

John Berg's Response to Jeff Daily's Accusing John Berg of Violations

At the April 21, 2021 meeting of the South Kitsap School Board of Directors¹, Director Jeff Daily handed Board President Eric Gattenby an envelope² with alleged violations of Director John Berg. This document was apparently written before the meeting and some of Director Daily's remarks and actions^{3,4} during the meeting contradicted his statements in that document, as will be shown. Director Daily's letter will be cited in ***bold italic***, without correcting for spelling or grammar, followed by Director Berg's response.

Dear Board President Gattenby,

Attached are the violations that I am requesting you to investigate concerning the conduct of Director Berg.

Under Board Governance Policy GP-5⁵, the Board President has a responsibility to "Monitor Board behavior to ensure that it is consistent with its own rules and policies and those legitimately imposed upon it from outside the organization" and under that duty specifically to "Ensure that Board meeting deliberations are fair, open, and thorough, but also efficient, timely, and orderly". The Board President does not have specific authority to "investigate" the alleged conduct of a Board member. Board Governance Policy GP-12⁶ addresses the process by which a Director's policy violations are to be addressed. The first item in that process is "Conversation in a private setting between the director and the Board President or other individual member." Director Daily's "delivering these allegations of violations during a public meeting which makes them public documents"⁷ is inconsistent with the President's "conversation in a private setting".

Robert's Rules of Order Newly Revised (12th ed.) (*RONR*)⁸ is the parliamentary authority adopted by the Board⁹. *RONR* provides at 63:7-9 that disciplinary action must commence with a motion

¹ Exhibit A, Minutes of the April 21, 2021 meeting of the South Kitsap School Board of Directors. Due to staff error, a video or audio recording of the relevant portion of the meeting is not available.

² Exhibit B, undated and unsigned letter from J Daily to President Gattenby.

³ Exhibit C, Kitsap Sun article by Jeff Graham published April 22, 2021.

⁴ Exhibit D, Kitsap Daily News article by Bob Smith, published online, April 22, 2021 and later in the print edition of April 30, 2021.

⁵ Exhibit E, Board Governance Policy GP-5.

⁶ Exhibit F, Board Governance Policy GP-12.

⁷ See Exhibit B, Daily's Letter, second to the last paragraph.

⁸ Exhibit G, Excerpts from *Robert's Rules of Order Newly Revised* (12th ed.) (*RONR*) 63:7-12.

⁹ Exhibit H, Board Governance Policy GP-2 E5, adopting *RONR* at the Board's parliamentary authority (see page 2, "Meeting Conduct and Order of Business". The use of *RONR* is also referenced in Exhibit E, GP-5 on the Board President's role.)

or resolution to appoint a committee to investigate possible charges against a member. *RONR* continues at 63:11¹⁰, "An individual member may not prefer charges, even if that member has proof of an officer's or member's wrongdoing. If a member introduces a resolution preferring charges unsupported by an investigating committee's recommendations, the chair must rule the resolution out of order, informing the member that it would instead be in order to move the appointment of such a committee." Director's Daily's presentation of the allegations in a public meeting should have been ruled out of order by the board president.

I have given this to you at the board meeting so that they are documented in the meeting minutes.

When Director Daily handed Board President Gattenby a large manila envelope at the April 21, 2021 meeting, he did not disclose the specific contents of the envelope, although many of his charges therein were presented verbally during his remarks at the board meeting. He did not make it clear whether or not the document itself was to be considered confidentially or whether it was intended to be a public document. Director Berg emailed Director Daily the next day and asked "Was it your intention that those allegations remain confidential? Did you release them to the press? Should they be available to the public by way of disclosure as a public document? Would you object if they were released to the press?" No reply has been received to date. Superintendent Tim Winter forwarded Director Daily's letter to the rest of the Board under the heading "Public Document" with the preface, "As requested by Director Gattenby, attached is the document shared by Director Daily at last night's board meeting."¹¹ As stated previously, Daily's letter itself indicated that he intended it to be a public document.

