CHULA VISTA ELEMENTARY SCHOOL DISTRICT

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EACH CHILD IS AN INDIVIDUAL OF GREAT WORTH

MINUTES
BOARD OF EDUCATION

Special Meeting
May 27, 2021
5 P.M.
Dr. Lowell J. Billings Board Room, Education Service and Support Service
Streamed Online

ORDER OF BUSINESS

1. OPENING PROCEDURES *Opening Procedures*

A. Call to Order

President Reyes called the meeting to order at 5:05 P.M.

B. Roll Call

Dr. Eduardo Reyes, President
Ms. Kate Bishop, Vice President (Virtually)
Ms. Lucy Ugarte, Clerk
Mrs. Leslie Ray Bunker, Member
Mr. Francisco Tamayo, Member

Members Absent:
None.

Others Present:
Dr. Francisco Escobedo, Superintendent
Mr. Oscar Esquivel, Deputy Superintendent (Virtually)
Dr. Matthew Tessier, Asst. Supt., Innovation and Instruction (Virtually)
Mrs. Soreli M. Norton, Asst. to the Supt. and Board of Education
Mrs. Nancy Teahan, Asst. to the Supt. and Board of Education

C. Pledge of Allegiance

Board Member Bunker led the Pledge of Allegiance.

2. APPROVE AGENDA (Action) *Approve Agenda*

Motion: UGARTE, Second: TAMAYO, Vote: UNANIMOUS

3. ORAL COMMUNICATIONS

Oral Communications

The Oral Communications portion of this special meeting provides the public with information regarding addressing the Board, as follows: The public has the opportunity to be heard on any items included in the agenda. Speakers are requested to limit their remarks to three minutes (approximately 390 words). Community members wishing to comment should call (619) 679-9001. The Board shall limit the total time for public input on each topic to 20 minutes. With Board consent, the President may increase or decrease the time allowed for public presentation depending on the subject and the number of persons wishing to be heard. No Board action can be taken.

None.

4. APPROVE CONSENT CALENDAR (Action)

Consent Calendar

The following items listed under Consent Calendar are considered by the Board in one action. There will be no discussion on these items prior to the time the Board votes on the motion unless members of the Board, staff, or public request specific items to be discussed and/or removed from the Consent Calendar.

Prior to approval of the Consent Calendar, President Reyes pulled Item 4.A., Section H for discussion and separate action.

Motion: BUNKER, Second: TAMAYO, Vote: UNANIMOUS

A. Approve and/or Ratify Human Resources Items A Through H **2020-21.081B**

Board Member Tamayo noted an agreement to bring Vincent Pompei, Ed.D., back [for the new school year]. He said the amount for the previous agreement with Dr. Pompei had to be modified for additional services and motioned to amend the agreement to increase the "Not to Exceed" amount from $20,000 to $30,000.

Motion: TAMAYO, Second: BISHOP, Vote: UNANIMOUS

5. BOARD WORKSHOP

Board Workshop

A. Review of a School District Governing Board's:

(1) Role and Responsibilities; and

Dr. Escobedo said it was a pleasure and honor to introduce District Counsel Mr. Peter Fagen, from Fagen Friedman and Fulfrost LLP. He said Mr. Fagen has served the District for over a decade in a variety of areas.

UNADOPTED

Mr. Fagen thanked Dr. Escobedo and the Board for the opportunity to present and said facilitating governance workshops is one of the things he most enjoys doing, adding the point is to help the leadership team and Board be the best they can be. Mr. Fagen commented he started working with the District in 2006; has seen many transitions; and the District has consistently been the jewel in the South Bay, a district with an excellent reputation that does great work with the students it serves. Also that success stems in part from a highly functioning leadership team—the Board and Superintendent—and commented that anytime there is a change in the members of that group, the dynamics change.

Mr. Fagen listed a series of handouts—free legal advice—for Board Members' reference: two documents on Navigating the Brown Act, California Public Records Act (PRA), one on Assembly Bill 992 (social media activity), and a Communication Guide. He then began his interactive presentation by engaging the Board with two questions: Why they wanted to become a Board Member and how they would describe the best boss they ever had. All the Board Members shared their answers.

