

LAW OFFICES OF
MARGARET A. CHIDESTER & ASSOCIATES

2151 MICHELSON DR, STE 260
IRVINE, CA 92612-1369

MARGARET A. CHIDESTER*
STEVEN R. CHIDESTER
ALEXANDRA T. REYNOSO
ARIEL K. GREENWOOD

TELEPHONE: (949) 474-5040
TELECOPIER: (949) 474-8540
m.chidester@californiaschoollaw.net
*A PROFESSIONAL CORPORATION

REF. OUR FILE

December 11, 2024

SCROC-95

Personal & Confidential

VIA ELECTRONIC MAIL

Marie Puterbaugh
marieputerbaugh@gmail.com

Rolf Strutzenberg
rolf4rbusd@gmail.com

Re: Report of Southern California Regional Occupational Center to Complaint of Ms. Marie Puterbaugh: Findings of Fact and Conclusions of Law

Dear Ms. Puterbaugh and Trustee Strutzenberg:

Ms. Marie Puterbaugh (herein referred to as “Complainant”) exercised her right to file a complaint concerning the manner in which she states she was treated by Board President Trustee Rolf Strutzenberg (referred to herein as “Respondent”) during the opportunity for public comment at the October 17, 2024 school board meeting of the Southern California Regional Occupational Center (“SoCal ROC”). Both Complainant and Respondent assert that they were acting within their rights during their brief exchange and disagreement.

I. Applicable Complaint Procedures

Complainant utilized the online complaint form available on the SoCal ROC website which allows a complainant to identify the type of complaint. Her complaint form is incorporated into the factual report attached as Exhibit 1. Here, Complainant checked “Discrimination, Including Harassment, Intimidation, or Bullying on the basis of the following (select all that apply).” In her interview, Complainant did not allege that the bullying was made on the basis of her membership in any of the protected classes listed on the form. She nevertheless reported to the investigator that she felt bullied by Respondent.

SoCal ROC has multiple complaint procedures available to individuals who wish to file a complaint: Regulation 1312, Complaints Concerning District Employees, Regulation 1312.2, Complaints Concerning Instructional Materials, Regulation 1312.4, Williams Uniform Complaint Procedures, and Regulation 1312.3: Uniform Complaint Procedures. On the facts alleged, the first three procedures are not appropriate to address the complaint.

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 2

Education Code section 33315 provides in relevant part at section (a)(1)(F) situations to which Uniform Complaint Procedures apply: “The filing of complaints that allege unlawful discrimination, harassment, intimidation, or bullying against any protected group as identified under Sections 200 and 220, and Section 11135 of the Government Code, including any actual or perceived characteristic as set forth in Section 422.55 of the Penal Code, or on the basis of the person’s association with a person or group with one or more of these actual or perceived characteristics, in any program or activity conducted by an educational institution, as defined in Section 210.3, that is funded directly by, or that receives or benefits from, any state financial assistance.”

Although Complainant checked the category of “Discrimination” and asserted bullying, she identified no protected class or perceived characteristic as the basis of the alleged misconduct, nor did she specify one in her interview. Because the ROC has no specific complaint procedure to allege violations of California’s open meeting law, the Ralph M. Brown Act, the uniform complaint procedure outlined by Regulation 1312.3 was utilized. This is permitted by 5 CCR 4610(e) which states, “Nothing in these regulations shall prevent an LEA from using its local uniform complaint procedure to address complaints not described in subsection (b). *LEA investigation reports on complaints not described in subsection (b) may not be appealed to the CDE.*” (Emphasis added) The complaint filed by Ms. Puterbaugh is not a complaint described in 5 CCR 4610 subsection (b), which references Education Code section 33315(a)(1). For this reason, as set out in section X, the findings addressed herein are not appealable to the California Department of Education.

