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September 14, 2009

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

FILED

SEP 25 2009

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

Re: *Response of the San Jose-Evergreen Community College District to the
2008-2009 Grand Jury Report, Who Really Benefits from Education Dollars?
(Hint: It's Not the Students).*

Dear Mr. Kawashima and 2008-2009 Grand Jury Members:

Pursuant to the requirements of Penal Code section 933.05, the San Jose-Evergreen Community College District ("SJECCD") respectfully submits this response to the Grand Jury Report, Who Really Benefits from Education Dollars? (Hint: It's Not the Students).

FINDING AND RECOMMENDATION 1

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 teacher and/or no payment ceiling)
- Excessive travel and conference costs
- Pension contribution

RECOMMENDATION 1

Board 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

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DISTRICT RESPONSE TO FINDING AND RECOMMENDATION 1

The SJECCD disagrees with this finding. The recommendation will not be implemented because it is not warranted and it is not reasonable.

Health Benefits:

The San Jose-Evergreen Community College District rejects the premise that forms the basis for this recommendation. It is incorrect to state that the SJECCD's Board of Trustees approves itself overly generous benefits, or benefits that exceed those of its teachers or any other employees. To the contrary the SJECCD Board of Trustees members are provided with the same medical, dental and vision package as all other district employees. Under this policy, the total cost paid for health benefits for the Board of Trustees for FY 2008/2009 was \$117,583.59.

As such, the SJECCD adheres to the structuring of trustee benefits contemplated by the California legislature. As set forth in Government Code section 53208.5:

the health and welfare benefits of any member of a legislative body of any . . . political subdivision of the state shall be no greater than that received by nonsafety employees of that public agency. In the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.

Furthermore, the Grand Jury Report appears to support its recommendation by noting that "health benefits are discretionary and not required by the Education Code." However, while not required, they are expressly authorized pursuant to Government Code section 53201(a), which 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.

Moreover, that trustee benefits are discretionary does not mean they are inadvisable. So long as districts conform to the requirements of Government Code section 53208.5, SJECCD asserts that providing benefits to trustees is reasonable. The District further asserts that it is short sighted to see the elimination of trustee benefits as a cost savings. The Grand Jury Report states that school board trustees "generally meet once or twice a month to conduct district business," and that trustees "receive a modest stipend for attending board meetings." However, in finding this stipend sufficient, the report overlooks the fact that members of a governing board are responsible and accountable to their constituents at all times. The legal responsibility assigned to these members is not limited to the short periods

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of time when a board is in session. Board Members review extensive packets on a broad range of programmatic, administrative and fiscal issues in preparation for each meeting, serve on subcommittees, attend community events and are available to the public on weekends, evenings and holidays.

In short, serving as a Board Member is a significant responsibility with significant obligations. This recommendation under-appreciates the critical role and responsibility of a board of trustees in stewarding a community college district and fails to consider the negative, long-term impact of devaluing this contribution on the ability of local governments to attract dedicated individuals to voluntary public service.

For the reasons stated above, the SJECCD rejects the recommendation to eliminate health benefits for trustees, and the findings on which it is based. Providing health benefits to SJECCD's trustees is reasonable, appropriate, and lawful, as it is authorized under Government Code sections 53201(a) and 53208.5.

Travel and Conference Costs:

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.” (emphasis added)

Travel to attend conferences where Board Members receive training and information about the responsibilities of Board Members and learn to advocate for the interests of the District are appropriate activities. Payment of travel costs to perform these duties is normal, expected and appropriate. The SJECCD further asserts that it is short sighted to devalue activities that foster the professionalism, knowledge and skill of public boards that are charged with the responsibilities involved in overseeing the state's community colleges—responsibilities which include the statutory duty to review and approve multi-million dollar budgets. As a result, the SJECCD Board has determined that pursuant to Education Code section 2423, the payment of travel and conference costs incurred to attend conferences and to travel to various locations to represent San Jose-Evergreen is an appropriate expenditure of public funds.