Director's Daily's making these allegations against Director Berg public is inconsistent with his insistence that such allegations should be addressed in private, as will be shown.

Director Daily may argue that in spite of his insistence that charges should be made privately and not publicly, he was justified in making his charges against Director Berg public because Director Berg has made charges against Director Daily public. That argument fails because the beginning premise is false – Director Berg did not name any specific charges in his motion but only addressed the need to investigate possible charges.

I request you to respond to me prior to the last board meeting in May.

This is a reasonable request.

Please contact me for documentation should you not have it.

It is not the responsibility of the Board President to request additional documentation, nor to seek it out. All such documentation should have been presented confidentially with the initial

¹⁰ See Exhibit G, Excerpts from *RONR*.

¹¹ Superintendent Winter's email to the Board dated April 23, 2021.

complaint.

Alleged Violation I.

Director Berg has disrespected me in public and has denied me due process, right to free speech, and confidentiality.

Director Daily has not referenced any specific instance in which Director Berg “disrespected him in public.” Such a vague claim needs more detail. By due process, Director Daily must be referring to having the right to know the allegations against him and to be able to respond. The Board Referral Form¹² is only the first step in the “due process” under *RONR*¹³ and he would be informed of the charges and allowed to respond at a later stage, after the confidential investigation. No attempt to restrict Director Daily’s right of free speech had been made, other than to attempt to hold him accountable for any speech in violation of his fiduciary duty of obedience as a Board member or in violation of Board policy. No specific charges against Director Daily have been made public by Director Berg, thus his rights to confidentiality have not been violated. Under the Board Referral Form, charges would be discussed privately in committee and later in an executive session of the Board.

In April of 2021, the U.S. Supreme Court agreed to hear a case from Texas addressing whether or not a school board’s censure of one of its members infringes upon that member’s First Amendment free speech rights.¹⁴ Until that is decided months from now, guidance comes from the 9th Circuit decision in *Blair v. Bethel School District*¹⁵, in which the court wrote:

Ken Blair maintains his First Amendment rights were violated when his fellow school board members voted to remove him as their vice president because of his relentless criticism of the school district’s superintendent. The district court disagrees, and so do we. To be sure, the First Amendment protects Blair’s discordant speech as a general matter; it does not, however, immunize him from the political fallout of what he says.

The court distinguished between free speech rights of a normal individual from that of an elected board member. The court reasoned that because the board’s retaliation did not stifle free speech and the offending board member was free to continue to speak out publicly, free speech rights were not violated.

While Director Daily may have a free speech right to the things he says, the Board, collectively and by majority vote, also has a free speech right to disagree with him in a most emphatic way. That is what a censure is -- the Board collectively exercising its free speech rights. Director

¹² Exhibit I, Board Referral Form.

¹³ See Exhibit G, *RONR* excerpts

¹⁴ *David Buren Wilson v. Houston Community College System*, 955 F.3d 490 (5th Cir. 2020).

¹⁵ *Blair v. Bethel Sch. Dist.*, 608 F3d 540 (9th Cir. 2010)

Daily's remarks to the Kitsap Sun¹⁶ after the April 21st meeting, Exhibit C, made it clear that he had no intention of modifying his actions as a result of any Board action.

Every district employee has the right to have any allegations against him or she addressed in private.

This assertion was contradicted and violated by Director Daily in making his accusations against Director Berg public.

The Board Referral Form provided that any allegations against Director would be addressed in private. No specific allegations were made public in the Board Referral Form. Throughout his letter, Director Daily contradicts himself as to whether the charges should be public or private. Director Daily was informed in advance of the Board Referral Form on the agenda and did not request that it be addressed in executive session. To the contrary, he insisted that it be addressed in public with the press in attendance¹⁷, then he complained that it was not done in private. When Director Rebecca Diehl moved to have the Board Referral Form removed from the agenda, Director Daily objected and voted no to removing it from the agenda.

