



Eureka City Schools

Gary Storts, Superintendent
Office of the Superintendent
2100 J Street | Eureka, CA 95501

August 30, 2024

Hand-Delivered

Honorable Judge Kelly L. Neal
Humboldt County Superior Court
825 5th Street
Eureka, CA 95501

Hand-Delivered

Humboldt County Civil Grand Jury
825 5th Street
Eureka, CA 95501

Dear Judge Neal:

Pursuant to Penal Code section 933.05, subdivision (f), this correspondence serves as the response of Eureka City Schools (“District”) to the 2023-2024 Humboldt County Civil Grand Jury (“Grand Jury”) Final Report entitled “Eureka City Schools – Board of Trustees, Deal or No Deal” (“Final Report”), published June 12, 2024. This response was included as part of the District’s Board of Trustee’s August 29, 2024, Board meeting, on the open session agenda, and approved by the Board.

The Final Report addresses the Board’s process for approving an exchange of real property pursuant to Education Code section 17536. The Final Report concluded that the Board complied with the Ralph M. Brown Act, but criticized the Board for the fashion in which it approved the real property exchange. While the District complied with the law, the Board values public participation, and concedes that it could have been more transparent with the public regarding the real property exchange.

The Final Report included six Findings and five Recommendations that require a response. The District responds to each of the Findings and Recommendations as follows.

RESPONSE TO FINDINGS

Finding 1: Public notice of the pending real-estate decision prior to the December 14, 2023, Eureka City Schools Trustee meeting did not describe the transaction as a proposed property exchange under California Education Code section 17536 and did not specify both parties

involved. Therefore, the public did not have an opportunity to be informed and to question the details of the pending decision.

Response to Finding 1: The Board disagrees partially with this Finding. Prior to December 14, 2023, the real property transaction was brought to the Board as a closed session item authorized by Government Code section 54956.8 because the District was in active negotiations. Government Code section 54954.5, subdivision (b), provides safe harbor language that the Legislature recommended including when a governing body is meeting in closed session to have a conference with its real property negotiators. The safe harbor language does not require the District to identify details such as whether a real property exchange is being addressed within the agenda. (See Gov. Code, section 54954.5, subdivision (b).) The District did list the proposed acquirer of the property as a negotiating party on the closed session agenda item for December 14, 2023. It did not list the District as a negotiating party, though that was implied by the presence on the District's agenda; further, Government Code section 54956.8 does not require the identification of the District as one of the parties to the negotiation.

Finding 2: Public notice of the pending real-estate decision prior to the December 14, 2023, Eureka City Schools Trustees meeting did not identify the person or person with whom the designated Eureka City Schools negotiator may negotiate – specifically, the name (identity) of the principal members and financial backers of AMG Communities – Jacobs, LLC. Therefore, the public did not have an opportunity to be informed and to question the details of the pending decision.

Response to Finding 2: The Board disagrees partially with this Finding. The Board agrees that it did not list AMG Communities – Jacobs, LLC, as a party with whom it was negotiating at the Board Meetings prior to the December 14, 2023 meeting. As to identifying the principal members and financial backers of AMG Communities – Jacobs LLC, the Brown Act does not require that degree of detail on the agenda. Government Code section 54945.5, subdivision (b), requires the District to identify the name of its negotiator, not the name of the negotiator for the other party to the negotiations. That section indicates that in listing the negotiating parties, the agenda must “[s]pecify name of party (not agent)”, which is what the District did on the December 14, 2023, agenda.

Finding 3: Public notice of the pending real-estate decision prior to the December 14, 2023, Eureka City Schools Trustee meeting did not include the proposed text of Resolution 23-24-023 and Agreement. Therefore, the public did not have an opportunity to be informed and to question the pending decision.

Response to Finding 3: The Board disagrees partially with this Finding. The District did not release the text of Resolution 23-24-023 until after the Board provided additional direction to the District negotiator in closed session, paving the way for Board to proceed with adopting the Resolution to approve the exchange agreement in open session. The public did have an opportunity to be informed because the Board discussed the item in open session and allowed the public the opportunity to comment in open session on the agenda item. The Board voted to approve the Resolution only after inviting public comment. However, the Board appreciates and understands the Grand Jury's concern with allowing the public a longer opportunity to review agreements being considered by the Board when feasible. The Board is dedicated to providing an opportunity for the public to be informed of pending District decisions within the confines of the Brown Act and the District's operational needs.

Finding 4: Eureka City Schools Trustees did not fully vet AMG Communities-Jacobs, LLC to establish the bona-fide identity of its members and its financial integrity and discuss this information in open session. Therefore, the public did not have an opportunity to be informed and to question the details of the pending decision and its potential relationship to other local public policy issues.

Response to Finding 4: The Board disagrees partially with this Finding. There is no provision in the Government Code, Education Code or other applicable law which requires the District to prequalify or review financials of a proposed acquirer of District property. Education Code section 17536, *et seq.*, regarding property exchanges does not require any such process. If the District had engaged in a sale of the surplus property, rather than an exchange, there is an even more explicit process the District must follow, and it again does not provide for prequalification or financial reviews; it simply contemplates sale to the high bidder. (See Ed. Code sections 17455, *et seq.*) Additionally, the District's obligation is to serve its students, parents, teachers, and staff. The Board approved a real estate transaction on the basis that the additional cash consideration would directly benefit the District's students by aiding needed improvements to District facilities. That purpose is directly in line with the District's mission and statutory authority, while other local public policy issues beyond the District's responsibility may not be.

