



J. Michael Clára
Salt Lake City School Board
District Two

801-521-3223 • donMiguelSLC@gmail.com
974 S. 1400 W. • Salt Lake City • Utah • USA Page | 1 of 11

30 September 2016

DELIVERED VIA USPS PRIORITY MAIL

The Honorable Sean Reyes
Utah Attorney General
Utah State Capitol Complex
350 North State Street, Suite 230
Salt Lake City, Utah 84114

Re: Superintendent Cunningham's & Board President Heather Bennett's
Violation of Utah Open & Public Meetings Act

Dear Mr. Reyes,

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 this complaint on behalf of the residents of Salt Lake City, District 2. ¹ I have reason to believe that the **Salt Lake City Board of Education** on the advice of Superintendent Cunningham violated certain provisions of **Utah Open & Public Meetings Act**. ² Furthermore, The **ACT** states that your office has the authority to enforce its provisions. ³

On September 20, 2016 – The Board of Education held a regularly scheduled meeting that was properly noted and convened at 6:00 p.m. at the Salt Lake City School District, Board of Education office located at 440 East 100 South in Salt Lake City, Utah. ⁴ The presiding officer declared that the Board was convened to hold a closed door meeting, there was a patron that was asked to leave prior to the doors being closed. The Superintendent's attorney, Kristina Kindl stated the purpose of the closed door meeting:

"discussion of the character, professional competence, or physical or mental health of an individual..." ⁵

At the commencement of the meeting, Superintendent Cunningham had her attorney explain to the Board why Business Administrator, Janet Roberts terminated a contract for Graduate Advisory Services at Horizonte Alternative High School. ⁶ The reason given was no different from what the Superintendent had advised me via email earlier in the week:

"...a new position was added to each high school to assist students with scholarships and the college application process...we cannot support the new position and an outside contractor." ⁷

¹ Utah Code §53A-3-401(5)

² Utah Code §§ 52-4-101 et seq

³ Utah Code §§ 52-4-303

⁴ Salt Lake City Board of Education Agenda 09/20/16

⁵ Utah Code §§ 52-4-205

⁶ Contract # JB1544-GA Graduate Advisory Services Between Salt Lake City School District and Kimball Young 09/01/14

⁷ Superintendent Cunningham email to Michael Clára – Salt Lake Education Foundation Audit 09/15/16

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

Señor Florez –Deseret News

During the meeting I repeatedly objected to this issue being discussed in a closed door session because the subject presented to the Board was not within the limited exceptions allowed in the ACT.⁸ I eventually left the illegally held meeting as reflected in the minutes:

At 6:01 p.m. a motion was made, after which members excused the audience and remained in the Board Room:

^N(1) That the board meet in Closed Executive Session to consider character, professional competence, or physical or mental health of an individual and/or deployment of security personnel, devices, or systems. Approval was given to the motion on a vote of 4 to 1 with Mr. Clára voting "No".
**(Kennedy and Emery)

Present for Closed Session were Tiffany Sandberg, J. Michael Clára (leaving at 6:20 p.m.), Rosemary Emery, Melissa Ford, Katherine Kennedy, Alexa Cunningham, Janet Roberts, Kristina Kindl, and Florence Vincent, board legal counsel from Prince, Yeates and Geldzahler.

Board members adjourned from the Closed Executive Session for character, professional competence, or physical or mental health of an individual and/or deployment of security personnel, devices, or systems at 6:25 p.m. and returned to the Board Business Meeting at 6:31 p.m.

BACKGROUND

You will note that the minutes also reflect that I voted 'NO' to go into the closed session. I did so, because of the following email exchange with Superintendent Cunningham in the day's prior to the meeting:



Michael Clara <donmiguelslc@gmail.com>

RE: Salt Lake Education Foundation Audit

1 message

Lexi Cunningham <Lexi.Cunningham@slcschools.org>
To: Michael Clára <donmiguelslc@gmail.com>
Cc: Janet Roberts <Janet.Roberts@slcschools.org>, Kristina Kindl <Kristina.Kindl@slcschools.org>

Thu, Sep 15, 2016 at 1:00 PM

Mr. Clara,

During last year's budget cycle a new position was added to each high school to assist students with scholarships and the college application process. This was essentially what Mr. Young was doing at Horizonte. Mr. Young was told that he could apply this position but we could not support the new position and an outside contractor. He did not apply for the new position and his contract was cancelled.