As a substitute for the April 21st motion on the Board Referral Form, Director Daily moved to "censure Director Daily for his behavior and remarks"¹⁸ without specifying precisely what they were. The substitute motion failed. Had it been adopted, the investigation into his alleged offenses would not have continued.

This "board referral form" is a thinly veiled attempt to publicly harass and embarrass me in a public venue.

The Board Referral Form is not a "thinly veiled attempt" to publicly harass and embarrass Director Daily in a public venue. A major component of a public censure is to employ shame and embarrassment in response to an offender's actions. It is nearly impossible to proceed with any public censure without causing shame and embarrassment. That is the whole point of public censure. The intent should be obvious and thus it is not "thinly veiled". By the adoption of a motion to censure Director Daily, the remainder of the Board would publicly disavow and disassociate itself from the actions and remarks of Director Daily.

Exactly what are the alleged offenses is he talking about. No one has talked to me or presented them to me. Where is my right to know what my accusers are being told?

As stated previously, specific offenses were not detailed in the Board Referral form in compliance with the *RONR* 63:11 rule regarding the initiation of disciplinary proceedings, which

¹⁶ See Exhibit C, cited previously.

¹⁷ No representatives of the press were physically present in the meeting, but the meeting was available to the public via Zoom.

¹⁸ See Exhibit A, Minutes of the April 21st Board meeting.

states, "For the protection of parties who may be innocent, the first resolution should avoid details as much as possible."

As was brought out in the meeting of April 21st, offenses were previously presented to Director Daily in private, first by President Gattenby, and later in an executive session of the board. While Director Daily denies the latter, the remainder of the Board were present in the executive session and no Board member spoke up at the April 21st meeting supporting Director Daily in his insistence that it never took place. No record was made of what was said in the executive session because minutes are "a record of what was *done* at the meeting, not what was *said* by the members" (RONR 48:2¹⁹).

Since Director Daily did not get the message previously (meaning he did not understand, not that he did not receive), the next step in the GP-12 disciplinary process is to consider censure.

In addition, this being done in public is a breach of confidentiality.

As stated previously, Director Daily opposed removing the consideration of the Board Referral Form from the April 21st agenda. Neither did he request that the matter be addressed in an executive session. To the contrary, he demanded that it be addressed in public. The Kitsap Sun article, Exhibit C, quoted Director Daily as saying "We are going to keep it on here and we are going to solve it tonight right here. It's going to get solved right here". The Kitsap Daily News Article, Exhibit D, quoted him as saying, "We are going to keep it here. We are going to solve it tonight – right here."

This appears to relate to the email we all received from Mr. Greg Wall previously that alleges misconduct of me, and tells our board members to use board procedures and polices in efforts to take disciplinary action against me.

There is no evidence that any email from Greg Wall²⁰ prompted the Board Referral Form.

It also appears to be blatant retaliation for my comments regarding:

- ***My testimony during a Port Orchard City Council Meeting pertaining to the SKSD 2021 Levy which is addressed in SKSD Board Policy 1201.***

Director Daily addressed the Port Orchard City Council Meeting on January 26, 2021, and spoke against the levy.²¹

There is no SKSD Board Policy 1201 as cited by Director Daily.²²

¹⁹ RONR 48:2 reads "Content of the Minutes. In an ordinary society, the minutes should contain mainly a record of what was done at the meeting, not what was said by the members. The minutes must never reflect the secretary's opinion, favorable or otherwise, on anything said or done."

²⁰ Exhibit J, emails from Greg Wall.

²¹ Port Orchard City Council Meeting <https://www.youtube.com/watch?v=dERL5ZVDVsQ> at 1:24:40.

²² Email from Superintendent Winter to Director Berg, April 23, 2021.

Since no specific charges were mentioned in the Board Referral Form, it appears that Director Daily is now detailing them himself. This contradicts his statement that he was not aware of complaints against himself.

