



2010-2011 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

BURBANK REVISITED: A FALTERING DISTRICT SHOWS LITTLE IMPROVEMENT

Summary

The 2010-2011 Grand Jury received three complaints from concerned citizens regarding the operation and administration of Luther Burbank School District (LBSD) and its Board of Trustees (Board). The complaints covered a wide range of topics from financial matters to management and Board practices. The Grand Jury's investigation uncovered, among other things, excessive authority granted to consultants, efforts by consultants to violate the Brown Act, and poor governance and oversight on the part of the Board.

Background

The LBSD is a one-school district. It is located in a relatively low-income, unincorporated area of Santa Clara County entirely surrounded by the City of San Jose. Luther Burbank School is near Lincoln High School, which is operated by the San Jose Unified School District. LBSD has approximately 583 students in kindergarten through eighth grade.

The LBSD duties of Principal and Superintendent, at one time, were combined and performed by one person. Other administrators include a Chief Business Officer (analogous to a Chief Financial Officer) and a Curriculum Director (similar to a Vice Principal). The LBSD and its Board have a history of mismanagement and questionable governance practices. Numerous audits have uncovered poor business practices. A recent audit (2009) cited 119 deficient items, including evidence of credit card misuse, poor financial tracking, and weak security over District records (see reference 1). A former Board president pleaded no contest to criminal conflict-of-interest charges.

Methodology

The 2010-2011 Grand Jury conducted 25 interviews. Persons interviewed included staff and administrators of LBSD, current and former Board members, the Superintendent of the Santa Clara County Office of Education, and concerned members of the public. Contract consultants were also interviewed, and members of the Grand Jury attended six LBSD Board meetings. The Grand Jury reviewed documentation, including Board agendas and minutes, financial records and audits, emails, internal memoranda, contracts, and other printed and electronic material, as well as the 2008-2009 Grand Jury Report entitled "Board of Trustees of Luther Burbank School District Gets An 'F'."

Discussion

The LBSD operates one school, Luther Burbank School. The school has approximately 583 students.

The Grand Jury found that the Boards¹ have shown incompetence in managing the affairs of the LBSD. The Boards have not provided suitable oversight in the management of the District as shown by:

- repeated change of executive management in the period 2008-2011, resulting in consultant contracts and employee buy outs that involved excessive financial outlay of district funds;
- execution of consultant contracts containing vague scope of work resulting in power grabs and staff confusion;
- the relationship with Mr. Richard Rodriguez, including granting him excessive supervisory authority while working as an unpaid volunteer; hiring him as interim Superintendent despite his efforts to circumvent the Brown Act and history of mismanagement as evidenced by a 119-point audit during his tenure;
- lack of District control of important and confidential records;
- inaccessibility of the Board;
- lack of Board knowledge and training regarding governance responsibilities;
- lack of follow through to District responses to prior Grand Jury reports recommending the establishment of a Citizen Oversight Committee for bond funds.

Payment for Consultant Contracts, Contract Buy Outs, and Employment Lawsuits Has Resulted in Excessive Financial Outlay

Mr. Richard Rodriguez served as the District Superintendent between 2001 and 2008. Beginning in 2008, there were a series of executive management changes and employment lawsuits stemming out of terminations.

2008

- December 2008: The Board terminated and bought out the contract of Mr. Rodriguez, the District Superintendent. The buyout of his contract was from January 2009 through May 2010 and totaled \$202,218.
- December 2008: The Board hired Dr. Fernando R. Elizondo of Education Strategies, Inc. (EES) to serve in the capacity of "Interim" Superintendent for a total of \$127,841 in salary and benefits. Concurrently his firm was paid \$115,753 to recruit a Superintendent/ Principal.

¹ The use of the term "Boards" is meant to acknowledge that the composition of the Board has changed during the period covered by this report.

2009

- June 2009: Ms. M. Maldonado resigned from her position as Principal of Burbank School. The Superintendent and Principal jobs were consolidated into one position.
- July 2009: Administrative employee was terminated.
- September 2009: The District hired Dr. Becki Cohn-Vargas, a professional educator with 40 years of experience, as “permanent” Principal/Superintendent at a negotiated annual salary, including benefits of approximately \$160,000.
- October 2009: Dr. Elizondo, as a consultant, mentored Dr. Cohn-Vargas, until June 2010 at a fee of \$194 per hour, with a total payment of \$55,109.

