



East Side Union High School District

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Academic, personal and social success for each and every student.

Dan Moser, Acting Superintendent

October 9, 2009

FILED

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DAVID H. YAMASAKI
Chief Executive Officer/Clerk,
Superior Court of CA County of Santa Clara
BY D. ALDYCKI

VIA FAX (408) 882-2795 AND U.S. MAIL

Honorable Jamie A. Jacobs-May
Presiding Judge
Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

Re: Response to Grand Jury Report Dated June 15, 2009

Dear Judge Jacobs-May:

As Acting Superintendent of the East Side Union High School District ("District"), I am responding to the above-referenced Grand Jury Report entitled, "Who Really Benefits From Education Dollars? (Hint: It's Not the Students)", on behalf of the East Side Union High School District ("District"). The Board of Trustees at their meeting of October 8, 2009, on a 4/1 vote approved the response below for submission to the Santa Clara County Civil Grand Jury. A copy of the Board approved minutes will follow once the minutes are approved by the Board at their November 19, 2009, meeting.

The responses set forth below are submitted in compliance with California Penal Code section 933.05. Before enumerating the District's responses, I believe it is important to take into consideration that each member of the District's Board of Trustees ("Board") is volunteering his or her time to the community. The tremendous number of hours per month each Board member puts into his/her Board position includes reviewing Board agendas and accompanying materials, meeting with community leaders and stakeholder groups, visiting school sites, etc.

Some of the areas that a school board is responsible for making decisions pertain to complex budgeting and personnel matters. In addition, if a major construction project is undertaken, a school board is responsible for reviewing and approving or rejecting or modifying change order requests from construction contractors.

Furthermore, Board members also meet individually with the Superintendent to go over a wide variety of matters that the Board has jurisdiction and authority to act on. In order to be able to make informed decisions, it is highly desirable for Board members to attend conferences in which they receive training and updates on such areas as the Brown Act, the evaluation of superintendents, personnel matters, and curriculum and instruction.

Finally, I believe it is worth noting the District, with approximately 26,000 students, is the second largest school district in Santa Clara County.

BOARD OF TRUSTEES: Frank Biehl, Eddie Garcia, J. Manuel Herrera, Patricia Martinez-Roach, Lan Nguyen

It is the policy of the East Side Union High School District not to discriminate on the basis of sex, age, religion, race or national origin, sexual orientation, or handicapping condition in its educational programs and activities or in the recruitment and employment of personnel.

FINDING 1:

Boards of Trustees approve overly generous benefits to themselves, which include the following:

- Fully paid health benefits for trustees and their families (often exceeding those of teachers and/or with no payment ceiling)
- Excessive travel and conference costs
- Pension contribution

Response to Finding 1:

Disagree. The Education Code and Government Code provide that trustees' benefits may be paid by the District in which they are elected to serve. The benefits provided by the District to its Board members are in compliance with the statutory limitations and requirements.

Health benefits and pension contributions are ways to encourage qualified members of the community to run for office and to remain in office once elected. Most Board members provide countless volunteer hours beyond the time required to prepare and participate in Board meetings.

The District has already reduced travel and conference costs, and will continue to study and implement ways to contain these types of costs and expenses. Board member travel is not excessive. For example, not all Board members attend the annual CSBA conference, although money is budgeted for all Board members to attend that conference. Board members attend CSBA to receive education and training on issues affecting public schools in order that each member may be better prepared to execute the duties and responsibilities of his/her office.

RECOMMENDATION 1:

Boards of Trustees should carefully review the benefits listed in Finding 1 and:

- Eliminate health benefits for Board Members
- Minimize travel and conference costs
- Eliminate pension contributions

Response to Recommendation 1:

Bullet 2 of Recommendation 1 has been implemented. The District has taken steps to minimize travel and conference costs.

Regarding bullet 3, pension contributions through CalPERS or CalSTRS is not optional if salary compensation is provided.

The remainder of Recommendation 1 will not be implemented because it is not warranted. Typical health benefits and pension contribution policies in county districts are not "overly generous" when weighed against the duties of the position, and the importance of attracting qualified candidates. Eliminating them would discourage incumbents from staying and discourage new qualified candidates from running for school board, not desirable ends.

FINDING 2:

Boards of Trustees are approving overly generous benefits to Superintendents and Chancellors, including the following:

- Auto allowances (auto leases/purchases, insurance, maintenance, etc.) to superintendents
- Housing allowances
- Million dollar housing loans at zero or below market interest rates
- Guaranteed annual step and/or longevity increases
- Signing Bonuses
- Contract buyouts
- Excessive performance bonuses
- Per diem payments when out of the district
- Personal technology allowances professional memberships and subscription allowances
- Excessive travel and entertainment expenses
- Salary increases automatically triggered by increases in teacher's salaries which are in addition to other guaranteed salary increases
- Pension allowances (in addition to regular STRS/PERS contributions)
- Advanced degree stipends
- Lifetime medical insurance benefits
- Annual physicals

Response to Finding 2:

Disagree. Considering the challenges required to manage and oversee a school district of more than 26,000 students, and the high cost of living in Santa Clara County, the Board has managed to compensate its superintendent at a reasonable level. In this regard, it should be considered that the District's current superintendent's annual compensation is \$225,000; he has no car allowance, deferred compensation plan, life insurance or loans. In addition, the contract does not provide for any automatic COLA increases or annual physicals. California law allows that a public agency may unilaterally terminate an employee's employment contract without cause with a maximum of 18 months buy out. The current Superintendent contract provides for a buy-out of only up to 12 months, much less than the buy-out allowed by law.

