

**STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT**

IN THE MATTER OF:)
)
THE BOARD OF EDUCATION OF THE)
LOS LUNAS PUBLIC SCHOOLS)
)
)
_____)

REPORT TO THE SECRETARY

1. Introduction and summary of proceedings

On May 26, 2021, Secretary Designate of the Public Education Department (“PED”) Ryan Stewart (“Secretary Stewart”) informed the Los Lunas School Board members (David Vickers, Frank Otero, Steven Otero, Bryan Smith and Eloy Giron) (collectively the “Board), that the Board was suspended effective immediately. PED Exhibit 54; Giron-Smith Exhibit 2. Secretary Stewart stated in the letter that this action was being taken due to “the severe, un-remediated, and persistent impairment of the educational process by certain members of the school board, the Los Lunas School Board is hereby suspended effective immediately, pursuant to NMSA 1978, § 22-2-2 and § 22-2-14.” The letter lists/describes the reasons for the actions on pages 2-4. Board Members Giron and Smith responded to the above on July 16, 2021. In short, they argued that the summary suspension failed to satisfy NMSA 1978, 22-2-14 and NMAC 6.30.6.8 and 6.30.6.9. They also argued that there were no grounds to support the suspension.

The undersigned was appointed as a hearing officer on June 15, 2021. There were no objections to the Hearing Officer. On June 16, 2021, a hearing was noticed for June 30, 2021. However, during a June 17, 2021, scheduling conference, at the request of Joseph Goldberg, attorney for Mr. Giron and Mr. Smith, the parties and Hearing Officer agreed to reschedule the

hearing for July 27, 2021. The hearing date was moved to July 28, 2021, at the request of the Hearing Officer.

On July 21, 2021, a prehearing conference was held. The parties agreed that no closing arguments would be done, and they would use the time for their opening arguments.

On July 16, 2021, Mr. Giron, Mr. Smith, Steven Otero and the PED submitted exhibit and witness lists, along with the exhibits. Thereafter, amended lists were submitted as follows:

- July 19, 2021 - Giron and Smith amended witness and exhibit lists.
- July 23, 2021 – Giron and Smith first amended exhibit list.
- July 26, 2021 – Giron and Smith second amended exhibit list.
- July 27, 2021 – PED first amended witness list.
- August 11, 2021 – Giron and Smith third amended exhibit list
- August 23, 2021 – Giron and Smith fourth amended exhibit list.

On July 27, 2021, the PED submitted Proposed Findings of Fact and Conclusions of Law (and attachments). On August 23, 2021, Giron and Smith submitted Proposed Findings of Fact and Conclusions of Law.

A. The July 28, 2021, hearing

A hearing took place on July 28, 2021, with the PED presenting its witnesses and evidence. At the hearing, Dan Gerson, of Stelzner, Winter, Warburton, Flores & Dawes, P.A. represented the PED. Joseph Goldberg of Freedman Boyd Hollander Goldberg Urias & Ward, P.A represented Board Members Elroy Giron and Bryan Smith. The other Board Members were present but not represented by counsel. The hearing was recorded via Zoom and transcribed by a court reporter. Mr. Gershon called the following witnesses: (1) Walter Gibson, former Superintendent; (2) Steven Moore, Owner, Organic Technologies; (3) Claire Cieremans, Chief Financial Officer; and (4)

Andy Garcia, Director of Maintenance and Construction. Given that the PED's case, along with cross examinations, took the entire day, the parties agreed to complete the matter on August 24, 2021. The official transcript was sent to the Hearing Officer and citations to the July transcript are referenced to as "Tr."

