

## 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 Directors<sup>1</sup>, Director Jeff Daily handed Board President Eric Gattenby an envelope<sup>2</sup> with alleged violations of Director John Berg. This document was apparently written before the meeting and some of Director Daily's remarks and actions<sup>3,4</sup> 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-5<sup>5</sup>, 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-12<sup>6</sup> 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"<sup>7</sup> is inconsistent with the President's "conversation in a private setting".

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

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<sup>1</sup> 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.

<sup>2</sup> Exhibit B, undated and unsigned letter from J Daily to President Gattenby.

<sup>3</sup> Exhibit C, Kitsap Sun article by Jeff Graham published April 22, 2021.

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

<sup>5</sup> Exhibit E, Board Governance Policy GP-5.

<sup>6</sup> Exhibit F, Board Governance Policy GP-12.

<sup>7</sup> See Exhibit B, Daily's Letter, second to the last paragraph.

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

<sup>9</sup> 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 63:11<sup>10</sup>, "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."<sup>11</sup> 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

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<sup>10</sup> See Exhibit G, Excerpts from *RONR*.

<sup>11</sup> 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 Form<sup>12</sup> is only the first step in the “due process” under *RONR*<sup>13</sup> 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.<sup>14</sup> Until that is decided months from now, guidance comes from the 9<sup>th</sup> Circuit decision in *Blair v. Bethel School District*<sup>15</sup>, 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

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<sup>12</sup> Exhibit I, Board Referral Form.

<sup>13</sup> See Exhibit G, *RONR* excerpts

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

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

Daily's remarks to the Kitsap Sun<sup>16</sup> after the April 21<sup>st</sup> 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 attendance<sup>17</sup>, 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 21<sup>st</sup> motion on the Board Referral Form, Director Daily moved to "censure Director Daily for his behavior and remarks"<sup>18</sup> 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

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<sup>16</sup> See Exhibit C, cited previously.

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

<sup>18</sup> See Exhibit A, Minutes of the April 21<sup>st</sup> 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 21<sup>st</sup>, 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 21<sup>st</sup> 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 48:2<sup>19</sup>).

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 21<sup>st</sup> 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 Wall<sup>20</sup> 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.<sup>21</sup>

There is no SKSD Board Policy 1201 as cited by Director Daily.<sup>22</sup>

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<sup>19</sup> 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."

<sup>20</sup> Exhibit J, emails from Greg Wall.

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

<sup>22</sup> 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.<sup>23</sup>

- ***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.<sup>24</sup>

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 Request<sup>25</sup> for Director Berg's email to Mr. Austin, Director Daily would not have been privy to the nature or details of

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

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

<sup>25</sup> 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.<sup>26</sup>

### ***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*<sup>27</sup> 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.***

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<sup>26</sup> Email from John Berg to Gerry Austin, March 21, 2021

<sup>27</sup> 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)<sup>28</sup>).

***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 13:6<sup>29</sup>. 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 21<sup>st</sup> 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

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<sup>28</sup> 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)".

<sup>29</sup> 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 21<sup>st</sup> 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, 2021<sup>30</sup>, 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.

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<sup>30</sup> 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).<sup>31</sup> 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.<sup>32</sup> (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:

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<sup>31</sup> Exhibit N, Email correspondence between Director Berg and Mr. Mann.

<sup>32</sup> 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 following<sup>33</sup>:

**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***

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<sup>33</sup> 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 21<sup>st</sup> meeting was later amended at the May 5<sup>th</sup> 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.<sup>34</sup> 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* 63:11<sup>35</sup>).

***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.***

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

<sup>35</sup> 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 21<sup>st</sup> meeting, together with resource material from consultant Jurassic Parliament<sup>36</sup> to Directors Gattenby, Sebren, and Diehl the day before the April 21<sup>st</sup> 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 21<sup>st</sup> meeting and after a letter critical of Director Daily was published in the Kitsap Sun March 8, 2021<sup>37</sup>.

***You may contact me for specific emails and other information.***

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

<sup>37</sup> 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"<sup>38</sup>

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

# REGULAR MEETING OF THE BOARD

## Wednesday, April 21, 2021

### Minutes

The meeting was held at the District Administration Building with remote access via Zoom. Notice was provided to community members wishing to access the meeting.

#### **Present:**

Eric Gattenby	President
John Berg	Vice President
Liz Sebren	via Zoom
Rebecca Diehl	Director
Jeff Daily	Director
Tim Winter	Superintendent
Jennifer Farmer	Assistant Superintendent of Business and Operations
Dr. Andy Rogers	Executive Director of Special Services
Amy Miller	Communications and Public Information Officer
Robbie Bell	Recorder

#### **CALL TO ORDER**

President Gattenby called the meeting to order at 5:00 pm and provided information regarding the nature of the meeting. The in-person meeting was held in compliance with the safety requirements contained in the State of Washington's Miscellaneous Venues – COVID-19 Guidance.

**Pledge of Allegiance:** President Gattenby led the flag salute.

**Establish Agenda:** Superintendent Winter requested that Item 4.05 Donations to the South Kitsap School District be removed from the agenda. The Board approved.

**MOTION: DIEHL** moved to remove Board Discussion topic Resolution of Censure. The motion failed.

**MOTION: BERG** moved to limit discussion on Item 2.04 Board Budget Planning 2021-2022 to 10 minutes. The motion carried.

The agenda, as amended, was approved by general consent.

**NIB Awards:** The first Board Meeting of the month begins with a brief and inspiring presentation of "Caught Being a NIB" awards. A "NIB" award salutes those who truly "walk the talk" of our district Vision Statement, "Nurturing Growth, Inspiring Achievement, and Building Community". We honor and value those who exhibit a "whatever it takes" approach to their work with South Kitsap kids, colleagues, and families. Join us in thanking these "NIBS" for embracing our vision. A list of this month's NIB's can be found on the April 21, 2021 Board Meeting Agenda.

**Staff and Student Recognition:** The Board recognized with appreciation the retirement of 5 long-time SK staff members. They also recognized student Cadet Ensign Regina Obnial for winning the American Revolution Essay Contest and CTE Director Sara Hatfield for being named a member of Leadership Kitsap's 20 under 40! A copy of the presentations can be found on the April 21, 2021 Board Meeting Agenda.

**Public Comment:** None

#### **PRESENTATIONS/REPORTS**

**Priority Plan Focus:** Dr. Andy Rogers Executive Director of Special Services presented an overview of the summer school program planned for SK students and staff. A copy of the presentation can be found on the April 21, 2021 Board Meeting Agenda.

**Thought Exchange Community Survey:** Amy Miller Communications and Public Information Officer reviewed the results of the recent survey. A summary of the results can be found on the April 21, 2021 Board Meeting Agenda.

At 6:15 pm, the Board took a five-minute break.

**Facility Long-Range Planning Advisory Committee Report:** Committee member Lee Fenton updated the Board on the committee's mission statement and work to date.



**MOTION: BERG** moved that the Facility Long-Range Planning Advisory Committee be directed to examine the current capital levy projects, identify those that will be completed by the end of 2022, those that will not be addressed with current funding, and advise the Board on the specific capital improvement needs and priorities for the years 2023 through 2026. The motion failed.

**Board Budget Planning 2021-2022:** Each Director shared his/her budget priorities.

**MOTION:** DAILY moved to extend the discussion 10 additional minutes. The motion failed.

### **BOARD DISCUSSION/LINKAGE**

#### **Board Linkages:**

- Director Sebren attended the WSSDA Regional Meeting; she would like the Board to work together to build trust with the community;
- Director Daily drove down the Oregon Coast, visited Catalyst Charter School, and rode along on a bus route;
- Director Berg has been attending the WSSDA weekly updates; he attended the WSSDA Regional Meeting; he has been corresponding with citizens; and he reported that no applications have been received from student representative.

**Legislative Report:** Director Diehl shared the Board's budget planning report with local legislators; the legislative session ends April 25. She reported that the filing period for School Board positions is May 17-21 and resources for candidates are available on the WSSDA website.

**WIAA Report:** None

#### **Board Discussion:**

The board discussed the following topics:

- Agenda planning for April 28 Work Session

**MOTION: BERG** moved to approve the meeting format he presented. The motion carried.

- Resolution of Censure

**MOTION: BERG** moved to adopt the Board Referral Form to establish two committees of two Directors each to pursue the matter and report back to the Board in executive session. The motion carried.

**MOTION: DAILY** moved to censure Director Daily for his behavior and remarks. The motion failed. Director Daily delivered a letter to President Gattenby regarding Director Berg.

- Application to Facility Committee

**MOTION: GATTENBY** moved to approve Mr. Mann's application to the Facility Committee. The motion failed.

- Addressing correspondence to the Board; Director Berg will draft a new policy on communication.
- Director Daily scheduling "office" hours to meet with constituents at the district office on the first and third Tuesday of the month.

### **CONSENT AGENDA**

- Consent Agenda
- Minutes of the Regular Meeting of March 31, 2021
- Human Resources Employment Reports
- Affidavit of Vouchers and Payroll
- ~~Donations to the South Kitsap School District~~
- Authorization to Call for Bids Central Kitchen Backup Generator Project

The Consent Agenda was approved by general consent. Attachments to Consent Agenda items can be found on the April 21, 2021 Board Meeting Agenda.

### **NEW BUSINESS/ACTION ITEMS**

#### **Resolution No. 1342 Emergency Waiver of High School Graduation Credits**

**MOTION:** The motion to approve Resolution No. 1342 Emergency Waiver of High School Graduation Credits carried.

#### **Coherent Governance Training**

**MOTION: DIEHL** moved to approve the contract with the Aspen Group to provide professional development to the Board. The motion carried.

**Open Public Bargaining**

**MOTION: BERG** moved to cancel the public hearing set for May 5, 2021 and to postpone the entire matter indefinitely. The motion carried.

**BOARD POLICY REVIEW**

**Review Operational Expectation 7: Budget Planning**

**MOTION: BERG** moved to increase the fund balance to 8% (Item #7). The motion failed.

The Board asked Superintendent Winter to report on the advantages and disadvantages of raising the fund balance.

**SUPERINTENDENT REPORT**

Superintendent Winter updated the Board on the following topics:

- OSPI is requiring an Academic and Student Well-being Recovery Plan by June 1. The plan will be submitted to the board for approval on May 19;
- State assessments will not be conducted this spring, they have been moved to the fall;
- The Audit Exit Conference is scheduled for April 27 at 12:30 pm;
- The return to school plan will be shared at the May 5<sup>th</sup> meeting;
- SKHS planning graduation on June 19, more details will be known next week;
- He will provide an update on the pool at the May 5th meeting.

**ADJOURNMENT**

Meeting adjourned at 8:29 pm.

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Eric Gattenby, President

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Tim Winter, Superintendent



Dear Board President Gattenby,

Attached are the violations that I am requesting you to investigate concerning the conduct of Director Berg. I have given this to you at the board meeting so that they are documented in the meeting minutes. I request you to respond to me prior to the last board meeting in May. Please contact me for documentation should you not have it.

#### **Alleged Violation I.**

Director Berg has disrespected me in public and has denied me due process, right to free speech, and confidentiality. Every district employee has the right to have any allegations against him or she addressed in private. This "board referral form" is a thinly veiled attempt to publicly harass and embarrass me in a public venue. Exactly what are the alleged offenses he is 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? In addition, this being done in public is a breach of confidentiality. 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 policies in efforts to take disciplinary action against me. 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.
- Mr. Austin for his comments regarding Mr. Mann and myself.
- Mr. Austin was in violation of the board and district policy regarding inappropriate comments and slandering another individual.
- 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.
- Mr. Berg had no authority to reprimand Mr. Austin, as the board did not discuss the issue.

#### **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). Board policy (GP-12) has no procedure such as the one in the board referral form. He made this up. This divides the board 4 to 1 against me with no one to be a neutral person. 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?

#### **Alleged Violation III.**

GP-12 has not been followed. Where is my unofficial "discussion" with the board chairman? When was this accomplished and documented? While we made some comments during an executive session, that was not the focus of the session. 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.

