



Soquel Union Elementary School District and the Brown Act

Missing – Mutual Respect and a Shared Vision

Summary

Separate investigations of the Soquel Union Elementary School District's Board of Trustees (SUESD Board) were conducted by both the 2015–16 and 2016–17 Santa Cruz County Civil Grand Juries. These investigations revealed that the SUESD Board has created an environment that misinforms the public, minimizes community input, and discourages citizen involvement. The 2015–16 Santa Cruz County Civil Grand Jury investigated the SUESD Board and reported on discrepancies in record keeping procedures and two instances of violations of California's open meeting laws known as the Brown Act. The SUESD Board's response to that report indicated ongoing operation outside the bounds of state law, in conflict with their own policies and bylaws, and contrary to the guidance of the California School Board Association. The goal of this follow-up report is to encourage the SUESD Board to embrace a more transparent, inclusive approach to the business of school governance.

Background

*The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. California Government Code (Cal Gov Code, CGC) §54950
“The Brown Act”*

The legislation governing conduct by school boards and other legislative bodies is commonly referred to as The Brown Act.^[1] Named for its author, former State Assemblyman Ralph M. Brown, it has been a benchmark of the people’s right for governmental transparency since its enactment in 1953. It guarantees the people the right to participate in meetings of local legislative bodies. This California government code details how a local legislative body, such as a school board, must announce and conduct its meetings.^[2] It also provides for the right of the people to be heard before any decisions are reached.

Violating the Brown Act is a misdemeanor. The code states:

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.^[3]

School boards are also subject to the California Education Code (Cal Ed Code), which “...establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.”^[4] In other words, the Cal Ed Code strongly asserts that enforcing the law in instances of even the appearance of non-compliance is in the people’s interest.

These government codes instruct school boards to “adopt reasonable regulations to insure that this intent is carried out.”^[5] The regulations, manifested in a school board’s policies and bylaws, specify ways to insure the proper functioning of board meetings.^[5]

Scope

In conducting this investigation, the Grand Jury reviewed the 2015–16 Grand Jury report “Soquel Union Elementary School Board – Full Disclosure is Not Optional,”^[6] the SUESD Board’s response to that report,^[7] California Government and Education Code sections,^[8] ^[9] SUESD Board Policies and Bylaws,^[10] the SUESD Board’s posted agenda packets,^[11] minutes,^[12] and audio recordings^[13] ^[14] of meetings during 2015 and 2016, and the California School Board Association (CSBA) article *Defining Governance: Engaging the Community*.^[15]

Investigation

Many of the findings and recommendations in the 2015–16 Grand Jury report were not related to the Brown Act and have been resolved.^[6]^[7] Board meeting conduct, however, is still in question. While the 2015–16 Grand Jury report asserted that there were at least two violations of the Brown Act,^[6] the Board’s response to that report revealed many more.^[7] This investigation found the Board is also operating in violation of the Cal Ed Code^[9] and in violation of its own bylaws.^[10] There are four general areas of ongoing concern:

- Closed session conduct
- Trust issues and community engagement
- Standards for District Superintendent evaluation
- Incorrect agenda template

Closed Session Conduct

In June of 2014,^[16]^[17] and again in June of 2015,^[18] the Board revised the contract of the District Superintendent in closed session, increasing the salary for their only employee. The 2015–16 Grand Jury report^[6] found that the Board did not allow for public comments, as required by state law,^[5]^[19] prior to taking action on this revision. There is no record in the minutes of the Board announcing what would be discussed during closed session and no record of a request for public comment on closed session items for June 18, 2014. In responding, the Board claimed that the oversight “may” have been “inadvertent” and therefore was not a violation of the Brown Act.^[7]

The Grand Jury disagrees. “Inadvertent” or not, the Board’s action violated state codes^[5]^[19] and was in conflict with their bylaw which states: “If the item is on the agenda, you will have the opportunity to speak at the time the agenda item is discussed.”^[20]

The Grand Jury recognizes that the agenda template used by the Board allows for “public comment on closed session items only” prior to adjourning for this portion of the regular meeting. In reviewing the Board’s agendas^[11] and corresponding approved minutes^[12] from January, 2015 to January, 2017, the Grand Jury discovered 22 instances where “Public Comment for Closed Session Items” was on the agenda with no corresponding reference in the minutes that the public comment time occurred.

