

**UPDATED 10-19-2026**

**Item 11.C. - Supplemental materials distributed just prior to the start of the meeting by request of Trustee Allman (excluding information protected by privilege/confidentiality)**

The enclosed materials for distribution to the Board in public were submitted less than two hours before the start of the October 15, 2026, board meeting. This provided very little time to assess whether confidential information was included in the documents - which included communications with legal counsel, communications requesting legal advice or opinions, as well as references to a prior closed session Board discussion and decision. Redactions were quickly made and the documents posted, erring on the side of over redaction to best protect the District and ensure no confidential information was included, while at the same time providing public access right away.

Now, having had adequate time to review the records, and given the public discussion and disclosures on October 15, 2026, it has been determined that some of the previous redactions were not necessary to protect confidentiality or privilege, the updated redacted documents are available [here](#).

Submitted by Trustee Michael Allman

## Correspondence Concerning Withholding of Board Counsel Memorandum

Email exhibits for public distribution in advance of a Governing Board meeting · Chronological · October 15, 2026

Highlighting added by Trustee Allman.

The following exhibits are emails among Trustee Michael Allman, Board President Jane Lea Smith, Superintendent Anne Staffieri, and Trustee Phan Anderson (District counsel appears on some copies as a recipient) regarding access to a written legal memorandum prepared by District counsel in connection with Trustee Allman's September 15, 2026 Brown Act notice regarding the August 30 gathering. The memorandum itself is not included. Exhibits appear in chronological order, oldest first; each begins with a numbered header on the same page as the email.

### List of Exhibits

- 1 Exhibit 1** — September 21, 2026, 9:24 a.m. and 10:16 a.m.  
Trustee Phan Anderson asks Superintendent Staffieri for the legal memorandum before the special meeting; Staffieri replies that counsel is preparing a memo for the Board.
- 2 Exhibit 2** — September 23, 2026, 4:23 p.m.  
Trustee Allman asks President Smith (copying the Superintendent) to forward counsel's written legal opinion to all Board members.
- 3 Exhibit 3** — September 23, 2026, 5:32 p.m.  
President Smith writes that the memorandum is being forwarded to trustees and [REDACTED]
- 4 Exhibit 4** — September 23, 2026, 8:13 p.m.  
Trustee Allman asks President Smith for the same memorandum other trustees received and for any authority to withhold it.
- 5 Exhibit 5** — September 24, 2026, 9:13 a.m.  
President Smith declines to provide the memorandum, stating that it is privileged, that Trustee Allman is adverse to the District on this matter, and that he is not entitled to it absent a Board majority vote to waive privilege.
- 6 Exhibit 6** — September 24, 2026, 12:32 p.m.  
Trustee Allman replies that he will participate in and vote on Item 2.A and again asks for the memorandum or the specific statute or bylaw relied on to withhold it.
- 7 Exhibit 7** — September 26, 2026, 3:21 p.m.  
Trustee Allman asks President Smith to provide the memorandum by 5:00 p.m. on September 28 or, if she elects not to, to call a special meeting with an action item on whether to withhold it, and asks that the Board obtain an independent legal opinion.
- 8 Exhibit 8** — September 29, 2026, 11:13 a.m.  
Trustee Phan Anderson and Trustee Allman request under Board Bylaw 9322 that an open-session action item on whether to withhold the memorandum from Trustee Allman be placed on the next available Board meeting agenda.

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**9 Exhibit 9** — September 29, 2026, 5:30 p.m.

President Smith again declines to provide the memorandum and states that [REDACTED]

[REDACTED]

[REDACTED]

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**10 Exhibit 10** — September 30, 2026, 7:27 a.m.

Trustee Allman responds to President Smith's September 29 email and asks that the memorandum be provided to him by Friday, October 2, 2026, 5:00 p.m.

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**11 Exhibit 11** — October 6, 2026, 6:22 p.m.

Trustee Allman asks President Smith to identify the date, agenda item, and minutes of the Board action she cited as [REDACTED].

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## Exhibit 1 — September 21, 2026, 9:24 a.m. and 10:16 a.m.

Trustee Phan Anderson asks Superintendent Staffieri for the legal memorandum before the special meeting; Staffieri replies that counsel is preparing a memo for the Board.

