



J. Michael Clára
Salt Lake City School Board
District Two

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12 September 2016

HAND DELIVERED

Ms. Janet Roberts, Business Administrator
% Salt Lake City School District
440 East 100 South
Salt Lake City, Utah 84111

Re: 2nd GRAMA Notice of Appeal: Gang Prevention Expenditures

Dear Ms. Roberts,

Acting under the authority of my elected office, and in my official capacity as a member of the Salt Lake City Board of Education, I submit the following appeal on behalf of the residents of Salt Lake City, District 2. ¹

Pursuant to Utah Government Records Management Act – please accept this: **GRAMA NOTICE OF APPEAL** in your capacity as the district’s chief administrative officer. ²

BACKGROUND

On April 5, 2016 - At the regularly scheduled Board meeting, I specifically requested that the Board look at student, police, community and gang intervention in a comprehensive manner within the context of budget development. ³

On May 16, 2016 – I met with Superintendent Cunningham and among other issues advised her of my concern for the manner in which District personnel were misappropriating state funding allocated to the District for gang prevention and intervention.

On May 17, 2016 –During a regularly scheduled Board meeting, I renewed my request for financial information on the gang prevention and for at-risk students. ⁴

On June 7, 2016 – Prior to the regularly scheduled meeting of the Board commencing, I once again asked you in your capacity of the Board’s Business Administrator, for information on gang funding as well as clarification on a \$20,000.00 expenditure for the Salt Lake Area Gang Project.

¹ Utah Code §53A-3-401(5)

² Utah Code §63G-2

³ Salt Lake City Board of Education Meeting – Video 04/05/16

⁴ Salt Lake City Board of Education Meeting – Video 05/17/16

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

Señor Florez –Deseret News

You consulted with Larry Madden who claimed to not have any information on the expenditure, but would check with one of his subordinates and get back to me. ⁵

On June 21, 2016 – During the regularly scheduled meeting of the Board, I once again, raised the issue of the status of the District’s gang intervention program. The Board president spoke to my request with a commitment to have the information provided to me. You spoke to my concern and advised me that it was a grant from the state and you signed off on it, although you would not provide me any information in response to my questions. In that same meeting I asked about the details of RDA expenditures. I was told that the information I requested, would be provided.

On July 12, 2016- I sent Superintendent Cunningham an email renewing my request for information on the finances of the District for at-risk students. I in part stated the following:

On May 6, 2016 –Superintendent Withers sent me the following information; "Enhancements for At-Risk Students (EARS) Resources".

Our EARS funding peaked at \$5,051,765 in 2008-09 and totals \$2,463,967 for the current year (2015-16).

The following programs in the General Fund receive EARS allocations:

Board Distributed Student Achievement Funds (elementary);

Program 1013-District Achievement Testing;

Program 1016-AVID/Equity; program 4255-MESA;

Program 4261-Truant Student;

Program 4266-ALS Services; and,

Program 4267-ESL Endorsement.

The EARS resources also help fund the 7.0 FTE used to support high school English as a Second Language (ESL) classes."

I went on to advise Superintendent Cunningham:

All that is doing, is telling me that the funding is being scattered among these categories. This does not tell me what this funding is being used for. I would like to know the specific expenditures that EARS money is being used for in terms of amount of monies and their purpose. I cannot make an informed decision on funding if I do not have a clear picture on how the District is utilizing this particular category of state funding.

A couple of months ago, I asked Janet R. what was the \$20,000.00, expenditure for Salt Lake Area Gang Project Inc. in the May 3, 2016 – Purchase report was used for. Janet referred the question to Larry M. who confirmed that Misty S. spent the money. Someone was going to get back to me on what exactly that money was used for.

I am also wanting to see a copy of the Gang Prevention application that was submitted to the State Office of Education. I am being told that Colors of Success is being eliminated from the District.

⁵ Salt Lake School District –Purchase Report 05/03/16

If that is true, then I submit that this District is placing the community in danger if we are eliminating this type of gang intervention program.

I have also asked for a break down on how the District is funding transportation with school buses. Earlier this year Barbra K. attempted to cancel a school bus that serves students attending Clayton Middle School. I am of the opinion that bus routes and their funding are the purview of the Board not a District administrator.

I would also like to know the total amount of RDA funding that the District receives and where that money is being spent.

