June 7, 2010

Gail Fenumiai
Director, Division of Elections
P.O. Box 110017
Juneau, Alaska 99811-0017

Re: Review of Application for Recall of
Jody J. Leisholmn, Board Chair,
Annette Island School District, (REAA#20)
A.G. file no.: JU2010201320

Dear Ms. Fenumiai:

You have asked for our opinion regarding the application for petition for recall of Jody J. Leisholmn, the chairperson of the Annette Island School District regional school board.[1] The school board is comprised of five members, including Ms. Leisholmn.[2]

Regional school board members are subject to recall under AS 14.08.081, which adopts by reference the recall procedures of AS 29.26.240 – 29.26.360.[3] Alaska Statute 29.26.270 requires the director of the Division of Elections to review the recall application and prepare a recall petition if the application meets the requirements of AS 29.26.260.

As a preliminary matter we note two deficiencies in the recall application. First, the application is deficient because it does not include a statement that the voters who

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[1] The Annette Island School District is in Regional Education Attendance Area ("REAA") number 20, and is located in Metlakatla.

[2] This information is from the 2010 Membership Directory provided by the Association of Alaska School Boards, updated January 13, 2010.

[3] Under AS 14.08.081, the Director of the Division of Elections performs the functions of a municipal clerk set out in AS 29.26.240 – 29.26.360, for an REAA recall.

signed the proposed petitions did so as sponsors under AS 29.26.260(a)(1). The applicants can correct this deficiency by submitting a new petition with appropriate language and a new application.[4] The proposed petition's introductory language should be changed to indicate that the undersigned registered voters are applying for the recall petition as sponsors. Second, there is no indication that the letter setting out the grounds for recall was attached to or otherwise circulated with the signature pages for the recall application. We recommend that each signature page include a statement that the sponsors are qualified voters who signed the application with the description of the recall grounds attached.

In order to avoid further delay in the processing of any new application, we have also reviewed the allegations set out in the proposed petition to determine whether they are sufficient to state grounds for recall. In our opinion, the grounds for recall stated in the application fail to satisfy the requirements of AS 29.26.260(a)(3). Therefore, we recommend that the Division of Elections not prepare the recall petition.

I. BACKGROUND

On April 15, 2010, a group of Annette Island School District residents filed an application with the Division of Elections for the recall of school board chairperson Jody Leisholmn.[5] The application included a letter comprised of six paragraphs dated March 12, 2010, signed by Dianna Nelson. The six paragraphs of this letter apparently set out the statement of the grounds for recall:

> Board Chair Leisholmn hired Principal Royal even though he was under investigation in Oregon by the Teacher Standards and Practice Commission for a complaint from the Medford School District. Even after demonstrable anger management issues at several sporting events and complaints from staff of bullying and intimidation, Leisholmn refused to

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[4] *See* 1991 Inf. Op. Att'y Gen. (Jan. 15; 663-90-0393) (rejecting applications for recall of Copper River School District board members).

[5] The recall application refers to Ms. Leisholmn as both the school board chair, and the board president, and sets out her name as "Leisholm," and "Leisholmn." *See* caption of letter: "Jody Leisholm [sic], School Board President," and body of letter in which Ms. Leisholmn is referred to as "Board Chair." In this opinion we will refer to Ms. Leisholmn as the board chairperson.

> meet with or listen to staff complaints about Principal Royal and Superintendent Avey.[6]
>
> Leisholmn allowed Superintendent Avey to create positions and employ both family and friends. This district has considerably more administrators and consultants than comparably sized districts.
>
> Leisholmn forbid other board members from meeting with staff in a forum to discuss complaints falsely alleging that the meeting would violate rules for school board meetings. As Board Chair she failed to provide any vehicle for staff and community members to comment or review actions of administrators.
>
> Leisholmn withheld information about the District and its finances in violation of the Freedom of Information Act including disclosure of school board compensation, fringe benefits and reimbursement for travel.
>
> Leisholmn interfered in the administration of the union and sanctioned the discrimination and intimidation of native workers.
>
> Leisholm conducted board business in Executive session and rubberstamped whatever Superintendent Avey wanted in public board meetings.