Exhibit 1 — message 1 of 2

**From:** phan.anderson@sduhsd.net  
**To:** anne.staffieri@sduhsd.net; michael.allman@sduhsd.net  
**Date:** Monday, September 21, 2026, 9:24 a.m. PT  
**Subject:** Brown Act violation agendized and legal memo

Hi Anne,

I assume we will be including a closed session item on Wednesday to discuss the two alleged Brown Act violations brought up by Trustee Allman.

I'd like to see the legal memo before the meeting, so I have time to process it.

Thank you,  
Phan

*[District signature block omitted]*

Exhibit 1 — message 2 of 2

**From:** anne.staffieri@sduhsd.net  
**To:** phan.anderson@sduhsd.net  
**Cc:** michael.allman@sduhsd.net  
**Date:** Monday, September 21, 2026, 10:16 a.m. PT  
**Subject:** Re: Brown Act violation agendized and legal memo

Good morning Phan,

I am still working with President Smith on potential changes to the agenda. I'm in receipt of your email and request for legal memo. I spoke with Mike earlier today and have asked our counsel to prepare a memo for board reference. I will share with the board once I have it.

Thank you  
Anne

*[District signature block omitted]*

## Exhibit 2 — September 23, 2026, 4:23 p.m.

Trustee Allman asks President Smith (copying the Superintendent) to forward counsel's written legal opinion to all Board members.

Exhibit 2

**From:** michael.allman@sduhsd.net  
**To:** janelea.smith@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net  
**Date:** Wednesday, September 23, 2026, 4:23 p.m. PT  
**Subject:** Fwd: Brown Act violation agendized and legal memo

President Smith,

I see that a special meeting has been called for tomorrow at 5pm to discuss one of the recent alleged Brown Act violations. However, I have not seen the legal analysis from our attorneys. Please forward their written legal opinion to all the members of the Board as soon as you can. It is unacceptable to expect us as Board Trustees to review a legal opinion on something as important as our public meeting laws with less than 24 hours notice.

Please let me know when we can expect a copy of their opinion.

Regards,  
Mike

*[Forwarded September 21 messages omitted; see Exhibit 1.]*

### Exhibit 3 — September 23, 2026, 5:32 p.m.

President Smith writes that the memorandum is being forwarded to trustees and that [REDACTED]  
[REDACTED]

Exhibit 3

**From:** janelea.smith@sduhsd.net  
**To:** michael.allman@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net; pfagen@f3law.com  
**Date:** Wednesday, September 23, 2026, 5:32 p.m. PT  
**Subject:** Re: Brown Act violation agendized and legal memo

Hi Mike,

We recently received the written legal memo and Anne is forwarding to trustees [REDACTED]  
[REDACTED]  
[REDACTED]

Thanks,  
Jane Lea

## Exhibit 4 — September 23, 2026, 8:13 p.m.

Trustee Allman asks President Smith for the same memorandum other trustees received and for any authority to withhold it.

Exhibit 4

**From:** michael.allman@sduhsd.net  
**To:** janelea.smith@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net; pfagen@f3law.com  
**Date:** Wednesday, September 23, 2026, 8:13 p.m. PT  
**Subject:** Re: Brown Act violation agendized and legal memo

President Smith,

I write as a sitting Trustee who must vote tomorrow on Item 2.A.

Your email this evening states that a written legal memo has been received and that Anne is forwarding it to trustees, [REDACTED]

Please provide me immediately — and in any event before the September 24 special meeting — the same written counsel memo that is being or has been provided to the other Trustees for Item 2.A.

I remain a member of this Board. Sending a Government Code section 54960.2 cease-and-desist notice does not remove my seat, my vote, or my right to the same Board counsel materials other Trustees receive on an agendized item. Our Governance Handbook requires information to be distributed fully and equally to all Board members, and requires that counsel advice sought for District business be disseminated to all Board members. The attorney-client privilege for written advice from District counsel is held by the Board as the client — not by the President against one member of that client.

If you contend there is lawful authority to withhold this memo from me while sharing it with the other Trustees, please state that authority in writing tonight, with a copy to Mr. Fagen.

I expect equal access without further delay.

Mike

Trustee

San Dieguito Union High School District  
michael.allman@sduhsd.net

## Exhibit 5 — September 24, 2026, 9:13 a.m.

President Smith declines to provide the memorandum, stating that it is privileged, that Trustee Allman is adverse to the District on this matter, and that he is not entitled to it absent a Board majority vote to waive privilege.

