



August 19, 2015

Honorable David J. Daniels  
Presiding Judge  
San Diego County Superior Court  
220 W. Broadway  
San Diego, CA 92101

**RE: Grand Jury Report: "San Diego Unified School District Trustee's Overreach: Abuse of Power?"**

Dear Judge Daniels:

The San Diego Unified School District ("District") has reviewed the Facts, Findings and Recommendations in the Grand Jury Report "San Diego Unified School District Trustee's Overreach: Abuse of Power?" filed on May 18, 2015. Pursuant to California Penal Code section 933(c), the following constitutes the response of the District, its Governing Board ("Board") and the Superintendent, to the findings and recommendations pertaining to matters under the control of the District.

**INTRODUCTION**

The above-entitled Grand Jury report raises serious concerns regarding the potential for District officials to engage in conduct which may constitute an abuse of authority. This is an issue which the District takes seriously. However, the facts and findings presented in the report suggest merely the perception of a violation. The Grand Jury made no findings of actual misconduct on the part of any of the District's five trustees. Rather, the report speaks only to the "perceptions" of certain staff members and the "possibility" that certain things "may have" occurred.

Further, the Grand Jury's findings and recommendations overlook long-established District policies and procedures which are directed at the potential overreach which is the subject of the report, and which are sufficiently robust to address the issues raised in the report. The District disagrees both that the District's Board Member Code of Conduct, Conflict of Interest Policy and Board Governance Policies are insufficient to prevent trustees from exerting undue influence in matters involving a particular District school, and that there is no training provided to trustees on the issues addressed in these documents. Therefore, while the District appreciates the time and attention the Grand Jury has paid to these issues; it declines to follow the recommendations provided in the report.

## **RESPONSE TO FACTS, FINDINGS AND RECOMMENDATIONS**

**Finding #01:** The removal of two staff members from the school attended by a trustee's child was perceived by other staff to have been improperly influenced by a trustee.

**Response:** To the extent the District is being asked to agree or disagree whether unidentified staff members at an unidentified school had certain perceptions regarding personnel changes, the District is unable to do so. This would require speculation on the District's part as to the identity of the trustee, the subject school, the identity of the referenced staff members and their internal mental processes. To the extent it is implied that any staff member was removed from his or her position without adequate cause, and/or that any trustee improperly influenced or attempted to influence staff changes at any District site, the District disagrees with this finding. (Penal Code § 933.05(a)(2).)

**Explanation:** To the extent any staff perceived that the removal of any staff member at any school was moved due to the improper influence of a single trustee, such a perception would be inaccurate and contrary to established District practice and Board Governance Policies. The Board is not involved in decisions regarding the assignment or reassignment of site personnel. Rather, pursuant to a Board adopted resolution, that authority is delegated to the Superintendent.

Further, as acknowledged by the Grand Jury, no individual trustee has the power to direct personnel actions. The Board acts as a collective, and any action taken or direction given by the Board to the Superintendent requires approval of a majority of the Board. (See Board Governance Policies B/SR-2: Single Unit Control, providing that "the board will direct superintendent only through official decisions of the full board" and that "the superintendent is neither obligated nor expected to follow the directions or instructions of individual board members;" and B/SR-3: Staff Accountability, providing that the board "will not give direction to any employee other than the superintendent" and that the board will not "formally or informally evaluate any staff member other than the superintendent and any other direct reports.")

This finding also ignores applicable laws and district rules pertaining to personnel actions. The finding is based in part on the apparently reported "fact" that certain staff members were "removed" from a school "in spite of the fact that they performed well in their positions;" thereby implying they must have been removed for an improper reason. However, there are a myriad of reasons that an employee may move from one position to another, including voluntary or involuntary transfer, site or district reorganization, budgetary considerations, and/or leave of absence. Such moves are governed by applicable provisions of the Education Code, the district's collective bargaining agreements, and the Classified Regulations of the District.

