

## **RESPONSES OF DIRECTOR DAILY TO JULY 28, 2021 FOLLOW-UP QUESTIONS OF MS. CAPPEL**

### **Follow up questions for Director Daily:**

#### Allegation

A. Director Daily has undertaken actions aimed at or with the effect of undermining board decisions.

#### **Follow up questions:**

1. Did you send the email quoted in the Nextdoor app post that was referenced in the summary of allegations, which states:

“Below is an email I received from Jeff Daily . . . “

#### **RESPONSE:**

Presumably, the allegation this question refers to is the one cited in the Summary of Allegations as follows:

“Director Daily has undertaken actions aimed at or with the effect of undermining board decisions.

On December 2, 2020, the Board adopted Resolution No 1338, authorizing a special election on February 9, 2021 “in order to submit to the qualified electors of the District the proposition of whether excess property taxes should be levied to provide educational programs and operations (hereafter levy).”

Director Daily sent emails to constituents that were posted on the Nextdoor app opposing the levy and citing inaccurate data.”

**RESPONSE:** Director Daily does not use Nextdoor and does not know what it is. He did not post anything to Nextdoor. Anyone could claim that something posted there was ‘sent by Director Daily.’ Director Daily is unable to ascertain from the screenshots provided where the alleged quote begins, and what parts are commentary by the poster. If you can provide any more information about the alleged email – the date/time it was sent; who it was sent to; etc., then Director Daily could potentially answer your question by checking his email archives.

If the allegation is that ‘inaccurate data’ was cited by Director Daily, please specify what data is alleged to be inaccurate, and Director Daily can respond as to whether he recalls citing that particular data, and if so, what his sources for the data may have been.

Director Daily denies ever intentionally using inaccurate data, but cannot eliminate the possibility that he made good-faith assertions based on information he believed to be correct, but that contained some sort of unknown inaccuracy.

If the allegation is that Director Daily ‘undermined’ a decision of the board by stating his thoughts about the levy, please recall that the Board did *not* vote to support the approval of the levy. The board simply voted to call a public vote on the issue of the levy. Director Daily is free to express his opinion on the levy without contradicting any vote of the board.

B. Director Daily has engaged in threatening, unprofessional, and disrespectful communications.

A PDC complaint was filed on December 13, 2020, alleging that Citizens Supporting South Kitsap Schools failed to register as a political committee. Director Gattenby, Superintendent Winter, and union official John Richardson were identified as witnesses. The letter to Director Gattenby stated:

I am disappointed. Given your stated character and leadership position, I didn’t think this type of stuff was your style and worth the risk.

Cordially,

J Daily

**Follow up questions:**

1. Did Director Daily deliver three sealed envelopes to the District offices addressed to the individuals identified above?

Response- Yes, Director Daily delivered three envelopes to the District offices.

2. Did the envelopes contain typed letters?

Response- Yes, the envelopes contained typed letters.

3. Why did you send the letters to Director Gattenby, Superintendent Winter and Mr. Richardson?

Director Daily sent the letters to them specifically because he felt it would be embarrassing to the Board for board members to be roped into something that did not concern the District or the Board, and that would certainly prove to be a false allegation. Director Daily was looking for a response from them, hopefully something that indicated they would not allow local politics to affect their working relationships with Director Daily.

At the time, Director Daily had only been on the board a short period of time, and was just getting to know his colleagues. The false PDC allegations seemed to be someone from outside trying to smear Director Daily’s reputation and undermine the working relationships between board members.

The complaint was written by Gerry Austin, who is in the SKSS organization. For some reason, he sent it to the district and board. The complaint did not involve the District, so it seemed inappropriate to send it to the District.

Director Daily was hoping for an acknowledgement that Director Gattenby, Superintendent Winter, and Mr. Richards really didn’t know they had been named as witnesses in support of the complaint, and that if they had concerns, they would speak with Director Daily directly before

simply filing false complaints. The letter was to let them know that he was aware the complaint and wondered about their involvement.

