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March 9, 2021

BY EMAIL AND FIRST-CLASS MAIL

President Gabriela López
San Francisco Board of Education
555 Franklin Street
San Francisco, CA 94102

RE: Cure and Correct Letter Demanding Rescission of Resolution in violation of Brown Act

Dear President López:

Pursuant to the Ralph M. Brown Act (Gov. Code, § 54950 et seq), §54960.1(b), I write to demand that the San Francisco Unified School District Board of Education ("School Board") vote to immediately rescind Resolution No. 212-2A1 that was adopted by a 5-2 vote at the School Board's Regular Session Meeting on February 9, 2021.¹ (hereinafter, "February 9th Vote"). Please note that the Ralph M. Brown Act expressly provides that agendas must contain "a brief general description of each item of business to be transacted or discussed at the meeting." Cal. Govt. Code §54954.2(a)(1); Gov. Code, § 54954.2; see also *Hernandez v. Town of Apple Valley*, 7 Cal. App. 5th 194 (2017). Agenda items must include a brief general description of each item of business to be transacted or discussed at the meeting so as to "give the public a fair chance to participate in matters of particular or general concern."

Misleading and Incomplete Notice

With regard to the February 9th vote regarding Resolution No. 212-2A1, the agenda reads as follows: "**212-2A1 In Response to Ongoing, Pervasive Systemic Racism at Lowell High School.**" (hereinafter, "Resolution 212-2A1") Accordingly, the agenda item description reads as a fragment that neither satisfies the Brown Act's express statutory requirements nor the due

¹ [https://go.boarddocs.com/ca/sfusd/Board.nsf/files/BXSNFF5F9E6B/\\$file/Collins Lowell 2 Feb 2021.pdf](https://go.boarddocs.com/ca/sfusd/Board.nsf/files/BXSNFF5F9E6B/$file/Collins%20Lowell%20Feb%202021.pdf)

process rights afforded to all citizens under the California Constitution. Thus, the School Board's February 9, 2021 action on Resolution No. 212-2A1 and any actions now underway pursuant to that vote are not properly authorized by law as the vote exceeded that which appeared in the description.

In *Hernandez v. Town of Apple Valley*, 7 Cal. App. 5th 194 (2017), the court held that the Apple Valley Town Council's agenda item description was insufficient because it did not inform the public that any action was to be considered. To that end, the School Board must "cure and correct" the Brown Act violation here by rescinding the vote and properly noticing and rehearing the matter.

Moreover, additional, multiple Brown Act concerns stem from the February 9th hearing, including, but are not limited to, the fact that the agenda description did not inform the public that:

1. The School Board would vote to abandon the long-term use of the Lowell Admissions Policy that was created by a Task Force and specifically designed to create a diverse student body;²
2. The School Board would vote to enter into an MOU to create a body outside of the jurisdictional purview of the San Francisco Unified School District (hereinafter, "SFUSD") for the purpose of conducting an "equity audit" of Lowell High School³ and the SFUSD;
3. The School Board would vote to enter into an agreement with the City and County of San Francisco to utilize the services, time, and resources of the Office of Racial Equity, a division of the San Francisco Human Rights Commission, in partnership with the SF NAACP, the California NAACP, and the National NAACP to establish a Community Coalition comprised of SFUSD Black Student Union Leaders, the SFUSD African American Parent Advisory Council, the SF Alliance of Black School Educators, and other alumni, anti-racist educators, students, and community leaders to lead and inform this work;
4. The School Board would vote to seek outside funding for this MOU and equity audit;
5. The School Board would initiate an MOU process with the Education and Civil Rights Initiative (CRI) of the Kentucky College of Education, Lexington, Kentucky; and
6. That the School Board would act to impact and alter a prior vote that it took on October 20, 2020 when the School Board imposed a temporary one-year interim lottery admissions process for Lowell High School because of compliance difficulties with Board of Ed Policy 5120.1⁴ that allegedly stemmed from the COVID 19 pandemic

² 1. <https://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AZS28M7BDEA9>

³ <https://www.sfusd.edu/school/lowell-high-school/school-information/school-profile-2018-2019>

⁴ <https://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AZS28M7BDEA9>

February 9th Vote Exceeded the Scope of the Agenda Notice and Occurred in Violation of the Brown Act