2010

- June 2010: Dr. Elizondo’s contract was terminated.
- June 2010: A former Board president was charged with criminal conflict-of-interest violations stemming out of official duties.
- November 2010: New Board members were elected.

2011

- January 2011: Mr. Rodriguez signed a contract with the District to serve as an unpaid “volunteer consultant”.
- January 2011: A Board member resigned. A new Board member was appointed, which shifted the Board’s political balance in favor of Mr. Rodriguez.
- March 2011: The Board terminated the contract of Dr. Cohn-Vargas and bought it out at a cost of \$160,000.
- March 2011: The Board voted to replace Dr. Cohn-Vargas with Mr. Rodriguez. He now serves with the title of Interim Superintendent at a cost of \$683.78 per day, plus expenses.
- May 2011: The Board voted to rehire Ms. M. Maldonado as Principal, effective August, 2011. Ms. Maldonado was principal during the period that Mr. Rodriguez was Superintendent prior to 2008.

The Board’s lack of management oversight and governance has resulted in significant unnecessary expenditures. As shown in Table 1, the Board’s decisions have cost LBSD in excess of \$900,000 in less than three years.

Table 1: Examples of LBSD Board's Financial Decisions

Payee	2009	2010	2011	Comments
Mr. R. Rodriguez	\$151,663	\$50,554		Buy out as fired Superintendent
Dr. F. Elizondo	\$139,584			Payout as Interim Superintendent
Dr. F. Elizondo	\$115,753			Payout as consultant to recruit Superintendent/Principal
Dr. F. Elizondo		\$52,736		Payout as consultant to assist newly hired Superintendent/Principal
Dr. B. Cohn-Vargas			\$160,384	Buy out as fired Superintendent/Principal
Administrative staff employee			\$120,000	Payout for wrongful termination lawsuit settlement
Ms. M. Maldonado			\$121,176	Salary and Benefits as Principal, for Aug – Dec 2011
Totals	\$407,000	\$103,290	\$401,560	Combined = \$911,850
Mr. R. Rodriguez			\$638.78 per day	Ongoing pay as Interim Superintendent

In addition to the \$120,000 administrative staff employee settlement, the Board further agreed to additional settlement conditions that included a \$25/month travel allowance, a 2.5% addition in salary for bilingual stipend, 30 days vacation and 18 months added to the seniority calculation.

The District often paid two persons for the same work or portions of it. Additionally, the District was often still paying the prior executive's contract buy out at the same time the District was paying for the new executive. In the case of Mr. Elizondo, the District paid him to act as Superintendent while at the same time paying him a large recruiting fee for his work in finding his replacement. Then, the District authorized even more money for Mr. Elizondo to be paid to mentor the individual he recruited.

The New Board and New Superintendent

When Mr. Rodriguez' contract was bought out by the Board in December of 2008, Mr. Rodriguez had been employed by the District for 35 years. He started as a teacher and spent 19 years in the classroom before moving into administration in the district. He was appointed Superintendent in 2001, and served 8 years in that capacity. Mr. Rodriguez stayed in close contact with his supporters at LBSD after his contract was bought out.

He is now employed by LBSD as Interim Superintendent. Mr. Rodriguez is now being paid a salary commensurate with the position of Principal/Superintendent while only assuming the duties of a Superintendent and hiring a full-time Principal for an additional \$121,176 per year.

Intimidation of Public and Interference with *Board Election*

Numerous persons interviewed described the divisiveness within the LBSD community that negatively affects the education mission of the District. These persons also stated that, following Mr. Rodriguez' ouster as Superintendent, he became heavily involved in the 2010 Board of Trustees election to the extent of actively supporting a slate of candidates financially and otherwise. During the election, there were allegations of defacement of lawn signs for candidates known to oppose Mr. Rodriguez, and pro-Rodriguez candidates' election materials being placed inside the voting booths. The Grand Jury is neither accusing, nor implying that Mr. Rodriguez was involved in any of these allegations.

Soon after the election, a veteran member of the Board suddenly resigned with no stated reason. Two candidates applied for appointment to the vacant seat. The resulting appointment created a pro-Rodriguez Board majority. In March 2011 this Board voted to buy out Cohn-Vargas' Principal/Superintendent contract and subsequently voted to contract with Mr. Rodriguez as "Interim" Superintendent.

