
MEMORANDUM

TO: Shayna van Hoften, Interim General Counsel

FROM: Timothy L. Reed

DATE: October 22, 2024

SUBJECT: Executive Summary – Michael Hursh Investigation¹
Confidential Attorney-Client Privileged Communication

I. INTRODUCTION

On or about March 20, 2024, Alameda-Contra Costa Transit District (“AC Transit” or the “District”) Interim General Counsel Shayna van Hoften retained me to conduct an independent, attorney-client privileged investigation into allegations made by General Manager Michael Hursh that Director Sarah Syed (1) engaged in bullying and disrespectful conduct toward him and (2) improperly interfered with his ability to conduct his duties as General Manager. Mr. Hursh’s complaints and allegations were set forth in (1) a March 15, 2024 email from Mr. Hursh to Board President Joel Young and (2) a March 28, 2024 memorandum provided to me by Mr. Hursh.²

As part of my investigation, I interviewed the following individuals: (1) Mr. Hursh (on March 28, 2024 and June 10, 2024);³ (2) Director Syed (on May 28, 2024, June 4, 2024, and October 18, 2024);⁴ (3) [REDACTED]

¹ This Executive Summary is a general summary of my findings. It is not a comprehensive investigation report and therefore does not capture every facet of the investigation, including every issue raised by Mr. Hursh or every finding made by me. This Investigation Summary does, however, capture Mr. Hursh’s primary concerns and my findings related to those concerns.

² The scope of my investigation was limited to the concerns raised by Mr. Hursh in the March 15, 2024 email and March 28, 2024 memorandum.

³ The June 10, 2024 meeting was to briefly address a follow-up item.

⁴ On October 7, 2024, Ms. van Hoften emailed me that Director Syed planned to share a written statement with me to supplement her prior interview and to inform me of events that had taken place since our previous meetings. Per Ms. van Hoften, Director Syed agreed to provide her statement by October 16, 2024. Director Syed did not send me a statement, but we met via video conference on October 18, 2024.

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

██████████ (on June 4, 2024); and (4) ██████████
██████████ (on June 20, 2024).

I also reviewed the following documents:

1. Mr. Hursh’s complaint email and memorandum, as described above;
2. Various notes provided by Director Syed;
3. Pertinent District policies including:
 - a. Board Policy No. 101, Board of Directors Rules of Procedure;
 - b. Board Policy No. 160, Board Officers: Performance Evaluations & Compensation, Employment Agreements, Leave Notification;
 - c. Board Policy No. 201, Anti-Bullying and Prevention of Abusive Conduct; and
 - d. Board Policy No. 702, Conflicts of Interest and Standards for Ethical Conduct;
4. Minutes from, and video of, the March 13, 2024 AC Transit Board of Directors meeting, as well as a Staff Report entitled “AC Transit Realign Phase 4: Updates and Key Decision Points” from that same meeting;
5. Minutes from, and video of, the August 7, 2024 AC Transit Board of Directors meeting;⁵
6. Information from the District’s website concerning Realign;
7. Director Syed’s “Report on Broadway Bus Service Detours”;
8. Mr. Hursh’s New Board Member Orientation Binder; and
9. Various emails and other communications involving Mr. Hursh, Director Syed, and others.

Based on my witness interviews and review of the documents and information above, I cannot substantiate that there were any violations of Board Policy No. 201, Anti-Bullying and Prevention of Abusive Conduct. However, the preponderance of evidence establishes that in violation of Board Policy Nos. 101 and 702, Director Syed 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.

⁵ Following my initial July 18, 2024 submission of this Executive Summary to Ms. van Hoften, on or about August 9, 2024, Ms. Van Hoften requested that I review the following potentially pertinent materials: (1) video from the August 7, 2024 AC Transit Board of Directors meeting and (2) an August 8, 2024 email from AC Transit employee ██████████ to Mr. Hursh discussing an interaction that ██████████ had with Director Syed. In his email, ██████████ asserts that Director Syed engaged in a “concerning” “line of questioning” regarding Mr. Hursh during a meeting. Due to timing and scope considerations, I did not undertake witness interviews and other investigatory steps in response to reviewing those materials (though I am amenable to doing so, should it be requested). However, the Board meeting video and August 8 email appear to support the need for governance training, as discussed in Section IV below, to address recognition of the distinctions between policy and operational activity, as well as to ensure a proper understanding of Board meeting procedure.

