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Salt Lake City School Board
District Two

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DELIVERED VIA UNITED STATES POSTAL SERVICE

Mrs. Kristi Swett, President
% Salt Lake City Board of Education
2256 South King Street
Salt Lake City, Utah 84109



Re: Superintendent Adopts Miss Shirley's: "NO HUNGRY CHILD" Policy

Dear President Swett,

I am writing to renew my requests^{1 2 3} that the external investigation reports^{4 5} be placed on the **Action Item Agenda** for the **October 7, 2014**, school board meeting.

Recognizing that there is some resistance on your part in allowing members of the Board of Education to cast a vote on this issue; I draw your attention to the fact, that it is customary for a governing body to exercise their representative voice and vote to accept or reject reports they commissioned or requested.

By way of illustration, earlier this year a committee of the Utah House of Representatives hired outside counsel to conduct an investigation into the actions of Utah Attorney General Swallow. When the external investigators submitted their findings, the Tribune⁶ reported the following:

The Utah House on Wednesday released the final report of its investigation into former Attorney General John Swallow, laid out in more than 200 pages with 3,700 exhibits, the result of a four-month, \$4 million investigation, which contributed to Swallow's resignation... **The committee voted unanimously Tuesday to approve the final draft of the report**, which will be presented to...

¹ Independent Investigation [email dated 02/17/2014]

² Salt Lake City Board Of Education Meeting [video dated 09/16/14]

³ Keeping Promises- Next Steps in Lunchroom Fiasco [letter dated 09/09/2014]

⁴ Independent Investigative Final Report by Mr. Blake Ostler, Attorney at Law *n.d.* [report received August 29, 2014]

⁵ Independent Account's Report by Squire & Company P.C. [report dated May 16, 2014]

⁶ Final House Report on Swallow Scandal Now Available Online by Robert Gehrke [Salt Lake Tribune 03/11/14]

"Local school boards are the bedrock of our society, yet they are invisible to the public"

Señor Florez -Deseret News

You will also recall that in the fall of 2010⁷, prior to my service on the Board of Education, a special meeting was convened in order to consider whether to accept or reject the arbitrators:

Findings of Facts and Recommendations in a Shared Governance Grievance⁸

The minutes of that meeting reflect the following:

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President Swett reported the Salt Lake City School District Board of Education has received the findings and recommendations from Mr. Felshaw King in the matter of the Salt Lake Teachers Association (SLTA) v. Salt Lake City School District (SLCSD). She said each board member has reviewed and carefully considered Mr. King's opinion and all associated documents. Following a brief discussion, board **members voted unanimously against the recommendations** made by the hearing officer.

Although I was not serving on the board at that time, I do recall the community outrage at the board's decision. In fact, the issue was often the topic of conversation during my campaign (2012) for a seat on the Salt Lake City Board of Education. You will recall that a group of parents from West High School submitted a letter which read in part:

By way of background, over the summer the district unilaterally imposed a new schedule at the high schools without following the policies and practices of shared governance. An independent arbitrator hired jointly by SLTA and the district (using taxpayer money), determined that the district had violated shared governance and recommended certain remedies. **The School Board immediately voted not to accept the arbitrator's decision** and imposed the schedule change without acknowledging the violation⁹

Each school board meeting is started with the **Pledge of Allegiance**. I would ask you to honor the part that says "*and for the Republic for which it stands*" and allow the members of the current school board their right to exercise their repressive voice, in much the same way you allowed in 2010.

SCRUTINY OF THE BOARD AND THE PUBLIC

The title of this section comes from the last line of the cover sheet attached to the report as presented by Mr. Ostler.¹⁰

We submit our Final Report to the scrutiny of the Board and the public...

To that end, this letter will also serve as a response to Mr. Ostler's invitation and my submission of written questions in advance of our October 7th, meeting as discussed in the September 16, 2014, Board of Education meeting.¹¹ As you will note, the following questions and concerns are in relation to the external investigation, conducted by Thompson Ostler & Olsen Attorneys At Law.

⁷ Salt Lake City Board of Education [meeting minutes 08/23/14]

⁸ Salt Lake Teachers Association (Grievant) v. Salt Lake City School District (Respondent) [report delivered 07/29/10]

⁹ West High School SCC Open Letter *n.d.* [www.whslcparent.org]

¹⁰ Independent Investigative Final Report, Cover Letter by Mr. Blake T. Ostler [dated 09/10/14]

¹¹ Salt Lake City Board of Education [video 09/02/14]

GAPS IN THE REPORT: SLCPD Investigation?

