

LAW OFFICES OF
PAUL D. SCOTT
A PROFESSIONAL CORPORATION
435 PACIFIC AVENUE, SUITE 200
SAN FRANCISCO, CALIFORNIA 94133

TELEPHONE
(415) 981-1212

FACSIMILE
(415) 981-1215

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BY EMAIL AND FIRST-CLASS MAIL

The Honorable London Breed
Room 200, City Hall
1 Dr. Carlton B. Goodlett Pl.
San Francisco, California 94102

Re: Renaming of San Francisco Schools

Dear Mayor Breed:

I write concerning the recent announcement by the SFUSD Board of Education that it plans to change the names of 44 public schools in San Francisco. Like many San Francisco residents, I have appreciated your thoughtful comments in response to the School Board's pronouncements on this subject. As numerous residents share your common-sense concerns, my firm has spent some time reviewing the process by which the Board arrived at its stated intention to change the names of the schools, and our conclusion is that the School Board's decision violated the Brown Act and also fails from a due process standpoint. Accordingly, as litigation regarding the Board's determination may otherwise ensue by legitimately frustrated San Francisco residents, I would respectfully request that the City Attorney be asked to review the points set forth in this letter and issue an opinion, so the School Board will have an opportunity, if appropriate, to reconsider its course of action.

The SFUSD Board of Education's concerns about racism and other forms of oppression are manifestly critical concerns that we all share. Building up those who have been disadvantaged or oppressed, through public recognition and otherwise, is similarly vital. There is no dispute about these most basic points. But the proposed highly significant action of potentially changing the names of 44 schools should only be undertaken in strict compliance with the law on a carefully considered school-by-school basis.

Background Facts

On May 22, 2018, the School Board passed Resolution No. 184-10A1, which resolved in pertinent part as follows:

That the San Francisco Board of Education finds it necessary to engage the larger San Francisco community in a sustained discussion regarding public school names, their relevance, and the

appropriateness of schools named for historical figures who engaged in the subjugation and enslavement of human beings; or who oppressed women, inhibiting societal progress; or whose actions led to genocide; or who otherwise significantly diminished the opportunities of those amongst us to the right to life, liberty, and the pursuit of happiness; and . . .

That said process shall be led by a blue-ribbon panel, whose membership shall be established by the Superintendent of Schools and ratified by the San Francisco Board of Education no later than the beginning of the 2018-19 school year; and . . .

That said blue-ribbon panel shall offer findings and recommendations, through the Superintendent of Schools to the San Francisco Board of Education regarding the potential renaming of SFUSD schools as soon as June, 2019, but no later than June, 2020, at which time the advising panel shall be dissolved . . .

Resolution No. 184-10A1, Available at [184-10A1 Rename Schools.pdf \(boarddocs.com\)](#)

In September 2020, the advisory committee identified 44 school names for potential renaming.¹ The SFUSD subsequently posted the following item on the Board's agenda for January 26, 2021:

I. PROPOSALS FOR ACTION

1. Resolution No. 211-12A1 - Amendment to Resolution No. 184-10A1, In Support of a Formal Process in the Renaming of San Francisco Unified School District Schools (adopted May 22, 2018) - Commissioner Mark Sanchez

Available at <https://go.boarddocs.com/ca/sfUSD/Board.nsf/goto?open&id=BW6NUU6136DC>

Linked to this agenda item was the List of Schools Recommended for Renaming as well as a draft of the resolution (i.e., the amendment to Resolution No. 184-10A1) that was to be considered by the Board at the January meeting. The proposed action item in the resolution was "That the Board of Education review and sanction the panel's list of school names for potential renaming."²

¹ Available at [List of Schools Recommended for Renaming.pdf \(boarddocs.com\)](#); see also [San Francisco Unified School District advisory committee identifies 44 San Francisco public schools eligible to be renamed - ABC7 San Francisco \(abc7news.com\)](#).

