



October 21, 2020

BOARD OF EDUCATION

*Jessie Ryan
President
Trustee Area 7*

*Christina Pritchett
Vice President
Trustee Area 3*

*Michael Minnick
2nd Vice President
Trustee Area 4*

*Lisa Murawski
Trustee Area 1*

*Leticia Garcia
Trustee Area 2*

*Mai Vang
Trustee Area 5*

*Darrel Woo
Trustee Area 6*

*Isa Sheikh
Student Board Member*

Via E-Mail: dfisher@saccityta.com

David Fisher, President
Sacramento City Teachers Association
5300 Elvas Avenue
Sacramento, CA 95819

Re: SCTA Letter of October 1st Concerning Expanded Learning Program

Dear Mr. Fisher:

This letter is in response to the October 1, 2020 letter sent by SCTA to SCUSD Board President Ryan. In light of that letter, we felt it was important to provide SCTA with a full understanding of how the District's Expanded Learning Programs are selected and to address the alleged conflict of interest of Mr. Jerome Behrens, attorney from the Lozano Smith firm.

Expanded Learning Program Selection Process

First, all Expanded Learning Program providers go through an extensive process to assure quality programming and organizational capacity to meet program goals, including two phases:

- 1) Request for Qualifications (RFQ) that is used to determine if an organization has the capacity to run a program; and
- 2) Request for School Site Proposals that outlines specific program framework, plan and goals.

To begin the process, the SCUSD Youth Development Department opens the Request for Qualifications (RFQ) application under the guidance of the Contracts Office. The RFQ is opened every year in order for new agencies to have the opportunity to submit proposals and is posted on the District's website and in the Sacramento Bee. All interested parties are required to attend a Bidders' Conference before turning in their applications.

From there, the Contracts Office oversees the entire process, including the Bidders' Conference where a panel of three readers review and score applications. Based on the quality of applications, organizations are interviewed, references are checked, and all information about the organization is submitted to the Contracts Office.

Organizations that meet the criteria are then placed on the Qualified Providers list, though being on this list does not guarantee a contract. Instead, all the organizations who are on the qualified providers list are eligible to apply for programming at sites. Once a site administrator expresses a desire to open their site for a Request for School Site Proposals application, the Youth Development Office sends the application to all qualified providers.

Once submitted, all applications are sent to the site administrator for review, interviews are scheduled, site administrators make preparations for interviews, including writing interview questions with their particular site in mind. Youth Development facilitates the interviews. Principals then check agency references, conduct a site visit run by the agency(ies) they are interested in, and then let YDSS know about their decision. At that point, Youth Development signs a contract based on the grant amount.

For school year 2020-2021, Youth Development Support Services had a pool of 12 community based organizations (CBOs) that were deemed to have the capacity to run high quality programs. Currently, nine CBOs are contracted to run programs at 60 program sites.

The Alleged Conflict of Interest of Jerome Behrens and the Center for Fathers and Families

Concerning the conflict of interest asserted by SCTA, there is no conflict of interest present in this matter under the variety of laws that are applicable. Mr. Behrens, as a member of the board of directors of the Center for Fathers and Families (“Center”), has no financial interest in this matter and has not been involved in any way in the making of any decisions regarding the selection of the CBOs which will be operating the Expanded Learning Programs at District sites as has been outlined above.

Government Code Section 1090 Regarding Contracts

Government Code section 1090 prohibits public officials from “be[ing] financially interested in any contract made by them in their official capacity.” This statute is focused on government contracts and it applies to nearly all public board members, officers, and employees. (See *People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.) In addition, the Legislature has created two categories of exceptions to section 1090, called “remote interests” and “non-interests.”

Here, given that the Center’s board of directors (including Mr. Behrens) serve without compensation, section 1090 is not implicated and there is no need to look to see if particular exceptions to section 1090 apply. We are unable to locate any authority interpreting section 1090 that finds a financial interest is present for an unpaid volunteer board member.

The Political Reform Act

In addition to Government Code 1090, the Political Reform Act (“Act”) prohibits public officials from making or influencing governmental decisions of all kinds in which they have a personal financial interest. (Gov. Code, § 87100.) Board Bylaw 9270 provides:

A Board member, designated employee, or other person in a designated position shall not make, participate in making, or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a disqualifying conflict of interest. A disqualifying conflict of interest exists if the decision will have a "reasonably foreseeable material financial effect," which is distinguishable from the effect on the public generally, on the Board member, designated employee, or other person in a designated position, his/her immediate family, or any financial interest described in 2 CCR 18700. (Government Code 87100, 87101, 87103; 2 CCR 18700-18707)

A Board member, designated employee, or other person in a designated position makes a governmental decision when he/she, acting within the authority of his/her office or position, authorizes or directs any action on a matter, votes or provides information or opinion on it, contacts or appears before a district official for the purpose of affecting the decision, or takes any other action specified in 2 CCR 18704.

Because the Center is a charitable organization, it is clearly not considered to be a “business entity” as that term is defined by the Act. Furthermore, Mr. Behrens is an unpaid, volunteer board member and took no part in preparing or reviewing the Expanded Learning agreements in any way. As a result, no conflict of interest is present under the Act.

In conclusion, the October 1, 2020, letter does not raise any facts or law showing a conflict of interest with regard to Mr. Behrens and the Expanded Learning contracts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jorge A. Aguilar', with a stylized flourish at the end.

Jorge A. Aguilar
Superintendent