#### **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.

#### **Alleged Violation V.**

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

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?

#### **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".

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 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.

#### **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. 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.

In conclusion, I am delivering these allegations of violations during a public meeting which makes them public documents. 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. It is with great disappointment that Director Berg failed to perform his required due diligence in this matter. On its face, Director Berg's actions appear to be 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.

You may contact me for specific emails and other information. 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



## NEWS

# South Kitsap school board considers censure of member over alleged policy violations

**Jeff Graham** Kitsap Sun

Published 1:43 p.m. PT Apr. 22, 2021 | Updated 3:16 p.m. PT Apr. 22, 2021

"Dysfunctional" is a word two South Kitsap School District directors used during Wednesday's school board meeting to describe its ability to function properly.

Evidence of that dysfunction reared its head two hours into Wednesday's three-and-a-half-hour gathering in which member Jeff Daily brought forward a motion to censure one of the board directors — himself.

"I propose that director Daily be censured for his behavior and remarks," Daily said. "I have no idea what they are, but let's end this right now because that's where you're going. ... we want to embarrass somebody, so do it."

The fireworks began shortly after Wednesday's meeting began as members discussed establishing the agenda. Member Rebecca Diehl proposed a motion to remove an item submitted by member John Berg: discussion regarding alleged offenses and improprieties involving Daily and the possibility of "censuring" or reprimanding Daily.

During the ensuing discussion, Daily addressed Berg directly.

"You've disrespected me in public, you've denied me the right of due process, freedom of speech and confidentiality," Daily said.

Board president Eric Gattenby attempted to cut off Daily, saying his statements weren't germane to the issue.

"It is germane," Daily countered. "I'm talking about the motion here. Do not interrupt. 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."

Diehl's motion to remove the item from the agenda failed 4-1.

Later, Berg cited the board's Coherent Governance policy (GP-12) which addresses director violations.

"Our policy GP-12 provides the framework, the basis and the authority to censure a director," Berg said.

GP-12 states that "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."

Gattenby said Daily had previously been informed of his potential policy violation, first by Gattenby himself, then during a board executive session meeting. Daily disagreed.

"As far as I know, I have never been reprimanded," Daily said, before disclosing information about a Public Disclosure Commission complaint previously discussed by board members while in executive session.

"You are in violation right now by discussing in public by talking about what was in executive session," board member Liz Sebren told Daily.

Berg did not disclose what policy violations Daily might have committed that might lead to possible censuring but proposed a motion to create a pair of two-person committees — Gattenby and Sebren on one, Berg and Diehl on the other — to "investigate accusations and draft recommended action."

Daily responded to Berg by raising the stakes, asking the board to amend Berg's motion and vote on his censure immediately, believing that the outcome has already been decided.

"This is a thinly disguised attempt to publicly embarrass me," Daily claimed.

Saying that the board's censure action was "pre-determined," Daily wasn't sure what a reprimand would accomplish.

"You get your censure, now what?" Daily asked. "How does that change things? What does that fix? What have you done? How has that improved things?"



Daily's motion to censure himself failed 4-1 (Daily voted yes). Berg's motion to investigate possible censure passed 3-2 (Berg, Gattenby and Sebren voted yes; Daily and Diehl voted no).

Toward the end of the meeting, as the board discussed receiving potential Coherent Governance training, Berg said spoke about the board's inability to operate properly.

"The dysfunction on our current board is due more to the personalities on the board than due to the governance model it uses," Berg said. "All the training in the world will do no good if the individual board members do not work together. ... If we can get over our personal differences, we can move ahead with proper governance."

Sebren argued that more training is necessary.

"We have a dysfunctional school board right now," Sebren said. "We need some intensive training to help us get over our personalities and to go back to exactly what the structure is that needs to be guiding us."

Daily told the Kitsap Sun following Wednesday's meeting that he has no intention of stepping down and would like the findings of the censure investigation to be made public.

When asked about the dynamics between board members, Daily admits he's felt like an "outlier" since being elected in November 2019 but that he has no problem fighting for what he believes is best for kids.

"You can't have a school board that (votes) 5-0 all the time," Daily said. "All five people cannot be thinking all the same thing. ... Somebody has to do this kind of work."

SOUTH KITSAP SCHOOL DISTRICT

# Lid blows off at contentious SKSD board meeting

Director Daily calls for his own censure to bring dysfunctional allegation to the forefront

By Bob Smith

Thursday, April 22, 2021 7:04pm | **NEWS**



**SOUTH KITSAP**  
SCHOOL DISTRICT

PORT ORCHARD — Trouble has been percolating during South Kitsap School District's board of directors meetings over the past few scheduled meetings conducted virtually.

And at Wednesday evening's meeting, the proverbial tea kettle popped off its top when Jeff Daily, who was elected a school board director after defeating president Greg Wall in November, brought forth an odd twist to a motion that was already on the agenda that night: a censure resolution — but, at his suggestion, issued against himself.

The resolution on the agenda — a censure submitted by John Berg, also a new board member — called for sub-committees to look into “alleged offences (sp) and improprieties of Director Jeff Daily.”

Daily shortcircuited that discussion after board member Rebecca Diehl introduced a motion to remove Berg's agenda item, which was defeated by a 4-1 vote. He told board members that, instead, he wanted to bring the issue to the forefront:



“I propose that Director Daily be censured for his behavior and remarks. I have no idea what they are, but let’s end this right now because that’s where you’re going.”

The director, who represents District 5, accused Berg of disrespecting him in public and denying him “the right of due process, freedom of speech and confidentiality.”

When board President Eric Gattenby interrupted Daily and called his statement “not germane,” Daily chided him, asking Gattenby not to interrupt him.

“We are going to keep it here. We are going to solve it tonight — right here.”

Berg defended his action by citing the board’s policy concerning violations by directors. He said the Coherent Governance policy gives the board the authority to censure a director if that individual has willfully violated policy.

Gattenby reminded Daily that he had been warned of an instance in which he had likely violated the policy by disclosing a Public Disclosure Commission complaint that the board had discussed in an executive session.

Demanding that the board vote on his censure, Daily said the outcome had been “pre-determined.” With that being a “fait accompli,” the director said the effort would do nothing to “change things.”

Daily continued: “You get your censure, so now what? What does that fix?”

The school board voted on the two motions: Daily’s motion for self-censure was defeated 4-1, with his “yes” the sole vote in favor; the Berg motion for sub-committees to investigate the allegation passed by a 3-2 vote. Diehl joined Daily to vote against it.

Berg urged additional training so that directors could address the board’s dysfunctional operation. He said it’s not so much that the board has difficulty working within its governance model, but rather it’s that the personalities of the board members clash when working on school district matters.

“All the training in the world won’t do any good if the individual board members don’t work together,” he said.

Board member Liz Sebren said she hoped board members could eventually get beyond the name-calling and dysfunctional tone.

“We have a dysfunctional school board right now,” she said. “We need intensive training to help us get over our personalities.”



**GP-5**  
***PRESIDENT'S ROLE***

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(SKSD Language)

The President of the Board ensures the integrity of the Board's processes and normally serves as the Board's official spokesperson. Accordingly, the President has the following authority and duties:

1. 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:
  - a. Conduct and monitor Board meeting deliberations to ensure that only Board issues, as defined in Board policy, are discussed.
  - b. Ensure that Board meeting deliberations are fair, open, and thorough, but also efficient, timely, and orderly.
  - c. Chair Board meetings in accordance with law and using the most recent edition of *Robert's Rules of Order Newly Revised*.
  - d. Provide a means of collecting monitoring data from all directors, collate and present data to the board for discussion and action.
2. Make all interpretive decisions that fall within the topics covered by Board policies on Governance Process and Board/Staff Relationship, except where the Board specifically delegates such authority to others, using any reasonable interpretation of the provisions in those policies:
  - a. Refrain from making any interpretive decisions about policies created by the Board in the Ends and Executive Limitations policy areas.
  - b. Refrain from exercising any authority as an individual to supervise or direct the Superintendent.
3. Represent the Board to outside parties in announcing Board-stated positions and in stating decisions and interpretations within the areas assigned to the President, delegating this authority to other directors when appropriate, but remaining accountable for its use.
4. With the Superintendent, plan and approve the annual meeting schedule and associated agendas.
5. When necessary, sign documents as required by law and authorized by the Board.
6. Appoint directors to Board-approved subcommittees with input from the Board. In the absence or inability of the President, the Vice President shall have all of the powers and duties of the President.

Policy Type: Governance Process

***GP-12***

***PROCESS FOR ADDRESSING DIRECTOR VIOLATIONS***

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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.



## Excerpts from Robert's Rules of Order Newly Revised (12<sup>th</sup> ed.)

### Steps in a Fair Disciplinary Process

63:7 Most ordinary societies should never have to hold a formal trial, and their bylaws need not be encumbered with clauses on discipline. For the protection both of the society and of its members and officers, however, the basic steps which, in any organization, make up the elements of fair disciplinary process should be understood. Any special procedures established should be built essentially around them, and the steps must be followed in the absence of such provisions. As set forth below, these are: (1) confidential investigation by a committee; (2) report of the committee, and preferral of charges if warranted; (3) formal notification of the accused; (4) trial; and (5) the assembly's review of a trial committee's findings (if the trial has been held in a committee instead of the assembly of the society).

63:8 Confidential Investigation by Committee. A committee whose members are selected for known integrity and good judgment conducts a confidential investigation (including a reasonable attempt to interview the accused) to determine whether to recommend that further action, including the preferring of charges if necessary, is warranted.

63:9 Accordingly, if the rules of the organization do not otherwise provide for the method of charge and trial, a member may, at a time when nonmembers are not present, offer a resolution to appoint an investigating committee. This resolution is to be in a form similar to the following:

Resolved, That a committee of... [perhaps "five"] be elected by ballot to investigate allegations of neglect of duty in office by our treasurer, J.M., which, if true, cast doubt on her fitness to continue in office, and that the committee be instructed, if it concludes that the allegations are well-founded, to report resolutions covering its recommendations.

63:10 To initiate disciplinary proceedings involving a member, a suitable resolution would be:

Resolved, That a committee of... [perhaps "five"] be appointed by the chair [or "be elected by ballot"] to investigate rumors regarding the conduct of our member Mr. N, which, if true, would tend to injure the good name of this organization, and that the committee be instructed, if it concludes the allegations are well-founded, to report resolutions covering its recommendations.

63:11 For the protection of parties who may be innocent, the first resolution should avoid details as much as possible. 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 recommendation, 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 (by a resolution, as in the example above). A resolution is improper if it implies the truth of specific rumors or contains insinuations unfavorable to an officer or member, even one who is to be accused. It is out of order, for example, for a resolution to begin, "Whereas, It seems probable that the treasurer has engaged in graft,..." At the first mention of the word "graft" in such a case, the chair must instantly call to order the member attempting to move the resolution.

63:12 An investigating committee appointed as described above has no power to require the accused, or any other person, to appear before it, but it should quietly conduct a complete investigation, making an effort to learn all relevant facts. Information obtained in strict confidence may help the committee to form an opinion, but it may not be reported to the society or used in a trial—except as may be possible without bringing out the confidential particulars. Before any action is taken, fairness demands that the committee or some of its members make a reasonable attempt to meet with the accused for frank discussion and to hear his side of the story. It may be possible at this stage to point out to the accused that if he does not rectify the situation or resign, he probably will be brought to trial.

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## **Meeting Conduct, Order of Business and Quorum**

(WSSDA 1400 - Essential)

Board meetings will be scheduled in compliance with the law and as deemed by the board to be in the best interests of the district and community. The Board will function through (1) regular meetings, (2) special meetings, and (3) emergency meetings.

### **Regular Meetings**

Regular meetings shall be held at 6:00 p.m. on the first (except for the first week of July), and third Wednesdays of each month in the District Office, 2689 Hoover Avenue SE Port Orchard, WA 98366 or at other times and places as determined by the presiding officer or by majority vote of the Board. An agenda of business to be transacted must be posted on the district website not less than twenty-four (24) hours in advance of the published start time of the meeting, unless the district does not have a website or employs fewer than ten full-time equivalent employees.