Finding 5: Resolution 23-24-023 and Agreement was introduced and voted on within 2 ½ hours on December 14, 2023. The Eureka City School Trustees acted hastily without sufficient prudence and due diligence. This deprived the public of information and adequate explanation and communication regarding terms and conditions or sufficient opportunity to consider, respond or question the transaction.

Response to Finding 5: The Board disagrees partially with this Finding. It agrees that it publicly introduced the supporting documentation for the item and voted on it in open session within approximately 2 ½ hours of the documentation being made public. The Board disagrees that it acted hastily without sufficient prudence and due diligence. The Board agrees that the public could have been afforded additional time to review the agreement, for example if the open session item had been deferred to a later Board meeting.

Finding 6: Eureka City Schools Trustees conducted unrecorded, secret, undocumented, and undisclosed negotiations. This deprived the public of adequate explanation and communication regarding terms and conditions, or sufficient opportunity to consider, respond or question the transaction during open sessions, and prevented the Humboldt County Civil Grand Jury from determining whether Eureka City Schools Trustees complied with the California Government Code during closed sessions.

Response to Finding 6: The Board disagrees partially with this Finding. The Board met appropriately in closed session to discuss the price and terms of the proposed real property transaction, as allowed by the Brown Act. Government Code section 54956.8 expressly authorizes a closed session meeting for this purpose. Furthermore, the District provided all non-privileged documents responsive to the Grand Jury's request. The District concedes that if there had been greater time between the property exchange agreement being made public and the Board acting on it that there would have been more opportunity for public review and input.

RESPONSE TO RECOMMENDATIONS

Recommendation 1: Pursuant to California Government Code section 54957.2 the Eureka City Schools Trustees designate a clerk or other officer or employee to attend each closed session and keep and enter in a confidential minute book a record of topics discussed and decision made at the meeting. This recommendation is to be done by December 31, 2024.

Response to Recommendation 1:

This recommendation will not be implemented. No person may disclose confidential information that has been acquired by being present in an authorized closed session to a person not entitled to receive that confidential information. "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. (Gov. Code, § 54965; *Harron v. Bonilla* (2005) 125 Cal.App.4th 738, review

granted (28 Cal.Rptr.3d 3) and subsequently dismissed (49 CalRptr.3d 654); *Kleitman v. Superior Court* (1999) 74 Cal. App. 4th 324; 86 Ops.Cal.Atty.Gen 210 (2003). Keeping a confidential minute book could lead to impermissible disclosure of such information. It also runs the risk of discovery of the deliberative process of the Board, which is protected as a privilege under California law. (See *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.) The District also notes that school districts and other local agencies across the State typically do not keep minutes of closed session.

Recommendation 2: Although the time for immediate cure and correct action has expired, the Eureka City Schools Trustees make details of the Jacobs property negotiations and ongoing status of the transaction known to the public by October 1, 2024.

Response to Recommendation 2:

This recommendation has been implemented. The Board has made details of the Jacobs property negotiations through agenda items in open session at multiple Board meetings, including April 4, 2024, July 10, 2024, and August 8, 2024. The Board has also provided relevant, non-privileged documents and records in response to multiple California Public Records Act requests.

Recommendation 3: The Eureka City Schools Trustees adopt and implement procedures to assure compliance with the spirit and intent, as well as the literal and technical requirements, of the Brown Act with respect to public notice and participation to avoid the deficiencies noted in this report. The recommendation is to be done by March 31, 2025.

Response to Recommendation 3:

This recommendation has been implemented. As the Grand Jury's Final Report concludes, the Board complied with the technical and literal requirements of the Brown Act. The Board remains dedicated to complying with the Brown Act and has existing policies directing compliance, including Board Bylaw 9320 (Meetings and Notices), Bylaw 9321 (Closed Session), Bylaw 9322 (Agenda/Meeting Materials), Bylaw 9323 (Meeting Conduct), and Bylaw 9323.2 (Actions By The Board). Regarding the spirit and intent of the Brown Act, those are subjective standards. While the District will continue to strive to comply with those subjective standards of spirit and intent, it is able only to ensure compliance with the objective standards and direct statutory guidance set forth in the Brown Act.

Recommendation 4: The Eureka City Schools Trustees create audio and video recordings of all open sessions of Eureka City Schools Trustee meetings. This recommendation is to be done by December 31, 2025.

Response to Recommendation 4:

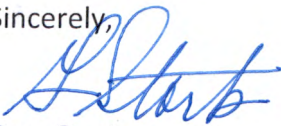
This recommendation will be implemented. The District is exploring the ability to audio and video record its open session meetings to improve the public's ability to attend meetings remotely and allow the public the ability to review its open session meetings at a later date.

Recommendation 5: The Eureka City Schools Trustees and staff engage in comprehensive Brown Act training conducted by independent experts not connected with Eureka City Schools or California School Boards Association. This recommendation is to be done by December 31, 2025.

Response to Recommendation 5: This recommendation will be partially implemented. As part of their commitment to transparency and openness, the Board annually participates in governance workshops and trainings. The request that the Board use independent consultants not related to the District or CSBA is unwarranted. Rules and procedures governing school districts are unique. To ensure proper compliance, the District relies on consultants and associations that are experts in school board governance and procedures. The Board and District staff are committed to receiving annual governance training, including on the Brown Act, but will continue to exercise the District's discretion as to the appropriate trainers.

On behalf of the Board, thank you for the insight and recommendations in the Final Report. The Board and District staff is committed to take the expressed desire for greater transparency into account in any future real property transactions. The Board looks forward to shifting focus back to the mission and vision of the District and its support of the important work of educating students.

Sincerely,



Gary Storts
Superintendent