None of the above was generally described or listed in the Agenda Item Description, as required by the Brown Act and the California Constitution. Thus, the School Board acted beyond the scope of the agenda item description when it adopted Resolution No. 212-2A1 and voted to “use the regular admissions process that is used by other comprehensive high schools in SFUSD in the 2021-2022 academic year and beyond” for Lowell High School. Moreover, any further action item contained within Resolution No. 212-2A1 is also not properly authorized. Again, the required agenda item description for Resolution 212-2A1 merely reads as follows, ***“212-2A1: In Response to Ongoing Pervasive, Systemic Racism at Lowell High School.”***

By way of comparison, on October 20, 2020, the School Board convened to vote on a resolution to vote and adopt an interim admissions policy for Lowell High School for the 2021-2022 school year due to the COVID-19 pandemic. At that time, the agenda item description clearly provided as follows: ***“Superintendents’ Resolution To Adopt An Interim Lowell Admissions Policy For the 2021-2022 School Year.”*** Here, the October 20, 2020 agenda item description directly informed the public of the introduction of a resolution that would result in a School Board vote to alter or impact the long-standing admissions process that was designed to create a diverse student body at Lowell High School.⁵

Failure to Abide by Board Policy 1200

Board Policy 1200

Community Involvement

Board Policy 1200 provides that, “the Board of Education acknowledges that parent and community involvement in the public school system is one of our most valuable resources in improving the quality and support of public education.” The agenda item description on February 9, 2021 misled and silenced countless voices in our under-represented communities by failing to notice the full scope of the action contemplated. Moreover, the one-week turnaround from Resolution 212-2A1’s first reading to final vote drew criticism and concerns that were raised from those who favored the purpose of Resolution 212-2A1. It is significant that the Reverend Amos Brown, who is the President of the San Francisco Chapter of the NAACP repeatedly *pled* with the School Board for a continuance and delay of matters regarding the Lowell Admissions policy. The Reverend Amos Brown stated:

I'm back here with you again. I want to chime in with the parents and to say we welcome their involvement with the NAACP, the lives of black school educators, the black faith community and the Asian Democratic club on this matter of admissions...It's disrespectful. We ought to have everybody at the table. Have reasonable, respectful conversation... At the end of the day, we can say look and say see what we did. We would have been a dream team. Like they were in South Africa with Mandela and Desmond Tutu. That's the way you deal with these challenges and social issues... You don't go into a silo and talk to oneself...Please,

⁵ <https://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AZS28M7BDEA9>

let us join together with the parents, they have spoken.....We need to put the brakes on and put a timeline, 70 days will be good enough time period.... we don't need a paralysis of an analysis. We know what has been going on.... Let's come together and come and at the end of the day and say what we have done. **We are going too fast with this matter about the changes with the admissions policy and also the situation at Lowell High School. And changing the names of the schools in this district.** (emphasis added.) Board of Education Hearing, February 9, 2021: 2:05.

Inexplicably, the voices of the SF Chapter of the NAACP as well as numerous Asian and Chinese community leaders, including Seeyew Mo (President of Families for San Francisco), multiple leaders from the Chinese American Democratic Club, members of the Lowell Community, including, students, parents, alumni, former Lowell Alumni Association Board Members, current Lowell Alumni Association Members, including Lisa Le Moi (President of the Friends of Lowell Foundation) as well as other members of the community were simply dismissed out of hand by the School Board when it voted 5-2 to adopt Resolution No. 212-2A1 absent meaningful community member participation.

Again, this item had only been introduced *one week earlier and the public was not given a formal presentation from those involved with MOU until after Public Comment* had closed on February 9, 2021. Notably, the voices of two School Board Members Jenny Lam and Kevine Boggess, also urged the School Board to slow down and consider a different path with regard to action taken pertaining to the proposed permanent Lowell High Admissions policy changes.⁶

Unreasonable Time Limits on Public Comment and then Reopening of Public Comment for Proponents of the Resolution Without Giving Opponents Equal Time.

Next, while the Brown Act allows the School Board to place reasonable time limits on public participation on agenda items, the 30-minute limit on public comment in opposition to this multipronged motion absent any committee hearing or task force review and absent having meaningful disclosure or explanation of the resolution until after Public Comment closed on the resolution does not satisfy the intent of the Brown Act as this was not reasonable under these circumstances.