If regular meetings are to be held at places other than the District Office or are adjourned to times other than a regular meeting time, notice of the meeting will be made in the same manner as provided for special meetings. All regular meetings of the board shall be held within the district boundaries.

### **Special Meetings**

Special meetings may be called by the president or at the request of a majority of the board members. A written notice of a special meeting, stating the time and place of the special meeting and the business to be transacted will be delivered to each board member. Written notice will also be delivered to each newspaper and radio or television station that has filed a written request for such notices. Written notice may be delivered personally or by mail, facsimile or electronic mail. The notice must be posted on the district's website unless the district 1) does not have a website, 2) employs fewer than ten full-time equivalent employees; or 3) does not have an employee whose job description or employment contract provides a duty to maintain or update the website.

The district must also prominently display the notice at the main entrance of the district's headquarters as well as at the location of the meeting if the meeting is held at a location other than the headquarters.

All required notices must be delivered or posted not less than twenty-four (24) hours prior to the meeting.

The written notice requirement will be deemed waived if a member:

1. Submits a written waiver of notice to the board secretary at or prior to the time the meeting convenes. The waiver may be given by telegram, fax, or electronic mail; or
2. Is actually present at the time the meeting convenes.

Final disposition shall not be taken on any matter other than those items stated in the meeting notice.



## **Emergency Meetings**

In the event of an emergency involving fire, flood, earthquake, possible personal injury or property damage, the Board may meet immediately and take official action without prior notification.

## **Public Notice**

Public notice will be properly given for any special meeting; whenever a regular meeting is adjourned to another time; or, when a regular meeting is to be held at a place other than the District Office.

All meetings will be open to the public with the exception of executive or closed sessions authorized by law. Final action resulting from executive session discussions will be taken during a meeting open to the public as required by law.

Individuals with disabilities who may need a modification to participate in a meeting should contact the superintendent's office no later than three days before a regular meeting and as soon as possible in advance of a special meeting so that special arrangements can be made.

During the interim between meetings, the office of the superintendent, as board secretary, shall be the office of the Board. The district's public records shall be open for inspection in the manner provided by and subject to the limitation of the law.

## **Quorum**

Three directors shall be considered as constituting a quorum for the transaction of business.

## **Meeting Conduct and Order of Business**

All board meetings will be conducted in an orderly and business-like manner using the most recent edition of *Robert's Rules of Order Newly Revised* as its parliamentary authority, except when such rules are superseded by board bylaws or policies. The order of business will be that indicated in the agenda. Any additions or changes in the prepared agenda may be requested by the superintendent or a director and must be approved by majority vote of the directors present. At a special meeting final action may be taken only on that business contained in the notice of the special meeting.

Board members are not required to be physically present to attend a board meeting. Any or all board members may attend a board meeting and vote via any communication platform—including videoconference or teleconference-- that provides, at a minimum, simultaneous aural communication between those present, provided: 1) the meeting is properly noticed with any required passwords or authorization codes; 2) the meeting is accessible to the public; 3) the meeting accommodates any member of the public who wishes to participate and 4) the communication platform is generally known and accessible to the public.

The Board shall establish its regular order of business but may elect to change the order by a majority vote of the members present. All votes on motions and resolutions shall be by "voice" vote unless an oral roll call vote is requested by a member of the Board. All votes will be approved by majority of those present and voting, unless otherwise required by law. No action will be taken by secret ballot at any meeting required to be open to the public.

An oral roll call vote of all the members of the Board is required for the election of board officers, filling a vacancy on the board, or for the selection of the school district superintendent, and a majority vote of all the members of the board is required for any person to be elected or selected for such positions.

## Public Comment

The board recognizes the value of public comment on educational issues and the importance of involving members of the public in its meetings. In order to permit fair and orderly expression of such comment, the board will provide a period at the beginning and/or the end of the meeting during which visitors may present to the board. Unless the entire board meeting is conducted electronically, oral public comment will be received only in person.

The board will also allow individuals to express an opinion prior to board action on agenda items that the board determines require or will benefit from public comment. Individuals wishing to be heard by the board will first be recognized by the chair/president.

Individuals, after identifying themselves, will proceed to make comments within the time limits established by the board. An individual will be allowed three minutes and a representative of a group five minutes. Only district stakeholders will generally be allowed to address the board. The chair/president may interrupt or terminate any statement when it exceeds the time limits, or is vulgar, obscene or grossly disruptive to the Board process. Any restriction imposed must be viewpoint neutral. The board as a whole has the final decision in determining the appropriateness of all such rulings.

Public comment is an opportunity to direct comments to the board and is not intended to permit interrogation of the board or its members nor to engage in a dialogue. Any specific questions raised in the public comment will be addressed to the chair/president, who will typically refer the question to the superintendent for a detailed response to the individual at a later time. The superintendent will then also report the response to the board at a subsequent public meeting.

Cross References:	WSSDA Policy 1220	Board Officers and Duties of Board Members
	WSSDA Policy 1410	Executive or Closed Sessions
	WSSDA Policy 1420	Proposed Agenda and Consent Agenda
Legal References:	RCW 28A.330.020	Certain board elections, manner and vote required – Selection of personnel, manner
	RCW 28A.320.040	Bylaws for board and school government
	RCW 28A.330.070	Office of board — Records available for public inspection
	RCW 28A.343.370	Vacancies
	RCW 28A.343.380	Meetings
	RCW 28A.343.390	Quorum – Failure to attend meetings
	RCW 42.30.030	Meetings declared open and public
	RCW 42.30.050	Interruptions - Procedure
	RCW 42.30.060	Ordinances, rules, resolutions, regulations, etc., adopted at public meetings – Notice – Secret voting



RCW 42.30.070	prohibited Times and places for meetings – Emergencies – Exception
RCW 42.30.080	Special Meetings
Ch.42 U.S.C. 12101-12213	Americans with Disabilities Act

Management Resources: 2014 – June Issue  
 2013 – April Issue  
 2012 – June Issue  
 Policy News, June 2005 Special Meeting Notice Requirements

## **PROCEDURE**

(WSSDA 1400P)

All meetings, including study sessions and retreats, must be advertised as meetings that are open to the public. If a board wishes to devote all or most of a special meeting to an issue(s) to be discussed in executive session (Policy 1410), the special meeting should be called to order and recessed to an executive session. The purpose of the executive session should be announced and recorded in the minutes (e.g., real estate matters, litigation).

All regular meetings must be held within the district boundaries. Special meetings may be held outside the district with proper notice of the time and location.

### **Meeting Notices**

A regular meeting does not require a public notice if held at the time and place provided by board policy. If the board does not meet at its regular location, the meeting should be treated as a special meeting with proper notice to the press stating the time, place and purpose of the meeting. Each director should receive a printed or electronic copy of the agenda at least three days in advance of the meeting.

For special meetings, a district is required to notify newspapers and radio and television stations which have filed a request for such notification. Written notice must also be provided to each school director 24 hours prior to the meeting. Notice to a director is deemed waived if the director files a written notice of waiver with the board secretary before or at the time of the commencement of the meeting or by the director's actual attendance at the meeting.

The notice of the meeting must also be posted on the district's website, the door of the main district offices and the door at the location of the meeting if it is different from the district's offices. The district does not have to post on its website if it: (1) doesn't have one; (2) employs fewer than ten full-time equivalent employees; or (3) does not have an employee whose job description or employment contract provides a duty to maintain or update the website.

All public notices of board meetings should inform persons with disabilities that they may contact the superintendent's office so that arrangements can be made for them to participate in board meetings.

Each director should receive a printed or electronic copy of the agenda twenty-four hours in advance of the meeting. While other items of business may be discussed at a special meeting, no final action can be taken on topics which have not been identified on the printed agenda. If an item is to be discussed in executive session in accordance with Policy 1410, the item of business must also appear on the agenda if final action is to be taken following the executive session.

No meeting notice is required when the board is acting as a quasi-judicial body in a matter between named parties (e.g., hearing on discharge, nonrenewal or discipline of an employee, unless the employee requests a public meeting; hearing regarding suspension or expulsion of a student) or for the purpose of planning or adopting strategy or positions to be taken in collective bargaining, grievance or mediation proceedings, or reviewing such proposals made by a bargaining unit.

#### **Meeting Recess and Continuation**

The board may recess a regular, special or recessed meeting to a specific future time. Notice of such a recess and continuation must be posted at or near the door of the meeting room. Notification to the press is not required.



**Executive or Closed Session**

(WSSDA 1410 - Discretionary)

Before convening in executive session, the president shall publicly announce the general purpose for excluding the public from the meeting place and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the president.

An executive session may be conducted for one or more of the following purposes:

- A. To consider, if in compliance with any required data breach disclosure under RCW 19.255.010 and 42.56.590, and with legal counsel available, information regarding the infrastructure and security of computer and telecommunications networks, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities, and other information that, if made public, may increase risk to the confidentiality, integrity, or availability of agency security or to information technology infrastructure or assets;
- B. 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;
- C. To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price; however, discussion of factors comprising the minimum value of the property and the final action of selling or leasing public property will be taken in a meeting open to the public;
- D. To review negotiations on the performance of publicly-bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;
- E. To receive and evaluate complaints or charges brought against a director or staff member; however, upon the request of such director or staff member, a public hearing or a meeting open to the public will be conducted on such complaint or charge;
- F. To evaluate the qualifications of an applicant for public employment or to review the performance of a staff member; however, discussion of salaries, wages, and other conditions of employment to be generally applied within the district will occur in a meeting open to the public, and when the board elects to take the final action of hiring, setting the salary of an individual staff member or class of staff members, or discharging or disciplining an employee, that action will be taken in a meeting open to the public;
- G. To evaluate the qualifications of a candidate for appointment to the board; however, any interview of such candidate and final action appointing a candidate to the board will be in a meeting open to the public; or
- H. To discuss with legal counsel representing the district matters relating to district enforcement actions, or litigation or potential litigation to which the district, the board, or

a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the district. Potential litigation means matters protected by attorney-client privilege related to litigation that has been specifically threatened; litigation that the district reasonably believes may be commenced; or the litigation or legal risks of a proposed action or current practice of the district, if public discussion is likely to result in an adverse or financial consequence to the district.

### **Closed Sessions/Private Meetings**

The Open Public Meetings Act does not apply to certain board activities and public notice is not required prior to holding a closed session for any of the following purposes:

- A. Consideration of a quasi-judicial matter between named parties as distinguished from a matter having a general effect on the public or a class or group; or
- B. Collective bargaining sessions with employee organizations or professional negotiations with an employee, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement, or that portion of a meeting in which the board is planning or adopting the strategy or position to be taken during the course of collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress while in progress.

Legal References:	RCW 19.255.010	Disclosure, notice – Definitions – Rights, remedies
	RCW 42.30.110	Executive sessions
	RCW 42.30.140	Chapter controlling — Application
	RCW 42.56.590	Personal information – Notice of security breaches

Management Resources:	2017 – July Issue
	Policy News, June 2011 Legislature Addresses Executive Session

### **Audience Participation**

Individuals with disabilities who may need a modification to participate in a meeting should contact the superintendent's office no later than three days before a regular meeting and as soon as possible in advance of a special meeting so that arrangements for the modification can be made.

Legal References:	RCW 42.30.030	Meetings declared open and public
	RCW 42.30.050	Interruptions — Procedures
	42 U.S.C. §§ 12101-12213	Americans with Disabilities Act



## **Minutes**

(WSSDA 1440 – Discretionary)

The secretary of the board keeps the minutes of all board meetings. Minutes become official after approval by the board's next regularly scheduled meeting and must be retained as a permanent record of the district. Minutes must be comprehensive and shall show:

- A. The date, time and place of the meeting;
- B. The presiding officer;
- C. Members in attendance;
- D. Items discussed during the meeting and the results of any voting that may have occurred;
- E. Action to recess for executive session with a general statement of the purpose;
- F. Time of adjournment; and
- G. Signature of presiding officer and date minutes approved.