Additionally, there were 17 separate occasions where the published minutes did not report the topics discussed in closed session, although these topics had been identified on the agenda. The Board often records in the minutes: “Nothing to report out of closed session.” This is not sufficient. By law, the Board may only consider in closed session items disclosed to the public in an open meeting.^[21] This disclosure is usually done through numbered agenda items. These topics should then be recorded in the regular meeting minutes as a record of what took place. This “general practice” that “closed session topics listed in the agenda are not repeated in the published minutes”^[7] produces an inaccurate record of action taken. On returning from closed session,

disclosure of the topics discussed would conform to the recommendations of the CSBA article *Defining Governance*.^[15]

The minutes show that on two separate occasions,^{[22] [23]} the Board adjourned the open meeting and then convened a closed session. The closed session items had been agendaized, but by adjourning the meeting prior to convening closed session there was no longer an opportunity for the public to comment.^{[5] [19]} Neither was there an opportunity for the Board to report on the items discussed and actions taken during the closed session.^[21] Among the items discussed at the March 1, 2017 meeting were a review of superintendent candidate applications and a “Public Employee Discipline/Dismissal/Release/Complaint.”^[24] The action taken in closed session was reported at 11:29 pm by “convening open session”^[23] to a meeting that had been adjourned at 8:40 pm.

Trust Issues and Community Engagement

Board policies make frequent reference to the guidance of the CSBA to support their own policies and bylaws as a management resource.^[10] The Board, as noted in the minutes from January 14, 2015 through March 1, 2017, has also received training from the CSBA in the form of workshops, seminars, and governing guidance on nine separate occasions.^[12] On December 7, 2016, the minutes reflect that four of the seated trustees attended an annual CSBA conference which included governance workshops.^[25] The minutes of February 1, 2017 show that on January 23, 2017, the Superintendent attended a CSBA “Good Beginnings” workshop.^[26]

In its five part series on *Defining Governance*, the CSBA includes an article, *Engaging the Community*,^[15] which addresses a school board’s responsibility for community engagement and what constitutes a healthy relationship between boards and the communities they serve.

School boards ensure success for all students by making decisions that fulfill legal mandates and align district systems and resources to ensure the long-term fiscal stability of the district. To do this, boards must act collectively and openly, be guided by community interests and informed by recommendations of the superintendent and professional staff.

(Ref: California School Board Association: *Defining Governance, Engaging the Community*^[15])

A review of the minutes for January 6, 2016 and February 1, 2017 show that the Board has had input from the community.^{[26] [27]} Additionally, the recently adopted “Board of Trustees Governance Handbook”^[28] has a form for “Public Request for Agenda Item.” The Grand Jury sees these as positive steps that engage the public as stakeholders in the district.

The Board's bylaws state the Board is mandated to hold an annual self-evaluation during an open meeting.^[29] This evaluation should include whether the previous year's goals have been achieved and set new goals for the future. The Grand Jury could find no evidence in the 2015 or 2016 Board minutes that this occurred.^{[11] [12]}

Standards for District Superintendent Evaluation

The 2016–17 Grand Jury reviewed Board agendas and minutes^{[11] [12]} and found that while the Board conducts evaluations of the superintendent at least annually,^[30] they have not updated the responsibilities and duties of the superintendent in over 15 years.^{[31] [32]} This is significant as the superintendent is in charge of the overall operation of a district that has seen many changes in both curriculum and funding since the Board adopted the 2012 policy detailing its responsibility for evaluating the superintendent.^[26]

When evaluating the superintendent, the discussion must be kept confidential^[33] and therefore be conducted in closed session, but state law mandates that:

- the agenda must disclose that a closed-session meeting is to occur and the items to be discussed^[21]
- the public must be given the opportunity to address the Board regarding these items before any action is taken^{[5] [19]}
- any decision or action taken by the Board during the closed session must be announced during the meeting's open session^[21]

All of this should also be recorded in the minutes.^[34]

Incorrect Agenda Template

The template used by the Board for their meeting agenda since at least 2011, shown and discussed in further detail in [Appendix A](#), is incorrect in the following ways:

- It prominently displays an inaccurate start time for a meeting with closed-session items
- It fails to notify the public (and District staff) of the appropriate time for them to request consideration of items on the Consent Agenda until after that time has passed
- It incorrectly uses the term “Public” session, rather than “Open” session
- It doesn't inform the public that agenda items may be moved to the beginning of the agenda until after the time to do so has passed
- The Roll Call doesn't occur until after closed session, leaving no record of who attended the closed session
- The order of business, as reflected in the agenda, is confusing and misleading

Until these issues are rectified, members of the public could be deprived of their right to comment.