B. The August 24, 2021, hearing

On August 24, 2021, the hearing resumed, and the Board Members presented their testimony and evidence. At the hearing, the PED was represented by Mr. Gerson. Board Members Giron and Smith were represented by Mr. Goldberg. The other Board Members were present but not represented by counsel. The hearing was recorded via Zoom and transcribed by a court reporter. Mr. Goldberg called as witnesses: (1) Mr. Jiron; (2) Mr. Smith; (3) Frank Otero; and (4) Michael Griego, Attorney from Valencia County. Mr. Vickers called himself as a witness. Steven Otero called himself as a witness. While finding character witnesses likely not relevant, the Hearing Officer allowed Mr. Goldberg to call Mr. Griego who testified to the character of Mr. Smith and Mr. Jiron. Based on relevance and cumulativeness, the Hearing Officer did not allow Mr. Goldberg to call a second character witness. The Hearing Officer was provided a draft transcript of the August 24, 2021, hearing. Citations to the day two draft transcript are referred to as "DTr." Note that the pages numbers in the draft transcript may end up being different than the final version.

The Hearing Officer admitted into evidence the following exhibits:

- PED Exhibits: 1-63, 65-67
- Giron and Smith Exhibits: 1-34
- Steven Otero Exhibits: Pictures

At the July hearing, Mr. Goldberg took the position that under the hearing rules, hearsay was not admissible. NMAC 6.30.6.9E(11). The Hearing Officer did not agree that the language relied on by Mr. Goldberg precluded hearsay. The rules state that the Rules of Civil Procedure and Evidence do not apply. (*Id.*) Moreover, as stated in *Bransford v. State Taxation & Revenue Dept., Motor Vehicle Div.*, 1998-NMCA-077, 18, 125 N.M. 285, in “administrative proceedings, both hearsay and non-hearsay evidence may be considered.”

2. Findings of Fact

NMAC 6.30.6.9, requires the Hearing Officer to provide, within two business days after the hearing, a report setting for the “findings of fact.” It does not require conclusions of law. Those are left to the Secretary. NMAC 6.30.6.9E(16) (the “secretary’s written decision shall contain findings, reasons, conclusion and legal authority . . .”). Note, that the PED submitted over a thousand pages of documents. Some of the exhibits are lengthy the PED did not refer to most of the documents in the presentation of its case. In addition, Giron and Smith submitted recordings of meetings, but did not provide a reference to a particular portion of the recording. The Hearing Officer only had two days from the hearing to prepare a report. Thus, while the Hearing Officer generally reviewed many of the documents, he did not review every document in detail and did not rely heavily on the exhibits that were not referenced in the hearing or the Proposed Findings.

The Hearing Officer finds as follows:

Notice

1. On November 13, 2020, Secretary Stewart wrote the Board stating that he had been informed of “potential” violations of law, including of the Procurement Code, Public Schools Code, the Open Meetings Act, the Inspection of Public Records Act and the Governmental Code.

The Board was directed to take” immediate action to discontinue any improper conduct. . . .” PED Exhibit 40; Giron-Smith Exhibit 1.

2. The November 13, 2020, letter from Secretary Stewart does not identify the engagement of REDW or of attorney Andrew Sanchez by the LLSB as potential violations of the New Mexico Procurement Code, requiring cure and potentially warranting suspension. Nor does that letter identify:

a. the failure to obtain prior approval of the New Mexico State Auditor before engaging REDW; Steven Moore or Organic Technology Inc.;

b. any issue of “bullying” or “intimidating” or “threatening” or “retaliating against” LLSB staff;

c. any issue of LLSB board members pressuring administrators to hire, fire or discipline LLSB staff;

d. any issue with respect to Andy Garcia or the LLSB Maintenance Department;

e. any issue with regard to a fencing project or the Cooperative Educational Services (“CES”);

f. any issue with respect to LLSB board members inappropriately addressing LLSB staff at a board meeting;

g. any issue with respect to a December 2, 2020, board meeting and inappropriate comments about disabled students;

h. any issue with respect to Craig Chavez or “pole barns”; or

i. the Board failing to develop educational policies, as issues requiring cure or warranting potential suspension.

Id.

