

SUMMARY REPORT OF INVESTIGATION

Date: August 3, 2021

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From: Kris Cappel, Esq.
Seabold Group

I. INTRODUCTION & SCOPE OF INVESTIGATION

On April 21, 2021, the South Kitsap School District Board of Directors (Board) approved Director John Berg's motion to investigate possible censure of Director Jeff Daily. Seabold Group was retained to conduct a fact-finding investigation of the alleged grounds for censure.

II. INVESTIGATIVE PROCESS

In this investigation, Seabold Group interviewed Directors Berg, Sebren, Gattenby, and Diehl, as well as Superintendent Tim Winter. Seabold Group also reviewed Board meeting agendas, minutes, documents, as well as documents provided by the witnesses and the District. Documentation in support of the allegations is attached as Appendix A. Director Daily chose to respond to the allegations in writing. His written responses are attached as Appendix B.

III. APPLICABLE DISTRICT POLICIES

The Board of Directors is governed by The Coherent Governance model of board leadership, containing four sets of policies: Results, Operational Expectations, Governance Process, and Board/Superintendent Relations. The Governance Process policies potentially applicable to the censure motion include:

GP-1 – Governance Commitment and Beliefs

Standard 1

Provide responsible school district governance by:

- a. Conducting board and district business in a fair, respectful and responsible manner.
- b. Ensuring the board is accountable and open to the public including seeking divergent perspectives in its decision making process.
- c. Respecting and advocating mutual understanding of the roles and responsibilities of board members and the superintendent.
- e. Promoting healthy relationships by communicating supportively, inspiring, motivating and empowering others, and exercising influence in a positive manner.

- f. Working as an effective and collaborative team.

GP-2 - Governing Style

The Board will govern with emphasis on our stated Ends policies; respect diversity in viewpoints; focus on strategic leadership rather than administrative detail; observe clear distinction between the Board and Superintendent roles; make collective rather than individual decisions; and govern proactively rather than reactively.

GP-9 – Professional Standards of Conduct

The Board commits individually and collectively to ethical, professional, and lawful conduct, including proper use of authority and appropriate decorum when acting as Board members. The Board, acting in its legislative capacity, shall have the authority and responsibility to interpret and apply these standards of conduct.

The Board agrees to adopt, as of this date, the Washington State School Directors' Association (WSSDA) Individual School Director Standards as follows:

Standard 1. Values and Ethical Behavior

To be effective, an individual school director:

- c. Commits to treating each individual with dignity and respect.
- d. Models high ethical standards.

Standard 2. Leadership

To be effective, an individual school director:

- a. Contributes to thoughtful governance discussions and decisions by being well informed, open minded and deliberative.
- b. Understands that authority rests with the board as a whole and not with individual directors.
- c. Is able to articulate and model appropriate school director roles and responsibilities.
- d. Actively participates in school director duties and responsibilities.
- e. Demonstrates group membership and leadership skills, working within the board structure.

Standard 3. Communication

To be effective, an individual school director:

- a. Builds and maintains positive connections with the community and staff.

- b. Communicates accurately and honestly, with awareness of the impact of his/ her words and actions.
- c. Listens carefully and with an open mind.
- d. Maintains civility and treats all people with respect.
- e. Maintains confidentiality of appropriate matters.
- f. Refers and guides people with concerns to appropriate staff.
- g. Welcomes parent, student and community input.

Standard 4. Professional Development

To be effective, an individual school director:

- c. Participates in professional development, individually and with the board/ superintendent team.

Standard 5. Accountability

To be effective, an individual school director:

- a. Is accountable to the community.
- b. Takes personal responsibility for his/her own words and actions.
- c. Respects and abides by board decisions.
- e. Complies with board policies/procedures and the law.

