



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

May 22, 2023

Fremont Union High School District Adult School
c/o William B. Tunick, Dannis Woliver Kelley Attorneys at Law
Via Email: wtunick@DWKesq.com

Warning Letter Re: FPPC No. 2018-01474; Fremont Union High School District

Dear William B. Tunick:

The Enforcement Division of the Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”).¹ This letter is in response to a sworn complaint alleging your client, the Fremont Union High School District (“FUHSD”), violated the Act’s prohibitions on mass mailings sent at public expense.

The Enforcement Division has completed its review of the matter and determined that your client produced a 40-page booklet titled *FUHSD Adult School Q2 Class Schedule* (the “Booklet”) which featured members of the FUHSD Board of Trustees, in violation of the Act’s prohibitions on mass mailings sent at public expense. Additionally, the Enforcement Division cannot conclude that the Booklet in question violated the Act’s prohibition against campaign mailers at public expense.

The Act prohibits newsletters or other mass mailings from being sent at public expense.² A mailing is prohibited under the Act if all of the following criteria are met: (1) the item sent is a tangible item and is delivered to the recipient at their residence, place of employment, or post office box; (2) the item sent features an elected officer³ affiliated with the agency that produces or sends the mailing; (3) the agency pays any costs for distribution of the item, or pays more than \$50 toward the design, production, or printing costs for the item; and (4) more than 200 substantially similar items are sent in a single calendar month.⁴ A mailing is not prohibited under the Act if the elected officers’ names appear in a roster listing of all the elected officers of the

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 89001.

³ “Features an elected officer” means that the item mailed includes the elected officer’s photograph or signature or singles out the elected officer by the manner of display of his or her name or office in the layout of the document. (Section 89002, subd. (c)(2).)

⁴ Section 89002, subd. (a).

agency in the same type size, typeface, type color, and location and does not include the elected officers photograph, signature, or any other reference to the elected officers.⁵

Additionally, a campaign related mailing sent at public expense is prohibited under the Act if the criteria discussed above in (1), (3), and (4) are met, and the item sent either: (a) expressly advocates the passage or defeat of a clearly identified measure, or (b) when taken as a whole and in context, unambiguously urges a particular result in an election.⁶ An item unambiguously urges a particular result in an election if it meets either of the following criteria: (a) it is clearly campaign material or campaign activity; or (b) when considering style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.⁷

The Booklet included a list of the members of the FUHSD Board of Trustees on page 2. The elected officers' names all appeared in the same type size, typeface, type color, and location. The Enforcement Division determined that this portion of the mailing qualifies for the exception provided in Section 89001, subdivision (b)(1), discussed above.

Next, the Booklet included a letter from the principal which discussed, among other topics, a local ballot measure to be voted on at the next election. The Enforcement Division determined that while the letter clearly identifies a local ballot measure, the letter does not contain express advocacy as alleged in the complaint. After review, it was determined that the letter was not campaign material, and it only expanded on the information provided in the ballot question and did not use any inflammatory or argumentative language. Thus, the Enforcement Division cannot conclude that the Booklet violated the Act's prohibition against campaign mailers at public expense and will not pursue this allegation further.

Finally, the Enforcement Division found that the Booklet included a photograph of the members of the FUHSD Board of Trustees on page 40. The inclusion of this photograph meets the criteria for "features an elected officer," in violation of Section 89002, subdivision (a). However, the Enforcement Division has decided to close this case with this warning letter because the violation resulted in minimal public harm, the photograph at issue here appeared on the last page of the Booklet along with 10 other photographs, there are no captions included for the photographs to identify the individuals appearing in the photographs, and none of the photographs contain only members of the FUHSD Board of Trustees or spotlights a single member of the FUHSD Board of Trustees. Further, FUHSD does not have a prior history of violating the Act.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered

⁵ Section 89001, subd. (b)(1).

⁶ Regulation 18901.1, subd. (a).

⁷ Regulation 18901.1, subd. (c).

information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourselves of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten days from the date of this letter.

If you need forms or a manual, or guidance regarding your obligations, please visit our website at www.fppc.ca.gov. Please feel free to contact me at JRinehart@fppc.ca.gov or (916) 323-6302 (voicemail) with any questions you may have regarding this letter.

Sincerely,

Jenna Rinehart

Jenna C. Rinehart,
Commission Counsel
Enforcement Division

cc: Ed Brown [REDACTED]