

# GAVILAN COLLEGE

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**FILED**

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

Don Kawashima  
Foreperson  
Santa Clara County 2008-2009 Civil Grand Jury  
Superior Court Building  
191 North First Street  
San Jose, CA 95113

Dear Mr. Kawashima:

Attached are the responses from the Gavilan Joint Community College District to the following grant jury reports:

**Who Really Benefits from Education Dollars? (Hint: It's Not the Students)**

Grand Jury Findings and Recommendations Concerning Inventory Practices and Superintendent/President Purchases

If you have any questions you can contact me at 408-848-4712.

Respectfully,



Steven M. Kinsella, D.B.A., C.P.A.  
Superintendent/President



Board of Trustees: Tom Breen

Elvira Zaragoza Robinson, Esq.

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## District Response to the Grand Jury Report, Who Really Benefits from Education Dollars? (Hint: It's Not the Students)

### 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

### 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

### District Response 1

The district disagrees with this finding.

The recommendation will not be implemented because the recommendation is not reasonable and is not warranted. Reasons for disagreement with the recommendation are provided in the following paragraphs.

#### Eliminate health benefits

This recommendation will not be implemented because it is not warranted and is not reasonable.

The Gavilan College Board of Trustees has for many years received the same medical, dental and vision package as all other employees. Board Members do not receive a greater or lesser level of benefits than what is provided to employees of the district. The total cost paid for health benefits for the seven members of the Board of Trustees was \$70,189. The Grand Jury report incorrectly reports the amount of health benefits provided to Gavilan College Board of Trustees to be zero.

District paid health benefits are authorized by law and are appropriate expenditures of funds in accordance with Government Code Section 53201 (a) that states:

*"The legislative body of a local agency, subject to conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body, as provided in subdivision (b), who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues, or other charges from their compensation, to the extent that the charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by Section 53205.*

The Gavilan Joint Community College Board of Trustees rejects the recommendation of the Grand Jury on the basis that the benefits are authorized under Government Code Section 53201 (a) and are equal to the benefits provided to employees.

The Grand Jury report makes a statement that the governing boards meet once or twice a month. It is accurate to say that the governing board meets as a board one day a month. However, the members of the governing board are responsible and accountable to their constituents 24 hours a day, seven days a week, 365 days a year. The legal responsibility assigned to governing board members is not limited to the short periods of time when boards are in session. Board members are always on call. They attend numerous community events on weekends, in the evenings and during holidays as representatives of the college. Their personal contact information is available to the public which allows members of the public unlimited access to the board members. In summary, being a board member is a full time responsibility with full time obligations. There is nothing inappropriate or unfair about receiving the same benefits offered to full time employees.

#### **Minimize Travel and Conference Costs**

This recommendation will not be implemented because it is not warranted and is not reasonable.

Education Code Section 72423 states that the governing board of a community college district **shall provide** for the payment of travel expenses of any representatives of the board when performing services directed by the board. Travel to attend conferences where board members received training and information about the responsibilities of board members and to advocate for the interests of the district are appropriate activities. Payment of travel costs to perform these duties is a normal, expected and an appropriate expenditure of public funds.

In conclusion the Board has determined that payment of travel and conference costs incurred to attend conferences and to travel to various locations to represent Gavilan College is an appropriate expenditure of public funds provided for in Education Code Section 72423. Boards may also claim for mileage reimbursement for their travel to and from the district in the performance of their duties. No board member has submitted a reimbursement request for that cost even though it is authorized.

At Gavilan College, Administrative Procedure 7400-Travel, approved in October 2006 provides regulations used by the college when reimbursing members of the Board of Trustees and college employees (including the Superintendent/President) for travel. AP 7400 provides for meal costs to be reimbursed using a per diem rate established by the United States Department of General Services. The daily per diem rate varies by geographic location and provides a payment that is restricted to the rates set by the Federal government. The rate varies mostly by geographic location where a conference is being held.

Relying on the Department of General Services is considered a fair method of reimbursing employees for travel costs. Employees can spend whatever amount they chose on meals and entertainment costs. However, no employee or board member is reimbursed for an amount that is more than the Department of General Services per diem rate. Use of the per diem method prevents the district from paying for expensive and elaborate meals at the most expensive restaurants and was intended to prevent the exact situation the Grand Jury has reporting as occurring at some district(s).