Exhibit 5

**From:** janelea.smith@sduhsd.net  
**To:** michael.allman@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net; pfagen@f3law.com  
**Date:** Thursday, September 24, 2026, 9:13 a.m. PT  
**Subject:** Re: Brown Act violation agendized and legal memo

Trustee Allman,

After further consideration, we are unable to provide you with the memorandum because it constitutes a privileged attorney-client communication. As you are aware, the memorandum was prepared by legal counsel for the District in response to your stated threat of litigation against the District. Because you are adverse to the District with respect to this matter, you are not entitled to receive the District's privileged attorney-client communications regarding the issue. Disclosure of the District's legal analysis to a potential opposing party would undermine the attorney-client privilege.

You've made your demands and allegations as an individual against the District. Just as a third-party who has threatened litigation against the District would not be entitled to receive an attorney-client privileged memorandum, you likewise are not entitled to receive one given your position as an adverse party to the District. Given my fiduciary duty to the District, I am not going to place the District in a potentially disadvantaged position by providing privileged advice to an adverse party. Absent a vote by a majority of the Board to waive the attorney-client privilege and permit disclosure of the legal memorandum, you would not be entitled to receive it.

Moreover, your letter appears to acknowledge that you would not participate in the Board's decision as an adverse party, as evidenced by your request that the Board "please send the Board's written response to michael.allman@sduhsd.net, with a copy to the Superintendent."

Regards,

President Smith

## Exhibit 6 — September 24, 2026, 12:32 p.m.

Trustee Allman replies that he will participate in and vote on Item 2.A and again asks for the memorandum or the specific statute or bylaw relied on to withhold it.

Exhibit 6

**From:** michael.allman@sduhsd.net  
**To:** janelea.smith@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net; pfagen@f3law.com  
**Date:** Thursday, September 24, 2026, 12:32 p.m. PT  
**Subject:** Re: Brown Act violation agendized and legal memo — equal access; I will vote on Item 2.A

President Smith:

I write as a sitting Trustee of this Board. I will attend tonight's special meeting. I will participate in Item 2.A. I will vote on Item 2.A.

Your email from this morning incorrectly treats me as having stepped aside from the Board's decision as an "adverse party." That is not my position and not my request. Asking that any Board written response also be sent to my District email, with a copy to the Superintendent, does not mean I forfeit my seat, my participation, or my vote. I remain a member of the Board that is deliberating and deciding Item 2.A tonight.

Please provide me, before Item 2.A is called, the same written legal analysis from District counsel that has been provided to other Trustees for this agendized item.

I am proceeding under the Ralph M. Brown Act and the Education Code meeting statutes that govern this Board. Government Code section 54960.2 sets the cease-and-desist / unconditional-commitment path for past Brown Act claims. Nothing in that section — or in sections 54960 or 54960.1 — strips a complainant who is also a sitting Trustee of membership, of the right to vote, or of equal access to the Board counsel writings other Trustees receive for the same agendized item. Education Code section 35145 requires school board meetings to be open and conducted under the Brown Act. Education Code section 35164, and Board Bylaw 9323, provide that the Board acts by majority vote of the membership and that members have a duty to vote on matters before them absent a conflict. Board Bylaw 9323 limits the President's role to conducting meetings in accordance with Board bylaws and procedures that carry out the will of the majority. It does not authorize the President alone to withhold District counsel analysis from one sitting Trustee while other Trustees receive it for the same vote.

I have identified no Brown Act section, no Education Code meeting statute, and no Board Bylaw that authorizes the Board President, acting alone and without a Board vote, to withhold from one voting Trustee the District counsel analysis already provided to other Trustees on the same agendized item. Government Code section 54957.5 addresses writings distributed to all, or a majority of all, members of a legislative body in connection with a matter under consideration — framed around distribution to the body, not "all members except one." If you contend a specific statute or Bylaw authorizes tonight's unilateral withhold, cite it in writing before Item 2.A is called, with a copy to Mr. Fagen and Superintendent Staffieri.

You are taking this withhold on your own, as Board President, without a vote of the Board. That unilateral withhold keeps me from voting on Item 2.A, which is largely a legal question, with the same District counsel analysis other Trustees already have. Our Governance Handbook's equal-distribution and counsel-dissemination language is consistent with that reading, but I am not resting this demand on the Handbook alone.

