

March 19, 2019

Tamara Otero, President

Board of Trustees

Cajon Valley Union School District

750 E Main St.

El Cajon, CA 92020

Demand to Cease and Desist from Practices Violating the Ralph M. Brown Act

Dear Ms. Otero,

This notice is to caution you that the body over which you preside has violated the Ralph M. Brown Act, in engaging in or ratifying several practices.

**Violations Complained of**

Government Code sections violated: 54953.5, 54954.2, 6253 (b)

Practices constituting the violations:

1. Refusal to Permit Inspection and/or copying of audiotape recordings made by the District of open and public meetings of the Board of Education.

The Ralph M. Brown Act provides, in subdivision (b) of Government Code Section 54953.5:

Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

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1. Destruction of audiotape recordings made by the District of open and public meetings of the Board of Education—subsequent to a Public Records Act request for them—within the 30-day retention period specified in Section 54953.5 (b).
2. Preventing a trustee from asking questions of staff during a meeting concerning items on the agenda.

The Ralph M. Brown Act provides, in paragraph (3) of subdivision (a) of Government Code Section 54954.2:

. . . on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.

**Specifics of Violations Complained of**

Miriam Raftery, editor of East County Magazine, informed me on February 13 and March 6 of the following incidents:

*Our reporter, Paul Kruze, sent a request on December 12 asking for a time to come listen to tapes of several public meetings including one held just one day earlier, on December 11, for Cajon Valley Union School District’s board in El Cajon.  
  
Naomi Rodriguez from the district informed Kruze that the recordings had been destroyed.  We are informed that their policy is only to keep them for 30 days. But even under that tight timeframe, they failed to comply with our records request that was as timely as it could possibly be.    
  
The district policy is to not provide copies of recordings and to only allow people to come into their office to listen to the recordings. We are also told by school board member Jill Barto that she was advised over the phone that she would not be allowed to make her own copy of the recording  nor even to take notes.  However, both Barto and Kruze say that the district was uncooperative in scheduling any time for  them to come listen to the recordings at the district office, despite multiple requests.*

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*On Dec. 11 , parent Mark Robak and possibly others criticized the board for a new state report showing several schools are failing state standards.  The Superintendent, asked by Kruze and Raftery about those problems, has refused to even acknowledge any problem with the schools let alone a solution. He told Raftery that the state is “measuring the wrong metrics.”    
  
During the Feb. board  meeting, district representatives claimed recordings are not important because there are minutes of meetings. However our review of minutes of recent meetings show some key details omitted or summarized. Robak’s public comments were summarized in a sentence. Barto tells us some board commented directed at her were omitted entirely, which was a  key reason she was trying to access a recording.   
  
As reporters, accessing recordings in a timely manner is important for accuracy in quoting board members and those who testify, so our First Amendment rights as press are being denied.    
  
We are no longer in an era of bulky reel to reel tapes.  We archive our radio show podcasts for the past five years at a cost of just $15 a month, so neither cost nor storage space is an issue.  Cajon Valley prides itself on winning a national technology award.  Given the ease of making digital recordings today, it is incomprehensible why the district would not make digital recordings freely available on its website for an extended time period--unless they don't want the public to know what is happening at public meetings of their board.*

Mr. Kruze has since further informed me that

*On December 12, 2018, I submitted a CPRA (California Public Records Act) request for the tape of the December 11, 2018 meeting of the Cajon Valley Union School District. Due to the holidays, the district informed me that they would be delayed in complying with the request.*

*On January 15, 2019, I was verbally informed by Ms. Naomi Rodrigues, Executive Assistant to the Superintendent of the district, that I would be receiving the documents, due to the Christmas and New Year’s holidays, on January 25, 2019.*

*On January 25, 2019, I received the documents I had requested. When I followed up a couple weeks later what had happened to the the board meeting audio I requested, I was informed via e-mail on February 12, 2019 that it had been destroyed, pursuant to a Cajon Valley Union School District policy to destroy audio after 30 days, despite my legally submitted request."*

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Trustee Barto has separately informed me as follows:

*At the November meeting, I had asked some questions of David Miyashiro (Superintendent). about some agenda items and he never responded to me so during the meeting ; it was on an item on the agenda and I was requesting information and he made a public information announcement that unless Joe Alegria as current board president said that I could ask questions and use staff time to get answers about agenda items, he was not going to approve staff time to approve my request, whether for agenda items or off agenda items.*

*Number one, I am elected by the people for the people to hold the district accountable and have transparency and accountability and to ask questions where needed to make appropriate decisions that affect our schools and our community, and to withhold that information should be a direct violation.*

*So at that meeting (Nov) I asked for a copy of the tapes and after the meeting I directly asked Naomi for a copy of the tapes because I wanted it on the record what was said. I was told I had 30 days to come in and listen to them in her office, make an appointment that was convenient for her, I told her fine I will bring my recorder in to tape it and she said that was unacceptable, I could only listen to it…It is not legal for them to do that, according to an attorney I spoke with, who I spoke with….they may not, after I formally requested it, destroy the tape and I had followed up with several emails that until I could*

*come in and listen to it and make a hard copy, that tape was not to be destroyed….But they did destroy it.*

*I had tried to go in, it was never convenient for them to meet with me, I had tried to make 3 or 4 different appointments…they were never available, and also I was dealing with family issues…*

*At the December meeting I requested the tape of the November meeting again and also with the minutes it was not stated in minutes of that November meeting (provided at the Dec. meeting) that David had made that statement and I wanted it clarified. But that that never happened….*

*I formally requested it again at end of meeting in board comments and was immediately shut down by Tamara Otero who was the new board president, being told I was not allowed to ask questions of staff nor request items in our board reports…they say the board reports agenda period is to ask about things I have done. I was having to use that meeting to formally request items that I was denied and to formally request copies of tapes that I was denied, and I kept getting shut down by Tamara. So I asked for a copy of the December tape, too, and it was never convenient for me to come in.*

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**Unconditional Commitment to Cease and Desist**

The Cajon Valley Union School District has 30 days from receipt of this letter to provide me with an unconditional commitment to cease, desist from, and not repeat the practices noted above as items 1 through 3, in the manner compliant with Government Code section 54960.2, subdivision (c). Its failure to do so will entitle Californians Aware to file an action for declaratory judgment and injunctive relief and for attorney’s fees and costs.

**Request for Copies of Public Records**

In addition, please provide copies of  audio/video recordings of all meetings of the Council within the last 30 days, as well as all emails/documents concerning the practices noted above as items 1 through 3.

Respectfully,

Terry Francke

General Counsel

Californians Aware

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