Use of the per diem method is fair to employees and to taxpayers. Using the Federal government rates and payment method adds objectivity to the process as another agency sets the reimbursement rates. Gavilan College considers this method one of the best practices available for reimbursement of employees and board members when paying for district travel and conference costs. It is indeed unfortunate that the Grand Jury for some reason considers use of this method as inappropriate while in the same document is chastising district employees and board members for consuming expensive meals and passing those costs on to taxpayers. Gavilan College could not disagree more and not only defends its practice, respectfully requests that the Grand Jury take the time to reevaluate its finding and recommendation about reimbursement for this necessary and appropriate cost of conducting district business.

#### ***Eliminate pension contributions***

This recommendation will not be implemented because it is not warranted and is not reasonable.

The district does not provide pension payments to members of the governing board.

#### **Finding 2**

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

- Auto allowances
- 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 subscriptions
- 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 STERS/PERS contributions)
- Advanced degree stipends
- Lifetime medical insurance benefits
- Annual physicals

## **Recommendation 2**

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

## **District Response 2**

The district disagrees with this finding.

The district will not implement this recommendation because it is not warranted and is not reasonable.

The items that the Grand Jury recommends be eliminated from contract provisions are in many cases considered best practices and are advocated for by associations of governing boards and chief executive officers which provide recommendations on elements that should be included in a contract with executive administrators.

Gavilan Joint Community College District includes the following provisions in its employment agreement with the Superintendent/President:

- An Auto and Business Expense allowance
- Contract buyout provision
- Per diem payments when out of the district on district business
- Pension allowances in excess of STRS and PERS

### Automobile Allowance

The district will not implement this recommendation because it is not warranted and is not reasonable.

The Superintendent/President and vice presidents receive a taxable automobile and business expense allowance. The monthly payment of \$1,000 has been in his contract since 2005. Vice presidents receive a similar allowance but the amount is \$450 per month. The Superintendent/President is responsible for being active in the communities served by the district. The Superintendent/President drives between 12,000 and 15,000 miles a year in performance of his duties. Providing an automobile and business allowance is an appropriate method to ensure the Superintendent/President is reimbursed for some portion of the costs incurred in order for him to perform his duties. The amount is not unreasonable and is within the level provided to other superintendent/presidents.

### Contract Buy-Out Provision

The district will not implement this recommendation because it is not warranted and is not reasonable.

The Superintendent/President and vice presidents have contract buy out provisions that can be invoked by the governing board at anytime. Having the ability to remove a superintendent/president or a vice president without cause prevents the district from

engaging in costly litigation that would result when disciplinary action is undertaken with the objective of terminating the administrator. The contract buyout provision is a tremendous cost savings measure that ensures the district and the superintendent/president understand the severance arrangement should the board decide it needs a change in this leadership position. This result will avoid litigation that may otherwise be initiated by a contract employee upon termination by the governing board. Gavilan College's contract buy out is twelve months for the superintendent/president and six months for the vice presidents.

#### Per Diem Payments

The district will not implement this recommendation because it is not warranted and is not reasonable.

As previously discussed the per diem allowance for travel and conference reimbursements for members of the board, the per diem allowance applies to all employees of the district. What may not be clear is that the per diem payments only apply to overnight travel and conference attendance. Additionally, when meals are provided during a conference the per diem rate is adjusted downward to reflect payment only for the periods when meals are paid for by the employee.

#### Pension allowances in excess of STRS and PERS

The district will not implement this recommendation because it is not warranted and is not reasonable.

The Superintendent/President receives the same 1% contribution to a 457 Plan as all other employees.

#### **Conclusion**

The Gavilan Joint Community College District Board of Trustees includes reasonable conditions in the employment agreement with the superintendent/president. The provisions of the employment agreement are written in a manner that ensures the superintendent/president receives equitable treatment in relation to compensation provisions made available to other employees. The Gavilan College superintendent/president contract contains only the most common provisions which are the provisions that allow payment of district costs incurred in the performance of the duties as superintendent/president. The Gavilan Superintendent/President contract does not contain any provision that is not also included in the contracts of the vice presidents. In fact the Superintendent/President does not receive the stipend for having a doctorate degree which is a provision provided to vice presidents. In that regard the superintendent/president actually receives a lower level of benefits provided to other administrators and members of the faculty.

