A. Personnel Report
 - 1. Personnel Report to the Board of Trustees
- B. Quarterly Report on Williams Uniform Complaints
- C. Approval of Payroll Report and Accounts Payable Warrant List for the Month of March 2018

VI. COMMUNICATIONS

[attachment 2]



Mountain View Whisman School District
Board of Trustees - Regular Meeting

1175 Castro Street (Graham MUR)
April 19, 2018
6:30 PM

(Live streaming available at www.mvwsd.org)

As a courtesy to others, please turn off your cell phone upon entering.

Under Approval of Agenda, item order may be changed. All times are approximate.

I. CALL TO ORDER (6:30 p.m.)

The meeting was called to order at 6:30 p.m.

A. Pledge

The Pledge of Allegiance was led by Ms. Blakely.

B. Roll Call

Present: Blakely, Gutiérrez, Wilson, Wheeler

Absent: Coladonato

C. Approval of Agenda

A motion was made by Tamara Wilson and seconded by Ellen Wheeler to approve the agenda with the removal of item VII. B - Developer Fees, which will be moved to the May 3, 2018 meeting.

Ayes: Blakely, Gutierrez, Wheeler, Wilson

Absent: Coladonato

II. OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD CONCERNING ITEMS ON THE CLOSED SESSION AGENDA

No members of the public wished to address the Board concerning items on the Closed Session agenda.

III. CLOSED SESSION

The meeting was adjourned to Closed Session at 6:35 p.m.

Mr. Coladonato arrived at 6:55 p.m.

A. Public Employee Employment: Graham Principal, Mistral Principal, Theuerkauf Principal

B. Negotiations

C. Public Employee Discipline/Dismissal/Release

IV. RECONVENE OPEN SESSION (7:45 p.m.)

The meeting was reconvened at 7:41 p.m.

A. Closed Session Report

Ms. Blakely reported that the Board voted in Closed Session 5-0 to accept the resignation of a certificated employee (teacher) effective, April 30, 2018.

V. CONSENT AGENDA

The following items will be handled with one action; however, any item may be removed from consideration by individual Board Members or the Superintendent.

A motion was made by Greg Coladonato and seconded by Ellen Wheeler to approve items on the Consent Agenda including a revised Personnel Report.

Ayes: Blakely, Coladonato, Gutierrez, Wheeler, Wilson

A. Personnel Report

1. Personnel Report to the Board of Trustees

B. Quarterly Report on Williams Uniform Complaints

C. Approval of Payroll Report and Accounts Payable Warrant List for the Month of March 2018

VI. COMMUNICATIONS

A. Employee Organizations

Emily Zapata, President of the Mountain View Educators Association, shared some suggestions from the Town Hall on safety last night. She also congratulated the new site administrators.

B. District Committees

No report at this time.

C. Superintendent

Dr. Rudolph reported that the Enrollment Priorities Task Force will meet on April 24. He also reminded everyone that the Board would hold a retreat focused on dual immersion on April 28. He also invited everyone to come to the groundbreaking for the new school on North Whisman Road on April 26.

VII. COMMUNITY COMMENTS

This is the time reserved for community members to address the Board on items that

20 December 2018

TO: Mountain View Whisman Governing Board

Board Secretary Rudolph:

RE: Public Request for Agenda Discussion and Action item

A provision of the state Education Code, reflected in a local Board Bylaw (BB), allows for the placement on the Agenda of an item from the public. I am asking for such an Agenda item, on the first January 2019 Regular Meeting. (Jan.10, 2019) This is in reference to a previous "cease and desist" letter to the MVWSD Board dated December 11, 2018.

I wish that the following attached "suggested draft" letter be included in the meeting agenda packet, and that the allotted time for the item be "5 minutes." I will not need any presentation time myself - I can completely contain my comments to the Board in the usual community comment period of 3 minutes.

I would suggest, that the following line of Government Code be included in your usual text introduction to an item, and that you ("staff") urge a simple adoption vote without modification.

part of section 54960.2.(b) Government Code

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

This request is being mailed Dec 20, and I am going to also hand-deliver a copy to you, Dr. Rudolph, (or the new Board Clerk) at the MVWSD Board meeting tonight. **TIME IS OF THE ESSENCE: 30 days from my Dec 11th cease and desist" letter** is what the law discusses as necessary to absolutely avoid any further possible district liability.

best,

Steven Nelson 
1404 Bonita Ave.
Mountain View, California 94040
(650) 968-4733

attachment: suggested draft response letter

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M.B.