² The full text of the resolution reads as follows:

Subject: Resolution No. 211-12A1

Amendment to Resolution No. 184-10A1, In Support of a Formal Process in the Renaming of San Francisco Unified School District Schools (adopted May 22, 2018)
- Commissioner Mark Sanchez

WHEREAS: The San Francisco Board of Education adopted Resolution No. 184-10A1, In Support of a Formal Process in the Renaming of San Francisco Unified School District Schools on May 22, 2018, committing the District to changing names of schools named for historical figures who engaged in the subjugation and enslavement of human beings; or who oppressed women, inhibiting societal progress; or whose actions led to genocide; or who

On January 26, 2021, the Board held its meeting, and the resolution was passed as written. Notwithstanding the narrow scope of the resolution, however, on January 27, 2021, SFUSD issued a press release including the following statements describing the import of the resolution in materially different terms:

The resolution . . . serves as the Board's commitment to replace the names.

Schools with names that the Board wants to see replaced will have the opportunity to continue engaging their communities and propose alternate names to the Board.³

Thus, while the language of the resolution indicated that the Board was going to consider approving a list of school names for *potential* renaming, SFUSD's press release goes further and states that the decision has now been made to rename the schools on the list and only alternate names will be considered going forward.

The Brown Act

The Brown Act sets forth the following notice requirements, in pertinent part, that the School Board must follow relative to the issues it plans to take up at regularly scheduled Board meetings:

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. . . .

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements

otherwise significantly diminished the opportunities of those amongst us to the right to life, liberty, and the pursuit of happiness; and

WHEREAS: A blue ribbon panel of community leaders was formed and has met for more than one year to examine school names and set up a process for identifying names for change; and

WHEREAS: The panel has forwarded the names of more than 40 school sites for potential renaming to District leadership, with an end date of April 19, 2021 for suggested new names to be reviewed by the panel, at which time the panel will make its final recommendations for new names to the Board of Education.

THEREFORE BE IT RESOLVED: That the Board of Education review and sanction the panel's list of school names for potential renaming.

Available at:

[https://go.boarddocs.com/ca/sfUSD/Board.nsf/files/BXHBNY2D407B/\\$file/Sanchez%20Support%20Panels%20Renaming%20Schl's%201%2012%2021.pdf](https://go.boarddocs.com/ca/sfUSD/Board.nsf/files/BXHBNY2D407B/$file/Sanchez%20Support%20Panels%20Renaming%20Schl's%201%2012%2021.pdf)

³ A full copy of the press release is available here: [SF Board of Education Advances Plan to Rename Schools | SFUSD](#)

made or questions posed by persons exercising their public testimony rights under Section 54954.3. . . .

Government Code § 54954.2.

The California Attorney General's guide to the Brown Act explains, with regard to the agenda requirements, that "the purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." See *The Brown Act, Open Meetings for Local Legislative Bodies, 2003, California Attorney General's Office* at 16, Available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/brownAct2003.pdf>

This commentary by the Attorney General is consistent with the California Court of Appeal's decision in *Carlson v. Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, 199. In *Carlson*, the court analyzed similar language in section 966 of the Education Code and rejected an agenda item, which described a proposed school closure as a "school site change," calling it "misleading and inadequate to show the whole scope of the board's intended plans." *Id.* Similarly, in *Moreno v. City of King (2005)* 127 Cal.App.4th 17, 26–27, the Court of Appeal held that an agenda item which referenced "'Public Employee (employment contract)'" was not sufficient to convey the fact that a particular employee's dismissal would be discussed. It should have stated directly "Public Employee Dismissal." *Id.*

In the instant matter, the notice provided to San Francisco residents by the School Board was similarly inadequate and misleading, for it did not make clear that the purpose of the January 26, 2021 hearing was to make a final determination on whether the 44 school names would be changed, let alone all at once.

The agenda stated cryptically that the proposed amendment was "In Support of a Formal Process in the Renaming of San Francisco Unified School District Schools." See January 26, 2021 meeting agenda. The draft resolution attached to the agenda item only purported to resolve "That the Board of Education review and sanction the panel's list of school names for *potential* renaming." See Resolution 211-12A1 (emphasis added). Thus, none of the information made available to the public in advance of the hearing made it evident that the board's actual plan was to make a final decision on the removal of 44 school names in simply one vote.

