

LUCIA MAR UNIFIED SCHOOL DISTRICT

BOARD OF EDUCATION

INTRODUCTION

The San Luis Obispo County Grand Jury investigated a complaint against the Lucia Mar Unified School District (LMUSD) Board of Education. In February, 2007 two principals were called into the Superintendent's office and told they would lose their present positions¹ as principals in their respective schools after the current school year. However, they were told they might be able to fill other positions in the school district, if any existed. Because the principals were allegedly given no warning this might happen, and because parents and other community members in the district were quite outraged, the Grand Jury decided to look into the matter.

METHOD

Members of the Grand Jury interviewed current and former Lucia Mar Unified School District (LMUSD) Board members, parents, administration and staff. The Grand Jury examined LMUSD Board meeting agendas for February 20 and 27, 2007, both of which were special closed sessions of the Board. According to the Brown Act, Board members are required to report out, in open session, any actions to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee taken during closed session.² The Grand Jury also examined LMUSD Board minutes (February 20, 27 and March 6, 2007), a

¹ For purposes of this report, "lose present position" includes the following: retirement, dismissal, reassignment, release or other terms indicating the administrators would not remain in their present positions.

² California Government Code Section 54957.1(a)(5)

LMUSD Board meeting tape of February 27, 2007 and performance reviews of one principal involved in the controversy (1984 to 2007). Members of the Grand Jury attended a meeting of the LMUSD Board of Education. We also reviewed various emails dated February 24 and 25, 2007 between concerned parents and LMUSD Board members. In addition the Grand Jury during the course of this investigation, reviewed the following documents:

1. Desk top references for School Boards and Superintendents
2. The Brown Act (Schools Legal Service)
3. Various District Policies of LMUSD
4. Education Codes pertaining to termination/reassignment of Administrators

NARRATIVE

TIME-LINE OF EVENTS

- In November, 2006, three new Board members were elected to the Lucia Mar Unified School District Board of Education.
- In December, 2006, according to testimony before the Grand Jury, a Board member shared with another individual that at least two other Board members intended to remove one or more principals from their current positions.
- On February 20, 2007, a Special Meeting of the LMUSD Board took place. The agenda listed two items to be discussed in closed session:
 - Public Employee Performance Evaluation
Title: Superintendent
 - Public Employee Discipline/Dismissal/Release
- The Minutes of February 20, 2007 reflect the following:
 - Six Board members were present, Ms. Santos was absent
 - The closed session lasted approximately 2 hours and 45 minutes
 - Nothing was reported out of closed session

- The meeting was adjourned as soon as the closed session ended.
- The next day, February 21, 2007, the complainant was summoned by the Superintendent via an email message. Later that day the Superintendent informed the complainant that the majority of the Board had given her direction to discuss possible employment/retirement options for the upcoming year because he would not be returning to his present position as principal of his current school. The complainant stated, “This came as a shock to me since I have had twenty-eight years of impeccable evaluations as a professional educator and have had extraordinary teacher, student and parent support during that time.” Note: the Grand Jury reviewed the management evaluations of the complainant and found them to be exemplary.
- On February 21, or 22, 2007, another principal had a similar interview with the Superintendent. Both principals told their staffs, and soon parents were aware that two well-respected principals were being removed from their current positions. Rumors began to spread about the causes for such abrupt action. It was reported the rumors were sometimes ugly and amounted to character assassination. Teachers, administrators, parents, even students were affected by what can only be termed an “uproar” in the community.
- On Monday, February 26, 2007 a LMUSD Board member attended a Parent Teacher Student Association (PTSA) meeting and spoke on the subject of the rumored dismissals. He claimed the Board did none of the actions the entire community thought it had done, and that he had no knowledge of why the Superintendent acted the way she did.
- On Tuesday, February 27, 2007 another Special Meeting of the LMUSD Board of Education was held. The agenda was the same as the week before, except that it included an item for the Board to report out of closed session. The Minutes reflect that the meeting was called to order at 7:00PM. After the Board heard public comments on closed session items, a motion was made and seconded by Board members to waive confidentiality so the previous week’s closed session could be discussed. The vote failed 5 to 2, in spite of the fact that the principals involved had waived their rights to confidentiality. Public comment continued until 9:45PM, at which time the Board went into closed session, which lasted until 10:44PM. Reported out of closed session was a

resolution, unanimously passed, expressing confidence and support in the principals involved. The Board issued a blanket apology and later blamed everything on “miscommunication.”