Allotting each member of the public one minute to speak on such an intricate proposal was completely unreasonable under the circumstances and failed to fulfil the tenets of the Brown Act which seeks to create inclusion, not exclusion of the public on matters of importance to the community. This multi-pronged resolution was first introduced on February 2, 2021 absent any meaningful, detailed presentation from all the stakeholders and participants or the many community groups involved with the MOU process.⁷

In addition, the February 9, 2021 meeting record pertaining to Resolution 212-2A1 demonstrates that the School Board *reopened the public comment process* when it placed several members of the public in support of Resolution 212-2A1 onto the Zoom platform as “panelists” for what was supposed to be “questions and answers from the commissioners.” Instead of merely answering

⁶ <https://www.youtube.com/watch?v=YlQTum5V4EA>

⁷ <https://www.youtube.com/watch?v=2kZRsf9Goa4>

questions, these members of the public introduced additional testimony absent any questions being posed to them by the Commissioners. This action was so unusual and so violative of the hearing process that SF Chronicle reporter Jill Tucker repeatedly tweeted during the hearing:

- The SF school board has abandoned meeting protocol, giving time to outsiders supporting the measure to speak at length on their opinions and personal experiences after public comment. I've spent countless hours in public meetings and this one is off the rails.

- While the board claims they have contributed to the resolution, they are not elected officials and the time has passed to for public comment. The board can ask questions of experts, but that is not what's happening.

-SF school board still allowing outsiders to share their opinions after public comment. They are supposed to be there to answer board questions. We are now 6.5 hours into this meeting.

- SF Board now allowing outside community members, including Rev. Amos Brown, to continue sharing their opinions even though public comment is over. This is not how it's supposed to go. This violates board policy and how public meetings are conducted.¹

In violation of the Brown Act, no equal time was given to those in opposition to Resolution 212-2A1 or to comment on what these so-called "panelists" stated after the close of public comment. As a result, the School Board impermissibly violated the time limitations that it specifically set for the public comment and thereby violated the Brown Act by favoring one side over the other.

Please take note that pursuant to Government Code §54960.1, the School Board has 30 days from today's date to cure or correct the foregoing actions and inform my office in writing of the steps it is taking to do so. Should you fail to cure or correct, the Brown Act authorizes commencement of an action by mandamus or injunction for the purpose of obtaining a judicial determination that the Board of Education acted in violation of the Act and thus the action is null and void. See Gov't. Code §54960.1(c).

In the interest of resolving these issues in an amicable manner short of litigation, I would encourage the School Board to rescind this matter and allow for a meaningful, complete, community process to take place that includes ALL stakeholders and interested parties to participate in this process. All interested parties must participate in a legitimate, inclusive, community driven process that focus on the whole of the SFUSD and arrive at a process by which the issues you have raised in Resolution No. 212-2A1 can be addressed at the appropriate time.

Hopefully, the SFUSD schools will be fully open soon. The work contained in Resolution 212-A21 is important and participation must be inclusive. Sheryl Davis, Executive Director of the Human Rights Commission of the City and County of San Francisco also testified on February 9, 2021 and warned, “...I support this resolution, yet I have concerns about *unintended consequences*....I want to make sure that we’re focused on *bias... and that the oppressed do not become the oppressors*....”.⁸

Compliance with California’s open meeting laws as well the mandates of the California Constitution, including acting to uphold due process is not “an elective option” for the School Board; compliance with the law applies equally to all and is mandatory.

Sincerely yours,

A handwritten signature in blue ink, reading "Christine A. Linnenbach". The signature is fluid and cursive, with a large loop at the end.

Christine A. Linnenbach, Esq.

Cc:

Members of the Board of Education

Esther Casco, Assistant to the Board of Education; cascoe@sfusd.edu

Vincent Matthews, Superintendent of Schools; matthewsv@sfusd.edu

Mayor London Breed, San Francisco Mayor; mayorlondonbreed@sfgov.org

City Attorney Dennis Herrera, San Francisco City Attorney; Brittany.feitelberg@sfcityatty.org

⁸ <https://www.youtube.com/watch?v=YIQTum5V4EA;>



Jill Tucker ✓ @jilltucker · Feb 9

The SF school board has abandoned meeting protocol, giving time to outsiders supporting the measure to speak at length on their opinions and personal experiences after public comment. I've spent countless hours in public meetings and this one is off the rails.

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Jill Tucker ✓ @jilltucker · Feb 9

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Jill Tucker ✓ @jilltucker · Feb 9

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Jill Tucker ✓ @jilltucker · Feb 9

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