



# Capistrano Unified School District

*Excellence in Education*

33122 Valle Road, San Juan Capistrano, CA 92675

Telephone (949) 234-9200/FAX 493-8729

May 23, 2011

## BOARD OF TRUSTEES

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## SUPERINTENDENT

JOSEPH M. FARLEY, Ed. D.

Office of the District Attorney  
Tony Rackauckas, District Attorney  
401 Civic Center Drive West  
P.O. Box 808  
Santa Ana, California 92701

Dear Mr. Rackauckas,

Thank you for providing the Capistrano Unified School District (CUSD) the opportunity to provide additional information concerning allegations that the CUSD Board of Trustees violated provisions of the Brown Act during recent Board meetings.

A table is inserted, in the front pocket of the notebook, that summarizes some of the information contained in this binder and includes the following information:

1. Board meeting dates, including some the earlier investigation should have cited
2. Agenda descriptions and agenda reference numbers
3. A summary of the earlier investigation findings if the meeting was analyzed by your office
4. A rebuttal finding if the meeting was analyzed
5. Supportive evidence or documentation to support that rebuttal
6. Other supportive evidence to that rebuttal that may be acquired during the renewed investigation into this matter, and;
7. A summary of supportive documents for each Board of Trustees meeting cited on the table.

Some or all of the information referenced above require background explanations to fully appreciate their impact on the investigative findings.

Assistant District Attorney Ray Armstrong is meeting with me tomorrow to initiate the continuation of the investigation. He is also scheduled to do additional interviews and to review data on May 31, 2011, and June 2, 2011, including interviews with staff and Trustees.

Your letter of May 6, 2011, to Marcus Walton, Chief Communications Officer, is attached as it summarizes your office's preliminary findings on the compliance issues.

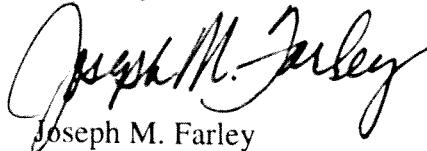
Ltr: Tony Rackauckas, District Attorney

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Please do not hesitate to contact me if you need any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph M. Farley". The signature is fluid and cursive, with the first name "Joseph" and last name "Farley" clearly legible.

Joseph M. Farley

Attachment

c: Raymond Armstrong, Assistant District Attorney  
Jack R. Brick, President, Board of Trustees  
Dr. Gary Pritchard, Vice President, Board of Trustees  
John M. Alpay, Clerk, Board of Trustees  
Ellen M. Addonizio, Member, Board of Trustees  
Anna Bryson, Member, Board of Trustees  
Lynn Hatton, Member, Board of Trustees  
Sue Palazzo, Member, Board of Trustees

CAPISTRANO UNIFIED SCHOOL DISTRICT  
San Juan Capistrano, California

Response to District Attorney Inquiry Concerning Board of Trustees Compliance with the Brown Act—Government Code Section 54950  
May 23, 2011

Notation on Related District Attorney Information:

On October 9, 2007, the District Attorney for the County of Orange, Tony Rackauckas, informed then Board President Sheila Benecke that due to a number of findings it was **recommended** the Board “should record or transcribe all closed sessions.” (Exhibit V, page 36, recommendation 3)

In a related matter, the Board entered into a settlement and release agreement with Mr. Ron Lackey concerning Orange County Superior Court Case #06CC00149 (Exhibit W). This matter resolved another Brown Act-related complaint and called for the recording of the closed sessions for a one year period. Given the recommendation of the District Attorney and the formal agreement in the Lacey case, the Board recorded its closed session meetings for over one year and then curtailed the practice of recordings, not because of concerns from Brown Act compliance, but because of the cumbersome process of recording the sessions.

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Board Meeting Date	Agenda Item Description	Legal Citation Regarding Description and Rebuttal	District Attorney's Finding	CUSD Rebuttal Finding	CUSD Supportive Evidence and/or Documentation	Other Potential Evidence and/or Documentation Available	Exhibit Number, Other Information, and/or Notation
March 16, 2011	N/A	N/A	The Board conferred outside of the hearing of the public in violation of the Brown Act	The vice president of the Board, who was conducting the meeting, called for a brief recess. During this time three Trustees talked at the end of the dais for less than 5 seconds behind Supt. Farley. Although this doesn't represent a quorum of the Board, Dr. Farley asked them to separate, which they did quickly. Other Trustees remained in their seats or exited the meeting room.		<p>Testimony from Jane Boos concerning the meeting at the end of the dais.</p> <p>Testimony from Supt. Dr. Farley concerning the meeting at the end of the dais.</p> <p>Testimony from Board of Trustees present at the Marcy 16, 2011, meeting concerning their placement and discussion during the recess of the meeting.</p>	

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March 16, 2011	<p>Report on the restoration of furlough days and pay Agenda Item #2 (open session)</p> <p>Response to demand to cure and correct Brown Act Violations Agenda Item #3 (open session)</p> <p>Reaffirmation of previously considered restoration of furlough days and pay Agenda Item #4 (open session)</p>	Most violations of the Brown Act can be remedied by correction of the alleged violation.	The District Attorney's finding acknowledged that the cure and correct remedy was implemented but asked for a clearer concession of the actual violation of the Brown Act.	The District implemented the cure and correct procedure as a precaution, but did not believe that it actually violated the Brown Act.	<p>Board agenda of March 16, 2011</p> <p>Minutes of March 16, 2011</p>		<p>EX Q: March 16, 2011, Board Agenda</p> <p>EX R: March 16, 2011, Board minutes</p> <p>EX S: Exhibit entitled "Report on the Restoration of Furlough Days and Pay for Four Employee Organizations"</p> <p>EX T: Exhibit entitled "Response to Demand to Cure and Correct Alleged Brown Act Violations"</p> <p>EX U: Exhibit entitled "Reaffirmation of Previously Considered Restoration of Furlough Days and Pay for Four Employee Organizations"</p>