GP-12 – Process for Addressing Director Violations

The Board, individually and collectively, is committed to full compliance with the provisions of its own policies. In the event of a director's willful and continuing violation of policy, the Board may seek remedy by the following process:

1. Conversation in a private setting between the director and the Board President or other individual member.
2. Discussion in a private session between the offending director and the Board (as permitted by law).
3. Consider public censure of the offending director of the Board.
4. Remove the offending director from any committee or other Board-designated responsibility, as appropriate.
5. In cases of nonattendance, declare the seat vacant in accordance with law.

B/SR 2 – Board Authority

Only decisions of the Board acting as an entity are binding on the Superintendent. Accordingly:

1. Decisions or instructions of individual Board members, officers, or committees are not binding on the Superintendent except in rare instances when the Board has specifically delegated such exercise of authority.
2. Individual members will not give instructions to or request work of the Superintendent except in rare instances when the Board has specifically delegated such exercise of authority.
3. Board members who are contacted by parents, employees, and others, with issues concerning the District, or its employees, should refer the individual to the Superintendent's Office who will refer them to the responsible individual.

IV. SUMMARY OF ALLEGATIONS

A. 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. The text of the resolution passed by the Board stated, in part:

WHEREAS, to provide properly for educational programs and operations funding, **the Board hereby deems it necessary and advisable that:** (1) an excess tax of approximately \$2.50 per \$1,000 of assessed valuation, to provide an aggregate amount of \$27,880,220 be levied in 2021 as part of the taxes to be collected in 2022; (2) an excess tax of approximately \$2.50 per \$1,000 of assessed valuation, to provide an aggregate amount of \$30,386,678 be levied in 2022 as part of the taxes to be collected in 2023; (3) an excess tax of approximately \$2.50 per \$1,000 of assessed valuation, to provide an aggregate amount of \$33,118,717 be levied in 2023 as part of the taxes to be collected in 2024, and (4) an excess tax of approximately \$2.50 per \$1,000 of assessed valuation, to provide an aggregate amount of \$36,096,640 be levied in 2024 as part of the taxes to be collected in 2025, with such excess taxes to be deposited into the District's General Fund and -2- 4839-9877-9601.3 used for continued funding for the District's educational programs and operations

(See Appendix A, pps 2-7).

The language of the resolution and the Board's discussions prior to the vote, makes it clear that the Board supported the passage of the levy as "necessary and advisable." Director Daily was the only nay vote.¹

Evidence:

- Director Daily offered public comments in opposition to the levy before the Port Orchard City Council on January 26, 2021. At the conclusion of his comments, Director Daily stated, "Please vote no on the levy."
- Director Daily disseminated an email to a constituent opposing the levy and that constituent posted the email on the Nextdoor app. (See Appendix A, pps 142-144).²

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

Evidence:

- January 12, 2020 email communications with Board and pre-board meeting notes. (See Appendix A, pps 8-12).
- February 17, 2020 pre-board meeting notes to all directors. (See Appendix A, pps 136-138).
- April 13, 2020 pre-board meeting notes to all directors, including the following statements:
 - "Is this seriously the agenda?"
 - "The superintendent "is our employee; not our best friend."
 - "This is a total waste of time"
 - "I will ask for Ms Farmer's resignation and her staff at the meeting"
 - "I will also ask for Mr Holsten's resignation at the meeting"
 - "If we can't get [agenda items] fixed by next meeting, I will ask for the resignation of the superintendent at that meeting."
 - "I have no problem embarrassing the board, the superintendent, the individual board members and asking for their resignations if you move forward with this item." (See Appendix A, p 116.)

¹ Director Daily claims, "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."

² In his second written response, Director Daily stated that the Nextdoor post did not include enough information for him to determine whether the post was a true copy of an email that he had sent to a constituent. The email included as Appendix A, p 142 makes it clear that the Nextdoor post did accurately include Director Daily's email, which opposed the levy.