- ***Mr. Austin for his comments regarding Mr. Mann and myself***

Mr. Gerry Austin's comments referred to occurred at the end of a meeting of the Facilities Long-Range Planning Advisory Committee, on March 21, 2021.²³

- ***Mr. Austin was in violation of the board and district policy regarding inappropriate comments and slandering another individual.***

This is a charge against Mr. Austin and not against Director Berg. Director Daily cites no board or district policy that Mr. Austin violated. A careful review of Gerry Austin's remarks reveals that Mr. Austin's remarks consisted only of true statements regarding Mr. Larry Mann and Director Daily and Mr. Austin's personal opinion about their actions. Slander only occurs if statements made are false and can be proven to be false. Opinion cannot be proven false.

- ***Mr. Berg was speaking for the board (I did not authorize him to contact Mr. Austin) when he talked with Mr. Austin regarding his inappropriate comments regarding the Larry Mann matter.***

Director Berg was not speaking for the Board in his remarks to Mr. Austin, since a Board member can only speak for the Board when specifically authorized by the Board. Board members are free to correspond with citizens without obtaining Director Daily's permission. Director Daily routinely corresponds with citizens and employees without obtaining permission from the Board.²⁴

It is often difficult to determine when a Board member is speaking for the Board when it is known to the listener that the speaker is a Board member. When Director Daily addressed the Port Orchard City Council in opposition to the school levy, he did not mention that he was on the Board, but it was known to all that he indeed was.

- ***Mr. Berg had no authority to reprimand Mr. Austin, as the board did not discuss the issue.***

In advising Mr. Austin on proper procedure at committee meetings, Director Berg did not, nor did he represent that he was speaking for the Board, thus Director Berg did not require either Director Daily's or the Board's permission. It was not intended nor should it be construed as a reprimand of Mr. Austin. Unless Director Daily made a Public Disclosure Request²⁵ for Director Berg's email to Mr. Austin, Director Daily would not have been privy to the nature or details of

²³ Exhibit K, Transcript excerpt from the Facilities Long-Range Planning Advisory Committee.

²⁴ Exhibit L, Correspondence between Director Daily and Mr. Peter Darrah as an example of Director Daily's correspondence.

²⁵ Director Daily has made 39 Public Disclosure Requests of the District since his election to the Board.

Director Berg's remarks to Mr. Austin, other than Director Berg's mentioning in a Board meeting that he had communicated to Mr. Austin on the appropriateness of Mr. Austin's remarks at the committee meeting. (This was in relation to Director Daily's attempt to have the Board remove Mr. Austin from the committee.)

Director Berg is a Professional Registered Parliamentarian, the highest accreditation granted by the National Association of Parliamentarian. In his remarks to Mr. Austin, Director Berg stated that he was speaking as a parliamentarian, and did not imply that he was speaking for the Board. The exact text Director Berg's advice in his March 18, 2021 email to Mr. Austin was:

As a parliamentarian, I would have to say that it is out of order to make a personal attack on the character or motives of another member during a meeting, unless the subject is a censure or disciplinary action against the member. Under *Robert's Rules of Order Newly Revised* (12th ed.), a committee does not have authority to discipline its members, but must limit its actions to making recommendations to the superior body (the School Board here). Yet in the case of the Facilities Long-range Planning Advisory Committee, the School Board has directed it to function as a board under Robert's Rules, thus giving it more authority over its members and procedures than a committee. In the future such remarks should be in the context of a necessary censure by the committee or a formal request to the School Board to remove a member from the committee when necessary for the proper functioning of the committee.²⁶

Alleged Violation II.

Director Berg has been unethical as he has used the board referral form for personal reasons and is a violation of our board policy (GP-12).

Implementing a board policy cannot be a violation of board policy. Governance Policy GP-12 specifically provides for "Consider public censure of the offending director of the Board". It also states, "The Board, individually and collectively, is committed to full compliance with the provisions of its own policies." Implementing this policy cannot be unethical. Director Daily has cited no personal reasons that Director Berg may have other than a desire to enforce board policy.

Board policy (GP-12 has no procedure such as the one in the board referral form. He made this up.