The letter does not specifically reference any of the statutory grounds for recall - (1) misconduct in office, (2) incompetence, and (3) failure to perform prescribed duties - in relation to the claims set out concerning Ms. Leisholmn.

The application was also accompanied by: (1) the signatures and residence addresses of 10 persons, and (2) the name and address of a contact person and an alternate.

We shall review this application under applicable Alaska law, which we summarize next.

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[6] It is not clear if the statement about anger management issues relates to Ms. Leisholmn, Principal Royal, or Superintendent Ivey.

II. APPLICABLE LAW

The director for the Division of Elections is tasked with reviewing the application to determine whether it satisfies the requirements of AS 29.26.260. This statute requires:

1. the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition;

2. the name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent; and

3. a statement in 200 words or less of the grounds for recall stated with particularity.

AS 29.26.260. There are three grounds for recall of a regional school board member: (1) misconduct in office,[7] (2) incompetence,[8] and (3) failure to perform prescribed duties. AS 29.26.250. The statute does not specify a timeframe in which this application review process is to take place.

There are several cases in Alaska on the subject of recall as well as several opinions from this office. We have had occasion to discuss this body of authority at length and incorporate that discussion by reference. *See* 2007 Op. Alaska Att'y Gen.

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[7] "Misconduct in office" is not defined in the recall statutes. *Black's Law Dictionary* (5th ed. 1979) defines misconduct in office as "[a]ny unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." *See* 1988 Inf. Op. Att'y Gen. (Apr. 22; 663-88-0462) (quoting *Black's Law Dictionary*), (recall of Copper River School District School Board Chairman).

[8] "Incompetence" is not defined in the recall statutes. *Black's Law Dictionary* defines "incompetency" as "lack of ability, legal qualification, or fitness to discharge the required duty. A relative term which may be employed as meaning disqualification, inability or incapacity and it can refer to lack of legal qualifications of fitness to discharge the required duty and to show want of physical or intellectual or moral fitness." *See* 1988 Inf. Op. Att'y Gen. (Apr. 22; 663-88-0462) (recall of Copper River School District School Board Chairman).

(July 19) (recall Chatham school district board members); 2006 Inf. Op. Att'y Gen. 4-5 (Jan. 17; 663-06-0096) (recall of Alaska Gateway school board members); 2005 Inf. Op. Att'y Gen. (Nov. 22; 663-06-0075) (recall of Alaska Gateway school board member); *see also* 2005 Inf. Op.Att'y Gen. 6 -13 (Sept. 7; 663-06-0036) (recall of state senator).

For purposes of this opinion, we will confine our discussion to the published court decisions. The seminal case on recall is *Meiners v. Bering Strait School District*, 687 P.2d 287 (Alaska 1984). *Meiners* involved an attempt to recall an entire REAA school board. The court held that recall statutes, like initiative and referendum statutes, "should be liberally construed so that 'the people [are] permitted to vote and express their will.'" *Id.* at 296 (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)). The court concluded that "the recall process is fundamentally a part of the political process. The purposes of recall are therefore not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute." *Id.*

Because the recall statute required the grounds for recall to be stated with particularity, the *Meiners* court reviewed two of the asserted grounds for sufficiency. The court emphasized that it was not proper to determine the truth of the recall allegations. Rather, the court assumes that the alleged facts are true and rules upon them similar to a court ruling on a motion to dismiss for failure to state a claim. *Id.* at 300 n.18. The court reviewed the asserted allegations to determine whether they sufficiently stated a claim for "failure to perform prescribed duties" (one of the specified grounds in the recall statute).

The recall committee in *Meiners* claimed that the board failed to control the district superintendent who had allegedly spent money on non-district purposes. The court held that the board was statutorily required to "employ" the superintendent, and that this duty implied that the board would exercise a certain amount of non-discretionary control and supervision over the superintendent. Therefore, the court held that this ground sufficiently stated a claim for failure to perform prescribed duties. *Id.* at 300.

