



## 2007-2008 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

# LUTHER BURBANK SCHOOL BOARD MEMBER RESIGNS AFTER GRAND JURY INVESTIGATION

### Introduction

The 2007-2008 Grand Jury (Grand Jury) received a citizen complaint that Gustavo De La Cruz, a member of the Luther Burbank School District Board of Trustees (Board), violated the California Education Code by continuing to serve on the Board for more than a year after moving out of the District.

### Background

The Luther Burbank School District (LBSD) consists of a single elementary school serving about 500 students from kindergarten through eighth grade in an unincorporated area of San Jose. LBSD is governed by a five-member Board, each of whom is elected to a four-year term. Board members are paid a stipend of \$120 per month for attendance at two board meetings per month. In addition, Board members receive health insurance benefits for themselves and their families or may alternatively elect to receive \$3000 per year in lieu of benefits.

California Education Code Section 35107 requires that any elected or appointed member of the governing board of a school district be a resident of the school district. The State Attorney General defines "residence" as a domicile, or place of physical presence coupled with an intention to make that place one's permanent home; a person may only have one domicile at any given time. Further, the Attorney General concludes that Government Code Section 1770 requires continued residency for school board officials, finding that an election residence requirement remains during the entire term of office as a continuing qualification for holding the office.

Section 35010 of the California Education Code states that the governing board of each school district shall prescribe and enforce rules not inconsistent with law for its own government.

### Discussion

The LBSD Superintendent and various Board members were initially informed in September 2006 and subsequently received an anonymous letter in October 2006 stating that Board member Gustavo De La Cruz had moved to a new residence outside the District boundaries and that renters were living in his former residence within the District.

The nonresidency issue was discussed under the subject Possible Board Vacancy at the November 16, 2006 LBSD Board meeting. The meeting minutes show that another Board member confirmed two couples were renting the home and that Mr. De La Cruz stated he planned to move back into the house in two months. Mr. De La Cruz continued to attend all LBSD Board meetings, vote on LBSD issues, and collect both the monthly \$120 stipend and the \$3000 per year in lieu of benefits. However, no evidence of subsequent occupancy of the house by Mr. De La Cruz is available, and LBSD mail sent to him at that address has been returned to the LBSD office. In November 2007 the California School Boards Association sent a District Roster Update to the LBSD office listing a new address outside the District for Mr. De La Cruz. The LBSD Board failed to monitor and validate Mr. De La Cruz's residency status after the November 2006 discussion.

The Grand Jury investigated the matter using resources of the Santa Clara County District Attorney's Office and confirmed that Mr. De La Cruz was in fact residing outside the District. The LBSD attorney was informed of the issue and presented that information to Mr. De La Cruz, who resigned effective March 7, 2008.

## **Conclusions**

Mr. De La Cruz was not a resident of the Luther Burbank School District from September 2006 until his resignation in March 2008 and according to the Education Code was not eligible to serve on the Board during that time. His continuing Board membership was in violation of the California Education Code.

Mr. De La Cruz improperly received LBSD Board member benefits of a monthly stipend and cash in lieu of benefits during the time of his nonresidence.

## **Findings and Recommendations**

### **Finding 1**

Gustavo De La Cruz was not a resident of LBSD and improperly failed to resign from the LBSD Board upon moving out of his residence in the District. During the time that he continued to serve on the Board while failing to fulfill the residency requirement under California law, he collected his monthly stipend and cash in lieu of health benefits from the District.

### **Recommendation 1**

The Grand Jury recommends that LBSD pursue legal means to recover all compensation, with interest, that was paid to Mr. De La Cruz during the time that he no longer resided within the District but continued to serve on the LBSD Board of Trustees.

### **Finding 2**

The LBSD Board failed to carry out its responsibility to comply with the requirements of the California Education Code by allowing a nonresident Board member to continue to serve on the Board.

## Key References

### Documents

California Education Code, Sections 35010(b) and 35107(a).

California Government Code, Section 1770.

California School Boards Association. *District/COE/ROP Roster Update*, November 19, 2007.

Concerned Citizens of Burbank, to President, Luther Burbank School District Board of Trustees. Letter, October 20, 2006.

De La Cruz, Gustavo, to Santa Clara County Board of Education. *Subject: Resignation as Board Member of LBSD*, March 7, 2008.

Luther Burbank School District Board of Education. *Minutes of Meeting*, November 14, 2006.

State of California, Office of the Attorney General. 75 Ops.Cal.Atty.Gen. 287, 288 (1992).

State of California, Office of the Attorney General. 79 Ops.Cal.Atty.Gen. 243, 245 (1996).

State of California, Office of the Attorney General. 81 Ops.Cal.Atty.Gen. 94, 98, 101 (1998).

State of California, Office of the Attorney General. 83 Ops.Cal.Atty.Gen. 181 (2002).

### Interviews

February 12, 2008      Superintendent, Luther Burbank School District

**PASSED** and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 17<sup>th</sup> day of April, 2008.

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Raymond A. Blockie, Jr.  
Foreperson

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Tim Cuneo  
Foreperson pro tem

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Kathryn C. Philp  
Secretary