When issues are discussed that may require a detailed record, the board may direct the secretary to record the discussion. Audio or video recordings will be maintained on file as follows:

- A. If the recording is transcribed verbatim (word for word), the recording must be retained for one (1) year; or
- B. If the recording is only used as a reference to create written minutes, the recording must be retained for six (6) years.

Unofficial minutes will be provided to board members in advance of the next regularly scheduled meeting of the Board and will also be available to other interested citizens. Minutes need not be read publicly, provided that members have had an opportunity to review them before adoption.

A file of permanent minutes of all board meetings will be maintained in the office of the board secretary to be made available for inspection upon the request of any interested citizen.

Cross Reference:	WSSDA Policy 6570	Property and Data Management
Legal References:	RCW 28A.400.030 RCW 40.14.070  RCW 42.32.030	Superintendent's duties Destruction, disposition, donation of local government records – Preservation for historical interest – Local records committee, duties – Record retention schedules – Sealed record Public meetings—Minutes
Management Resources	2010 – April Issue	

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**Absence of a Board Member**

(WSSDA 1450 – Priority)

Whenever possible each board member shall give advance notice to the president or superintendent of his/her inability to attend a board meeting. A majority of the Board may excuse a board member's absence from a meeting if requested to do so.

The Board may declare a board member's position vacant after four (4) consecutive unexcused absences from regular board meetings, if the absences were for reasons other than illness, active or training military duty, or those authorized by resolution of the Board.

If a board member is on active duty or training status with the military, the Board will grant an extended leave of absence to cover the period of service or training. The extended leave of absence may not have the effect of extending the board director's term. The Board also has the authority to appoint a temporary successor to the absent board member's position. The temporary successor shall serve until the board member's returns or the end of the board member's term.

Cross References:	WSSDA Policy 1220	Board Officers and Duties of Board Members Board Member Resignation and Vacancy
	WSSDA Policy 1114	
Legal References:	RCW 28A.343.390	Quorum — Failure to attend meetings
	RCW 42.12.010	Causes of vacancy
	RCW 73.16.041	Leaves of absence of elective and judicial officers
Management Resources:	2016 – July Issue	
	Policy News, October 2001	Law Grants Board Member
	Military Leave	



# BOARD REFERRAL REQUEST FORM

An incidental main motion to refer

**Topic:** Resolution of Censure

**Submitted for Consideration** John Berg  
**by:**

**Submitted for Board Meeting** April 21, 2021  
**On:**

**Desired Resolution Date:** May 19, 2021

**Board Policy Related To:** GP-12

**Objective of This** Respond to alleged offences and improprieties of Director Jeff Daily.  
**Conversation/Topic:**

**Board Motion:** Establish two sub-committees composed of Directors Gattenby and Sebren on one, and Directors Berg and Diehl on the other, to draft alternate resolutions of censure, or to recommend that no action be taken.

**Board Decision:** Motion Approved: \_\_\_\_\_ Motion Fails: \_\_\_\_\_

**Guidance Provided to the** Research and draft alternate resolutions  
**Committee:**

**Outside Resources Needed:** District's legal counsel and/or WSSDA recommended policies as deemed necessary.

**Information to be Provided to** Draft resolution censuring Director Daily, or recommendation that no  
**the Board by the Committee:** action be taken.

**The Decision That the Board** Adoption of Resolution Censuring Director Daily  
**Will Make:**

**Referred to:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Board Chairperson Signature:** \_\_\_\_\_

## **Emails from Greg Wall**

Mr. Wall's email of January 26, 2021 was as follows:

Dear Board Members and Superintendent:

I made comments tonight at the City Council meeting, asking for approval and endorsement of the Enhanced Program Levy. I was appalled to have Mr. Daily also make comments opposing the levy and urging people to vote against it. He was, as usual, spouting his made up statistics and outright lies. I was somewhat surprised that he spoke, since his clone, Dave Kimble was also there, and I know Mr. Daily and Mr. Kimble share the Jim Johnson alias. In any case, as a member of the Board, he is obliged to support the actions of the Board, which has approved this levy measure,

As you know, the norms adopted by our School Board, and by WSSDA, require Board Members to support the actions of the Board, even if they were in the minority. Apparently, Mr. Daily does not think the rules apply to him.

Your Board policies include measures that can be used to discipline members of the Board who refuse to follow the rules. It is time to utilize these steps. If Mr. Daily will not abide by the rules, he should be removed from the Board.

Mr. Wall's email of January 27, 2021, was as follows:

I realize how frustrating this is, but this clown is ruining the Board and the District. I heard today that he is emailing people and telling them not to vote for the levy. This was on the next door neighbor website.

A couple of suggestions: first, contact WSSDA and see if you can get some guidance or help, second, urge Eric to follow the procedures in District policy for dealing with a member who is misbehaving and document it. Finally, start confronting him on the record in public meetings, again so it can be documented.

Sorry I lost the election. Keep up your good work.



## **Transcript from Facilities Long Range Planning Advisory Committee, March 21, 2021**

AUSTIN: Since the last time we met, I watched both board meetings and at the meeting on the 17th, there was a pretty lengthy report about our activities to [sic] the committee, and I would like to remind the two directors here [Berg & Daily] that do not represent our committee or speak on our behalf. While it is appropriate to update the board at large of the activity and provide updates, comments should stick to facts and activities and any questions or comments should be coming from the committee via what Jay has proposed here.

Secondly, in watching those discussions about potential members of the committee, I'd like to state that I think that a criminal conviction for child abuse and thus being ineligible to serve as a volunteer in our schools is adequate grounds for disqualification. Quite frankly, found the discussion to be abhorrent, considering the person being discussed also recently had a protection order placed against them after court found that they had harassed District staff. If these aren't disqualifying factors, then what are?

And lastly, as we have discussed community sentiment at length, at our last meeting, Director Daily, I was surprised to see your last letter in the Kitsap Sun where you expressed concern about a disturbing downward trend in voter approval. I think it's extremely disingenuous to express such concern when your previous letter and public statements were, in fact, discouraging voters from voting for the levy. I don't think it's proper for you to be concerned about conditions that you, yourself, contributed to. And I will leave it at that.

DAILY: Mr. Austin. Hold it. This is extremely inappropriate at this committee meeting. If you've got issues, bring them up elsewhere, but not here. That's extremely inappropriate. Extremely childish and very poor

AUSTIN: I feel that these matters directly affect the committee and I respectfully disagree.

(<https://vimeo.com/522845403> starting at 1:56:00)

# Communication from Dir. Daily 8/8/2020

Darragh, Peter

Sat 4/24/2021 11:11 AM

To: Gattenby, Eric <gattenbye@skschools.org>; Berg, John <berg@skschools.org>;

Cc: Daily, Jeff <daily@skschools.org>;

Dear Directors Gattenby and Berg,

As you move forward with the committees to investigate censure of Director Daily, I thought his communication to me last August might be relevant. Please use as you see fit.

Thank you,

Pete Darragh

From: Daily, Jeff

Sent: Saturday, August 08, 2020 10:27 AM

To: Darragh, Peter

Subject: RE: Questions to answer

Mr Darragh-

Since your intent is to incite versus understand, I will answer you as you appear to be an expert on all matters.

1. It will never be safe for your kids to go anywhere, much less the schools. You as others, seem to want a guarantee that nothing will happen. Remember, the district built the plans; not the board.
2. Until a vaccine that really works is available and 330M Americans are immunized, no one will feel relatively comfortable. I don't think Port Orchard is high on the priority list. Since this is global, you will never be safe again as different countries have different standards. No one will guarantee that to you, ever.
3. As to the health department and the Gov, they will never say it is safe to open the schools because even they cannot guarantee that no one person will die which seems to be what you and others want. All they can do is recommend for local districts to do what is right for them. So, tell me, if the cases go down to 50, is that safe, how about 25, is that safe, how about 5, is that safe, how about one? Remember, it only takes one to infect the schools. So, be prepared to be online for a long time if that is your logic. Will there be a second wave, a third wave, a fourth wave, probably. When the flu season comes, then what? Every student with a cough will be turned away because we won't want to take the chance that one may be COVID? What about the one kid who transfers to our District in November when you want to open but he has the virus? Was it safe to open then? So tell me, when will it be safe so NO child will be sick from the virus. The noble teachers talk about the virus. However, over 60 of them attended a 3 hour funeral in a church, sadly, for one of our own. So much for adhering to the guidance of no more than 5 in one place. I read about our teachers and families on facebook on vacation, theme parks, family gatherings, etc. Apparently they seem to be not all that concerned about the virus otherwise they would be home. Wouldn't they as the health department, Gov, and CDC have told all of them what is a safe practice.



4. All over the country, including Idaho and many other places, folks are going to school. Have there been some failures, yes, but many have done it that you apparently haven't heard about.

5. My wife is classified and plans to return to work. She is over 65 and has no immune system. I have been in the schools and plan to be on the buses and in the schools. I also have no immune system. I wouldn't ask you to do something I wouldn't do.

6. You and others missed the points from Mr Gattenby and Mr Berg and I. Mr Gattenby told you he is willing to risk his daughter in the HS. You apparently are not so go online. Mr Berg is willing to risk his grand children in the elementary schools. You apparently are not so go on line. I went to Walmart where it was full of kids, old people, handicapped people, all over the place shopping and grabbing food over others. I assume you folks don't shop as it would endanger your kids. Does that sound like people here are worried about the virus to you. Apparently you missed all of these points in your anger and frustration. So, go online.

7. As a combat veteran, I am more familiar with death than you will ever know so unless you have been there, don't lecture me. Everyone of the men that were lost and I lost will always sadden me until I die. As a parent, don't ever tell me and my wife about the death of a child, unless you have lost one.

8. You were given three choices. 1) send your kids to school per the school plan. 2) put your kids on line until YOU feel it is safe to come out. 3) put your kids on line for the entire year. Most people like choices as it gives them control of their lives and to make the best decision for their family.

9. As for pride, I lost that long ago in addition to my arrogance. I just try to do the best I can for everyone. It is apparently not up to your standards. I assume your kids are very high functioning which begs the question of why do you have them in the SKSD?. It is the 2nd lowest academically of the 7 districts in the area. Most of your teachers live outside of PO and several have kids that do not go here. But, 40% of our kids are low income who just try to get by. Many of their parents are furloughed or laid off. They have no childcare option as do the rich district employees, Boeing employees, Shipyard employees. They want the choices we have offered because they want to make the decision, not be told how to live their lives.

10. Obviously, the union has pressured everyone for a meeting as all I got was hateful and threatening emails from teachers, other district employees, and some parents. I guess diversity and respect of others points of view is just a joke in Port Orchard as well as what the District is supposed to be teaching your kids. The ones I got from most parents, excluding you, were thankful for a choice that they can make. The March to June on line exercise was a total failure, regardless of what the district tells you. Not for your kids as they can achieve anywhere in any environment. But if you think things will be so much better, good luck convincing most of the kids who really need school. The SPED kids will never be successful in an online environment which I know since I taught SPED at the HS for 12 years. So, it is really about all kids and all needs, not just the high level kids.

11. As for the district being a business, it really is. SKSD has a monopoly on education in PO. There are no other options so they do what they the unions want. But many parents who were forced to home school or go on line or look for pods or private tutors had their world opened up. It is convenient to go to SK schools but folks see options. If the district doesn't offer what parents want, they will now go elsewhere. Many of our kids go to Peninsula and CK. The enrollment is dropping, regardless what folks think. People are finding options to best suit their kids. So, there is more than the SKSD in this world.

12. The rising salaries of teachers and classified along with the recent pay raises and taxpayer paying huge health benefits for district employees, in spite of many in this area who are furloughed and laid off, the businesses that are closed and never coming back, the retirement savings loss of many, and a coming global recession doesn't seem to register with many here, especially the well to do. But it will eventually come to PO.

13. So, my guess is that you will get what you think you want on Monday. But, regardless of if and when the district schools open, your kids will never be safe again as if it isn't this crisis, there will be another. Remember, it only takes ONE to infect the entire

system. Stay safe.