The recall committee also alleged various infractions of laws relating to open meetings. The court held that these allegations also stated a claim for failure to perform prescribed duties and were sufficiently particular. *Id.* at 301-02. The court additionally held that inaccurate legal statements or lack of legal citation would not invalidate the application. The court wanted to avoid "wrapping the recall process in such a tight legal straitjacket that a legally sufficient recall petition could be prepared only by an attorney who is a specialist in election law matters." *Id.* at 301.

However, the court explained that the particularity requirement served an important purpose, holding that allegations that are insufficient to state grounds should not be included in a petition because "[i]t might force the target official to expend most of his 200 words of rebuttal fending off charges, which although legally insufficient for recall, he fears may garner the voters' attention." *Id.* at 302.

In *Von Stauffenberg v. Committee for an Honest and Ethical School Board.*, 903 P.2d 1055 (Alaska 1995), the court again addressed a recall attempt against several school board members. In two of the allegations, the recall committee alleged that board members committed misconduct and failed to perform prescribed duties by going into executive session to consider the continued retention of an elementary school principal. Applying the standards set forth in *Meiners*, the court concluded that it was legal to consider "sensitive personnel matters" in executive session. The court held that the legal exercise of discretion by a public official (*i.e.* deciding as a matter of discretion whether to discuss personnel matters in executive session) cannot be a ground for recall. Moreover, because the allegations did not describe why going into executive session violated the law, the court held that they were not sufficiently particular. These allegations failed to state a claim and therefore were insufficient. *Id.* at 1060.

From these two cases, we conclude that courts do not require recall committees to perfectly articulate the grounds for recall. But the courts do require that a recall application include a sufficient amount of detail so that the basis for recall is understandable—that is, the grounds must be factually sufficient. Moreover, an application that alleges lawful conduct will not support a petition for recall—in other words, the grounds must also be legally sufficient. These precedents guide our analysis of these applications, which we turn to next.

III. ANALYSIS

Alaska Statute 29.26.260(a) sets forth three requirements for a recall application. We discuss each in turn and conclude that the second is satisfied, with the caveat that we cannot make a determination as to the validity of signatures. We conclude that the first requirement is not satisfied because the voters did not sign as sponsors. We conclude that the third requirement is not satisfied because the application fails to sufficiently state the grounds for recall.

A. Signatures and Residence Addresses

Alaska Statute 29.26.260(a)(1) requires the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition.[9] The Division of Elections has indicated that at least 10 municipal voters have signed the application. However, as we noted above, the voters failed to sign the petition as sponsors, and therefore the application fails to satisfy this requirement. In addition, when the sponsor signatures are solicited, each signature page should include a statement that the sponsors are qualified voters who signed the application with the description of the recall grounds attached.

B. Contact and Alternate

Alaska Statute 29.26.260(a)(2) requires the name and address of a contact person and an alternate (note that this portion of the statute does not require a residence address). The application provides a contact, an alternate, and addresses. This requirement appears to be satisfied.

C. Statement of Grounds

Alaska Statute 29.26.260(a)(c) requires that the grounds for recall be stated with particularity in 200 words or less. According to our count of the words, the entire statement of grounds is less than 200 words. We next consider the sufficiency of the grounds.

As noted above, there are three statutory grounds for recall: (1) misconduct in office, (2) incompetence, and (3) failure to perform prescribed duties. Our task is to evaluate whether the allegations are factually and legally sufficient, that is, whether they provide sufficient particulars and details to state one of the grounds for recall. However, the Division does not determine the factual accuracy of allegations. *Meiners*, 687 P.2d at 300 n.18.

The recall application alleges a number of undated claims phrased in broad and general terms (which the sponsors apparently contend constitute misconduct in office, or incompetence, or failure to perform prescribed duties). We have determined that all of the allegations, taken factually as true, nevertheless fail to identify specific violations of Alaska law, and are therefore both factually and legally insufficient. We therefore recommend that the Division of Elections not certify the recall application.