II. Factual Summary

On October 19, Ms. Puterbaugh submitted a written complaint asserting “potential violation of Brown Act.” Her complaint states in part, “I went to make public comment at the Board meeting. I was under the impression that the Brown Act allowed me to speak publicly as I wish. Rolf Strutzenberg has heard me present at RBUSD as I have spoken out against his actions of accusing other RBUSD Board members of illegal activities. This has resulted in some current school board members thinking of not running again, despite terrific results at RBUSD. I believe Mr. Strutzenberg has a track record of making everything a battle and his fellow board members need to know his history...” The complaint also alleged that Mr. Strutzenberg engaged in racially discriminatory actions against an administrator of the RBUSD. She concluded, “I would like to know exactly how my speaking about the President of the Board was a violation of the Brown Act and when I can come to speak without being shut down.”

President Strutzenberg, during his brief exchange with Complainant at the October 17, 2024 SoCal ROC board meeting, asked “Do you have anything that’s within the jurisdiction of SoCal ROC?” He additionally asked “... have something to talk about that is in the jurisdiction of SoCal ROC, we are happy to hear it. If you have something...”

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 3

Ms. Puterbaugh responded in part, “But you’re on the Board. This is important. I mean, I can email them your lawsuits... That you never answered if they’re yours or not.”

More details of that interaction are set out in the report of investigator Dr. Mario Liberati, the complaint form, and in the transcription of the exchange, included as an exhibit to Dr. Liberati’s report.

Initially, Superintendent Dr. Rodriguez assigned Assistant Superintendent Ashley Davis to investigate the complaint. However, it soon became apparent that both Complainant and Respondent felt very strongly about their positions, and that it could be awkward for an employee of the ROC to investigate the President of the Board of Education that employed them.

Accordingly, the investigation was assigned to the Law Offices of Margaret A. Chidester. We retained the investigation firm of Liberati & Associates and specifically the services of Dr. Mario Liberati to conduct the factual investigation of the complaint, reserving the legal issues for this office to address as set forth herein.

Dr. Liberati conducted interviews with Complainant and Respondent as well as with two nonparty witnesses who attended the October 17 Board meeting. The remarks of Ms. Puterbaugh, shared with Dr. Liberati in her interview, demonstrate her purpose for speaking at the October 17 board meeting: to advise the ROC members about her perceptions of the Board President’s judgment and how he conducts himself as a board member. Dr. Liberati reported that she stated in her interview: “I know some people who are on the board, and it becomes increasingly exhausting when they are under attack. I want them to know that I have their back. I don’t want them to quit doing the great work they are doing for schools.”

She told Dr. Liberati that her purpose for speaking at board meetings is to support other board members and “to share information which is power. He’s inviting people to scream at other people and is suing people. I want to tell board members to watch out and be careful.” She told Dr. Liberati, “All I wanted on October 17, 2024 during the SoCal ROC Board meeting, Comments from the Public Section, is my three minutes to warn other board members. Not a lot of people are listening, but he’s getting a little dangerous and a little untethered.”

When Complainant was interrupted by Mr. Strutzenberg, she replied, “You are the Board. You are in charge. You are the President of the Board. This does impact business.” She reiterated that Respondent, “... is the President of the Board and the decisions he and the other board members make, impacts the business of SoCal ROC.” She stated, “Isn’t that important to the school board that is at the top of the organization making business decisions...”

Trustee Strutzenberg acknowledged to the investigator that he did in fact stop the community member from speaking further during the public comment section of the agenda. He explained that his action was, “in accordance with California Law and Board Bylaws.”

Ms. Puterbaugh and Mr. Strutzenberg
December 11, 2024
Page 4

Presumably, Trustee Strutzenberg was referring to the requirement of the Brown Act that comments by members of the public be within the subject matter jurisdiction of the governing board.

The December 11, 2024 report of Dr. Mario Liberati is attached and incorporated herein as Exhibit 1.

III. Legal Authority for Public Comment at School Board Meetings

California's open meeting law, the Ralph M. Brown Act, at Government Code section 54954.3 states in part:

“(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body...”

Additionally, section (b)(1) provides:

“The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.”

Finally, section (c) states:

“The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body...” (Emphasis added)

The California Education Code at section 35145.5 also provides the opportunity to address the governing board: “Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the governing board on any item of interest to the public, before or during the governing board's consideration of the item, that is within the subject matter jurisdiction of the governing board.”

As contained in Dr. Liberati’s exhibits, the regular Board agenda of the SoCal ROC under “Comments from the Public,” states, “Individual speakers shall be allowed three (3) minutes to address the Board on each agenda or non-agenda item. The Board shall limit the total time for public input on each item to 20 minutes.”