3. On May 26, 2021, Secretary Stewart informed the Board that the Board was suspended effective immediately. PED Exhibit 54; Giron-Smith Exhibit 2. Secretary Stewart stated in the letter that this action was being taken due to “the severe, un-remediated, and persistent impairment of the educational process by certain members of the school board, the Los Lunas School Board is hereby suspended effective immediately, pursuant to NMSA 1978, § 22-2-2 and § 22-2-14.” *Id.*

4. The letter states in part:

Information and Evidence of Improper Board Conduct:

The misconduct by certain Los Lunas School Board members is demonstrated by information and evidence provided to the PED, the Office of the State Auditor, and the New Mexico State Police. The PED received evidence that multiple Board members acted contrary to the law in at least the following ways:

1. Violations of the Governmental Conduct Act, and potentially portions of the Criminal Code, by:
 - a) Misrepresenting information in public meetings of the school board which were directly contradicted by documentation provided to the board member.
 - b) Directly soliciting a vendor to redo a portion of the contract without following the procurement requirements.
 - c) Inappropriately addressing a district employee in the audience in a threatening manner during a board meeting.
 - d) Demanding that district administrators terminate or hire particular individuals.
 - e) Pressuring an employee through the employee’s family member(s) to lie or be dishonest about the employee’s supervisor. This included pressuring the employee to claim the supervisor forced the employee to moonlight for the supervisor while on the job and to claim that he feared retaliation from the supervisor. This also included pressuring the employee to represent that the board member had a video of the moonlighting to induce the employee to lie.

- f) Expressing to a potential vendor who provided a quote, “what was in it for [the board member]”, for personally setting up the prospective contract.
 - g) Falsifying allegations regarding financial misconduct of school administrative personnel.
 - h) Attempting to extort school administrative support, and maintenance personnel through intimidation and threats, including potentially threatening staff with retaliation, such as termination of employment if staff did not accede to board member demands, including demands to lie to investigators.
2. Violations of the Procurement Code, by:
- a) Directly soliciting bids from potential vendors in a procurement when not involved in the procurement.
 - b) Providing confidential bid information to potential vendors.
 - c) Demanding that contracts for goods and services be awarded to certain vendors, rather than undergoing the appropriate procurement process.
 - d) Soliciting services and contracts without working through district’s Chief Procurement Officer and central procurement office as provided by NMSA 1978, § 13-1-97.
3. Violations of the Open Meetings Act (OMA) and the Inspection of Public Records Act (IPRA), by:
- a) Taking board action through rolling quorums contrary to the provisions of OMA.
 - b) Taking board action on matters not described with reasonable specificity on the Board Meeting Agenda.
 - c) Refusing to produce records as required by IPRA.
 - d) Attempting to avoid compliance with IPRA by utilizing personal email accounts for school board business.
4. Violations of Board Policies and the Public School Code, by:
- a) Interfering with district contracts and not following the Procurement Code, contrary to Board Policy 3.15.

- b) Interfering with personnel matters, including demanding the demotion, suspension, or termination of school personnel, and making decisions and taking on responsibilities properly assigned by to the [sic] superintendent, contrary to Board Policies 2.5 and 2.5.1, and NMSA 1978, § 22-5-14.
- c) Interfering with overall district operations, contrary to Board Policy 2.2.7 and NMSA 1978, § 22-5-14.
- d) Demanding family members be hired as prohibited by nepotism restrictions, contrary to Board Policy 5.40 and NMSA 1978, § 22-5-6.
- e) Not referring complaints about schools or any phase of the total school operation to the superintendent, and improperly carrying out administrative and supervisory functions appropriately delegated to the Superintendent, contrary to Board Policy 2.5.1 and NMSA 1978, § 22-5-14.

Id.

5. The letter does not identify any specific act or alleged wrongdoing to any specific board member; clearly all or most of the complained about acts relate to only some of the board members.

6. The letter does not identify the December 2, 2020, board meeting and inappropriate comments about disabled students nor the failure to develop educational policies as grounds for summary suspension.