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[9] In the past we have recommended rejection of recall application where the signers failed to sign as sponsors. *See* 1993 Inf. Op. Att'y Gen. (July 26; 663-93-0419); 1991 Inf. Op.Att'y Gen. (Jan. 15; 663-90-0393).

1. Claims set out in paragraph one:

a. Hiring of Principal Royal

Ms. Leisholmn is alleged to have hired Principal Royal. This allegation contends that hiring Royal as a school principal was improper because he was under investigation by the Teacher Standards and Practice Commission in Oregon for a complaint from the Medford School District. Under AS 14.08.111, one of the duties of a regional school board is to "approve the employment of the professional administrators, teachers, and noncertificated personnel necessary to operate its schools." As noted earlier, the *Von Stauffenberg* case holds that an elected official cannot be recalled for legally exercising the discretion granted to them by law.[10] We do not find any authority that makes it improper to hire a school principal who is under investigation.

Instead, under 4 AAC 12.300(h) an applicant is required only to discuss suspension or revocation of a certificate by another state. In contrast, 4 AAC 12.325 (on certification requirements for administrators performing specific duties) and 4 AAC 12.345 (on administrative certificate) do not include a requirement for an applicant to disclose that he or she is under investigation or for the school district to consider an investigation as a factor in a hiring decision.

Thus, Alaska law does not require that a school principal disclose that he or she is under investigation, and it is not a violation of Alaska law to hire a principal who is under investigation.[11]

b. Failure to heed complaints about Principal Royal and Superintendent Avey.

Ms. Leisholmn is alleged to have failed to meet with staff to hear their complaints about Principal Royal and Superintendent Avey. There is no specific statute or regulation requiring that a school board member heed complaints about the principal or

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[10] *Von Stauffenberg v. Comm. for an Honest and Ethical Sch. Bd.,* 903 P.3d 1060.

[11] Elected official cannot be recalled for legally exercising the discretion granted to them by law. *Von Stauffenberg,* 903 P.3d 1060.

superintendent.[12] We will analyze the claims against the principal and the superintendent separately.

i. Principal Royal

Turning first to the allegations concerning Principal Royal, the closest authority we could find on this point is AS 14.20.149(a), which requires a school board to adopt "a certificated employer evaluation system for evaluation and improvement of the performance of the district's teachers and administrators [except for the district's superintendent]." The evaluation "must be based on observation of the employee in the employee's workplace." Subsection (a)(7) requires that this evaluation system "provide an opportunity for students, parents, community members, teachers and administrators to provide information on the performance of the teacher or administrator who is the subject of the evaluation."[13]

There is a general allegation in paragraph one that Ms. Leisholmn refused to meet with or listen to staff regarding their complaints against Principal Royal, including a complaint about "demonstrable anger management issues at several sporting events and complaints from staff of bullying and intimidation."[14] The allegation that Ms. Leisholmn refused to meet with or listen to staff is too vague to make an adequate claim for recall under AS 29.26.250 and AS 14.20.149(a)(7). There are no dates, names, or other specifics describing the staff complaints against Principal Royal or on Ms. Leisholmn's alleged failure to meet with staff to hear these complaints. There is also no allegation that there was a lack of other opportunity to provide information on the performance of the principal. The allegation that Ms. Leisholmn failed to meet with or listen to staff in

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[12] In *Von Stauffenberg,* the superior court found a similar allegation insufficient. The insufficient allegation claimed "fail[ure] to provide full and open communication between themselves [the board members sought to be recalled] and the voters of the district on the[n] subject of the retention of Mary Asper." 903 P.2d at 1058.

[13] The district policy on evaluation of other administrative personnel is BP 4315(a), and numbered paragraph 4 of this policy provides that assessments will include evaluations from teachers, students, parents, community members, and other administrators.