DAMAGE

The handling of the attempted reassignment/termination of two principals in the LMUSD caused great harm to the community, including the following:

1. Damage to the reputations of the principals due to rumors about the causes of the abrupt personnel actions.
2. Damage to the reputation of the Superintendent as rumors and conflicting information circulated regarding the reason she took action against the principals. The Superintendent subsequently resigned her position with LMUSD and accepted a position in Gilroy.
3. Potential loss of other administrators and teachers in the LMUSD because of fear, lowered morale, and mistrust caused by the actions against their colleagues and supervisors.
4. Confusion and stress among parents, followed by anger when Board members refused to discuss what had transpired on February 20, notwithstanding permission from principals involved.
5. Confusion and fear among students who heard many of the rumors.
6. Time taken away from educational and administrative matters and general disruption of educational processes.

WHAT SHOULD HAVE HAPPENED

While administrators in a school district serve at the will of the Board and can be released or reassigned for any reason or no reason, *after proper notification*, there are steps that are normally followed leading up to that notification. Some of these steps are codified in the *California Education Code*. Some are policies and procedures of individual school districts. The following is a summary of usual procedures for termination/reassignment of administrators, as given to the Grand Jury by the Superintendent and attorneys for LMUSD.

Typically, if there is reason to believe an administrator is not performing his/her duties as prescribed, issues are identified by the Superintendent, sometimes with input from the Board, and the Superintendent meets with the administrator to develop an improvement plan. The Superintendent and administrator meet regularly to monitor progress on the items identified for improvement. This can take a short time or a long time; however it is standard practice to provide plenty of opportunities to improve. If the improvement occurs there is no further action. If it does not occur, the administrator is notified that progress is not satisfactory, and s/he may receive a notice by March 15 that his/her services are no longer required.

Issuance of a notice prior to March 15 is required for reassignment to be effective for the following school year. If an administrator receives such a notice and is reassigned to a teaching position, the administrator has the right to request a written statement of the reasons for the transfer. If the reason for transfer is incompetence or unsatisfactory performance, the administrator must have received an evaluation within the 60 days preceding the notice of reassignment.

In the normal course of evaluation, which occurs biennially for most administrators (annually for new administrators), they receive feedback on their performance. (It should be noted that all administrators employed by LMUSD were evaluated this school year by the Superintendent.) The discussion of an administrator's performance is typically initiated by the Superintendent, however it can be initiated by a Board member.

Of course, an egregious action by an administrator, for example, hitting a child, would lead to immediate action by the Superintendent and/or the Board, such as putting the administrator on administrative leave. That is not what happened at LMUSD.

THE BROWN ACT

Based on the complaint and evidence examined by the Grand Jury, including the procedures normally followed by LMUSD for removing administrators who are underperforming (described above), the Grand Jury questions whether the Superintendent acted on her own, without direction

from the LMUSD Board. The Board, however, has declined to reveal what transpired in closed session on February 20, 2007, citing the Brown Act as justification.

The intent of the Brown Act is to protect the public from actions taken by legislative agencies behind closed doors, not to protect those agencies from their own wrong-doing, when it occurs. The Brown Act is a set of standards for holding closed sessions. It requires a public agenda and reporting to the public all actions taken in closed session to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee.

The LMUSD frequently used the same “placeholder³” items for their closed session agendas, including “Public Employee Discipline/Dismissal/Release” and “Public Employee Performance Evaluation: Superintendent.” They apparently believed they were then free to discuss any personnel item that might arise. However, Section 54957 of the Brown Act states, “As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session.” Thus, the use of placeholders, at best, thwarts the spirit of transparency in government and, at worst, may set the stage for a violation of the above section of the Brown Act.

The Grand Jury does not know exactly what went on during the closed session of the LMUSD Board of Education on February 20, 2007. It is likely that some direction was given to the Superintendent, but whether it followed a formal vote, or the equivalent of a “straw vote,” or simply a meeting of the minds, is not clear. The Grand Jury, however, believes the community deserves to know exactly what happened. The Board has the power, under the Brown Act, to waive confidentiality. In this case, the Grand Jury believes it is in the best interest of the community for the Board to do so and make public what transpired during closed session on

³ A placeholder is a term, sign or some other thing which generally stands in the place of content which is unknown or not identified.

February 20, 2007. Without the Board voluntarily providing the information, the Brown Act gives the District Attorney the authority to obtain it.⁴

CONCLUSION

The Grand Jury reviewed documents and listened to testimony. Everything we have reviewed and heard indicates the two principals who were told they were being removed from their positions were performing in an exemplary fashion. The Superintendent's actions subsequent to the February 20, 2007 closed session of the LMUSD Board (i.e., summoning two principals and telling them they will be removed at the end of the school year) does not appear to be consistent with "miscommunication," or with a lack of direction from the Board. The individuals involved and the whole community has been harmed and deserves to learn the truth. The Board has the power to make the whole truth known by waiving confidentiality and then being open and truthful with the citizens who elected them.