7. By agreement of the parties, Mr. Giron and Mr. Smith, through their attorney, responded to the above on July 16, 2021, denying any wrongdoing.

Board and Superintendent duties/responsibilities

8. Pursuant to NMSA 1978, § 22-5-4, the Board's responsibilities include:
- Developing educational policies for the school district;
 - Employing a local superintendent for the school district; reviewing and approving the annual school district budget;

- Contracting for the expenditure of money according to the provisions of the Procurement Code; and
- Adopting rules pertaining to the administration of all powers or duties of the local school board.

9. Pursuant to NMSA 1978, § 22-5-14, the school district superintendent has the authority and responsibility to:

- Carry out the educational policies and rules of the state board and local school board;
- Administer and supervise the school district;
- Employ, fix the salaries of, assign, terminate or discharge all employees of the school district;
- Prepare the school district budget based on public schools' recommendations for review and approval by the local school board and PED.

10. The Board enacted its own policies providing that the Board “is the policy-setting governing body for the school district, created by the State Legislature. Its members are local public body officials, with responsibilities and powers established through state law and regulation. Board members have no authority over school affairs as individuals. They have designated authority, within the limits of state law, over school affairs, when they take action in properly convened official sessions.” LLS Policy 1.3., attached to PED’s Proposed Findings.

11. The Board enacted its own policies which provides that the Board “shall” “contract for the expenditure of money according to the provisions of the Procurement Code; delegate administrative and supervisory functions to the local Superintendent; review, revise as needed, and submit policies to the Public Education Department on an annual basis; conduct

meetings in conformance with the Open Meeting Act.” LLS Policy 2.2.7 (Duties) and LLS Policy 2.8, attached to PED’s Proposed Findings.

Training

12. Following the November 13, 2020, letter, the Board received additional training on the above-cited laws, as well as roles and responsibilities of the board. Specifically, in January 2021, the PED, the New Mexico School Boards Association (“NMSBA”), and the New Mexico Coalition of Educational Leaders, provided a detailed board training. PED Exhibits 43 and 44 (training materials); Tr. p. 74.

13. The Board received additional training in February 2021 regarding the Board’s responsibilities with regard to the Open Meetings Act, the Inspection of Public Records Act, its proper role, and direction that it avoid interfering with day-to-day District operations and staff. PED Exhibit 45 (training materials).

14. Mr. Gibson could not state if there was a change in the Board’s activities or their involvement with staff or procurement after the training. Tr. pp. 75-76. He was transitioning out of his role, and little goes on during the Holidays. *Id.*

Day to Day Management

15. Steven Otero applied for a construction supervisor job in October 2018 that he did not get. (Tr. p. 172). Ms. Cieremans and Mr. Garcia were on the committee.

16. On December 14, 2020, Steven Otero made an IPRA request for records relating to a Supervisor for Constriction Management position, current contractor information related to construction and landscaping projects, invoices and other information. PED Exhibit 7, at 000156.

17. Ms. Cieremans testified that several individuals told her that Steven Otero was saying he would run for the board and heads were going to roll. Tr. p. 153. He never personally said this to her. *Id.*

18. Ms. Cieremans claimed that Ms. Sanders and Mr. Otero met, and that Mr. Otero wanted Mr. Garcia put on leave. However, she was not at that meeting. Tr. p. 170.

19. On January 7, 2020, Steven Otero requested information from Dana Sanders about contract days, vehicles, lunch schedules and SRO's and site security. PED Exhibit 5, at 000126.

20. On January 21, 2020, Steven Otero requested from Dana Sanders receipts and other information including expenditures for RAKS, Home Depot and Lowes. *Id.* at 000130.

