



Milpitas Unified School District

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Human Resources Department

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Cheryl E. Jordan, Assistant Superintendent • Maria del Rio, Director

August 24, 2010

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

FILED

SEP 01 2010

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

Your Honor,

We have received the Final Report from the 2009-10 Santa Clara County Civil Grand Jury entitled, *Looking at Policies Our Schools Use to Find and Place Employees*. The report indicated that there are five recommendations to the Board of Education of the Milpitas Unified School District regarding hiring practices. The District's responses to these five findings and recommendations (1,2,3,4,& 7) are enclosed and submitted for your review.

Respectfully,

A handwritten signature in cursive script that reads "Marsha Grilli".

Marsha Grilli
President
MUSD Board of Education

Grand Jury Investigation –

Looking at Policies Our Schools Use to Find and Place Employees, June 24, 2010

Milpitas Unified School District (MUSD) Response to findings 1, 2,3,4 and 7:

1. The District disagrees with recommendation number one because the Collective Bargaining Agreement (CBA) for certificated staff members does not give preference to internal candidates over external candidates as it complies with Ed. Code 35036. All openings for each subsequent school year are open to external and internal candidates as of April 15th, and typically, most openings are posted after April 15th. For those openings that are posted between March 1st and April 15th, the CBA allows for the District to recruit outside applicants if there are no qualified internal candidates. Article 7.2 *Transfers* of the MUSD- Milpitas Teachers Association CBA is included here as evidence:

ARTICLE 7 - TRANSFERS

- 7.1 All transfers of existing staff members will be made **to facilitate the best educational program for the students** of the District and the total District program. Transfers will not be arbitrary or capricious.
- 7.2 In order to expedite unit member requested transfers, **with due consideration to equal employment opportunity**, the following criteria should be utilized in the order listed in making transfers:
 - a)
 1. Unit member preference
 2. Credentials
 3. Grade level or subject experience
 4. Major(s)/Minor(s)
 5. Professional skills
 6. Seniority
 - b) Transfers at the request of a unit member shall be considered when such a change would not displace another unit member from the assignment against his/her wishes.
 - c) Unit members may request transfer from one school in the District to another. Such requests shall be made directly to their current administrator on District form P-75. The receiving administrator shall have the opportunity to discuss such transfer with the unit member and/or administrator. Recommendations from both administrators shall be sent to the Superintendent or designee for review. **The unit member shall be informed by either the current administrator or the receiving administrator if a transfer is approved or disapproved.** Upon request, written reasons must be given to the unit member in the event a transfer is not approved.

Although the CBA for classified employees does provide for preference of internal candidates over external candidates, that is only for transfers that are within the same classification. If there are no transfer requests, then the position is posted for both external and internal candidates. The CBA states, "*If there is no acceptable employee applicant, then applications will be accepted from non-employees.*" This allows the District to recruit outside applicants if there are no inside applicants who are both qualified and acceptable (based on satisfactory evaluations and test results).

The District has determined that both CBAs ensure that competency is the seminal factor in the job candidate selection process; therefore, the District respectfully declines Recommendation #1 as it is not warranted.

2. The District disagrees with recommendation #2 to adopt interview practices similar to those of Palo Alto Unified School District that provide for opportunities for applicants to demonstrate their teaching skills as the current MUSD selection process for certificated personnel has proven to be highly effective. Candidates for certificated openings must fulfill the following prerequisites before they are considered for interviews:
 - a. hold a valid California credential or permit in the subject or specialist area for which s/he would serve;
 - b. demonstrate that s/he is a *Highly Qualified Teacher* in accordance with California's State plan for the No Child Left Behind Act, developed pursuant to 20 USC 6311;
 - c. pass the California Basic Educational Skills Test or other test of basic skills as approved by the California Commission on Teacher Credentialing;
 - d. demonstrate competency in written communication; and
 - e. provide three letters of recommendation by persons who have supervised the candidate in employment, educational, or student teaching settings.

Once the candidates have been selected for an interview, they are interviewed by a panel of practicing educators, which may include but is not limited to, teachers, counselors, assistant principals, principals, and district office administrators. As candidates complete the interview portion of the selection process, the panelists evaluate the candidates using a scoring and ranking process. Reference checks are completed before making an offer for employment, and if they are favorable, the candidate must complete a background check through the Department of Justice. Once the candidate is cleared by the DOJ report as specified under Education Codes 44346.1 and 44424, s/he is eligible for employment.

Although the PAUSD has a similar number of students as MUSD, they have a budget that is twice that of MUSD as well as a greater number of administrators who are available to spend time observing candidates as they teach a class. This is a recommendation the District would consider in better economic times when both the budget and personnel capacity would allow for implementation of this pre-employment screening practice. MUSD strives for continual improvement in all aspects of the hiring process and appreciates the Grand Jury's recommendation for improvement. The District is confident that its current recruitment and interview process is exceedingly effective in providing MUSD students with extremely qualified teachers and specialists; therefore, the District respectfully declines recommendation #2 as it is neither warranted nor reasonable.

District	Enrollment	Number of District Office Administrators/Managers	Adopted budget (Income) 2009-10
PAUSD	11,000	24	\$165,930,785
MUSD	9,800	13	\$74,847,667

3. The District agrees with recommendation #3 to formulate and implement policies covering the hiring of employee and Board member relatives to avoid the appearance of bias or favoritism in recruitment and position assignments. The District will recommend that the Board approve Board Policy *Employment of Relatives* BP4112.8, 4212.8., and 4312.8 as described in the California School Boards Association suggested Board Policies guidelines. This policy prohibits the appointment of any person to a position that is supervised, evaluated, or managed by his/her relative. It also prohibits an employee or Board member from participating in any decision that applies specifically to his/her relative. The first readings for the new BP will be held during the September Board meetings, and will be implemented by October 26, 2010.
4. As described in its response to recommendation #3, the District agrees with recommendation #4 to implement a policy prohibiting direct employee supervision of family members. This prohibition will be explained in Board Policy *Employment of Relatives* BP4112.8, 4212.8., and 4312.8 as described above. The new Board Policy will be implemented by October 26, 2010.
5. It is with reservation that the District agrees with recommendation #7. The District does not currently have a question on employment applications asking candidates if they have relatives who work for MUSD because of the potential liability for possible discrimination claims on the basis of marital or domestic partnership status. After consulting with legal counsel, the District feels that having a Board Policy in place to prohibit direct supervision of family members and/or to make a determination about a specific family member's employment or

promotion status will provide a rationale for asking such a question at some point during the hiring process. The District will add the following inquiry to all interview questionnaires by September 1, 2010: *Please state the names of any relatives already employed by MUSD.*