This statement is false. GP-12 provides for public censure of an offending member, and *RONR*²⁷ provides that process in which the first step is the appointment an investigating committee.

This divides the board 4 to 1 against me with no one to be a neutral person.

²⁶ Email from John Berg to Gerry Austin, March 21, 2021

²⁷ See Exhibit G, Excerpts from *RONR*.

In a deliberative assembly, there are differences of opinions permitted. There is no requirement that there be a neutral person during any debate. While a presiding officer has a duty to be neutral in the presiding capacity, in a small board, the presiding officer has full rights to participate in debate and take sides on the matters being debated (RONR 49:21(7)²⁸).

The top of the form says we want to respond to alleged allegations. The middle part describes the possible actions including no action be taken. The end says the outcome is to censure Director Daily. Exactly how is this not a kangaroo court with a pre-determined outcome?

The Board Referral Form is a main motion to refer rather than a subsidiary motion to refer a pending matter to a committee. See RONR 13:6²⁹. Rather than a typical motion to refer a pending motion to a committee for further study, a main motion to refer introduces a main motion and at the same time refers it to a committee for study. In this case the main motion was "Adoption of Resolution Censuring Director Daily" and that question was to be referred to the committees for confidential investigation and later recommendation for final action. Adoption of such a main motion to refer does not approve nor guarantee the ultimate approval of main motion to be studied. In the same way, the Board Referral Form introduced by Director Daily in 2020, regarding opening all collective bargaining to the public, did not decide the outcome the issue in advance, but initiated the study of the question. This is not a kangaroo court, but a deliberative process to investigate a matter and bring it to a final vote at later time.

Alleged Violation III.

GP-12 has not been followed. Where is my unofficial "discussion" with the board chairman? When was this accomplished and documented?

At the April 21st Board meeting, Director Daily disputed President Gattenby's account of the private conversation that they had regarding Director Daily's inappropriate actions, and his additional inappropriate actions discussed at an executive session. All of the other Board members were present at the executive session and none of them expressed agreement with

²⁸ RONR 49:21(7) reads, "If the chairman is a member, he may, without leaving the chair, speak in informal discussions and in debate, and vote on all questions" with the added footnote, "Informal discussion may be initiated by the chairman himself, which, in effect, enables the chairman to submit his own proposals without formally making a motion as described in 4:4-8 (although he has the right to make a motion if he wishes)".

²⁹ RONR 13:6 reads, "When a motion proposes to assign a task or refer a matter to a committee when no question is pending, such a motion is not the subsidiary motion to Commit, but is a main motion. It is an incidental main motion if the assignment or referral is pursuant to a subject on which the assembly has already taken some action; but it is an original main motion if the matter to be assigned or referred relates to a new subject."

Director Daily's assertion that the subject of his behavior was not discussed in executive session.

While GP-12 refers to a process with five numbered items, the general understanding is that they are steps that would normally be taken in order of seriousness. However, the policy does not specifically require that the steps must be followed in order. For example, during a dispute with a neighbor, there are certain steps that should be taken to resolve or defuse the situation. Drawing a gun on the neighbor is certainly one of the last options, if it even indeed is an option, yet under certain circumstances, it may be appropriate without going through all the preliminary steps first.

While we made some comments during an executive session, that was not the focus of the session.

Here Director Daily is admitting that his inappropriate actions were indeed discussed in the executive session, which he refers to as "we made some comments".

You were upset that my comment the PDC complaint involving you was "witness tampering". The other board members had no idea what this was about unless you told them in advance, which would be a violation of the Open Public Meetings Act.

This "You" appears to be directed to President Gattenby and further references the discussion in the executive session.

Here Director Daily is disclosing what was discussed in an executive session, which he also discussed openly at the April 21st meeting. In response to that, Director Liz Sebren was quoted in the Kitsap Sun article, Exhibit C, as saying, "You are in violation right now by discussing in public by talking about what was in executive session."

