

Administrator terminated for ASO debacle

Brett Robertson refused demotion, blames college president for mishandling racially-charged May 2019 student body election

By Julia Woock
News Editor

Former director of student activities Brett Robertson, who refused a demotion by college president Dr. Kindred Murillo, was terminated by the Governing Board tonight on a 3-0 vote. Governing Board President Nora Vargas was not present. Trustee Nader recused himself before the vote.

SC's administrators association accused Murillo of scapegoating Robertson over her own mishandling of the May 2019 ASO elections debacle.

SC trustees conducted a public hearing in February, but postponed action without comment. No timelines for a decision were announced.

Murillo said Robertson showed poor leadership and blamed him and former Dean of Student Affairs Dr. Malia Flood for an ASO election marred by racist behavior by some of the candidates and their supporters. Robertson said Murillo is to blame for the confluence of events that led to the cancellation of the election and an eight-month investigation that cost more than \$100,000.

Broken Chain of Command

Robertson said Murillo undermined him and micromanaged the ASO by allowing students to bypass him and to go directly to her with their concerns. He said Murillo knew of concerns, but did not inform him what was happening and unnecessarily inserted herself into a student election. Murillo, he said, showed very poor judgement and unprofessional behaviors.

"She did not contact me at any point, which to me is an operational failure on her part," he said. "I was learning after the fact the things I did not know were happening, but students were going to her directly. Then she, in turn, was not communicating back down to me."

Robertson said some ASO students informed Murillo of their concerns on the Monday morning April 29

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before the explosive May 2 meeting. He said the students also went to Student Activities Coordinator Richard Eberheart, who reported to Robertson.

"They didn't come to me," he said. "So I walked into that Monday meeting not knowing anything of what was going with the agenda or any of that. I learned all of that in the moment the meeting started."

A hastily called meeting of two warring ASO tickets mediated by a consultant Murillo hired devolved into name calling, charges of racism and character assassination. Murillo herself ended the meeting about 90 minutes in and cancelled the election. After a lengthy investigation determined that events did not affect the outcome of the vote, an ASO was seated in January.

Robertson said he could not do his job effectively due to poor communication and dysfunction up and down the chain of command. He said he submitted ideas to former Vice President of Student Affairs Dr. Angelica Suarez to move forward from the ASO election debacle in the spring, but was told everything was on hold until the investigation concluded.

"In student activities I think we worked very hard in the fall semester to bridge and heal these wounds," he said. "To rebuild trust. To rebuild the relationships and I think we were well on our way, and then late in the term when that report finally came out to just kind of rip me out of that position was devastating to me and many of the students."

Robertson said that the ASO lost stability it had rebuilt when he was uprooted so abruptly. He said it was a disservice ASO officers and club students did not deserve.

Robertson said when the investigation concluded on November 13 he met with Murillo, VP of Human Resources Rose DelGaudio, and administrator association president Fernando Poveda. He was informed he was to be demoted due to "lack of leadership." Robertson said he and Flood had back-to-back meetings and received similar news. He said he worked with his new dean to take time off from his new position as Student Services Supervisor in Student Employment.

Murillo said the demotion was to see if he was a better fit in another department. She said she was not comfortable with a lateral move after what had happened.

"I wanted to give him a chance," she said. "I like Brett as a person and I wanted to give him a chance to see if he could do another job. That was my intent."

Union Backs Robertson

Robertson said Poveda called Dec. 4 to inform him the demotion was in violation of his contract. Poveda said to Robertson could be transferred to a lateral position or equivalent, but the district did not have the right to demote him without due process. Poveda asked Robertson what he wanted to do, and Robertson said he told him he wanted his previous position back. Murillo said no.

Murillo said she is not surprised by the position of the administrators association.

"I understand why SCCDAA did what they did," she said "I'm not going to criticize and say anything different about it, but I've always tried to give people an opportunity to show that they can do a good job in another position because maybe this just wasn't the right position for him."

Poveda said Robertson and Flood were unfairly singled at because they are easy targets. He said the treatment was disparate and it was wrong to single them out when so many mistakes were made by so many people.

"SCDAA's position is Brett Robertson and Malia Flood have been scapegoated," he said. "Look at what occurred. Malia Flood did not have any allegations made against her and yet she was demoted. Brett Robertson had no allegations sustained against him and yet he's losing his job and there were others that were guilty who had serious allegations sustained against them by the investigation report which directly harmed students, yet they didn't get anything but a slap on the hand."

Robertson said DelGaudio reached out to Poveda during the negotiation to inquire how the college could punish him in lieu of the demotion — an inquiry that surprised them both.