Lexi

From: Michael Clára [mailto:donmiguelslc@gmail.com]
Sent: Thursday, September 15, 2016 1:07 PM
To: Lexi Cunningham <Lexi.Cunningham@slcschools.org>
Cc: Janet Roberts <Janet.Roberts@slcschools.org>
Subject: Re: Salt Lake Education Foundation Audit

I do not recall those positions being presented to the Board for approval. Can you please send me a copy of the job postings? Who is currently in those positions? What funding source was used for those positions? When were those positions and names placed on the HR report? Who made the decision to switch from a contractor to an employee at the District for each High School?

Un abrazo.

Michael Clara
M: 801-205-0329
BB: 6EF20737
Boards Member, District 2

§ 53-3-401, Utah Code: Notwithstanding a local school board's status as a body corporate, 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. #B-051-us-01
School Board Amendments 2014 Legislative Session

⁸ Utah Code § 52-4-205

RE: Salt Lake Education Foundation Audit

1 message

Lexi Cunningham <Lexi.Cunningham@slcschools.org>

Thu, Sep 15, 2016 at 1:08 PM

To: Michael Clara <donmiguelslc@gmail.com>

Cc: Kristina Kindl <Kristina.Kindl@slcschools.org>, Janet Roberts <Janet.Roberts@slcschools.org>

We will gather this information for you.

Lexi



Michael Clara <donmiguelslc@gmail.com>

Re: Salt Lake Education Foundation Audit

1 message

Michael Clara <donmiguelslc@gmail.com>

Thu, Sep 15, 2016 at 3:46 PM

To: Lexi Cunningham <Lexi.Cunningham@slcschools.org>

Bcc: "J. Michael Clara" <donmiguelslc@gmail.com>

Dr. Cunningham,

Something very shady is going on here. I called the High Schools and they are not aware of this new positions that you just told me about. Who in the District created these new positions and didn't tell anyone? How is it that the Board was not made aware?

On the issue of Kimball Young's contract work at Horizonte.

Janet is claiming that the contract was cancelled on July 19, 2016.

Yet the Board approved the \$48,000.00 for his contract at the August 2, 2016 Board meeting.

I was at Horizonte the last two days and I have been advised of and convince of the value that Kimbal Young brings to the school. This is not something that can be blamed on McKell, this is on your watch. The Board has approved the funding for this contract for another year. The District should then carryout the vote of the Board. According to Utah law - no one in the District can override a vote of the Board.

I am asking you to correct this oversight. Honor the site based decision to employ Kimball Young in this manner. Respect the authority of the Board and allow the payment for this contract to move forward.

Un abrazo,

Michael Clara

M: 801-205-0389

BB:5EF20737

Board Member, District 2

§ 53-3-401, Utah Code: Notwithstanding a local school board's status as a body corporate, 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. HB 250 - Local School Board Amendments /2014 Legislative Session



Michael Clara <donmiguelslc@gmail.com>

RE: Salt Lake Education Foundation Audit

1 message

Lexi Cunningham <Lexi.Cunningham@slcschools.org>
To: Michael Clara <donmiguelslc@gmail.com>

Fri, Sep 16, 2016 at 4:19 PM

Mr. Clara,

I am going to update all board members at our meeting on Tuesday.

Lexi

Page | 4 of 11



Michael Clara <donmiguelslc@gmail.com>

Re: Salt Lake Education Foundation Audit

1 message

Michael Clara <donmiguelslc@gmail.com>
To: Lexi Cunningham <Lexi.Cunningham@slcschools.org>

Fri, Sep 16, 2016 at 4:28 PM

Thank you for the update. Did a revised agenda go out? I did not see this issue on the agenda that I received.

Un abrazo,

Michael Clara
M: 801-205-0389
BB:5EF20737
Board Member, District 2

§ 53-3-401, Utah Code: Notwithstanding a local school board's status as a body corporate, 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. HB 250 - Local School Board Amendments 2014 Legislative Session



Michael Clara <donmiguelslc@gmail.com>

RE: Salt Lake Education Foundation Audit

1 message

Lexi Cunningham <Lexi.Cunningham@slcschools.org>
To: Michael Clara <donmiguelslc@gmail.com>

Mon, Sep 19, 2016 at 5:37 AM

Mr. Clara,

We will be discussing in Executive Session. There is not a revised agenda.

