



Mike Brandy, Interim Chancellor

FILED

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

September 17, 2009

Honorable Jaime Jacobs-May
Presiding Judge
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Dear Honorable Jaime Jacobs-May and Members of the 2008-2009 Santa Clara County Civil Grand Jury:

On June 3, 2009, the Grand Jury of Santa Clara County released a report entitled, "Who Really Benefits from Education Dollars? (Hint: It's Not the Students)." This summarized the Grand Jury's findings and recommendations regarding the use of education dollars in Santa Clara County.

In accordance with California Penal Code 933(c), the Foothill-De Anza Community College District's response is included herein for your information.

Sincerely,

A handwritten signature in blue ink that reads "Mike Brandy". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mike Brandy
Interim Chancellor

MB: cc

Santa Clara County - Grand Jury
Report on Trustees, Chancellors and Superintendents Salary and Benefits
"Who Really Benefits From Education Dollars?"

Foothill/De Anza Community College District
(hereinafter "FHDA" or "District")
Response

FINDING 1 – Boards approve overly generous benefits to themselves including paid health benefits, excessive travel costs and pension contributions.

Response: Disagree.

Explanation:

RE: Fully paid health benefits:

FHDA District Board of Trustee members received health benefits in accordance with plan choices and participation criteria available to other benefit eligible classified, faculty and administrative employees. The District should continue to maintain benefits coverage because 1) Trustees work on behalf of the District well beyond the required participation in Board meetings and meeting preparation, often commensurate with effort expended by full-time employees; and 2) Trustee participation in a District health plan ensures a vested interest in continuing viability of available plan options, as well as plan design change and participant contribution decisions.

RE: Travel and conference costs:

FHDA District Board of Trustee members attend only those conferences and meetings that are relevant to their role as Trustees. Attendance at state legislative meetings, Trustees Association meetings/conferences, California Community College League meetings/ conferences, League for Innovation meetings, and related conferences and travel are directly related to meeting their expectations as Trustees to understand the community college system and relevant legislation, to influence external decision making on behalf of the district, and to make informed decisions as to the district's leadership and direction.

RE: Pension contributions: N/A.

FHDA does not provide pension contributions on behalf of Trustees.

Recommendation 1 – Boards should carefully review the benefits listed in Finding 1 and eliminate health benefits, minimize travel/conference expense and eliminate pension contributions.

Response and Explanation

RE: Eliminate health benefits for Trustees: Will not implement.

FHDA believes that providing health benefits commensurate with those offered other benefit eligible classified, faculty and administrative employees is beneficial to the District. The District should continue to maintain benefits coverage because Trustee participation in a District health plan ensures a vested interest in continuing viability of available plan options, as well as plan design change and participant contribution

decisions. Similar to one of the reasons employers provide benefits for employees, doing so for Trustees serves as a recruiting tool when identifying or encouraging community members to invest their time in providing leadership to the District as an elected official.

RE: **Minimize travel and conference costs:** Already implemented prior to Grand Jury Report.

The District believes relevant travel and conference costs are a worthwhile investment to ensure Trustees are well-informed and prepared to be able to participate in decision-making on behalf of the District and its constituents. The District consistently reviews its expenditures for appropriateness and value. In addition, these receive additional scrutiny during tough budget times as the District is forced to make decisions that yield the most benefit.

RE: **Eliminate pension contributions:** N/A.
N/A.

FINDING 2 – Boards approve overly generous benefits to Chancellors/Superintendents.

Response: Disagree

Explanation:

FHDA provides 1) a vehicle allowance in recognition of the expectation for the chancellor to travel within and outside the area on district business; 2) a community allowance to cover out of pocket expenses associated with district business; and 3) offers additional compensation via step increases and a stipend for advanced degree. Such forms of additional compensation are associated with valid business practices and help to keep the district somewhat competitive with other institutions. FHDA however, does not offer many of the other types of compensation reported by the Grand Jury. There are no million dollar loans, housing allowances, or performance bonuses, for example. The District does not offer signing bonuses, lifetime medical insurance benefits or excessive travel and entertainment expense reimbursement.

The District understands, however, how such additional benefits, at some level, may become necessary to recruit and retain qualified individuals. The District, however, enjoys an excellent reputation and is viewed in high regard, thereby reducing the need for additional benefits beyond those currently provided.

Further, items identified as “extra benefits” by the Grand Jury are in fact reimbursements for valid business related expenses. To characterize as extra compensation reimbursements for 1) attendance at conferences/meetings; 2) use of personal vehicle for district business; or 3) computers and cell phones required by the district unfairly inflates a conclusion of excessive executive pay. In fact, employees should be fairly reimbursed for out of pocket expenses incurred on behalf of FHDA.

Recommendation 2 – Boards should carefully review and renegotiate Chancellor benefits for possible reduction and/or elimination.

Response and Explanation: Requires further analysis.

In part, the Board Policy 4200 Compensation states, “*The Board will compensate all employees in the District with total compensation comprised of salary and benefits that is appropriate, fair and competitive. Compensation decisions shall be made within the Board’s fiduciary responsibility to the public.*” In comparison to other districts, the District has maintained a low level of compensation for its chief executive, contrary to the District’s compensation philosophy to remain competitive. The chancellor’s salary has been unadjusted, except for associated adjustments to salary schedules at the same rate as other administrators, for some time.