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January 26, 2011	Conference with Labor negotiators Agenda Item #3B (closed session)	This item was appropriately posted on the agenda Gov. Code 54957.6	The District Attorney's findings indicate that the Board voted to reinstate teacher's salaries at this meeting	The Board voted to instruct the labor negotiator.  Because there were varied opinions on this topic among Trustees, a vote was taken to authorize negotiators to honor an agreement that was previously approved by the Board.	Board agenda of January 26, 2011	Testimony from Board of Trustees present at the January 26, 2011, closed session  Testimony from Superintendent Joseph Farley concerning discussion during the closed session	EX N: January 26, 2011, Board agenda  EX O: January 26, 2011, "Confidential Legal Opinion on CUEA/CUSD Contract Language," by Attorney Jack M. Sleeth, Jr. that was discussed during the closed session  EX P: Budget information distributed during closed session re: Implication of honoring the agreement.

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January 11, 2011	Revised 2010-2011 School Calendar: Approval, revisions to the 2010-2011 school calendar, restoring two instructional days Agenda Item #4 (open session)	This item was appropriately posted on the agenda Gov. Code 54954.2(a)	Not Referenced	The Board took action to restore two instructional days to the calendar	Board agenda of January 11, 2011  Minutes of January 11, 2011  Testimony of Assistant Superintendent Julie Hatchel concerning the error on the exhibit to this item, which incorrectly stated that the approval occurred on December 13, 2010	The exhibit to this item incorrectly stated that the Board had approved the reinstatement of furlough days on December 13, 2010.	EX I: January 11, 2011, Board agenda  EX J: January 11, 2011, Board minutes  EX K: Statement of Assistant Superintendent Julie Hatchel concerning the error to the exhibit.  EX L: Exhibit entitled "Proposed Revisions to 2010-2011 School Calendar"
January 11, 2011	Conference with Labor Negotiators Agenda Item #41D (closed session)	This item was appropriately posted on the closed session agenda Gov. Code 54957.6	Not Referenced	The Board discussed the collective bargaining implications of restoring two "instructional" furlough days	Notations of Assistant Supt. Jodee Brentlinger re: closed session discussion  Testimony of Jodee Brentlinger concerning closed session discussion		EX M1: Assistant Superintendent Jodee Brentlinger's notes.  EX M2: Transcription of audio recording of agenda item four on Board agenda of January 11, 2011

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December 13, 2010	Public Employee Performance Evaluation – Superintendent Agenda Item #2A (closed session)	Gov. Code 54957 permits closed sessions to discuss the performance of the superintendent	The District Attorney's finding incorrectly states that a vote was taken to reinstate furlough days at this meeting.	The Board discussed the performance of the Superintendent  No vote was taken on this item during this closed session meeting or on any other item as the performance evaluation was the only topic on the closed session agenda.	Board Agenda of December 13, 2010  Extensive background material for the Superintendent evaluation and goals, distributed to Board of Trustees on December 9, 2010, with the December 13, 2010, Board Agenda	Testimony from Board of Trustees present at December 13, 2011 closed session.  Testimony from Superintendent Dr. Joseph Farley concerning the intent of this meeting, which was planned exclusively for discussions concerning his performance as superintendent.	EX. F: December 13, 2010, Board agenda  EX. G: December 13, 2010, Board minutes  EX H: Background material for Superintendent evaluation and goals



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December 7, 2010	Conference with Labor Negotiators Agenda #48F (closed session)	<p>Votes taken relative to direction to a negotiator are not reported out after closed sessions. Gov. Code 54957.1(a)(6)</p> <p>Gov. Code 54957.6 permits closed session for reviewing positions and instructing labor negotiators.</p>	Not Referenced	<p>The Board voted to instruct the labor negotiator.</p> <p>Because there were varied opinions on this topic among Trustees, a vote was taken to authorize negotiators to honor an agreement that was previously approved by the Board.</p>	<p>Board agenda of December 7, 2010</p> <p>Meeting information with (CUEA) association officers on December 8, 2010</p> <p>Board Update of December 10, 2010, citing meeting with association officers on December 8, 2010</p>	<p>Testimony from Board Secretary Jane Boos concerning discussions during December 7, 2010, closed session</p> <p>Notation by Board Secretary Jane Boos concerning discussions during December 7, 2010, closed session</p> <p>Testimony from Deputy Superintendent Ron Lebs and Assistant Superintendent Jodee Brentlinger concerning meeting with association officers on December 8, 2010, where follow-up action was discussed as a result of Board action given on December 7, 2010</p> <p>Testimony from Board of Trustees present at December 7, 2010, closed session</p>	<p>EX A: December 7, 2010, Board agenda</p> <p>EX B: Support materials distributed to the Board on December 2, 2010, for the closed session discussion at the December 7, 2010, meeting</p> <p>EX C: Meeting information concerning meeting with association officers on December 9, 2010, and December 13, 2010</p> <p>EX D: Notation by Jane Boos concerning discussions during December 7, 2010, closed session</p> <p>EX E: Board Update of December 10, 2010</p>