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Superintendent: Dr. Rick E. Bagley | Board of Trustees: Annelise Bauer • Anne Capron • Wesley Pratt • Mark Reagan • Amy Stock

January 23, 2017

VIA EMAIL AND U.S. MAIL

Sharon Sagar
Ross Valley Charter School
92 Ridge Road
Fairfax, CA 94930
Email: sagarsharon@yahoo.com

Re: Ross Valley Charter School
2017-2018 Proposition 39 Request

Dear Ms. Sagar:

We are in receipt of your letter, dated January 17, 2017, in which you express Ross Valley Charter's (RVC) interest in collaborating with the District with regard to the RVC facilities allocation decision our Board of Trustees is required to make as a result of the Proposition 39 request the RVC submitted on October 31, 2016. We are also aware of your open letter to the public, posted in December 2016, in which you urged community members to contact District officials to express their support for your suggestion that the District and RVC engage in "mediation" utilizing the services of the Marin County Office of Education.

In the open letter, RVC indicates it "would like to work with the District and the community to model open, honest, constructive communication with all stakeholders." Unfortunately, RVC's actions against the District in the past, combined with its continuing pattern of conduct, are inconsistent with the notion, and purpose of collaboration and do not engender a spirit of cooperation and honesty that constructive relationships require. The District must also note its concern that, by urging community members to pressure the District into participating in mediation, RVC has unfairly placed the District in the untenable position of potentially being perceived as uncooperative, even though mediation is not required or appropriate in this context and the District has fully complied with all laws regulating the facilities allocation process. This further undermines the collaborative cooperation and trust that we would all hope and expect.

As you can imagine, it was very disappointing when RVC filed a lawsuit for an injunction and temporary restraining order against the District in November 2016. It was even more disappointing to learn of the RVC's false allegations in the lawsuit, which inaccurately accused the District of emailing parents interested in RVC and threatening to dis-enroll their children from District schools. The District neither stated

Letter to Sharon Sagar
January 23, 2017
Page Two of Four

nor implied that it would dis-enroll any student, took immediate steps to correct any misinterpretation of its email by assuring families that no students would be dis-enrolled for submitting an intent to enroll form to the RVC, and guaranteed continued enrollment to all students who ultimately decide to remain with the District. Rather than contacting the District to clear up any misunderstanding, which would have been in the spirit of constructive collaboration, RVC immediately sued the District. Ultimately, the Marin County Superior Court rejected RVC's allegations, ruled in the District's favor, and found no violation of law.

Nonetheless, despite the fact that the Court found that RVC would likely not prevail on the merits of its allegations and the RVC voluntarily dismissed its own case, RVC continued to make misrepresentations regarding the outcome of the lawsuit to the community. For example, as recently as January 12, 2017, Conn Hickey, RVC Chief Financial Officer, emailed a community member, stating that "[w]e will continue to use the legal system to make our District follow the law and when it breaks the law, as it did on November 16 by violating Federal 1983 Civil Rights law," even though the Court expressly found that no violation of law occurred. Mr. Hickey continued stating that, "we will use whatever recourse is available to us to make the District obey it," which continues to spread the false assumption that the District violated the law.

It is also public knowledge that RVC's board minutes of December 21, 2016 state "approval" of a loan agreement with California Charter Schools Association ("CCSA") to fund litigation against the District and the documents reflect they were signed by Mr. Hickey in February of 2016 – long before a Proposition 39 request was made. See the RVC December 21, 2016 Board's minutes and a copy of the loan agreement with CCSA here. Section 5(b) of Charter School Legal Defense Fund Loan Agreement, states,

"Borrower shall not enter into any settlement of the lawsuit that constitutes the Project without the prior written consent of Lender, it being acknowledged that Lender, in its discretion, may condition its approval of a settlement on the immediate or accelerated repayment of all or a portion of the outstanding Loan principal and any accrued interest thereon, inasmuch as: (i) the Project is of material importance to Lender and the furtherance of Lender's exempt purposes; (ii) the Loan constitutes a meaningful amount to Lender; and (iii) a settlement entered into under circumstances that do not further Lender's exempt purposes constitutes an inappropriate use of Lender's assets and therefore justifies the immediate or accelerated repayment of the Loan or some portion thereof. Any immediate or accelerated repayment of all or some portion of the outstanding Loan principal and any accrued interest thereon pursuant to this paragraph (b) shall be treated as a prepayment described in Sections 2.1 and 2.2."