I put you on notice that I contend this withhold is unauthorized. I reserve all rights with respect to your personal responsibility for withholding from me information I am entitled to receive as a Trustee, including any available civil, administrative, or other remedies. This reservation is not an assertion that any particular penal statute, including Government Code section 54959, already decides this fact pattern, and it is not a request for personal legal advice from District counsel.

I understand District counsel / F3 has taken the posture that attorney-client privilege somehow belongs to a "majority" of the Board, and that no individual Trustee has a right to confidential counsel materials. I disagree with that posture as applied to withhold from me, for an open-session agenda item, the same Board counsel writing other Trustees already have. The client for Board counsel advice on Board business is the Board as a body; the President may not unilaterally redefine one sitting Trustee out of that client for purposes of tonight's vote. This email is not a request for personal legal advice to me as an individual, and I am not claiming an attorney-client relationship with District counsel as my personal lawyer.

I am not asking that the memorandum be posted in the public agenda packet or otherwise published to the public. I am asking for equal access, as a Trustee, to the same confidential Board counsel analysis other Trustees received for Item 2.A.

Please confirm in writing, with a copy to Mr. Fagen and Superintendent Staffieri, either (1) that the memo will be provided to me before Item 2.A is called, or (2) the specific statute or Bylaw you rely on to withhold from one voting Trustee the Board counsel writing already shared with other Trustees on the same agendized item.

I preserve all rights and objections arising from unequal access to the counsel analysis on which the Board is being asked to act tonight.

Michael Allman  
Trustee  
San Dieguito Union High School District  
michael.allman@sduhsd.net

## Exhibit 7 — September 26, 2026, 3:21 p.m.

Trustee Allman asks President Smith to provide the memorandum by 5:00 p.m. on September 28 or, if she elects not to, to call a special meeting with an action item on whether to withhold it, and asks that the Board obtain an independent legal opinion.

Exhibit 7

**From:** michael.allman@sduhsd.net  
**To:** janelea.smith@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net; pfagen@f3law.com; blallande@f3law.com  
**Date:** Saturday, September 26, 2026, 3:21 p.m. PT  
**Subject:** Counsel's memorandum on my September 15 notice regarding the August 30 gathering: release it to me or call a special meeting to vote on withholding it

President Smith,

On September 23 you wrote that counsel's memorandum on my September 15 notice regarding the August 30 gathering was being forwarded to trustees. On September 24 you declined to give it to me, stating that the memorandum was prepared "in response to your stated threat of litigation against the District," that I am "averse [sic] to the District with respect to this matter," and that "[a]bsent a vote by a majority of the Board to waive the attorney-client privilege and permit disclosure of the legal memorandum, you would not be entitled to receive it." I asked you on September 23 for the lawful authority that allows this, and on September 24 for the specific statute or bylaw you rely on. No statute or bylaw has been cited; at the September 24 meeting counsel referred only generally to "the common law of conflict of interest."

I am not adverse to the District. I raised with the Board what I believe was an improper action, using the Brown Act's cease-and-desist process (Gov. Code § 54960.2), which gives the Board the opportunity to address the matter itself by an unconditional commitment. A trustee who sees a possible violation has a duty to raise it, not to look the other way. I have not sued the District, and there is no legal action. Asking for counsel's advice on the question is not hostile; I need it to do my job. I remain open to counsel's analysis. If counsel concludes there was likely no violation, I want to read that analysis and weigh it, just as the trustees who received it have been able to do (counsel said it was "only provided to four").

Your position also has the rule backwards. The District is the client and holds the privilege, and the District acts only through its Board, by majority vote at a meeting (Evid. Code § 953; *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373; Ed. Code §§ 35145, 35164). *Roberts* holds that "a local governing body is the holder of the attorney-client privilege with respect to written legal opinions by the governing body's attorney," and I am a member of this governing body. Sharing the memorandum with a Board member is not a disclosure outside the client, and "[a] disclosure that is itself privileged is not a waiver of any privilege" (Evid. Code § 912(c)). I have found no statute or bylaw, and none has been cited to me, that gives the President or counsel, acting alone, authority to decide which trustees receive counsel's advice. Our bylaws say the opposite: "a Board member has no individual authority" (BB 9200), and the President "shall have the same rights as other members of the Board" (BB 9121). The Governance Handbook commits the Superintendent to "[d]istribute information fully and equally to all Board members."

