



For Official Use Only

City of Oakland

Public Ethics Commission

Stamp Date/Time Received:

COMPLAINT FORM

Complaint Number: 05-04

Please Type or Print in Ink and Complete this Form.

This complaint concerns a possible violation of: (please check all that apply)

The Oakland Sunshine Ordinance, California Public Records Act or Brown Act. (Access to public meetings or documents.)

Oakland Campaign Reform Act

Oakland City Council's Rules of Procedure/Code of Ethics

Oakland Limited Public Financing Act

Oakland Conflict of Interest regulations

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Oakland Lobbyist Registration Act

Oakland False Endorsement In Campaign Literature Act

I am/We are not sure which specific law, ordinance or regulations apply. However, I am/We are requesting that the Ethics Commission determine if my/our complaint is within its jurisdiction.

The alleged violation occurred on or about the following date(s) *March 9, 2005* latest of *Brown Act* violations of time and agenda restrictions imposed on me and the public.

The alleged violation occurred at the following place: *meetings of the State Administrator and/or Oakland School Board.*

Please provide specific *facts* ~~facts~~ describing your complaint (Or attach additional pages as necessary.)

See attached page.

The persons you allege to be responsible for the violation(s) are:
Oakland State Administrator Randolph Ward

Any witnesses who were involved and/or who can provide additional information: (Please indicate names and phone numbers, if available.)

Tapes of all meetings are available as well as agenda posted on the District website.

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There may be other laws that apply to the violations you are alleging. The time limit to commence a legal proceeding to enforce those laws may not be extended by filling this complaint. You should contact an attorney immediately to protect any rights available to you under the law.

By filling this complaint with Public Ethics Commission it, and all other materials submitted with it, becomes a public record available for inspection and copying by the public

NAME: Jim Mordecai PHONE NO.(Day):(510) 486-0160
ADDRESS: 2812 Farber St. PHONE NO.(Eve.):(510) ^{cell} 205-4635
CITY: Berkeley STATE: CA ZIP: 94705
FAX NO.: () _____
E-MAIL Jim 2812@hotmail.com

PLEASE RETURN THIS FORM TO:

Public Ethics Commission
One Frank Ogawa Plaza, 4th floor
Oakland, CA 94612

Phone: (510) 238-3593
FAX:(510) 238-3315

- Attachments
1. statement of facts describing complaint
 2. Email of request to clarify procedure for putting an item on agenda by the public.
 3. meeting agenda 3/9/5 SA/Board
 4. Meeting agenda, Special mtg, 3/15/5
 5. Facilities Advisory Committee mtg. regular, 3/9/5

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1. Beginning with his first meeting Oakland State Administrator Randolph Ward dictated that the public's opportunity to address the school board and the State Administrator would be limited to an agenda item called public comments on all agenda and non-agenda items.
2. He also limited each public speaker to three minutes or less regardless of the length or complexity of the meeting agenda.
3. Ed Code 35145.5. It is the intent of the Legislature that members of the public be able to place matters directly related to school district business on the agenda of school district governing board meetings. Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the governing board on any item of interest to the public, before or during the governing board's consideration of the item, that is within the subject matter jurisdiction of the governing board. Governing boards shall adopt reasonable regulations to insure that this intent is carried out. The regulations may specify reasonable procedures to insure the proper *functioning of governing board meetings*.
4. The underlined portion of Ed Code 35145.5 provides the public with the choice on each item it considers to speak before or during the "consideration of the item..."
5. The Oakland School Board's Bylaw for conducting meetings is posted on the District website. This bylaw places time limits on speakers and also a total time limit per agenda item. However, this bylaw is in conformity with Ed Code 35145.5 because it does not prevent public speakers from the opportunity to address the body on each agenda item as they are discussed.
6. Not only does the State Administrator prevent the public from addressing agenda items as they are discussed at regular meetings but he also restricts public comment to the public comments agenda item at special meetings and even committee meetings.
7. The last three meetings the State Administrator has modified his policy of limiting the public's opportunity to speak to the public comments section of the agenda. State Administrator Ward now allows the public to address agenda items that appear on the agenda prior to public comments.
8. However, it is very difficult for a member of the public to tell from reading the following section of the agenda that he or she has a right to speak to agenda items coming before public comments.

M. Public Comments on All Other Agenda and Non-Agenda Items

This section of the Agenda provides an opportunity for members of the public, for a maximum of three minutes or less (depending on the number of speakers), to directly address the State Administrator and the Board on ALL other items on the current agenda and on ANY ITEM of interest that is NOT ON THE CURRENT AGENDA...

9. Also, I protest the State Administrator's inappropriate use of "General Consent Report" to pass numerous agenda items insulated from public view.
"Adoption of the General Consent Report" means that all matters appearing under this topic are approved in one motion unless the State Administrator allows an item to be removed and voted on separately or otherwise acted upon..."

The wording "...unless the State Administrator allows..." means that items the State Administrator places on the Consent Report can only be discussed in public with his permission. This is a policy that neither promotes transparency nor the confidence of the public.