While other staff may draw inferences from the simple fact of a move, personnel matters regarding performance, evaluation, and requests for personal leave are confidential by law. For that reason, it is unlikely – and certainly should not be assumed – that the perceptions of other staff as to 1) whether an employee performed well in their position; or 2) the reason for their reassignment (whether voluntary or involuntary) are accurate.

**Finding #02:** Several school staff members testified that they made decisions regarding a trustee's child out of fear of retribution.

**Response:** The District has no basis to agree or disagree as to what any witness testified to and is, therefore, unable to respond.

**Explanation:** Grand Jury testimony is confidential. The transcripts of interviews conducted in connection with this investigation have not been released. Therefore, the District cannot know what was or was not testified to.

**Finding #03:** A trustee may have failed to follow the Code of Conduct and Governance Culture GC-7, Section 2.a, by attempting to interfere with operational issues at a school attended by their child.

**Response:** A "finding" that something "may" have occurred is really no finding at all. To the extent it is alleged that a trustee actually failed to follow the District's Code of Conduct and/or Board Governance Policy GC-7, the District disagrees with this finding (Penal Code § 933.05(a)(2)).

**Explanation:** The District is unaware of any trustee failing to follow the referenced Board Governance documents. Notably, there are no facts in the report which indicate any actual wrongdoing on the part of any trustee, nor are there any findings of wrongdoing. The entirety of this report is based upon the subjective perception of unidentified persons.

**Finding #04:** These actions conflict with Governance Culture Policy GC-7, section 1.c. "conflicts based upon the personal interest of any board member who is also a parent of a student in the district."

**Response:** The District disagrees with this finding. (Penal Code § 933.05(a)(2).)

**Explanation:** This "finding" is based on incomplete "facts" and implies without basis that District employees were wrongfully admonished or disciplined. First, the fact that confidential student information "may" have been improperly provided is not a fact, it is a mere possibility. Second, while it is likely that "an employee" somewhere in the

District was admonished at some point for violation of District policy regarding the handling of confidential student information, it does not follow that the admonishment was improper. District policy regarding the handling of confidential student information is based upon the Federal Educational Rights and Privacy Act ("FERPA"). If an employee violated a student's rights under FERPA, an admonishment would be entirely proper regardless of whether such conduct was reported by a trustee or someone else. Similarly, it would not be improper for the District to discipline an employee responsible for providing student support for failing to provide such support as was required in carrying out his or her duties.

**Finding #05:** District and school personnel have difficulty maintaining appropriate boundaries with a trustee parent as distinguished from a trustee without a personal interest in school operations.

**Response:** The District disagrees with this finding. (Penal Code § 933.05(a)(2).)

**Explanation:** Whether or not unidentified individual employees have difficulty maintaining "appropriate" boundaries with a trustee parent is wholly subjective as to each individual. The District has roughly 14,000 employees, all with arguably different views on what is or is not appropriate, and what is or is not comfortable, as it pertains to relationships with trustees. Certainly, it cannot be said that all employees – or even most employees – have difficulty maintaining appropriate relationships with all trustees when they are also parents of District students, as is asserted in this finding.

**Finding #06:** There is no perceived confidential procedure for employees to utilize when faced with conflicts regarding a trustee.

**Response:** Again, the District is not in a position to know the perceptions of individuals; specifically, whether they "perceive" there is a confidential means to address conflicts with trustees. To the extent it is alleged that a confidential procedure does not exist, the District disagrees with this finding. (Penal Code § 933.05(a)(2).)

**Explanation:** It is possible that some employees may have that perception, while others are aware of the many venues in which an employee may lodge a complaint. However, it is not true that the District does not have confidential procedures for employees to utilize when faced with conflicts with a trustee. There are several avenues for employees to raise such concerns in a confidential manner, including, but not limited to, the District's Fraud Hotline on which anonymous calls may be made to report, *inter alia*, trustee misconduct.