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

II. SUMMARY OF FACTUAL BACKGROUND

A. Mr. Hursh and Director Syed’s Pre-District History

Director Syed assumed her Director role on December 2, 2022. She and Mr. Hursh previously worked at the Santa Clara Valley Transportation Authority (“VTA”). At VTA, Mr. Hursh was Chief Operating Officer and Director Syed was a Senior Planner.

According to Director Syed, she and Mr. Hursh had a “friendly” relationship when they were at VTA, but were not friends. However, Director Syed stated that Mr. Hursh was supportive of her bid to run for AC Transit’s Board. She provided text messages between her and Mr. Hursh, apparently from October 2022, where she noted that the Amalgamated Transit Union (“ATU”) had endorsed her candidacy. Mr. Hursh responded, in part, “Congratulations!”

B. Direct Communications with Staff by Director Syed

As indicated by Mr. Hursh, [REDACTED], and [REDACTED], the Board of Directors’ role is to make policy decisions, while Mr. Hursh is tasked with executing those decisions. Per Mr. Hursh, Board members are not to direct the work of staff. Further, the consensus among the witnesses was that ideally, all communications between Board members and the staff should go through Mr. Hursh. However, Director Syed stated that during her Director orientation, Mr. Hursh informed her that she could contact his executive team members directly, without his involvement.

Director Syed admittedly has contacted District staff directly on multiple occasions, and at times she has done so without including Mr. Hursh in her communications. Further, according to [REDACTED] and [REDACTED], there have been instances where Director Syed has reached out to staff in such a way that her communications may have been interpreted as directing their work.

For example, on May 24, 2023, Director Syed email [REDACTED], copying [REDACTED] [REDACTED] [REDACTED], the following message: “[REDACTED] mentioned a deliverable on the Realign project was coming at our recent Alameda ILC. Could I get a copy of the draft analysis please?”

In addition, on June 5, 2024, at 11:55 a.m., Director Syed emailed [REDACTED], with Mr. Hursh copied, a list of approximately 20 questions concerning materials that were prepared for a Realign workshop that was to occur that same day. She also requested that [REDACTED] to make specific modifications to the materials. [REDACTED] provided responses to Director Syed’s inquires that same day, June 5, at 4:36 p.m.

C. Director Syed’s Request that Mr. Hursh Serve as An Employment Reference

On August 25, 2023, via text message, Director Syed asked that Mr. Hursh serve as a reference for her for an Oakland Unified School District position. Mr. Hursh agreed to do so, though he stated during my interview with him that he felt that he had no choice but to do so.

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

D. Mr. Hursh's Performance Evaluation

Mr. Hursh maintains that in his most recent performance evaluation, the narratives by Directors describing his job performance were glowing. He also received a "good raise" and "got mostly what [he] asked for." However, his numerical rating did not reflect how his performance was described. Mr. Hursh believes that Director Syed may have provided him ratings of "2" or "3" rather than the maximum rating of "5."

Director Syed recalled engaging in the performance evaluation process for Mr. Hursh, but did not recall specific ratings given to Mr. Hursh. She characterized the feedback and scoring process as being a collective endeavor amongst the Directors, in collaboration with the consultant retained for the evaluation.

E. Director Syed's Request for Investigation File

On December 1, 2023, Director Syed requested a copy of a report from an investigation involving the District's former [REDACTED] from [REDACTED]. After [REDACTED] declined to provide the report on December 4, 2023, Director Syed made several subsequent requests for the report to Board President Young from December 4 to December 8, 2023. On December 13, 2023, Director Syed apparently requested that Mr. Hursh provide her with information regarding the investigation. However, Mr. Hursh declined to provide the information.