[14] As noted above in footnote 4, it is unclear from the letter whether this allegation relates to the principal or the superintendent. For application of the facts to the statutes, we assume that it relates to the former.

one instance cannot serve as the basis for a violation of AS 14.20.149(a)(7) where there was other opportunity for providing information on the performance of the principal. Further, the letter claims that the objectionable conduct occurred at "sporting events," and it is unclear from this description that the complained of actions are "based on observation of the employee in the employee's workplace," which is the required basis for an employee's evaluation under AS 14.20.149(a). Lastly, there is no claim that Ms. Leisholmn failed to comply with the district evaluation policy in failing to meet with staff to hear complaints.[15] In sum, the allegation that Ms. Leisholmn refused to meet with and listen to staff is not stated with sufficiently particularity to state a claim for recall ((1) misconduct in office, (2) incompetence, or (3) failure to perform prescribed duties.)

ii. Superintendent Avey

The state law evaluation standards do not apply to a school superintendent.[16] So Ms. Leisholmn's failure to meet with staff regarding Superintendent Avey is insufficient to state a claim under state law standards. Turning to district standards, the district policy only requires an annual evaluation of the superintendent's performance, and does not include the requirement for community comment set out in AS 14.20.149(a)(7).[17] Given that there is no requirement under either state or district standards for the board to receive community comment on a superintendent's performance, the allegations fail to describe a violation of law or policy sufficient to state a claim for recall. A decision by a school board member to not meet or listen to staff complaints concerning the superintendent is an act of discretion, particularly where there is no indication of more than one instance of this refusal and no dates or other specifics are provided. Once again, as set out in *Von Stauffenberg,* an elected official cannot be recalled for legally exercising the discretion granted to them by law. To the extent that this allegation can be viewed as a claim that Ms. Leisholm has failed to adequately supervise Superintendent Ivey, it includes insufficient detail to set out a claim of inadequate supervision of the superintendent.[18]

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[15] The district evaluation policy is set out in BP 4315(a), which is discussed more fully below in relation to the recall allegations set out in paragraph 3(b).

[16] AS 14.20.149(a).

[17] BP 2123 (district policy on evaluation of the superintendent); BP 4315(a) (policy on evaluation of other administrative personnel).

[18] We note that a specific claim of failure to adequately supervise a superintendent was found to be a sufficient ground for recall in *Meiners*. *See Meiners,* 687 P.2d at 300.

There is no claim that Ms. Leisholmn has failed to hold the superintendent responsible for improper conduct; instead, the claim is focused on her alleged failure to listen to staff complaints.[19] The decision to listen to staff complaints where there is no legal obligation to do so under state law or board policy is an exercise of discretion that does not provide a ground for recall.[20]

2. Paragraph two claims – Leisholmn allowed Superintendent Avey to employ family and friends.

This paragraph alleges in vague and conclusory terms that Leisholmn allowed Superintendent Avey to "create positions and employ both family and friends," and that "this district has considerably more administrators and consultants than comparably sized districts." However, under AS 14.08.101 one of the powers of a school board is to appoint employees, and under AS 14.08.111, one of the duties of a regional school board is to "approve the employment of the professional administrators, teachers, and noncertificated personnel necessary to operate its schools." Under AS 14.14.140 "members of the immediate family of a chief school administrator may not be employed by the chief school administrator except upon written approval of the school board."[21] And, under board policies, "the school board, before hir[ing], approves the employment of all school personnel."[22] Board policies provide that the "superintendent or designee

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However, in *Meiners* the grounds for recall stated numerous specific factual allegations that served as a basis for the claim of lack of supervision. *Meiners*, 687 P.3d at 291-93. In contrast, here the petitioners have provided only vague and conclusory allegations.

[19] In *Meiners*, the petitioners provided specific examples alleging that the superintendent was spending large amounts of district funds on inappropriate expenditures. Petitioners alleged that the school board failed to hold the superintendent responsible for these expenditures. In contrast, the petitioners here have only alleged a failure to listen to staff complaints about the superintendent.

[20] The superior court found a similar allegation insufficient in *Von Stauffenberg*, 903 P.2d at 1058 (fail[ure] to provide full and open communication between themselves [the board members sought to be recalled] and the voters of the district on the[n] subject of the retention of [school principal] Mary Asper).