At the same time, SJECCD recognizes that reimbursement for travel must only be for activities that directly benefit the district, and then only when properly documented. Thus, pursuant to Board Policy 2735, Board Members are only entitled to have “reasonable travel expenses paid for District-authorized travel when they act as representatives of and perform services related to the duties of the Board.” Further SJECCD Administrative Procedure 6300.4, Travel Expense Claims, provides regulations used by the District when reimbursing members of the Board of Trustees and college employecs (including the Chancellor) for travel.

AP 6300.4 requires that any travel request be approved in advance, and imposes several restrictions on travel costs. Any airfare will only be approved when “it is found to be as economical as other allowable transportation and/or when the savings of time will be an advantage to the District.” Any mileage reimbursement is paid at the Internal Revenue Service rate at the time of travel. Also, Board Members are encouraged to stay at moderately priced hotels and obtain a government rate when possible.

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AP 6300.4 also provides for meal costs to be reimbursed using a per diem rate of \$55.00 (\$10 for breakfast; \$15 for lunch; and \$30 for dinner). The daily per diem rate is reasonable and is less than the rate set by the United States Department of General Services for the Sunnyvale Palo Alto/San Jose area. Use of the per diem method provides a clearly articulated standard that provides the members with a reasonable reimbursement of meal costs while traveling and allows the District to exercise control by capping costs. Furthermore, this per diem rate is pro-rated and there are specific rules regarding time of travel and how many meals can be reimbursed (for example, on the first day of travel if departure is after 11.00 a.m., only lunch and dinner may be claimed). Use of the per diem method is fair to employees and to taxpayers. San Jose-Evergreen Community College District considers this method one of the best practices available for reimbursement of employees and Board Members when paying for District travel and conference costs.

For the reasons stated above, the SJECCD rejects the recommendation to minimize travel and the findings on which it is based. The findings fail to recognize the value to districts of properly regulated travel, and that SJECCD's current practices provide sufficient monitoring and accountability to ensure that public funds are used only for district-related activities.

Pension Contribution:

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

FINDING AND RECOMMENDATION 2

FINDING 2

Board of Trustees is 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 buy-outs
- Excessive performance bonuses
- Per diem payments when out of 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 contribution)
- Advanced degree stipends
- Lifetime medical insurance benefits
- Annual physicals

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RECOMMENDATION 2

Board of Trustees should carefully review and renegotiate the superintendent/chancellor benefits listed in Finding 2 for possible reduction and/or elimination.

DISTRICT RESPONSE TO FINDING AND RECOMMENDATION 2

The District disagrees with this finding. The recommendation will not be implemented because it is not warranted and it 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. It is short-sighted to devalue well-tailored and negotiated contract terms designed to encourage retention of high-performing and successful district leaders. It is also simplistic to draw conclusions about the appropriateness of such provisions without considering the services to students and cost savings that a particular district has achieved due to the leadership of the chancellor or president/superintendent that the trustees successfully hired or retained with the use of a well-negotiated contract. For example, this Grand Jury Report makes no investigation into, and gives no consideration to, the programs, initiatives, facility improvements and other efforts directly benefiting students, that have been achieved by the educational leaders, such as Chancellor Perez, whose contracts are being scrutinized.

With regard to the specific contract provisions identified in the report, San Jose-Evergreen Community College District includes the following provisions in its employment agreement with the Chancellor, and asserts that they are appropriate and conform to best practices.

- Guaranteed annual step and/or longevity increases
- Contract buy-outs
- Per diem payments when out of district
- Professional memberships and subscription allowances
- Annual physicals

Guaranteed annual step and/or longevity increases

As stated by the Grand Jury, the Chancellor will receive a one-time bonus if she completes her four-year contract. Retention of qualified administrators is a common struggle for public education institutions. Continuity of service helps to develop a long term strategy for dealing with many of the challenges faced by the District.

Contract Buy-Out Provision

The Chancellor has a contract buy-out provisions that can be invoked by the governing board at anytime. The terms of the buy-out conform to Government Code section 53260, which caps severance packages at:

an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired

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the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

Having the ability to remove a chancellor without cause gives district boards the ability to avoid the costly litigation that commonly results when disciplinary action is utilized to terminate the administrator. The contract buy-out provision is, in actuality a cost savings measure that ensures the district and the chancellor understand the severance arrangement should the board decide it needs a change in this leadership position. This result avoids litigation that may otherwise be initiated by a contract employee upon termination by the governing board.