In determining the appropriate compensation for the superintendent/president, the Gavilan governing board chose not to include a long list of exotic and unusual provisions that increase the total compensation of the superintendent/president. Instead the Gavilan governing board decided to provide a base salary that was reasonable for



the Gavilan governing board decided to provide a base salary that was reasonable for the position.

In conclusion, the Gavilan Joint Community College District Board of Trustees has reviewed the employment agreement with the superintendent/president and sees no areas where reductions are appropriate. The Grand Jury provides no comparative data to support its findings or recommendations other than an arbitrary comparison to student head count to conclude that the superintendent/president's salary is excessive. If the Grand Jury used square miles covered by the district they would have obtained a completely different perspective that is equally inadequate in determining if the salary for the chief executive officer is appropriate.

**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.

**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.

**District Response 3**

The district disagrees with this finding.

Before providing reasons for disagreeing with this finding, Gavilan College requests that the Grand Jury make the following corrections to its report:

In Table 2, Gavilan College should be spelled as "Gavilan" and not "Gavalin".  
The salary and 457 Plan contribution for the Superintendent/President is \$231,793 not \$238,500 for a total cost of \$243,793.

For the three multiple college districts, there is a Chancellor for each district and then a president at each college. While Gavilan is managed by a Superintendent/President, the multiple college districts have a president plus a chancellor. The chancellors oversee the district office and have no direct oversight over students. Indicating the cost of administration is therefore an unacceptable measurement approach.

Within the community college organizational structure, the colleges are accredited and award college degrees and certificates. The district office provides centralized services and leadership for the colleges. The district office has little or no interaction with students.

Understanding that only the colleges are accredited and the college presidents are the only ones who oversee students, a more fair representation of cost per student would

be to acknowledge there are three administrators managing the total populations of students. By adding this third administrator to the calculation, the total cost per student would be as follows:

Foothill-De Anza	\$15.93
San Jose-Evergreen	\$43.26
West Valley-Mission	\$37.63

Another major deficiency in the Grand Jury's assessment of administrative costs is that the report does not identify the number of administrators employed by each college district in relation to the number of students enrolled. At Gavilan College, there are eight (8) administrators including the superintendent/president. At each of the colleges within a multiple college district there is at least that same number (8) of administrators at each college as is assigned to Gavilan. In addition to the administrators at the colleges, the district office will have at least three or perhaps more administrators in addition to those assigned at Gavilan College. The cost of that district administration has to be added to the cost of the college assigned administrators in order to obtain a fair understanding of the cost of administration for these colleges. By using any calculation that reasonably accounts for the district and college costs of administration, the Grand Jury will no doubt find that Gavilan does not have the most costly administration which is the conclusion of the current report but instead is more likely that it has the least expensive cost of administration which is an almost universally accurate statement when comparing single college districts to multiple college districts. If the Grand Jury asked one or two additional questions it could have most likely come close to identifying the true cost of administration of the colleges in the County. As the report is now written there is insufficient and inaccurate information which prevents the conclusions from being accurate.

The recommendation will not be implemented as it is not warranted and it is not reasonable.

Members of the Board of Trustees have a number of factors to consider when making a job offer to a potential superintendent/chancellor. Using a quantified metrics may provide a general sense of what a district can see is being offered by other districts but that alone will not be a deciding factor in determining what is offered to a potential employee. Even more important though is what amount will be acceptable to the applicant. Few people are going to take salary reductions or will knowingly compromise their quality of life to take on a job.

Governing boards must structure a package of items that will attract the person it is negotiating with. The Grand Jury's report ignores one of the most fundamental factors that should be considered when attempting to hire a person for the given set of problems at any one district. Every district is unique and has a reputation that will influence an applicant's interest in a position. For example, if a district is known to have poor relations with its unions, or has financial problems or is a district that is underperforming are all challenges that are going to be considered when an individual



contemplates accepting a new job. The risks associated with the new position must be offset by the compensation package that will be offered. This cannot be done using a cookie cutter approach as stipulated by the Grand Jury.

Fortunately, school and community college districts have the legal authority to structure a compensation package to allow the governing board to offer a level of compensation that it believes is necessary and appropriate in order to hire or retain the chief executive officer.

