

To: Board of Directors
From: Sarah Syed, Director Ward 3
Date: January 6, 2025
Subject: Item 6.A. Consider the adoption of Resolution No. 25-006
censuring Sarah Syed for violation of Board Policies 101 and 702.

This memo concerns Item 6.A. on the January 8, 2025 agenda.

On January 8, 2025 the Board will consider censure for alleged violation of Board Policies 101 and 702 based on two emails dated May 24, 2023 and June 5, 2024.¹ The investigation suggests that in these two emails I “engaged in communication with staff that *could have* been interpreted as direction of their work or as attempting to influence the content of their reports [emphasis added].”

I. Response to Alleged Violation of Board Policies 101 and 702 in Two Emails

Attached in Addendum 1 are redacted copies of the email documentation. Here is what these two emails are about:

a. *May 24, 2023 Email - Subject: Market Analysis*

I attended a public meeting of the Alameda Interagency Liaison Committee on May 17, 2023.² An AC Transit employee mentioned a draft Market Analysis in the public meeting presentation on Realign.³ A few days later I emailed staff and requested the draft Market Analysis.

The investigation report suggests that, “requesting the draft Realign analysis on May 24, 2024 could be construed as an attempt to influence the content of an in-process report prior to it being finalized.” The context is being misinterpreted by the investigator here. Some documents are public, even though they are labeled “draft.” Draft doesn’t mean it is not cleared for public release. For example, draft documents are published for public review on the AC Transit Realign website.⁴

I was not trying to improperly obtain a draft report still getting reviewed in the chain of command. After I sent the email that is allegedly a violation of policy, I received no reply, and I did not follow up prior to staff presenting the Market Analysis at a Board Workshop on July 26, 2023.

The investigation suggests, “While Director Syed technically asked for the analysis, in light of her role within the district relative to that of staff, such a request could reasonably be construed

¹ The investigation misstates the date of the email which was May 24, 2023, not in 2024 as inaccurately stated in the investigation report.

² [May 17, 2023 Alameda Interagency Liaison Committee agenda and audio recording](#)

³ Realign is a comprehensive assessment of every AC Transit bus line in response to the substantial shifts in ridership and commute patterns since the pandemic. By collecting data and public feedback, Realign aims to introduce a new equity-focused bus network designed to increase ridership and service reliability.

⁴ AC Transit Realign Website, <https://www.actransit.org/realign>

as an order instead of an ask.” Board policy clearly distinguishes between inquiries to staff and orders that would direct the work of staff.

As cited in Staff Report No. 25-123 (January 8, 2025), Board Policy 101 states in relevant part,

“*Except for inquiry purposes*, the Board of Directors and individual Board members shall deal with District employees solely through the Board Officer (General Manager, General Counsel, or District Secretary) having supervisory responsibility over individual employees. The Board or individual Board members shall not give orders to any District employee under the jurisdiction of an Officer...[emphasis added]”.

“Except for inquiry purposes” is a significant exception in the Board policy. What the policy says is: Board members don’t give orders. That is what is prohibited under the policy. It is not intended to deal with inquiries. Basing a censure on such a weak finding that an inquiry requesting a document mentioned in a public meeting could have been construed as an order sets a scary precedent. The Board policy is about orders and not inquiries.

The email inquiry to staff requesting a document an employee mentioned in a public meeting was sent in May 2023 during my first six months in office yet I first learned it was an alleged policy violation on December 30, 2024. I would have preferred for the concern with my inquiry to have been brought to my attention in 2023 so I would have known it was an issue. I also would prefer to have been offered training at the time if the email was such a serious breach of policy that it could give rise to censure over a year and a half later.

b. June 5, 2024 Email - Subject: Realign questions for tonight

A June 5, 2024 workshop was scheduled on Realign, the comprehensive assessment of AC Transit bus lines, to provide staff and the Board with an opportunity for a deep dive into the issues. As a courtesy, I emailed staff the questions that I intended to be asking at the workshop in advance. These included questions that I had heard from constituents who had reviewed the presentation materials. I knew the public was also expecting answers.

As cited in Staff Report No. 25-123 (January 8, 2025), Board Policy 702 states in relevant part,

“Board members, unless authorized by the Board, shall not individually direct the work of Board Officers or staff, or attempt to influence the content of reports from Board Officers of staff”.

It’s normal for Directors to ask questions of staff in a presentation on an important agency project like Realign. Directors having adequate information is central to our ability to do our jobs. It’s a reasonable courtesy, if not expected, that questions that we anticipate in advance should be provided to staff as a courtesy in advance. The email did not contain any programmatic directives and was solely concerned with preparing to have a more educated work session. If there was a problem with the scope of how many questions I was asking, the General Manager

can reply to me and say we will do the best we can. There are so many ways for this to be dealt with professionally.

The intent of the email was to provide staff with advance notice so they could be prepared to answer the questions at the workshop. The point is that this is a respectful dialogue and not the kind of conduct that our board policy is trying to restrain. Our board policy is trying to restrain Directors hijacking what the staff recommendation would be.