After asking how many bosses a superintendent has, Mr. Fagen explained a superintendent only has one boss—the governing board as a group. He emphasized that a governance board can only legally act through its majority at a duly noticed and appropriately agendized meeting, said no individual board member has any power to do anything other than attend meetings and try to convince at least two other colleagues to their point of view. Once the boss (the board), acts through its majority, it has spoken to their one employee (the superintendent); a district has many employees but they all work for the superintendent and only the superintendent works for the board. Mr. Fagen referred to each of the characteristics of a good boss that Board Members mentioned; reflected on how it may be difficult for a board as a whole to fulfill some of them; and said it is good for board members to try to emulate those characteristics in their relationship with the superintendent. He said the way board members interact with superintendents has a lot to do with how the community perceives the governing board (as a group) and asked Board Members how they want to be perceived (as a Board, not individually). He explained it is important to conduct business in a way that enhances the public's trust, so they will want to send their children to District schools instead of choosing one of the other options available (charters, private schools, or home schooling).

Mr. Fagen described the role of the superintendent and the partnership of the board president and superintendent. A governing board's role is to, among other things, set the vision; hire, support,

and hold accountable the superintendent; ensure fiscal health; and monitor student performance. Labor negotiations, personnel decisions, and handling complaints and concerns are not part of a governing board's job. Responding to a question from President Reyes, Mr. Fagen gave examples of how board members' involvement in labor negotiations can undercut the negotiations team's work. Regarding personnel decisions, it was emphasized the superintendent is who hires, fires, promotes, and disciplines employees, although the decision is presented to the board for final approval. A governing board is the appellate body, and as such, board members cannot be involved in the hiring process.

Mr. Fagen also spoke about the "no surprises rule," saying board members receive meeting documentation ahead of time, so they should review it and alert the superintendent about any questions they will ask, so staff has a chance to prepare. Other topics discussed were board members' activity at school sites, their conduct, and communications. Vice President Bishop asked for clarification regarding board members being allowed to express personal opinions and discuss issues they wish to advocate for. Mr. Fagen said board members can express their opinions but cautioned that discussing items that without duly noticing and appropriately agendizing them may violate the open meetings law. This is because doing so deprives the public from observing discussion and participating, through limited public comment, on issues or items that are of interest to them. To add issues/items to the agenda, board members should approach the superintendent or board president. In answer to a question from President Reyes, Mr. Fagen said addition of items to the agenda follows board policy or governance protocols.

Mr. Fagen talked about open, honest, and direct communications, which are key to maintaining levels of trust and having a high functioning leadership team.

- Board members should respect each other, be honest, and maintain confidentiality (as required by law); doing so creates trust. Board members may not necessarily agree but they understand their colleagues and know they can express their opinions [in closed session] because they know the discussion will remain confidential.
- A board takes collective responsibility for its performance—whether a vote is unanimous or not—once a decision is made, the board has spoken.
- When approached by members of the public who expect an issue resolved, board members should thank them and acknowledge the issue, but not promise anything other than to pass it along to the appropriate personnel. Board members

should not promise anything because they individually have no power to fulfill the promise—the full Board has to agree, which may not happen.

- It is important for board members who are sharing an opinion that differs from the board's opinion to make it clear they are not speaking on behalf of the board.
- Confidential information should never be released.
- Members of the public may not understand the procedure or substance of items of discussion, so board members need to be patient with them.
- Express disagreement with a position before the position is adopted and within meetings.

Mr. Fagen remarked that board members run for office as individuals but once elected, there is a change. After elected officials take the oath of office, they represent and owe a duty to act in the best interest of the entire community and their fiduciary duty is to all stakeholders, not to a particular constituency. He emphasized the importance of trust, which is the result of understanding and respect and said boards can function effectively despite disagreements when different viewpoints are respected.

President Reyes recessed the meeting at 6:30 P.M. and reconvened at 6:41 P.M.