Is there a place to know where Title I funding is being spent? I continue to receive complaints from employees that Title I monies are being spent inappropriately. Can you provide me a break down on how and where Title I money is being expended throughout the District?

I would also like to know what funding the District plans to put forward towards the University of Virginia turn around program during the 2016-2017 school year. What is the source of that funding?

Finally, I want to ensure that the Board has been informed about all available funding. Last year we were told of the need to raise taxes by 1.5 Million and then in late November we are told of an additional ongoing 2 million dollars available in the budget.

It is imperative that all information about revenue be disclosed to the Board during the budget process and prior to the Truth in Taxation hearing, not afterwards.⁶

On July 18, 2016- I once again met with Superintendent Cunningham and among other issues renewed my request for information on the status of at-risk student funding. In that meeting, I renewed my request for information on the finances of the District. I also renewed my objection to personnel changes occurring without Board approval. I also renewed my request for an updated organization chart of the District administration and departments.

On July 29, 2016 – I received a copy of the Gang Prevention and Intervention proposal signed and submitted to the State Office of Education by you and Chief Operations Officer, Larry Madden, back in May of this year.⁷ The proposal confirmed what I was being told, that you and Chief Madden did indeed eliminate Colors of Success as the District’s gang intervention program. In my correspondence to the Superintendent I asked the following:

“...from a procurement standpoint,⁸ can you please advise me what process Administrator Roberts and Chief Madden followed in order to utilize the services of a teacher from East High and her program, Technique for Tough Times in place of Color of Success? My records indicate that Colors of Success is the District’s designated “Sole Provider”⁹ for Gang Prevention programs within the District?¹⁰

I have as of yet to receive a response from the Superintendent.

⁶ Michael Clára email to Dr. Cunningham – Board Budget Meetings 07/12/16

⁷ GRANT APPLICATION: Gang Prevention and Intervention 2016-2017 Proposal to USOE

⁸ Board Policy F-2

⁹ Utah Code §63G-6A-802

¹⁰ Notice of Proposed Sole Source Procurement – Request # 000958

On July 31, 2016 – I sent Superintendent Cunningham correspondence that she acknowledged receiving, yet as of this writing, has not responded to my requests in that email. I here renew one of them:

In light of the fact that I have received multiple reports of administrators utilizing District resources in order to generate income for their private sector business, I would request copies of all “conflict of interest” declared by employees of the District as required by state statute: “An employee shall declare a potential conflict of interest...”¹¹

On August 2, 2016 – During a regularly scheduled meeting of the Board, I once again renewed my request for details on the finances of the District and a current organizational chart of the departments and personnel on the District level.¹²

On August 3, 2016 - I did receive scant information (four pages) on Title I expenditures. However, it is not to the level of detail that I require in order to make decisions on the finances of the District.¹³

On August 25, 2016 – I submitted a GRAMA request to Superintendent Cunningham, “formally” requesting information on the finances of the District, which I had previously “informally” requested but had not yet received.¹⁴

On September 2, 2016 – After receiving no response from Superintendent Cunningham, which under GRAMA is considered a denial, I sent a GRAMA appeal to your attention.¹⁵

Later that day, I did receive a response to my initial GRAMA request from the Superintendent’s attorney, Kristina Kindl, who advised me that I would be provided the requested information upon payment of \$337.50.

On September 10, 2016 – I received a certified letter from you stating that my appeal was “moot” because you were asserting that attorney Kindle’s (Superintendent’s legal counsel) reply to my email was within the specified timeline under GRAMA. I don’t agree with your math, nevertheless, I am submitting yet another GRAMA appeal in the form of this correspondence. In your rejection letter, you duplicitously admonish me as follows:

...Please keep in mind that as an elected board member, you can request district information through the informal process provided for in Board Policy B-1: Board of Education Legal Status, Responsibilities, and Ethics.

This Policy outlines the process through which board members can receive information necessary for the performance of their elected duties, and receive such information free of charge, and may, if appropriate, provide you with information that is not available to the general public.¹⁶

You will note that I have documented numerous instances that I did indeed “request district information through the informal process” which includes negative responses from you.

On September 12, 2016 – I am submitting this GRAMA Denial Appeal to you, in your capacity as the Chief Administrative Officer of the District as prescribed in GRAMA.