Director Daily was particularly disappointed to find Director Gattenby's name appended as a witness to the PDC complaint. Director Daily found it disappointing and unprofessional for Director Gattenby to have been involved in this PDC complaint, just in the early days of being colleagues on the Board. That is the disappointment that Director Daily expressed to Director Gattenby. Director Daily was genuinely concerned at the seemingly uncharacteristic attack by Director Gattenby. Nothing whatsoever in the letter was threatening, or intended in any way to interfere with a witness.

The underlying PDC complaint was dismissed as being without merit.

4. What was your intent in stating: "I didn't think this type of stuff was your style and 'worth the risk?'"

Response: In stating "I didn't think this type of stuff was your style," Director Daily was expressing that it seemed uncharacteristic of Director Gattenby to participate in undermining a fellow board member with false allegations. Director Daily was stating that he expected openness and direct communication in his relations with board colleagues, and was surprised that Director Gattenby appeared to be cooperating with a complaint about something he had never mentioned to Director Daily.

In stating that he didn't think "this type of stuff was... 'worth the risk,'" Director Daily was expressing that making false statements, or participating in false complaints designed to undermine a board member, did not seem to be worth the risk of damaging the Board's credibility, or damaging the Director Gattenby's own credibility.

Director Daily sent these as personal communications by hard copy so that his concerns could be handled privately and cause the least public controversy.

When Director Daily spoke with the Superintendent Winter about Mr. Winter's his involvement in the PDC complaint, he said he had only heard about the complaint the night before, and had not given Mr. Austin his permission to use him as a "witness". Mr. Daily expressed his concern that engaging in complaints rather than conversation wasn't a good way to build a working relationship. Superintendent Winter agreed with Director Daily, saying that actions like the PDC complaint are not how he usually works, and that he wanted to build a relationship with Director Daily.

C. Director Daily has violated the confidentiality of executive sessions.

Attached are communications with Superintendent Winter regarding the disclosure of confidential information following an executive session on May 6, 2020.

**Follow up questions:**

1. Do you agree that information discussed during executive sessions is deemed confidential?

2. As a director, do you agree you are prohibited from disclosing information discussed during executive sessions to members of the public?

*Response-*

Information *learned* (not just discussed) in a properly-convened executive session of a governing body of a public agency is generally confidential. Director Daily agrees with the applicable law.

Executive sessions can only be properly called for a limited number of reasons. Those reasons must be publicly announced prior to the commencement of the session, and the session must be limited to the purposes set forth in statute, RCW 42.30.110(1). For example, the school board might meet in executive session in order to “consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price[.]” RCW 43.30.110(1)(b).

This does not mean that the OPMA imposes a blanket prohibition against disclosing *any and all* information that may have been shared during an executive session. According to the guidance of the Attorney General, “Information that had already been disclosed publicly is not rendered confidential by discussing it in executive session.”

RCW 42.30.110 “only creates a duty of confidentiality with regard to information about the statutorily authorized purpose (or purposes) for convening an executive session.” That is, information discussed that is outside the stated legal purpose of an executive session is not rendered confidential just because executive session privilege is claimed. Any off-topic discussion is not confidential.

Real estate transactions are only confidential in the context of a properly-called executive session, which can take place only when the real estate transaction information under discussion can be expected to result in a price change for the deal in question. General conversation about budget line items, the source of funding for a project, or concerns over whether a project is needed, are not properly subject to executive session confidentiality.

The District's desire to purchase land for an undisclosed reason was documented on a public budget brief/presentation of capital projects proposed under the recently approved capital projects levy. This presentation was given on or about January 30, 2020, by Brent Palmason, who was the facilities and levy project manager at that time.

An expenditure for land amounting to \$1.1 million appeared on this presentation. Below is the slide from that presentation. The slide clearly shows an allocation of \$1.1 million of the capital levy to ‘Purchase additional property for school use.’