The Grand Jury concluded that Mr. Rodriguez engaged in what appears to be a deliberate attempt to stack the Board in his favor by supporting specific candidates, then volunteering as an unpaid consultant, in order to ultimately facilitate his return to authority to his current position as the paid Interim Superintendent.

Poor Board Control: Excessive Authority Granted to Consultant Under A Contract Containing Vague Scope of Work

LBSD entered into an unpaid volunteer consultant contract with Mr. Rodriguez in January 2011. The contract contained a scope of work and method of performing services as follows:

Services: Consultant shall provide the following professional services and any other services upon request and approval of the Board:

Advise and make recommendations as requested by the Board;

Recommend legal representation for the Board;

Perform any other duties as requested by the Board;

Method of Performing Services: Consultant shall determine the methods, details and means of performing the services, subject to approval of the Board.

The fact that there is a contract at all for "unpaid volunteer services" is unusual. Further, the scope of work for the contract is incredibly vague, thereby allowing Mr. Rodriguez to interfere with or overlap the duties of the Principal-Superintendent.

Even while a "permanent" Principal/Superintendent was in place, and while Mr. Rodriguez had no legal or official connection with the District except as a volunteer consultant, Mr. Rodriguez was permitted to interfere in District affairs.

The School Superintendent reports directly to the Board of Trustees. In the case of Luther Burbank, however, the Board allowed Mr. Rodriguez to step in between the Principal/Superintendent and the Board. The Grand Jury was given documentation that showed that, at one point, Mr. Rodriguez suggested that he supervise the Principal/Superintendent and act as the intermediary between her and the Board. Supervising the Superintendent is the responsibility of the Board. As discussed above, his duties were not clearly specified and he was reportedly constantly on campus, influencing the Board and interfering with the duties of Principal/Superintendent Cohn-Vargas. As an example, Mr. Rodriguez was observed giving direct orders to staff on such minor matters as cafeteria operations. Faced with the Principal/Superintendent's complaint; the Board did nothing to restrict Mr. Rodriguez' activities. When the Board did nothing to restrict his activities, his continued, directive presence created a confusion of authority.

The Boards have relied heavily on consultants to run the District. But the Board, in the case of Mr. Rodriguez, did not merely rely on a consultant; it allowed him to direct the activities of the district. In doing so the board failed to exercise its own independent judgment. The scope of work was vaguely defined in the contract, allowing a power vacuum to exist that permitted him to effectively control the District in his unpaid consultant role.

Mr. Rodriguez Misguided the Board about the Legal Requirement for Open Meetings

The Ralph M. Brown Act (Brown Act) requires that the deliberations and actions of the governing bodies of local agencies are open and public and that provision is made for meaningful public access to its decision making (Appendix A). The act prohibits action on items not placed on the agenda and severely restricts the type of actions such bodies can take in private session. Elected officials are prohibited from using virtually any means—whether “direct communication, personal intermediaries, or technological devices”—to deliberate or reach consensus on matters outside the public forum. Any person who is elected but who has not yet assumed the duties of office is bound by the Brown Act.

On November 7, 2010, immediately following the 2010 LBSD Board election, but prior to the swearing in of newly elected Board members, Mr. Rodriguez, having no formal relationship with the Board, sent an email (Appendix B) to the three newly elected members and one of the two existing board members. This email informed the board member and members elect that the “days prior to your being sworn in on December 7th are the only days that we will be able to meet as a group.” It also states that after the members elect are sworn in Mr. Rodriguez will only be able to meet with the members two at a time to discuss school business. He further informed the member and members elect that it was urgent that they meet as a group in advance of the December 7th swearing in so that the members could be well prepared for the business at hand.

Rodriguez lists several issues needing to be discussed with the member and members elect during the proposed private meetings:

- The election of the Board President and Clerk
- Board President assignment of members to committees
- The termination of the contract with Dr. Elizondo
- The termination of existing Board legal representation
- The proper scope of Rodriguez' authority over certain staff, including Dr. Cohn-Vargas
- The authorization for Rodriguez to secure legal services
- The authorization for Rodriguez to negotiate a settlement of an existing lawsuit, including the specific amount of that settlement
- The reinstatement of and elimination of certain staff members.

With reference to the above items, Mr. Rodriguez told the board member and members elect, "I see my role as sharing this vital information with you as soon as possible so that you can be on the same page and come to a consensus on things."