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 5

Also stated under this heading is: “II. Topics Not on Agenda: Anyone in attendance may address any issue by following the same procedure process listed above. Since the Board cannot take action on items which are not on the agenda, such items may be referred to the Superintendent for handling. Individuals interested in speaking to items which are not on the agenda will be called upon at this time.”

IV. Legal Issues Presented

1. Are the decision-making capacity and conduct of board members subjects within the jurisdiction of the SoCal ROC governing board?
2. Did the Board President have the right to halt comment from a citizen addressing the judgement, temperament, and/or conduct of an ROC board member?
3. Did the conduct of the Board President constitute bullying as defined by law?

V. Legal Authority Regarding Board Jurisdiction Over Conduct of Individual Board Members

In her written complaint and in her interview, Complainant questioned Respondent’s fitness to serve as a school board member. For example, she wrote in her complaint, “If Mr. Strutzenberg appears untethered from reality, doesn’t that impact the business of your school?”

Policies and bylaws agendized, considered, and adopted by school boards have the effect of local law.

ROC Board bylaws identify matters within the jurisdiction of the governing board as they pertain to conduct of board members.

1. ***Board Bylaw 9000*** “Role of the Board” states in part, “Governing Board members have been appointed from the governing boards of participating JPA districts. Additionally, two Board members-at-large have been appointed by the ROC governing Board. *Board members provide leadership and citizen oversight to the ROC. The Board shall ensure that the ROC is responsive to the values, beliefs, and priorities of the communities it serves.*” (Emphasis added) In this regard, see also Board Policy 9005 item 4 and Board Bylaws 9320 and 9121.
2. ***Board Bylaw 9005*** “Governance Standards” states in relevant part, “To maximize Board effectiveness and public confidence in ROC governance, *Board members are expected to govern responsibly and hold themselves to the highest standards of ethical conduct.*” (Emphasis added)

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 6

3. **Bylaw 9200** “Limits of Board Member Authority” states in relevant part, “The Governing Board recognizes that the Board is the unit of authority over the ROC and that a Board member has no individual authority. Board members shall hold the education of students above any partisan principle, group interest, or personal interest.”
4. **Board Bylaw 9323** “Meeting Conduct” states in relevant part under “Public Participation,” “*Members of the public are encouraged to attend Board meetings and to address the Board concerning any item on the agenda or within the Board's jurisdiction.*” (Emphasis added) Additionally, the bylaw provides at item 6, “The Board president may rule on the appropriateness of a topic. If the topic would be more suitably addressed at a later time, the president may indicate the time and place when it should be presented.

The Board shall not prohibit public criticism of its policies, procedures, programs, services, acts, or omissions. (Government Code 54954.3) In addition, the Board may not prohibit public criticism of ROC employees.” (Emphasis added)

5. **Board Bylaw 9271** “Code of Ethics” states in relevant part, “This code of ethics expresses the personal ideals which the Governing Board believes should guide each school Board member's activities:... Individuals. Each Board member has a direct concern for every individual in the community. *As an integral part of his/her duties, he/she represents the authority and responsibility of government. This authority must be exercised with as much care and concern for the least influential as for the most influential member of the community.*”

“Employees. The Board member's actions may affect the capability of ROC employees to practice their trade or profession and should encourage their increasing competence and professional growth.”

Additionally: “*Laws, Policies. Each Board member must be aware of, and comply with, the constitutions of State and Nation, the Education Code of the State of California, other laws pertaining to public education and the established policies of the ROC.*” (Emphasis added)

Finally, “...each Board member shall... Be constantly aware that he/she has no legal authority except when acting as a member of the Board.