## **RESPONSE TO RECOMMENDATIONS**

### **Recommendation 15-30: Create a stand-alone Code of Conduct and Conflict of Interest Statement for Trustees.**

Response: This recommendation will not be implemented because it is not warranted. (Penal Code § 933.05(b)(4).) The District already has a Board Member' Code of Conduct (GC-7) and Board Member Conflict of Interest (GC-8), as well as other governance documents which cover conduct and conflicts of interest, and clearly delineate the roles and responsibilities of the trustees and their relationship with staff. (See Board Policies GC-2; Governing Commitments; GC-3 Board Job Description, in addition to those identified above in the District's response to Finding 1.) These documents are incorporated into the Board Governance Policy Manual, but stand on their own.

### **Recommendation 15-31: Require trustees to sign a formal declaration acknowledging their understanding and acceptance of the Code of Conduct and Conflict of Interest Statement for Trustees.**

Response: This recommendation will not be implemented because it is neither reasonable nor warranted. (Penal Code § 933.05(b)(4).) When each Trustee takes office, he or she affirms that he or she will carry out his or her office in accordance with all applicable laws, including the above-described Board-adopted governance documents. There is no benefit to additionally have each trustee sign a "formal declaration."

### **Recommendation 15-32: Implement a mandatory annual training program for all trustees regarding Code of Conduct, Conflict of Interest, Ethics, Roles and Responsibilities of Board Members.**

Response: This recommendation will not be implemented because it is not warranted. (Penal Code § 933.05(b)(4).) The Board collectively, and Board members individually, participate in multiple trainings and workshops regarding Board Governance. Immediately prior to or upon taking office, each trustee attends Orientation for New Trustees regarding Roles and Responsibilities provided by the California School Boards Association ("CSBA"). Thereafter, each trustee attends other trainings provided by CSBA, which may include ethical and appropriate behavior, human resources practices, legislative policy issues, educational policy and/or strategic leadership. A summary of the trainings attended by the District's current trustees is attached. In addition, the Board holds a Board Workshop annually in which they conduct a self-assessment regarding their performance in the context of the District's Board Governance Policies, Code of Ethics and Code of Conduct.

**Recommendation 15-33:** Implement a mandatory in-service program for school staff, administrators, and faculty to include the roles and responsibilities of staff when interfacing with trustees or district administrators, including the appropriate conduct when a trustee or administrator is also the parent of a child who attends the school.

Response: This recommendation will not be implemented because it is neither reasonable nor warranted. (Penal Code § 933.05(b)(4).) Over the years, several board members have had children attending District schools. Only rarely has there been a complaint and all have been handled appropriately without the need for District-wide training. The District has limited resources and does not agree that the benefit of providing a mandatory training for all school staff to address the few circumstances in which a trustee may have a child in the school justifies the expense of providing such training.

**Recommendation 15-34:** Establish the position of Ombudsman as part of a newly developed independent confidential process for all employees to report and resolve complaints in the district without fear of reprisals.

Response: This recommendation will not be implemented because it is neither reasonable nor warranted. (Penal Code § 933.05(b)(4).) The District already has a confidential process via its Fraud Hotline for an employee to make complaints without fear of reprisal. These complaints are handled by the Office of Internal Audit which is charged with ensuring appropriate handling. The District does not believe that an additional Ombudsman is needed; nor does it believe that any benefit to be derived from creating an additional (and duplicative) process and position justifies the cost thereof.

**Recommendation 15-35:** Establish an Ethics Review Panel independent of the San Diego Unified School District to monitor Board Member actions.

Response: This recommendation will not be implemented because it is neither reasonable nor warranted. (Penal Code § 933.05(b)(4).) As noted above, the District maintains a Fraud Hotline which is monitored by the Office of Internal Audit. That department is charged with, among other things, ensuring that District employees and trustees are acting ethically. Additionally, the California Fair Political Practices Commission has a hotline that any citizen may call to report unethical behavior on the part of public officials. Finally, the Board Governance Policies contain a process for addressing board member violations. (See GC-9: Process for Addressing Board Member Violations.)

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Overreach: Abuse of Power?"

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August 19, 2015

**Conclusion**

On behalf of the Board of Education and its staff of the San Diego Unified School District, we appreciate your concern for our District.

