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April 24, 2024

Via email to maria.majorek-hockert@fresnounified.org

Board of Trustees,
Fresno Unified School District
C/O Bob Nelson, Superintendent
2309 Tulare Street
Fresno, CA 93721

Re: Demand to Cease and Desist Brown Act Violations

Dear FUSD Board of Trustees:

In accordance with sections 54960 and 54960.2 of the Government Code, this letter, sent on behalf of Darius Assemi, is a demand that you cease and desist the Brown Act violations described herein. Under section 54960.2, you have 30 days to make an unconditional commitment to cease and desist the violations in the manner described by that section's subdivision (c). You must make that decision during the open session of a regular or special meeting. Gov. Code § 54960.2(c)(2). If you fail to make this unconditional commitment, you should anticipate litigation seeking a judicial declaration that you violated the Brown Act.

The agenda for your March 20, 2024 and April 3, 2024 meetings included an item for the employment or appointment of a superintendent and stated that closed session discussion was authorized by Brown Act section 54957. At both meetings, you considered whether you will conduct an internal or national search to find candidates for the position. On March 20, you decided to conduct an internal search. Then, on April 3, you changed course and decided to conduct a national search.

Neither question is consideration of the employment or appointment of a superintendent because deciding the scope of your search is different from considering a specific candidate. See *Ricasa v. Office of Administrative Hearings* (2018) 31 Cal.App.5th 262, 276. Therefore, you should have considered it as an open session agenda item. That issue aside, if the closed session was proper, section 54957.1 provides that "[t]he legislative body of any local agency shall publicly report any *action taken* in closed session and the vote or abstention on that action of every member present." Gov. Code § 54957.1(a) (emphasis added).

I italicized "action taken" because it is a term of art. An "action taken" includes not only "an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance" but also "a collective decision made by a majority of the members of a legislative body [or] a

collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision." Gov. Code § 54952.6.

To this end, your advice that the Brown Act only requires you to disclose final votes was wrong. It appears your counsel erroneously relied upon section 54957.1(a)(5) as support for your inaction. Section 54957(a)(5) is limited to how you would disclose a final decision to appoint a superintendent and ensures that you disclose complete information about that decision. But it does not negate the requirement that you disclose any other action taken. The attempt to narrowly construe the Brown Act in this manner undermines the Brown Act's stated purpose, violates the requirement to construe it broadly, and erodes public confidence in a government that must be open and transparent to the public. See, *e.g.*, *Galbiso v. Orosi Public Utility Dist.* (2008) 84 Cal.App.4th 1063, 1080.

Our position follows section 54957.1's inherent purpose, which is to protect *individuals* from the disclosure of personal information. See, *e.g.*, *Gillespie v. San Francisco Public Library Com.* (1998) 67 Cal.App.4th 1165, 1173. A decision on the question of whether the district will conduct an internal or national search does not implicate any individual's right to privacy in the same way as the consideration of a specific candidate application. Similar to a decision to fill a vacancy on your Board by appointment or special election, there is no justification whatsoever to decide the parameters of your superintendent search in secret.

To the extent your attorneys might look to *Gillespie, supra*, 67 Cal.App.4th 1165 as support for your decision to withhold information from the public, that case does not apply. Setting aside *Gillespie*'s unique circumstance of considering the Brown Act's interplay with San Francisco's Charter, it was as limited to the nomination of candidates to a position. The actual nomination of candidates is different from deciding the process by which those candidates would be nominated.

I would be happy to discuss these issues if you are interested. I otherwise await your decision on whether you will unconditionally commit to ceasing and desisting either or both of the Brown Act violations described above as well as disclosure of the actions taken on March 20 and April 3. You may reach me at 951-667-1927.

Best Regards,

Chad D. Morgan, Esq.