Cordially,

J Daily

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**State of Washington  
PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908  
(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov) • Website: [www.pdca.wa.gov](http://www.pdca.wa.gov)

March 1, 2021

Delivered electronically to "millsaustin@wavecable.com"

Subject: Complaint regarding Citizens Supporting South Kitsap Schools, PDC Case 82098

Dear Gerry Austin:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on December 13, 2020. Your complaint alleged Citizens Supporting South Kitsap Schools, a group created by Dave Kimball, may have violated RCW 42.17A.205, .235, and .240 by failing to timely and accurately register and report as a political committee after establishing themselves as the Committee Against the February 2021 SKSD Levy and making expenditures to oppose the levy through the placement of signs. The complaint alleged Citizens Supporting South Kitsap Schools failed to file a Committee Registration, Monetary Contribution reports (C-3 reports) and Summary Full Campaign Contribution and Expenditure reports (C-4 reports), disclosing contributions and expenditures undertaken by the Campaign.

PDC staff reviewed your allegations; the applicable statutes, rules, and reporting requirements; a response submitted by Dave Kimball; and spoke with Mr. Kimball to determine whether the record supports a finding of one or more violations.

Based on staff's review, we found the following:

- Jim Bryant called himself Committee Against South Kitsap School District 2021 Levy in order to submit the opposition statement in the Kitsap County Voters Pamphlet. Mr. Bryant stated he did not raise or spend any funds concerning the February 9 ballot measure, but acknowledged using Dave Kimball's website at no charge to express his opposition to the levy.
- Mr. Kimball said when he realized Mr. Bryant did not have his own website, he offered use of his website to Mr. Bryant at no cost for two months. Mr. Bryant identified Committee Against South Kitsap School District 2021 Levy as being responsible for the content he posted on the website. Mr. Kimball and Citizens Supporting South Kitsap Schools stopped using the website during the two months Mr. Bryant posted information about the February 9 election.
- Mr. Kimball said the only expenditures he has incurred have been the annual costs to maintain the website. On December 13, 2020, Mr. Kimball paid \$151.87 to One.com for hosting services and

renewal of the domain name for the upcoming year. The value of using the website for two months was approximately \$25. Mr. Kimball said Citizens Supporting South Kitsap Schools has never solicited or accepted any funds.

- Mr. Kimball said Citizens Supporting South Kitsap Schools did not authorize the purchase or placement of any signs opposing the school district's 2021 levy.
- 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.

Based on these findings, staff has determined, no evidence was found supporting the alleged violation that Citizens Supporting South Kitsap Schools was a political committee required to register and report its activities with the Public Disclosure Commission.

Based on this information, the PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1).

If you have questions, you may contact Phil Stutzman at 360-664-8853, toll-free at 1-877-601-2828, or by e-mail at [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov).

Sincerely,  
*/s Electronically Signed Philip E. Stutzman*  
Phil Stutzman  
Compliance Officer

Endorsed by,  
*/s Electronically Signed Barbara Sandahl*  
Barbara Sandahl  
Deputy Director  
For Peter Lavalley  
Executive Director

cc: Dave Kimball, Citizens Supporting South Kitsap Schools



# Re: Some of your interesting thoughts

Berg, John

Fri 3/19/2021 3:35 PM

To: Larry Mann <mannlarry95@gmail.com>; Daily, Jeff <daily@skschools.org>; Diehl, Rebecca <diehl@skschools.org>; Gattenby, Eric <gattenbye@skschools.org>; Sebren, Liz <sebren@skschools.org>; Winter, Tim <winter@skschools.org>;

Cc: 'Gerry Austin' <millsaustin@wavecable.com>;

2 attachments (114 KB)

Sun2018\_LarryMann.pdf; Rapsheet\_MannLarry.pdf;

Mr. Mann:

I was surprised that your application to the facilities committee was not on the agenda of our March 17th meeting. I expected it to be there for consideration. I will move to put it on the agenda for the March 31st meeting. If we put it after the Public Comments portion of the meeting, you will have a three-minute opportunity to demonstrate the extent to which you would be an asset to the committee.

Regarding your requests for information, I am not speaking for the District, but will share my observations and my understanding of the law and the process. I am not an attorney. You may wish to consult your own legal counsel.

The Freedom of Information Act applies to Federal agencies, not State agencies such as a local school district. Any exemption from the cost of reproducing documents in the FOIA does not apply to State Agencies and a school district.

The Washington State Public Records Act (RCW 42.56), applies to the South Kitsap School District. The SKSD has a staff member assigned to handle requests for public records. Amy Miller is the District's Communication & Public Information Officer and all public records requests should be directed to her, not to the superintendent, nor to the board members.

When information requests are sent to multiple people such to the superintendent and all board members, the response becomes problematic. It is certainly not practical to have six different people each respond to your request, so a request to many is best responded to by only one. None of the individual board members have authority to speak for the District. Only the Board as a whole or the Board through its appointed representative can speak for the District.

You recently requested information on the negotiated SKEA agreement. I discussed your request with the superintendent and suggested that he respond to the first questions and refer you directly to the SKEA regarding the latter questions on the internal affairs of the SKEA. I cannot personally require the superintendent to perform any specific task; his direction comes from the Board as a whole.

This response to your email is with a "Reply to All" and goes to the superintendent and the rest of the Board. However, the recipients of that Reply to All cannot respond with their comments through another Reply to All. Discussions between three or more Board members must be limited to public meetings, and a series of Reply to All email messages could be in violation of the Washington State Open Meetings Act. That makes it difficult for the Board members to coordinate a single response to request sent to multiple Board members.

There is a difference between a request for information and a request for public records. The Washington State Public Records Act requires a response from the District to a request for "identifiable public records". A question like "How many students are enrolled in the SKSD?" is a request for information and not a request for public records. A request like "Please provide a copy of the latest enrollment report from the SKSD to the Superintendent of Public Instruction" would constitute a public records request. The law itself provides for redress when a public records request is denied, and that redress is not an appeal to the superintendent nor to the Board. You nevertheless have a right to petition for redress of grievances and inform the Board of any denial of your public records request, but such petition is not considered to be duplicate request for public records.

The District, the superintendent and the individual board members do not have any legal obligation to respond to other requests for information. Normally, they will respond to appropriate requests as a matter of good policy and public relations, but they are not required to do so.

In the same way, an elected official will generally respond to inquiries as to why she or he voted a particular way, but the elected official is under no obligation to do so upon the demand of any citizen.

Regarding any statements that you are "listed as a sex offender", I have confirmed that you are not registered. I don't recall any mention of the word "pedophile" at any SK School Board meeting. Nevertheless, the recordings of the meetings are available online for viewing. Since your moral character and criminal history has been brought into question, in your defense I am including a 2018 article from the Kitsap Sun and a copy of your criminal history for the information of the Board. Not all current Board members were on the Board in 2018 when the incidents referenced in the Sun article took place.

When you include with your requests statements such as "please try to get an ounce of brains compiled amongst you", it does not promote a civil dialogue, nor does it provide any incentive for any of us to respond to you.

**John R. Berg**  
South Kitsap School District  
Director Position 2

Email: Berg@SKSchools.org  
Voice mail: 206-317-3785  
Website: www.SKSchools.org

2689 Hoover Ave  
Port Orchard, WA 98366

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**From:** Larry Mann <mannlarry95@gmail.com>  
**Sent:** Thursday, March 18, 2021 10:03:01 PM  
**To:** Berg, John; Daily, Jeff; Diehl, Rebecca; Gattenby, Eric; Sebren, Liz; Winter, Tim  
**Subject:** Some of your interesting thoughts

SKSD Directors:

First things first, I sent the board a second application for the Facilities Committee that the board did not have the common courtesy to acknowledge receipt of. Therefore, I'm demanding at this time a written decision on the status of my application and if it was denied I want specific written reasons for the denial.

Second, in the last week or so I sent a simple letter to the board with some questions about your negotiated SKEA agreement. Once again the board did not acknowledge receipt and did not respond. I will expect a written answer to that letter also in a very timely manner.



Third, I am told that Director Jeff Daily is being wrongfully attacked because he allegedly supports me. See if you can grasp this thought. What I have seen and heard about Director Daily is that he would support anyone, other than me, whom you would be playing the same games with as you are with me. Let me explain my ties to Director Daily. Exclude Director Daily from this next statement. You five (5) remaining Directors please try to get an ounce of brains complied amongst you to understand this. I do not know Director Daily, never talked to him, shook his hand, had coffee with him, a donut with him, don't have a clue what he looks like, would not know him if he walked up to me and started to talk to me. However, I have to admit, I have a huge tie to Director Daily—"I VOTED FOR HIM." Is that too deep for you?

Fourth, I understand one of the districts employees and this board has been discussing me, at board meetings (a public meeting) regarding the fact that I was the subject of an SKSD "restraining order," long expired by the way. The significance of that fact is that I can now request to visit any class at any school as long as I request it in compliance with your policy and will expect "no denial for any reason" to said request. I was accused by SKSD superintendent of threatening him, also a lie. Keep in mind this was your superintendent who put a camera in a teacher's room so he could watch her and was forced out of that position and came to SKSD. Is that not called "voyeurism?" I was also accused by an SKSD administrator of stalking her, also a lie, otherwise she would have been in court to support that allegation. Of late your employee and the board have used the word "pedophile" in reference to me and I suspect that term will NEVER come up again from any board member, school district employee, or associate of SKSD. Then your group states, "I'm listed as a sex offender," also a lie, so please apply the end of my prior sentence here once again. I urge this board to quickly, very quickly, clean up your public speaking habits.

I expect a speedy response to my letter accompanied by any/all requested documents.

Larry I. Mann

## NEWS

# South Kitsap School District critic tied to threats, racist letters remains banned

**Chris Henry** Kitsap

Published 6:00 p.m. PT Oct. 28, 2018 | Updated 2:32 p.m. PT Oct. 29, 2018

SOUTH KITSAP — A 2017 protection order barring South Kitsap resident Larry Mann from South Kitsap School District property and prohibiting him from directly contacting district staff has been extended.

Kitsap County District Court Judge Marilyn Paja on Friday approved the school district's petition to extend the anti-harassment order she issued against Mann on Nov. 1, 2017. The order remains in effect through May 1, 2019.

The district in 2016 and 2017 received more than 20 letters signed by "Texas Momma" and "Prince of Darkness." The letters contained crude language, sexually suggestive statements about students, racist and anti-gay statements, and threats to harm staff, such as suggesting they 'need to be lynched.'

**More:** Judge: Letters to South Kitsap schools "predatory"

District officials linked the anonymous letters to Mann through handwriting on a letter he sent to a student at the high school.

Mann in court said he had received the letters by mail and forwarded them to the district.

Similar letters were sent to Central Kitsap and North Kitsap school districts.

Mann is a longtime critic of the district. He wrote voters' pamphlet statements against South Kitsap's 2016 bond and against the bond and capital levy measures that are on the upcoming Nov. 6 ballot.

Mann and his wife Judith Kay Mann in 2005 pleaded guilty to child assault and unlawful imprisonment after two of their three grandchildren, who they had legally adopted, were found bound with plastic zip ties. Larry Mann served eight months in jail for his role in the abuse; his wife served four years in prison and was released in 2009.

The protection order bans Mann from being within 500 feet of schools and district facilities. He is allowed to be within 50 feet of school bus stops "as necessary for ordinary travel" on roads since he lives near Burley Glenwood Elementary, the court allowed. Mann can communicate with the district only through its attorney.



**More:** Judge extends school district's temporary restraining order against South Kitsap man

The original anti-harassment order against Mann, which would have expired on Nov. 1, allowed the district to petition for an extension. Superintendent Karst Brandsma in court documents asked for a one-year extension, saying he "remains vigilant and fearful" that once the order expires the harassment will begin again. Paja granted a six-month extension.

Brandsma, in his declaration, said his concern is heightened by the upcoming bond and levy election, which "is expected to garner media attention."

"In the ongoing harassing letters of 2016 and 2017, Mr. Mann was highly agitated over similar school funding," Brandsma stated. "There is concern that the upcoming ballot measures will trigger additional threatening and disturbing communications."