Calling a trustee "adverse" does not change this. The narrow exception in *Tritek Telecom, Inc. v. Superior Court* (2009) 169 Cal.App.4th 1385 involved a director who had actually sued, reached only documents prepared to defend that suit, and was applied by a court. In a corporate setting, *Fowler v. Golden Pacific Bancorp, Inc.* (2022) 80 Cal.App.5th 205, reaching the issue although the appeal was moot, warned against letting a director "lose access to corporate records merely because the director is deemed hostile or adverse to

management."

You have no authority, acting alone, to withhold the memorandum from me. Only the Board can make that decision. I raised this with you in writing on September 23 and 24 and at the September 24 meeting, and I do so again today. If you, acting alone, can withhold this memorandum, nothing would stop a President from withholding any memorandum, confidential or not, from any trustee she disagrees with. That is not how a Board governs.

I ask that you provide me the memorandum the other trustees received by 5:00 PM on Monday, September 28, 2026. If you elect not to do so, I ask that you call a special meeting of the Board at the earliest possible date, with an item for potential action titled "Whether to withhold from Trustee Allman counsel's memorandum regarding his September 15, 2026 notice on the August 30 gathering," so that any trustee who believes I should not receive it can make that motion and the Board can vote on it in open session.

I also ask that the Board obtain an independent legal opinion on whether the President may withhold counsel's advice from a trustee without a vote of the Board.

Sincerely,

Michael Allman  
Trustee Area 4

*[District signature block omitted]*

## Exhibit 8 — September 29, 2026, 11:13 a.m.

Trustee Phan Anderson and Trustee Allman request under Board Bylaw 9322 that an open-session action item on whether to withhold the memorandum from Trustee Allman be placed on the next available Board meeting agenda.

Exhibit 8

**From:** michael.allman@sduhsd.net  
**To:** anne.staffieri@sduhsd.net; janelea.smith@sduhsd.net  
**Date:** Tuesday, September 29, 2026, 11:13 a.m. PT  
**Subject:** Agenda request under BB 9322: action item on whether to withhold counsel's memorandum from Trustee Allman  
**Attachment:** Sep 26 2026 Allman email to President Smith.pdf (reproduced as Exhibit 7)

Superintendent Staffieri and President Smith,

Under Board Bylaw 9322, Trustee Phan Anderson and I request that the following action item be placed on the next available regular Board meeting agenda, or any earlier special meeting the President calls.

"Consideration of a motion to withhold from Trustee Allman the written legal memorandum from District counsel that President Smith stated on September 23, 2026 was being forwarded to trustees (related to Item 2.A, September 24, 2026 special meeting)."

BB 9322 provides that a proposed item "supported by two or more Board members will be added to the next available Board meeting agenda," and directs the Superintendent to determine that support. Trustee Anderson supports this request and will confirm her support to you directly.

We ask that the item be agendized in open session. The question before the Board is whether to withhold counsel's advice from one of its members—advice that, according to counsel, was "only provided to four" [of the trustees]. I do not concede that the Board may lawfully do so, but absent a Board vote, no individual Board member, including the President, has the authority to withhold it. A decision about what information a trustee receives is not a conference with counsel about litigation under Government Code section 54956.9, and no other closed-session exception applies (Gov. Code § 54962). No lawsuit has been filed.

My September 26 letter to President Smith, which sets out my position and authorities, is attached as supporting information.

Please confirm the meeting date on which the item will appear.

Michael Allman  
Trustee Area 4

## Exhibit 9 — September 29, 2026, 5:30 p.m.

President Smith again declines to provide the memorandum and states that [REDACTED]  
[REDACTED]

### Exhibit 9

**From:** janelea.smith@sduhsd.net  
**To:** michael.allman@sduhsd.net  
**Cc:** pfagen@f3law.com; jsalt@f3law.com; anne.staffieri@sduhsd.net  
**Date:** Tuesday, September 29, 2026, 5:30 p.m. PT  
**Subject:** Response to your September 26th email

Trustee Allman,

This letter serves as a response to your September 26, 2026 email. As stated in my prior correspondence, the memorandum prepared by legal counsel analyzes the Board's options and legal strategy in response to your cease-and-desist demand regarding an alleged Brown Act violation at the "Ecke Super School Meet and Greet." The memorandum is a privileged attorney-client communication prepared for the benefit of the District and the Board concerning a matter in which you have asserted claims against the District and expressly reserved the right to pursue further remedies. Your initial correspondence is a required prerequisite step in the Government Code for taking action against the District based on your allegations, regardless of if you self-proclaim to not be "adverse" to the District.

