

## 2001-2002 SANTA CLARA COUNTY CIVIL GRAND JURY

### INVESTIGATION INTO OPERATIONS OF THE ORCHARD SCHOOL DISTRICT

#### ABSTRACT

In the summer of 2001, the Santa Clara County Civil Grand Jury received two citizen complaints regarding conditions at San Jose's Orchard School District (OSD). The complaints specifically described certain allegedly improper activities of the superintendent. About that same time, OSD began receiving critical attention from the media, including stories in the Metro and San Jose Mercury News newspapers as well as mention on ABC Channel 7 television.

The Grand Jury conducted an extensive seven-month investigation into the reported problems at OSD. The investigation exposed a large number of questionable policies and actions within the district. The Grand Jury chose to focus its attention on the most recent school year (2000-2001) and the OSD board of trustees' (the board) performance in meeting its legal and ethical responsibilities to oversee the district and properly manage the superintendent's actions.

The Education Code permits a school district to employ a superintendent and to delegate to the superintendent any of the duties specified by the Education Code (sections 30526). However, the governing board retains *ultimate* responsibility for performance of those powers or duties delegated (section 35161).

The Grand Jury found that the board failed to manage the fiscal affairs of the district in a prudent and responsible manner, while exhibiting flagrant disregard of certain provisions of the Education Code and the Ralph M. Brown Act (Brown Act). The

superintendent admittedly contributed to a chaotic situation at the district; however, it was the board's irresponsible performance that allowed the situation at OSD to reach a catastrophic level.

Several Grand Jury recommendations have been addressed to the Orchard School District Board of Trustees delineating ways to prevent such problems in the future. One Grand Jury recommendation has been addressed to the Santa Clara County Office of Education to increase its efforts at providing support to school districts.

## INTRODUCTION

In August 2001 the Santa Clara County Civil Grand Jury received two citizen complaints alleging, among other things, “there has been significant mismanagement and misconduct of Federal and State funds; unethical and illegal procedures; fraud in district contracts...” As authorized by California Penal Code Section 933.5, the Grand Jury conducted a seven-month investigation of Orchard School District (OSD) operations, concluding in February 2002.

After a preliminary review of the situation at OSD, the Grand Jury narrowed the scope of its investigation to the most recent school year (2000-2001). This was the period when confusion, dissatisfaction and criticism among educators and community members accelerated to a state of crisis. This was also the last full year of service for the superintendent. The area of Grand Jury focus was the performance of the board in meeting its legal and ethical duties and responsibilities. The Education Code permits a school district to employ a superintendent and to delegate to the superintendent any of the duties specified by the Education Code (sections 30526 and 35250). However, the governing board retains *ultimate* responsibility for performance of those powers or duties delegated (section 35161).

While the financial state of the district was also of interest to the Grand Jury, the finances were concurrently being investigated by others, including California’s Fiscal Crisis and Management Assistance Team, as ordered by the state superintendent of public instruction.

In the course of its investigation, the Grand Jury visited the school, received testimony from three members of the board of trustees,

one past board member, the two complainants and the superintendent of OSD. In addition, the Grand Jury interviewed the county superintendent of schools and two of her staff, the consultant/acting superintendent of OSD, and members of the district staff. The Grand Jury read and reviewed the district policies and by-laws, all board minutes and agendas for the past three years that were made available, various budget and expense reports, copies of memos and letters, newspaper articles, and a television news video segment.

Over the course of its investigation, the Grand Jury formally requested minutes, agendas and other documents from OSD on three occasions. Despite these requests, a number of these legally required documents were never provided to the Grand Jury.

## BACKGROUND

Orchard School District is located three and one-half miles northeast of downtown San Jose close to the junction of Highway 880 and Highway 101. It is the oldest school district in Santa Clara County, formed in 1856 by immigrants and gold prospectors. It has approximately 50 teachers and 800 kindergarten to eighth-grade students who present both ethnic and financial diversity. About forty percent of the students qualify for poverty line assistance: reduced fees or no fees for lunch and other concessions.

