



SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

January 5, 2021

Via Mail and Electronic Mail

Debra Duardo, M.S.W., Ed.D. (Duardo_debra@laoe.edu)
Los Angeles County Superintendent of Schools
Los Angeles County Office of Education
9300 Imperial Highway
Downey, California 90242

Re: Santa Monica-Malibu Unified School District
Notice of Board Vacancy

Dear Superintendent Duardo:

This correspondence shall serve as the Santa Monica-Malibu Unified School District's ("District") written notice to the Los Angeles County Office of Education ("LACOE") that there is a vacant seat on the District's Board of Education due to former member Oscar de la Torre's election as a Santa Monica City Councilmember, and that District's Board of Education is taking the necessary and timely steps to fill this vacancy.

Oscar de la Torre was previously elected as a Board member of the District in November 2018 to serve a four-year term. During the midst of his term, Mr. de la Torre successfully ran and was elected as city council member for the Santa Monica City Council this past November 2020. The election results were certified by the County of Los Angeles Registrar Recorder/County Clerk, and on December 8, 2020, the Santa Monica City Council approved, adopted and certified a resolution accepting the Official Canvass for the General Municipal Election including the results of the city council election. At the December 8, 2020, City Council meeting, Mr. de la Torre took the oath of office and began his service as a Santa Monica City Councilmember.

After initially advising the District he would submit a written resignation upon notice of the election results, and in recognition that he cannot hold both offices, Mr. de la Torre is now refusing to do so.

Government Code section 1099 ("Section 1099") provides that upon assuming a public office that is incompatible with one that the officer already holds, the officer is "deemed to have forfeited the first office upon acceding to the second." (Gov. Code § 1099(b).)

Under Section 1099, public offices are considered incompatible if:

- (1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
- (2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices; or
- (3) Public policy considerations make it improper for one person to hold both offices.

Per the Attorney General, it is well-settled that the offices of city councilman and school trustee are incompatible as there are numerous situations where a school board and city council may contract with each other or engage in other direct relationships. (65 Ops.Cal.Atty.Gen. 606 (1982).) Furthermore, the Attorney General has opined there are numerous potential clashes of duties and loyalties between the two offices further rendering them incompatible. *Id.*

Mr. de la Torre acceded to an incompatible office when he was sworn in as a Santa Monica City Councilmember on December 8, 2020. Accordingly, on December 8, 2020, Mr. de la Torre forfeited his Board member position with the District by operation of law, pursuant to Section 1099, resulting in the present Board vacancy. The District has now commenced the appointment process to timely find a Provisional Appointee for the remainder of Mr. de la Torre's term. The District plans to complete the appointment process on or around January 14, 2021.

If you, or the LACOE General Counsel's office, who has been in contact with the District's counsel, has any issue, concerns, or requires additional information from the District regarding the Board's intent to fill the current vacancy, please so advise at your earliest convenience. Otherwise, the District will provide written notice once the appointment process is complete.

Should you have any questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in dark ink, appearing to read "B. Drati", with a stylized flourish extending to the right.

Dr. Ben Drati
Superintendent,
Santa Monica-Malibu Unified School District

cc: Allison Deegan (deegan_allison@laoe.edu)