The investigation suggests that the questions “could be construed as an attempt to direct the work of staff” and that “Director Syed requested that [redacted] make specific changes to Realign workshop materials.”

Here the investigator lacks the relevant context that members of the public had reviewed the presentation slides and expressed their confusion about specific slides. Members of the public could not understand from the presentation materials what is going on with paratransit, service reliability, and with specific routes. So, as I conveyed the questions, I also passed along what I thought were a couple of helpful suggestions for how to clarify the presentation materials. Now that I know it is an issue, if I had to do it over again, I would have left the suggestions out and left to their discretion how to provide the answers in the way that worked best for them.

II. Call for Board Training

The board policies in question, and their application here is vague. There is variability in how Board Officers (General Manager, General Counsel, and District Secretary) apply board policy. Attached in Addendum 1 is an email exhibit “*Board Communications with Staff in the District Secretary's Office*” dated June 24 2024 showing this variability. In fact, if this proposed censure is how the policies are applied, it is clear that other Directors have engaged in some breach of the policies over their tenure.⁵ Please see the confidential addendum for additional specific documentation of this pattern.

To the extent that any of my actions were deviations from board policy, all of it was inadvertent, and can be corrected by training and Board convergence on interpretation of the policies. I welcome training for the full Board and for the Board to establish group norms so that policies are clear, and no one is singled out.

The proposed censure would punish one member of this body for sending two emails 13 months apart which were within the scope of their duties. Given that (1) the Board has not received training and (2) the investigation did not examine policy interpretation, agency norms, and if other Board members and staff have applied Board policy in similar ways; it would be ill-advised and repugnant to single out one Board member for censure.

⁵ For example, on multiple occasions after I joined the Board, I asked a Board colleague a question and directly observed my colleague initiate direct contact with subordinate staff to follow up. I also provided confidential documentation to the investigator for specific documentation of this pattern, included in the confidential addendum. However, the investigator considered that issue beyond the scope of the investigation and did not follow up on the documentation I provided, nor did the investigator interview other Board directors to establish agency norms and policy interpretation.

Censure is not appropriate in this case. The Board should stick to its original determination when it closed the investigation to provide refresher governance training to all members. The November 5, 2024 Closure of Complaint Investigation Letter attached in Addendum 1 states in relevant part,

To address these findings, the Board (as opposed to only you, as a single director) will engage in additional training on Board roles and communicating with staff.⁶

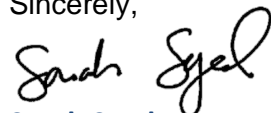
Everyone should receive training so that the whole Board and agency can move forward. Let's get to work to ensure that policies are clear and that the Board converges on interpretation of the policies.

III. Moving Forward

What's important to me moving forward from this is that we work together as a Board to accomplish the important business for the people of Alameda and Contra Costa Counties who elected us.

There is a lot of work we must get done this year including fighting for our fair share of a regional revenue measure, building stronger relationships with local and regional leaders, advancing more equitable legislation in Sacramento, getting more reliable bus service out on the streets, and regaining the public's trust. I'm very optimistic for our transition with acting General Manager Kathleen Kelly who returns to the AC Transit after a successful career. My goal is for the Board to all be productive board members so we can continue to work together to improve AC Transit and focus on all the really important challenges that lie ahead.

Sincerely,



Sarah Syed

Director Ward 3



Alameda-Contra Costa Transit District | 1600 Franklin Street | Oakland, CA 94612

Cell: 510.316.6998 | Email: ssyed@actransit.org

⁶ November 5, 2024 Closure of Complaint Investigation Letter

Market Analysis

From Sarah Syed <ssyed@actransit.org>

Date Wed 5/24/2023 5:15 PM

To [REDACTED]@actransit.org>

Cc [REDACTED]@actransit.org>

[REDACTED],

[REDACTED] mentioned a deliverable on the Realign project was coming in at our recent Alameda ILC. Could I get a copy of the draft analysis please?

Thanks,
Sarah

Realign questions for tonight

From Sarah Syed <ssyed@actransit.org>

Date Wed 6/5/2024 11:54 AM

To [REDACTED]@actransit.org>

Cc Michael Hursh <mhursh@actransit.org>

[REDACTED],

I have a few questions on the Realign materials for tonight's workshop.

Questions on Realign:

1. Are staff recommending that we unfreeze the 2019 paratransit boundaries and cut paratransit access with the implementation of Realign?
2. Slide 30: What is the baseline for slide 30?
 1. What is driving the improvements?
 2. Where are they happening in the District?
3. Can you please provide a map of the proposed frequent coverage network and access to it?
4. Previously staff identified that access to destinations as a key metric to understand how well the new network is achieving equity goals. Has this metric been analyzed for the new proposal?
5. Slide 34: do the numbers represent a ranked priority? How were the routes prioritized?
 1. Will there be a consideration of increasing the on-time performance goal from 72% since we are currently meeting it?
6. Slides 39-40: what time frame is this OTP data from?
7. Lines 54 and Lines 73 didn't have frequency reduced in the January 2024 proposal
 1. What changed from January to May 2024 for these two lines?
8. Transbay:
 1. What changes have there been in how transbay riders use our service?
 2. What changes in the draft service plan respond to those changes?
 3. Many of the Transbay lines serve about 150 people on average per day. What is the variability across weekdays – typical high weekday, typical low weekday? Are Fridays consistently lower? If so, have staff considered a special Friday service?
9. Ridership:
 1. For the 7% increase projected, what is the elasticity and what is the network bonus factor? Does this projection assume free transfers to BART and other transit operators planned for implementation with Clipper 2?
 2. How much is ridership projected to increase under existing conditions?
10. Operator in-reach and labor feedback
 1. What changes have been made to the proposed plan in response to operator in-reach and labor feedback?
11. Slide 41: Service reliability and service reliability attachment
 1. What is happening with Lines 52 and 18? Please add a note to the table re: what is going on with these routes.
 2. Is this comparing Winter 2023 to Spring 2023? Are there seasonal differences and is it different if you compare Winter 2023 to Winter 2022?
 3. Service reliability attachment:
 1. The way the information is presented is asking us to do a lot of work to understand what is going on with service reliability. Please add a few sentences to explain what we are supposed to learn from this information.

12. Slide 44:

1. What does the ground truth involve? Is it just making sure the automated data is accurate, or is it collecting additional data? What systems are in place to collect and analyze operator feedback?

13. Slide 45:

1. It would be useful to see the layover, pull, and deadhead time broken out.

Thanks so much,
Sarah

Sent from my iPad

Board Communications with Staff in the District Secretary's Office

From Linda Nemeroff <LNemeroff@actransit.org>

Date Mon 6/24/2024 4:12 PM

To Joel Young <jyoung@actransit.org>; Diane Shaw <dshaw@actransit.org>; Murphy McCalley <mmccalley@actransit.org>; Jovanka Beckles <jbeckles@actransit.org>; Jean Walsh <jwalsh@actransit.org>; Sarah Syed <:ssyed@actransit.org>; H. E. Christian (Chris) Peeples <CPeeples@actransit.org>

Good afternoon, Directors.

I am aware of an email sent to you last Friday concerning communications with staff, which included communications with my office. I just want to make you aware of my expectations with regard to Board member interactions with my staff so there is no confusion.

With regard to the regular communications between Board members and my staff – it is business as usual. Please feel free to communicate with Jelena, Tanisha, and David as you have been concerning conferences and events, expense claims, catering orders, office supplies, etc. As always, you can reach out to me for anything, and I expect you to do that as you have been. If issues arise, you will hear from me directly.

The District Secretary's Office is a service department committed to supporting the Board and we are here to do just that – provide service to you.

If you have any questions, please reach out to me.

Thanks, Linda



Board Administrative Officer/
District Secretary
LINDA A. NEMEROFF,
CMC

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November 5, 2024

VIA ELECTRONIC MAIL ONLY: ssyed@actransit.org

Director Sarah Syed
Board of Directors
Alameda-Contra Costa Transit District
1600 Franklin Street
Oakland, CA 94612

Re: Closure of Complaint Investigation

Dear Dir. Syed:

I am writing to you as special counsel to the Alameda-Contra Costa County Transit District (District).

This letter is to inform you that the District has completed its investigation into the complaint against you alleging that you (1) engaged in bullying and disrespectful conduct toward General Manager/CEO Michael Hursh, and (2) improperly interfered with his ability to conduct his duties as General Manager.

Attorney Timothy L. Reed at the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, O.C. conducted a comprehensive investigation in line with the District's commitment to maintaining a respectful and safe work environment.

Mr. Reed collected and considered evidence, including Mr. Hursh's complaint and interviews, your interviews, interviews of other parties involved, video recordings and minutes of District Board of Directors meetings, and other pertinent records. Following a fair, impartial, and thorough investigation, the investigator did not substantiate that there were any violations of Board Policy No. 201, Anti-Bullying and Prevention of Abusive Conduct. However, the investigator found, by a preponderance of the evidence, that you violated Board Policy Nos. 101 and 702 because you failed to deal with District employees solely through a Board Officer with supervisory responsibility over such employees, and you engaged in direct communication with staff that could have been interpreted as orders to employees that are under the jurisdiction of a Board Officer.

To address these findings, the Board (as opposed to only you, as a single director) will engage in additional training on Board roles and communicating with staff. In addition, the Board will conduct additional bullying and harassment training (though the related complaint was not substantiated). Finally, the Board will engage a coach to be available to work with you and other Board members, as desired, on Board effectiveness and engagement.

Sarah Syed
November 5, 2024
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Thank you for cooperating in the investigation. This is to remind you that the District does not tolerate retaliation of any kind toward employees who have made complaints or cooperated in workplace investigations. If you have any questions about this prohibition, feel free to contact me or General Counsel/Chief Legal Officer Aimee Steele.

The District now considers this matter closed.

Very truly yours,



Shayna M. van Hoften
Partner
AC Transit Special Counsel, former Interim General Counsel

cc: Aimee Steele, General Counsel/Chief Legal Officer