21. On February 7, 2021, Steven Otero emailed Dana Sanders and Bryan Smith listing information he had requested from Andy Garcia. *Id.* at 000132

22. Organic Technologies provided field maintenance services to the District. Tr. at p. 30.

23. The fields maintained by Organic Technologies were in good condition. Tr. p. 32.

24. After Steven Otero became a Board Member, the District stopped doing work with Organic Technologies. Tr. p. 137-140.

25. Recently, however, a purchase order for Organic Technologies to do work on the athletic fields was approved. Tr. p. 145.

26. In a March 15, 2020, email to Dana Sanders, Steven Otero questioned the amount of money paid to Organic Technologies and indicated there were cheaper alternatives. PED Exhibit 37, 000616. Steven Moore used his personal email account.

27. In a March 15, 2020, email to Dana Sanders, Steven Otero forwarded information from Helena Agri Enterprises on fertilizer costs. *Id.* at 000617. Steven Otero used his personal account.

28. Steven Moore, owner of Organic Technologies was familiar with Steven Otero from Mr. Otero's employment at Moriarty Public Schools and Los Lunas Public Schools. Tr. p. 137.

29. Mr. Moore testified that while Steven Otero worked for Moriarty Public Schools, Steven Otero indicated he wanted a bribe. Tr. pp. 138-140. Mr. Otero did not directly rebut the testimony. He indicated he did not recall the conversation and later claimed they had *never* talked. DTr. pp. 167-168. However, his questioning implied otherwise, and Mr. Moore was believable. Tr. pp. 146-147.

30. Steve Otero was concerned that the pole barns were dangerous and might fall down in the wind. The District had them inspected by an engineering company. Tr. p. 34.

31. The inspection did not satisfy Mr. Otero, so a second company inspected them. The second company indicated they were stable but recommended cross pieces be added. Tr. p. 34.

32. Steven Otero and Mr. Jiron were involved in asking questions about the issue. Tr. p. 35.

33. Steven Otero sent pictures to POMS and Associates and others regarding the issue. PED Exhibit 41, 000671; PED Exhibit 37, 000614.

34. Steven Otero objected to the use of a carpet cleaning company out of Las Vegas, Nevada. He solicited a bid from another vendor and at a board meeting revealed the successful bidder, the recommended bidder and their price. Tr. p. 36.

35. Steven Otero and Mr. Jiron objected to a bid related to an outdoor pool that needed to be torn out. (Tr. p. 37).

36. Mr. Jiron and Steven Otero made comments that they thought that the District should use local contracts instead of using CES. Tr. p. 38-39.

37. Steven Otero and Mr. Jiron frequently raised the issue of local vendors not being used. (Tr. p. 60-61).

38. Steven Otero said on multiple occasions he wanted local contractors used. Tr. pp. 69, 117, 127, 159, 160. He wanted bids sent directly to local contractors. Tr. p. 127.

39. Mr. Steven Otero communicated that the District should not use Lowe's or Home Depot and should use RAKS, a local hardware store. Tr. p. 161.

40. Mr. Jiron was supportive of using local vendors. Tr. p. 162.

41. Steven Otero and Mr. Jiron wanted the District to use RAKS because it gives back to the community. Tr. p. 208.

42. In all instances in which Steven Otero and Mr. Jiron asked questions about local firms, procurement activities and checks, they were member of the Finance Committee. Tr. p. 95.

43. Steven Otero questioned Mr. Gibson about the awarding of a contract for chemicals and cleaning equipment that he didn't like. Tr. p. 62. Steven Otero brought photos of carpet cleaning equipment and a price list of the chemicals to a board meeting. Tr. at p. 129.

44. Steven Otero raised issues about contractor Craig Chavez. Procurement told Mr. Gibson that Mr. Chavez had the proper licenses. Tr. p. 109.

45. Steven Otero personally questioned Ms. Cieremans about whether Mr. Chavez had the proper license. Tr. p. 164.

46. Mr. Chavez did not need a GS license for his scope of work putting bark on a playground. Tr. p. 231.

47. Ms. Cieremans oversaw procurement. Tr. p. 156. She never heard inappropriate conversations about procurement with Frank Otero, Mr. Vickers, or Mr. Smith. Tr. p. 162.