Additionally, the email attached a copy of Rodriguez' proposed contract with the Board. Mr. Rodriguez stated that, "It's my expectation that the Board will approve a contract for my services on December 7th, so it's important that we are all on the same page with this issue." The contract attached to this email quoted a fee of \$98 per hour; however Mr. Rodriguez subsequently changed his contract to be a volunteer consultant. Mr. Rodriguez also proposed that he have equal authority as the then Principal/Superintendent Cohn-Vargas but that she report to him and he report to the Board.

The Grand Jury could not confirm that Mr. Rodriguez met with any of the recipients of his email. The Grand Jury asked three of the four recipients whether any meeting ever took place to discuss the matters outlined in the email and they each denied it. However, the existence of this email demonstrates Mr. Rodriguez' intent to hold such meetings, and as such, his intent to try to circumvent the Brown Act through private meetings with elected officials. The email also evidences his intent that, after the election, the meetings would have to be conducted in a serial fashion (two members at a time), which is likewise prohibited by the Brown Act, if the goal, is as stated by Mr. Rodriguez "to come to a consensus on things."

It is noteworthy that even though the Board members denied that a meeting ever took place to discuss the subjects contained in the email, the January 7, 2011 LBSD special meeting agenda (see reference 2) included two subjects that were contained in Mr. Rodriguez November 7, 2010 email:

- (1) approval of Rodriguez' consulting contract
- (2) closed session discussion of the Ruiz v. LBSD matter

Likewise, the January 11 meeting agenda included other subjects from Mr. Rodriguez' November 7 email:

- (1) closed session discussion of litigation, Ruiz and Perez
- (2) termination of legal services contract
- (3) retention of new legal services.

The minutes for the meetings reflect that actions were taken on these matters consistent with the recommendations that Mr. Rodriguez made to the member and members elect in his November 7 email. Mr. Rodriguez' intent to hold this initial meeting with the member and members elect in private to discuss, deliberate, and reach a consensus on matters that ultimately came before a quorum of the Board is suggestive of efforts to circumvent the Brown Act. Further, Mr. Rodriguez' claim that he can meet with Board members two at a time after the members elect take office could constitute a serial meeting, which is still precluded by the Brown Act. Although the Brown Act applies to the Board, not Mr. Rodriguez, he was responsible for facilitating the apparent violation by instigating and attempting to act as a conduit for the Board members to reach a consensus on District business outside the open meeting requirements of the Brown Act.

Mr. Rodriguez Appointed As Interim Superintendent Despite Track Record

Mr. Rodriguez was rehired by the Board and now serves as an employee with the title of Interim Superintendent even though the period of his previous tenure (2004 – 2008) in the same position, was seriously questioned in an audit described below.

In response to citizen complaints, in 2009, the Santa Clara County Office of Education (SCCOE) commissioned a fiscal performance audit of LBSD. This audit was an analysis of LBSD policy and administrative regulations. In August 2009, Vavrinek, Trine, Day & Co. CPA submitted a final report of its Fiscal Performance Audit of LBSD outlining 119 findings and addressing “major discrepancies” in several areas:

- Fiscal operations
- Personnel procedures
- Board policies and administrative regulations
- Segregation of duties
- Training
- Contract compliance
- Documentation.

EES was hired to address the audit findings and to make the necessary corrections to policy and procedures. EES' own description of the situation stated the need to address “serious and inappropriate district accounting procedures” (Appendix C). The EES “Final Analysis of Board Policy and Administrative Regulations and the Final Report: District Fiscal Performance Audit: AB 139”

Mr. Rodriguez was Superintendent during the period of the audit and was responsible for many of the school district's actions, policies and procedures that led to the 119 findings delineated in the audit report. The result of this audit prompted the County Superintendent of Schools to write a letter to the District Attorney's Office (Appendix D) pinpointing some of the weaknesses of the District's internal controls uncovered in the audit. The letter stated that Education Code Section 1241.5 stipulates that in the event that a county superintendent has reason to believe that fraud, misappropriation of funds or other illegal activities have occurred, the county superintendent can conduct an audit. The letter further states that such an audit was warranted due to the findings contained in the district's 2006-07 annual financial audit report and discussions with concerned citizens. The superintendent felt that as result of the findings in the audit he had conducted, he was required by Education Code 42638(b) to notify the District Attorney of the findings. Despite this history of poor leadership, the current Board chose to rehire Mr. Rodriguez in 2011.