My first question, is in relation to the absence of the Salt Lake City Police Department's (SLCPD) involvement in this incident.

As you are aware, Mrs. Erica Lukes, a parent from Uintah Elementary School, recently brought it to the Board of Education's attention, that lunch room manager, Shirley Canham (Miss Shirley) was escorted out of her school and interrogated by two Salt Lake City police officers earlier this year.¹²

I found it curious that the external investigator failed to mention this in his report. Law enforcement's involvement and their conclusions would seem to me, to be a significant part of this saga and would go a long way in helping members of the Board of Education understand the circumstances surrounding this incident. Why was this left out of the report? Is the investigation still ongoing? Is the investigation concluded? If so, what was determined?

Had the external investigators included this in their report, I am confident they would have discovered that SLCPD involvement is yet another layer of subterfuge deployed by Superintendent Withers and Business Manager Roberts. Let me explain why I reached this conclusion.

Following the public revelation that Salt Lake City Police Department (SLCPD) had interrogated Miss Shirley as a "*suspect*", I submitted a GRAMA request to SLCPD.¹³

The SLCPD responded that there is no offense report on record indicating that Miss Shirley is or was under investigation by the Salt Lake City Police Department, much less being brought to the police station for questioning.¹⁴

I was able to confirm that Miss Shirley was indeed interrogated by two Salt Lake City Police Officers as several people saw them arrive at the school and make contact with Miss Shirley. I also obtained a signed notarized statement from Miss Shirley, where she states that at the conclusion of the interrogation, one of the officers said words to the effect that they would "*report back to McKell Withers*".¹⁵

I am deeply troubled by the set-up that is currently unfolding. It appears that two Salt Lake City police officers did the bidding of the superintendent outside of official law enforcement channels.

Moreover, the Board of Education was led to believe on more than one occasion, that the actions of a certain employee rose to the level of "*criminal activity*".

It now appears that there was never an official law enforcement investigation in progress although the Board of Education and the public were deceived into thinking otherwise. In fact, the phone number that the officers left with Miss Shirley, goes back to the bike unit that patrols parks. I find it odd, that the bike-patrol are acting as detectives, investigating and interrogating lunch room workers about discarded lunches and book keeping errors.

¹² *Ibid.*

¹³ GRAMA: Police Report [letter dated 09/19/14]

¹⁴ SLCPD GRAMA Reply [letter dated 09/19/14]

¹⁵ Shirley Canham Testimony *n.p.* [notarized statement 09/19/14]

At this point, it would be helpful to obtain a public disclosure about the relationship between these two officers and Superintendent Withers and Business Administrator Roberts. If this is an official investigation, initiated by the school district, why not tell us the outcome? ¹⁶

I did discover a payment from Janet Robert's office to one of the officers in the amount of \$200.00 utilizing district funds. ¹⁷ Was this payment for conducting a fake interrogation that served only to intimidate and harass a lunch lady? Was this payment for some other security function? If so, then why have a police officer that works for the district part-time conduct an investigation on employees of the district?

Beyond the intimidation factor to the employee, consideration must be given to the purposeful deception that was in play, designed to adversely influence the perceptions, decisions and votes of the Board of Education.

To that end, I filed a complaint ¹⁸ with the SLCPD Internal Affairs Division in an effort to obtain the facts surrounding the police interrogation of Miss Shirley. I have been contacted by them and have provided them additional information as requested. Based on the information I have to date, it does not pass the smell test and stinks of police-powers abuse and deceptive influence of elected officials.

I filed a complaint with SLCPD Internal Affairs Division in the hopes that we can find the truth in this matter since the external investigator sidestepped the police involvement. These circumstances raise several questions like: were the officers being paid by the City at the time of the interrogation? Were they off duty and being paid by McKell Withers and Janet Roberts? Were they being paid by both the City and the School District at the same time? Were they being paid by School District funds only? If so, why? How often does this happen? Is there a police report? What did this investigation real or not conclude? What was its purpose? Etc...

If this was indeed an official police investigation why doesn't Superintendent Withers and Business Administrator Roberts know the outcome of the investigation? Or do they know and refuse to disclose that information to the Board of Education.

At any rate, it is my hope that the truth of this matter will begin to reveal itself as a result of the internal affairs investigation. I do not have answers to the questions above, I do however feel that they deserve to be answered.