Governance Handbook

In October, 2023, the SoCal ROC Governing Board adopted its own governance handbook. Section 2, “Unity of Purpose, states in relevant part, “As members of the Governance Team, *we model the type of behavior we expect to see throughout the SoCal ROC.*”

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 7

- Be prepared
- *Be courteous*
- Be good citizens
- *Be personally responsible and proactive*
- Be informed
- *Be trustworthy* (competence and character)
- *Be respectful*
- *Be open-minded, good listeners*
- Be confidential (when asked)
- *Be inclusive*” (Emphasis added)

Page 2 item 3 states in relevant part “*Board of Education members will... Act with a professional demeanor that models and communicates the SoCal ROC’s beliefs and vision.*” (Emphasis added)

At page 3, the Handbook speaks to the relationship between the ROC and its member districts, as a trustee holds roles in both: Board of Education members will “Understand that while individual Board Members represent their respective districts, while on the dais as a member of the SoCal ROC Board, shall represent all students of the joint powers agreement.”

At page 4, under Protocols During the Board Meeting, it is stated “The Board will honor these norms during the board meeting... Seek first to understand, then be understood.”

Additionally, “Address each other, staff and members of the public, with respect and civility.” At page 5, “Board Members will listen attentively to Public Comments and, in accordance with the Brown Act, will not engage in dialogue with speakers on non-agenda items.”

We conclude that based upon the actions of the SoCal ROC governing board in adopting these Board Bylaws and the Governance Handbook, the conduct of individual Board members is within the subject matter jurisdiction of the SoCal ROC Board.

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 8

VI. Case Law Permits Public Comments and Criticism About District Agents

There is a paucity of case law specifically addressing the jurisdictional argument regarding the right of a member of the public to comment during public comment on the conduct of a trustee. However, the United States District Court for the Central District of California found that members of the public may voice criticism of school district employees and programs in the 1996 decision in *Baca v. Moreno Valley Unified School District* (USDCCD 1996) 936 F. Supp. 719. In *Baca*, the plaintiff parent was removed from the school board meeting when, during public comment, she criticized multiple District employees, attributing to at least one of them serious allegations of unprofessional conduct. After she was removed, the parent filed suit. Although *Baca* involves criticism about administrators and not about an officer such as a board member, the facts are sufficiently similar to establish that the decision must also apply to trustees of a school district or other local educational agency (“LEA”) such as SoCal ROC, as such LEAs are subject to Education Code and Brown Act requirements.

In *Baca*, District policy prohibited criticism of District employees during public comment. The Court found that this was an over-broad, impermissible restraint on the speech of plaintiff Ms. Baca and other citizens’ right of free speech. Although Ms. Baca referred to administrators by name and alleged significant misconduct by them, the Court held that speech criticizing a District employee, even if later proven to be defamatory, was protected by both the California and Federal constitutions from governmental censorship and prior restraint: “Thus, under the California constitution, District’s board may not censor speech by prohibiting citizens from speaking, even if their speech is, or may be, defamatory.” The Court noted that Article 1, section 2, subdivision (a) of the California constitution forbids prior restraint or censorship because this “subjects all freedom of sentiment to the prejudices of one man, and makes him the arbitrary and infallible judge of all controverted points in learning, religion, and government.” (936 F. Supp. 719 at 728). The Court observed, “The California legislature has designed school board meetings as limited public fora, i.e. fora open to the public in general, but limited to the comments related to the school board’s ‘subject matter.’ Therefore, the open sessions of the District’s board meetings are limited public fora, and any regulation of speech in such fora must be reviewed in light of the nature of the fora.”

The Court methodically reviewed and rejected all of the defendant school district’s arguments concerning protecting the privacy of District employees, protections against defamation, and other objections to allowing criticism by members of the public against District employees. The Court held, “Therefore, because complaints by members of the public about District employees, even if defamatory, legally cannot cause a deprivation of the employees’ protected liberty interest, a policy forbidding such complaints cannot be justified by merely claiming that the complaints have such effect. (936 F. Supp. 719 at 734)

Based upon the legal reasoning of the federal district court in *Baca*, we conclude that the conduct of a District trustee, including decision-making and the manner in which the trustee

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 9

approaches Board member responsibilities, are within the subject matter jurisdiction of the governing body, and that members of the public have the right to comment on the conduct of individual board members. This determination is reinforced by the bylaws of that body which specifically reference the conduct expected and required of board members.

VII. The Facts Do Not Support an Allegation of Discrimination Based on Bullying

Complainant asserted her feeling of being bullied by Respondent.