¹¹ Utah Administrative Code R477-9-3 Conflict of Interest

¹² Salt Lake City Board of Education Meeting – Video 08/02/16

¹³ Dr. Cunningham Weekly Report to the Board

¹⁴ Michael Clára GRAMA request to Superintendent Cunningham – District Finances 08/25/16

¹⁵ Michael Clára GRAMA Appeal to Business Administrator Roberts – District Finances 09/02/16

¹⁶ Janet Roberts letter to Michael Clára responding to GRAMA Appeal 09/08/16

APPEAL

I am appealing Superintendent Cunningham's decision to charge me \$337.50. for information on the finances of the District as my "legal rights are directly implicated by the information in the records" that I am requesting¹⁷ as I am a duly elected member of the Board of Education. ¹⁸ Current Utah law states that local Board members are elected by a vote of the people. ¹⁹ The law further states the following:

*"...an elected member of a local school board serves and represents the residents of the local school board member's district, and that service and representation may not be restricted or impaired by the local school board member's membership on, or obligations to, the local school board."*²⁰

Among other responsibilities state statute endows a local Board of Education with the following responsibilities: ²¹

Implement training programs for school administrators, including basic management training, best practices in instructional methods, budget training, staff management, managing for learning results and continuous improvement, and how to help every child achieve optimal learning in core academics.

- *Local school boards shall spend minimum school program funds for programs and activities for which the State Board of Education has established minimum standards or rules under Section **53A-1-402**.*
- *Each school board shall adopt and implement a comprehensive emergency response plan to prevent and combat violence in its public schools, on school grounds, on its school vehicles, and in connection with school-related activities or events.*
- *A board shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.*

Additionally, the Board of Education Handbook²², which has the force of policy states the following:

The powers and mandatory duties of the Board of Education are defined in the Utah Code and State Board of Education Rule. They are divided among executive, legislative, and quasi-judicial responsibilities, as follows:

Executive

- 1. Select and appoint the Superintendent of Schools.*
- 2. Select and appoint the Business Administrator.*
- 3. Continuously appraise the educational and administrative management of the school system, through the evaluation of the superintendent and business administrator.*
- 4. Periodically adopt a multi-year strategic plan. In the Salt Lake City School District this is called the Student Achievement Plan.*
- 5. Communicate and meet with community members, staff, and students, both to receive feedback and communicate board views on educational issues.*
- 6. Approve collective bargaining agreements.*

¹⁷ Utah Code §63g -2-203 (4c)

¹⁸ Utah Code §53A-3-402

¹⁹ Utah Code §20A-14-104

²⁰ Utah Code §53A-3-401

²¹ Utah Code §53A-3-402.

²² Board of Education Handbook –Salt Lake City School District

Legislative

1. Develop, adopt, and interpret policies.
2. Adopt operating and capital budgets.
3. Approve curriculum guides and courses of study.
4. Establish school boundaries.
5. Advance a legislative agenda.
6. Advise and approve decisions on facility, procurement, and financial matters as necessary.
7. Authorize legal settlements.

Quasi-Judicial

1. Decide appeals of the superintendent's administrative decisions.

Moreover, Utah law places school Superintendents and Business Administrators in a subordinate position to the local Board of Education.²³ Speaking of the Superintendent and Business Administrator, current *Board* policy²⁴ states the following:

“The board expects these appointed officers to work together, with district employees and members of the board, to promote student learning.

The board further expects that the business administrator and superintendent will exemplify the highest standards of professional competence and ethical conduct... The board expects the superintendent to discharge all of his or her statutory duties and to consult with and inform the board about school operations and problems in timely, accurate, and appropriate ways. ...The superintendent is accountable to the board for his or her performance.”

SHAME ON YOU AND SUPERINTENDENT CUNNINGHAM!

In spite of the statutory authority of the *Board* and the subordinated position of that you and Superintendent Cunningham occupy in relation to my elected office; I have had to resort to submitting GRAMA request in order to obtain information needed to carryout the duties assigned to me by the State Legislature and given to me by my neighbors at the ballot box. In denying me information on the finances of the District the two of you have effectively silenced the voice of the citizens in District 2.

I would surmise that you will find no other local elected official in the state of Utah that is forced to submit GRAMA requests in order to obtain information from the very agency that the elected official oversees. Yet in this case, newly hire hired Superintendent Cunningham has denied my verbal and written request for information and has now denied my GRAMA request in the form of charging me a \$337.50 for the information I am seeking.

