

August 13, 2015

Re: Request for Formal Written Advice

I am writing to request formal written advice on whether I have a conflict of interest under the Political Reform Act that would prevent me from deliberating, voting or otherwise participating in matters involving the Office for Civil Rights of the U.S. Department of Education in my role as a member of the Governing Board of the Palo Alto Unified School District. I was first elected to the Board in November 2014, and I am a resident of Palo Alto and employed fulltime as a software engineer at Google.

Background information

In late 2012, the Palo Alto Unified School District (PAUSD) reached two resolution agreements with the U.S. Department of Education Office for Civil Rights (OCR), in response to complaints from parents. One of those complaints resulted in a finding by OCR that the district had violated federal civil rights laws in failing to protect a disabled student from bullying. After the agreements and finding were reported in the press in January 2013, I and other community members advocated publicly for a more transparent and proactive response from the district and the school board. I was at that time a leader of a community group that advocated on the subject of student social-emotional well-being and school reform issues.

Subsequently OCR opened several more investigations, two of which are still pending: a Title IX compliance review regarding sexual harassment and assault at Palo Alto High School, and a complaint regarding sexual harassment of a student at Gunn High School. Both of these investigations have been reported in the press. In June 2014 the School Board adopted a resolution criticizing OCR's investigation procedures. The board's handling of the OCR matters was a central issue in the 2014 school board election, in which I criticized the board's OCR resolution and called for a more cooperative relationship with the federal government. I was elected to the PAUSD Board of Education in November 2014.

From 2002-2010 I served as a paid consultant to the non-profit Ed Trust West, working with then-executive director Russlynn Ali (a law school classmate of my wife) who was later appointed by President Obama to be Assistant Secretary of Education for Civil Rights and head of OCR. In 2013, I did a small amount of uncompensated consulting (less than 20 hours) to the non-profit Public Counsel. The director of impact litigation at Public Counsel was at that time Catherine Lhamon, who was later appointed by President Obama to succeed Ali. From 2005-13, my wife served on a non-profit board with Lhamon.

From 2009 through 2011, I served as an occasional paid consultant to OCR with respect to the Civil Rights Data Collection (CRDC) national survey of school districts (I did minor consulting regarding the CRDC in 2012, and participated in a staff training on statistics in 2014 on a pro-bono basis without compensation). From 2009-2011 I received a total of \$26,426, including

\$5,872 in 2011, all reported as W-2 income. I have received no compensation from the Department of Education since 2011. I had no knowledge of OCR investigations in Palo Alto prior to the 2013 press reports from any source, either within or outside OCR.

On February 16, 2013, after learning of OCR's finding against PAUSD for violations of civil rights law, I wrote to OCR asking for information about how common it is for complaint investigations to result in such findings. OCR treated my inquiry as a FOIA request and provided information which I shared with the district, the School Board, the public, and the press. I also noted to OCR that other families with disabled or minority children had reported similar issues, and asked whether the agency was considering a consolidated approach to address any systemic issues. In reply, OCR referred me to various departmental policy documents, and I had no further communications with OCR on the subject of systemic enforcement. All of my correspondence with OCR on the subject of PAUSD is attached as Exhibit B.

In May 2013 I helped to organize (along with other community groups) a public event in Palo Alto at which OCR attorneys presented information about civil rights in education, under OCR's technical assistance program. In June 2013, after reports in the local and national media of sexual harassment and sexual assault of students at Palo Alto High School, I wrote to OCR suggesting that the agency consider offering technical assistance to the district on the topic of Title IX. The district itself made a request for technical assistance at about the same time. I received a brief message from OCR acknowledging my email and stating that OCR would reach out to PAUSD. This is the last communication that I have had from anyone at OCR regarding the Title IX matter.

My wife Michele Dauber is employed as a professor of law at Stanford University, and is an expert on Title IX and school-based sexual harassment and assault. She is not an attorney, does not practice law, and has never represented anyone. In 2013, she referred one of the PAUSD OCR complainants to pro bono representation with other Stanford faculty members. She has received no money from any source, nor any promise of any future payment or gift with respect to any issue involving PAUSD at any time. During 2013 and early 2014 (before I filed for election to the Board) as PAUSD worked to revise its bullying and complaint procedures in accordance with one of the Resolution Agreements with OCR, she expressed to the Board of Education, to the press, to OCR and to the public her concerns about the need for better policies and procedures to address sexual harassment in PAUSD schools, and about whether the district's proposed harassment policies were consistent with state and federal law.

Throughout 2013 and 2014 I spoke to the PAUSD Board of Education, to the public, and to the press advocating a more transparent and cooperative relationship with OCR. I published an opinion article in the local newspaper to that effect in August 2013, and I spoke on this issue dozens of times during the 2014 school board campaign. During the 2014 campaign, some of the individuals who had made complaints about the district to OCR made contributions to my campaign and participated in distributing campaign literature and fundraising. After my election I have continued to advocate for a cooperative stance with OCR.

Question

In my role as a member of the Governing Board of the Palo Alto School district, do I have a conflict of interest that disqualifies me from participating in deliberation or decision-making regarding matters involving the U.S. Department of Education Office for Civil Rights? For example, the Board of Education will soon give direction to the Superintendent on whether the district should attempt to reach resolution agreements with OCR in the two pending matters. In addition the Board will likely discuss how to respond to any findings or proposed agreements, if and when OCR concludes its investigations.

I am seeking formal advice from the FPPC on this question because I anticipate that matters involving OCR, none of which are quasi-judicial in nature, will come before the Board of Education in September 2015.

It is my understanding that I do not have a conflict of interest, because neither I nor my employer (Google) have any financial interest in the outcome of any matters involving the federal Department of Education's Office for Civil Rights. I have received no compensation from OCR since 2011, as described above, nor do I have any promise or offer of any future payment or gift from OCR. Further, it is my understanding that compensation from the federal government is excluded from the definition of "income" pursuant to the Political Reform Act. I believe that my statements in support of a policy of cooperation and transparency towards OCR, and my communications with OCR, are protected political speech under the First Amendment and do not give rise to a conflict of interest. See, e.g., City of Fairfield v. Superior Court, 14 Cal.3d 768 (Cal. 1975). Likewise, my understanding is that campaign contributions from individuals who have filed OCR complaints do not create a conflict of interest. See Woodland Hills Residents Assn., Inc. v. City Council, 26 Cal.3d 938 (Cal. 1980).

I am seeking a formal determination from the FPPC in order to ensure that my conduct conforms with the law and in order to be fully transparent with the public about this matter. I have attached PAUSD Board Bylaw 9270, "Conflict of Interest," for your information.

Sincerely,

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