Letter to Sharon Sagar
January 23, 2017
Page Three of Four

In addition, sections 8(a) and 8(b) state,

- (a) *“Lender and Borrower have common interests in the defense of the Project. In addition, a tripartite relationship exists between Lender, Borrower and Borrower’s Counsel in regards to the Project such that Lender and Borrower have formed a coalition for a common purpose, the successful prosecution and/or defense of the claims raised in the Project. Moreover, sharing of the Common Interest Defense Information in confidence between Borrower and Lender is reasonably necessary for accomplishment of the purposes for which Borrower’s Counsel was consulted.”*
- (b) *“Accordingly, it is the intention of Lender and Borrower that the Common Interest Defense Information may be exchanged among them (including their employees, their Board members, their principals as necessary to the Project) and among their counsel (and to those individuals assisting counsel) and that such exchange has not and will not constitute a waiver of any privilege protecting the Common Interest Defense Information from disclosure including, without limitation, the attorney/client privilege and the work product doctrine.”*

Based on the above, the CCSA and RVC, along with their representative counsel, are in a “tripartite” relationship that makes it extremely difficult for the District to reconcile RVC’s offer to engage in constructive collaboration with RVC alone. The overt hostility and litigation with which RVC continues to threaten the District also threatens the likelihood of any successful outcome from such collaboration.

Separate and apart from the lawsuit, the RVC continues to spread other misinformation to the community about the District’s officials. For example, RVC surrogates have spread the false allegation that District Board President Anne Capron led a “human barricade” of “anti-charter folks” at an RVC informational meeting held at the Fairfax-San Anselmo Children’s Center (“FXSACC”) on January 12, 2016, and distributed literature disparaging charter schools in an effort to intimidate families from attending RVC. The allegation is inappropriate, demonstrably false, and continues to reflect RVC’s antagonism towards the District. Ms. Capron arrived to the FXSACC in the mistaken belief that she would be attending a different community information meeting scheduled at a later date. While on her way leaving the FXSACC immediately upon this realization, she was greeted by several other people and spent no more than several minutes speaking to them. Ms. Capron neither led nor participated in any “human barricade” and did not distribute literature of any kind or “market” the District’s schools. Her presence was unobtrusive and simply cannot, in any way, be characterized as having actively discouraged and intimidated families from enrolling in RVC.

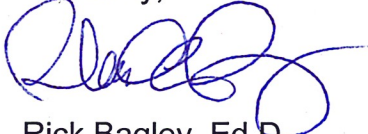
Letter to Sharon Sagar
January 23, 2017
Page Four of Four

In the open letter you also indicate, "RVC believes leasing Red Hill in lieu of Proposition 39 is the best option" which inaccurately suggests that the District never explored the option of leasing Red Hill to the RVC in the first place. However, it must be clarified that last year the District offered the Red Hill facility to the most responsive bidder on two separate occasions and outside of the Proposition 39 process. In both instances RVC failed to provide a bid that was responsive to the District's stated terms and when the District ultimately agreed last June to further modify those terms in a final attempt to negotiate a proper lease, RVC rejected the District's final offer. RVC seems to be requesting the District re-open this matter a third time, failing to acknowledge it declined the Board's final offer last June.

Setting aside for the moment our concerns about RVC's representations that it truly seeks an open and collaborative relationship in light of its actions to the contrary, mediation is simply unwarranted and not appropriate. Specifically, there is nothing to mediate and there is no obligation under the law to participate in mediation in the currently-ongoing Proposition 39 process. As you know, the process for providing public school facilities to charter schools is strictly regulated by Proposition 39 and its implementing regulations. The District has and will continue to adhere to these provisions of law. This is the process that RVC chose to initiate and the process places the responsibility for allocation of space squarely on the District and its Board of Trustees. It is the elected Board of Trustees that is to balance the interests of the District's current and future students in meeting the requirements of the law and for which our Trustees have sole responsibility.

Should you have any questions regarding the foregoing, please feel free to contact me.

Sincerely,



Rick Bagley, Ed.D.
Superintendent
Ross Valley School District