#### *A Fundamental Conflict of Interest Exists Between You and the District*

While you are correct that "a local governing body is the holder of the attorney-client privilege with respect to written legal opinions by the governing body's attorney," that principle does not establish an unrestricted right of access to privileged documents by a Trustee when the Trustee's personal interests are directly adverse to those of the District – especially when the Trustee has threatened and taken steps to initiate legal action against that District. As previously explained, "the common law doctrine against conflicts of interest strictly prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties." (70 Ops.Cal.Atty.Gen. 45, 47 (1987); 64 Ops.Cal.Atty.Gen. 795, 797 (1981); 46 Ops.Cal.Atty.Gen. 74, 86 (1965).) Moreover, "[a] public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." (*Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.)

Here, your cease-and-desist demand – a required step under Government Code section 54960.2(a)(1) prior to taking action – is directed to the Board of Trustees and concerns potential claims you may pursue against the District. In this circumstance, your personal interests are necessarily implicated. Providing you with counsel's advice regarding the District's response to *your demand and threatened litigation* would place you in a position to access the District's legal analysis and strategic considerations regarding a matter in which you have asserted an adverse interest. Given the prospect of litigation initiated by you against the District, at minimum, a common law conflict of interest exists.

In addition, this matter also presents a financial conflict of interest. Your correspondence expressly reserves rights under Government Code sections 54960 and 54960.2 and contemplates potential legal action. To the extent such proceedings could give rise to a claim for attorney fees, the matter implicates Government Code section 87103(c), which prohibits public officials from participating in governmental decisions in which they have a financial interest.

A useful analogy illustrates the concern. Suppose a Trustee were leaving the Board meeting and using the hand railing to walk down the ramp out of the District office on District property. If the handrail suddenly failed, causing the Trustee to fall and injure his/her leg on the sidewalk, the Trustee might submit a Government Claims Act claim against the District – a required step prior to initiating formal action or litigation against the District. In that circumstance, the Trustee would not be entitled to review counsel's confidential advice or litigation strategy regarding the District's response to that claim, or a liability analysis based on the District's handrail maintenance history simply because litigation had not yet commenced – especially when still within the statutory timeline to initiate any such litigation triggered by the initial demand.

Or, alternatively, suppose a Trustee had a student in the District and the student was eligible for and received special education services in the District. If the Trustee did not believe the student's IEP was being appropriately followed and sent a demand letter to the District prior to filing a compliance or due process complaint, and the District's legal counsel prepared a privileged memo analyzing the complaint or allegations to the Special Education Director regarding the facts and law at hand, the District should not provide that legal analysis to the adverse Trustee. The same principle applies here. A claimant's access to the District's legal strategy could influence the claimant's own decisions regarding how to proceed and thereby compromise the District's ability to obtain confidential legal advice concerning its response. Remember, each of our fiduciary duties is to the District.

#### *Invocation of the Brown Act's Cease-and-Desist Process*

Your cease-and-desist letter under Government Code section 54960.2(a) cannot reasonably be characterized as an informal effort to raise a potential Brown Act concern. As a Trustee, you had numerous avenues available to raise concerns regarding District actions, including requesting discussion of the issue by the Board or communicating your concerns directly to fellow Trustees and District administration. Instead, you elected to invoke the Brown Act's formal cease-and-desist procedure, a statutory mechanism specifically tied to potential litigation and judicial enforcement, and a required step prior to initiating the same.

Indeed, your letter expressly provides: "*Absent timely and satisfactory response, I reserve all rights under Government Code sections 54960 and 54960.2, including referral to the San Diego County District Attorney and any other available remedy.*" In addition, your fourth demand constitutes a litigation-hold notice, directing the District to "*Preserve all recordings, photographs, notes, and communications concerning the Ecke Gathering, and any communications among Trustees Smith, Viskanta, and Williams regarding agenda control, voting, or the Ecke Gathering.*"

These provisions underscore that the cease-and-desist demand was not merely a request for discussion or clarification on what you believed was improper Board action. Rather, it triggered a formal legal process and expressly preserved the possibility of future legal action against the District. Under those circumstances, counsel's advice regarding the District's response remains privileged and will not be disclosed to the individual asserting the claim absent approval by a majority of the Board – which is not set to meet again for another 2+ weeks.