Lexi

Re: Salt Lake Education Foundation Audit

1 message

Michael Clára <donmiguelslc@gmail.com>
To: Lexi Cunningham <Lexi.Cunningham@slcschools.org>
Cc: Melissa Ford <m.ford@comcast.net>, M <rosemary.emery2@gmail.com>
Bcc: "J. Michael Clára" <donmiguelslc@gmail.com>

Mon, Sep 19, 2016 at 9:19 AM

Page | 5 of 11

Thank you for the reply. This process that you follow to inform Board members is a bit frustrating. The last time we had an issue (Dr. Christy) that was a matter of public concern, instead of providing me with information that I could pass on to members of the community, you gave me the same the reply; instead of answering my questions you said that you would inform the entire Board at the next Board meeting.

I later discovered that the issue was discussed with other Board members to my exclusion. Then at the Board meeting you stated that you could not say anything while someone on the District level disseminated details of the allegations to the media. You also stated that you were not aware of the actions taken against Dr. Christy because the demotion happened before you started as Superintendent.

In this case, the actions of Janet Roberts occurred on your watch. This is your responsibility to correct or perpetuate. To that end, can you tell me how this is a Closed Door issue? Utah Law states the following:

(1) A closed meeting described under Section 52-4-204 may only be held for:

- (a) discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions to discuss collective bargaining;
- (c) strategy sessions to discuss pending or reasonably imminent litigation;
- (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
- (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares,
- (f) discussion regarding deployment of security personnel, devices, or systems;
- (g) investigative proceedings regarding allegations of criminal misconduct;
- (h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints; (i) as relates to an ethics committee of the Legislature

Which category does this issue with Horizonte fall under?

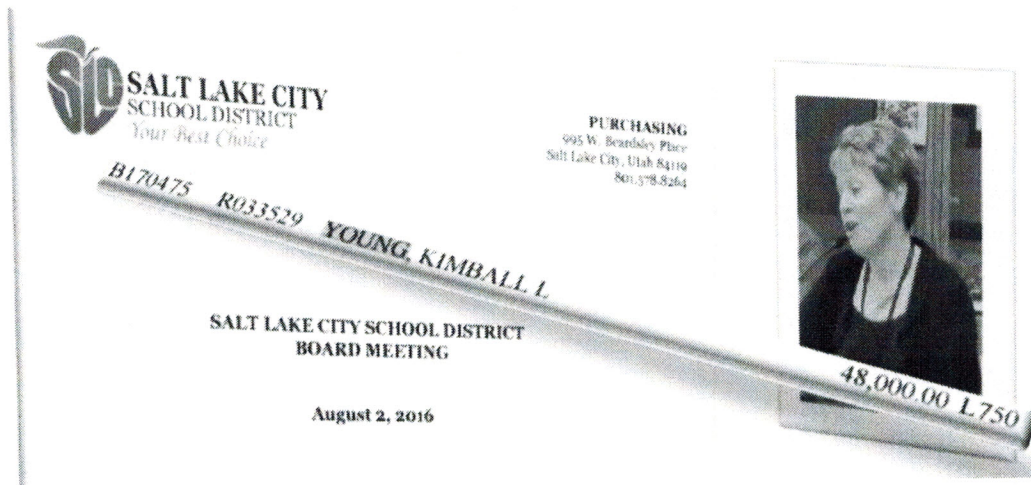
Superintendent Cunningham ignored my email and did not reply. Consequently, I voted "NO" to go into the closed session on 09/20/16, because she would not tell me what exception in the ACT she was invoking to discuss the illegal cancelation of Horizonte Alternative High School's College Advisory Services. It is significant to note, that during the public portion part of the meeting, Horizonte graduate Dominigue Westenskow addressed the Board. This is significant in that he was excluded from hearing the secret deliberations of the Board on this matter. The minutes for the public portion of the meeting reflect the following:

B. REQUEST TO SPEAK

Dominigue Westenskow, Horizonte graduate, addressed the board to share his feelings of the importance Mr. Kimball Young's support and the various opportunities he had helped provide were to him as a Horizonte student. He said Mr. Young recently left Horizonte, he requested the board find a way to have him continue, and said he feels the outcome for some Horizonte students will be greatly impacted without Mr. Young's efforts.