F. The Broadway Detour

In or around 2022, the District began detouring buses away from a stretch of Broadway in Oakland on weekends. At some point, District staff inadvertently coded the detour for seven nights. This inadvertent change was publicly communicated in late March or early February 2023, but subsequently clarified. Director Syed stated her belief that Mr. Hursh was being "dishonest" regarding the miscoding explanation.

During the first weekend in March 2024, Director Syed went to site of the Broadway detour, where she rode buses and talked to bus operators, field supervisors, police officers, and bus riders. Director Syed did not inform the Board or Mr. Hursh that she would be undertaking this activity. She claims to have done so in an effort to change the District's Broadway detour practice. Director Syed was accompanied by [REDACTED], a member of the [REDACTED] Board of Directors, purportedly for "safety" reasons. She subsequently prepared a "report" regarding her experience.

G. The March 8, 2024 Tempo Bus Crash

On March 8, 2024, there was an incident where an AC Transit Tempo bus was involved in an accident. That evening, Mr. Hursh learned of the incident and informed the Board. However, prior to him doing so, Director Syed contacted Mr. Hursh, stating that Oakland City Councilmember [REDACTED] told her that Mr. Hursh already informed Councilmember [REDACTED] of the accident. Director Syed stated that Councilmember [REDACTED] sent her a screenshot of the communication between him

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

and Mr. Hursh, and she produced what she purports to be the screenshot of the that communication. However, Mr. Hursh denies having Councilmember [REDACTED] contact information.

H. The March 13, 2024 Board of Directors Meeting and Lead-up

On March 11, 2024, during a reception in Sacramento and according to Mr. Hursh, Director Syed asked Mr. Hursh whether the ATU agreed to move the March 2025 general sign-up. Mr. Hursh responded that there was no agreement in writing yet, but that he was confident that an agreement would be reached. According to Mr. Hursh, Director Syed responded, “That’s not what I am hearing.”

On March 12, 2024, Director Syed emailed Mr. Hursh and others requesting that Realign items be pulled from the agenda for the next day’s Board meeting. She also asked Mr. Hursh via email for confirmation that the items were being pulled.

On March 13, 2024, Director Syed visited the ATU headquarters. According to her, it was part of a pre-planned meet-and-greet. However, ATU’s leadership shared positions on issues. According to Mr. Hursh, the same time of Director Syed’s visit, he was conducting negotiations with the ATU. However, Director Syed maintains that she was not aware that those discussions were occurring (assuming they were during the time of her visit).

Later that day, March 13, 2024, there was a Board meeting in which Realign and the sign-up process were discussed. This meeting was contentious, with Director Syed asking that reports concerning the Realign project be pulled from the agenda. Prior to the public Board meeting, there was a closed session. According to Mr. Hursh, [REDACTED]. However, Director Syed [REDACTED].

III. SUMMARY OF CONCLUSIONS

A. Board Policy No. 201, Anti-Bullying and Prevention of Abusive Conduct

Board Policy No. 201 states, in pertinent part, the following:

AC Transit Board Officers, Board Members and employees at all levels have the duty to behave in a professional and civil manner towards each other, customers and the public. Everyone has the right to work in an environment free from bullying and abusive conduct. Bullying or abusive conduct will not be tolerated.⁶

Examples of bullying and abusive conduct set forth in Board Policy No. 201 include “[v]erbal abuse, threats, insults, and yelling” and “[c]oercion, intimidation and misuse of power.”⁷

⁶ See Board Policy No. 201, § IV.A.

⁷ See Board Policy No. 201, § IV.A.

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Based on the information gathered through my investigation, the facts do not establish a violation of Board Policy No. 201. The preponderance of evidence does not establish that Director Syed engaged in bullying or abuse conduct. Specifically, my investigation did not uncover any “verbal abuse, insults, threat, yelling,” “demeaning language,” or other conduct that would violate Board Policy No. 201. Mr. Hursh concedes that Director Syed never engaged in yelling, use of profanity, other egregious conduct. Further, Director Syed’s communications with District staff do not rise to the level of “misuse of power.”