Brandsma said the district has in the past year received two communications from Mann through the approved procedure. The district has not received more threatening letters from "Texas Momma" or "Prince of Darkness."

Mann in his response to the court maintains there was a "lack of evidence that I had written the letters." He acknowledges his opposition to school bonds and levies.

"I believe as a United States citizen and taxpayer, I have the right to have my opinion heard," Mann said. "I believe the school board is simply trying to prevent me from exercising my right to express my opinion about the school levies."

Note, Oct. 29, 2018: A Bremerton school district staff member also received letters from the same apparent source.

Friday, March 19, 2021



## Web Search Transcript

Washington State Patrol

Identification and Criminal History Section

P. O. Box 42633

Olympia, Washington 98504-2633

Telephone (360) 534-2000 Option 2

This report was generated from a transaction run on 3/19/2021 at 2:11 PM  
Conviction Criminal History RCW 10.97.050(1)

Pursuant to the purpose of inquiry, a possible match was found in the Washington State Criminal History Repository based on the descriptors provided:  
**MANN, LARRY L DOB 01/13/1939 SEX M RAC U**



WASHINGTON STATE PATROL  
CRIMINAL HISTORY RECORD SECTION  
P.O. BOX 42633  
OLYMPIA, WASHINGTON 98504-2633

\*\*\*\*\*  
CRIMINAL HISTORY INFORMATION AS OF 03/19/2021  
\*\*\*\*\*

NOTICE

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY.  
SECONDARY DISSEMINATION OF THIS CRIMINAL HISTORY RECORD INFORMATION IS  
PROHIBITED UNLESS IN COMPLIANCE WITH THE WASHINGTON STATE CRIMINAL RECORDS  
PRIVACY ACT, CHAPTER 10.97 RCW. NON-CRIMINAL JUSTICE AGENCIES WHO HAVE  
STATUTORY AUTHORITY TO RECEIVE NON-CONVICTION CRIMINAL HISTORY RECORDS  
MAY NOT USE SEALED JUVENILE RECORD INFORMATION IN MAKING LICENSING OR  
EMPLOYMENT SUITABILITY DETERMINATIONS.

POSITIVE IDENTIFICATION CAN ONLY BE BASED UPON FINGERPRINT COMPARISON. BECAUSE  
ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED  
FOR SUBSEQUENT USE. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED,  
COMMUNICATE DIRECTLY WITH THE AGENCY THAT SUPPLIED THE INFORMATION TO THE  
WASHINGTON STATE PATROL.

A DISPOSITION STATUS OF ?WARRANT ISSUED? MAY NOT INDICATE THE PRESENCE  
OF AN ACTIVE WARRANT. ALL WARRANT INFORMATION SHOULD BE OBTAINED  
FROM THE ACCESS SYSTEM AND MUST BE CONFIRMED WITH THE ENTERING AGENCY.

THIS CONVICTION RECORD MAY INCLUDE INFORMATION FOR WHICH A PERSON IS CURRENTLY  
BEING PROCESSED BY THE CRIMINAL JUSTICE SYSTEM.

\*\*\*\*\*  
MASTER INFORMATION  
\*\*\*\*\*

NAME: MANN, LARRY LEE DOB: 01/13/1939  
SID NUMBER: WA22835381

\*\*\*\*\*  
PERSON INFORMATION  
\*\*\*\*\*

SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR	PLACE OF BIRTH	CITIZENSHIP
M	W	605	190	BRO	GRY	IN	US

OTHER NAMES USED	OTHER DATES OF BIRTH USED	SOC SEC NUMBER
------------------	------------------------------	-------------------

\*\*\*\*\*  
CONVICTION AND/OR ADVERSE FINDING SUMMARY  
\*\*\*\*\*

	DISPOSITION DATE
2 FELONY(S)	
ASSAULT OF A CHILD-3	CLASS C FELONY 10/21/2005
UNLAWFUL IMPRISONMENT	CLASS C FELONY 10/21/2005
0 GROSS MISDEMEANOR(S)	
0 MISDEMEANOR(S)	

0 CLASSIFICATION(S) UNKNOWN

\*\*\*\*\*  
\*\*\*\* NO KNOWN DOC SUMMARY INFORMATION \*\*\*\*  
\*\*\*\*\*

\*\*\*\*\*  
CRIMINAL HISTORY INFORMATION  
\*\*\*\*\*  
THE ARRESTS LISTED MAY HAVE BEEN BASED ON PROBABLE CAUSE AT THE TIME OF ARREST  
OR ON A WARRANT. PROBABLE CAUSE ARRESTS MAY OR MAY NOT RESULT IN THE FILING OF  
CHARGES. CONTACT THE ARRESTING AGENCY FOR INFORMATION ON THE FORMAL CHARGES  
AND/OR DISPOSITIONS.

AN ARREST IS NOT A CONVICTION OR FINDING OF GUILT.

-----  
ARREST 1 DATE OF ARREST: 06/11/2005  
-----

NAME USED: MANN, LARRY LEE  
CONTRIBUTING AGENCY: WA0180000 KITSAP COUNTY SHERIFF  
LOCAL ID: 30021326 PCN: 737054136 TCN: WA1800002200219937  
-----

ARREST OFFENSES	DISPOSITION
	CONTRIBUTOR OR RESPONSIBLE AGENCY:
	WA018015J KITSAP COUNTY SUPERIOR
	COURT
	COURT CASE NO: 051008839
	STATUS: GUILTY
	0115600 ASSAULT OF A CHILD-3
	RCW: 9A.36.140(2)
	DOMESTIC VIOLENCE
	CLASS C FELONY
	STATUS DATE: 10/21/2005
	SENTENCE: SENT. DESC.:
	CHG 01: JAIL-8 MOS, SUPV-
	12 MOS **CHG 02: JAIL-8
	MOS, CONCURRENT, SUPV-
	INCLUDED
	STATUS: GUILTY
	0066400 UNLAWFUL IMPRISONMENT
	RCW: 9A.40.040(2)
	DOMESTIC VIOLENCE
	CLASS C FELONY
	STATUS DATE: 10/21/2005

\*\*\*\*\*  
NO KNOWN DEPARTMENT OF CORRECTIONS INFORMATION



\*\*\*\*\*  
\*\*\*\*\*  
NO KNOWN SEX/KIDNAPPING OFFENDER REGISTRATIONS  
\*\*\*\*\*

\*\*\*\*\*  
\*\*\*\*\*  
NO KNOWN APPLICANT DETAILS  
\*\*\*\*\*

\*\*\*\*\*  
\*\*\*\*\*  
NO KNOWN MONITORED POPULATION REGISTRATION TRACKING INFORMATION  
\*\*\*\*\*

\*\*\*\*\*  
GLOSSARY OF TERMS IS AVAILABLE IN THE CRIMINAL JUSTICE TRAINING MANUAL (CJTM)  
LOCATED AT [HTTP://WWW.WSP.WA.GOV/\\_SECURED/IDENT/RESOURCE.HTM](http://www.wsp.wa.gov/_secured/ident/resource.htm)  
\*\*\*\*\*

\*\*\*\*\*  
RESOURCES  
\*\*\*\*\*

ADMINISTRATIVE OFFICE OF  
THE COURTS (AOC)-----[WWW.COURTS.WA.GOV](http://www.courts.wa.gov)  
WSP CRIMINAL HISTORY  
RECORDS SECTION-----[CRIMHIS@WSP.WA.GOV](mailto:CRIMHIS@wsp.wa.gov) OR (360) 534-2000  
WSP CRIMINAL HISTORY &  
FINGERPRINT TRAINING-----  
[HTTP://WWW.WSP.WA.GOV/\\_SECURED/IDENT/RESOURCE.HTM](http://www.wsp.wa.gov/_secured/ident/resource.htm)  
DEPARTMENT OF CORRECTIONS (DOC)---[WWW.DOC.WA.GOV](http://www.doc.wa.gov)  
WSP SEX/KIDNAPPING  
OFFENDER REGISTRY (SOR) UNIT--(360) 534-2000  
REVISED CODE OF WASHINGTON (RCW)---[HTTP://APPS.LEG.WA.GOV/RCW/](http://apps.leg.wa.gov/rcw/)  
WSP WASHINGTON ACCESS TO CRIMINAL  
HISTORY (WATCH) WEBSITE-----<https://fortress.wa.gov/wsp/watch>  
WSP IDENTIFICATION AND  
BACKGROUND CHECK SECTION-----[WATCH.HELP@wsp.wa.gov](mailto:WATCH.HELP@wsp.wa.gov) OR (360) 534-2000

RE: your 19 Mar 2021 3:35 pm email

Larry Mann <mannlarry95@gmail.com>

Sat 3/20/2021 5:32 PM

To: Berg, John <berg@skschools.org>; Daily, Jeff <daily@skschools.org>; Diehl, Rebecca <diehl@skschools.org>; Gattenby, Eric <gattenbye@skschools.org>; Sebren, Liz <sebren@skschools.org>; Winter, Tim <winter@skschools.org>;

Mr. Berg:

Please do not present my application for the facilities Committee at the next board meeting. Please use the meeting time for more important district business. Thank you for offering to present my app but I no longer have any interest in participating on this committee.

Thank you,

Larry Mann



# Your letter and application of March 28th

Berg, John

Mon 4/19/2021 3:22 PM

To: Larry Mann <mannlarry95@gmail.com>;

Cc: Winter, Tim <winter@skschools.org>;

Mr. Mann:

This is in response to your letter dated March 28, 2021, in which you wrote that you "rescind my previous request for non-consideration to appointment to the SKSD Facilities Planning Committee."

Your original application for appointment to the Committee was considered by the Board at its February 17, 2021, meeting and the motion to appoint you failed. The minutes of that meeting constitute the record of that action.

You subsequently submitted a revised and more complete second application for appointment to the Committee dated March 4, 2021. In my email to you of March 19, 2021, I indicated that I would "move to put it on the agenda for the March 31<sup>st</sup> meeting". However, on March 20, 2021 you emailed me requesting "Please do not present my application for the Facilities Committee at the next board meeting."

I understand that your March 28<sup>th</sup> request is to rescind your March 20<sup>th</sup> request to not have your application considered, and that you have now submitted a third application dated March 28, 2021 and wish to have it considered by the Board.

Your demeanor and actions have convinced me that you would not be an asset to the Facilities Planning Committee and that your appointment to the Committee would not be in the best interests of the District. I therefore will not request that your application be put on the agenda for consideration by the Board. I am sharing this correspondence, including your third application, with the rest of the Board. If any of them want to put your application on the agenda for a vote, the board can decide whether or not to even bring it to a vote.

Board appointments are at the discretion of the Board and no one has a right to be appointed upon demand. Board members are not required to justify or explain any vote. Other than from you and Director Daily, I have not heard from anyone who disagreed with the initial vote against appointing you to the Committee. On the other hand, I have received support and encouragement from multiple individuals who agree that you should not be appointed to the Committee.

In my email of March 19<sup>th</sup>, I did not "require" you to appear before the Board to "argue" for your appointment. I simply pointed out to you an opportunity to participate in Public Comment and "have a three-minute opportunity to demonstrate the extent to which you would be an asset to the committee." As stated above, your demeanor and actions before and after that time have demonstrated the extent to which you would be an asset to the committee. None of the other applicants chose to use the Public Comment to address the board regarding the consideration of their applications, although they could have.

We did not conduct criminal background checks for the other applicants for the Committee because the issues were never raised. In your case, there was first a mention of your criminal history at a meeting of the Committee in March and you later referenced the issues and challenged them in your email to the Board of March 18<sup>th</sup>. For

that reason, I obtained the relevant information and shared it with the rest of the Board so that we would all have accurate information.

In my email of March 19th, I did not suggest that you hire an attorney to plead your case regarding the appointment to the Committee. My reference "You may wish to consult your own legal counsel" was clearly in the context of my discussing your public disclosure request and my own disclaimer of my qualifications in discussing the public disclosure law and process.