Education Code section 48900(r)(1) states in relevant part:

“Bullying’ means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more *acts committed by a pupil* or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, *directed toward one or more pupils* that has or can be reasonably predicted to have the effect of one or more of the following:

- (A) *Placing a reasonable pupil or pupils in fear of harm* to that pupil’s or those pupils’ person or property.
- (B) *Causing a reasonable pupil to experience a substantially detrimental effect* on the pupil’s physical or mental health.
- (C) *Causing a reasonable pupil to experience substantial interference* with the pupil’s academic performance.
- (D) *Causing a reasonable pupil to experience substantial interference with the pupil’s ability to participate in or benefit* from the services, activities, or privileges provided by a school.” (Emphasis added)

Thus, the Education Code definition of bullying is focused on actual harm to pupils, and does not extend to members of the school community, such as Complainant, and does not apply on the facts alleged in the complaint or mentioned in the interview.

Dr. Liberati’s report also observes that the Respondent’s conduct does not rise to the level of bullying defined by Government Code section 12950.1(h)(2), in that it constitutes a single act is not especially severe or egregious.

Further, the alleged bullying is not asserted by Complainant to have occurred on the basis of Complainant’s membership in a protected class or because of a perceived characteristic (see part I of this opinion).

Ms. Puterbaugh and Mr. Strutzenberg
December 11, 2024
Page 10

VIII. Findings of Fact Based on the Evidence Gathered and Conclusions as to Each Allegation

This report adopts the factual findings of the investigator, Dr. Mario Liberati of Liberati & Associates.

1. The allegation that Complainant exercised her legal right to address the SoCal ROC Board on October 17, 2024 is sustained.
2. The allegation that Respondent Board President Trustee Strutzenberg interrupted Complainant and halted her remarks, contrary to law, is sustained.
3. The allegation that the remarks that Complainant commenced to deliver were in fact within the subject matter jurisdiction of the SoCal ROC is sustained.
4. Accordingly, the allegation that the Ralph M. Brown Act was violated is sustained.
5. Although the interruption was abrupt and could be characterized as inappropriate, the action of the Board President did not constitute bullying as explained in Education Code section 33315(a)(1)(F) nor Government Code section 12950.1(h)(2), because the trustee's actions were not based upon Complainant's membership in a protected class, or having a perceived characteristic listed in that section, or on the basis of her association with a person or group with one or more of the actual or perceived characteristics listed in that section.

Further, the facts do not support a violation of Education Code section 48900(r)(1), which addresses bullying in a school context by or against pupils. Thus, the allegation of discrimination based on bullying is not sustained.

IX. Corrective Action

Complainant requests, by way of remedy, an apology. Although an apology should be sincere and cannot be compelled, it remains an available option for Respondent.

Complainant may attend a future meeting to exercise her rights to public comment in accordance with Board Bylaws and this report.

By way of corrective action, we recommend that the Superintendent provide this report to all members of the SoCal ROC Governing Board so that regardless of the member presiding over the public comment section of the meeting, all members of the board will be aware of the rights of the public, subject to the time limitations contained in board policy and regulation, to

Ms. Puterbaugh and Mr. Strutzenberg

December 11, 2024

Page 11

articulate their public criticism of the policies, procedures, programs, or services of the ROC, including how they are impacted by the acts or omissions of the legislative body, including criticism of the actions of employees and/or trustees of the SoCal ROC.

X. Appeal of This Decision

Pursuant to 5 CCR 4610(e), this report is based on a complaint not described in 5 CCR 4610(b), and therefore may not be appealed to the California Department of Education.

Pursuant to SoCal ROC Regulation 1312.3, “A Complainant may pursue available civil law remedies outside the ROC’s complaint procedures. Complainants may seek assistance from mediation ROCs or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders.”

This investigator thanks the Complainant and the Respondent for their participation in this process, and is available on request to advise the SoCal ROC Superintendent and Governing Board regarding compliance with statutory requirements for public comment.

Respectfully submitted,



Margaret A. Chidester

MAC:bb

cc: Julian Rodriguez, Ed.D.
Superintendent

Mario Liberati
Investigator

Enclosures:

- Exhibit 1 - December 11, 2024 Investigative Report of Dr. Mario Liberati