48. On more than one occasion, Mr. Jiron and Mr. Otero discussed with Mr. Gibson employees that they felt were not competent and didn't do their job well. They never asked for the employees to be fired. Tr. p. 41.

49. Mr. Gibson is of the opinion that Mr. Otero sought to undermine Andy Garcia. Tr. 42-43.

50. Principals "almost without exception" were upset about the "behavior" of the board. (Tr. p. 68). A number of individuals complained about a number of letters/memos that were submitted by various individuals complaining primarily about Steve Otero and to a lesser extent, Mr. Giron. PED Exhibits 33-34, 38, 39, 41, 42, 46-51.

51. On February 7, 2020, a meeting was held with Mr. Garcia, Ms. Sanders, Ms. Cieremans, Mr. Jiron, and Steven Otero. They questioned Mr. Garcia about the location of air-conditioners and went to the supply room. Tr. p. 224.

52. In the same meeting, Mr. Jiron claimed the security cameras were not working. Mr. Garcia showed him that they were. Tr. p. 224-225.

53. Mr. Giron admits he brought concerns about the security camera to Ms. Anders. DTr. p. 43.

54. Mr. Vickers believes other Board Members bullied and intimidated Los Lunas Staff based on communications from the Staff. DTr. pp. 145-146. He does not have personal knowledge of the above.

55. Mr. Vickers believes some Board Members got overly involved in day-to-day operations and procurement matters. DTr. pp. 147-148, 150.

REDW Audit and Andrew Sanchez

56. By statute and rule, the school district is subject to an annual audit by the state auditor. NMSA 1978, § 12-6-3 and NMAC 2.2.2.

57. NMAC 2.2.2.15 provides in pertinent part: “An agency . . shall not enter into a professional services contract for a special audit [or] forensic accounting engagement regarding the financial affairs and transactions of an agency and relating to financial fraud, waste or abuse in government without the prior written approval of the state auditor.”

58. Mr. Gibson talked with Steven Otero who informed him he thought there were things that were going on in the maintenance department that were wrong. Tr. p. 44; DTr. pp. 104-105.

59. Accounting firm REDW was hired to do a forensic audit related to the maintenance department. Tr. p. 44; Exhibit 26, REDW report 7/17/2020.

60. The REDW investigation came about because Steven Otero had numerous questions and concerns about finances in the maintenance department. The issue was taking a lot of time from the Board and administration. So, Ms. Sanders recommended an audit. DTr. pp. 33-35. *See also* PED Exhibit 8 at 000158.

61. The Board did not obtain prior written approval for the special audit of the state auditor.

62. Mr. Vickers voted for REDW by mistake. DTr. p. 153.

63. The Board promulgated its own policy, Los Lunas School Board Policy 3.12.1 Financial and Compliance Audit: "In the event the School Board or School Administration

determines that a special audit is needed to investigate possible misuse or embezzlement of public funds, the Office of the State Auditor shall be contacted immediately for assistance or direction, prior to engaging an independent auditor to review the circumstances". *See also*, Tr. p. 45.

64. The Board failed to contact the State Auditor regarding its allegations of misuse or embezzlement of public funds which required the use of a special auditor prior to its approval of the special audit. *Id.*, *see also* DTr. p. 105.

65. The Office of State Auditor approved the engagement of REDW. Tr. p. 90. This happened after the Audit. *Id.*

66. The engagement of REDW in 2020 was for a specific, limited purpose – a limited audit of financial transactions in the LLSM Maintenance Department. Giron-Smith Exhibits 4, 8.

67. The total payment to REDW for the audit in 2020 was \$ 45,000. Tr. p. 101.

68. In February 2020, Ms. Sanders instructed Ms. Cieremans to initiate a purchase order to hire an auditing firm. PED Exhibit 8, at 000158; Tr. p 198.