The inadequate nature of the notice for the January 26, 2021 hearing was confirmed by comments at the hearing by Commissioner Sanchez, who drafted the resolution but still felt it necessary near the end of the hearing to clarify what was meant by his resolution: "Just next steps, so the ... this this resolution means that all the schools that are on the list will . . . their names will be changed. So we just want to be really clear with our communities that that's going to happen once ... if this resolution should pass today." Video Recording of January 26, 2021 hearing at 6:38:10-6:38:36. Available at <https://www.youtube.com/watch?v=jnsrGIR44EY&feature=youtu.be>

The notice provided by the School Board regarding its decision to rename the schools thus failed to satisfy the notice requirements of the Brown Act. Residents cannot be required "to guess" as to whether they should attend a hearing or seek additional information from the Board.⁴ Accordingly, the

⁴ *San Diegans for Open Gov't v. City of Oceanside*, 4 Cal.App.5th 637, 209 Cal.Rptr.3d 305 (Cal. App. 2016) ("The Attorney General reached a similar conclusion when asked to consider an agenda of the State Board of Food and

School Board was precluded from voting to eliminate the names of the 44 schools at the January 26, 2021 hearing. Government Code § 54954.2(a)(1) & (a)(3).

Due Process

In *People v. Ramirez*, the California Supreme Court reiterated the governing standard for determining whether official government action has satisfied due process:

“[I]dentification of the dictates of due process generally requires consideration of (1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) the dignitary interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. (See *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal. 3d 552, 561 [150 Cal. Rptr. 129, 586 P.2d 162].)

People v. Ramirez, 25 Cal.3d 260, 269 (2020).

In the instant matter, as has been made evident by the public outcry regarding the School Board’s actions, there is a significant private interest amongst San Francisco residents in the long-standing names of the local schools their children attend, they attended, or their parents and grandparents attended before them.

There is also a risk of them being deprived of that interest erroneously, given credible reports on the inadequate and/or inaccurate history relied upon by the panel. As an example, James Russell Lowell was included on the list based on the claim that “he did not want Black people to vote,” but a scholarly biography states he “advocated giving the ballot to the recently freed slaves.” See *The San Francisco School District’s renaming debacle has been a historic travesty, SF’s decision to rename 44 schools: Botched process. Botched outcome. Botched priorities*, by Joe Eskenazi.⁵ James Lick was included on the list due to an association with the Early Days Sculpture, which showed a prostrate native American at the feet of white men, but Lick reportedly died 18 years prior to the sculpture’s completion. *Id.* As another example, Paul Revere was included due to his alleged involvement in the conquest of the Penobscot Indians, but the source relied upon for this allegation is reportedly at direct odds with this

Agriculture, which was subject to related provisions of the Bagley–Keen (sic) Open Meeting Act (§§ 11121–11121.8, 11123). An agenda for the board stated that the board would consider ‘Tuolumne River San Joaquin River Flood Control Problem’; however, in acting on that agenda item, the board adopted a resolution opposing congressional designation of the Tuolumne River as a ‘Wild and Scenic River.’ The Attorney General concluded that the agenda did not meet the requirements of the statute because members of the public would have to guess as to whether they should attend the meeting of the board or seek additional information from the board. (67 Ops.Cal.Atty.Gen. 84 (1984).)”).

⁵ Available at <https://missionlocal.org/2021/01/the-san-francisco-school-districts-renaming-debacle-has-been-a-historic-travesty/>. Eskenazi is a former writer for SF Weekly and San Francisco Magazine. The Northern California branch of the Society of Professional Journalists named Eskenazi the 2019 Journalist of the Year. <https://missionlocal.org/author/joee/>. The article cites a report by Families for San Francisco. Our firm is not affiliated with that organization.

claim. *Id.* A properly noticed hearing with opportunity to comment by relevant historians, who were reportedly not consulted in this process, could help avoid such potential errors.

An additional potential for error here lies in the Board's assessment of the potential financial impact of its decision. During the hearing, a question was posed to Deputy Superintendent Myong Leigh about the potential cost of a school name change, and he said they "probably don't have as much of a precise estimate as they need to develop." Video Recording of January 26, 2021 hearing at 6:21:50-6:24:45, available at <https://www.youtube.com/watch?v=jnsrGIR44EY&feature=youtu.be>. He cited an estimate by another SFUSD staff person of \$10,000 for a typical signage replacement budget but concluded by saying that "I do think that we should just to shed a bit more light on this question dig a little bit deeper and talk with some school leaders and anyone else who might have insights into this. I like you have heard a lot of estimates that are significantly higher than that so would like to kind of better understand where some of those estimates might be coming from, but that's what I have to share tonight." *Id.* Other public reports, by contrast, estimate the potential cost at \$1 million or potentially significantly more for renaming the schools, while the SFUSD has a potential budget deficit of \$75 million next year.⁶ Once again, a properly noticed hearing with an opportunity to be heard by the stake-holders at each particular school could inform the Board as to the actual cost of renaming that school.