Questions Regarding the Interim Superintendent Contract

The Board entered into an employment contract with Mr. Rodriguez that stated that he was to be paid at the same rate as the out-going superintendent. The outgoing superintendent was being paid a doctoral stipend. Mr. Rodriguez does not have a doctorate degree. The contract also states that Mr. Rodriguez "shall be reimbursed for all expenses authorized by the District Board of Trustees that are incurred on behalf of the District, upon proper submission and approval of expense receipts and reports." The Grand Jury discovered that Mr. Rodriguez is being paid an expense allowance of \$6,600 per year, which is figured into his payment of \$683.78 per day. The Grand Jury questions why Mr. Rodriguez would be reimbursed for expenses when he is being paid an expense allowance.

Lack of Control of Records

During its investigation, the Grand Jury found a lack of control over sensitive LBSD documents, including personnel and financial records. Through interviews the Grand Jury learned that there is no protocol to track documents when removed from District files. Interviewees indicated that financial records have been removed from the District office and not returned. In fact, an interviewee brought original documents (reported missing by other individuals) to a Grand Jury interview. It is not known whether other documents were accessed, with or without proper authorization, or removed from the campus.

Interviewees also stated that Mr. Rodriguez was given carte blanche access to personnel records during his capacity as a volunteer consultant. Given that his contract contained no provision on why his scope of work would require access to highly confidential records or the lack of business necessity in this regard, the Grand Jury is concerned about whether he might have accessed records in violation of the privacy of school employees.

Board Inaccessibility

Ironically, as the Board is elected to represent the interests of the public, there is no effective means for the public to contact Board members. The District website does not provide email addresses or any means for the public to contact the Board other than a general District office phone. Website information is minimal. At the time of approval of this report there was no contact numbers or email addresses posted on the LBSD website for any Board members.

Apparent Lack of Board Training

The foregoing establishes that the members of the Board have minimal competence in school board best practices, or school board operations in general. This extends to lack of knowledge of school law, board governance and responsibilities, and knowledge of law governing conduct of public bodies². Some of the more notable examples include that the Board President told the Principal/Superintendent and members of the Board that they could not contact legal counsel without the Board President's permission. There was no Board policy in this regard and the Board President, as an equal to other elected members, cannot and should not be the gatekeeper regarding whether other Board members or the Superintendent can obtain legal advice. Further, some Board members accepted coaching from Mr. Rodriguez who misled them regarding their responsibilities for the Brown Act.

The California School Boards Association (CSBA) and the Vermont School Boards Association have published materials which may be of significant value to the education and training of the Board (see reference 3). CSBA provides in-service training opportunities to school board members. Some of this training material is available at no cost to the District.

Lack of Board Responsiveness to External Findings and Recommendations

This Grand Jury reviewed the 2008-2009 Civil Grand Jury report on LBSD. The report listed several findings and recommendations. Only a few of these received satisfactory responses. For the most part the responses were evasive and expressed only partial agreement with complex excuses for noncompliance. Among the recommendations was that the LBSD create a Citizen's Oversight Committee (COC) to monitor Measure A expenditures. LBSD disagreed that a COC was required, but said it would consider commissioning a special audit for Measure A. When the Grand Jury asked staff for a copy of the audit, one could not be produced.

² Local government officials must receive training in general ethics principles (Gov. Code, § 53235, subd. (d)), and the training must provide a brief summary of specific laws concerning conflicts of interests, perquisites of office and government transparency. Under AB 1234, the current Board would have been required to undergo this training and it is presumed that they did so, however, the issues that are endemic to the District are greater than the ethics issues covered by this training.

Additionally, LBSD agreed with the 2008-2009 Grand Jury recommendation to post contact information for the Board on its website. As of May 15, 2011 contact information for Board members is not posted on the LBSD website. The District's responses to the 2008-2009 Grand Jury report may be viewed at http://www.sccourt.org/court_divisions/civil/cgj/2009/responses/BurbankTrustees/LutherBurbank.pdf

A Case for Consolidation

It is questionable whether the one-school school district model is efficient or economically advisable in an urban setting adjacent to a major school district with resources that LBSD cannot offer its students. The Grand Jury recognizes the value of the neighborhood cohesiveness of the Burbank area; however, the economic viability and sustainability of this single-school school district must be examined. Most of the interviewees agreed redistricting and merging with San Jose Unified would benefit the school. The process to annex a small school district to an adjacent district may be initiated by any of the following:

- Resolutions signed by a majority of the governing board members of each district (*Education Code [EC] § 35700*);
- A petition by 25% of the voters in the district to be transferred (*EC § 35700*);
- A resolution of the Santa Clara County Committee on School District Organization (*EC §§ 35720-35721*);
- A petition by 10% of the voters of either district (*EC §§ 35721*);
- A resolution of the county board of supervisors, city council, or local agency formation commission (*EC §§ 35721*).