The district operates just one school, located at 921 Fox Lane, San Jose. The combination school and district office is a new facility having a complex of 48 classrooms in several buildings and an administration wing. Students moved into the new school in January 1998.

Members of the five-seat board are normally elected to fill four-year terms. During the

past two years (2000 and 2001), various vacancies have occurred. Two members (including a long-time president of the board) resigned because they no longer lived in the district. Normally these seats would have been filled by appointment until the next election, but one appointee was forced to resign shortly after taking office when it was discovered he was not a registered voter. Subsequent to a November 2001 election, the board returned to full strength in 2002. One of two running incumbents was returned to office and two newcomers were selected. One other incumbent was not up for reelection. A fifth member of the current board was appointed to fill a vacancy just prior to the election.

In 1998, the OSD trustees hired a full-time superintendent to replace the previous part-time and consulting administrators. The new superintendent previously had been an assistant superintendent in Santa Cruz County. Testimony showed that the board established as a singularly important priority that the new superintendent raise academic expectations and improve student test scores.

OSD has accumulated substantial financial resources in recent years. In 1998 a \$20 million bond issue was passed. This bond money enabled the district to construct the new school, which was finished in January 1998. The district passed another bond issue for \$16 million to pay for capital improvements in 1998. In addition, OSD had banked approximately \$5 million from the sale of a site on Gish Road, San Jose in 1998. Most recently, in the fall of 2001, the 3,300-voter district again passed a bond issue, this time a \$40 million measure for the purchase of adjoining land and the anticipated construction of more classrooms.

During the 2000-2001 school year, many parents became mistrustful of the

superintendent and, to some extent, the board. In March, teachers issued a no confidence vote regarding the superintendent. The distrust was also manifest in complaints to the media and the Grand Jury.

On May 14, 2001, ABC Channel 7 television began a series of investigative stories about the district, claiming, among other things, excessive spending on the part of the superintendent. The stories alleged the superintendent was inaccessible to parents and teachers and that some board members did not reside within the district. During the same time, the Metro and San Jose Mercury newspapers began publishing stories critical of activities at OSD. Soon, the California Superintendent of Public Instruction asked the Santa Clara County Superintendent of Schools to investigate possible financial irregularities in the district.

As of February 2002 (the date of this report), OSD was in a state of organizational and fiscal crisis, the superintendent and his special assistant had resigned, and an interim superintendent was working to alleviate the innumerable problems. The district was more than \$2 million overspent in its \$4.5 million budget for 2000-2001. In addition, a Coordinated Compliance Review conducted by the state revealed more than 30 areas of noncompliance to educational requirements.

## **FACTS**

1. District policies and by-laws were intact and available to guide the board and administration in performing their duties. The board members attended training conferences at least one time per year, and they had legal advice and assistance at their disposal.

2. On March 26, 2001, the OSD teachers' association announced a no-confidence vote in the superintendent. There is no evidence that the board undertook action or initiated an investigation of the situation. In later testimony to the Grand Jury, board members said they chose to accept a simple explanation offered by the superintendent, which was that teachers were upset about having to work a little harder.
3. As complaints mounted, the board and the superintendent made promises that specific efforts would be made to improve parent-district communication and parent feedback would be solicited. Nevertheless, the Grand Jury heard testimony that parents continued to have problems obtaining answers to questions raised both privately and during board meetings. Parents stated they were unable to meet with the superintendent and promises of forthcoming answers were not fulfilled.
4. Board members testified they were often unaware of expenditures until asked by the superintendent to approve them after the fact. The board allowed these practices to continue.
5. The superintendent and his staff made prodigious use of the district credit card, and frequently neglected to provide documentation in the form of receipts. This practice exacerbated an apparent lack of financial controls within the district. In January 2001, the board was presented with an official audit of the 1999-2000 fiscal year completed by Boren and Company, an accountancy corporation. The audit noted that approximately one-sixth of the district's non-payroll expenditures were paid by credit card. The board took no discernible action to remedy or curtail this practice.
6. In spite of the Boren and Company audit, which raised other indicators of budget problems, including an unfavorable variance of more than \$2.5 million for the 1999-2000 fiscal year, the board took no apparent action to avoid further financial difficulty. No layoff notices were issued and the Grand Jury could find no evidence of budget reductions.
7. In June 2001, the board authorized a 25 percent raise in the superintendent's salary, increasing his compensation from \$106,000 to \$133,000 per year. Other members of the superintendent's staff received increases and/or bonuses as well. These raises were granted despite the growing unrest and complaints from teachers and parents. Board members' testimony to the Grand Jury indicated they were oblivious to the mounting financial crisis.
8. On June 26, 2001, the acting board president signed a new three-year contract for the superintendent. The Grand Jury reviewed all documentation that was provided by OSD and was unable to trace how or when the contract was approved. As late as October 15, 2001, one board member testified to the Grand Jury that he had never seen the contract and was unaware of its existence.
9. In August 2001, the superintendent of public instruction called for an audit of OSD. She directed the county office of education to call in California's Fiscal Crisis and Management Assistance Team to examine the district's books. Subsequently, a district representative announced the district is more than \$2

