



Why BVSD can't move forward until it deals with its past

By **Joel Dyer** - November 2, 2017

Dave Kirby

Over the past few months, we've learned a lot about the inner workings of the Boulder Valley School District (BVSD). While it is full of thousands of great people committed to our children's education, it can also be complex, political, secretive and defensive of public scrutiny.

You may recall that the last time I wrote about BVSD, I claimed that the Board of Education (BOE) was hiding what I believe are its own mistakes behind the secrecy of executive session. I had arrived at my opinion during the course of our previous investigation surrounding Dr. Messinger's departure (see "[Inside the turmoil at BVSD](#)," July 14, 2017).

Well it's been a few months since then and quite a bit has happened. I ended my last piece with a sincere plea to the BOE — OK, maybe it was a bit stronger than that — to start being transparent on this issue and to take responsibility for what I think were inadequacies in its past handling of alleged harassment complaints. I encouraged Board members to step up, or step down, because the whole story was eventually going to come out and when it did, this whole secrecy thing was going to look bad for them. In interviews with the *Daily Camera*, Dr. Messinger has been very clear that he believes that a more "open process" with "transparency and closure" would be to his benefit as well.

We are not trying to determine the guilt or innocence of anyone, not Dr. Messinger nor anyone who ever may or may not have brought a complaint against him. We have no way of doing that. The BOE's investigation into allegations brought by Leslie Arnold in 2017 was conducted by an outside law firm, and its findings were simply meant to offer guidance to the Board, not determine guilt or innocence. Our concern in this matter is the public's interest in this case, which we believe does not rest, for the most part, in the he-said, she-said aspects of it. We believe that the manner in which the elected officials who comprise the school Board and their legal counsel handled past complaints is the most important part of this story with regards to public interest.

As I mentioned in my last column on this subject, *BW* had numerous sources for this story and knew far more than we had written to date. We had held off reporting certain things last July because we believed that with the passage of time, more of our sources who had asked us to protect their identities out of fear of retaliation or concerns about harming their careers would be willing to attach their names to the information they had provided. Journalists always prefer sources with attribution whenever possible.

And then the mail came.

On Oct. 11, an envelope with no return address arrived at *BW*'s offices addressed to myself and Angela K. Evans, who has been spearheading this investigation since the beginning. Inside were official reports generated during the 2017 investigation into allegations of harassment based on gender brought by BVSD administrator Leslie Arnold. The investigation, its findings and the reports had all been kept confidential behind the wall of executive session until the moment that envelope was opened.

We don't know who sent us these reports. I can tell you that since our reporting was first published on this issue, our phone lines and email inboxes have seen a fair amount of activity from people claiming to be BVSD employees, many anonymously requesting our help or suggesting we look here or there for certain

information. A typed note in the envelope with the reports said it came from concerned BVSD employees who wanted the truth to come out. We have no way of knowing if that is the true source, but we did verify the documents' authenticity.

We are doing our best to handle this new information in a responsible manner. We understand that many of the people who are mentioned in the reports did not expect their comments and names to appear publicly. With that in mind, we are trying to navigate the information, using it to confirm information already gathered from other sources and to give important detail in areas where we believe it best serves the public interest. Hopefully that explains why we have not simply posted the full reports to our website.

For the record, we had never seen a copy of the reports until the mail came that day. All of our previous reporting had been done via multiple sources. Nearly everything in the reports was information we already knew. In essence, the reports served to confirm our earlier reporting while adding a few details here and there.

So has my opinion changed about the BOE and its secrecy? No, it has not.

More than ever I believe that the Board and its legal counsel likely made serious mistakes along the way dating back to 2015. It still appears, as we reported to some extent months ago, that later questionable actions, based on the available information at hand, could be interpreted as having occurred in an effort to hide earlier mistakes. I use the word "appears" because so long as the elected members of the BOE refuse to answer our questions based on executive session secrecy, we have no choice but to write about what we know without further explanation, and what we know doesn't look good at all when it comes to responsible oversight of a school system.

Let's start with the whole concept of executive session; should it exist at all? Obviously journalists and citizen watchdogs hate it because it can be abused. But there is no question that it is a necessary evil in order to deal with personnel issues in a responsible fashion. No one should have their reputations soiled by unfounded allegations. So it seems appropriate to investigate such things in executive session. But that said, there is a downside: what if the Board decides not to investigate something it should have investigated while in executive session? In such an instance, that mistake is forever hidden from public view. And we all know that when mistakes have no consequences, it is more likely that they will be repeated.

In September 2015, two elected Board members, Tom Miers and Shelly Benford

approached BVSD legal counsel Richard Bump of Caplan & Earnest and told him they had been presented with a credible verbal complaint during several meetings over the summer with a former high-ranking BVSD employee with regards to Dr. Messinger. But the person they say told them about the problems with Messinger wrote the two Board members and Bump and said that she absolutely would not cooperate in an investigation and told them, "I have not initiated a complaint at this time." She went on to accuse the two Board members of pursuing their own personal agendas with regards to Messinger.

Miers and Benford then put those reported complaints in writing (four pages of very specific examples of alleged inappropriate behavior) and emailed them to the attorney. I won't go into further detail now as you can find more information on the specifics in the article following this commentary.

