



In that complaint I outlined how they distributed an email in the Closed Door Meeting and then classified it as "protected". On November 21, 2014, I received a copy of the District's motion to dismiss my complaint filed in court. In this response the attorney states that I should file a request under GRAMA if I want the document reclassified.<sup>6</sup> That request has now been submitted and denied by the District.<sup>7</sup>

② COLUMBUS COMMUNITY CENTER

On this same day, I also submitted a GRAMA<sup>8</sup> request for information about the District's financial relationship with the Columbus Center. I sent this request as a result of a report I received from an employee who report financial improprieties with his retirement payments. In the process of looking into this issue I discovered that the School Board's attorney, \_\_\_\_\_ is on the Board of Directors for this Columbus Community Center. The District later advised me that there are some financial improprieties that have resulted in litigation.<sup>9</sup> The District ultimately sent me an invoice for \$212.80, stating that I had to pay the fee in order to obtain the requested information.<sup>10</sup>

③ OFFICE FOR CIVIL RIGHTS CORRESPONDENCE

I also submitted a GRAMA<sup>11</sup> request for copies of correspondence and data the District is sending to the U.S. Department Office for Civil Rights. On August 25, 2015, Superintendent McKell Withers and I participated in an online video interview with Salt Lake Tribune reporter Jennifer Napier-Pierce. In the course of that interview the Superintendent stated words to the effect that the Office for Civil Rights just gives advice on matters of education. Several people contacted me asking for confirmation that OCR does not have a greater role that what was stated by the Superintendent. I submitted a GRAMA request in an effort to better understand the Superintendent's thinking. The District sent me an invoice<sup>12</sup> for \$131.00, advising me to pay the fee if I wanted the requested information.

④ On August 28, 2015, I submitted a GRAMA request for information surrounding the circumstances RFP JB1541-LS - Professional Legal Services. I did not receive a response from the District on this request until October 20, 2015.<sup>13</sup> This letter claimed that they have fulfilled the request.

On August 31, 2015, I received a letter from the District advising me that more time was needed to gather the requested information.<sup>14</sup>

On September 2, 2015, I received an email from Board President Heather Bennett advising me that my current and future requests for information would be treated as follows: "*district officials will respond as they would to any member of the public*".<sup>15</sup>

<sup>6</sup> Jon Michael Clára v Salt Lake City Board of Education - Motion to Dismiss - Civil # 140907356 11/21/14

<sup>7</sup> District's GRAMA Denial Letter 10/20/15 & District Denial of Appeal 11/16/15

<sup>8</sup> GRAMA request to Superintendent McKell Withers from J. Michael Clára - Columbus Community Center 08/27/15

<sup>9</sup> Michael Clára Email exchange with administration and \_\_\_\_\_ 09/02/15

<sup>10</sup> District's GRAMA response - Columbus School Center 10/14/15

<sup>11</sup> GRAMA request to Superintendent McKell Withers from J. Michael Clára - Office for Civil Rights 08/27/15

<sup>12</sup> District's GRAMA response - Office for Civil Rights 10/20/15

<sup>13</sup> District GRAMA response - RFP 09/16/15

<sup>14</sup> District GRAMA Response 08/31/15

<sup>15</sup> \_\_\_\_\_ email to Michael Clára, GRAMA Requests, Pending and Future 09/02/15

On September 8, 2015, I filed a retaliation and intimidation complaint with the U.S. Department of Education, Office for Civil Rights (OCR) because I had reason to believe that the District's threat to charge me a fee for information and to restrict my access to information is a retaliatory act because of my advocacy for the most vulnerable students of our City.<sup>16</sup>

On September 21, 2015, I received a response from OCR<sup>17</sup> advising me that they are initiating an investigation on this issue because the District has "*subjected [me] to intimidation and retaliation*".

5 On September 28, 2015, I submitted a GRAMA request for information on class size and finances at Horizonte Alternative High School.<sup>18</sup> This GRAMA request was sent as a result of the Superintendent not providing me the information when I requested it, the previous week.<sup>19</sup> I received a partial response from the District. They informed me that if I wanted additional information, it would cost me \$900.00.<sup>20</sup>

On October 13, 2015, I sent a letter to the District advising them that I had not received any information responsive to my GRAMA requests.<sup>21</sup>

On October 20, 2015, I received a letter from the District advising me that information was sent to me on October 8, 2015. I never received the letter via USPS or Electronic mail.<sup>22</sup> Later that evening, I received hard copies of missing responses.