There were Public Disclosure Commission (PDC) complaints made by the Citizens Supporting South Kitsap Schools (CSSKS) and the South Kitsap School Supporters (SKSS), two organizations which were opposed to each other in the latest school levy campaign. In the recent Voters' Pamphlet CSSKS was associated the argument against the levy and SKSS was associated with the argument in favor of the levy. Mr. Austin was associated with SKSS. The PDC documents named three individuals associated with CSSKS, which opposed the levy, namely David Kimball, Jeff Daily, and Jim Bryant. The PDC's letter of March 1, 2021³⁰, included the following finding:

Mr. Kimball confirmed Jeff Daily, a South Kitsap School District Director, has been involved with Citizens Supporting South Kitsap Schools since it was established, and has publicly stated his opposition to the South Kitsap School District 2021 levy.

It would not be a violation of the Open Public Meeting Act for a director to provide information to other directors outside a meeting, provided there did not follow a discussion such as with "reply to all" emails.

³⁰ Exhibit M, PDC Letter of March 1, 2021.

Complaints filed with the PDC and related documents are publicly available on the PDC website.

Alleged Violation IV.

Director Berg has committed both Nonfeasance and Misfeasance. Director Berg has willfully impugned, maligned and damaged my reputation and character. He is aware of, or should be of the consequences of his actions in doing this. He is not just "proposing" something with no thought as to the long-term consequences. Any director who does not act to stop such misfeasance also commits nonfeasance when failing to act to correct these discriminatory and harmful acts.

Here Director Daily is arguing that a director is guilty of nonfeasance if they do not act to stop another director's acts of malfeasance. This fully justifies Director Berg's attempt to address any alleged malfeasance committed by Director Daily.

Alleged Violation V.

Violations of the Open Public Meeting Act. Director Berg has corresponded numerous times with Mr. Mann and the board.

Director Daily has presented no evidence supporting the claim that Director Berg's correspondence with Mr. Mann violated the Open Public Meetings Act (OPMA).³¹ Director Berg responded to Mr. Mann's email and cc'd the rest of the Board on his response. This does not violate the OPMA.

The OPMA does not prohibit emails between board members.³² (Director Berg has received over thirty emails from Director Daily since January of 2020, most of which were also addressed to the entire Board.) The OPMA only prohibits a series of emails that resemble a discussion as if in or in lieu of a meeting. If any Board members subsequently respond with a "Reply to All", then a violation of the Act might be indicated. This did not happen on Director Berg's part.

His thinly veiled comments such as "I recommend..." or "but do what you want" are intended to plant a seed in the other board director's minds.

When Director Berg shared with the Board his response to Mr. Mann's request to be again considered for the third time for the committee appointment, Director Berg prefaced his email with:

³¹ Exhibit N, Email correspondence between Director Berg and Mr. Mann.

³² Exhibit O, Practice Tips on OPMA Electronic Communications from the Municipal Research and Services Center (MRSC)

Alleged Violation VI.

It appears that Director Berg is in violation of our conduct policy regarding treatment of all individuals. I direct you to review Superintendent Winter's "Message to Community" dated April 8, 2021. Clearly the district policies espoused by Superintendent Winter are not reflected in Mr. Berg's actions. Mr. Winter states in part: "The South Kitsap School District strives to provide students with optimal conditions for learning by maintaining a school environment where everyone is treated with respect and no one is physically or emotionally harmed". He further states: "The school community includes all students, school employees, school board members, contractors, unpaid volunteers, families, patrons, and other visitors".

The committees established by the Board Referral Form would investigate whether or not it was Director Daily who actually violated this policy of being respectful to others.

The Board conducted a ThoughtExchange survey during April. There were no comments received that addressed any board member by name, except for Director Daily. Some of the remarks received from staff, parents, and community members in the survey included the following³³:

Director Daily is toxic and a hinderance to the school district community. He violates board governance policies, attacks people with his words The board needs to hold him accountable with the disciplinary guidelines, up to public censure

A school board that knows its role and holds directors accountable. Mr. Daily is ill prepared and creates animosity in every board meeting. His claims about what kids want are his own irrational thoughts. Recall??