No specifics were provided in the presentation, which generated many questions by the public. These questions were under discussion long before the executive session was held. It was common knowledge in the district and among citizens that the district planned to go into a partnership to buy land to build a student health clinic in cooperation with Peninsula Health Care Services.

## Capital Levy Projects

### Capital Improvements - Continued

Projects	Estimated Cost	Notes
New Outdoor Tracks for Marcus Whitman and John Sedgwick	\$1,500,000	Replace cinder running tracks with new rubber tracks
Acquisition of Property	\$1,100,000	Purchase of additional property for school use

Information that Director Daily heard in public, or from sources outside of the executive session, is not confidential information. Director Daily is well- connected in the local community, and this real estate transaction was public knowledge.

The Board cannot discuss information that is already public in an executive session and thereby deem it confidential, or claim that it then cannot be discussed with people who were already aware of the information. That is not the intent of the Open Public Meetings Act.

In order to show that Director Daily actually did reveal confidential real estate transaction information learned in executive session, the following would have to be demonstrated:

1. The information was truly confidential, and had not been discussed, announced, or leaked to the public prior to the executive session.
2. The executive session was properly called, for a legal reason, including a showing that discussing the real estate transaction at the public meeting was likely to cause a price change for the deal.
3. The subject matter of the executive session was properly announced prior to the beginning of the session.
4. The session was not ended or rendered improper by off-topic discussion.
5. Director Daily was the source of a leak of confidential information learned during the session.; and
6. The information was not known to Director Daily's interlocutors before he revealed it to them.

The meeting in question appears to have been an improper use of an executive session, as it was at this meeting when President Gattenby broached the public disclosure complaint. The PDC complaint had not been noted as a topic for this executive session. The PDC matter tainted the entire executive session. The privilege that is attached to a proper executive session was thus nullified. Additionally, the land purchase plan was well known throughout the district and many in the community long before the executive session. This was not confidential information, and it was not protected by the executive session privilege.

3. As a director, do you believe you have the personal discretion to decide whether information discussed during an executive session is confidential?

*Response:* It is the duty of every director, including Director Daily, to comply with the plain written language of the Open Public Meetings Act. 'Personal discretion' is not required, as the decisions of

each director can and should be governed by the statute and the case law associated with the statute. It is important to keep in mind that the purpose of the Act is to prevent government agencies from concealing public information.

Further – this question is objectionably leading, and does not reflect a neutral investigation.

4. Did you disclose information discussed at the May 6, 2020 executive session to a party not in attendance at that executive session?

Response-

As the information discussed at the session was already known to Director Daily and to many other people, due to their separate involvement with the district and outside agencies, it was not confidential.

At worst, Director Daily only reiterated his thoughts on non-confidential subjects that had previously been discussed with the same people weeks before. These discussions related to the item on the district's slide involving monies slated for real estate, and that was of concern to some individuals. This conversation started back in February. The discussions did not involve anything that may have damaged a real estate transaction. They did not involve specific locations, sellers, or any other details.

There was only one item of information that Director Daily did learn at that executive session. He has never disclosed to anyone since he had not heard it from other sources.

Director Daily wrote to the Superintendent with the intent was to show that he understood the Superintendent's concern. As a new board member, Director Daily's desire was to learn to work with the superintendent, not to defend himself. If there was an issue with confidentiality of executive sessions, it should have been handled with the procedure in the Board's own policies: With a private conversation to correct the issue. Such a conversation never took place. It has been more than a year since the session in question.

- G. Director Daily is divisive, abrasive, and makes accusations of wrongdoing without offering factual support.

**Follow up questions:**

1. What was the factual basis for claiming there were \$18 million in unaccounted funds?

Response-

Director Daily is the sole board member with any financial background. He holds a BBA in Finance and an MBA. Director Daily is former Board Member of a financial institution. He managed \$285M in Pentagon funds during his career. He is eminently qualified to understand District financial reports.