Findings

- F1.** The June 18, 2014, SUESD Board minutes do not record that there was an opportunity for public comment prior to the superintendent's evaluation.
- F2.** The June 18, 2014 and June 3, 2015 SUESD Board minutes do not record that the superintendent's evaluation was discussed in closed session.
- F3.** The 2015 and 2016 SUESD Board minutes do not record whether the Board offered the public a chance to speak before closed sessions.
- F4.** In 2015 and 2016, closed session items were rarely recorded in the minutes.
- F5.** In 2015, 2016, and the first two months of 2017, the SUESD Board repeatedly used the statement "Nothing to report out of closed session."
- F6.** The Board has met twice in closed session after adjourning open session.
- F7.** The Board, in adopting their Governance Handbook, has shown increased acceptance of public input in the direction of the district by including an avenue for requesting items to be added to the agenda.
- F8.** In 2015, 2016, and the first two months of 2017, the SUESD Board minutes did not record that the Board has conducted a self-evaluation.
- F9.** The SUESD Board has not reviewed or revised the responsibilities and duties of the superintendent at any time between September 2001 and 2016.
- F10.** The SUESD Board has been using an incorrect template for its agenda for at least the past six years.
- F11.** The agenda template announces conflicting times for the convening of public meetings.
- F12.** The agenda template does not advise the public of its opportunity to pull items from the consent agenda for comment prior to the adoption of the agenda.

Recommendations

- R1.** The SUESD Board should record in the minutes the closed session agenda items that were discussed and any actions taken, including taking no action, on those items. (F1, F2, F4, F5)
- R2.** The SUESD Board should demonstrate its compliance with **CGC §54954.3(a)**, **CEC §35145.5**, and its **Bylaw 9323** to give the public an opportunity to comment by recording this offering in the minutes. (F3)
- R3.** The Board should comply with **CGC §54957.7.(a)**, **CGC §54957.7.(b)**, **CGC §54957.7.(c)** by not meeting in closed session after adjourning open session. (F6)
- R4.** The SUESD Board should comply with its **Bylaw 9400** by addressing in public session its self-evaluation, including whether or not the District's goals for the previous year have been achieved. (F8)
- R5.** The SUESD Board should conduct an official review and update of the criteria for evaluating their only employee, the superintendent. (F9)

- R6.** The SUESD Board should comply with **CGC §54954.3** by correcting its agenda template to reflect accurate times, locations, and content for meetings. (F10)
- R7.** The Board’s agenda should reflect that Board meetings begin with the Call to Order. (F11)
- R8.** The Board should advise the public of its right to pull a Consent Agenda item for comment prior to adopting the agenda. (F12)

Commendations

- C1.** We commend the Board for including in their Governance Handbook a public request form to add agenda items. (F7)

Required Responses

<i>Respondent</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within/ Respond By</i>
SUESD Board of Trustees	F1–F12	R1–R8	90 Days August 28, 2017

Definitions

- **Action Taken:** A collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or 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^[35]
- **Agenda Packet:** The Board meeting agenda and supporting documents for items to be discussed at the meeting
- **Board:** SUESD Board of Trustees
- **Brown Act:** The Ralph M. Brown Act, California Government Code Sections 54950–54963 describing legalities of conducting meetings of local legislative bodies
- **CEC:** California Education Code is the state law relating to public education.
- **California School Board Association (CSBA):** A nonprofit education association representing the elected officials who govern public school districts and county offices of education
- **CGC:** California Government Code is the state law relating to the operation of state entities
- **Legislative Bodies:** A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body^[36]
- **SUESD:** Soquel Union Elementary School District

Sources

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Site Visits

There were no site visits.

