

Statement regarding Agenda Item #9

Nick Robinson
May 11, 2010

On January 26, the Peralta administration decided to close the College of Alameda childcare center without a formal vote by this Board and opportunity for public input prior to the decision. The decision to close the childcare center has never been on any agenda as an action item.

A parent or student who reads the Board agenda prior to every meeting would not have known that there was a plan to close the childcare facility. In fact, this is exactly what happened—hundreds of members of the Peralta community were taken by surprise when they learned that a critical decision about our lives was made without our knowledge. The purpose of the Brown Act and Board Policy are thwarted when decisions are made without public input. Opportunities for debate and discussion after the fact do not and cannot make up for the violation of mandated procedures.

If an action to close the center has been taken by Vice Chancellor Allen, it is contrary to board policy and the Board must declare it void. That action is in violation of the Brown act, and the Board must declare the action void and hold a public meeting before any further action. If no action has been taken, Peralta has no right to close the center.

At its heart, this complaint is about the undemocratic nature of this administration and this Board who have excluded people most affected by the proposed closure of the COA childcare center. Following the principle "No decision about us without us," we continue to demand a full Board vote on this item.

We have received no written response to the complaint filed on April 21; this is the only agenda item tonight that did not have background materials associated with it. Instead we were thrilled at the April 27 Board meeting when the Chair said he would put the proposed closure on tonight's Board agenda.

The District's position conflicts with public statements by the Board Chair. On April 29, the Chair wrote that he "Directed the Chancellor to keep the Childcare center at College of Alameda open through December by working with SEIU 1021 until a permanent funding solution can be found." This shows that he thinks he, not the Chancellor, has the authority to make decisions about the Childcare center, and that he exercised that authority – all without a Board vote.

When the agenda was finally made public on the afternoon of May 7, we were stunned to find no agenda item addressing the childcare decision. We were doubly stunned to see that instead of the childcare question, the Board has put our legal complaint on the agenda as an item for discussion.

The Agenda item indicates that the Board believes there is no obligation to allow public comment because it is not a Board responsibility to make decisions about keeping the center open. Instead, the item indicates, it is solely a Chancellor-level decision, and a Chancellor can make this kind of decision without any Board approval.

This is directly contrary to the Board's own policies. According to Board policy, this Board is responsible for all policy decisions, curricular decisions and major programmatic and facilities decisions – anything over \$100,000. It is

your responsibility as elected representatives to take full responsibility for any program-level or system-level change.

The Chancellor is responsible for implementing policies and making recommendations for programmatic or structural change. The Chancellor can hire or fire people below management level, but cannot create new positions or create new programs, or make curricular or facilities changes without board approval. His or her role is to implement Board policies, and make reports and recommendations. The role of the board is to create policies, review the reports and recommendations and take actions.

If the Board's position were correct, the Chancellor could choose, without consulting with the Board, to close another child care facility, or to move it, or to open yet another one. This is absurd and undemocratic. The reason that the responsibilities are allocated as they are is so that the community can have input on important decisions. The structural division of responsibilities allows for the Chancellor to manage day-to-day operations, but the public to engage, through the board, on the operations of the college.

This is not a minor issue, and as the parents most affected by the proposed closure have tried to explain, this is not simply a contract "augmentation." They may lose their childcare as a result of this decision, and may not continue at Peralta.

This lack of understanding is a result of systematically excluding people most affected by its decisions. The April 12 memo by Vice Chancellor Allen purports to explain the District's rationale for closing the COA childcare center. It contains a number of basic errors, including claims that COA child care is not meeting its contract with the State, COA child care is draining the Fund reserves, there is no waitlist of families for COA child care and basic errors about finances, including a subtraction error.

These errors make us doubt the ability of this administration to make decisions that dramatically impact our lives and our education. They are also errors that could be avoided if the Board simply listened to the people it governs.

Our complaint stands. We await a formal written response, after which we will decide whether to pursue further legal action to void any decision to close the child care center.

We should not have to resort to the courts to ask our elected representatives to give us our basic rights to participate in decisions about our education. Board policies, past board actions, and statements of the President of the Board clearly show that the Chancellor does not have the right to make decisions about closing facilities without board action.

We demand that the Board void any decision to close the child care center, rescind the layoff notices, direct the Chancellor to keep the child care center open, and record these actions in the minutes of the May 11 meeting.

Abel Guillen, President
Peralta Community College Board of Trustees
333 East 8th Street
Oakland, CA 94606 USA

April 22, 2010

Dear Mr. Guillen,

This letter is to call your attention to a substantial violation of a central provision of the Ralph M. Brown Act, one which jeopardizes the finality of the action apparently taken by the Peralta Community College District (PCCD) Board of Trustees to close the childcare center at the College of Alameda (COA). The decision to close the center was made outside the legally mandated processes, and must be declared void.

I am currently enrolled as a student at Laney College. My ability to meaningfully participate in decisions made about my education and the education of my classmates has been thwarted by actions taken by the PCCD Board of Trustees and members of the PCCD administration.

The nature of this complaint

The nature of the violation is as follows: the PCCD Board of Trustees decided to close the COA childcare center without ever subjecting the question to a formal vote and opportunity for public engagement prior to the decision.

The decision to close the childcare center was not posted on the Agenda for January 26th when the decision appears to have been made, and in fact has never been on any agenda as an action item.