During the 09/20/16 secret deliberations, I pointed out that in the Board's prior business meeting, we approved the \$48,000.00, payment for Horizonte Alternative High School's College Advisory Services contract for the 2016-17 school year. Moreover, the Boards actions were conducted in an open and public meeting:⁹

BOARD OF EDUCATION VS Business Administrator



During the illegal closed door session, I asked by what authority did Janet Roberts override an official act of the Board of Education? I went on to point out that the Business Administrator is not the Human Resources Director and neither is she an educator. Indeed, Ms. Roberts is appointed by the Board, axiomatically she is an employee of the Board and as an employee, should carryout the official acts of the Board not revoke them. In other words, Ms. Robert's cancelation of the College Advisory Services contract at Horizonte Alternative High School is a blatant act of in insubordination and as far as I am concerned is illegal. The Utah legislature has endowed the Business Administrator with the following limited duties:

"...be custodian of all district funds, be responsible and accountable for all money received and disbursed, and keep accurate records of all revenues received and their sources... countersign with the president of the board all warrants and claims against the district as well as other legal documents approved by the board..."¹⁰

As noted above (and below),¹¹ I called upon Superintendent Cunningham to rectify this situation and to instruct the Business Administrator to perform her statutory duties and resume payments to Kimball Young for his contractual services:

I was at Horizonte the last two days and I have been advised of and convince of the value that Kimbal Young brings to the school. This is not something that can be blamed on McKell, this is on your watch. The Board has approved the funding for this contract for another year. The District should then carryout the vote of the Board. According to Utah law - no one in the District can override a vote of the Board.

I am asking you to correct this oversight. Honor the site based decision to employ Kimball Young in this manner. Respect the authority of the Board and allow the payment for this contract to move forward.

⁹ Salt Lake City Board of Education Minute Meetings 08/02/16

¹⁰ Duties of Business Administrator -Utah Code §53A-3-303

¹¹ Michael Clara email to Superintendent Cunningham 09/15/16

I asked for an explanation as to why the public was now being excluded from hearing the explanation of why the Business Administrator countered an official act of the Board. ¹² No explanation was given. I was hoping to rectify this situation by having this issue placed on the agenda of the Board's public meeting scheduled for October 4, 2016. As per Board policy, two members of the Board asked Board President Heather Bennett to place this on the agenda. ¹³ Sadly, she did not honor our request:

Notice of Public Meeting

**Salt Lake City School District
440 East 100 South
Salt Lake City, Utah 84111**

Heather Bennett, Board President
Tiffany Sandberg, Board Vice President
Alexa Cunningham, Superintendent

October 4, 2016

- | | | |
|----|--------------------------|-----------|
| 1. | BOARD CONVENES | 6:00 p.m. |
| | • General Pronouncements | |

- | | | |
|----|--|-----------|
| 2. | CLOSED EXECUTIVE SESSIONS (if needed) | 6:05 p.m. |
| | A. Litigation; Negotiations; and/or Property | |
| | B. Character, Professional Competence, or Physical or Mental Health of an Individual; and/or Deployment of Security Personnel, Devices, or Systems | |

- | | | |
|----|---|-----------|
| 3. | BOARD MEETING (Board Room, Rooms 112 - 114) | 6:30 p.m. |
|----|---|-----------|

Note: In accordance with Board Policy B-2, School Board Meetings, if a board member, the superintendent, or the business administrator wants to discuss any document(s) related to an item on the board's consent, discussion, or action agenda, he or she must provide copies for all members of the board, and for the superintendent at least twenty-four hours in advance of the scheduled board meeting in order to allow sufficient time for the document(s) to be read and considered. In addition, presenters with documents to be distributed at the scheduled board meeting are encouraged to submit all documents to the superintendent at least twenty-four hours in advance of the meeting.

- Welcome
- Pledge of Allegiance
- Recognition: West High School HOSA

- | | | |
|----|-----------------|-----------|
| A. | CONSENT AGENDA: | 6:40 p.m. |
|----|-----------------|-----------|

Note: Any request by a board member to move a topic off of the consent agenda and onto the action agenda must be received by the president, vice president, and superintendent at least twenty-four (24) hours prior to the scheduled board meeting, and must include an explanation of the board member's concerns with the consent item(s). Advance notice of the specific concern(s) will allow the superintendent, or superintendent's designee, to be prepared to fully discuss those concerns at the board meeting.