"They asked Fernando how they could discipline me for demotion,



Fernando A. Martinez/Staff

IDESOFMARCH—Dozens of Southwestern College colleagues and students rallied for Director of Student Activities Brett Robertson at his disciplinary hearing. Attorney Roberto Ochoa (left) defends Robertson (center) and claims a dysfunctional administration led to the student government scandal, which Robertson was being terminated for. Robertson was fired on a 3-0 vote of the governing board.

so sort of after the fact try to then impose discipline to demote me," said Robertson. "The union obviously did not cooperate with that request. Poveda said he was not going to cooperate with DelGaudio to demote association members without due process."

Robertson said Poveda informed him on December 18 that the district threatened to terminate him if he did not voluntarily accept the demotion.

"Fernando called me and said the district is giving you an ultimatum now," Robertson said. "Either you accept the demotion voluntarily or we're going to terminate you. To me, that's retaliation for exercising my rights under the contract."

Robertson said he felt bullied and attacked into accepting the demotion. He said he took winter break to reflect on what he wanted to do.

"I thought about it and I decided this isn't right," he said. "As a gay man, I know what it's like to be bullied. I grew up having to deal with being bullied. Now that I'm an adult and I'm out and proud, I'm not going to put up with being bullied anymore by anybody, including the president of the college."

Robertson said he told Poveda on January 3 that he would not accept the demotion. He said he was placed on administrative leave January 13.

"That's when they put me on leave and verbally communicated they would pursue termination," he said. "They made good on that threat. On January 24th I got a notice of termination."

Skelly Hearing 'Tainted'

Robertson said he had a Skelly Hearing on February 3 conducted by VP of Business and Financial Affairs Dr. Kelly Hall where he was allowed to refute allegations made against him. He said the process was tainted by the fact that Hall is a junior employee recently hired by and obligated to Murillo.

"They chose who they wanted," he said. "I suppose from the cabinet members of this college she would be the most neutral person because she's new. She wasn't directly involved in the election, but they got to choose who that was."

Hall said the Skelly hearing is an opportunity for a third-party to listen to the employee and impartially make a recommendation on what HR should do. She said the Skelly officer can recommend whether to move forward or not, and modify the proposed action. She said the meeting with Robertson and his attorney Ricardo Ochoa lasted about an hour.

"I can say Brett was extremely professional, polite, courteous and we spent an hour together," she said. "He gave me his recollection of the events. I thanked him."

Hall said it is not the responsibility of the Skelly officer to determine culpability, but to determine if there is enough evidence to move forward.

"My finding was that there was sufficient evidence to take the action to the next step and allow the governing board to hear it," she said. "Brett had an opportunity to share his perspective with the board, the ultimate individuals who are responsible for this school. It is the responsibility of the governing board to make those sorts of decisions because they (sic) are accountable to the citizens

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Brett Robertson
former director of SC Student Activities

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Robertson said that he had no input in selecting an impartial Skelly officer. Hall, he said, is vulnerable to pressure from her boss — Murillo — and could not be impartial.

"She is accountable to the president, so that isn't completely unbiased," he said. Murillo said she was not involved in the selection of the Skelly officer and that human resources personnel set up the Skelly hearing. She said the SC Administrators Handbook required a vice president to serve as the Skelly officer. All college vice presidents work directly under Murillo.

Robertson said Murillo's actions are a desperate attempt to cover her own serious lapses in judgement.

"Kindred makes a hasty decision to transfer me," he said. "Violates our contract. We call her out on it. Oh well, now we'll try to demote you through a disciplinary process, after the fact. They back off on that. Then they threaten me with either accept it or be terminated. I don't accept that. Then they make good on that threat and follow through and put together what I believe is a rather desperate and flimsy case for termination. Because I stood up and I fought back that forced their hand to try to go down this road of termination, which has led to this big mess."

Robertson said the process has been dysfunctional.

"Everything about this has been unfair and unjust for multiple reasons," he said. "One is this shifting position of the district and how they've handled this. The allegations in the termination. The unfair and disparate application of discipline across various employees has been unjust. I think this has been very unjust."

'Easy Targets'

Robertson said he and Flood should have received nothing more than a verbal reprimand, like what was issued to Student Activities Coordinator Eberheart and Assistant Professor of Biology Trishana Norquist.

"I think Kindred made a calculation that Dr. Flood and I were easy targets and went after us," he said. "I think she probably thought it would be politically difficult to sanction Richard and Trishana. She decided we were easy targets."

Robertson said he did not wish

Norquist or Eberheart ill.

"I don't think Richard or Trishana deserve a harsher discipline," he said. "But I think my discipline and Dr. Flood's were way disproportionate and unjust. I think ours was way out of line. I think that was a political calculation Murillo made that's simply unjust."