A parent, teacher, or community member who diligently read the agenda items prior to every meeting would not have been notified that there was a plan to close the childcare facility. In fact, this is exactly what happened—hundreds of members of the Peralta community were taken by surprise when they learned that a critical decision had been made without notice. The purpose of the law is thwarted when decisions are made without public input. Opportunities for debate and discussion after the fact do not and cannot make up for the violation of the mandated procedures.

A pattern of noncompliance

The PCCD has engaged in a well-publicized pattern of noncompliance with state mandates, financial mismanagement and violation of its governance structure and Board policies and procedures.

- PCCD is currently the only community college district in the State that has not filed its quarterly and annual financial reports to the State Chancellor's office. A Public Records Act I submitted to the District on April 12 has so far gone

unanswered. Additionally, PCCD has not formally passed a budget for 2008-09, 2009-10 or 2010-11 fiscal years. This deprives the public and PCCD stakeholders of our ability to participate in fiscal decisions in any meaningful way.

- In 2009, the Chancellor unilaterally approved pay raises for PCCD administrators, a move the Contra Costa Times called a “flagrant violation of District policy requiring Trustees to approve pay increases” (“Editorial: It was well past time for Elihu Harris to leave the Peralta college district,” January 18, 2010). We allege a similar violation in this complaint.

Timeline of the violations

Item Two (“Informational items and oral reports”) in the agenda for the January 26, 2010 PCCD Board of Trustees meeting lists a series of “reports” from Vice Chancellor Wise Allen: “Enrollment, Website, Financial aid and Childcare Updates.” Paper copies of Board agendas are typically unavailable at meetings, but a diligent member of the public who managed to read this agenda would be led to believe that Vice Chancellor Allen was simply giving an update at this meeting and that no action would be taken. If anything, this diligent member of the public would be *mised* by how the District noticed its action.

In a memo to Chancellor Harris from Vice Chancellor Allen available on the PCCD web site dated January 19, 2010, Allen describes the action in question. Allen writes, “To address the short fall [in State funding], I am recommending that we close the Child Care Center at the College of Alameda.”

Allen concludes the letter by writing “If you have any questions, please let me know; otherwise I will proceed to implement this plan effective July 1, 2010.”

The action taken was in violation of the Brown Act because there was no adequate notice to the public on any posted agenda that the matter acted upon would be discussed. There was no finding of fact made by the Peralta board of trustees that urgent action was necessary on a matter unforeseen at the time the agendas were posted. Furthermore, for years the PCCD has repeatedly refused to share key financial information which have a direct bearing on the justification for the decision.

This is not a trivial violation. An agenda item is legally mandated for every “action” taken. While the Board of Trustees never technically voted on the decision to close the childcare center, it clearly took responsibility for the action as if there was a vote, and decision not to intervene after being notified of the chancellor’s plans to close the center constitutes an action. Section 54952.6 defines “action taken” as “a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.” Under any reading of this statute, the decision to close the childcare facility was an “action taken.”

On March 23, the PCCD Board of Trustees meeting agenda noticed a public hearing "To eliminate certain services and related layoff notices" [sic].

The public hearing description lists eight workers at four positions to be laid off effective July 1, 2010 because "categorical funding through the child care program(s) will have been severely cut." Nowhere does the executed resolution mention the College of Alameda childcare center. The public is led to believe that this was a discrete action to lay off eight workers *after* the decision to close the center was made in January.

Finally, on April 13, another "Childcare update" appeared under Item Six of the PCCD Board of Trustees agenda. Vice Chancellor Allen signed an April 12 memo that acted as the basis for this "update."

The April 12 consists of a bulleted list of reasons to close the COA childcare center authored by Vice Chancellor Allen.

The public has no basis to address these points because the PCCD has refused to or cannot provide accurate fiscal data.

Vice Chancellor Allen concludes the letter by writing "The restructuring and downsizing of Peralta's Child Care Program will have no impact on the number of students and parents that Peralta has been serving." This statement contradicts testimony from parents currently using the COA childcare facility given at the March 23 PCCD Board of Trustees meeting.

The sum result of these (non-)actions has been to dampen, discourage and exclude public participation including PCCD students and parents who use the COA child care center. These parents discovered that they were losing their childcare only *after* the January 26 Board meeting. Subsequent participation has occurred *in spite of* confusing and misleading Board materials and is limited because the action in question was already apparently made unilaterally by PCCD administrators in violation of Board policy.

Had the action in question been properly noticed and given a proper hearing in front of the Board, it is entirely possible that the Board would have been convinced not to close the center. After all, *it is the Board's decision to make.*

Demand for corrective action

If in fact an action has been taken by Vice Chancellor Allen, it is contrary to board policy and the Board must declare it void. If no action has been taken, PCCD has no right to close the center. If the Board has taken an action, that action is in violation of the Brown act, and the Board must declare the action void and hold a public meeting before any further action.

The Brown Act requires the board to notify the public with a "brief description" of each item to be acted upon. It provides for judicial invalidation of illegally taken actions.

Pursuant to Government Code Section 54960.1, I demand that the Peralta Board of Trustees cure and correct the illegally taken action as follows: the formal and explicit withdrawal from any commitment made to close the childcare center, coupled with a disclosure at a subsequent meeting of why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda.

As provided by Section 54960.1 you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

As you know, private discussions about a possible lawsuit may themselves be a violation of the law.

Nicholas Robinson

Peralta Community College Student

CC:

Dr. William Riley
Nicky Gonzalez Yuen
Linda Handy
Marcie Hodge
Cy Gulassa
Nicky Gonzalez Yuen
Bill Withrow

Other interested parties