million over budget for the 2000-2001 fiscal year.

10. In September 2001, the superintendent's special assistant resigned after it was discovered he was the source of threatening emails sent to a television reporter who was responsible for unfavorable reports about the district and its management.
11. Board meeting agendas were not consistently posted 72 hours before the meetings as required by the Ralph M. Brown Act (Brown Act). The Brown Act, California Government Code Sections 54950 to 54962, establishes specific requirements to ensure that the business of government shall be conducted in an open manner. Specifically, Section 54954.2 requires the posting of agendas 72 hours before meetings.
12. Actions taken by the board in closed sessions were not consistently reported in an open session, a violation of the Brown Act. The Grand Jury confirmed a number of times when actions were taken in closed session but minutes reported "no action taken." Often these actions were not reported until the following month's minutes. Other times, the Grand Jury could find no record of actions having been reported.
13. Minutes of board meetings were often unavailable for approval by the board members at the next meeting (usually one month later). Board members testified that minutes sometimes arrived weeks or months after the fact, and they were approved whenever presented. Board members were unable to say if minutes for every meeting throughout the past two years had been presented for approval.
14. The board did not always follow the posted agenda. One example is the board's June 2001 decision to seek approval of a multi-million-dollar bond during the November 2001 election. This item was not properly placed on the published agenda as required by the Brown Act, effectively eliminating opportunity for public debate. After public outcry, the oversight was legally corrected by putting the item on a later agenda and recasting the formal vote of trustees.
15. Decisions made and actions taken at the open session board meetings were not always recorded in the board minutes. Some items were recorded in such an abbreviated manner that it was difficult to follow the proceedings. It was difficult for the Grand Jury to track actions, such as the decision to grant salary increases or the decision to renew the superintendent's contract. After seven months of investigation and numerous requests for documentation, the Grand Jury has been unable to construct an adequate record of the district's activities during the 2000-2001 school year. Many agendas and minutes remain missing. Language is cryptic at best, and documents are sometimes contradictory. For example, at a June 2001 meeting regarding the extension of Dr. Jones' contract, it was reported that all five board members were present, yet the vote count was shown as 4-0 with no abstentions. No explanation is given for this discrepancy.
16. Testimony to the Grand Jury by OSD board members and the retired board president regarding key board actions was at times confused, vague, and contradictory. This testimony indicated that board members:

- a) may not have completely understood their responsibilities;
  - b) accepted the superintendent's assurances that finances and operations were in order without proper confirmation or documentation;
  - c) were reluctant to, or unsure of how to, direct the superintendent to provide budgets, minutes and other required crucial documentation; and
  - d) were unable to recount details of policies and practices, including matters such as the course of contract approvals, when and how budgets were reviewed, when and how the superintendent's performance was evaluated, and the nature of topics discussed in closed sessions.
17. The trustees and the superintendent lowered class sizes in all grades in an attempt to improve test scores by simply hiring more teachers. Immediate improvement in test scores did result; however, the ensuing increase in salaries contributed to serious deficits in the budget.
18. The current ratio of students to teacher is 16:1 at every grade level in OSD, kindergarten through grade eight. The state currently provides funding to allow a 20:1 ratio in kindergarten through grade three only. Unfortunately, the district lacked an adequate plan of how to cover the additional costs. The Grand Jury heard testimony that the superintendent and board planned to use the proceeds or interest from either the Gish Road sale or the bond funds, possibly both. This move would be illegal without a special waiver from the state, which was not applied for until after the fact. The state granted the waiver in January 2002.
19. A district review of teacher assignments in October 2001 revealed that only three of 11 teachers in grades six, seven and eight were assigned within their credential areas. As of January 2002, several teachers remained unassigned to classrooms.
20. There was no evidence that OSD utilized realistic enrollment projections in hiring teachers, a standard practice in school administration. OSD is overstaffed with teachers. The District cannot release excess teachers during the current school year since notification was not given by the March 15, 2001, deadline as required.
21. The 2001-2002 OSD budget was more than three months late to the county office of education. When it did arrive, it was not approved. This is one of the few times in Santa Clara County history that a school district's budget has been rejected.
22. In April 2001, the California Department of Education's Coordinated Compliance Review Committee documented more than 30 areas in which OSD was out of compliance with California Department of Education requirements. Board members and the superintendent testified to the Grand Jury that they were not aware of this situation.
23. OSD personnel practices during 2000-2001 were out of compliance with the district's own policies and bylaws. There was a lack of documented job descriptions at all levels. Staff evaluations were erratic and did not follow state guidelines and requirements.

24. For the 2000-2001 school year, the state found many erasures on student tests in at least one class and withdrew a \$70,000 award that had been based on test score improvement.
25. Prior to March 2001 there had not been a continuously functioning School Site Council, a violation of Education Code Sections 52011 and 52012. During this time, parents and staff were asked to sign documents, implying that the council existed when it did not.
26. A school-wide plan, including a needs assessment, developed with broad involvement of school personnel and parents was not in place, as required by Education Code Section 52011.
27. There was no Gifted and Talented Education Program (GATE) during the 2000-2001 school year. It is unclear just how long this situation had existed prior to 2000-2001. Until parents openly complained, the district had improperly accepted the GATE money issued by the state. The 2000-2001 money has since been returned.
28. No process was in place for disseminating information about the complaint procedures to students, employees, parents, guardians, school advisory committees and interested parties, as required by district policies 1313 and 1314.
29. Because the OSD English Language Learners Program has been frequently out of compliance, the district has been targeted by the state department of education to participate in a specialized process of strict monitoring and intensive assistance. This program targets chronically non-compliant English Language Learners Programs

statewide. Only ten districts per year are assigned to the program.

## FINDINGS

The Grand Jury finds that the OSD board was negligent in performance of its duties in a number of important areas.

1. Despite having had training and despite the availability of outside support resources, the OSD Board of Trustees erred in at least three major areas: business and organizational management; compliance with state education codes; and compliance with the Brown Act. (Ref. Facts #1-29)
2. The board exhibited gross negligence in financial planning and control, including: failure to monitor expenditures versus budgets; failure to assess the risks associated with budget planning assumptions; and failure to ensure adequate funding for all district policy decisions. Various education codes limit or require special authorizations to move district monies between general operational funds and “capital” funds (including interest). The evidence collected by the Grand Jury indicates that the board and superintendent either did not understand these requirements or chose to ignore them. (Ref. Facts # 4, 5, 6, 7, 9, 16, 17, 18, 20, 21)
3. The board failed to understand the balanced management focus necessary to accomplish concurrent district goals. The board and the superintendent focused almost entirely on test scores to the exclusion of other critical areas. (Ref. Facts # 17, 18, 19, 20, 22, 25, 26, 27, 28, 29)
4. The board did not recognize or act upon the seriously deteriorating relationship

among members of the administration, staff and community. (Ref. Facts # 2 & 3)