Regarding your public disclosure requests regarding students, your request for the unredacted list of all students by name and school has been denied by the District and the reason for partial denial and redaction of denied portions have also been provided to you. Your recourse for the denial of a public disclosure request is stated in the statute. Repeated appeals to the Board will be futile. I see no point in your repeatedly asking for information that you have already been denied (in the case of your public disclosure request for unredacted records), or that you have already been provided (in the case of the redacted record and reasons for the denial of the redacted portions).

Regarding your questions about the District's agreement with SKEA, I understood that to be a request for information and not a request for disclosure of identifiable public records under the Public Records Act. I explained the difference between the two in my March 19<sup>th</sup> email.

You stated that no other applicant has been treated as you have been in how their applications were processed. No other applicant has presented the same issues as you have.

You are correct that convicted felons are not barred from being appointed to district advisory committees. I don't recall that your criminal history was even brought up before your initial application was denied on February 17<sup>th</sup>. It is the intent and duty of the District to act in the best interests of the children. The Board has broad discretion in deciding whom to appoint to committees. The board can certainly take into consideration whether or not a person who has been convicted of Assault of a Child and Unlawful Imprisonment can be expected to act in the best interests of the children if appointed to a committee that is expected to act in the best interests of the children. That is not an abuse of the Board's discretionary authority.

**John R. Berg**

South Kitsap School District  
Director Position 2

Email: [Berg@SKSchools.org](mailto:Berg@SKSchools.org)  
Voice mail: 206-317-3785  
Website: [www.SKSchools.org](http://www.SKSchools.org)

2689 Hoover Ave  
Port Orchard, WA 98366



# SOUTH KITSAP SCHOOL DISTRICT

Nurturing Growth • Inspiring Achievement • Building Community

## Application for Appointment to the South Kitsap School District Facilities Long-Range Planning Committee

Name: Larry Mann	Phone: 360-876-3482
Address: PO Box 1338 Port Orchard, WA 98366	Email: mannlarry95@gmail.com

### Facilities Long-Range Planning Advisory Committee tasks and purpose:

- Consider, develop, and recommend long-range plans for the physical facility needs of the District, with benchmarks at a minimum of five, ten, twenty-five, and fifty-year points;
- Recommend priorities for addressing deferred maintenance and planned upgrades to physical facilities of the District;
- Consider and recommend bond and capital levy requirements.

Do you reside within the South Kitsap School District boundaries? Yes ☒ No ☐

If not, describe your interest below.

Your elementary school boundary? Burley/Glenwood

Please explain your interest in South Kitsap Schools and serving on this committee.

I know much about or South Kitsap history. I have been a resident and faithful taxpayer for several decades. I am very interested in helping to help advise our school district and school board in helping to advise how the district might prioritize what we need to be doing with our current district facilities. I enjoy planning and doing research so these skills and interests should be helpful working in a group. I believe the young adults in South Kitsap should have the best facilities our and learning environments in our district that the

In order to represent all segments of the community, please check ALL boxes that apply.

SKSD employee ☐ No - I have never been an SKSD employee.  
If so, your position

Parent of SK student(s) ☐ No - I do not have children in the SKSD.  
If so, grade level(s)

SK student ☐ N/A  
If so, grade level

Member of a Community Organization(s) ☐ No, but I do attend church in my community.  
(please specify)

Do you currently, or have you in the past, served on any other SKSD committees or boards? Yes ☐ No ☒ Please list name(s) and dates.

I have not served on any other SKSD committee or board , I do not currently serve on any other SKSD committees or boards.

What experience and talents will you bring to the committee?

My experiences and talents are varied. In my past work experiences both federal and civilian as well as military. I have acquired extensive experience in building, heavy machinery repair/maintenance, heavy industrial manufacturing including design, manufacture and assembly of items. I have vast experience in industrial safety and have been a member of several safety committees as well as serving as a safety officer and member safety committees for two of my employers in my working years. I was also a Chief Steward for a union that had more than 20,000 members. I am well versed in preparing and negotiating with others as I worked extensively on negotiations involving union agreements and contracts

Please explain any potential conflict of interest you might have with the implementation of the committee's recommendations, such as being a potential contractor, architect, etc.

I have no conflicts of interest. I am retired and will not be a contractor, an architect, or other member of a trade or organization that could run into potential conflicts of interest while serving on this committee.

I have read Resolution 1336 Facility Long-Range Planning Advisory Committee and agree to comply with the Committee's guidelines.



Larry Mann

March 4, 2021

Sign or print name

Date

Thank you for taking the time to complete this application.

Please return to:

South Kitsap School District/Superintendent's Office

2689 Hoover Avenue

Port Orchard, WA 98366

Or email to: [bell@skschools.org](mailto:bell@skschools.org)

Please call 360-874-7001 with any questions.



# PRACTICE TIPS

For Local Government Success



These practice tips are intended to provide practical information to local government officials and staff about electronic communications and requirements under the Open Public Meetings Act (OPMA), chapter 42.30 RCW. Electronic communications between members of an agency's governing body can implicate the OPMA, and these practice tips will help guide you in identifying and addressing key issues in this regard.\* For more information and resources visit [www.mrsc.org/opmapra](http://www.mrsc.org/opmapra).

## An Email Exchange Can Constitute a Meeting

If you, as a member of the governing body (e.g., city council, board of commissioners, planning commission), communicate with other members of the governing body by email, keep in mind that email exchanges involving a majority of members of the governing body can constitute a "meeting" under the OPMA. This principle also applies to text messaging and instant messaging.

**What types of email exchanges can constitute a meeting?** If a majority of the members of the governing body takes "action" on behalf of the agency through an email exchange, that would constitute a meeting under the OPMA. Note that taking "action" under the OPMA can occur through mere discussion of agency business, and that any "action" may be taken only in a meeting open to the public. The participants in the email exchange don't have to be participating in that exchange at the same time, as a "serial" or "rolling" meeting can occur in violation of the OPMA. However, the participants must collectively intend to meet to conduct agency business.

1

**Recommendations:** As a member of the governing body, consider the following tips to avoid potential OPMA violations:

- Passive receipt of information via email is permissible, but discussion of issues via email by the governing body can constitute a meeting.
- An email message to a majority or more of your colleagues on the governing body is allowable when the message is to provide only documents or factual information, such as emailing a document to all members for their review prior to the next meeting.
- If you want to provide information or documents via email to a majority of members of the governing body, especially regarding a matter that may come before the body for a vote, have the first line of the email clearly state: "For informational purposes only. Do not reply."
- Unless for informational purposes only, don't send an email to all or a majority of the governing body, and don't use "reply all" when the recipients are all or a majority of the members of the governing body.
- Alternatively, rather than emailing materials to your colleagues on the governing body in preparation for a meeting, have a designated staff member email the documents or provide hard copies to each member. It's permissible, for example, for a staff member to communicate via email with members of the governing body in preparation for a meeting, but the staff member needs to take care not to share any email replies with the other members of the governing body as part of that email exchange.



2	<p><b>Phone Calls and Voice Messages Can Constitute a Meeting</b></p> <p>As with email exchanges, if a majority of the members of the governing body is taking "action" (see above) on behalf of the agency through phone calls or a voice mail exchange, that would constitute a meeting. Such a "telephone tree" occurs, for example, when members call each other to form a majority decision. As above, the calls and messages can constitute a serial or rolling meeting if the members collectively intend to meet and conduct agency business.</p>
3	<p><b>Key Consideration Related to Conferring to Call a Special Meeting</b></p> <p>Under <a href="#">RCW 42.30.080</a>, a special meeting (in contrast to a regular meeting) may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body. In order to give effect to this authority granted under <a href="#">RCW 42.30.080</a>, we believe it's permissible for a majority of the members of the governing body to confer outside of a public meeting for the sole purpose of discussing whether to call a special meeting. This includes conferring for that purpose via phone, email or other electronic means.</p>
4	<p><b>Use of Social Media Can Implicate the OPMA</b></p> <p><i><b>Question:</b></i> If members of the governing body use social media (e.g., through a Facebook page or Twitter feed) to host a discussion about issues related to the agency, and the discussion includes comments from members of the governing body, could that violate the OPMA?</p> <p><i><b>Answer:</b></i> If the discussion includes comments from a majority of the members of the governing body, that discussion could constitute a public meeting under the OPMA. There's no authority under the OPMA regarding what would constitute adequate public notice – if that's even possible – for this kind of virtual meeting, so it's best to avoid this type of discussion on social media.</p> <p><b>Recommendation:</b> Social media can be an effective tool to solicit comments from the public, but social media shouldn't be used by your agency's governing body to collectively formulate policy.</p>
5	<p><b>Failure to Comply with the OPMA Can Be Costly</b></p> <p>Violation of the OPMA can result in personal liability for officials who knowingly violate the OPMA and in invalidation of agency actions taken at a meeting at which an OPMA violation occurred. Attorney fees and court costs are awarded to successful OPMA plaintiffs. OPMA violations can also lead to a loss of public trust in the agency's commitment to open government.</p>

\*DISCLAIMER: These practice tips are meant to provide practical information to local government officials and staff about electronic records and requirements under the OPMA. The tips aren't intended to be regarded as specific legal advice. Consult with your agency's attorney about this topic as well.

May 2016



## Censuring a School Board Director

In order to save time and debate on the board referral form for censure, I share these observations and remarks. I wish to avoid airing our dirty linen in public as much as possible.

WDDSA does not have any recommended policies on censure of a school board director. Our GP-12 provides the framework, basis, and authority for the censure of a director. For process and procedural matters in our meetings, our GP-2 E5 provides that the most recent edition of *Robert's Rules of Order Newly Revised* applies unless superseded by board policy. The most recent edition is the twelfth edition published in 2020, which I will refer to as RONR.

The relevant portion of the Public Meetings Act is RCW 42.30.110(1)(f), which allows for an executive session "To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge".

In any judicial review of actions of the school board, the court will examine whether or not the board followed the law and its own policy. Therefore, we need to adhere to proper procedure, including the relevant provisions of RONR.

The Board Referral Form for Censure does not state specific charges of wrongdoing. This is intentional. RONR provides that disciplinary procedures are initiated by a motion to establish a committee to confidentially investigate and report back any recommended actions. In order to protect against unsubstantiated charges being made in a public meeting, the initial action "should avoid details as much as possible" (RONR 63:11).

The committees will investigate accusations and draft recommended actions. Because any committee of three or more board members requires public meetings, two separate committees, each consisting of two members, are created to work in parallel. The committees will report back to the board in executive session. The accused board member could insist that that meeting be held in public, in which case the preliminary work of the committees will have been already conducted in private. Any final action recommended in executive session would then be considered in a public meeting.

The accused may argue that they have not been provided with the specific charges against them. That is true. The investigating committee process is similar to that of a grand jury (RCW 10.27). The purpose is to investigate and identify appropriate charges to be brought. Grand jury proceedings are conducted strictly in secret and the accused has no right to informed or heard at that stage of the proceedings. Only when the charges are formally made will the accused will have an opportunity to provides a defense, either in executive session, or in a public meeting. (While RONR provides that the investigating committee may confer with the accused for any defense, this is not practical because three board members conferring triggers the need for a public meeting. Committee members may confer individually and privately with the accused.)

The accused may argue that accusations are a result of a group of employees ganging up on the accused. While that may be true, such overwhelming disapproval is a clear indication of a morale problem among the staff, and the cause of that morale problem should be investigated and dealt with. As Director Daily has so often said of public opinion, "Perception is reality."

The accused may argue that every board member has a right of free speech as an individual and is free to speak up against board actions. However, board members have a fiduciary responsibility to the organization to not actively work against it. There are consequences to free speech – if someone publicly criticizes me, I have a right to revoke my dinner invitation. Furthermore, if the accused has a free speech right to publicly disagree with the remainder of the board and recommend different action, the remainder of the board would also have a free speech right to publicly disagree with the accused with a resolution of censure and even request that the accused resign from the board.

Unless the board majority clearly, publicly, and formally disassociates itself with a fellow director's actions, that fellow director's actions will reflect badly on the entire board.