Honesty from board members It seems as if Mr Daily has an agenda. As our elected board member, it would be nice to know what that is. What exactly is his objective ?

Jeff Dailey needs to step down, he does not get what a school board member role is, he insults the school district beyond belief

Board The Board needs a no confidence vote. Mr. Daily is exhausting and not in it except to hear himself speak. He is not good for the board or community

Building relationships The board, particularly Mr Daily, needs to build a positive relationship with the staff, especially admin, before we lose more good, hard working people.

In the case of Mr. Mann, regardless of his previous record, he still retains his full set of rights. He is not under any restraining orders or other societal restrictions. He is free as is any other person to do as they wish, regardless of what people might think about him. I urged the board twice to establish criteria that would eliminate this type of

³³ Email from Amy Miller, May 5, 2021.

Mr. Larry Mann has submitted a third application to be appointed to the Facilities Long-Range Planning Advisory Committee. It was sent by postal mail to Superintendent Winter and separately to me also.

Attached is his letter and application, together with my response indicating that I would not be requesting that his application be put on our agenda for consideration. If any other Board members want it on the agenda, they can so request and the remainder of the Board can decide if it should even come to a vote. Since my response to him makes many references to my email to him of March 19th, I have also included that correspondences so that you don't need to search for it.

He may be corresponding with other director's one -on-one, which is a defacto open public meetings act violation. Clearly, his intent is to get around the open public meeting act to conduct illegitimate and possibly illegal acts. These actions bring into question both the legitimacy and appropriate conduct of our board.

If Director Daily believes that Director Berg has violated the OPMA, he should provide the sufficient proof to the appropriate State agency. Here he refers to "may be corresponding with other director's" [sic] and "possibly illegal acts", which constitutes only vague accusations.

This is consistent with Director Daily's repeated practice of raising questions and making vague insinuations and suggestions of impropriety, without any follow-up, details, or proof. The effect of this repeated behavior is to promote public distrust of the District. His comments during board meetings and his many letters to the editor are ample evidence of this, but are not cited here.

In addition, why did Director Berg singularly determine the "teams" listed on this board referral form? Did he bother to confer with those directors he assigned to the 'teams' prior to putting their names down? Did he give any thought to what the long-term consequences could be from his actions?

Director Daily complains that Director Berg did not confer with the other Board members regarding the drafting of the Board Referral Form and its designated composition of the two committees, yet in the previous paragraph he points out that Director Berg is not permitted under the OPMA to confer with other Board members outside of a public meeting.

If anyone disagreed with the composition of the two committees as stated in the Board Referral Form, they were free to move to amend the Board Referral Form at the meeting. The Board Referral form adopted at the April 21st meeting was later amended at the May 5th meeting.

problem. Given board policy, district policy, and Mr. Winter's recent letter regarding hate crimes, this is exactly the issue that will surface. It is blatant discrimination for the board to say Mr. Mann cannot be on a committee without providing the rationale for his non-selection. Mr. Mann may well have grounds for civil litigation at both state and federal levels.

This paragraph does not actually contain any specific complaints against Director Berg, except for Director Daily's disagreeing with Director Berg and the rest of the Board's vote that Mr. Mann should not be appointed to the Facilities Long-range Planning Advisory Committee.

In 2017, the District obtained a temporary protection order against Mr. Mann as a result of threatening letters received by the Superintendent and staff.³⁴ Previously Mr. Mann was convicted of Assault of a Child and Unlawful Imprisonment and served eight months in jail relating to treatment of his grandchildren. Nevertheless, Director Daily claimed it is "blatant discrimination" against Mr. Mann to not appoint him to a citizens advisory committee. Discrimination consists of making a decision based on preferences. Whether or not one chooses chocolate or vanilla is discrimination. Discrimination is not illegal except when done on the basis of specific prohibited criteria outlined in statute. All of the Board members have had correspondence with Mr. Mann and were able to draw their own conclusions as to the appropriateness of appointing him to a committee. The Board has broad discretionary authority in appointing citizens to committees. The Board did not improperly discriminate against Mr. Mann in connection with any of the prohibited criteria.