Given that redistricting and/or consolidation are a long and arduous process, the Board and the District may want to consider creative solutions that have worked in other areas of the state. An interviewee reported to the Grand Jury that a school district had employed a Joint Powers process whereby they consolidated the finance functions of small districts, and had one qualified finance person handle all business functions for the consolidated function. A solution to financial management issues could be the creation of a Joint Power Authority (JPA) with the SCCOE, whereby all one-school school district finances could be managed by one qualified financial manager. A JPA would allow consolidating financial management for the other two one-school districts in the county with LBSD.

Conclusion

Mr. Rodriguez was superintendent and was responsible for many of the school district's actions, policies and procedures that led to the 119 findings defined by an audit report initiated by the SCCOE. Although Mr. Rodriguez was not charged or accused of any personal wrongdoing, under his supervision as superintendent LBSD was mismanaged according to the 2009 final audit report, and he should not have been rehired by the district. Despite this history, and the fact that Mr. Rodriguez has demonstrated an effort to circumvent the laws that apply to the Board for open meetings (Brown Act), the current Board chose to rehire Mr. Rodriguez.

The Luther Burbank School District allowed Mr. Rodriguez to have an inordinate amount of control of the District as a consultant.

Although the Brown Act applies to the Board, not Mr. Rodriguez, his actions in encouraging an unscheduled meeting could have resulted in a violation of the Brown Act.

Poor business decisions have resulted in expending over \$900,000 that could have been spent on student education.

FINDINGS and RECOMMENDATIONS

Finding 1

Mr. Rodriguez was overly influential in LBSD governance as a consultant. His consultant contract was overly broad and placed inadequate limits on the scope of his duties. Despite his having only a consultant status, Mr. Rodriguez was permitted to exercise direct authority over staff and was given unlimited access to confidential records.

Recommendation 1a

The Board should limit consultant contracts to specific purposes and specific time frames.

Recommendation 1b

The Board should ensure that consultants have no direct authority over staff.

Recommendation 1c

The Board should ensure that consultants have no access to confidential records, except for matters within the specific and limited scope and purpose of their contract, and in such cases only under supervision of LBSD staff.

Finding 2

There is minimal security or control over financial, personnel, and other sensitive District documents and records. There are inadequate systems in place to track the movement of these records.

Recommendation 2

The Board should establish a secure facility, onsite or otherwise, to store vital LBSD records, and establish a strict protocol, such as formal logs showing document removal and return with reason for request, for access to and removal of confidential documents and records.

Finding 3

The LBSD has a record of poor management predating the 2007-2008 Grand Jury report. This situation continues to exist with minimal improvement.

Recommendation 3a

The LBSD Board should resolve to consolidate with another school district and take the requisite steps to begin that process. (See the 2009-2010 Grand Jury report entitled "Achieving School District Efficiency Through Consolidation").

Recommendation 3b

Alternatively, the LBSD Board should work with SCCOE to consolidate its business functions with the other one-school school districts in the county through a Joint Powers Authority.

Finding 4

Members of the LBSD Board continue to receive inadequate training to properly fulfill their roles as board members.

Recommendation 4a

The District should obtain educational/training programs for the existing and all new Board members. It should be a requirement that new Board members attend this program after they are elected and before taking office.

Recommendation 4b

The District should obtain continuing education on best practices for school governance for all Board members throughout their tenure in office.

Recommendation 4c

The LBSD Board should attend board meetings at other districts to learn best practices for operating as a board.

Finding 5

Staff and Board Members have been restricted from contacting authorized legal counsel without permission of the Board President. There is no Board Policy to support this directive.

Recommendation 5

The Board should develop a Policy and Procedure defining the process for authorized legal counsel contact.

Finding 6

In response to the 2008-2009 Grand Jury Report, the LBSD made a commitment to publish an audit report on the use of Measure A funds. There is no published audit report regarding expenditures of Measure A funds, as promised.