#### *Applicable Caselaw*

In response to the authorities cited in your correspondence, you are correct that *Fowler v. Golden Pacific Bancorp, Inc.* (2022) 80 Cal.App.5th 205 (a case about a corporation, not a public entity) held that a director should not be denied access to corporate records merely because he or she is viewed as hostile or adverse to management. However, *Fowler* is expressly distinguished from the circumstances presented in *Tritek Telecom, Inc. v. Superior Court* (2009) 169 Cal.App.4th 1385 and reaffirmed *Tritek's* core holding:

*“... a director does not have the right to access privileged documents generated in defense of a suit for damages that the director filed against the corporation. In such a scenario, the director's intent to misuse the information to harm the corporation is self-evident. [Citations Omitted] Therefore, consistent with the holdings in Havlicek, supra, 39 Cal.App.4th at pages 1855–1856, 46 Cal.Rptr.2d 696, and Saline, supra, 100 Cal.App.4th at pages 914–915, 122 Cal.Rptr.2d 813, it was proper to limit the director's inspection rights to exclude the privileged documents. There has been no similar showing here—that Fowler is seeking access to documents protected by the attorney-client privilege. Thus, Tritek's holding simply does not apply under the facts of this case.”* (Emphasis Added).

The *Fowler* Court declined to apply *Tritek* because the director there was not seeking access to attorney-client privileged materials prepared in response to claims asserted by the director against the corporation. The court expressly noted that “there has been no similar showing here” and concluded that *Tritek* therefore did not apply under the facts of that case. The circumstances presented here are materially different. The memorandum at issue is not an ordinary corporate record. It is attorney-client privileged legal advice prepared in direct response to your allegations that the District violated the Brown Act and your stated intent to pursue legal remedies if the matter was not resolved to your satisfaction. Accordingly, this case falls within the line of authority recognizing limits on a fiduciary's access to privileged communications generated in response to the fiduciary's actual or threatened claims against the entity.

Further, in *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050, the Court held that a city council member who was disqualified from participating in a closed-session discussion because of a conflict of interest was not entitled to review a recording of that closed session meeting. As the Court explained, “*the policy and rule against participation by a council member with a conflict should be construed to prohibit the council member from obtaining a tape recording of a closed session between the council and its attorney, where the council met to discuss litigation related to the disqualified council member's area of conflict.*” (Emphasis Added, p. 1059).

The Court also reasoned that “... *the policy of preventing unbiased governmental decisions outweighs the public's right to know or to have all of its representatives be fully informed or actively participate in all governmental decisions. The legislature has already determined that public officials can in certain circumstances be excluded from governmental decisions, and that the public can be denied access to certain council discussions.*” (Emphasis Added, p. 1058).

Consistent with *Tritek*, *Fowler*, and *Hamilton*, the issue here is not access to Board or District records generally. Rather, it concerns access to attorney-client privileged communications prepared regarding a matter in which your interests are adverse to those of the District. Under those circumstances, you are not entitled to obtain privileged legal advice concerning that conflict.

#### *Practical Governance Standpoint & Next Steps*

At the Board's September 24, 2026 special meeting, you participated in the discussion and voted on adopting an unconditional commitment in response to the concerns raised in your own September 15th demand. In doing so, you were able to evaluate and take a position on the matter without reviewing the District's legal memorandum. Given that background, it is clear that receipt of the memorandum is not necessary for you to participate in or vote on any future consideration of the issue. Furthermore, regardless of the legal analysis, the Brown Act specifically provides that adopting what you seek – an unconditional commitment pursuant to Government Code section 54960.2 – “shall not be construed or admissible as evidence of a violation” of the Brown Act. (See Gov. Code section 54960.2(c)(4).) Still, merely stating you are not adverse to the District on this matter despite your demand letter which threatens litigation, you, from the dais, also encouraged the public to file similar litigation prerequisite steps against the District that you serve on – an interesting statement from

some who proclaims to be concerned about the District's legal expenditures.

Your request for the memorandum is, in effect, a request for information from the Board or Superintendent. As you know, [REDACTED]

[REDACTED] Accordingly, given your position as a prospective plaintiff who has taken steps to initiate litigation against the District here, and given that you have participated in robust discussion and voted on this topic just days ago, there does not appear to be a need for, and there is no requirement that, the memorandum be provided to you as a default before any Board action on this matter.

Lastly, I am in receipt of your request to place an item on an upcoming agenda regarding distribution of the legal opinion prepared to advise the District regarding issues arising from your notice and your stated intention to pursue a Brown Act challenge. I will manage that request -- as with any other trustee-submitted request -- in accordance with Board Policy.