On October 29, 2015, I sent a letter of appeal to the District for denying me the information in relation to School Bus Safety.<sup>23</sup>

On November 10, 2015, I sent a letter of appeal to the District, for their denial of information related to Columbus Center, Office for Civil Rights and Horizonte Alternative High School.<sup>24</sup>

On November 16, 2015, I received a denial of my appeal for documentation related to School Bus Safety.<sup>25</sup>

On November 27, 2015, I filed this letter of appeal with the Utah State Records Committee. Although I have not received a response to my appeals submitted on November 10<sup>th</sup>, it is unlikely that the District will provide me the requested information.

## BACKGROUND

I was elected to the Board of Education in November of 2012 and took the oath of office in January of 2013. Although I am a governing member of the Board of Education, I have learned that my questions will not be answered and request for information will be denied me by the bureaucracy.

<sup>16</sup> Michael Clára letter to the U.S. Department of Education - Office for Civil Rights, Retaliation 09/08/15

<sup>17</sup> OCR letter to Michael Clára, Case Number 08-15-1331 09/17/15 (OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964)

<sup>18</sup> GRAMA request to Superintendent McKell Withers from J. Michael Clára - Horizonte Alternative High School Data Request 09/28/15

<sup>19</sup> Michael Clára email to McKell Withers - Horizonte High School 09/21/15

<sup>20</sup> District GRAMA Response 10/13/15

<sup>21</sup> Michael Clára GRAMA Appeal Letter to Janet Roberts 10/13/15

<sup>22</sup> District GRAMA Denial letter 10/08/15

<sup>23</sup> Michael Clára GRAMA Appeal Letter to Janet Roberts 10/29/15

<sup>24</sup> Michael Clára GRAMA Appeal Letter to Janet Roberts 11/10/15

<sup>25</sup> District GRAMA Denial letter 11/16/15

To that end, during my first two years of service I filed the following GRAMA request:

**iSchool (08/19/13)**

Determined that the administration did not follow state law in obtaining this grant money

**West High Audit (02/05/14)**

Determined that West High parents had good reason to be concerned about the financial practices in the Athletic program

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(02/18/14)

Determined that the Superintendent allowed \_\_\_\_\_ to write his own contract to evaluate School Improvement Grants. \_\_\_\_\_ was then paid for evaluations that he did not do.

**Public Relations Firm (02/20/14)**

Determined that Board president and vice president along with the superintendent were going to hire a public relations firm without Board knowledge or approval in order to cover up inappropriate behavior of District administrators.

**Gang Prevention (6/10/14)**

Determined that the administration was biased in their initial decision to divert gang prevention funding away from the district's only gang prevention program.

**Superintendent Compensation (06/12/14)**

Determined that the superintendent has been paying himself an annual bonus that was contingent on Board approval, yet no Board approval was ever given over the past five years.

**Equity Audits & Climate Surveys (06/16/14)**

Determined that the school administration had stopped conducting equity audits although the board voted to conduct them each year within the budget. The Board was also stating to the State Office of Education that they were being done each year which was not accurate. Board members did not even know what an Equity Audit is.

**Police Department (09/19/14)**

Determined that the police department and the district attorney had closed the case against a district employee in July of 2014, due to lack of evidence. Although as late as September of 2014 the administration was leading the Board to believe that the investigation was still ongoing. Also determined that the Business Administrator was providing a SLC Deputy Chief with personal financial information of an employee in the absence of an official police investigation.

**Lunch Room Financial Data (10/10/14)**

Determined that contrary to what the Business Administrator asserted in a 11/07/14 Board meetings, she did not have any other financial data on how lunch rooms operate in the district.

**School Bus Maintenance**

Determined that the administration gave false information to the School Board about the safety of school buses in the District's fleet.