Recommendation 6

The District should meet its commitments to the community by conducting an audit and creating an audit report regarding expenditures of Measure A funds.

Finding 7

Mr. Rodriguez misled a Board member and members elect by suggesting that they could meet and reach consensus on matters coming before the Board. His email dated November 7, 2010 proposed meeting with Board members as a group prior to their swearing in. This email uses language which indicates an effort to circumvent the Brown Act.

Recommendation 7

All LBSD administrators and Board members should be trained to understand their responsibilities and obligations with respect to the Brown Act and abide by them.

Finding 8

It is difficult for the general public to reach individual Board members.

Recommendation 8

The LBSD Board should institute procedures to facilitate improved citizen communication with the Board and District officials. The Board should post email contact information on the LBSD website for each Board member.

APPENDIX A

BROWN ACT (selected sections)

54952.1. Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

54952.2. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

54952.2. (b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

For more information on the Brown Act see:

http://ag.ca.gov/publications/2003_Main_BrownAct.pdf

APPENDIX B1

Email from Richard Rodriguez to the LBSD Board Members and Members Elect

--- On Sun, 11/7/10, Richard Rodriguez <rkr@charter.net> wrote:

From: Richard Rodriguez <rkr@charter.net>

Subject: Next Steps

To: mtgarcia03@yahoo.com, fran4raul@yahoo.com, monasj01@gmail.com, lgperfect2003@yahoo.com

Date: Sunday, November 7, 2010, 1:14 PM

Good morning Ladies,

The days prior to your being sworn in on December 7th are the only days that we will be able to meet as a group. Do to the rules and regulations of the Brown Act, which I will attach here and you can begin studying, with board members of a five-member board only two of you can meet at a time. Once three of you meet together to discuss school district business that becomes a quorum and constitutes an illegal meeting. After you are sworn in, outside of the boardroom, I will only be able to meet with two of you at a time to discuss school district business. So you can see my urgency in trying to meet with you at least a couple more times before the December 7th meeting. I have information for you that will assist you in being well prepared for the business at hand.

I did learn a lesson last night and that is that I realize that it would be better for you if I email you all the information I want to give you ahead of time and that way when we meet you've had time to study it and we can spend more time focused on the topics and make adjustments according to your wishes and desires. My goal is to be of the greatest assistance to you so that you can make informed decisions. I have the utmost trust in your judgment. My desire is to give you my best professional advice and recommendations that I feel are putting children first and will contribute to the success of the district and to you as board members.

Because of preplanned vacations that my wife and I have scheduled these are the days I have available to meet with you: Nov. 8th, Nov. 10th, Nov. 11th, Nov. 20th, Nov. 21st, Nov. 22nd, and Nov. 28 – Dec. 6th. After that I can only meet with two of you at a time legally. Becki should get your Board packet to you on Dec. 3rd and it will be crucial to have a special meeting just to go over the board packet together, so we have to plan a meeting sometime between Dec. 3rd and Dec. 6th. Keep that in mind. It would actually help me tremendously if each of you can go through your calendars and tell me what dates listed above you can meet with me and what times you have available. It is extremely important that we sit down and plan for your first board meeting. There are elements that must be covered and stated at that meeting of which I can inform you so that you will be prepared. It will not normally be like this but you are involved in a very special situation and opponents will try to sabotage everything you do, so we have to be extra prepared. I am honored and grateful that you have stepped up to be board members and that you allowed me to assist with your campaign. Please allow me to assist and guide you through the crucial initial stage of your board ship.

Attached you will find a list of the things I wanted to discuss with you yesterday. We were all still excited about the election so we obviously didn't accomplish that, but with your review of the list we will be better prepared for our next meeting. Also, please feel free to call me to discuss any of the topics that you see on the list. I feel that each item needs explanation and

APPENDIX B1 – continued

needs to be discussed as a group. There are good reasons and background information for some of the immediate decisions that need to be made. I see my role as sharing this vital information with you as soon as possible so that you can be on the same page and come to a consensus on things. Nothing is in concrete until all of you as a board, review the issues, become completely informed, and come to an agreement as to your decisions.