10. From a phone message, and personal conversations, the Board Secretary, Mr. Rakestraw made clear to me that anyone could speak to agenda items coming before public comments section of the agenda. And, at the last meeting the State Administrator, Randolph Ward, announced that the public could speak to agenda items that came prior to the public comments section of the agenda and I was one member of the public that did speak to two agenda items coming before the public comments section of the agenda. However, the State Administrator's rules governing public comment remain unwritten rules.
11. At the March 9, 2005 meeting Randolph Ward limited speakers to two minutes on commenting on the two agenda items appearing prior to the public comments section of the agenda. Less than a hand full of speakers spoke to these two agenda items. Later, during public comments, speakers were again limited to two minutes by the State Administrator. Less than a dozen people spoke during the public comments portion of the agenda. On checking with the School Board President, and meeting chairman, Gary Yee, after the meeting, he was unable to provide a reason for limiting public speakers to two minutes when normally speakers are provided three minutes unless there are a large number of speakers. Item M on the agenda even says that the criterion for limiting speakers is the number of speakers. But, that criterion was not used because there were a small number of speakers for all the agenda items the public was permitted to address.
12. According to the agenda posted on the district website the Tuesday, March 15, 2005, special meeting of the State Administrator and/or School Board begins with the opportunity of the public to speak to the two items on the agenda. The problem with this opportunity is that the public is not given the opportunity to speak before or during the body's discussion of each individual agenda item as required by the law. There is a sort of artificial wall erected between the public's comments, and the body's deliberation on agenda items. This segregating of the public's comments on the agenda should not continue.

Jim Mordecai

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Subject: RE: Procedure for putting items on the Board agenda
Date: Sun, 6 Mar 2005 07:16:31 -0800
From: "Edgar Rakestraw" <Edgar.Rakestraw@ousd.k12.ca.us>
To: "Mordecai Jim" <jim2812@yahoo.com>

You may make your request in open session during public presentations and/or write Ward the request, or both.

-----Original Message-----

From: Mordecai Jim [mailto:jim2812@yahoo.com]
Sent: Saturday, March 05, 2005 10:09 PM
To: Edgar Rakestraw
Subject: Procedure for putting items on the Board agenda

I am interested in putting an item on the Board agenda. What is the procedure?

Jim Mordecai

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July 15, 2005

[ADDRESSEE MERGE]

RE: Oakland Public Ethics Commission Complaint No. 05-04

Dear Dr. Ward:

At its regular meeting of June 6, 2005, the Oakland Public Ethics Commission ("Commission") considered the above-cited complaint by Oakland resident James Mordecai. Mr. Mordecai alleged that the Oakland Board of Education ("School Board") violated the Ralph M. Brown Act and Oakland Sunshine Ordinance at its regular meeting of March 9, 2005.

(A copy of the staff report has been provided previously to your office and is available from the Commission at its website or upon request.)

While Mr. Mordecai made a number of allegations in his complaint, Commission staff identified only one which appears to raise issues under the Ralph M. Brown Act -- The apparently ongoing practice of allocating two to three minutes of speaking time for members of the public to address the School Board under "Public Comments" as well as on all other remaining items on the agenda. For the reasons discussed below, Commission staff has concluded there may be a legal issue over whether this practice violates provisions of the Brown Act.

At the March 9, 2005, School Board meeting, there were five remaining items agendized after "Public Comments" on the agenda: A general consent calendar, three items of new business, and a pupil discipline consent calendar. Speakers wishing to address those items were required to significantly compromise their time under "Public Comments" if they wished to speak to any or all of the remaining agenda items.

As you know, the Brown Act requires the agenda for a regular meeting to provide the public an opportunity to address a local legislative body on any item of interest, before or during the legislative body's consideration of the item. The Brown Act further provides that a legislative body may adopt "reasonable regulations" to ensure the public's right to address a legislative body. Those "reasonable regulations" may include regulations limiting the total amount of time allocated for public testimony on particular

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issues and for each individual speaker. The School Board's Bylaw No. 9323, for example, provides that individual speakers shall be allowed three minutes to address the Board on each agenda or non-agenda item; public input is limited to 20 minutes for each item.

The Office of the Attorney General has opined that a local legislative body may limit the right of the public to speak on particular items to five minutes or less for each individual speaker, depending on such factors as the time allocated for the meeting, the number of items, the complexity of each item, and the number of persons wishing to address the legislative body on each item of general public interest. [See 92 Ops.Atty.Gen. 212.]

Commission staff's primary concern with Mr. [Mordecai's] complaint was that the imposition of a two-minute limit for the several speakers interested in addressing the School board under "Public Comments" and on the remaining five items of business may not have been sufficient to ensure the public's right to adequately address the School Board on those items. The School Board's practice of limiting speakers to two to three minutes for all items following and including "Public Comments" contrasts with its policy of providing speakers with two to three minutes of speaking time for each item that appears on the agenda before "Public Comments."

The Commission has suspended further action on Complaint No. 05-04 to permit Commission staff to discuss the School Board's current speaker policies with you in the hope that the School Board may be willing to modify its current policy and provide members of the public with a reasonable amount of time to address each agenda item.

On behalf of the Commission, I would appreciate the opportunity to discuss this matter with you and/or your legal counsel at a convenient time. I look forward to your kind response and anticipated attention to this matter.

Very truly yours,



Daniel D. Purnell
Executive Director

cc: Roy A. Combs
Mark Morodomi
Edgar Rakestraw
Hon. Gary Yee

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