¹⁶ This question was asked by me and the parents at the September 2, 2014, Board of Education Meetings

¹⁷ Salt Lake City School District: Purchase Order- Board Report p 18 [board meeting, 07/08/14]

¹⁸ Police Misconduct [letter dated 09/19/14]

GAPS IN THE REPORT: A Board Member's Questions

The other baffling, missing part, of the report, is the fact that none of the concerns¹⁹ that I raised were addressed:

How is it that I was elected to represent 17th of this city's population on the Board of Education, yet the questions from one parent²⁰ are responded to throughout the report, but mine are not?

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I was the first member of the Board of Education to publicly call for an outside independent an investigation:

In his letter, Clara asks what responsibility the superintendent, Uintah principal and other administrators bear for the lunch incident. "I am sure you are aware that the community at large has lost confidence in the leadership of the district," Clara wrote, "as it appears that the bureaucracy is just protecting itself and has no interest in reaching the truth in this matter."²¹

Why were my submitted questions ignored?

In addition to sending my letter to you on **February 14, 2014**, I also emailed the letter to the Superintendent's attorney asking that my written questions be submitted to the external investigator. I received a reply email acknowledging receipt of my request and the assurance that my questions would be passed on.²²

I subsequently made the motion in the Board of Education meeting to issue an RFP that allowed for the hiring of an external investigator. During that meeting, it was clearly understood that my questions would be part of this investigation.²³

I voted to finance the external investigation with assurances from you, that my questions would be answered through the external investigation.²⁴

As a policymaker, the report falls short of my intentions when I made the motion and voted to issue an RFP.

I felt that the public was asking for accountability, therefore, my questions were designed to ascertain the role of all employees in the chain of command. Needless to say, I was disappointed to see that the report was virtually silent on the actions of the superintendent and the business administrator in this debacle. The report tells us:

We concluded that neither Superintendent Withers nor Business Administrator Roberts had notice of specific concerns and incidents until after the events at Uintah Elementary occurred.²⁵

What was the conclusive evidence? Were these two interviewed? What were the questions that were asked? As a member of the Board of the Board of Education the report fell short of my expectations and did not cover the areas that we had agreed to in public and closed door meetings.

¹⁹ A Call for An Independent Investigation [Letter 02/14/14]

²⁰ *Op. cit.* p 1

²¹ District Plans Independent Investigation of Discarded School Lunches by Lisa Schencker [Salt Lake Tribune 02/18/14]

²² Community Luchgate Questions [email dated 03/10/2014]

²³ Salt Lake City Board of Education [meeting minutes 03/04/14]

²⁴ Board of Education –Purchase Report [06/17/14 & 09/02/14]

²⁵ *Op. cit.* p 11

SCAPEGOATING MISS SHIRLEY

In my first reading of the report, I was immediately struck with what appeared to be a concerted effort to demonize Miss Shirley.

The report uses the word “*lie*” or “*lied*” at total of seven times²⁶ all attached to Miss Shirley and only her. There are multiple instances in the report where Support Services Director Kelly Orton²⁷ and Principal Malouf²⁸ were duplicitous in their actions yet the report never describes their deceptive behavior as “*lying*”. Why?

The report repeatedly reminds us that Miss Shirley “*didn't fulfill her job responsibilities*”.²⁹ Yet glosses over the fact that multiple district administrators³⁰, local school administrators³¹, other lunch room managers³² etc., did not perform their job functions as per established procedures, yet they are not called out in the same fashion that Miss Shirley is.

The report even goes so far as to falsely state³³ that Miss Shirley failed to perform job duties. Duties that were not even assigned to her!

Consider following:

“It is clear that Ms. Canham, despite her representations to the contrary:

- (a) had not run a negative balance report for Uintah Elementary School and provided it to Principal Malouf;**
- (b) Ms. Canham did not provide a list to Principal Malouf and provide direction as to what to do with each child who had an account deficit;**
- (c) she did not utilize the school account to pay down each student’s negative balance before lunch was served to avoid the credit limit;**
- (d) she did not have an adult contact the child and/or parent before the lunch and advise them that they could only take a fruit and milk until they pay for the meal;**
- (e) she did not use the school’s phone contact service to contact the parents of students who have a large negative account balance;**
- (f) although she had coordinated with Principal Malouf and other staff regarding how to utilize school mail to contact parents/students through letters to be sent home, she failed to actually send the letters home to give such notice; and**
- (g) she did not communicate with parents how easy and effective MyPaymentsPlus can be to notify them of their child’s daily meal account balance.”**