69. Mr. Gibson did not believe the audit was needed. Tr. p. 46.

70. REDW found “no evidence of wrongdoing, misconduct, waste, or abuse” by the District, or its employees. Tr. p. 50; PED Exhibit 26; Giron-Smith Exhibit 4. It did, however, list recommendations for improvement of internal controls over finance and good accounting practices. DTr. p. 39; PED Exhibit 26.

71. The Board did not go through an RFP process in awarding the work for the audit. Tr. p. 51. However, the amount paid to REDW was less than \$50,000. Tr. p. 51.

72. Mr. Otero intended to present at a Board meeting a PowerPoint regarding the REDW Audit. Tr. p. 58. However, he never gave the presentation. *Id.*

73. Originally, the audit was managed by an attorney for the District and the Board, Andrew Sanchez, and Mr. Gibson was left in the dark. However, after he objected, Mr. Smith intervened and ensured Mr. Gibson was allowed to know more about the Audit. Tr. pp. 53, 90.

74. Mr. Sanchez is an attorney hired by the District to work on an EEOC complaint and other matters. Tr. p. 54. He originally was with the Cuddy Firm which has a contract with the District but left the Cuddy Firm and went to the Himes, Petrarca & Fester law firm.

75. Mr. Gibson raised the issue to Mr. Smith and told him it was inappropriate. *Id.* However, Mr. Gibson never blocked any purchase orders. *Id.* The services from Mr. Sanchez for the audit were about \$20,000. *Id.*

76. Ms. Cieremans did not think the REDW audit was needed. *Id.*, pp. 154-155.

77. No contract was done regarding Mr. Sanchez's services while at the Himes firm. Tr. p. 156.

78. A purchase order was prepared for Mr. Sanchez's work on the EEOC matter. Tr. pp. 183-184.

79. Ms. Cieremans does not think there was anything illegal in paying Mr. Sanchez for his work. *Id.*

80. Mr. Vickers and Frank Otero were vocal about not using Mr. Sanchez. Tr. p. 207.

81. Ms. Sanders proposed that Mr. Sanchez deal with REDW. DTr. pp. 36-37; PED Exhibit 5, at 00136-137.

82. Mr. Sanchez provided legal advice that the audit was appropriate. DTr. p. 37; PED Exhibit 61 at 000064.

83. Mr. Gibson regularly advised the Board against using Andy Sanchez. Tr. p. 131.

84. Mr. Sanchez has provided legal advice to the District and Board for Mr. Smith's entire tenure on the Board (2015). DTr. pp. 76-77.

85. Mr. Sanchez's bills were sent to the District. DTr. p. 78. Some of the work had nothing to do with the Board but was work for the administration. DTr pp. 78-82.

86. Mr. Smith understood the District issued a purchase order for Mr. Sanchez's services. DTr. pp. 83-84.

87. Certain administrators have accused Mr. Smith of getting free services from Mr. Sanchez. DTr. pp. 88-89.

88. Mr. Sanchez has billed Mr. Smith for the work but Mr. Smith has not paid. DTr. pp. 89-90. Mr. Sanchez is waiting to see if Mr. Smith's bill will be paid by the district. DTr. pp. 90-91; Giron-Smith Exhibits 28-30.

89. Mr. Sanchez acted on behalf of the board for the REDW audit. DTr. p 103.

90. The money for the audit could have been used for other purposes. DTr. p. 106.

91. Frank Otero did not think the REDW audit would find any improprieties. DTr. p. 118.

92. Frank Otero was not supportive of Mr. Sanchez and the REDW audit. DTr. p. 119.

93. Mr. Vickers voted against paying REDW. DTr. p. 141.

94. Mr. Vickers did not think the REDW audit was a good use of money and wasted time and distracted from Board duties such as updating policies. DTr. p. 143.