(2) Role in Hiring the District Superintendent

Mr. Fagen pointed out that hiring a superintendent is the most important decision a board will make, as the superintendent is their one employee. He shared two important steps in the process, to:

- Create a task force (two board members) to drive the work and handle minutiae in order to avoid needing a board meeting every time there is a question.
- Identify the administrative/clerical support person.

There are many ways to approach hiring process and one of them is to use a search firm. There are different types of search firms—some are public agencies such as county offices of education who have groups that conduct searches. Other ones are private executive search firms. If going that route, the two-person task force should spend time investigating the search firms, looking at their references, success rates, and guarantees offered. A decision the board will make is whether the search will be local, statewide, or national.

Mr. Fagen noted that another way of hiring a superintendent is for the board to appoint an in-house candidate who has been groomed for the job and has the appropriate experience.

Once the board hires a search firm, there is information to secure from it:

- A timeline – Can be adjusted but the community will need to know what timeline the board is looking for.
- The stakeholder engagement process – What will the firm do to engage the community.
- How the process will be communicated – There will be a lot of interest in the process and the community will want updates. Does the search firm prepare the communications or leave it to the board? If the search firm, will the task force or the full board review the communications?
- The process for keeping the board informed of process.

Board Member Bunker asked what a reasonable length of time for hiring a superintendent—between three to four months, longer if the pool of candidates is not the best. Mr. Fagen said an option is to hire an interim superintendent, typically a retired superintendent or a current cabinet member who knows how things run in the district. He pointed out the current cabinet member may or may not be a candidate. The board can be clear with the person whether he or she will be considered for the job. Hiring an interim superintendent may turn out to be an on-the-job interview.

Board Member Tamayo asked if there is a time limit regarding having an interim superintendent. Mr. Fagen said he is not aware of a legal one but there retired superintendents have limitations on how long they can work or earn. He explained it is better not to wait too long to hire a permanent superintendent, in order to have a stable leadership group. It is good having an interim person too long—for example for a year—as it does not promote stability and may lead to a lot of uncertainty.

Board Member Tamayo said he knows some boards have appointed a superintendent without going through the process and asked if the option is available. Mr. Fagen said some boards have appointed an employee without conducting a search and other boards have selected an internal candidate after the person goes through the search process. Both are viable options.

Mr. Fagen said he would be happy to assist the Board with any questions. Said that while his company is not a search firm, it has helped boards go through search processes tailored to their needs.

B. Overview of the Ralph M. Brown Act

Mr. Fagen said the Brown Act is [California's] open meetings law. The intent behind the law is for school district business to be conducted

openly, in front of the public in order to provide meaningful access to members of the public. The law applies to legislative bodies and since governing boards are legislative bodies, they are specifically governed. The law is designed [to require] that public business is conducted in public and provides members of the public the opportunity to participate on a limited basis by addressing the board before or during discussion of items. The presumption is that discussion is held in open [session] with three limited exceptions when closed [session] is allowed—when the discussion involves privacy, strategy, or security. Mr. Fagen clarified that board meetings are not public forums, they are meetings where the board conducts district business and public involvement is limited.

Mr. Fagen asked Board Members what a meeting is. After hearing a couple of answers, he read the legal definition—a meeting occurs whenever the majority of the board gathers at the same time and place to hear, discuss, or deliberate [or take action] upon any item within the subject matter jurisdiction of the board or district. This language is restrictive that means three board members are not allowed to be together anywhere where they can hear the same thing if it has anything to do with education. There are some exceptions to this rule, for example individual contacts, public conferences (e.g., the California School Boards Association's annual conference), other local agency meetings (e.g., a city council meeting), and social gatherings. Regarding social gatherings, he said if there is a quorum, board members have to be careful not to be seen standing around together to avoid even the appearance of impropriety.

The open meetings law does not allow serial meetings. There is a type of serial meeting that consists of a "personal intermediary," someone who talks with one board member, then another, and then another and shares the information received from one board member with another one. There is an exception, what Mr. Fagen calls the "superintendent's exception," when the superintendent has separate conversations with board members to answer questions and provide information regarding an item that may come before the board. This exception is allowed if the superintendent does not communicate to board members the comments or positions of other board members. It is important the superintendent does not share, because board members need to go to board meetings with open minds, and have the right to try to convince their fellow board members' to their point of view. Furthermore, members of the public have the right to observe the board deliberating on the items on the agenda and if the board has already made up its mind, they are deprived of that right.