²⁶ *Op. cit.* pp 15, 16, 17, 21

²⁷ *Op. cit.* p 8

²⁸ *Op. cit.* p 6

²⁹ *Op. cit.* p 21

³⁰ *Op. cit.* p 20

³¹ *Op. cit.* p 13

³² *Op. cit.* p 9

³³ *Op. cit.* p 17

Section **b, c, d, e**, were **NOT** Miss Shirley's responsibilities as stated in the report. Those are listed in the policy as **SUGGESTIONS** to give to the principal:

“Provide the list to your school principal IN A TIMELY MANNER and request their direction on what to do with each child. Keep them informed and ask for their assistance when a student account is getting out of hand. Suggest the following solutions” ³⁴

Section **f** above **was actually added to the policy document after the fact** and was not in the original.³⁵ It was however, still a **SUGGESTION TO THE PRINCIPAL** not a requirement or duty of the Miss Shirley.

For example Miss Shirley **COULD NOT** pay down accounts (letter **c** above) as that funding source is under the principal's control.

Miss Shirley **COULD NOT** carryout section **g** because the notification system was **NOT WORKING**:

We also found many parents who expected to receive notices of lunch accounts and deficits based on their experience with the prior PAYPAMS program. If notices had been given to parents, it is likely that the issues of non-payment at Uintah Elementary would have been mitigated—perhaps significantly. ³⁶

I could cite other examples where this same pattern exist. I believe this example is sufficient in demonstrating my concern with this aspect of the report.

³⁴ *Op. cit.* p 9

³⁵ Fabricated Documents [Letter 09/02/14]

³⁶ *Op. cit.* p 20

LACK OF HONESTY IN THE ADMINISTRATION

I am troubled by the fact that the external report did not cover the **March 12, 2014**, Board of Education meeting. You will recall that you passed out a six page document that listed 36 questions posed by the community and answers provided by district personnel.

It is now clear to me that the district personnel were not truthful in many of their responses. Why didn't the external investigation cover this deception?

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I offer the following for your consideration:

Question # 15. Were the parents notified of the change of the online vendors?

Bureaucracy Answer: Notification flyers were provided to all schools in March 2013 to be sent home with students...

INVESTIGATION CONCLUDED:

However, we were unable to ascertain that any elementary school that was not involved in the Beta testing actually received or was aware of the notice of the MyPaymentsPlus letter to be sent to parents notifying them of the change from PAYPAMS to MyPaymentsPlus and how they could access the new service provided by MyPaymentsPlus.³⁷

We have concluded that while notice was given to high school principals and those participating in Beta testing the program prior to district-wide implementation, insufficient notice was given to elementary school principals regarding the notice letters to be sent to parents of the change.³⁸

If notices had been given to parents, it is likely that the issues of non-payment at Uintah Elementary would have been mitigated— perhaps significantly.³⁹

I could cite other examples where this same pattern exist. I believe this example is sufficient in demonstrating my concern with this aspect of the report.

³⁷ *Op. cit.* p 7

³⁸ *Op. cit.* p 11

³⁹ *Op. cit.* p 20

UNTRUE CONCLUSIONS

Throughout the report I found a number of false conclusions that were reached. I submit the following example:

In other words school **principals do not control who gets lunch** but only the amount of the school account deficit.⁴⁰

Contrast the above statement with the following stated procedures:

The kitchen manager will follow the instructions specified on the Negative Balance Report. Students who lack funds to pay for their meal and do not have written approval will be denied services and directed to the school principal... To avoid embarrassing any student that will be denied a meal or limit to the Milk and Fruit option **should be notified of the decision by the school principal ... prior to the lunch period.**⁴¹

The truth of the matter is, that the responsibility as per policy, to deny a lunch to a student NEVER rested with the Child Nutrition Manager. This is why in spite of the fact that student accounts were in areas at Wasatch and Meadowlark lunches were not discarded.

We are told that at Meadowlark Elementary the principal “directed”⁴² the Child Nutrition Manager “to just hit fruit-milk until parents...”.

We are told that at Wasatch Elementary “Principal Julie Miller suspended lunch account deficit to allow children to eat lunch”.⁴³

In fact, we are told that at Uintah Elementary “...Principal Malouf stated in her interview with independent counsel that she had established a clear policy with Ms. Canham at the beginning of the school year that no student would ever be denied a complete lunch and provided a fruit and milk...”⁴⁴

It is clear to me that these principals were acting within the authority that is **there’s alone** to deny a student a lunch! Not the Child Nutrition Manager.

