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January 15, 2010

10-06

Laura Schwalm, Ph.D.
District Superintendent
Garden Grove Unified School District
10331 Stanford Avenue
Garden Grove, California 92840

Re: Board Meeting – January 5, 2010

Dear Dr. Schwalm:

In your letter of January 7, 2010, you asked our office to review the transcript of the January 5, 2010, board meeting in which a discussion took place about an alleged Brown Act violation. Trustee Kimoanh Nguyen-Lam stated in the transcript:

“Mr. Lan Nguyen walked over to Mr. Bob Harden and asked if he agreed to be nominated as the next Board president. Mr. Harden said, ‘Yes,’ and nodded his head to show his consent. Then Mr. Lan Nguyen turned around to Dr. West and asked if Dr. West could nominate Lan for the vice president. Dr. West agreed. He even joked about Lan asking only for the second position. This took place just a few minutes before Dr. Schwalm called the meeting to order...”

As I am sure you are aware, the purpose of the Brown Act, California’s Open Meeting Law, is to give the citizens of California access to governmental agencies and to ensure that governmental decisions are made openly and that their deliberations are conducted openly.¹ Under the Brown Act, a meeting is defined as any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss or deliberate upon any item of business.² The Brown Act prohibits a majority of the members of a legislative body from using a series of communications to discuss, deliberate or take action on any item of business outside a meeting.³

¹ Government Code section 54950.

² Government Code section 54952.2(a).

³ Government Code section 54952.2(b).

However, the Brown Act does not prohibit a board member from engaging in separate conversations or communications outside of a meeting with another board member if that board member does not communicate to other members of the legislative body, the comments or position of any other member of the legislative body.⁴ In essence, individual contacts or conversations between a member of a legislative body and any other person, including another board member, do not violate the Brown Act.⁵

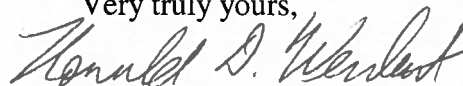
Our review of Trustee Kimoahn Nguyen-Lam's allegations contained in the transcript are that Trustee Lan Nguyen spoke to Trustee Bob Harden about whether Trustee Harden would like to be the next Board President, and Trustee Harden responded that he would. Trustee Kimoahn Nguyen-Lam then states that Trustee Lan Nguyen turned around and spoke to Trustee West and asked Trustee West, if Trustee West would nominate Lan Nguyen for Vice President of the Board, and Trustee West agreed. In our view, these are two separate, one-on-one conversations between two board members (the first conversation involving Trustee Lan Nguyen and Trustee Bob Harden and the second conversation involving Trustee Lan Nguyen and Trustee West).

Trustee Kimoahn Nguyen-Lam does not allege that Trustee Lan Nguyen spoke to Trustee West about the President position or that Trustee Nguyen spoke to Trustee Harden about the Vice-President position. Therefore, in our opinion, Trustee Lan Nguyen did not communicate to members of the Board the comments or positions of any other member of the Board and there was not a violation of the Brown Act.

However, given the fact that these two separate conversations took place in close physical proximity to other board members, and, as a result, it may have given the appearance of a Brown Act violation to members of the audience or other persons who were nearby or who may have overheard the conversations, we would recommend that board members, in the future, not participate in separate conversations involving business matters of interest to the school district, in close physical proximity to other board members. Our concern is that by holding these separate conversations in close physical proximity to other board members prior to a board meeting another board member may spontaneously join the conversation and then a Brown Act violation would occur.

If you have any further questions regarding this matter, please do not hesitate to contact our office.

Very truly yours,



Ronald D. Wenkart
General Counsel

⁴ Government Code section 54952.2(b)(2).

⁵ Government Code section 54952.2(c)(1).