Sincerely,



Cindy Marten  
Superintendent of Public Education

## Board Member Conference Training Sessions

| Barrera  | Beiser   | Evans  | Foster  | McQuary   |
|--|--|--|---|---|
| CSBA Annual Education Conference<br>San Diego, CA<br>December 4-6, 2008<br>Orientation for New Trustees - Roles and Responsibilities         | CSBA Annual Education Conference<br>San Francisco, CA<br>November 30-December 5, 2010<br>Orientation for New Trustees - Roles and Responsibilities | CSBA Annual Education Conference<br>San Diego, CA<br>December 4-6, 2008<br>Orientation for New Trustees - Roles and Responsibilities         | CSBA Annual Education Conference<br>San Francisco, CA<br>November 27-December 1, 2012<br>Orientation for New Trustees - Roles and Responsibilities  | CSBA Annual Education Conference<br>San Francisco, CA<br>December 13-16, 2014<br>Orientation for New Trustees - Roles and Responsibilities  |
| CGCS Legislative Policy Conference<br>Washington, DC<br>March 18-22, 2011<br><br>New Member & New Attendee Orientation to Legislative Issues | CGCS Legislative Policy Conference<br>Washington, DC<br>March 18-22, 2011<br><br>New Member & New Attendee Orientation to Legislative Issues       | CGCS Legislative Policy Conference<br>Washington, DC<br>March 9-12, 2013<br><br>New Member & New Attendee Orientation to Legislative Issues  | CSBA Institute for New Board Members and Brown Act Workshop<br>San Diego, CA<br>February 8-9, 2013<br><br>Human Resources: How, when and where the board can impact personnel decisions; maintaining supportive personnel environment; guidelines and policies for contract negotiations. Brown Act: Ed Code requirements, board bylaws.  | CSBA Institute for New Board Members<br>Sacramento, CA<br>January 23-24, 2015<br><br>Human Resources: How, when and where the board can impact personnel decisions; maintaining supportive personnel environment; guidelines and policies for contract negotiations.  |
| CGCS Legislative Policy Conference<br>Washington, DC<br>March 19-23, 2010<br><br>New Member & New Attendee Orientation to Legislative Issues | CSBA Delegate Assembly & Luncheon<br>Sacramento, CA<br>May 13-15, 2011<br><br>New Delegates Orientation on Education Issues                        | CGCS Legislative Policy Conference<br>Washington, DC<br>March 21-25, 2014<br><br>New Member & New Attendee Orientation to Legislative Issues | CSBA Delegate Assembly & Luncheon<br>Sacramento, CA<br>May 16-18, 2014<br><br>New Delegates Orientation on Education Issues   | NSBA 75th Annual Conference<br>Nashville, TN<br>March 19-23, 2015<br><br>New Board Member Boot Camp: Ethical and appropriate behavior for school board members is expected. Yet problems arise during meetings that can interfere with important work getting accomplished. Interact with your colleagues in a mock school board meeting conducted by members of the NSBA Board Member Boot Camp Faculty to examine what works and what doesn't in your meetings. |
|  |  | CGCS Legislative Policy Conference<br>Washington, DC<br>March 13-17, 2015<br><br>New Member & New Attendee Orientation to Legislative Issues | CSBA Board President's Workshop<br>Sacramento, CA<br>January 24, 2015<br>Tools for Strategic Leadership: Leading a board requires strong leadership, strategic vision and the ability to pull together members of a team. CSBA's Board President's Workshop prepares you for this new role. Board members receive tips, tactics and techniques to build effective governance teams, conduct meaningful meetings and fulfill governance responsibilities, while focusing efforts on improved student learning and achievement. | CSBA Delegate Assembly & Luncheon<br>Sacramento, CA<br>May 15-17, 2015<br><br>New Delegates Orientation on Education Issues   |
|  |  |  | CGCS Legislative Policy Conference<br>Washington, DC<br>March 13-16, 2015<br>New Member & New Attendee Orientation to Legislative Issues  |   |