Murillo said it was Robertson's responsibility to supervise Eberheart and that it was ultimately Robertson's inaction that led to a racially-charged protest held by students Wednesday of election week and the contentious Thursday meeting that led to the cancellation of the election.

"That's the part I think gets lost in all of this, is kind of the causal issues that occurred and how people got hurt in this," she said. "As where if rules had been followed according to the ASO constitution and by-laws, which is Brett's responsibility and Malia oversees him, then they have a responsibility to the students."

Ochoa said Eberheart had conducted ASO elections four times previously and knew how to perform all required tasks. Eberheart engaged in "willful misconduct," according to the investigation, a fact Ochoa presented to the board during the hearing.

"(Robertson) is not the frontline person who is responsible for that," said Ochoa. "There is an employee of this district, Richard Eberheart, whose responsibility it is to work with the ASO and oversee the election."

Robertson said his duties during an ASO election are to administer the election itself, like putting together the ballot and collaborating with IT to make sure vote tabulation is working properly. He said he also ensured that documents like the application to run for office are in order and he validated the eligibility of candidates. He said Eberheart's duties last spring were to train and oversee the election board, supervise the election coordinator and direct contact with the student candidates. He said the first and only red flag was the Monday meeting where students voiced their grievances and informed him the agenda was not properly posted.

"Richard is an experienced employee," he said. "I had no reason to believe that he would not know his duties and tasks and perform them. There would be no reason for me to micromanage him. For example, in regards to the agenda

posting, that's a procedural matter I would expect he would perform and make sure the elections coordinator was doing her duties in preparation for that meeting."

'A concern and a pattern'

Robertson said Murillo was going back and "looking for old and stale complaints" that were not worthy of disciplinary action. He said the first allegation was a Title IX hotel incident, where two investigations took place and neither found him at fault. Investigators recommended he update student travel procedures, but did not consider disciplinary action. Robertson said another allegation was an email complaint from a former ASO President and was handled as an interpersonal matter.

"The college alleged that I used racially-insensitive comments to her and I take exception to that because I did not do that and the college provided absolutely no substantiation of that," he said. "That was also not disciplinary in nature."

Robertson said the college is trying to mine old incidents and convert them into disciplinary items. This depicts how "desperate and flimsy" its case is, he said.

Ochoa said the district cannot use allegations of past performance shortcomings because the California Education Code dictates that allegations must be shared with the employee and placed in the employee's personnel file in a timely manner. Ochoa said the college did not complete any of these steps.

"There is a provision of the Education Code that requires that if you are going to use information against an employee in regards to their employment, that you have to provide it to them ahead of time, around the time you learned of it, and give them an opportunity to gather evidence to rebut those charges," he said.

Ochoa said the only allegation the college could use against Robertson was the ASO election issue and that the investigation cleared him of any wrongdoing.

Murillo said the previous incidents were included to demonstrate Robertson's pattern of decision making and a "historical context of not always making the best decisions."

"It's a concern and a pattern," she said. "I think that's the reason they were mentioned, because we have a pattern of behaviors. The severity of the ASO issue in its own right is pretty profound."

Murillo said she had to hold college employees accountable and Robertson was not doing his job.

"Brett is a nice guy, really nice guy," she said. "He wasn't doing his job the way he needed to be doing per his job description."

Ochoa said everyone up the chain of command shared responsibility for the ASO debacle.

Murillo agreed, and said she was willing to take responsibility and be held accountable as well.

"I take responsibility and I told the board 'I'll give you my resignation right now. This happened on my watch,'" she said. "I am totally ok being held accountable. I expect the managers who work for us to be also held accountable."

She also said projects had not followed through, like the plan to dedicate a space to the UMOJA learning community.

Good Evaluation

Ochoa said at the termination hearing that Robertson had undergone one evaluation and it was good. Robertson confirmed that he had a very good evaluation and there were no derogatory marks in his personnel file. He said that the issues Murillo brought up during the February termination hearing were not handled as disciplinary.

"For better or worse we're only evaluated every three years," he said. "So I only had one previous evaluation in November of 2016, which incidentally was after the hotel incident. I had a good evaluation."

Robertson also said his motivation to stay would be getting to work with the wonderful students he had the honor to serve.

"I'm really proud of all those efforts, and all that work that they've done and I've been able to provide guidance to, along the way," he said.

After everything that has happened with the district it would be hard to return to his previous position, he said, but he would be happy to serve in an equivalent capacity. He said the college had good people and that he appreciated his colleagues and the people he worked with for five and a half years.

"They're actually a lot of good people here and I really appreciated my colleagues and the people I worked with here for five and a half years," he said. "If there was a way I could have a fresh start, I would continue."