[21] 4 AAC 18.031 sets out additional requirements in the process for approval to employ family members.

nominates for employment all certificated and classified personnel."[23] So, the board, rather than the superintendent, is the entity responsible for hiring staff. The letter does not identify the positions that were created or the family and friends who were employed in those positions, nor does it indicate whether the board failed to approve the employment as is specifically allowed by AS 14.14.140. The board is given the discretion to employ staff, and the discretion to approve hiring of the chief administrator's family members. As noted earlier, an elected official cannot be recalled for legally exercising the discretion granted to them by law.[24] Further, the allegations are not sufficiently particular to describe a violation of law or policies or to provide a sufficient amount of detail to establish a basis for recall.

3. Paragraph three claims

a. Staff complaints

Paragraph 3 is also very vague, alleging that "Leisholmn forbid other board members from meeting with staff in a forum to discuss complaints falsely alleging that the meeting would violate rules for school board meetings." The letter does not identify the other board members, or the date or dates of the action. The allegations do not explain why forbidding other board members to discuss complaints violated the law. As such, this claim is not sufficiently particular. *See Von Stuaffenberg*, 903 P.2d at 1060. It may be that Ms. Leisholmn had concerns on the laws relating to open meetings.[25] But, the claim is not set out with sufficient particularity to make this determination. "[T]he allegations fail to state why [forbidding board members to meet with staff in a forum]…was violative of Alaska law" and therefore this paragraph lacks sufficient particularity. [26]

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[22] This district policy is set out at BP 4000(a).

[23] This district policy is set out at BP 4000(b).

[24] *Von Stauffenberg*, 903 P.3d 1060.

[25] *Id.* (legal exercise of discretion by a public official cannot be a ground for recall). Ms. Leisholmn may have exercised discretion and advised other board members that the open meetings laws would apply to the board meeting with staff to discuss complaints. And, if complaints concerned personnel matters, board meetings may have been required to be held in executive session.

b. Comment/Review Actions of Administrators

This paragraph of the letter also alleges that Ms. Leisholmn, as board chair, "failed to provide any vehicle for staff and community members to comment or review actions of administrators." The district policies provide a complaint process to address complaints concerning the schools, and school personnel, including administrators.[27] The complaint process allows complaints concerning a principal or central office administrator to be submitted to the Superintendent.[28] A complaint regarding the Superintendent is to be filed with the Board.[29] The complaint process exists on its own terms and anything Ms. Leisholmn may have failed to do does not entail a violation of these district policies. In addition, Ms. Leisholmn is not subject to any requirement by state law to create a parallel complaint process. As such, the claims of paragraph 3 of the petition fail to state adequate grounds for recall. A school board is required to adopt a system to evaluate the district's teachers and administrators (except the superintendent) by AS 14.20.149 and 4 AAC 19.050. Under AS 14.20.149(b)(7) this system must "provide an opportunity for students, parents, community members, teachers and administrators to provide information on the performance of the teacher or administrator who is the subject of the evaluation." The Annette Island School Board has adopted an evaluation system under BP 4315(a); (originally adopted July 25, 2006, and revised March 24, 2009). The policy provides a vehicle for staff and community members to provide information on the performance of administrators in the evaluation process. BP 4315(a), para. 4. The vehicle for comment exists by virtue of the Board policies, and the letter does not explain how Ms. Leisholmn violated this policy. Other than for evaluations, there is no requirement that a school board provide for comment or review of teachers or administrators.[30] The letter's conclusory allegations do not describe what specific actions

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[26] *Von Stauffenberg*, 903 P.2d at 1060.

[27] The complaint process is set out at BP 1312, and 1312.1, and AR 1312.1(a). BP 1312 specifies that "[i]ndividual Board members do not have authority to resolve complaints."

[28] AR 1312.1(a).

[29] *Id.*

[30] In *Von Stauffenberg,* the superior court found a similar allegation insufficient. The insufficient allegation claimed "fail[ure] to provide full and open communication

were taken or how they violated law or policies. The letter does not provide a sufficient amount of detail so that the basis for recall is understandable and the allegations are not sufficiently particular.