Open Meetings Act Issues

95. Mr. Gibson had suspicion of the Board violating the Open Meetings Act, but no evidence. Tr. p. 73.

96. No evidence of rolling quorums was provided.

97. Mr. Smith denies that the Board ever engaged in a rolling quorum or violated the Open Meetings Act. DTr. pp. 93-94.

98. The Board obtained legal advice regarding the appropriate use of executive sessions from March to May 2020. DTr. p. 94.

99. The Attorney General's office responded to complaints about Open Meetings Violations on November 18, 2020. Giron-Smith Exhibit 31; DTr. pp. 94-98.

100. The New Mexico Attorney General's Office determined that the complaints that the Board entered into closed sessions during April and May 2020 violated the Open Meetings Act "lacked merit" and that the Board was in "substantial compliance" with the Open Meetings Act. *Id.*

Public Records Act Issues

101. Mr. Gibson does not think that Mr. Smith purposely did not produce information in response to the IPRA request. Tr. p. 95.

102. Ms. Cieremans has personal knowledge of Board Members using personal email addresses but did not identify them or provide details. Tr. p. 169.

103. Steven Otero refused a district cell phone and used his personal device. Tr. p. 170.

Miscellaneous

104. Mr. Vickers, Mr. Frank Otero, and Mr. Smith did not have any inappropriate communications with Mr. Garcia. Tr. p. 230.

105. Panic buttons were installed for concerned staff members who feared "the wrath of Mr. [Stevens] Otero and Mr. Jiron." Tr. pp. 68-69, 154. No details were provided on why they feared any Board Member. Tr. p. 69.

106. Mr. Gibson did not notify security about any threats from Board Members. Tr. p. 122.

107. While certain individuals may have wanted the panic buttons, no objective evidence was submitted to support a reasonable fear for their safety at the hands of any Board Member.

108. Mr. Gibson never heard any “kind of serious conversation about teaching and learning, about instruction, about curriculum . . .” Tr. p. 77. He reported to the Board on what was happening and gave updates of his meetings with teachers and principals, but never discussed “achievement data.” Tr. p. 78.

109. The Board did not discuss with Mr. Gibson during his 9-months the “weaknesses of instructional practices” and “gaps” in learning. Tr. pp. 80-81.

110. Mr. Gibson worked from April 2020 to January 2021. He was winding down at the end of 2020. Tr. pp. 82-83.

111. Mr. Vickers and Frank Otero became disenchanted with the other Board Members. Tr. p. 70.

112. Mr. Smith said he wanted to find out who made complaints about him. Tr. p. 191; DTr. 92. There is no evidence that he intended to threaten anybody.

113. Mr. Giron admits to using the term “bunny suit” in relation to putting ancillary staff in protective gear. That term is used in his work to refer to PPE, DTr. pp. 44-45. There is no evidence Mr. Giron meant the term to be derogatory. He apologized to the offended mother. DTr. p. 46.

114. None of the administrators claimed to be fearful of Mr. Giron. DTr. p. 51.

115. A criminal investigation is being done related to one or more Board Members. DTr. pp. 60-63; Giron-Smith Exhibit 17. It is unclear the scope of the investigation.

116. Attorney Michael Griego was called as a character witness relating to Mr. Jiron and Mr. Smith. DTr. p. 128. In short, he testified that they have good reputations. The Hearing Officer finds this testimony to be irrelevant.

117. Frank Otero never observed Mr. Smith or Mr. Giron conduct themselves in a manner that constituted a persistent impairment of the educational process of the District. DTr. pp. 115-116.

118. Mr. Vickers does not believe he or Frank Otero engaged in any wrongdoing. DTr. pp. 150-151.

119. Each Board member denies any wrongdoing. See generally the transcripts. There is no evidence of wrongdoing by Mr. Vickers or Frank Otero. These two appear to be innocent bystanders in the crossfire.

Dated: August 26, 2021

By: _____ /s/
John K. Ziegler
Hearing Officer
August 26, 2021