

Board Report

November 10, 2022 Resolution and Directive

Purpose Statement: At a properly noticed and properly convened Special Meeting on November 10, 2022, the District 49 Board of Education adopted a two-part Resolution. The purpose of this Report is to respond to the second portion of the Resolution which authorized this law firm to retain an investigative firm to develop a legal case for possible action directed at Ivy Liu in connection with allegations that: 1) she violated requirements that a public official, using a social media platform in support of her political role, may neither block nor edit constituents from viewing or posting on such social media; 2) that she maintained and utilized false online identities to post unsupported claims which falsely portrayed District 49 operations; 3) that she falsely represented actions taken or about to be taken by the Board of Education; 4) that she falsely characterized the political or religious stance of fellow Directors; 5) that, with a purpose of creating public disharmony, she created a negative image and reputation for the District in violation of her fiduciary duties; 6) that she falsely generalized activities within the District without factual basis which had the effect of harming the reputation of teachers and staff members; 7) that she used the power of her office to interfere with hiring or continued employment of current and/or prospective employees due to their political or social views; 8) that she violated the Colorado Open Meetings Law and the requirements for confidentiality set forth in the Affidavit signed in connection with executive session confidentiality, a misdemeanor; and 9) that she generally harmed the District's enrollment, and employment recruiting by sabotaging Board priorities and policies.

Subsequently, additional related issues came to bear over the course of November, 2022 through January, 2023. For example, A) Director Liu threatened litigation against the District related to "violations of Roberts Rules"; B) was invited by counsel on at least three occasions between December 16, 2022 and the end of January to provide "any particular offensive content" in the District's curricula and has failed to do so; and C) used District email account to declare to a constituent that the Board is operating "in violation of CRSs".

As noted above, the Resolution specified the use of an "investigative firm." It additionally purported to grant "subpoena" and "deposition" power for purposes of the development of a "legal case." Upon close review and related research, it is unlikely that such powers are available in the current situation. Further, consultation with various potential investigative firms led to a conclusion that utilization of a third-party investigator would be both costly and inefficient. Therefore, rather than have the District expend the authorized sum (\$10,000), this factual review has been conducted by Miller Farmer Law, LLC under the normal monthly set-fee arrangement at no extra cost to the District.

Methodology: This office reviewed social media postings by Ms. Liu, corroborated their origin, and analyzed their content. Similarly, this office reviewed recordings of District 49 Board meetings, the content of email exchanges between Directors, reviewed Director Liu's emails, interviewed various individuals, and verified the record of proceedings of the Board from November, 2021 to the present time. The District also collaborated with Sentinel, our IT infrastructure vendor, to authenticate and review messages and documents on the D49.org domain.

Thus, the resulting report, herein, relies solely upon authentic artifacts, verifiable either as documents in the custody of the District, or as confirmed online/social-media posts.

Findings:

- 1. Social media as organ of official duties:** Multiple federal legal opinions stand for the proposition that public officials who use social media accounts to further their official duties, must comply with the First Amendment, and cannot block people from those accounts based on viewpoint. The key question is whether the account “becomes an organ of official business.” Here, Ms. Liu’s Facebook page originally entitled, “Ivy Liu: Elected D49 BOE What’s Next,” subsequently amended to “Updates on education from my perspective,” likely was in technical violation of this law. The latter title may not be intended to be related to official duties in a manner that implicates any legal concern. Nonetheless, postings such as the one on March 2, 2022, clearly act as an “organ of official business,” insofar as it describes past actions and predicts future efforts by the Board in a manner that demonstrates authority, e.g., “I’ve developed a draft district policy on transparency for the June timeframe,” and “I am proposing to review district guidance, instruction methods, and curriculum...” This sort of content is precisely what the courts have declared may not be blocked to certain viewers. Further, at least three constituents did report (with screen shots) being blocked from “Ivy Liu: Elected D49 BOE What’s Next.” (The announcement banner for this page indicated that “I will post updates on D49 actions from my perspective.”) In each case, this likely was illegal activity pursuant to current federal precedent. Any cause of action would be necessarily initiated by an individual who was blocked, and would not be a matter for this Board to pursue.
- 2. Inexplicable use of social media pseudonyms:** Ivy clearly did maintain, and continues to maintain, multiple false identities online and has utilized such personas to distribute commentary regarding both District and non-District issues. While no clear violation of policy or law is at stake, the use of confirmed identities such as “Sky Dancer,” “New Dawn Rising,” “Helen Weels,” and “Hannah Cyrus” to promote and discuss District matters is both perplexing and troubling. “Running Against-Wind,” “Dee Jackson,” and “Lily Poon” are related personas. Finally, there is the anonymous set of identities, “D49 Guardians” and related pages, which also are hosted, or co-hosted by Director Liu.