The report never tells us why Peggy Bjornn was going to schools and ordering Child Nutrition Managers to violate the established policy. **IN FACT**, we never hear from Peggy B. at all. Why wasn’t she interviewed? Clearly she is a key player in this so called “break-down in communication”.

I would surmise, that not interviewing Peggy only serves to further insulate the actions of Kelly Orton who the report tells us:

We have been unable to find evidence of abuses by Mr. Kelly Orton or others in the District Child nutrition Department with respect to any policy, procedure or program.⁴⁵

In my opinion, that conclusion is not only false but laughable. The policy clearly states that only the principal can deny a child a lunch, yet it appears that Kelly Orton was sending Peggy B. into the schools to discard lunches and compel others to do the same, although it was not her place to do so.

⁴⁰ Op. cit. p 4

⁴¹ Op. cit. p 5

⁴² Op. cit. p 13

⁴³ Op. cit. p 10

⁴⁴ Op. cit. p 6 & 16

⁴⁵ Op. cit. p 22

FABRICATION AND MISINTERPRETATION OF DOCUMENTS

I still would like a response to my September letter where I ask you why there are two version of the “**What’s Cookin**” document that ended up being a pivotal part of the aftermath of this investigation.⁴⁶

The report tells us that Kelly Orton misinterpreted his own policy:

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In post-incident personnel interviews and **written employee discipline letters** with employees involved in the incidents addressed to Peggy Bjornn and Shirley Canham, Mr. Kelly Orton asserted that this “What’s Cooking” notified all school Nutrition Managers that in no event were they supposed to ever take away a student lunch. However, the plain reading of the November 19, 2013 “What’s Cooking” **does not support his position.**⁴⁷

What are the consequences of this error? Has someone on the district level apologized to Peggy and Shirley for Kelly’s misapplication of the policy?

Why doesn’t the report put this misinterpretation into perspective? Why doesn’t the report explain the domino effect the misinterpretation of this policy has on the organization? Why doesn’t the report explain why the Business Administrator or Superintendent did not catch this blunder? Why doesn’t the report address these conflicts?

When I asked about this in a Board of Education meeting the response was shrugged shoulders. I was hoping the report would have addressed this in more detail.

Clara also criticized the district’s policies as not being clear enough. “There’s just a lot of ambiguity there,” Clara said of the child nutrition department’s policies, “and if I worked in your department, I could definitely see tripping up.”⁴⁸

There a multiple other defects that I could point out. I would be somewhat satisfied if the questions I pose in this letter were truthfully answered.

⁴⁶ Fabricated Documents [Letter 09/02/14]

⁴⁷ *Op. cit.* p 8

⁴⁸ Lunch Fiasco Laid Out For Salt Lake City School Board by Lisa Schencker [Salt Lake Tribune 02/05/14]

ULTIMATE IRONY

The Ultimate Irony in all of this is when Superintendent McKell Withers stated in a February School Board meeting⁴⁹ that he and Business Administrator Janet Roberts made the unilateral decision that all children would get a full meal.

Isn't that what the principals and Miss Shirley were already doing? The irony is that the administration made Miss Shirley's "*feed all the children*" practice into district policy, yet she ends up being the scapegoat in all of this. What a tragedy!

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IN CONCLUSION

KSL News anchor, Nadine Wimmer recently reported the following about the September 2, 2014, School Board meeting:

Board members did release one finding that too many parents was already obvious

The news story then shows you at the School Board meeting saying the following:

There was a multifaceted breakdown in communication that precipitated the situation at Uintah

I do hope that you recognize that the problems this School District faces is much deeper than a "multifaceted breakdown in communication".


In a February 16, 2014, email exchange about the Board commissioning this investigation you stated,

I have complete faith that district leaders have been **forthcoming and honest** in their response to and investigation of this matter. Nonetheless, having that belief tested by an independent entity will serve to repair the public's trust in the district's integrity and commitment to its students.⁵⁰

Now that this external investigation has been released, it is clear to me and others in the community that your "*faith*" in the district leaders has been misplaced.

Moreover, in order to "*repair the public's trust and district's integrity and commitment to students*", I am of the opinion that the School Board must take further action if there is any hope in restoring the integrity and morale of this organization. We must require accountability of the current district administration. The cover story of a rogue lunch room lady not following policy is not working.

Shalom,



J. Michael Clára
Board Member, District 2

Enclosures (50)

cc: Open Letter

⁴⁹ Salt Lake City Board of Education [video 02/04/14]

⁵⁰ Independent Investigation [email dated 02/17/14]