As you are aware, during my first year of serving on the Board of Education, I submitted a GRAMA request and received the following clarification from the late John E. Robson of Fabian, Attorneys At Law. At the time, Mr. Robson was serving as the attorney to the Board of Education. In part he stated the following:

“...As you know a GRAMA request only entitles a person to inspect and obtain copies of public documents. It does not entitle a person to documents that are protected or private. ... However, in your position as a Board member you have the ability to review protected and private information as long there is a valid educational or business reason to do so.

²³ Utah Code §53A-3-301 & §53A-3-302

²⁴ Board Policy B-1: Board of Education Legal Status, Responsibilities, and Ethics

Thus, the District wants to provide to you all of the information you might need to carry out your responsibilities...As a board member you have the same duty as the District to make sure that you do not disclose protected or private information...²⁵

Subsequent GRAMA responses from the Superintendent personal attorney used the following language:

*"...as I have done in my prior responses to your GRAMA requests, you have been provided with both public and protected information. Obviously as a board member you are entitled to view documents not available to the general public, but all protected information that is being provided to you as a board member must be kept and maintained in a confidential manner."*²⁶

Additionally, here is the language in a GRAMA response I received late last year:

*"As we have discussed, because you are a member of the Salt Lake City School District Board of Education, your access to documents is not the same as the general public's access. Due to your position as a board member, you are being provided with certain draft documents which are responsive to your request...Accordingly, I am providing you with two distinct sets of documents; one set comprises the documents I would provide to the requesting members of the public, and the other set contains confidential information, including private and protected information, which you are entitled to view based on your position as a board member. As always, all private and protected information that is being provided to you as a board member must be kept and maintained in a confidential manner and must not be disclosed."*²⁷

Clearly, the Superintendent's attorney, acknowledged my elected office and recognized that my access to records is different from that of the "general public", yet in this instance, I am to be assessed a fee of \$337.50 in order to view the records about the finances of the District.

While a local school board member is not mentioned in GRAMA, I do believe that the exceptions provided in §63G-2-206 apply to me in terms of what I am seeking i.e.

*"...request the record in relation to the Legislature's [local board member] duties including: preparation in review of a [board policy and] legislative proposal or legislation; appropriations [local school budget] or an investigation or review..."*²⁸

GRAMA does allow for the "sharing" of "private, controlled, or a protected record"²⁹ between governmental entities; where is the logic in denying the request of an elected member of the governing body over one of those governmental agencies?

In conclusion, I am embarrassed that as a duly elected member of the Salt Lake City Board of Education, I am having to expend an inordinate amount of time and energy in an effort to receive information on the most basic aspects of this school district. In requiring me to ask for request information in multiple venues and formats, you and the Superintendent have displayed disdain for elected officials, which stands as a blatant example and symbol of everything that is wrong with public education in the state of Utah.

Accordingly, GRAMA encourages agencies to fulfill a records request without charge.³⁰

²⁵ John Robson email to Michael Clára –Emails Responsive to GRAMA Request 09/1313

²⁶ District GRAMA Response, Student lunch Accounting System 02/24/14

²⁷ District GRAMA Response, School District's Lease Agreements with Wireless Communication Companies 02/17/15

²⁸ Utah Code §63G-2-206(1)(D)

²⁹ Utah Code §63G-2-206(1)(D)


³⁰ Utah Code §63g-2-203(4)

Based on Utah Code §63g -2-203 (4a), I am appealing the fee of \$337.50 that has been assessed and I am requesting a waiver of copy costs because releasing the records primarily benefits the public rather than a person as the “person” requesting the information is a duly elected member of the governing body³¹ of the government agency and therefore “entitled by law to inspect the record”.

Equally persuasive, the Utah Legislature has established that “an elected member of a local school board serves and represents the residents of the local school board member's district, and that service and representation may not be restricted or impaired by the local school board member's membership on, or obligations to, the local school board.”³²

I have sent a courtesy copy of this appeal to the State Auditor. I have sent a courtesy copy to my state Senator and the Senate President as they are in the process of reviewing a local elected official's ability to obtain information from the very agency over which that elected official has governing authority.

Shalom,


J. Michael Clára
Board Member, District 2

³¹ Utah Code §53A-3-402 Local School Boards –Powers and Duties Generally

³² Utah Code §53A-3-402 Local School Boards –Duty to Represent