4. Paragraph 4 claims - Withholding District Information

Alaska Statute 14.14.090(6) requires that a school board shall "keep the records and files of the school board open to inspection of the public at the principal administrative office of the district during reasonable business hours." Paragraph 4 can be read to allege that Ms. Leisholmn failed to comply with that requirement. However, the allegation is vague and fails to set out specific facts to flesh-out the conclusion that Ms. Leisholmn "withheld information about the District and its finances in violation of the Freedom of Information Act including disclosure of school board compensation, fringe benefits and reimbursement for travel." This is especially true in light of the district's regulations and policies which give the responsibility to facilitate public access to district records to the superintendent, rather than to the board chairperson.[31] The allegations are not sufficiently particular to describe what actions by Ms. Leisholmn violated law or policies. There is not a sufficient amount of detail so that the basis for recall is understandable.

5. Paragraph 5 claims – Interference with Union, and race discrimination

Paragraph 5 makes conclusory allegations that Ms. Leisholm interfered with the union and sanctioned discrimination and intimidation of Native workers. The claims alleged in this paragraph are not set out with sufficient particularity to provide notice of the factual substance of the allegations. What exactly did Ms. Liesholmn do to interfere with the administration of the union, and when did this happen? How exactly did Ms. Liesholmn "sanction[] discrimination and intimidation of native workers?"[32] The

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between themselves [the board members sought to be recalled] and the voters of the district on the[n] subject of the retention of Mary Asper." 903 P.2d at 1058.

[31] BP 1340 and AR 1340(a).

[32] Alaska Statute 14.18.020 prohibits discrimination in employment on the basis of race. Regulations implementing the prohibition on discrimination are set out at 4 AAC 06.500 – 600. 4 AAC 06.560 requires the district to adopt and make available to the

allegations are not sufficiently particular to describe how these actions violated law or policies. The allegations do not provide a sufficient amount of detail so that the basis for recall is understandable and Ms. Liesholmn would be given a fair opportunity to defend.

6. Paragraph 6 claims – Board business in executive session and rubberstamping Superintendent

Paragraph 6 claims that Ms. Leisholmn conducted board business in executive session and "rubberstamped" whatever Superintendent Avey wanted in public board meetings." The Open Meetings Act allows a board to go into executive session for various reasons, including to discuss sensitive personnel matters. AS 44.62.310(c). It is unclear from the allegations what the board business was. If it was to discuss sensitive personnel matters then executive session is appropriate. But, the board may not take action in executive session except to "give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations." If this is the board business complained of here, an executive session would nevertheless be appropriate. In *Von Stauffenberg*, 903 P.2d 1060, the Court rejected an Open Meetings Act violation as grounds for the school board recall because "the allegations fail[ed] to state why entering into the executive session was violative of Alaska law." This holding applies here. Without a description of what the board business was there are no facts to support an Open Meetings Act violation. Similarly, the claim of rubberstamping Superintendent Avey's wishes is not sufficiently particular to adequately set out grounds for recall. Without some detail regarding what actions were "rubberstamped," the officeholder would not have "a fair opportunity to defend [her] conduct in a rebuttal limited to 200 words.[33] The allegations in paragraph 6 are not set out with sufficient particularity to indicate any violation of the Open Meetings Act or whether there are grounds for recall based on "rubberstamping."

IV. CONCLUSION

As set forth above, this application fails to meet the requirement of AS 29.26.260(a) in two respects. First, the application does not include a statement that the voters who signed the proposed petitions did so as sponsors. AS 29.26.260(a)(1). Second, the application fails to set out the grounds for the recall in violation of AS

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public a grievance procedure to remedy violations of AS 14.18. The district has adopted this procedure through a board policy, BP 1312.3(a), and regulation AR 1312.3(a).

[33] *Von Stauffenberg*, 903 P.2d at 1060.

29.26.260(a)(3). We find the conclusory allegations against Ms. Leisholmn to be factually insufficient to establish misconduct in office, incompetence, or failure to perform prescribed duties. Accordingly, we recommend that the Division of Elections not prepare a petition for recall.

Please contact us if you would like further advice in this matter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:
Sarah J. Felix
Assistant Attorney General

SJF/bjs