



MEMORANDUM

FC 14 (01-02-07)

TO: Board of Directors

FROM: Director Nai Hsueh and
Director Tony Estremera

SUBJECT: Violations of Board Policy and Request for
Board Action

DATE: February 21, 2024

We are writing to request the Board to consider taking official Board actions that will compel Director Eisenberg cease her inappropriate behavior, as substantiated in the Executive Summary of Investigative Report #2, and behave in a constructive and professional fashion going forward.

Pertinent Board Policies Governing Our Recommendations

GP 6.15.3 Provides for any individual Board member to file a request for admonition, sanction, or censure upon the Chair or Vice Chair providing the Board with his/her findings and recommendation of the results of the investigation of a Board member filed by a non-Board member.

GP 6.3.1 Admonition. Admonition is the least severe form of action. An admonition may typically be directed to all members of the Board, reminding them that a particular type of behavior is not in the best interests of the District, and that, if it occurs or is found to have occurred, could make the member subject to sanction or censure.

GP 6.3.2. Sanction. Sanction is the next most severe form of action. Sanction should be directed to a particular member of the Board based on a particular action (or set of actions) that is determined to be misconduct but is considered by the Board not to be sufficiently serious to require censure. A Sanction is distinguished from censure in that it does not constitute punishment.

GP 6.3.3. Censure. Censure is the most severe form of action in this policy. Censure is a formal statement of the Board officially reprimanding one of its members. It is a punitive action, which serves as a penalty imposed for misconduct, but it carries no fine or suspension of the rights of the member as an elected official.

GP 6.3.4. Referral to District Attorney. At any point during any of the processes hereinafter described, the Board may refer the matter, as appropriate, to the Santa Clara County District Attorney for investigation. Prior to or following such referral, the Board may proceed with any of the actions described in this policy.

Analysis

The Investigative Report #2 substantiated 8 out of 25 complaints about Director Eisenberg's conduct against District employees, both classified and unclassified, as Discriminatory Harassment, Abusive Conduct, and Improper Direction to Staff. These substantiated complaints demonstrated that:

1. Director Eisenberg has, on repeated occasions, demonstrated that she is unwilling to follow the Board Governance Policies of the Santa Clara Valley Water District.
2. Director Eisenberg's behavior, occurring on a constant and ongoing basis, created, and continues to create an environment where both staff and Board members are unable to operate in a constructive environment. Most importantly, the negative impact of such behavior to District employees is unacceptable and cannot be continued. It is imperative that we treat all District employees with the respect and trust they are entitled to.

3. We welcome and appreciate constructive criticism when it is delivered in the spirit of camaraderie and in pursuit of improvement. We encourage our colleagues to engage in spirited discussion and active expression of our public positions. But there is no place for the above-described behaviors which discourages democratic participation and an open sharing of disparate ideas.

Recommendations

Pursuant to the Findings in the Executive Summary of the Investigative Report #2, and the Analyses above, we therefore request that the Board consider the following actions:

Censure of Director Eisenberg for her conduct per Board Policy GP 6.15.4 and GP-10, or other action as defined in GP-6.8 (Admonition) or GP-6.9 (Sanction).

In addition to censure, we recommend the following actions, pursuant to Board Policy GP 6.3, noting that the “Board has discretion in deciding the actions it may choose to take in response to a complaint.”

1. Remove Director Eisenberg from all roles and responsibilities representing the Board and District, including participating on any Board Committees.

District employees should not be subjected to such abusive conduct from anyone, much less from an elected Board Member. It is our responsibility as Board Members to protect District employees. We should prevent Director Eisenberg from any opportunity to continue her abusive conduct against District employees. Restricting her participation on Board Committees will prevent her from any further opportunity to harass our employees.

2. Director Eisenberg should not be allowed to be compensated for auditing Board Committee meetings (participating as an observer).
3. Director Eisenberg should not receive any approval for future travel expenses to any conferences on behalf of the District.
4. Director Eisenberg must attend and participate in appropriate anti-discrimination training within two months as a result of the finding regarding discrimination on the basis of national origin.
5. Director Eisenberg should not be allowed to meet with any employees who object to meeting with her.
6. Director Eisenberg should not be allowed to request any information directly from employees and must make any such request from a Board Appointed Officer.

If it wishes, the Board can review whether we should return Director Eisenberg to serve on committees after at least a year, and only if we are satisfied that her conduct during public Board meetings improves.

Next Steps

If the Board elects to censure Director Eisenberg, the next steps will be to set a public hearing, which can be scheduled to occur at the same special Board meeting where the Board will hold a public hearing to consider censure of Director Rebecca Eisenberg for the alleged misconduct that occurred on January 29, 2024.