The job of the CFO is to ensure that the public understands where taxpayer money is going, and to account for all of it. The job of Director Daily, as a board member, is to ensure that he understands where the money is, and what it is being used for. Director Daily represents his

constituents, who are taxpayers. If a board member has a strong concern that there is an issue with the budget, then that member should call the State Auditor's Office and file a complaint.

The district has five main accounts. One is the General Fund. The issue was simple: The issue was simple: During the board discussion, Director Daily was asking about a particular expenditure. The state was appeared to be giving the district \$127M for payroll, and Director Daily was asking why a change in the budget was for a larger amount, about \$156M. Director Daily wanted to know where the extra money was coming from.

The answer from the district was that the matter was "complicated" and that "many" revenue accounts helped make up the difference. Director Daily explicitly requested documentation from the CFO as to where exactly the \$18 million was coming from. That information was never provided. This is the basis on which Director Daily stated that the funds were unaccounted for – the accounting has never been provided for board inspection.

2. What was the factual basis for claiming the District could not pass a State audit?

Response: Auditors look for certain things, and there are different kinds of audits. In Washington, school districts use an accounting system that is not based on "GAAP" (Generally Accepted Accounting Principles.) Therefore, the only people who can audit the district is the State Auditor, because an outside auditing firm versed in GAAP is unqualified to do so. If an outside firm was brought in, it is Director Daily's opinion that the District would fail the audit, in part because District operations rely heavily on unpredictable, non-guaranteed levies to pay basic expense, rather than being able to fund the district without extra levy infusions.

Director Daily has had several conversations, and filed several complaints, with the State Auditor's office. Since the same folks audit the district year after year, they are familiar with the district. In essence, all they look for is that the money coming in from various sources goes into the right account, the bills are legally paid, records are kept, and the budget balances. There is examination of issues such as solvency as they claim that it is the job of the school board to decide how the money is spent. In fact, when Director Daily asked if the district was a "going concern," meaning whether the district has enough money to continue on for the future, the State auditor's office said that the District does not. It is Director Daily's educated opinion that these issues would pose concerns for an outside auditing firm.

No other business would be allowed to rely on public money to remain solvent. The District gets \$127M from the state and have a payroll of \$140M. That means that \$13M must come from the \$25M levy just to pay employees.

The district is spending far in excess of what the state allocates for hiring and personnel. The District further over-extended itself by using McCleary settlement funds for pay increases. The State warned all 295 school district not to do this, explicitly telling the districts across the state not to set up budgets that would not be fully after the disbursal of McCleary settlement funds. In previous years the, the State Auditor's Office had provided cautionary advisement about the



precarious nature of the district's budget, and how it could leave the district short on the required funds mandated to be held in reserve.

The chart below, provided at the most recent budget hearing, is indicative of how much the district relies on approval of levies in order to maintain payroll. This is not sound financial management. In the professional experience and educated opinion of Director Daily, the district is just a few failed levies away from potential receivership by the State.

The platform on which Director Daily was elected dealt with the financial concerns about the district, and concerns about and how the District presents fiscal information to the board, and, occasionally, to the public. The law clearly states that financial oversight is one of the two responsibilities of the board. Director Daily raising legitimate concerns is a fulfillment of his duty to his constituents, and his duty as a member of the board.

## Our Community Empowers an Enhanced Staffing Model

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Position	OSPI June Apportionment	District Budget Plan as of June
Principals	22.297	23
Classroom Teachers	369.739	520.56*
Counselors	14.841	29.5339
Nurses	1.253	7.1296
Social Workers	.532	3
School Psychologists	.217	13.559
Teaching Assistants/Paraeducators	14.058	137.372
Custodians	31.029	56.8397
Technology	4.47	14
Facilities Maintenance & Grounds	12.905	27
*Additional teachers beyond depicted number are funded by federal programs		