

From: [Sebren, Liz](#)
To: [Kris Cappel](#)
Subject: Fw: Just the Facts
Date: Sunday, May 30, 2021 3:51:09 PM

From: Daily, Jeff
Sent: Wednesday, October 28, 2020 9:01 PM
To: Berg, John
Cc: Gattenby, Eric; Sebren, Liz; Diehl, Rebecca; Daily, Jeff; Winter, Tim
Subject: Just the Facts

Mr Berg-

Since no one else seems to want to stop this issue caused by you, I will do so now. Sadly, forcing Mr Winter to comply with your request is probably highly illegal. He was trapped by you as his supervisor but probably decided to comply with your order since for a variety of reasons.

Here are the facts for you to consider.

1. You said you were disturbed by this issue and that is a personal statement. We all have our opinions and you have yours. Show me the law (RCW) and district regulations stating that anyone making any statement they wish to make, fact or fiction, is illegal whether in private or public. It may go against your personal code of ethics but unless you can show me the law, this is a personal vendetta for which you can be removed since it is an abuse of power to use your position to extract information from a subordinate and also call a public official a liar without proof. Since your charge is on the district server, it is a matter of public record and it can be taken outside the district to any court of law.
2. Please show me your authority to speak on behalf of the board. I need to see the RCW and the board policy.
3. I need to see your authority to conduct an investigation on behalf of the board. Please present to me your written authority signed by an authorized authority. Otherwise, you have conducted an illegal investigation and questioned the reputation of an employee and a public employee. District employees are protected by district policies and elected officials by the PDC, SAO, and AG's office. Mr Winter would have the right to have a public hearing should any action be considered against him as well as many other rights of any one accused of anything. I, as a public official, would have the right to a trial if the board were to take action. Since none of this is authorized by the board (and I wasn't aware of it, didn't vote on it, etc), you would be totally liable as the burden of proof is on you to prove your charges and you would bear the costs of an investigation as well as a trial. Any attempt to take action by the board using an illegal investigation would open it up to litigation. And since no one else has spoken out about this, the question of accomplices and collusion would be considered.
4. Show me your personal credentials to investigate absolutely anything. If you have no authority and no credentials, again, you are conducting an illegal investigation and without a license.
5. You have abused your authority as a board member since you without advising the board's employee of his rights to refuse to provide information, required him to provide you information that will now not be allowed in a court of law since you didn't advise him of his rights even if you have authority to conduct this investigation. Your request of me also violates my rights. This is also an unethical violation.
6. You threatened punitive action without any due process in an illegal investigation to two people. This alone is probably grounds for your dismissal.

7. If you accuse someone, the burden of proof is on you to prove it. So, you gather the information, not ask for it to be provided to you. Are you a judge also? The information you seek is available in the previous board minutes but you obviously did not read them, extract the information for yourself, and are expecting people to provide you as the self-appointed judge, jury, and executioner information to convict themselves. Perhaps you should read the Constitution of the United States as well as consult our legal process to see what it actually says and guarantees. Mr Winter's information is now probably not usable as it was gathered under duress (you are his supervisor) and without due process, advisement of rights, and a myriad of other issues you failed to ensure were accorded the "accused". In short, you can now be sued since you forced an employee to provide information in an unauthorized and probably illegal investigation.

8. Back dating any documents to support you would also be highly illegal and a violation of ethics.

9. Under what authority do you have to speak for the board in this matter? Show it to me. We have a process for asking the superintendent for information- a form to be precise. You went around that process for a personal cause versus having board authority to ask for information not related to district business. Again, you are in violation of our process and doing this for a personal reason. Using your position for personal reasons is also a violation of ethics. You made the Superintendent spend district resources for your own personal reasons, not related to any board actions. Your values are not the values of the board. As I board member, my values are mine that I do not impose on others, and the board has no written values that subscribe to yours.

10. Under what authority are you using to state that the board wants this information? I don't recall any motions, resolutions, discussions that asked for this investigation? If you talked with other board members, then you again violated the law of public meetings by conducting business illegally. Since I was not consulted, this would then look like a conspiracy. Conspiring to get rid of someone is also an ethics violation.

11. Your actions with two others are suspect since you and two others discussed the district's priorities to WSSDA without the full vote of the board. You told others not to reply to your email and then somehow, a very short notice board meeting occurred and priorities were sent to WSSDA without full board concurrence. Since I have no notification of the meeting, the 24 hour notice to the public, and was not allowed to state my preferences since the previous work session was stopped before the list was approved, one could wonder exactly what the intent of you and the others was. Especially since the top two priorities you gave were obviously items that I disagreed with.

12. If the board were to consider any "evidence" at a future board meeting, you would be open to an extortion charge since you had no authority to ask for any information without proper due process. Any action out of that meeting would expose you to liability since there exists no board authority to authorize you to do anything.

13. As you have accused me, you will need to prove that I lied in a court of law, not to the board. Your charge is serious and will be met with serious consequences. You will be required to document absolutely everything and it won't look good since your opening statement starts with "I was disturbed..." Should I win in court, I will expect your resignation as well as take action against you.

14. You could have voiced your concern in a manner for the board to discuss but you took it upon yourself for some reason to appoint yourself as a champion of justice. You will need to provide a court of law your authority and your motivation in order to take action on anything that involves the board. Having a Kangaroo court hearing in a board meeting is also highly illegal and opens the board to litigation. Again, any attempt to back this in at the next board meeting for some type of justification will just implicate the entire board in your unethical behavior.

15. If you have a concern about ethics, then the PDC, SAO, and AG's office are the proper authorities to contact for investigation. You have absolutely no authority to investigate anything at any time on behalf of the board. The board would use an attorney to do this. Using the "board wants" when you have no proof that the board even discussed this is also a "lie" and ethics violation.

16. It is obvious that your intent is to hurt and embarrass an employee and a public figure. Should you figure out how to get the evidence you need, if it comes out that your charges are unfounded, you will be

sued. The board is not a court of law.

17. You have 24 hours to provide the documentation I have asked for or I will file charges against you with the PDC, the SAO, and the AG. In short, you caused the issue, you solve it. A better solution (since I am a fair person and have no vendetta) would be to figure out how to extricate yourself from this mess and fix things with all parties.

Cordially,

J Daily