Certainly, some of the posts she made using those identities would be considered irresponsible coming from a Director, which likely explains why the pseudonyms were utilized in those contexts. For example, Helen Weels in agreeing with a Facebook statement by another individual that Board actions are “illegal,” notes, “the sheer hypocrisy and infringement on freedom of speech by Graham, Van Wieren and Thompson are duly noted ...” [sic]. Using this same pseudonym, Ms. Liu appears to routinely support her other identities that, among other things, describe Thompson/VanWieren/Graham as “three minions/morons,” the Chief Education Officer as “a superintendent who means to indoctrinate,” and the District’s legal counsel as “corrupt legal counsel,” while stating that the three “need to RESIGN: NOT Ivy Lui!! [sic], and “they just voted to bring CRT into D49.” This last statement clearly is irresponsible and untrue. Yet Ivy Liu, in the guise of Helen Weels, publicly supports such statements.

Her usage or participation in the usage of the alias, Leo Junger, is particularly curious. Here, she defends herself, Ivy Liu, using strong language and accusations. Her continued iconoclastic use of ALL CAPS for certain emphasis was the initial clue, but grammar tics and other commonalities also were considered in confirming her identity. Then, as is the case

with verifying the various pseudonyms, we tracked IP address, computer-specific address, explored expanded headers, used a CORA review of related missives, and observed her own confirmation of her identities. We additionally interviewed employees and constituents to verify their receipt, from Ivy, of messages and texts confirming her multiple personalities.

The January 23 email from Ivy in the guise of Leonard Junger, deserves to be completely set forth herein:

“WE the people have been watching the s***show that has been going on in D49 since Nov '21. It is beyond human indecency how you have treated the most trusted and respected member of your board who is fighting for kids and not trying to sell something.

WE are watching your next moves and standing by to respond to your next steps. You have had one year to show some semblance of integrity---You FAILED!

YOU make us puke when you remind people ad nauseum of your "Christian Constitutional Conservative" label.

We can't wait to see what your THIRD sorry-ass attempt is going to look like in trying to get rid of one of the most respected board members in D49 history by your redistricting proposals.

Has it occur to your idiots that manipulating the districts boundaries might actually free up more and STRONGER and no-need-to-be-nice candidaites to take back OUR board seats??

STOP FOLLOWING THE ORDERS OF THAT CEO AND CROOK OF A LAWYER!! It is so obvious to EVERYONE. Do you have any dignity? PLUS IT'S SUNSHINE LAW VIOLATION!!

A grandparent, a veteran who sure as hell who let traitors ruin our kids, and defender of our freedom!
LMJ”

Finally, a brief examination of social media reveals, amusingly, that Ms. Liu, using multiple aliases, will often “like” her own posts in a transparent effort to appear as though the statements are receiving public acclaim. Altogether, it is somewhat unnerving to observe an elected public official exhibiting these sorts of behaviors.

- 3. Usage of Hitler quote to portray District operations:** Perhaps most conspicuous of the various items at issue in the original investigation are the postings involving a quotation by “Adlf H-it-ler.” At least one of these postings was at “Updates on Education in D49 from my perspective,” and it continued with a statement that “(C.R.T.) concepts that are deceptively hidden in many of the latest Social Emotional Learning (S EL) programs from CA SEL.org. Not all S EL’s are bad but some are insidiously programmed to do just what our destroyers intend.” [sic]. Multiple interpretations of these declarations are possible. However, given the title of the Facebook account, it seems unreasonable to assume that there is not an implicit allegation that the “insidious” programming is taking place within the District. Unless and until Ms. Liu is able to actually point to content within District SEL

programs which contain CRT concepts, it is a necessary conclusion that this was a false representation of Board policy and was a violation of her fiduciary duty to the District.