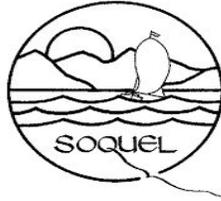
Websites

California Legislative Information <https://leginfo.legislature.ca.gov/faces/codes.xhtml>
Soquel Union Elementary School District <http://www.soqueldo.santacruz.k12.ca.us/>

Appendix A – Annotated SUESD Agenda

A typical agenda^[37] is shown below with these misleading sections highlighted:

- The “Open Session Begins” time indicated prominently at the top of the first page, centered and bold, is not the actual start time of this meeting. The meeting actually begins with “1. CALL TO ORDER,” which takes place one hour prior to the time indicated above. Following “11. Adjournment” on page three the same “Open Session Begins” phrasing is used in the notice for the next meeting. This confusion could cause people to miss their chance to comment on the closed session items offered at “1.A. Public Comment for Closed Session Items Only.”
- At “3.C. Adoption of the Agenda” on the first page the parenthetical note indicates only that this is when the *Board* can pull items from the Consent Agenda. It does not indicate any right of the public or staff to make a similar request, or any requirement that they do so at this time. However, at “8.E. Consent Agenda” on the third page, the agenda states “There will be no discussion on these items prior to the time the Board votes on the motion, unless members of the Board, staff or public have requested under *Adoption of the Agenda* that specific items to [sic] be discussed and/or removed from the Consent Agenda.” This creates a situation in which members of the public can unwittingly waive their right to address items on the Consent Agenda because they have not been put on notice when they need to make their request.
- At the very bottom of page three, the agenda states “VISITORS: If you wish to address an item on the agenda, please be present at the beginning of the meeting. Any item MAY be moved to the beginning of the agenda.” However, as discussed above, it is not clear from the agenda whether the meeting begins at 5:30 or 6:30, again potentially causing the public to lose their chance to address an item.



SOQUEL UNION ELEMENTARY SCHOOL DISTRICT
Regular Meeting of the Board of Trustees
AGENDA

December 21, 2016

District Office Board Room
620 Monterey Avenue, Capitola, California 95010

6:30 p.m. - Open Session Begins

DISTRICT MISSION STATEMENT

Staff, students, parents and the community share the responsibility for each child's success. We are committed to ensuring that each student develops the skills and confidence for lifelong achievement and is prepared to make a positive contribution to our world.

1. CALL TO ORDER (5:30 p.m.)

Call Public Session to Order

1.A. Public Comment for Closed Session Items Only

2. CLOSED SESSION (5:30 p.m.)

Public Employee Discipline/Dismissal/Release/Complaint

2.A. Conference with Legal Counsel- Existing Litigation

(Paragraph (1) of subdivision (d) of Section 54956.9)

Name of Case: State Case No. 44842- SACRCI: Gabriel Young v Soquel Union Elementary School District

3. OPENING PROCEDURES FOR PUBLIC SESSION (6:30 p.m.)

3.A. Roll Call

3.B. Pledge of Allegiance

3.C. Adoption of Agenda (At this time the Board of Trustees may elect to pull items from the Consent Agenda)

3.D. Report Out of Closed Session

4. PUBLIC COMMUNICATIONS

Members of the audience are welcome to address the Board of Trustees during Public Communications regarding items not listed on this agenda.

For items not on the agenda, we request that you fill out one of the forms available at the sign-in register and submit it to the Administrative Assistant to the Superintendent prior to the opening of the meeting. Three minutes may be allotted to each speaker and a maximum of twenty minutes to each subject matter. The Trustees cannot take action on these matters unless such matters are placed on a future agenda, according to law.

If the item is on the agenda, you will have the opportunity to speak at the time the agenda item is discussed. Please address the Board President. These proceedings are audio-recorded. (Board Policy 9323)

Board members shall hold the education of students above any partisan principle, group interest, or personal interest. (Board Bylaw 9200).

COMPLETE BOARD PACKET AVAILABLE AT <http://www.soqueldo.santacruz.k12.ca.us/Trustees/Trustees.html>

COPIES OF MATERIALS PROVIDED TO THE BOARD OF TRUSTEES ONLY ARE AVAILABLE FOR PUBLIC REVIEW AT THE DISTRICT OFFICE

District Website: www.soqueldo.santacruz.k12.ca.us

5. STANDING REPORTS

5.A.	Items from Superintendent and Assistant Superintendents
5.B.	Items from California School Employees Association
5.C.	Items from Soquel Education Association
5.D.	Items from Trustees: Reports on Meetings and Conferences Attended or Visits to Schools, and Public Communications
5.E.	Measure C Update