### **Conclusion**

The Gavilan Joint Community College District **rejects Recommendation #3 in total**. The board has the legal authority to negotiate with the superintendent/president and does not believe the approach proposed by the Grand Jury is an effective way to establish compensation for its chief executive officer.

Members of the Grand Jury are ignoring market conditions, skills of candidates for superintendent/chancellor positions, the cost of living within the Bay Area and the risks assumed by a potential job applicant when the person is asked to take a position within a district. A few quantitative factors can be taken into consideration as a way to assess a possible range of the amount of compensation that will be needed to attract the right applicant to a job.

The Gavilan Joint Community College Board of Trustees also wants to point out the negative and condescending tone of the recommendations of the Grand Jury. To a lay person unfamiliar with what is necessary to compete for qualified chief executive officers the tone of this report demonstrates that the members of the Grand Jury are insensitive to the real issues faced by elected officials when they are attempting to hire a high performing chief executive officer.

### **Finding 4**

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

### **Recommendation 4**

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

### **District Response 4**

The district disagrees with this finding.

The recommendation will not be implemented because it is not reasonable (and is in violation of Title 5, California Code of Regulations, Section 53201).

The Gavilan Joint Community College District Board of Trustees rejects this recommendation for the following reasons:

- a. The Board of Governors of the California community colleges regulates the activities of the colleges within the community college system through Title 5, California Code of Regulations. In Section 53201, CCR –Recruitment – requires in part: “Recruitment for full-time faculty and educational administrator positions shall be at least statewide and, at a minimum, shall include seeking qualified applicants listed in the California Community Colleges Equal Employment Opportunity Registry and posting job announcements with the Registry.”
- b. Furthermore, the Grand Jury’s recommendation is rejected because the focus of the recommendation is on cost reduction and places no emphasis on obtaining the best possible person for the job. When filling these critically important chief executive officer positions the goal of the governing board is not to conduct the cheapest recruiting process in order to fill the position. The goal of this governing board is to obtain the best qualified person recognizing the individual needs of the service area of Gavilan College.

#### **Finding 5**

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

#### **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.

#### **District Response 5**

The district disagrees with this finding.

The recommendation will not be implemented as it is not reasonable and it is not warranted.

There is an undocumented assumption that County Counsel’s involvement would result in group purchasing discounts not otherwise available to the district. This assumption is incorrect. Gavilan College is part of a Joint Powers Authority (JPA) that uses only attorneys that meet the requirements of the JPA. The rates charged by these attorneys are not unreasonable considering the level of expertise offered to the district by the principals of the firms used by the district.

There is no indication that the County Counsel would be able to meet the needs of the district. County Counsel has never approached the district to offer its services. Given the current fiscal crisis facing the County the District has no confidence in the level of service that may or may not be received and sees no reason to bring another layer of administration into the process of defending itself against law suits.

There is no requirement to use County Counsel. The governing board is responsible for obtaining the services of qualified attorneys to represent the district in a wide range of

issues. Having the ability to select attorneys with special expertise gives the district great control over ensuring it obtains the most competent legal counsel available. The attorneys work for the district and respond to direction of the district staff and the governing board. Gavilan College has no interest in having to rely on another governmental agency that is currently struggling with its own workload issues and budget shortfalls.

### **Finding 6**

The operation of 34 K-12 school districts and four 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 of two schools.

### **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.

### **District Response 6**

The district disagrees with this finding.

This recommendation will not be implemented because it is not reasonable.

Gavilan College serves south San Jose through San Benito County. The total service area covered is 2,700 square miles and runs 50 miles from end to end. While a recommendation to consolidate may be appropriate for those districts located in urban San Jose it is not appropriate in outlying areas and in districts that serve very distinct communities that span a considerable distance.

The Grand Jury's only focus is on cost reduction. Consolidation of districts would force districts to give up local control and the ability to concentrate on meeting the needs of the local community served by the district. The value of local control and being held accountable to the community that elected the members of the governing board has tremendous value in producing educational programs that meet the needs of the communities served by the college. Considering all of the negative aspects that are created when a district gives up its resources, identity and ability to respond to local needs, the Gavilan Joint Community College District rejects Recommendation 6 although this may be a viable recommendation for the six community colleges within the Silicon Valley urban area.