**Monitoring Elected Officials (09-/24/14)**

Determined that the District personnel monitor the private lives of Board members as well as plot ways to undermine members of the Board i.e.:

The Public information officer stated the following in an email to the Superintendent:

*"I believe he can and should be censored for his actions. We know he will react in a defiant manner...Mr Clara...rouge board member...actions should be taken by fellow board members...here are some options.*

- Letter of reprimand
- Censure
- Change board meeting procedures and agendas to limit him
- Declaring any discussion out of order and stopping him immediately
- Motion to remove him from the meeting
- Public letter demanding a public apology
- Letter of support from the board for the superintendent and business administrator
- Letter of support from the schools for the superintendent and business administrator"<sup>26</sup>

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I read emails of instances where they discuss that I am a member of the High Council in my LDS Stake, they even concern themselves as to my seniority on that council. They received other reports about my movements and actions at a meeting at the legislature, "he has a lot of files with him, he is taking a lot of pictures...".

In June of 2013 – I sent an email<sup>27</sup> to Business Administrator Janet Roberts:

*"Can you please provide me in writing a breakdown of the superintendent's salary / compensation, each year, from 2003 to the present?"*

Ms. Roberts then sends the email to the School Board Attorney asking:

*"I would like to get your opinion on the best way to answer this request?"*

The Board president replied:

*"I would say this information should not be given to him via email, and should be done in an executive closed session...at that point I can ask why he wanted the information...we will do this under the personnel."*

As a result of this GRAMA request I obtained insights as to the inordinate amount of time the administration devotes to tracking my movements and preventing me from obtaining information about the finances of the District.

Also in this set of GRAMA response, I received information that the Superintendent's attorney was sending out GRAMA request to multiple public agencies wanting to know their communications with me.

#### POWERS & AUTHORITY OF A LOCAL BOARD OF EDUCATION

The Board of Education Handbook<sup>28</sup>, which has the force of policy states the following:

*The powers and mandatory duties of the Board of Education are defined in the Utah Code and State Board of Education Rule. They are divided among executive, legislative, and quasi-judicial responsibilities, as follows:*

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<sup>26</sup> email to McKell Withers – Last Night's Meeting 03/19/14

<sup>27</sup> Janet Robert's email exchange with – Request 06/10/13

<sup>28</sup> Board of Education Handbook –Salt Lake City School District

*Executive*

1. Select and appoint the Superintendent of Schools.
2. Select and appoint the Business Administrator.
3. Continuously appraise the educational and administrative management of the school system, through the evaluation of the superintendent and business administrator.
4. Periodically adopt a multi-year strategic plan. In the Salt Lake City School District this is called the Student Achievement Plan.
5. Communicate and meet with community members, staff, and students, both to receive feedback and communicate board views on educational issues.
6. Approve collective bargaining agreements.

*Legislative*

1. Develop, adopt, and interpret policies.
2. Adopt operating and capital budgets.
3. Approve curriculum guides and courses of study.
4. Establish school boundaries.
5. Advance a legislative agenda.
6. Advise and approve decisions on facility, procurement, and financial matters as necessary.
7. Authorize legal settlements.

*Quasi-Judicial*

1. Decide appeals of the superintendent's administrative decisions.

Current Utah law states that local Board members are elected<sup>29</sup> by a vote of the people. The law further states that "an elected member of a local school board serves and represents the residents of the local school board member's district, and that service and representation may not be restricted or impaired by the local school board member's membership on, or obligations to, the local school board."<sup>30</sup>

Among other responsibilities state statute<sup>31</sup> endows a local Board of Education with the following responsibilities:

- Implement training programs for school administrators, including basic management training, best practices in instructional methods, budget training, staff management, managing for learning results and continuous improvement, and how to help every child achieve optimal learning in core academics.
- Local school boards shall spend minimum school program funds for programs and activities for which the State Board of Education has established minimum standards or rules under Section 53A-1-402.
- Each school board shall adopt and implement a comprehensive emergency response plan to prevent and combat violence in its public schools, on school grounds, on its school vehicles, and in connection with school-related activities or events.

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<sup>29</sup> Utah Code §20A-14-104

<sup>30</sup> Utah Code §53A-3-401

<sup>31</sup> Utah Code §53A-3-402.

- A board shall do all other things necessary for the maintenance, prosperity, and success of the schools and the promotion of education.