5. Personnel decisions were made without projections for determining needs. The resulting imbalance of teaching staff contributed to the serious shortfall in the 2000-2001 budget. (Ref. Facts # 18, 19, 20)
6. The board did not follow state guidelines to ensure fair personnel practices for all employees. (Ref. Facts #19 & 23)
7. The board and its administration failed to consistently create and maintain the documents necessary to maintain orderly records of its meetings and official actions as required by California Education Code Section 35163. (Ref. Facts # 12, 13, 15)
8. The board failed to make timely reports of budgets and expenditures to the county office of education as required by California Education Code Section 42100. (Ref. Fact # 21)
9. The district failed to monitor the status of compliance to legal mandates. The board was oblivious to these issues, thereby incurring risk to the district's legal status and, in some cases, to the quality of education being provided OSD students. (Ref. Fact # 22)
10. The board failed to consistently post required agendas sufficiently ahead of meetings and then failed to consistently follow the agendas during meetings as required by the Brown Act. This omission hindered the public's ability to understand when and how decisions were to be made. Consequently, the public's ability to make fair comment before the board was abridged. (Brown

Act Section 54954.2) (Ref. Facts # 11 & 14)

11. The board failed to conduct closed sessions in the approved manner, including properly reporting actions taken, as required by the Brown Act. This omission thwarted the public's ability to understand what was happening in the district. (Brown Act Sections 54954.2 and 54957). (Ref. Fact # 12)

## CONCLUSIONS

The story of OSD is a cautionary tale for school boards statewide. The public trust was breached at almost every level of OSD administration. As the district teetered between difficulties and chaos, the consequences of the board's weak governance grew increasingly serious.

In the opinion of the Grand Jury, the most troublesome blunder at OSD was an apparent lack of respect for the public's right to oversee the business of the district. This disregard for the principle of open government by the OSD board and superintendent was evidenced by outright neglect of the Brown Act and relevant sections of the appropriate California codes.

The public has both a right and a duty to ask reasonable questions and to expect that those questions be answered. This process provides a safeguard that is critical to the successful operation of democratic government. At OSD, a careless board and autocratic administration created an environment ripe for disaster. Had the public been given proper access to the workings of the district, the problems at OSD might have been recognized and averted before the current crisis.

School board service is an important job. Demands upon trustees are both serious and complex. Trustees should acquire as much training and support as reasonably possible if they expect to perform their duties properly. Such training serves best when it includes emphasis on board responsibilities for policy making, basic management oversight decisions, attention to the law and monitoring of the financial health of the district.

### RECOMMENDATIONS

The Grand Jury recommends that the Orchard School District Board of Trustees:

1. Perform a thorough assessment of board needs and responsibilities and then define, document and implement an annual plan to train board members, particularly in the areas of business and organizational management. Support resources are available at the county office of education, the California School Board Association, private consulting and training firms, and through legal counsel. (Ref. Findings # 1, 2, 3, 5)
2. Review major sections of the applicable California codes as they relate to the duties of the board and then define, document and implement a plan to make effective use of advice from legal counsel in these areas. (Ref. Findings # 1, 2, 5, 7, 8, 9, 10, 11)
3. Distribute information once a year to parents and other community members regarding provisions of the Brown Act and district procedures for handling complaints and questions. (Ref. Findings # 4, 10, 11)

4. Define and document a clear plan of objectives, priorities and expectations for the superintendent and then implement a procedure for frequent review and updating of this plan. (Ref. Findings # 2, 3, 4)

5. Communicate to staff and the public accurate, detailed records of the boards' actions and decisions as they occur. (Ref. Findings # 4, 7, 10, 11)

The Grand Jury recommends that the Santa Clara County Office of Education:

6. Define, document and implement a plan to increase its efforts at offering support services to school districts, particularly in the areas of financial management, budget preparation and education code requirements. (Ref Findings # 1-7)

**PASSED and ADOPTED** by the Santa Clara County Civil Grand Jury this 14<sup>th</sup> day of March, 2002.

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Bruce E. Capron  
Foreperson

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Norman N. Abrahams, DDS  
Foreperson Pro Tem

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Joyce S. Byrne  
Secretary