FINDINGS

1. Great harm has come to the community because of the secrecy surrounding the closed session of the Lucia Mar Unified School District Board of Education held February 20, 2007, and actions taken thereafter.
2. The Lucia Mar Unified School District Board of Education members may have been in violation of the Brown Act if, in the February 20, 2007 closed session, a collective decision by a majority of the Board gave clear indication to the Superintendent of their expectations that she remove a number of principals from their present positions and the Board did not subsequently report this action (i.e., giving direction to the Superintendent) in open session.

⁴ California Government Code Section 54963(e)

3. The Lucia Mar Unified School District Board of Education may be in violation of Section 54957 of the Brown Act if, in a February 20, 2007 closed session, specific complaints or charges were brought against any employees, including principals, and those employees were not notified in advance of their right to have the complaints or charges heard in an open session rather than a closed session.
4. The Lucia Mar Unified School District Board of Education is in violation of the spirit of openness when it uses “placeholders” as agenda items for closed sessions. A Board member testified to the Grand Jury about the placeholder “Public Employee Discipline/Dismissal/Release” saying, “I don’t think that’s legal. I think that if we’re going to be taking action against an employee, I think the Brown Act requires that we actually say ‘this is the employee we’re taking action against.’”
5. The Lucia Mar School Board’s actions subsequent to the February 20, 2007 special closed meeting exacerbated the problems. The public announcement and apology, blaming all the harm done on “miscommunication,” was not an adequate response to the community, based on testimony and continued public outcry.

RECOMMENDATIONS

1. Given that the affected principals have waived confidentiality, and given that the LMUSD Board of Education has the power to also waive confidentiality, the Board should, as a body, waive its right to confidentiality and place on the next possible agenda, a discussion of what actually occurred during the closed session of February 20, 2007. (Findings 1, 5)
2. If the LMUSD Board directed the Superintendent to remove principals from their current positions, Board members should make public their rationale for having done so without reporting out this action in open session, as required by the Brown Act. (Finding 2)

3. The LMUSD Board members should explain how their use of “placeholders” allowed them to discuss charges or complaints against employees in closed sessions, without first notifying those employees, under the Brown Act. (Findings 3, 4)
4. Receipt of required responses from Lucia Mar Unified School Board members and Superintendent should be forwarded to the San Luis Obispo County District Attorney for possible investigation of potential violations of the Brown Act by the Lucia Mar Unified School District Board of Education and for possible perjury in their testimony before the San Luis Obispo County Grand Jury. (Findings 1, 2, 3, 4)

REQUIRED RESPONSES

1. Responses from each Lucia Mar Unified School District Board of Education member – individually: Recommendations 1, 2, 3
2. Lucia Mar Unified School District Superintendent: Recommendations 1, 2, 3
3. San Luis Obispo County District Attorney: Recommendation 4

APPENDIX

SELECTED EXCERPTS FROM CALIFORNIA GOVERNMENT CODE

Sections 54950 – 54963

The Brown Act

54950. In enacting this chapter, the Legislature finds and declares that the public commissions, Boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

54950.5. This chapter shall be known as the **Ralph M. Brown Act**.

54951. As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any Board, commission or agency thereof, or other local public agency.

54952.2. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the

legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

54952.6. As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

54953.1. The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

54954.2. (a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an **agenda** containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in **closed session**. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

54954.5. For purposes of describing **closed session** items pursuant to Section 54954.2, the **agenda** may describe **closed sessions** as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the **closed session** items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

54957. Closed session regarding public security, facilities, employees, national security, examination of witness.

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session. (2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void. (3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body. (4) For the purposes of this subdivision, the term

"employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in **closed session** and the vote or abstention on that action of every member present, as follows:

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in **closed session** pursuant to Section 54957 shall be reported at the public meeting during which the **closed session** is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

54957.7. (a) Prior to holding any **closed session**, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the **closed session**. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the **closed session**, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) *After any **closed session**, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.*

(c) *The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the **closed session**, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.*

54958. The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

54959. Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

54963. (a) A person may not disclose confidential information that has been acquired by being present in a **closed session** authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a **closed session** that is specifically related to the basis for the legislative body of a local agency to meet lawfully in **closed session** under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a **closed session** if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor **Code** or Article 4.5 (commencing with Section 53296) of Chapter 2 of this **code**.