Furthermore, Utah law places school Superintendents and Business Administrators in a subordinate position to the local Board of Education.<sup>32</sup>

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Speaking of the Superintendent and Business Administrator, current Board policy<sup>33</sup> states the following:

*“The board expects these appointed officers to work together, with district employees and members of the board, to promote student learning.*

*The board further expects that the business administrator and superintendent will exemplify the highest standards of professional competence and ethical conduct...The board expects the superintendent to discharge all of his or her statutory duties and to consult with and inform the board about school operations and problems in timely, accurate, and appropriate ways. ...The superintendent is accountable to the board for his or her performance.”*

#### RELIEF

In spite of the statutory authority of the Board and the subordinated position of the Superintendent and Business Administrator, I have had to resort to submitting GRAMA request in order to obtain information needed to carryout the duties assigned to me by the State Legislature and given to me by my neighbors at the ballot box.

During my first year of serving on the Board of Education, I submitted a GRAMA request and received the following response from the late John E. Robson of Fabian, Attorneys At Law. At the time, Mr. Robson was serving as the attorney to the Board of Education. In part he stated the following:

**...As you know a GRAMA request only entitles a person to inspect and obtain copies of public documents. It does not entitle a person to documents that are protected or private.**

**... However, in your position as a Board member you have the ability to review protected and private information as long there is a valid educational or business reason to do so.**

**Thus, the District wants to provide to you all of the information you might need to carry out your responsibilities...As a board member you have the same duty as the District to make sure that you do not disclose protected or private information...<sup>34</sup>**

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<sup>32</sup> Utah Code §53A-3-301 & §53A-3-302

<sup>33</sup> Board Policy B-1: Board of Education Legal Status, Responsibilities, and Ethics

<sup>34</sup> Mr. John Robson email to Michael Clfra, Re: Emails Responsive to GRAMA request 09/13/15

Subsequent GRAMA responses from the District have used the following language:

*"...as I have done in my prior responses to your GRAMA requests, you have been provided with both public and protected information.*

*Obviously as a board member you are entitled to view documents not available to the general public, but all protected information that is being provided to you as a board member must be kept and maintained in a confidential manner."*<sup>35</sup>

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Here is the language in a GRAMA response I received earlier this year:

*"As we have discussed, because you are a member of the Salt Lake City School District Board of Education, your access to documents is not the same as the general public's access. Due to your position as a board member, you are being provided with certain draft documents which are responsive to your request...Accordingly, I am providing you with two distinct sets of documents; one set comprises the documents I would provide to the requesting members of the public, and the other set contains confidential information, including private and protected information, which you are entitled to view based on your position as a board member. As always, all private and protected information that is being provided to you as a board member must be kept and maintained in a confidential manner and must not be disclosed."*<sup>36</sup>

I find it curious that the District has in the past, acknowledged my elected office and recognized that my access to records is different from that of the "general public", yet they now deny me access to District records.

I would surmise that you will find no other local elected official in the state of Utah that is forced to submit GRAMA request in order to obtain information from the very agency that the elected official oversees. Yet in this case, you see the Superintendent deny my initial GRAMA request and now the Business Administrator deny my appeal by stating:

*"With regard to your claims that you are being denied information as a board member, you are always welcome to request this information from the superintendent through the process outlined in Board Policy B-1: Board of Education Legal Status, Responsibilities, and Ethics. In that policy, the section entitled "Questions and information Requests from Board Members," clearly outlines the process through which board members can receive information necessary for the performance of their elected duties, and receive such information free of charge. Again, you have chosen to not utilize this process outlined in Board Policy B-1, and have instead chosen to utilize a process intended to allow the public access to government records. Because you have made your information request through GRAMA, the district is obligated to respond to your GRAMA request as it would any other member of the public"*<sup>37</sup>

This explanation is laughable and sad at the same time. It is sad in that it demonstrates the level of bureaucratic entrenchment and incompetence. It conjures up the tableau of a circular firing squad involving the Board, community and school district bureaucracy. By way of illustration, on page 5 of this appeal, I describe a situation where I received an email exchange as a result of a prior GRAMA request. When I asked for information on a financial matter, the email exchange reveals the how they will prevent me from seeing the requested information.