Mr. Fagen explained there are different types of meetings and there are certain requirements for each. Special board meetings have a shortened timeline for posting of the agenda—24 hours instead of the 72 hours for regular meetings. Special meetings are scheduled for

special reasons and public comments are limited to items on the agenda. Meeting agendas need to be posted online and in an accessible place; they must include enough information for members of the public to determine they are interest in any of them. Board Bylaw 9322 was referenced as being the guide on how to add items to the agenda.

Mr. Fagen spoke about impermissible serial meetings. These can be in a "daisy chain" format, where A speaks with B, B speaks to C, and C speaks D about a topic that will be presented to the Board. Only two people have spoken to each other but you four have discussed and deliberated, which is a violation of the law. Another format is "hub and spoke," where A speaks with B, with C, and with D separately and shares all the information he is receiving with each of them.

Mr. Fagen addressed today's virtual world and its technology, saying the Brown Act was created before the iPhone, and email, text messages, websites, and social media. The law has adapted and been expanded and the same rules regarding impermissible serial meetings apply to communications via email, websites and blogs, texting, and social media. "Daisy chain" and "hub and spoke" situations via email or text are considered impermissible meetings and could result in law violations. Mr. Fagen mentioned "sunshine week," during which media outlets request different types of documents (e.g., the first 20 and the last 20 emails that superintendents received every month) and then write a series of articles regarding what they found. This is a fishing expedition that may expose things that are inappropriate. Mr. Fagen cautioned about receiving texts or emails during board meetings; these may violate the intent of the law if they relate to items on the agenda because the public cannot see those communications that are taking place during deliberation. He said it would not surprise him to see public records requests from the media such as "all email and text communications with board members starting one hour before and ending one hour after board meeting, regardless of topic." President Reyes asked how to address the fact that board members cannot avoid receiving communications. Mr. Fagen said board members might want to turn off their electronic devices during the meeting and even make an announcement to that effect, which would shield them from potential problems.

Assembly Bill 992, a temporary law was discussed that went into effect January 2021 and will last until January 2026 and relaxes prohibitions on social media. The law allows board members to engage in social media to answer questions, provide information to the public, or solicit information from the public regarding a matter within the board's jurisdiction as long as the majority of the board does not use social media to discuss the business within the board's jurisdiction among themselves. The law specifically prohibits the use of emoji, like, and

dislike reactions to board members' posts on social media. At President Reyes's questions, Mr. Fagen clarified the prohibition is limited to items that are within the subject matter jurisdiction of the board, not to personal items. Also, that board members should not comment on third-party posts regarding topics that fall within the board's subject matter jurisdictions, as there is the possibility of starting a serial meeting. To a question from President Reyes regarding board members who are running for reelection, Mr. Fagen responded that they can provide information and even endorse another candidate; also that campaign laws are different and may not align and that this law does not override anyone's ability to make an endorsement. A last thing Mr. Fagen remarked is that the relaxation within the law states that the social media must be accessible to the public free of charge and members of the public cannot be blocked, except by the social media platform for violating rules. At Vice President Bishop's questions, he clarified board members can block people from their personal sites but cannot block anyone from their public facing sites.

School boards may not prohibit public criticism, only control the amount of time you give the public to comment—and you have to be fair regardless of the content of the comments. Mr. Fagen discussed board responses to public comments and the rule of no action or discussion on matters not on the agenda. He said board members should refrain from engaging with the public on matters not on the agenda. He stated they may refer the matter to staff, ask staff to place the matter on a future agenda and/or report back to them on the matter, ask a clarification question, make a brief announcement or make a brief report on their own activities.