- August 2020 email communications with Peter Darragh (parent and SKSD employee). (See Appendix A, pps 123-125).
- April 2021 email communications with Mr. Darragh. (See Appendix A, pps 126-130). Mr. Darragh also believes that Director Daily made a public records request for his work emails in retaliation for Mr. Darragh's email inquiries to Director Daily.
- February 2021 email communications with Troy Grubb (SKSD employee and SEIU 925 Executive Board Member). (See Appendix A, pps 131-135).
- Communications with Director Gattenby (and others) in connection with Public Disclosure Commission (PDC) Case 82098.

A PDC complaint was filed on December 13, 2020, alleging that the 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 in the complaint. Director Daily delivered three sealed envelopes to the District offices addressed to Director Gattenby, Superintendent Winter, and Mr. Richardson. The typed letter enclosed in the envelope addressed 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

(See Appendix A, pps 117-119.) Director Gattenby feels the letter was intended to be threatening and constitutes "witness tampering." Similar letters were addressed to Superintendent Winter and Mr. Richardson who also found the letter to be threatening. In discussions with Superintendent Winter, Director Daily acknowledged his letters were related to the PDC complaint naming the three individuals as witnesses.³

- October 2020 email communications with Director Berg (See Appendix A, pps 139-141, 145-146).

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

Evidence:

³ In his first written response, Director Daily complained that the letter to Director Gattenby was "undated, and unaccompanied by any statement of when or how it was received" and "did not refer to any particular issue." After being asked directly whether he wrote the letter and whether it related to the PDC complaint, Director Daily responded in great detail that in fact he had written the letters and sent them to the three individuals identified in the summary of allegations, and that they were triggered by learning about the PDC complaint. He further stated that his comment regarding "worth the risk" was not intended a threat.

- At the April 21, 2021 regular Board meeting, Director Daily stated that the Board had previously discussed a PDC complaint in executive session.
- Following a May 6, 2020 executive session, Director Daily reportedly disclosed confidential information discussed during that session with one or more constituents. (See Appendix A, pps 147-159). Communications between Superintendent Winter and Director Daily regarding this issue are attached as Appendix A, pps 160-162. Director Daily did not admit to disclosing confidential information in his email to Superintendent Winter.

The District was unable to locate the email from the constituent that prompted Superintendent Winter's May 11, 2020 email to Director Daily.

D. Director Daily's actions reflect poorly on the Board as a whole.

Evidence:

- Thought Exchange Survey – only Director Daily was identified by name. (See Appendix A, pps 13-115).

E. Director Daily makes excessive public records requests resulting in unnecessary costs to the District.

Director Daily has been informed that as a Board member, he has the right to request information from the District, but instead he files multiple public records requests, resulting in unnecessary expense to the District.

Evidence:

- April 2020 emails with the superintendent and District staff noting that the District is "working on fulfilling the nine public records requests that you currently have in our system." (See Appendix A, pps 120-122).
- May 19, 2021 Annual Technology Update.
- "Things Keeping Us Up At Night"
- "Public records requests have increased 400%. On average each request consumes 6 hours of staff time to respond."

(See Appendix A, p 171).

F. Director Daily has failed to fulfill the duties and responsibilities of a director.

Evidence:

- Director Daily regularly refuses to sign Board documents. (See Appendix A, pps 181-189).
- Director Daily abstained from voting on the election of Board president and vice president during the December 2, 2020 regular Board meeting. (See Appendix A, pp 176-177).
- Director Daily declined a Board assignment during the December 2, 2020 regular Board meeting (WIAA Representative). (See Appendix A, pps 176-177).
- Director Daily failed/refused to attend a special session on January 23, 2021, dedicated to professional development (review and training of “Coherent Governance.”). (See Appendix A, p 180).
- Director Daily frequently abstains to avoid going on record or if he believes the agenda includes items that he believes should not be on the agenda.

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

Evidence (in addition to evidence cited above):

- Director Daily claimed, without evidence, that there was \$18 million in unaccounted funds.
- Director Daily stated that the District could not pass a State audit.
- Director Daily falsely claimed the District had approved a 3% across-the-board increase for District staff during the pandemic.