It is timely to review chancellor compensation as the Board approaches the conclusion of its hiring process for a successor chancellor. The District will need to remain competitive in these tough economic times and will need a top notch chief executive to continue the work of improving our services and the success of students into the future. The District will conclude its review of chancellor compensation by December 2009.

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: Disagree.

Explanation:

The District does not have knowledge of the complexity of other districts, particularly K-12, nor does it have knowledge of other schools’ academic improvements.

Recommendation 3 – Boards should ensure that Chancellor salaries and increases take into account the number of schools, teachers, and students they oversee, and are tied to the district’s student progress and quantifiable metrics.

Response and Explanation: Agree and further analyze.

It may be appropriate to tie salaries in some manner to the size of an institution and its measure of success; such models are easier to implement to predict salary and benefits. However, each institution faces significant challenge in meeting the needs of its students with shrinking resources and increasing demand and the size of an institution does not always adequately predict the level or magnitude of challenge associated with bringing success. A smaller institution can often come with additional, or different, challenges as it addresses the need to provide services to its students without the benefit of flexibility from a larger staff and faculty.

Regardless of the criteria and considerations included in considering the salary of a chancellor, chancellor tenure and continued employment should be tied to measures of success and regularly monitored.

The District will review the proposed salary of its new chancellor and make a determination by December 2009. The District is currently in the process of recruiting for a chancellor and will conclude its review prior to making an offer of employment and salary to the successful candidate.

FINDING 4 – Boards hire costly search firms to recruit successor Chancellors.

Response: *Disagree.*

Explanation:

The District does not characterize the hiring of search firms as “costly”, but rather as an appropriate expenditure to ensure the District does its best work to find and consider qualified candidates.

Recommendation 4 - Boards should conduct a preliminary search within the local area prior to hiring search firms

Response and Explanation: *Will not be implemented.*

Search firms provide a valuable service in locating and encouraging qualified candidates to apply for senior level positions. Search firms typically have a wider network of contacts outside of regular advertising methods and can be consistently more successful at improving the size and quality of applicant pool.

FINDING 5 – Boards approve the hiring of multiple attorneys, in some cases at tremendous expense.

Response: *Disagree - Partial.*

Explanation:

The Board approves the hiring of multiple attorneys for general legal services and specialized needs. The District does not characterize the services as a “tremendous” expense.

1. The request by the Grand Jury focused in part on legal services and associated expenses. Specifically, this particular inquiry asked for contracts with legal firms and detailed legal firm billing documents for the period January 1, 2008 through March 31, 2009. The District responded to this request with the raw data requested. Upon receipt and review of the Grand Jury report a significant discrepancy between the conclusion reached by the Grand Jury and what we’ve tallied emerged. Table 1 reflects those differences and breaks down legal fees by firm. The grand jury overstated the tabulation of the legal fees we submitted to them by over \$600,000.

2. FHDA does not employ an internal General Counsel; rather, we have developed long term working relationships with several generalists including the office of the County Counsel. Our most recent engagement with the County Counsel took place last year when they assisted our negotiations with the Santa Clara & San Benito Counties Building & Construction Trades Council in developing a Project Stabilization Agreement (PSA) as a part of the administration of our bond construction program. We have found that the County Counsel offered excellent service and their pricing, based on their current year fee schedule, was reasonably aligned with what we pay for general legal consultation services.

In addition to the services described above, FHDA periodically experiences the need for specialized legal services such as when considering the purchase of a new college site, managing construction litigation or dealing with the many esoteric provisions of the Education Code or other regulations that govern the California Community College

System. In those instances we have typically looked to specialty service providers in the private sector for assistance.

The firm of Jaret & Jaret provides most of the district's construction related legal advice and litigation work. This firm led the district through the legal action surrounding the De Anza Science Center project. Earlier this year the district prevailed in the Arbitration with the Architect/Engineering team. The award of legal fees occurred after the timeframe proscribed by the Grand Jury but resulted in the district being able to recover approximately \$800 thousand in legal costs associated with this Arbitration.

Another example of a specialty service provider is the firm of McCarthy & Berlin who provides legal advice and services focused primarily on the negotiation of cell site/tower projects. Many of our contracts with cell service providers have a provision that allows for the recovery of legal costs. These contract provisions have allowed for the recovery of approximately \$16,000 during this period.

The recovery of legal fees by both firms has resulted in a net legal expense during this period of approximately \$870 thousand. Our net legal expenses incurred during this time period was \$870 thousand, not the \$2.3 million reported by the Grand Jury.

Recommendation 5 - Boards of Trustees should engage County Counsel whenever possible and leverage their buying power to negotiate lower fees with private law firms.

Response and Explanation – Already implemented prior to Grand Jury Report.

The District has a long standing relationship with the Office of the County Counsel.

FINDING 6 – Operation of 34 K-12 districts and four community college districts creates excessively high management and administrative costs. Five K-12 districts have excessively high Superintendent costs per student which is reflective of the district having only one or two schools.

Response: Disagree.

Explanation:

FHDA does not have knowledge of other districts', particularly K-12, management and administrative costs, nor their associated challenges. Further, FHDA does not have knowledge of other schools' organizational structure.

Recommendation 6 – Consolidation of districts should be considered to reduce the numbers and costs of superintendents/chancellors, board members, administrative staff and overhead.

Response and Explanation: Requires further analysis.

FHDA has no opinion on this recommendation but recognizes that any consideration of consolidation would require extensive analysis prior to making and/or implementing such a decision. It should be noted that FHDA is the fifth largest community college district in the state.