- | | | |
|----|---|--------------------|
| 1. | Purchasing/Accounting Report | <u>EXHIBIT A1</u> |
| 2. | Human Resources Department Report | <u>EXHIBIT A2</u> |
| 3. | Minutes for the Board Meeting, September 6, 2016 | <u>EXHIBIT A3</u> |
| 4. | Minutes for the Board Meeting, September 20, 2016 | <u>EXHIBIT A4</u> |
| 5. | Board Policies <u>New/Revisions/Deletions</u> : | |
| | a. G-17, Political Activities on District Property | <u>EXHIBIT A5a</u> |
| | b. I-3, Optional and Specialized Programs | <u>EXHIBIT A5b</u> |
| | c. I-4, District Sponsored Charter Schools | <u>EXHIBIT A5c</u> |
| | d. I-22, Use of Copyrighted Materials | <u>EXHIBIT A5d</u> |
| | e. P-10, Personnel Evaluations | <u>EXHIBIT A5e</u> |

¹² Board Policy B-1: "...The board expects the business administrator to discharge his or her statutory duties".

- B. REQUEST TO SPEAK: 6:45 p.m.**
- Note: Persons requesting to speak to the board of education in an open meeting need to sign up prior to the start of the open session of the board meeting. Resolution of questions or responses to proposals should not be expected at this meeting; staff or others may be asked to research and/or prepare materials and solutions for a later time. Fifteen minutes total have been scheduled for persons requesting to speak. Three minutes will be allotted for individual requests and five minutes will be allotted for group requests. If we receive more requests than the allotted time permits, those requests may be scheduled for the next board meeting. Your concerns may be submitted in writing to the superintendent's office for distribution to the board of education at any time.*
- C. REPORT 7:00 p.m.**
1. Highlights from School Improvement Plans:
 - a. Mountain View Elementary - Ken Limb, Principal EXHIBIT C 1a
 2. Construction Update, Discussion, and Future Updates - Paul Schulte EXHIBIT C2
- D. DISCUSSION AGENDA: 7:25 p.m.**
- E. ACTION AGENDA: 7:55 p.m.**
1. Any item transferred from Consent Agenda
- F. BOARD MEMBER REPORT: 8:00 p.m.**
- G. SUPERINTENDENT'S REPORT: 8:10 p.m.**
1. Miscellaneous Updates: Follow-up on Requests to Speak
- H. ADJOURNMENT: 8:25 p.m.**

As already noted, during the August 2, 2016, Board meeting, approval was given for the administration to pay the \$48,000.00 for College Advisory contractual services at Horizonte Alternative High School. It is worth noting that \$25,000.00 of this contracted was funded through an approved grant from the Utah State Legislature:

State Program Plan

- English for English Language Learners (ELL)
- Adult Basic Education (ABE)
- Adult High School Completion (AHSC)

Plan Timeline

March 22, 2016 State Plan Form available to all state Adult Education Directors/Coordinators

Superintendent Cunningham and Business Administrator Janet Roberts are both appointed and hired by the Board of Education, yet they have countermanded an official act of the Board when they terminated the contract for College Advisory Services for Horizonte High School. Moreover, the explanation Superintendent Cunningham offered in the email below and repeated by her attorney and Business Administrator Roberts in the illegal closed door meeting was not truthful and was given as a deliberate act of deception:



Michael Clara <donmiguelslc@gmail.com>

RE: Salt Lake Education Foundation Audit

1 message

Lexi Cunningham <Lexi.Cunningham@slcschools.org> Thu, Sep 15, 2016 at 1:00 PM
To: Michael Clara <donmiguelslc@gmail.com>
Cc: Janet Roberts <Janet.Roberts@slcschools.org>, Kristina Kindl <Kristina.Kindl@slcschools.org>

Mr. Clara,

During last year's budget cycle a new position was added to each high school to assist students with scholarships and the college application process. This was essentially what Mr. Young was doing at Horizonte. Mr. Young was told that he could apply this position but we could not support the new position and an outside contractor. He did not apply for the new position and his contract was cancelled.

Lexi

The truth of the matter; each of the conventional High Schools in the Salt Lake City School District already have a full-time College Advisor and a part-time scholarship advisor. Here is the set up at East High:

Each of the three Traditional High Schools have 1 Full-time College Advisor and 1 Part-time Scholarship Advisor.