Regarding closed session, Mr. Fagen emphasized everything must be done in public unless they fall under one of three areas privacy, strategy, and security. He listed common sense matters that can be discussed in closed session after being specifically listed: personnel matters (privacy), pending litigation (strategy), student matters (privacy), negotiations and collective bargaining (strategy), real property negotiations (strategy), security matters (security). Mr. Fagen said that after the City of Bell fiasco, the Legislature stepped in and tightened up closed session requirements. On a side note, he said the Legislature made changes to the PRA and public agencies cannot just tell a requester their request is to broad; it shifts the burden to the agency, who needs to meet with the requester and help them figure out what it is they are asking for and then provide it to them. Action or approval of agreements must be reported unless the final approval rests with another party. Agreements become public record once approved and signed by the board, except if the agreement has been approved but not signed by the other party. Mr. Fagen mentioned a number of items that do not need reporting out such as labor negotiations agreements and some student matters. He emphasized the importance of maintaining

confidentiality regarding any closed session discussion. Mr. Fagen stated the law is very clear in prohibiting board members, even after they leave the board, from disclosing anything confidential discussed in closed session. This also applies not only to board members but also to anyone who participates in closed session. Ramifications for confidentiality or Brown Act violations are that board members may be personally liable the remedies or consequences include removal from office, being subject to a civil lawsuit, injunctive relief through a court, criminal liability, and written and verbal censure by the majority of the board. Another ramification of Brown Act violations may be the invalidation of actions taken in items not appropriately agendized; if this happens the board will have the opportunity to redo it correctly. Board members may be held personally liable and prosecuted if they see an actions being taken that violate the law and do not stop it.

The California PRA is a strong policy in favor of disclosure to the public and any writing, including emails and text messages communicated via district or personal devices, related to school district business are public records. Mr. Fagen said board members should enter into these virtual exchanges of information with the thought that someone could request to see them. He encouraged them to communicate in such a way that if the exchanges come to light, they serve to enhance the public trust in district leadership instead of detract from it.

Documents taken to a board meeting, if shared with the majority of the board, become public documents and copies must be available to share with the public.

Board Members thanked Mr. Fagen for the refresher and for the updates regarding new laws. President Reyes said it is always good to have information on new rules. Mr. Fagen thanked the Board again for the opportunity to present.

President Reyes called for a recess at 7:58 p.m. and reconvened the meeting at 8:10 p.m.

C. Review of the Chula Vista Elementary School District's Hiring Process

Dr. Escobedo said he would share the District's administrator selection process. He referred to a book, "Who [The A Method for Hiring]," from which the District used specific aspects to focus on hiring "A" players, who are people who have the ability to outproduce, outthink, or outperform most people by almost 200 percent. The focus of adding some of these simple strategies was to enhance the potential to make the best hire possible. Dr. Escobedo said it is well known how hiring the cost of bad hires is difficult, knowing how much someone who does not pan out, whether a principal, teacher, psychologist, can affect student achievement and decrease morale. He said management experts state

that most traditional hiring systems have a 50 percent chance of getting it right or wrong and the specific process he will share increases the percentage of success to closer to 85 percent.

Dr. Escobedo explained having a network of referrals is critical—referrals from recruiters, other principals, other superintendents, and universities is very important. He also showed the confidential recommendation form, important because recommendation letters are not always accurate and the form takes the accuracy to a higher level.

Dr. Escobedo detailed the method:

- District positions are posted on the website, on the statewide EDJOIN job search engine, and sometimes on EdCal, part of ACSA's network.
- At the same time that the job is posted, surveys are conducted with staff and community (English and Spanish) on the attributes of the new leader, what they would like to see. Those characteristics are matched to the questions asked during the interview.
- Once the job is posted and applications are received, the District looks at competencies, track record (with people jumping from district to district in a short period of time presents a red flag), alignment to culture, and their passion for the job.
- Human Resources processes and reviews all applications: Resume, letter of intent, written exercise, letters of recommendation.
- Applicants are then asked to submit an online video focusing on their background, their passion to serve students, and interest in the District. Answering a question from Dr. Reyes, Dr. Escobedo said the video is required for positions of principal and above.
- Human Resources and the Superintendent work together to review all submitted information and choose down to five to eight applicants, who are invited to interview. Dr. Escobedo reviews the application, looks at past successes and tried to find out why they changed job and why they want to come here, especially if it is a lateral move. Sometimes the information cannot be ascertained from the packet, so Dr. Escobedo makes pre-interview calls asking applicants about their career goals, what interest them professionally, how their last five bosses will rate their performance.
- The school or department then identifies key members for the interview panel. Two certificated staff members, two classified, two parents/community members. Also a current principal is invited, one of the Executive Directors, and a Human Resources staff member (usually a Director or the Assistant Superintendent).
- During the interview process, the applicants: Are provided a short period of time to review the questions, prepare a PowerPoint on something they are passionate about, complete a performance exercise, and answer questions from the panel. The panel then ranks the candidates and chooses the top three candidates for the next level of interviews.