6. PRESENTATION/DISCUSSION/INFORMATION ITEMS

7.A.	Discussion Regarding Updates on the Local Control Accountability Plan (LCAP) <i>Moirá Barker, Assistant Superintendent, Educational Services, will discuss any updates of the LCAP. (Addresses LCAP Goal # 1/ High Quality Instruction)</i>
7.B.	Presentation Regarding Measure C Citizens' Oversight Committee <i>Scott Turnbull, Superintendent, will present on the purpose, membership, and application process of the Measure C Citizens' Oversight Committee. (Addresses LCAP Goal # 3/ Safe Schools)</i>

8. ACTION ITEMS

8.A.	Consider Approval of the Construction Management Template Contracts with Kramer Project and Development Company for the Initial Eleven Projects <i>Consider approval of the Construction Management Template Contracts with Kramer Project and Development Company for the Initial Eleven Projects. (Addresses LCAP Goal #3/ Safe Schools or Community Partnerships)</i> Recommended Action: Approve the Construction Management Template Contracts with Kramer Project and Development Company for the Initial Eleven Projects.
8.B.	Consider Approval of the Program Management Template Contract with Kramer Project and Development Company <i>Consider approval of the Program Management Template Contract with Kramer Project and Development Company. (Addresses LCAP Goal #3/ Safe Schools or Community Partnerships)</i> Recommended Action: Approve the Program Management Template Contract with Kramer Project and Development Company.
8.C.	Consider Approval of the Architectural Contract Template Meta Architectural Design International (MADI) Group for the Initial Eleven Projects <i>Consider approval of the Architectural Contract Template Meta Architectural Design International (MADI) Group for the Initial Eleven Projects. (Addresses LCAP Goal #3/ Safe Schools or Community Partnerships)</i> Recommended Action: Approve the Architectural Contract Template Meta Architectural Design International (MADI) Group for the Initial Eleven Projects.

8.D. Consider Approval of the Master Planning and Programming Time and Material Contract for the Meta Architectural Design International (MADI) Group
Consider approval of the Master Planning and Programming Time and Material Contract for the Meta Architectural Design International (MADI) Group.
(Addresses LCAP Goal #3/ Safe Schools or Community Partnerships)
Recommended Action: Approve the Master Planning and Programming Time and Material Contract for the Meta Architectural Design International (MADI) Group.

8.E. CONSENT AGENDA
 The following items listed under the Consent Agenda are considered by the Board in one action. There will be no discussion on these items prior to the time the Board votes on the motion, unless members of the Board, staff, or public have requested under *Adoption of the Agenda* that specific items to be discussed and/or removed from the Consent Agenda.

- 8.E.1. Approve Minutes of the December 7, 2016 Board Meeting of the Soquel Union Elementary School District
- 8.E.2. Approve Personnel Actions
Classified
 1 - Resignations
- 8.E.3. Approve Job Title Change from Supervisor, Maintenance and Operations to Director of Maintenance and Operations
- 8.E.4. Ratify Payment of Bills and Warrants: Review and Approve Orders and Warrants Regarding Expenditures of Budgeted Funds
- 8.E.5. Consider Approval of the Contract with Clean-Tec Restoration & Cleaning for the District Office Rodent Waste Clean-Up

9. CORRESPONDENCE

10. FUTURE AGENDA ITEMS (As requested by Trustees)

Item _____ Requested By _____ Date _____
 None scheduled at this time.

11. ADJOURNMENT

*The next regularly scheduled board meeting is **January 18, 2017**. Open Session Begins at 6:30 p.m. (Location to be determined)*

Upcoming Board Meeting Dates

February 1, 2017	May 3, 2017
February 15, 2017	May 17, 2017
March 1, 2017	June 7, 2017
March 15, 2017	June 21, 2017
April 19, 2017	

District Schools

Main Street Elementary School	www.mainstreet.santacruz.k12.ca.us
Soquel Elementary School	www.soquel.santacruz.k12.ca.us
Santa Cruz Gardens Elementary School	www.scg.santacruz.k12.ca.us
New Brighton Middle School	www.nbms.santacruz.k12.ca.us
Opal Cliffs School	(No website currently available)

VISITORS: If you wish to address an item on the agenda, please be present at the beginning of the meeting. An item MAY be moved to the beginning of the agenda. Please fill out a speaker form so that the Board may recognize you. Individuals needing special accommodations including (but not limited to) an American Sign Language interpreter, accessible seating or documentation in accessible formats should contact the Superintendent's Office at 464-5639 at least two days prior to the meeting date.