The position of the two Board members was simple. They claimed they had been told this information by the former employee, and you can't unknow what you already know. They believed that despite the refusal of the former employee to cooperate with an investigation or even acknowledge she had made the complaint, the policies of BVSD still required an investigation into the allegations be conducted in order to ensure that no one else in the future would be at risk. This is what the BVSD guidelines seem to indicate to me when I read them. Alleged victims often refuse to cooperate with investigations for a variety of reasons. So the question is, without a cooperative complainant, is it still possible to do an investigation? The answer is obviously yes and that's why the BVSD policy states that with or without such cooperation, an investigation must be launched to make sure there are no other future problems of a similar nature. You go to all the people who worked with both parties and you either corroborate or refute the claims.

But that never happened in 2015.

According to our numerous sources on this matter, including current BVSD leadership, no investigation was ever conducted after the alleged complainant refused to cooperate.

I understand the majority of the Board's apparent position in wanting to protect the privacy and desires of the uncooperative former employee. But being nice and empathetic, while admirable, isn't what Board members are elected to do. And being blinded to their duties of oversight by their dislike and distrust of the two Board members who brought forward the request for an investigation is also inexcusable. I understand that the BOE has a tendency to be divided and that some members find this adversarial situation unpleasant. I happen to think it looks like democracy. I hate to think where we would be today if the entire

Board were in lockstep on this matter.

Stop and think about this for a minute. I've read the four pages provided by the two Board members to legal counsel and it's some really serious stuff. I have no opinion about whether or not it's true because it was never investigated. What I do know is that there are only two possible explanations for what occurred in 2015.

The first possibility is that two elected officials completely fabricated an incredible story including four pages of made-up examples of inappropriate behavior; and that they lied about claiming they had come from a former high-ranking employee of BVSD. And they made up this whole story in order to serve their political agenda because they did not support the superintendent and wanted him investigated in order to have him fired.

That would be an incredible story of wrongdoing by elected officials. Criminal, I think, if such a thing occurred. Surely the rest of the BOE and its legal counsel, if such gross misconduct were really suspected, would have a responsibility to investigate and expose that level of political corruption.

The other possibility, of course, is that regardless of these two Board members' alleged "agenda" or professional opinion of the superintendent, the information they gave to legal counsel, and their demands for an investigation, actually came from the alleged complainant who simply had her reasons for leaving it all behind instead of going through the difficult process of an investigation.

Just so you know, we've never found any Board member willing to claim that the list of allegations was made up by Miers and Benford. And the 2017 Arnold investigation seems to lend credence to at least some of the behaviors noted in the list of never-investigated claims brought forward by the two Board members.

And that, folks, is why an investigation was fully warranted in 2015. If elected officials were fabricating serious allegations against the Superintendent they oversee in order to get him fired, we damn sure needed to know that. But of course that wasn't investigated because no BOE member ever really believed they made it all up.

But if the other elected officials with or without the recommendation of legal counsel refused to investigate such serious allegations simply because of their dislike of or policy disagreements with Miers and Benford, or because they felt an allegiance to Messinger, or because the alleged victim refused to be involved in the investigation, I believe that was a serious mistake and an inexcusable

failure to follow BVSD's own guidelines in such instances.

Next problem.

Obviously, since the Board members who were there in 2015 seem to have known the complaints they were unwilling to investigate at the time could have some legitimacy, they at least had to be acutely aware that there might just be a problem that they should be on the lookout for in the future. Which is why it's all the more disturbing what happened a year later in 2016, according to the investigative report, when Leslie Arnold told the woman doing an evaluation of Messinger that she had concerns about the superintendent's behavior towards her. And, according to the investigative report, some of the allegations heard by the evaluator were disturbingly similar to the 2015 allegations that were never investigated.

Remember, this is only a few months after the Board and its attorney from Caplan & Earnest had been made aware of the 2015 allegations and decided not to investigate. Surely they would move swiftly to get answers this time around.

Nope.

According to the 2017 investigative report, when the evaluator told BOE President Sam Fuqua about the new complaint and that she was going to put it into writing, the report says Fuqua instead asked her to meet him at the Caplan & Earnest offices and make her report verbally, as in without a paper trail.

It appears no other Board members were told about this new potential problem following that meeting and Arnold was left in her same predicament. The next action according to the 2017 investigative report was to place the evaluator under a nondisclosure agreement. Arnold's 2016 concerns and subsequent complaints were not investigated until eight months later when she filed a formal complaint with the entire Board, which finally hired different outside counsel to investigate the whole thing.

So folks, you're pretty smart. How do you read the Board's decisions not to investigate? Maybe the first time, Board members put their desire to give privacy to an unwilling alleged complainant above their responsibility as elected officials to properly oversee the school system. Not investigating in 2015 might make you a kind, empathetic Board member, but it also makes you really bad at the job you were elected to do. And what about doing nothing in 2016 when told of similar complaints?

Was that lack of action and the decision to not share the new information with

other Board members really made on the advice of the same legal counsel who advised the Board's actions in 2015, when it decided not to investigate?

We'd like to ask some more questions about that relationship, but the only answers we get are, "Sorry, executive session," or, "Sorry, attorney/client privilege."

Well try this one on: Sorry, you don't get to move forward with BVSD until you deal more responsibly with these questions from the past. The same law firm is still giving advice to the same Board that is now deciding who will lead BVSD into the future. The new superintendent they choose will only have as much credibility as the people who appoint her. How can the BOE expect to create a new culture of openness without fear of retaliation if the people at the top are unwilling to investigate their own behavior in a public fashion?

Want to move on? Hire a new outside investigator to determine why the 2015 and 2016 complaints did not result in full investigations. That would be a great first step.

This opinion piece does not necessarily reflect the views of Boulder Weekly.

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