



## OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

**GREGORY D. TOTTEN**  
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August 18, 2014

Ms. Kerrie Taylor  
Attorney at Law  
Fagen Friedman & Fulfrost LLP  
6300 Wilshire Boulevard, Suite 1700  
Los Angeles, CA 90048

Re: Correction to August 13, 2014, Letter Entitled, "Allegation of Brown Act Violation by the Conejo Valley Unified School District, District Advisory Council"

Dear Ms. Taylor:

On August 13, 2014, the District Attorney's Office issued a letter entitled, "Allegation of Brown Act Violation by the Conejo Valley Unified School District, District Advisory Council." Since that time, I have discussed the matter with the complaining party, Cathy Carlson. After speaking with Ms. Carlson, I believe a portion of the letter, the last two sentences of the third paragraph on page two, is inaccurate. Our office is therefore deleting those two sentences from our previous letter. Please see the attached corrected letter. If you have any questions, please feel free to contact me directly at (805) 654-2278.

Very truly yours,

W. TAYLOR WATERS  
Deputy District Attorney

Enclosure

cc: Rocky Capobianco, CVUSD DAC Chairperson  
Jeffrey L. Baarstad, CVUSD Board Superintendent  
Cathy Carlson



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August 13, 2014  
(Corrected August 18, 2014)

Kerrie Taylor  
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Fagen Friedman & Fulfrost LLP  
6300 Wilshire Boulevard, Suite 1700  
Los Angeles, CA 90048

Re: Allegation of Brown Act Violation by the Conejo Valley Unified School District,  
District Advisory Council

Dear Ms. Taylor:

Thank you for your response letter to the Ralph M. Brown Act (Brown Act) complaint by Cathy Carlson.<sup>1</sup> Ms. Carlson alleged that the District Advisory Council (DAC) of the Conejo Valley Unified School District (CVUSD) denied her the right to provide public comment during the May 13, 2014, CVUSD DAC meeting. Our office appreciates the assurance of both the CVUSD and the DAC that the DAC will comply with the Brown Act when it conducts its regular and special meetings, and that the DAC will ensure the public is provided the opportunity to participate during its regular and special meetings.

As you acknowledged in your letter, the CVUSD DAC is subject to the requirements of the Brown Act. The DAC is an advisory body of the CVUSD established pursuant to Title 5, section 4423 of the California Code of Regulations. It is a standing body which has a continuing subject matter jurisdiction that is not exempted from the requirements of the Brown Act pursuant to Education Code section 35147. Accordingly, the DAC is a legislative body within the meaning of Government Code section 54952, subdivision (b), and subject to the Brown Act.

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<sup>1</sup> Ordinarily, the District Attorney's Office does not reveal the identity of a complaining party in referrals such as this, but does so here because Ms. Carlson's complaint was made to both our office and the CVUSD.

The Brown Act requires that before or during a legislative body's consideration of an item of interest to the public that is within the subject matter jurisdiction of the legislative body, the public shall have an opportunity to directly address the legislative body on that issue. (Gov. Code, § 54954.3, subd. (a).) However, the legislative body of a local agency may adopt reasonable regulations to ensure that the intent of the aforementioned requirement is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. (Gov. Code, § 54954.3, subd. (b).) Whether a regulation is "reasonable" under section 54954.3 must be evaluated in light of Article I, section 3(b)(2) of the California Constitution, which requires that rules be broadly construed to further the people's right to access. Furthermore, the Brown Act mandates that legislative bodies shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. (Gov. Code, § 54954.3, subd. (c).)

The DAC's By-Laws are silent on the issue of public comment, but reference the DAC's Standing Rules, which state, "A request for public comment time for non-agenda items shall be submitted in writing before the start of the meeting. The length of time for public comments will be determined by the Chairperson at each meeting based upon time available. If public comments are cut short, a comment may be submitted in writing for inclusion in the minutes." The Standing Rules are silent with respect to public comment for agenda items.

Ms. Carlson's complaint alleges that the CVUSD DAC denied her the right to provide public comment during the May 13, 2014, DAC meeting. Although Ms. Carlson was ultimately allowed to provide comment, she contends that occurred after the meeting had been adjourned. The DAC disputes this contention, as well as Ms. Carlson's claim regarding the timing of when she submitted her request for comment.

Nevertheless, the fact that the DAC schedules its public comment period toward the end of each meeting is problematic because it does not provide the public an opportunity to address the DAC "before or during" consideration of agenda items. For example, on the May 13, 2014, DAC agenda, public comment was scheduled for 11:00 – 11:20 a.m., after the agenda item calling for a "Bond Initiative General Consensus Vote" regarding LCAP Funding. Scheduling the public comment period at a time after the DAC considered the item of interest to the public that fell within the subject matter of the DAC did not provide the public an opportunity to address the DAC "before or during" consideration of that item. (Gov. Code, § 54954.3, subd. (a).) To avoid this issue, public comment should be scheduled for a time earlier in the meeting, prior to the DAC's consideration of any agenda items, or prior to each agenda item considered.

Kerrie Taylor  
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You have assured the District Attorney's Office that the CVUSD DAC will change the format of its meetings to allow for public comment on non-agendized items at the beginning of each meeting, and to allow for public comment on each agenda item prior to its consideration. In addition to modifying the scheduled time for public comment, the DAC should also consider adopting policies that expand the time when the public can request to provide comment. Other governing bodies throughout the county have adopted more lenient policies which encourage public comment. For example, the Ventura County Board of Supervisors allows public comment cards to be submitted before the public comment period begins, or if the comment pertains to a specific agenda item, before that item is discussed. The Oxnard Union High School District allows the cards to be submitted prior to the start of the meeting or prior to the start of the public comment section of the agenda. The CVUSD allows speaker forms for non-agendized items to be submitted prior to the start of the public comment period, and allows speaker forms for agenda items to be submitted prior to the Action portion of the agenda.

Given your commitment that the DAC will take steps to comply with the Brown Act and ensure the public is afforded the opportunity to meaningfully participate in the DAC's regular and special meetings, the District Attorney's Office does not anticipate enforcement action will be necessary. Nevertheless, our review of this matter will not be closed until we receive confirmation that the changes the CVUSD DAC intends to make to comply with the Brown Act have been formally implemented. Because the DAC is not scheduled to meet again until September 2014, we recognize that confirmation of these changes may not be provided to our office until September or October of this year.

Very truly yours,



W. TAYLOR WATERS  
Deputy District Attorney

Pc: Rocky Capobianco, CVUSD DAC Chairperson  
Jeffrey L. Baarstad, CVUSD Board Superintendent  
Cathy Carlson