Per Diem Payments

As previously discussed, the per diem allowance for travel and conference reimbursements for members of the board also applies to all employees of the District, including the Chancellor.

Professional Memberships And Subscription Allowances

Having an informed Chancellor who is engaged in the education community benefits the District. Reimbursement for membership in community and professional organizations is a common and reasonable expense.

Annual Physicals

The District is confused as to why a required physical exam is included on the list of “overly generous benefits.” This right to require the Chancellor to submit to a physical exam every two years is for the benefit of the District.

Conclusion

The San Jose-Evergreen Community College District Board of Trustees includes reasonable conditions in the employment agreement with the Chancellor. The provisions of the employment agreement are written in a manner that ensures the Chancellor receives equitable treatment in relation to compensation provisions made available to other employees. The District's Chancellor contract contains common provisions which allow payment of district costs incurred in the performance of the duties as Chancellor. With regard to reimbursement of travel expenses, vacation days, health benefits, the Chancellor receives the same benefits as other District employees. Also, the Chancellor does not receive a stipend for having a doctorate nor does the Chancellor receive an automobile allowance.

Members of the Board of Trustees have a number of factors to consider when making a job offer and negotiating with a potential chancellor. Using a quantified metric may provide a general sense of what 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 knowingly compromise their quality of life to take on a job—especially one as demanding as a district chancellor or superintendent.

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Governing boards must have the flexibility to structure a package of items that will attract the person it has identified as the right fit for that district. The Grand Jury's report ignores that every district is unique. Each district has particular challenges that require different skills and expertise.

By the same token, the Report fails to take into consideration how arduous it has become to serve as a district chancellor or superintendent in the Bay Area. These individuals can count on being on-call "24-7", managing complex multi-million dollar budgets, serving a growing student population with shrinking dollars, engaging with multiple unions in often-contentious environments, and dealing with aging facilities and equipment. And, they can count on taking on these challenges in a transparent and often politicized environment under the scrutiny of the public eye, the press, civil grand juries, etc. Further, Bay Area boards must contend with attracting or retaining CEOs in an area with one of the highest costs of living in the country. The extraordinary demands and risks associated with these positions must be offset by the compensation package that will be offered. This cannot be done using a cookie cutter approach as suggested by the Grand Jury. In short, the Grand Jury report ignores the unique needs of each district and the market conditions surrounding negotiations between districts and their chancellor/superintendent candidates.

Fortunately, school and community college districts have the legal authority to structure a compensation package that it believes is necessary and appropriate to hire or retain a chief executive officer with the necessary set of skills to lead that particular district.

In conclusion, the Board of Trustees has reviewed the employment agreement with its chancellor 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 chancellor'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 AND RECOMMENDATION 3

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 student's progress and quantifiable metrics.

DISTRICT RESPONSE TO FINDING AND RECOMMENDATION 3

The District disagrees with this finding. The recommendation will not be implemented because it is not warranted and it is not reasonable.

At San Jose-Evergreen Community College District, there is a chancellor for the District and

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a president at each college. The chancellor oversees the district office and has no direct oversight over students. Indicating the cost of administration is, therefore, an inappropriate and inaccurate 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.

As discussed above, a governing board has the legal authority—and duty—to negotiate an employment contract with its CEO. SJECCD does not believe that the approach proposed by the Grand Jury is an effective way to establish compensation for its chief executive officer. 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 Chancellor's salary is excessive.

The District rejects Recommendation 3 in total. A community college district requires its chief executive officer to act as a leader and guide the district through challenges. For example, after years of flat enrollment patterns, fiscal year 2008/2009 has seen an unprecedented level of growth in the District. But at the same time, the District's general fund has seen an unprecedented level of cuts due to the state budget crisis. In these times of dwindling financial resources and increased demand where the District is forced to do more with less money, it is particularly critical that the individuals selected for these positions are well-qualified and adept at managing a limited budget.