I anticipate that the investigating committees could report back three alternatives:

1. The committee could recommend that no further action be taken;
2. The committee could fail to agree upon a recommendation and submit no recommendation (in which case any member could submit a "minority report" with recommendations);
3. The committee could recommend adoption of a resolution of censure (with options chosen from the among the provisions in the resolved section), similar to:

Whereas, there is clear evidence that [the accused] has committed the following acts injurious to the South Kitsap School District and its Board of Directors:

1. ...;
2. ...;
3. ...; therefore,

*Resolved*, That the Board of Directors of the South Kitsap School District formally and publicly censures [the accused], expressing its disapproval for such actions stated above and requests that [the accused]:

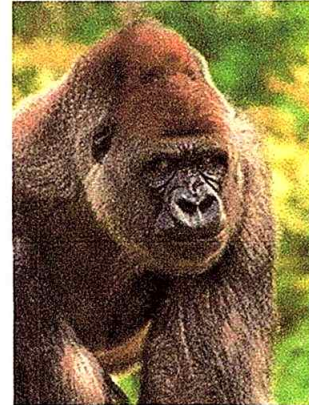
1. Publicly apologize for such actions;
2. Refrain from such actions in the future; and
3. Resign from the Board of Directors;

*Resolved*, That [the accused] is removed from all board committees and assignments, including the audit committee and as a board representative to meet with the Facilities Long-Range Planning Advisory Committee.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2021.



# Sanctioning rogue board members



In general, people who serve on nonprofit boards or in local government are peaceful and compliant. But every once in a while, you get a rogue board member. What can be done? We believe that it's important for boards to be prepared to sanction rogue members when necessary.

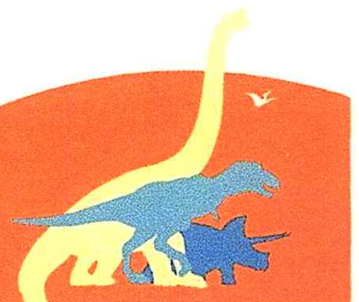
This is an unpleasant subject. However, all human organizations, even benign institutions like hospitals, schools and retirement communities, depend on power enforcement for their survival. If a member on your board is disrupting your work, we recommend you seek allies and take action. (Read this excellent article on [“The Outlier Syndrome in Governing Bodies”](#) for perspective on rogue board members.)

Note that this article applies only to members of boards and local government bodies, not to the ordinary members of a nonprofit organization. Professional organizations with ethics requirements for their members will have separate procedures. The article also does not apply to citizens giving public comment at meetings. [See our guidelines](#) on that topic.

## **ESTABLISH CLEAR GUIDELINES AND EXPECTATIONS**

The first and most important step is to establish clear guidelines and behavioral expectations. If you have adopted Robert's Rules of Order as your parliamentary authority, you have the basics in place. It can also be helpful to adopt more detailed discussion guidelines — [see our blog post here](#). When everybody knows what is expected and agrees on how your group will conduct its business, managing that business becomes much easier.

Just to remind, all persons present at a meeting have an obligation to obey the legitimate orders of the presiding officer (*Robert's Rules of Order Newly Revised*, 11th edition, p. 645).



## YOUR RULES SHOULD INCLUDE THE POWER TO SANCTION

In drafting bylaws or procedural rules, it's easy to forget to mention sanctions. It's human nature to hope that everyone will be polite and act appropriately in all circumstances. Unfortunately that doesn't always happen. Including the power to sanction, and specific actions that may be taken, in your bylaws or procedural rules will make it easier to tackle the problem if it occurs.

## WHAT KINDS OF OFFENSES SHOULD BE SANCTIONED?

Given human ingenuity, there are many actions that could be subject to sanction. Here's a starter list:

- Failing to offer courtesy and respect, using insulting or foul language in discussion
- Failing to observe the rules of discussion: interrupting others, speaking out of turn, speaking beyond the established time limits
- Violating the confidentiality of executive session
- Failing to observe ethics guidelines
- Taking actions outside the meeting which are aimed at undermining a board decision

## WHAT SANCTIONS CAN BE IMPOSED?

Obviously sanctions should be considered only when there is an ongoing problem. Before embarking on the sanctions route, we recommend that a serious conversation be held with the offender, and that the individual be encouraged to change behavior without formal action by the board. Sometimes bringing the options to the offender's attention is enough to bring about change, or even resignation from office.

If that isn't effective, you may have to impose a sanction. [Craig Freshley wrote](#) that "ideal penalties inflict just the right amount of hurt in order to tilt the scales toward compliance." Options include:

- Verbal admonishment
- Letter of reprimand
- Formal motion of censure
- Removal from external or internal committees
- Being directed to leave the meeting at which the behavior occurs
- Removal from a nonprofit board if the board has the power to do this

Note that directing a member to leave the meeting at which the behavior occurs, [removing a director from a nonprofit board](#), and [removing the chair during a meeting](#) are all drastic steps. Consult with your attorney before doing this. We have more information in the linked blog posts.

## WHO CAN VOTE ON SANCTIONS?

Since misbehavior is a serious matter, it's best to require that a majority of the entire board (all directors in office) vote in favor. Check your state law and conflict of interest policy to determine whether the person who is the subject of the proposed sanction may vote on the motion, or not.

From the perspective of parliamentary procedure, Robert's Rules has a specific disciplinary process, described on pp. 643 to 669. If this process has been started, the member may not vote on their own case. Robert also says that if a member offends repeatedly during a meeting, to the extent that the presider has warned the offender three times and "named" the member, they may not vote (see p. 646). Robert says that in other circumstances, the member may vote on the motion proposing to sanction them.



On a nonprofit board, even if you don't follow the formal disciplinary process, you may want to establish a special or select committee to consider the behavior and recommend action to the board. In a local government body, you will of course review state law and your options before moving ahead.

#### **SAMPLE SCRIPT FOR OFFENSES DURING A MEETING**

**Member A:** *Member B has repeatedly violated our rules of procedure and persists in using insulting language towards his colleagues and the public. I move that Member B be issued a verbal admonishment and directed to cease his inappropriate behavior.*

**Member C:** *Second!*

**Chair:** *It has been moved and seconded that Member B be issued a verbal admonishment and directed to cease his inappropriate behavior. Is there any discussion?*

**Member A:** *This has just gone on too long! At every meeting Member B calls his colleagues "bozos" and describes the public as "the great unwashed." It's impossible to get any work done with all the high emotion around here.*

**Member B:** *You people are all too sensitive. I'm just using humor to lighten things up a bit. I think this motion is a bunch of malarkey.*

**Member D:** *Well, I agree with the motion. I'm sick and tired of all this nonsense.*

**Chair:** *Is there any further discussion? [pause] Hearing none, we'll take the vote. All those in favor of the motion to issue a verbal admonishment to Member B and direct him to cease his inappropriate behavior, please say "aye."*

**Members A, C, D and Chair:** *Aye!*

**Chair:** *All those opposed, please say "no."*

**Member B:** *No!*

**Chair:** *The ayes have it and the motion passes. Member B, you are hereby admonished for your inappropriate and disruptive use of language during our meetings. Kindly cease such actions immediately and abide by our guidelines.*

**Member B:** *Well, I have a lot more to say about that, Chair.*

**Chair interrupts:** *The motion has been approved and no further discussion is in order. The next business in order is...*

Sanctioning rogue board members.

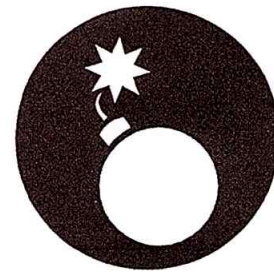
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# Lost the vote? Don't sabotage the council's action



We've had inquiries recently about elected officials who lost a vote, and then actively worked against the outcome. This amounts to trying to sabotage the council. It is wrong, wrong, wrong.

## THE MAJORITY RULES

General Henry Martyn Robert, the original author of *Robert's Rules of Order*, expresses it this way:

*The great lesson for democracies to learn is for the majority to give to the minority a full, free opportunity to present their side of the case, and then for the minority, having failed to win a majority to their views, gracefully to submit and to recognize the action as that of the entire organization, and cheerfully to assist in carrying it out, until they can secure its repeal.*

—Quoted in *Robert's Rules of Order Newly Revised*, 12th edition, p. xlvii

This is a fundamental principle of our system of government. It is embedded in our common law heritage, and our entire society. Government and its administration cannot function optimally, cannot best serve the citizens, and cannot advance, if the very people who are elected to serve choose to pursue their own private views against the decision of the body they belong to. When elected officials “go rogue” and work against their organization's action, they are violating their fiduciary duties of loyalty and obedience. Even more, they are assaulting the foundation of our democracy.

For these reasons, we consistently tell officials: If you lost the vote, you have an obligation to accept the vote as the decision of your body. Your agreement to serve as a public official carries with it the duty to support the fundamental principle of our system of government. You may express your disagreement in public (see our article [Criticizing a board decision in public](#)). However, you should not take a single step to undermine the decision, because that would harm the organization which you have a duty to serve.





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### IS SOMEBODY TRYING TO SABOTAGE YOUR COUNCIL?

If you are dealing with such a situation, we recommend getting advice from your attorney about the law in your state. Review your bylaws and this quotation from *Robert's Rules of Order*:

*An organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes.*

— *Robert's Rules of Order Newly Revised*, 12th edition, 61:1

Once you are armed with the law and the rules, discuss the matter with the independent-minded member in private (if the sunshine laws in your state allow two members to have a private conversation). They may need help understanding the issue. Explain what is wrong with their attempt at sabotage, and show the importance of allowing the body's action to stand. If that doesn't work, it may be necessary to bring it up at a public meeting of your council or board. And if public shaming fails to have any effect, you may have to sanction the member (see our article, [Sanctioning rogue board members](#)).

### BEING ELECTED LIMITS ACTIONS YOU MAY TAKE

American individualism is a great thing, but when you accept election to a local governmental body, you give up some of your First Amendment rights and some of your freedom of action. You agree to put the welfare of the organization above your own interest. You agree to compromise. You agree to follow the rules your body has adopted. And you agree that the entire body chooses its course of action, not any one self-interested individual. It ain't easy! But it's the American way.

### EXAMPLES OF ATTEMPTS TO SABOTAGE

Here are instances I have encountered of attempted sabotage:

- A planning commissioner publishes letters opposing the decisions of the commission and complaining about the members.
- A city council takes a position on the status of the wetlands in response to a request from the state department of ecology. Three minority members send a letter to the department saying that they disagree with the city's position.
- The school board has approved a large bond issue. A member who disagrees publishes an Op-Ed in the local newspaper urging citizens to vote against the bond.

Have you had to deal with attempted sabotage? [Let us know!](#)

Lost the vote? Don't sabotage the council's action

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**LETTERS | Opinion** *This piece expresses the views of its author(s), separate from those of this publication.*

## Board member isn't working for SK schools

**Tom Juvik, Port Orchard**

Published 1:41 p.m. PT Mar. 8, 2021

Now that South Kitsap Voters have passed the school levy, it's a relief to know that students returning to classrooms in the wake of the pandemic will not have to suffer through budget cuts and staffing turmoil during a time when they need stability and a strong support system. The amazing thing is that the levy passed despite SK School Board member Jeff Daily's best efforts to undermine it and thus gut the array of opportunities available to students.

The four board members who have persevered despite Daily's many "No," "Nay" and "Abstain" votes deserve our gratitude for their conscientious effort to do right by our schools. Don't get me wrong, this is not a case of one board member simply disagreeing about district priorities; it is about an individual acting disagreeable toward colleagues and every administrator, teacher, and classified employee group in the district. Daily's most recent letter to the Sun ("SKSD still needs levy feedback", March 2) seems to snatch defeat from the jaws of victory, and judging from his call to action, we can expect more contentiousness in the name of what he alleges to be "voter mistrust."

As author Ken Kesey used to say during his Merry Prankster years, "You're either on the bus or you're off the bus." When it comes to buses, Mr. Daily has missed the big yellow one. It's time for him to resign his seat and make space for someone willing to work with others in good faith to keep the bus running on all cylinders.

*Tom Juvik, Port Orchard*