This is the pair currently at East High School:



Elizabeth Shaw
School: East
Office Phone: 801-584-2923 ext. 1171
Email: elizabeth.shaw@utah.edu
Hometown: Clearfield, Utah
College: Weber State University
Degree: Bachelors of Science in Social Work



You will note on page 3 of this complaint, I challenged Superintendent Cunningham's explanation and asked her to send me documentation substantiating her claim that new positions were added to all of the High Schools. Her reply:



Michael Clara <donmiguelsic@gmail.com>

Page | 10 of 1:

RE: Salt Lake Education Foundation Audit

1 message

Lexi Cunningham <Lexi.Cunningham@slcschools.org>
To: Michael Clara <donmiguelsic@gmail.com>
Cc: Kristina Kindl <Kristina.Kindl@slcschools.org>, Janet Roberts <Janet.Roberts@slcschools.org>

Thu, Sep 15, 2016 at 1:08 PM

We will gather this information for you.

Lexi

VIOLATION

As noted above, Superintendent Cunningham is being less than truthful with the Board of Education. Moreover, on September 20, 2016, Dr. Cunningham and her attorney, Kristina Kindl misused the democratic process by convening a secret meeting of the Board of Education where access by the public was denied under the guise of:

*"...discussion of the character, professional competence, or physical or mental health of an individual..."*¹⁴

The abuse of Utah Open and Public Meeting Act is a common tactic used by Board President Heather Bennett in an effort to exclude the public from the deliberative processes. The idea being that the administration can provide information to the Board that cannot be discussed openly or substantiated in the cloak of a "closed door meeting". This serves only to avoid public scrutiny and accountability and results in a breakdown of our form of government. Moreover, this type of abuse is designed to constrain a Board member's ability to fulfill their responsibilities as stewards of the local education's resources and their distribution:

*"Members of the Salt Lake City School District Board of Education are elected officials obliged to monitor, evaluate, and work to improve educational opportunities for children and families in the district."*¹⁵

PUBLIC INTEREST

The decision to terminate the contract for College Advisory services at Horizonte Alternative High School was crafted in violation of Utah Open and Public Meeting Act:

1. The Board of Education approved the funding and the contract in an open and public meeting (August 2, 2016).
2. Superintendent Cunningham held a meeting that excluded the public while she explained why she countermanded the Board's public actions (September 20, 2016).
3. Board President, Heather Bennett denied my request to place this issue on the agenda of the next public meeting in an effort to rectify this abuse of the Act (October 4, 2016).
4. Board President Heather Bennett has effectively abdicated the authority of the Board because she refused to honor my request to place this issue on a public agenda, yet it is discussed in illegally held closed door meetings.

¹⁴ Utah Code §§ 52-4-205

¹⁵ Board Policy B-1

CONCLUSION

The Utah Legislature has declared it to be state policy that the political subdivisions of the State of Utah are to conduct their deliberations and take their actions in full view of the people whose business they are conducting.¹⁶ Clearly, an open and transparent government is both a key feature and a necessary condition of a contemporary democratic society. This view is based upon the conviction that the people can effectively exercise their constitutional role as overseers of government action where their unfettered rights of access to information about government operations are secure.

Page | 11 of 1:

The **ACT** was adopted to promote accountability and transparency and help prevent governing bodies from acting in secrecy and to reduce the chances of school systems being impacted by abuses of power, cronyism, nepotism and discrimination. In this instance, we see that when the Superintendent and Board President do not conduct the peoples business in an open and transparent manner they are then able to implement discriminatory practices because there is no accountability to the citizens of Salt Lake City.

Conversely, if they were required to justify why they are denying students of Color, equal access and opportunity to the postsecondary transitional programs of the District, I am confident that the public would demand that the students at Horizonte Alternative High School be given access to a full-time College Advisor in the same manner of their peers who attend the conventional High Schools within.

Accordingly, I am requesting that your office enforce the provisions of **Utah's Open and Public Meetings Act** which will result in strengthening the people's trust in government because it gives them the guarantee that the government is held accountable and better allow the public to effectively participate in the political deliberations and decisions that affect them and their children.

Shalom,

J. Michael Clára
Board Member, District 2

cc: United States Department of Education Office for Civil Rights
Utah Senator Luz Escamilla
Utah Representative Angela Romero
Utah Representative Sandra Hollins
Utah Education Standing Committee of the Utah House of Representatives
Utah Education Standing Committee of the Utah Senate
Utah State Auditor Dougall
Equity Leadership Team, Salt Lake City School District
Horizonte High, School Improvement Council
Mr. Kimball Young, Horizonte College Advisor
Superintendent Dickson, Utah Superintendent of Public Education
Superintendent Cunningham, Salt Lake City School District



¹⁶ Utah Code § 52-4-102 (2)