- Cabinet then interviews the three candidates. Questions are focused specifically to the sites, e.g., dual immersion, special education, etc.
- Each Cabinet member then provides a recommendation to Dr. Escobedo. After reviewing all information provided, he makes the final decision and it has happened that a finalist is not identified and the decision is made to go through the process again.
- If a finalist is identified, before he recommends the hiring to the Board, Dr. Escobedo engages on a last, critical step, the reference check. He listed a number of questions he asks, such as the context with which they worked together, the person's biggest strengths and areas for improvement, how they rate their overall performance on a scale of 1-10, what were some of the person's struggles on the job.
- The last step is the Board interview and approval or denial.

Clerk Ugarte asked who creates the questions, how do those differ from the questions a panel would ask, and requested some examples. The District creates the questions—a principal scorecard with competencies, from which the questions are developed; and example: "How would you strategize with your School Site Council in approving or implement this instructional strategy? He explained all the questions are formulated and some come from the survey, for example if there is a need for a strong collaborator.

Vice President Bishop thanked Dr. Escobedo for the presentation. Asked if the surveys are just to create the things the District is looking for in a potential candidate. Dr. Escobedo said it may be two-fold, for an example, if a school needs a more seasoned principal, he looks at the survey [results] and tries to match one of the existing principals to the characteristics (since he has the ability of moving an principals). Also serve to cater some of the questions to the specific needs of the school. Vice President Bishop referred to Dr. Escobedo's comment about the school culture and asked if the District is discouraging applicants out of state applicants. Dr. Escobedo clarified that it depends on the position, for example for the Human Resources [Assistant Superintendent] position, he wanted to stay within California due to the laws and because people from other states may interact with their bargaining units very differently than in California. She asked regarding the original pool of applicants. Dr. Escobedo picks the original pool and if there are more than eight, he makes the pre-interview calls. Vice President Bishop asked if Dr. Escobedo picks the panel of stakeholders; he said he does for Cabinet positions only and invites the union presidents to participate. He clarified he is only part of the final interview. Vice President Bishop thanked him for the answers and that there are some amazing people in the District, so the hiring process is working. Dr. Escobedo said he would be happy to have more conversations on how to improve the process.

President Reyes acknowledged Vice President Bishop. She requested a presentation at the June 16 Board meeting by San Diego State University's Dr. Mohammed Abdi on behalf of Community Advocates for Just and Moral Governance regarding police on school campuses. Vice President Bishop also shared three concerns from parents who would like to participate in the Virtual Academy. 1) Friday is the deadline for signing up and parents are confused about how it will look; 2) It is not similar enough to distance learning; and 3) Individualized Education Programs will not be able to be followed within the model. She also read a note on behalf of Chula Vista Council of PTAs President Marina Beltran asking the Board of Education to reach out to community through parent/teacher surveys, small meeting discussions with parent leadership groups (including the PTA), and public comments for input in what parents and teachers would like to see in a new superintendent. She commented that Ms. Beltran's request goes along with what is already being done in the District when hiring upper management.

6. ADJOURNMENT

Adjournment

President Reyes adjourned the meeting at 8:38 P.M.

Motion: TAMAYO, Second: UGARTE, Vote: UNANIMOUS

Francisco Escobedo, Ed.D., Secretary

Lucy Ugarte, Clerk