President Smith

*[District signature block omitted]*

## Exhibit 10 — September 30, 2026, 7:27 a.m.

Trustee Allman responds to President Smith's September 29 email and asks that the memorandum be provided to him by Friday, October 2, 2026, 5:00 p.m.

### Exhibit 10

**From:** michael.allman@sduhsd.net  
**To:** janelea.smith@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net; pfagen@f3law.com; jsalt@f3law.com  
**Date:** Wednesday, September 30, 2026, 7:27 a.m. PT  
**Subject:** Re: Response to your September 26th email

Dear President Smith,

The question is whether counsel's memorandum to the Board may be withheld from a trustee without a Board vote. It may not.

After my September 15 notice regarding the August 30 gathering, Trustee Anderson and I requested a legal opinion. District counsel prepared a legal memorandum in response, and I have asked for a copy. The privilege belongs to the Board. The Board has taken no vote to withhold the memorandum from me.

*Prepared for the whole Board.* You describe the memorandum as prepared "for the benefit of the District and the Board." The Board is all five trustees. The memorandum has gone to four and been withheld from one without Board action.

*The Superintendent coordinates.* BB 9200 and BB 9012 route trustee requests to the Superintendent; they make her the point of coordination, not a gatekeeper. The Governance Handbook commits the Superintendent to "Distribute information fully and equally to all Board members" and to "Provide information requested by one Board member to every Board member." Nothing authorizes her to withhold counsel's advice from one trustee.

*Release is the default.* Absent Board action, and I do not concede that Board action could do so, counsel's advice to the Board may not be withheld from a trustee. The next scheduled meeting is October 15, and the Board can meet on 24 hours' notice (Gov. Code, § 54956).

*Section 87103(c) does not apply.* No one has paid or promised me any income in this matter. Section 87103 defines financial interests and section 87100 is the bar; neither lets one trustee declare another conflicted.

*A cease-and-desist letter is not litigation.* Section 54960.2(a) requires a cease-and-desist letter before an action may be filed under section 54960 over a past action of the Board. It gives the Board a chance to respond with an unconditional commitment before any suit. Reserving my rights does not make me adverse. *Tritek* (2009) 169 Cal.App.4th 1385 concerns a director who filed a damages suit; I have not.

*The unconditional commitment.* A commitment "shall not be construed or admissible as evidence of a violation of this chapter" (§ 54960.2, subd. (c)(4)). Once it is provided, "[a]n action shall not be commenced" over that past action (id., subd. (c)(3)), unless the Board rescinds it under subdivision (e). Adopting the commitment resolves the past action described in my September 15 notice. The Board has not adopted one.

*Voting without the memorandum.* BB 9323 provides: "Except when prohibited by law, the Board expects its members to vote on issues before them." I was expected to vote, and I had to vote without counsel's advice because it had been withheld from me. That put me at a disadvantage no other trustee faced. I remain at that disadvantage today.

*My September 24 remark.* I said the "District Attorney or any interested party may still seek relief" on my separate Item 11B notice, tracking the statute's "district attorney or any interested person" (§ 54960.2, subd. (a)). That describes the law; it invites no one to file.

Each day it is withheld, I am unable to fully carry out my duties as a trustee on this matter. Please provide me with the memorandum by Friday, October 2, 2026, 5:00 PM.

Michael Allman, Trustee Area 4

*[Quoted text of President Smith's September 29 email omitted; see Exhibit 9.]*

## Exhibit 11 — October 6, 2026, 6:22 p.m.

Trustee Allman asks President Smith to identify the date, agenda item, and minutes of the Board action she cited as [REDACTED]

Exhibit 11

**From:** michael.allman@sduhsd.net  
**To:** janelea.smith@sduhsd.net  
**Cc:** anne.staffieri@sduhsd.net; pfagen@f3law.com; jsalt@f3law.com  
**Date:** Tuesday, October 6, 2026, 6:22 p.m. PT  
**Subject:** Re: Response to your September 26th email

Dear President Smith,

In your September 29 email you wrote that [REDACTED]

Please identify the date, agenda item, and minutes of that Board action.

Thank you.

Michael Allman  
Trustee, Board of Trustees  
San Dieguito Union High School District

*[Quoted text of President Smith's September 29 email omitted; see Exhibit 9.]*