With regard to the third criteria referenced in *People v. Ramirez*, members of the general public, as well as individuals affiliated with the schools in question, manifestly have a clear dignitary interest in a properly noticed opportunity to present their views on whether specific school names should be changed based on allegations of immorality against the individuals for whom the schools have been named.

Meanwhile, against all this, the governmental interest in proceeding immediately is limited. The schools have borne the names at issue in many cases for generations. There is minimal cost to holding additional hearings, at the appropriate time, to ensure that any decision to rename schools is made correctly. Indeed, to the extent that some schools were removed from the list after a properly noticed hearing, shortening the list would avoid unnecessary expenditures of time and resources by the School Board.

Finally, it is worth noting that, while the State of California has authorized local government bodies to conduct meetings remotely during the pandemic, such proceedings inevitably limit the robust debate that occurs at live hearings and almost certainly reduce the participation by low-income residents lacking access to the internet and by elderly alumni who have a direct interest in these issues and yet are less versed in the use of technology. The Executive Order authorizing remote proceedings references the time sensitivity of certain issues (e.g., entitlement to benefit programs) as part of the basis for why hearings are being allowed to proceed when physical access to the proceedings is not possible. See Executive Order N-29-20, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>. But as noted above, there is no parallel degree of urgency here with regard to the possible renaming of San Francisco's public schools. There is thus little justification in the context of the

⁶ Washington and Lincoln are out. S.F. school board tosses 44 school names in controversial move, San Francisco Chronicle, January 27, 2021. Available at <https://www.sfchronicle.com/education/article/Washington-and-Lincoln-are-out-S-F-school-board-15900963.php>

Executive Order for sacrificing the due process interests of those who will be adversely affected by the School Board's inadequately noticed hearing regarding these matters.

The Advisory Committee

With regard to the next steps in the contemplated renaming process, Commissioner Sanchez stated that "Once those names come to the committee, the committee will vet them and then bring the final recommendations of each school's' names to the Board to finally ratify." Video Recording of January 26, 2021 hearing at 6:38:36-6:38:48.

<https://www.youtube.com/watch?v=jnsrGIR44EY&feature=youtu.be>

The SFUSD maintains a webpage for the School Names Advisory Committee, which confirms, consistent with Commissioner Sanchez's comments, that going forward the panel will receive input on possible new names for schools and hold further meetings to discuss the same. [School Names Advisory Committee | SFUSD](#)

The resolution that provided for the creation of the Advisory Committee, however, only provided for the panel to remain in existence until "June, 2020, at which time the advising panel shall be dissolved . . ." Resolution 184-10A1. Unless the tenure of the committee was extended with due notice to the public at a regular School Board meeting, a further question thus exists as to whether the panel was properly authorized to submit its recommendations at the January 26, 2021 hearing, and separately whether membership in the panel, which is not an elected body, should be reopened during the contemplated renaming process, particularly given the evident weight that the School Board plans to place on the recommendations coming from the panel.

It is evident the School Board failed to provide adequate notice of what would be decided at its January 26, 2021 hearing and has begun to take action beyond the scope of the resolution that it passed there. For these reasons, its actions are unlawful. If the School Board wishes to consider the renaming of schools, at the appropriate time, it should do so with adequate notice and due process. The proposed action involves 44 individual schools, with different issues and numerous stakeholders as to each. As a purely practical matter, consideration of renaming should thus proceed on a school-by-school basis, at the appropriate time, with adequate notice and an opportunity to be heard by all those who would be affected by each individual decision. Overall, the School Board is engaged in an effort at profound change. The rigor of the proceedings by which they undertake that effort must therefore be commensurate to the task in order to arrive at a just and fully informed result.

Sincerely yours,



Paul D. Scott

CC: City Attorney Dennis Herrera
San Francisco School Board