4. **Violation of fiduciary duty using willful misstatements of law:** Ms. Liu has publicly (on social media) declared that her fellow board members violated policy and/or law when her treasurer position was revoked (but see, C.R.S. 22-32-104 which states that such a role is maintained at the pleasure of the board). She stated that Lori Thompson “ran for DD5 under false pretenses,” that “she misrepresented herself knowingly, time for a recall.” She encouraged constituents not to patronize Lori’s real estate business. Similarly, she used the pseudonyms listed above in item 2 to similarly denigrate her fellow Directors, associating them with terms such as Marxists, and questioning their religious faith. These claims are probably not able to be sanctioned by the Board as a political body, however, it should be evident that the manner, tone, and content of these allegations show no sign of a faith-based character.

5. **Unfounded assertions regarding District policy and practice:** This item (delivery of false impressions to create disharmony) shares a common foundation with item 3 above. Ms. Liu’s social media statement about the insidious integration of CRT in District educational venues is consistent with multiple Board meeting declarations in recent months. As a recent example, in December Ms. Liu alleged at a Board meeting that “we are teaching this [CRT] questionable content,” and went on to state that District SEL programs are “lathered with CRT content.”

Yet, whenever challenged, Ms. Liu only has pointed to indicia found on publisher websites to support her theories. Not once has she cited content within materials actually utilized in District classrooms to demonstrate her claims that “we are teaching this questionable content.”

There is a viable public debate concerning the efficacy of SEL practices and curricula in public education. Ms. D’Avola, for example, has thoughtfully presented questions regarding whether SEL instruction comes at the cost of classroom time for other core subjects. Weirdly, Ms Liu, when asked at the February 11 board retreat about her position, **adamantly maintained that she does not contest the use of SEL**, but that she instead questions the particular CRT-focused content.

In a December meeting, she contested legal advice based upon C.R.S. 22-32-104 that the Board illegally removed her officer status, and cited anonymous third-party legal authority. This was intended to create doubt about the legal authority of the Board and was clearly and completely incorrect. This was a violation of her fiduciary duty to the District. In November’s work session, Ms. Liu alleged that the Board had failed to conduct public dialogue regarding SEL programming in the District (“we haven’t sat down and talked about some of these programs and the specific problems that I know for a fact we have a problem with, which is CRT content.”). This notwithstanding that the topic has been before the Board in multiple meetings stemming back to May. Altogether, there is significant recorded evidence in support of the proposition that Ms. Liu has verbalized allegations, demonstrably untrue, at Board meetings which have the effect of creating disharmony and distrust.

In November, Ms Liu requested legal counsel to provide information on how to recall other board members.

On November 18, Ms Liu sought clarity as to whether, as a Director, she was able to access parent emails for purposes of sending direct communications. Legal counsel denied this request.

On November 23, Ms. Liu asserted, in email, that she has an unlimited right to visit any facility and speak with any personnel. When denied a particular visit, she claimed that the board was violating law and policy.

On November 29, Ms. Liu, in response to a denial of her request to have Deb Schmidt make a Board presentation on SEL, made one of what later became a cascade of litigation threats against the District.

On December 7, Ms. Liu received a demand letter from the Anti-Defamation League regarding her Hitler post. She declined to respond.

On December 15, Ms. Liu made a written threat of litigation and suggested a recall of John Graham for alleged violations of Roberts Rules.

On December 20, Ms. Liu wrote that the District took “wrongful action,” without specifying the alleged infraction.

In mid-January, Ms. Liu, using pseudonyms identified above, supported allegations about, and encouraged litigation against, the District.