FINDING AND RECOMMENDATION 4

FINDING 4

Board of Trustees hires costly search firms to recruit successors for retiring or dismissed superintendents/chancellors.

RECOMMENDATION 4

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

DISTRICT RESPONSE TO FINDING AND RECOMMENDATION 4

The District disagrees with this finding. The recommendation will not be implemented because it is not warranted and it is not reasonable. Moreover, to do so would violate Title 5, California Code of Regulations, Section 53201.

Community colleges are legally required to conduct a statewide search for certain positions, including superintendents/chancellors. The Chancellor's Office enacted Title 5, California Code of Regulations, Section 53021, entitled "Recruitment," which creates specific responsibilities for community college districts with respect to recruitment. This section prohibits in-house recruiting and specifically requires that "[r]ecruitment 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." (emphasis added)

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Moreover, as with Recommendation #2, this recommendation is solely focused on short-term cost, without taking into consideration the long-term costs of not obtaining the best possible person for the job. When filling these critically important chief executive officer positions, the goal of the governing board is to obtain the best qualified person recognizing the individual needs of the service area of the district. As mentioned above, in these times of dwindling financial resources and increased demand where the District is forced to do more with less money, it is particularly critical that the individuals selected for these positions are well-qualified and adept at managing a limited budget.

FINDING AND RECOMMENDATION 5

FINDING 5

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

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 TO FINDING AND RECOMMENDATION 5

The District disagrees with this finding. The recommendation will not be implemented because it is not warranted and it is not reasonable.

This Finding and Recommendation seems to be based on the premise that representation by the County Counsel will somehow result in group purchasing discounts not otherwise available to the District. This is incorrect.

County Counsel has never even approached the District to offer its services. There is no indication that the County Counsel would be able to meet the needs of the District and provide expertise in the practice areas necessary for the District. Furthermore, there is no requirement for the District to use County Counsel.

There is also no evidence that utilization of County Counsel for legal services will result in a cost savings. The rates charged by the attorneys representing the District are reasonable, particularly in light of the expertise offered by the principals of the firms used by the District. Very often the rates charged by these firms are lower than what would be charged to a private entity, because these public entity law firms are very sensitive to the budget constraints of their clients.

The governing board is responsible for obtaining the services of qualified attorneys to represent and advise the District on a wide range of issues. The District's ability to select attorneys with specialized expertise and skills ensures that it will be able to obtain the most competent legal counsel available. The attorneys work for the District and respond to direction of the District staff and the governing board. San Jose-Evergreen Community College District has no obligation to rely on County Counsel.

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FINDING AND RECOMMENDATION 6

FINDING 6

The operation of 34 K-12 school districts and four (4) community college districts creates an 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.

RECOMMENDATION 6

A consolidation of districts should be considered to reduce the numbers and costs of superintendents/chancellors, Board of Trustees, administrative staff, and overhead.

DISTRICT RESPONSE TO FINDING AND RECOMMENDATION 6

The District disagrees with this finding. The recommendation will not be implemented because it is ill-advised and contrary to the purported concern of the Report (i.e. expend district dollars in a manner that more directly benefits students.) Rather community college district consolidation and centralization would erode the core philosophy, values, mission and service of the community colleges by taking them out of the communities they serve.

SJECCD encompasses more than 300 square miles, including part of the City of San Jose and all of the City of Milpitas. The District includes the areas served by Milpitas and San Jose Unified School District, together with the Eastside Union High School District. The District is comprised of two colleges, Evergreen Valley College (EVC) and San Jose City College (SJCC). San José/Evergreen Community College District served approximately 26,085 students in Fall 2008 and 23,616 students in Spring 2009¹. A recommendation to consolidate is inappropriate because the District already encompasses a large geographical area, includes two community colleges and serves a large student population.

Unfortunately, the Grand Jury's inquiry has only focused on cost. It is important to note that the consolidation of districts would force districts to give up local control and the ability to concentrate on and adapt to the needs of the local community served by the District. The importance 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 colleges. 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 San José/Evergreen Community College District rejects Recommendation 6

Sincerely,


Rosa G. Pérez, Chancellor
San José/Evergreen Community College District

¹ This number is based on a duplicated headcount.