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28 February 2022

Governing Board
San Dieguito Union High School District
c/o Dr. Cheryl James-Ward, Superintendent (cheryl.jamesward@sduhsd.net)
710 Encinitas Boulevard
Encinitas, CA 92024

Re: Request to Cure and Correct Violations of Ralph M. Brown Act

Dear Board Members:

On behalf of my clients, Lisa Montes and Carol Chang, I am writing to request that the governing board of the San Dieguito Union High School District (the "District") cure and correct violations of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) committed at the board's regular meeting on February 17, 2022, and at the board's special meetings on February 7 and 24, 2022.

The governing board violated the Brown Act with respect to the regular meeting on February 17 because the District did not properly post its agenda for that meeting on the District's website.

An online posting of an agenda ***shall be posted on the primary Internet Web site homepage*** of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The ***direct link to the agenda shall not be in a contextual menu***; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

GOV'T CODE § 54954.2(a)(2)(A) (emphasis added).¹ Archives of the District's website confirm that the agenda for your February 17 meeting was not posted in compliance with this requirement. As a result of your failure to post the agenda properly, you were expressly prohibited by statute from taking any action or even discussing any of the open-session or closed-session items that you acted on or discussed on February 17, including but not limited to "Consent Agenda" items and the "Discussion/Action Items." *See id.*, § 54954.2(c) ("No action or discussion shall be undertaken on any item not appearing on the posted agenda. . . .").

¹ The exemptions to this requirement are inapplicable because, among other things, your agenda website does not list all agendas for meetings going back to January 1, 2019. *See id.*, § 54954.2(a)(2)(C)(ii) (exempting integrated websites with agendas posted "for all meetings occurring on or after January 1, 2019").



The governing board also violated the Brown Act with respect to the special meetings on February 10 and 24, 2022.

A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing **and posting a notice on the local agency's Internet Web site**, if the local agency has one.

GOV'T CODE § 54956(a) (emphasis added). Yet again, archives of the District's website confirm that the agendas for your February 10 and 24 meetings were not posted in compliance with this requirement. And just like the prohibition applicable to regular meetings, you were prohibited by statute from taking any action or even discussing any of the open-session or closed-session items that you acted on or discussed on February 10 and 24, including but not limited to the "Public Hearing" item and the "Discussion/Action Items." *Id.*

Actions taken in violation of Government Code Section 54954.2 or 54956 are "null and void." GOV'T CODE § 54960.1(a). My clients therefore demand that you cure and correct each and every one of the violations committed by the governing board at its meetings on February 10, 17, and 24 – including but not limited to all those actions relating to the adoption of new boundaries for trustee areas.

When you cure and correct the violations, it will not be sufficient to take the action anew or to ratify what you have already done because what you have done in violation of the Brown Act is void (especially because part of the illegal action that you took was the product of an unlawful public hearing). More than a century of California Supreme Court precedent makes clear that void acts cannot be ratified. "An absolutely void act cannot be ratified, nor can a principal ratify an act which he could not have authorized in the first instance." *Borderre v. Den*, 106 Cal. 594, 597 (1895). "Want of power is always a defense available to a public corporation, and no act of ratification can breathe life into the lack of power." *Haight v. Marin Municipal Water Dist.*, 208 Cal. 753, 764 (1930) (holding that governing board's attempt to ratify general manager's void acts "was a nullity"). In the context of "acts that are absolutely void for want of power in the [public] officers . . . no subsequent action by the officers themselves can give validity to the void act, or ratify it in any way." *People ex inf. Webb v. California Fish Co.*, 166 Cal. 576, 611 (1913).²

Instead, the proper course of action is for you to schedule a meeting for the purpose of fully rescinding all illegal actions that you took at your meetings on February 10, 17, and 24; and then put

² This rule applies to public acts and private agreements alike. See, e.g., *Reno v. American Ice Machine Co.*, 72 Cal.App. 409 (1925); *Hill v. Kidd*, 43 Cal. 615 (1872); *Kremer v. Earl*, 91 Cal. 112; *Union Collection Co. v. Buckman*, 150 Cal. 159 (1907); *Colby v. Title Insurance & Trust Co.*, 160 Cal. 632 (1911); *Wood v. Imperial Irrigation Dist.*, 216 Cal. 748 (1932); *Black Hills Investment, Inc. v. Albertson's, Inc.*, 146 Cal. App. 4th 883 (2007).



the various rescinded items on a subsequent meeting's agenda that is properly posted for the public to view for a period at least as long as the minimum period prescribed by statute. Separation of the cure and correction from new action is essential to giving the public confidence that you are not merely rubber-stamping your past illegal conduct. Furthermore, failing to give the public proper notice – especially on matters that you considered at a regular meeting with 72 hours' prior notice – will prejudice members of the public who desire to be engaged in your deliberations and provide their feedback before you make up your minds on how to vote.

Under the Brown Act, your violations must be cured not more than 30 days after receipt of this letter. Please notify me *in writing* as soon as possible to let me know whether the violation will be cured and, if so, when the cure will take place. (My clients may sue before receiving your response.)

Thank you for your prompt attention to this important matter.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

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