Allegation Violation VII.

In Mr. Berg's board referral form dated April 21, 2021 he talks about responding to alleged offences and improprieties he is claiming I have committed, yet lists none.

As stated previously, no specific detail of alleged allegations were given in the Board Referral Form because that is the rule in *RONR*, which states, regarding the motion to establish an investigating committee: "For the protection of parties who may be innocent, the first resolution should avoid details as much as possible" (*RONR* 63:11³⁵).

This would imply that Mr. Berg (and other board members) have been discussing this matter amongst themselves outside of the required public meeting forum. These actions by Mr. Berg implies there may be possible collusion in his actions with other board member whether telephonically or otherwise. Such actions between Mr. Berg and other board members which would be a violation of board ethics, board governance policies and district policies.

³⁴ See Kitsap Sun article of October 28, 2018, included previously in Exhibit N.

³⁵ See Exhibit G, Excerpts from *RONR*.

Regarding Director Daily's accusation of collusion among directors in drafting the Board Referral Form, the process was as follows: After an exchange with Director Sebren, Director Berg drafted the Board Referral Form. It was discussed with Director Diehl and Superintendent Winter at the agenda planning meeting the Thursday preceding the Board meeting. (Director Berg was filling in for President Gattenby at that meeting.) The Board Referral Form was sent to other directors and available on the common Board Docs application with the agenda. Director Berg also send his remarks prepared for the April 21st meeting, together with resource material from consultant Jurassic Parliament³⁶ to Directors Gattenby, Sebren, and Diehl the day before the April 21st meeting. There was no correspondence from Directors Gattenby and Sebren to Director Berg regarding the draft Board Referral form. Director Diehl did have a conversation with Director Berg regarding it prior to the Board meeting. None of these actions would violate the Public Meetings Act as claimed by Director Daily.

In conclusion, I am delivering these allegations of violations during a public meeting which makes them public documents.

Here Director Daily is contradicting his own claim in the second paragraph that allegations should be addressed in private, not in a public meeting. He stated there, "Every district employee has the right to have any allegations against him or she addressed in private." He thus wants charges against him private but wants charges against Director Berg to be public.

Since I delivered these allegations during a public meeting, you will need to report your findings and actions via an open and public board meeting in the future.

If Director Daily erred in presenting specific allegations in public, it does not follow that the Board President should subsequently also address the allegations in public.

It is with great disappointment that Director Berg failed to perform his required due diligence in this matter. On it face, Director Berg's actions appear to retaliatory. His intentions are gauged to cause me embarrassment, humiliate me, and to discredit me before this board and our community. Unfortunately Director's Berg's effort will most likely add to our communities' lack of respect for the board as well as further eroding of community trust.

Regarding "our communities' lack of respect for the board as well as further eroding of community trust", the ThoughtExchange remarks directed at Director Daily cited above were submitted prior to the April 21st meeting and after a letter critical of Director Daily was published in the Kitsap Sun March 8, 2021³⁷.

You may contact me for specific emails and other information.

³⁶ Exhibit P, Director Berg's prepared remarks and resource material from Jurassic Parliament.

³⁷ Exhibit Q, Letter to the Kitsap Sun published March 8, 2021.

Again, it is not the Board president's responsibility to seek out additional documentation. Such documentation should have been presented confidentially by Director Daily.

I expect you to follow district policy contained in GP-12, and inform me what actions you will and have taken and documented regarding Mr. Berg's actions and behavior.

Cordially,

J Daily

The only action that the Board president can take on his own authority under GP-12 is to speak to Director Berg privately on the matter. This has occurred. Any other action under GP-12 requires Board action. Director Daily has proposed no such Board action.

Cordially: "Sincere affection and kindness"³⁸

³⁸ Merriam-Webster's Collegiate Dictionary (11th ed.), p. 277