B. Board Policy No. 702, Conflicts of Interest and Standards for Ethical Conduct

Board Policy No. 702 states that “no member of the Board of Directors . . . shall disclose any information provided or obtained in closed session without the approval of a majority of the Board of Directors.”⁸ With respect to “conduct toward staff,” Board Policy No. 702 states the following, in pertinent parts:⁹

- Board members and members of committees, advisory or oversight bodies shall not publicly or privately engage in personal attacks on Board officers or employees or attempt to discipline any Board Officer or employee, except to the extent the Board is permitted to discipline Board Officers.
- Nothing in this section shall affect the right of the Board to evaluate the Board Officers. Board members shall not become involved in personnel matters except for any discussion by the Board regarding one or more of the Board Officers.
- 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 or staff.
- Board members shall not have access to or use any departmental, consultant or legal file without prior written consent of the General Manager and General Counsel . . .

Based on the information gathered through my investigation, the preponderance of evidence does not establish that Director Syed disclosed information provided or obtained in a closed session during the March 13, 2024 Board meeting. Mr. Hursh’s allegations do not concern the disclosure of information, but rather his preference that Directors [REDACTED].

In addition, the preponderance of evidence does not establish that Director Syed engaged in personal attacks against Mr. Hursh (though she may have criticized aspects of his work performance

⁸ See Board Policy No. 702, § VI.E.

⁹ See Board Policy No. 702, § VI.J.

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

as General Manager). Further, to the extent that Director Syed provided information that was used to evaluate Mr. Hursh’s performance, Board Policy No. 702 permits her to do so. Moreover, Director Syed requesting access to, and information regarding, the report concerning the investigation of the District’s former ██████████ does not violate Board Policy No. 702.

However, the preponderance of evidence establishes that in violation of Board Policy No. 702, Director Syed 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, including her May 24, 2024 and June 5, 2024 emails to ██████████. With respect to those emails, 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. In addition, in her June 5, 2024 email, Director Syed requested that ██████████ to make specific changes to Realign workshop materials.

C. Board Policy No. 101, Board of Directors Rules of Procedure

Board Policy No. 101 states the following in pertinent part:

Except for inquiry purposes, the Board of Directors and individual Boardmembers 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 Boardmembers shall not give orders to any District employee under the jurisdiction of an Officer . . .¹⁰

Here, the preponderance of evidence establishes a violation of Board Policy No. 101. As stated by ██████████ and ██████████, there have been instances where Director Syed has reached out to staff in such a way that her communications may have been interpreted as directing their work. For example, on May 24, 2024, Director Syed requested that ██████████ provide her with the draft Realign analysis. 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 as an order instead of an ask.

IV. RECOMMENDATIONS

Based on Director’s Syed’s communications with staff in violation of Board Policy Nos. 101 and 702, I recommend the following:¹¹

1. That Director Syed and other Directors undergo governance training that addresses relevant issues, including the role of the Board with respect to policy issues, as

¹⁰ See Board Policy No. 101, § 3.7.

¹¹ During my interviews with Director Syed, she stated her belief that other Directors may have engaged in direct contact with Mr. Hursh’s staff. I consider that issue to be beyond the scope of my investigation, but I am amenable to taking further investigatory steps if requested.

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

opposed to operational ones. Also, Board Policy Nos. 101 and 702 should be covered in any such training;¹² and

2. That it be reiterated to Directors that they should not direct or attempt to influence the reports of Board Officers or staff, and that communications with staff should go through the General Manager to avoid any appearance of direction or influence of staff.

The above approach is consistent with Mr. Hursh's desired outcome that Director Syed become "an effective Board member."

This concludes my investigation into this matter. Please do not hesitate to contact me with any questions.

¹² My understanding from Ms. van Hoften and Director Syed is that there have been at least two governance trainings since the commencement of my investigation. To the extent that such training is shown to be ineffective in addressing potential policy violations, other potential options should be considered.