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<sup>35</sup> District GRAMA Response, Student Lunch Accounting System 02/24/14

<sup>36</sup> District GRAMA Response, School District's Lease Agreements with Wireless Communication Companies 02/17/15

<sup>37</sup> Janet Roberts GRAMA Denial 11/25/15

They will give it to me in a closed door meeting and declare it a protected document:

*"I would say this information should not be given to him via email, and should be done in an executive closed session...at that point I can ask why he wanted the information...we will do this under the personnel."* <sup>38</sup>

There are multiple instances of this type of barriers being created in an effort to keep information from me, I will cite one more for purposes of context. Earlier this year I sent an email to the Superintendent requesting a copy of a Human Resources Audit report. Instead of receiving a response from him, I get an email from his attorney. Ms. Kindl send me a copy of the HR Audit and then states "the report is also marked "confidential" and that status must be preserved by you and the other board members who are viewing the report". <sup>39</sup> I did not agree with that classification so I submitted a GRAMA request. I did receive a copy of the report under GRAMA with the following explanation from Ms. Kindl:

*"Insofar as you have now submitted a GRAMA request, the district agrees that under that law, the report is a public document."*

Asking for information directly, as Ms. Roberts suggest is an act of futility on my part, which is why I am having to submit a GRAMA request.

In conclusion, I would dispute Ms. Robert's assertion that GRAMA is for the "public" and that providing information to me free of charge is "preferential treatment".

Soon after being hired as the Superintendent's full-time attorney, Ms. Kindl submitted a dozen GRAMA request to various agencies and elected officials seeking information about my conversations with them. This is not the first time that the District has sought to track my activities in this manner.

In one such request to the Office of the State Auditor, Ms. Kindl states the following:

*"As a government entity...the District further requests that the Office of the State Auditor share any private, controlled, or protected records as these records are necessary to the performance of the District's duties and functions."* <sup>40</sup>

The Utah State Auditor denied the District's request stating the following:

*As far as providing the District with any ...correspondence...from or sent to Michael Clara, if we had any such records they would most likely have been received through our hotline program. Any records received through our hotline program are considered "protected" by the following sections of Utah Code... In regards to your request that we "share any private, controlled, or protected records as these records are necessary to the performance of the District's duties and functions," you have provided no basis to show that any records we may have would satisfy this need. As such, we have no records in response to your request."* <sup>41</sup>

The District cannot have it both ways. They cannot on the one hand invoke the need for records about my activities on the basis of "necessary to the performance of the District's duties and functions". Yet turn around and deny my requests for records.

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<sup>38</sup> See footnote 27

<sup>39</sup> Kristina Kindl email to Michael Clára -- HR Report 07/07/15

<sup>40</sup> Kristina Kindl letter to the Utah State Auditor -GRAMA Request for Documents to/from J. Michael Clara 09/18/14

<sup>41</sup> Utah State Auditor Letter to Ms. Kindl -- GRAMA Denial 10/06/14

Utah State law gives me the authority and power to monitor the activities of the Administration, not the other way around.<sup>42</sup>

I am embarrassed that as a duly elected member of the Salt Lake City Board of Education, I am having to expend an inordinate amount of time and energy in an effort to better understand the actions of the school administration. I am nevertheless resolute in that my obligation is to the residents of the Glendale and Poplar Grove neighborhoods of Salt Lake City, Utah not an entrenched school bureaucracy:

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*"Notwithstanding a local school board's status as a body corporate, an elected member of a local school board serves and represents the residents of the local school board member's district, and that service and representation may not be restricted or impaired by the local school board member's membership on, or obligations to, the local school board."*<sup>43</sup>

I am of the opinion that these two subordinates of mine, the Superintendent and Business Administrator are abusing Utah GRAMA law in an effort to conceal their activities from me and the public. These two administrators stand as blatant examples and symbols of everything that is wrong with public education in the state of Utah. As evidenced by the circumstances requiring me to submit this appeal for your consideration.

Shalom,



J. Michael Clára  
Board Member, District 2

cc: Utah State Senator Wayne Niederhauser, President  
Utah State Representative Gregory H. Hughes, Speaker  
Utah State Senator Luz Escamilla, Senate District 1  
Utah State Representative Angela Romero, House District 26  
Utah Senator Curt Bramble, President Elect- National Conference of State Legislatures  
Ms. Virginia Wilson-Cobble, Attorney -U.S. Department Office for Civil Rights  
Business Administrator Janet Roberts, Salt Lake City School District

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<sup>42</sup> See footnote 28

<sup>43</sup> Utah Code § 53A-3-401(5)