Ms. Liu, on multiple occasions, incorrectly asserted that file BEDH “violates the First Amendment.” This, even after being provided statutory citations and corrective information by District legal counsel.

On February 8, Ms. Liu violated her fiduciary duty by writing to a constituent that the District is “operating in violation of CRS’s,” and also incorrectly noted that the Board “has given up [its curricular review] responsibility over 10 years ago.”

On February 15, Ms. Liu wrote to Director Thompson that she was aware of a pending lawsuit against the District, and upon further inquiry, declined to provide the District any information in violation of her fiduciary duty.

On February 15, after various, and numerous, violations of protocols, confidentiality, and trust, Ms. Liu’s privilege to visit schools or to interview personnel, was revoked.

- 6. False depiction of District operations:** This item, which raises the question of whether Ms. Liu falsely generalized issues within the District with the effect of harming the reputation of teachers, is best addressed in the context of the following: Ms. Liu has alleged that the District uses curricula which contains CRT indoctrination. Administration has responded in two ways. First, it asks the reasonable question as to which curricula contains such content and seeking for examples thereof. And, relatedly, Peter Hiltz has repeatedly

invited any parent in the District to identify any use of such materials and to that end has offered his direct phone line. Second, administration and many instructors (via public comment) have explained that pursuant to policy and the District's cultural compass, CRT indoctrination is not tolerated in District 49. Yet, Ms. Liu continues on a meeting-by-meeting basis to allege that such indoctrination is occurring, followed by immediate protestations that she is not implicating the teachers, but fully supports them. This, obviously and objectively, is an untenable position. It is the logical conclusion that her allegations have a detrimental impact on the reputation of District 49 instructors.

7. **Violation of individual rights, HR/employee matters, and legal duties:** This item is highly sensitive. There is validity to the allegations, however, these matters must remain private to protect the legal interests of individuals and the District.
8. **Violation of Executive Session confidentiality:** There is one confirmed incident of a violation of the confidentiality of executive session involving Ms. Liu, but it dates back to December, 2021. Two employees have confirmed that Ms. Liu divulged executive session content in a verbal conversation in the restroom at Creekside after the session and prior to the regular meeting. Additional violations of Open Meetings law may have occurred, but have not been confirmed.
9. **General harm to the District's reputation:** There are multiple examples, each anecdotal, which respond to the 9th allegation. We reviewed five statements from employees no longer employed by District 49. Each, to significant degree, assert that the departure was at least partially, and in three cases, significantly, related to behaviors and statements by Ms. Liu. The corollary concern, whether Ms. Liu's participation in farfetched allegations, op eds and social media comments negative to the District, and castigating of District personnel and operations, has harmed the District's enrollment or hiring opportunities will be in the hands of the reader.

Conclusions and Recommendations: First, it should be stated that the behaviors outlined herein provide a clear roadmap and support for the Board's past action to "Censure" Director Liu. While such action always is optional in nature, the particular issues of untruthfulness in Board meeting commentary and social media pseudonyms and related commentary do warrant said action. Ms. Liu has serially asserted that the censure and removal of the office of treasurer somehow are unsupported in the law. This is a completely specious defense.

As to legal claims, I find no issues which compel the initiation of such action by the Board or District. Social media blocking concerns are only addressed by cases involving constituents as plaintiffs. Item 7 is of significant concern, but not a matter for action to be initiated by this Board. In similar manner, there may be independent causes of action related to violations of the OML as well as personal claims by current or past employees, but the indirect nature of the infractions (basically, that fractious, indiscrete, and defamatory words by a Board member created a hostile work environment or gave rise to tort claims) means that potential individual plaintiffs will need to come to their own decisions on whether to prosecute.

The Board may take comfort that its November 10 action was fully warranted. Finally, the Resolution's declaration that Ms. Liu will not be indemnified for legal defense related to the listed areas of concern is sustainable.

Ivy Liu request to release this report: On February 11, 2023, at the Board Retreat, Ms. Liu requested release of this Board Report. The other board members present concurred. Accordingly, the holders of attorney-client privilege regarding this Report determined on record to release it.