RECOMMENDATION 2:

Boards of Trustees should carefully review and renegotiate the Superintendent/Chancellor benefits listed in Finding 2 for possible reduction and/or elimination.

Response to Recommendation 2:

The Board is bound by the terms of existing, approved contracts. The Board will carefully review and consider these issues at the next opportunity a new Superintendent contract is negotiated.

FINDING 3:

Superintendent salaries and increases appear to bear no relationship to the number of schools, students, and employees they oversee, nor their district's academic improvement.

Response to Finding 3:

Disagree. Based upon the facts set forth in the District's response to Recommendation 2, the District's current Superintendent's contract is reasonable when compared to similar-sized and smaller districts.

RECOMMENDATION 3:

The Board of Trustees should ensure that Superintendent/Chancellor salaries and increases take into account the number of schools, teachers, and students they oversee, and are tied to the district's students' progress and quantifiable metrics.

Response to Recommendation 3:

The recommendation has been partially implemented in that the superintendent's contract and evaluations do take academic performance into consideration.

FINDING 4:

Boards of Trustees hire costly search firms to recruit successors for retiring or dismissed Superintendents/Chancellors.

Response to Finding 4:

Disagree. The District's current superintendent, Robert Nuñez, was hired in 2005 without the services of a search firm. Mr. Nuñez was an internal District candidate. Prior to Mr. Nuñez, Dr. Esperanza Zendejas, was the District's superintendent from August 1, 2003 - June 20, 2005. The Board elected to retain the services of the search firm that resulted in Dr. Zendejas' hiring as the District's superintendent.

Before Dr. Zendejas, Joe Coto was the District's superintendent from January 1, 1989, until his retirement on May 30, 2003, and, therefore, the District did not need the services of a superintendent search firm during that time. Thus, the District has only once retained the services of a search firm for hiring a superintendent over the past 20 years.

RECOMMENDATION 4:

Boards of Trustees should conduct a preliminary search within the local area prior to hiring search firms.

Response to Recommendation 4:

Disagree. The Board disagrees because implementing this recommendation is not warranted. The Board will continue to exercise its discretion to determine when it is appropriate to hire a superintendent locally and when it is appropriate to retain the services of a search firm to conduct a state or nationwide search for the position of superintendent.

The District's response to Finding 4 above clearly establishes that the Board has not abused its discretion in the retention of superintendent search firms.

FINDING 5:

Board of Trustees approve the hiring of multiple private attorneys, in some cases at a tremendous expense.

Response to Finding 5:

Disagree. The Board disagrees with this finding. For the last several years, this District has adopted an outside General Counsel format for the delivery of legal services to the district. The data presented in the Grand Jury report establishes that the District's legal fees are among the lowest per student costs of any school district in the county.

RECOMMENDATION 5:

All Boards of Trustees should engage County Counsel whenever possible and leverage their buying power to negotiate lower fees with private law firms.

Response to Recommendation 5:

The District has retained County Counsel in the past. The hourly rates charged by County Counsel are greater than that charged by the District primary legal services provider.

Honorable Judge Jamie A. Jacobs-May
2008-2009 Civil Grand Jury
October 9, 2009
Page 6

FINDING 6:

The operation of 34 K-12 school districts and four (4) community college districts creates excessively high management and administrative costs. Five K-12 school districts have excessively high Superintendent costs per student, which is reflective of the district's having only one or two schools.

Response to Finding 6:

This is a find more properly responded to by the Santa Clara County Office of Education.

RECOMMENDATION 6:

A consolidation of districts should be considered to reduce the numbers and costs of Superintendents/Chancellors, Boards of Trustees, administrative staff and overhead.

Response to Recommendation 6:

The recommendation cannot be implemented by local boards and trustees, because under the California Education Code, consolidation of school districts is relegated to the people who live in the school district. Should communities wish to join with other communities to create larger school or community college districts, the process is clearly spelled out in the Education Code, under which a vote of the electorate can change district organization.

In Santa Clara County, voters from a few districts have chosen in the past to consolidate, but, for the most part, they have established a strong tradition and preference for local control of school districts.

If the Grand Jury of Santa Clara County needs further information or responses from the District, please contact me at your earliest convenience.

Sincerely,



Dan Moser
Acting Superintendent

cc: Board of Trustees