The second document attached is a copy of the contract that I am presenting to you regarding my working relationship with you, the new LBSD board. The format of the contract was taken from the contract used by Fernando Elizondo, but modified to include the work I will be doing for you. Also, the fee has been considerably reduced, as I feel Elizondo's fee was exorbitant. It's my expectation that the Board will approve a contract for my services on December 7th, so it's important that we are all on the same page with this issue. I will be charging a minimal fee and only expect to be doing this for three or four months. Unlike Fernando Elizondo I will only charge you for time legitimately spent on working with and for you. You will have the opportunity to have clear limits on my contract in order to dispel the rumors that others will start that I'm doing this to come back to the district to make money. Please feel free to call me to discuss any part of the contract or make your questions and responses to all on email so that everyone of you is in the loop. Being clear and open with all of you has been my consistent mode of operation. Because of my commitment to the children, parents, and staff of Luther Burbank School District I would do this work for you for free, you saw me freely give of my time during the campaign. However now we are entering a professional arena and if it is to be effective I need to be your official consultant. The response to people questioning my involvement needs to be that the board has hired me. At some point down the road when we agree that you no longer need me as much, I will continue to work with you at no expense, or perhaps just mileage to cover my commutes from Gilroy.

In any case, I'm very excited about your "Win!" and the work we are about to embark on. My 38 years at Luther Burbank School District have been very interesting and eventful, but also the best years of my life. I truly believe that your good judgment and passion can save the district. I was a school board member for twelve years in the Gilroy Unified School District. I know how difficult that job can be. I also served as board president three times and am well versed in how that position operates.

I am very proud of you. I hope that you see me as your strong supporter and the wind beneath your wings. Divided we will fall, together we can accomplish anything!

Here to serve you, Richard

"No Man Stands So Tall As When He Stoops To Help A Child" ~~Abraham Lincoln

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3 attachments —

2006BrownAct.pdf 101K

Mtg Agenda.doc (Appendix B2) 31K

ContractorAgreement.doc (Appendix B3) 44K

APPENDIX B2

Board Agenda attached to email dated November 7, 2010

- Elect Board President
 - Elect a Board Clerk?
 - Board President Assigns board members to committees
 - Terminate Contract with Fernando Elizondo
 - Terminate the Board's working relationship with attorney Esau Herrera and GCR (Calderon, Garcia, and Ruiz) effective immediately. Herrera to return all district documents (For example: COE report)
 - Hire Mr. R. as board advisor/consultant:
 - (a) See contract for specifics
- *Mr. R. to have equal authority as Becki with Rudy/Becki reporting to Mr. R. who will then report to the board)
- Authorize Mr. Rodriguez to work on the board's behalf to secure appropriate legal services for LBSD.
 - Board Benefits (individual board benefits only choice of HMO/PPO or no benefits at all)
 - Authorize Mr. Rodriguez to immediately work out a settlement in the case of Lupe Ruiz vs. LBSD:
 - (a) Reinstate Lupe Ruiz as Executive Administrative Assistant to the Superintendent aka District Secretary effective immediately with settlement to follow
 - (b) Monetary Settlement (1 year salary, attorney fees, reinstatement of comp time/vacation)
 - Authorize Mr. Rodriguez to immediately investigate the withdrawal of legal services to Mr. Perez provided by district insurance group.
 - Reinstate Marvelyn as Principal effective 1/1/11
 - Reinstate Diana as counselor/MAA Billing coordinator effective 1/1/11
 - Reinstate Carlos Casas in his previous position as School Clerk. (6-hour including benefits)
 - Eliminate Gama's position and re-hire Nova as tech specialist
 - Eliminate all support staff for Rudy

APPENDIX B3
INDEPENDENT CONTRACT AGREEMENT
FOR PROFESSIONAL SERVICES

(1) Parties

The Luther Burbank School District Board of Trustees (“District”) and Richard Rodriguez (“Contractor”) mutually agree and promise as follows:

(2) Contract Beginning Date

This contract shall commence on December 7, 2010

(3) Contract’s Obligation

In consideration of the compensation noted in paragraph #4, Contractor shall have authority over all employees including the superintendent and be an advisor/consultant to the Board/District. Contractor shall provide the following professional services, products and/or reports, as requested from time to time by the District:

- (b) Provide professional coaching for Board of Trustee members
- (c) Attend all open and closed meetings of the Board
- (d) Negotiate on behalf of the board and act as the Board’s Voice
- (e) Advise and make recommendations to the Board
- (f) Obtain legal representation for the Board/District
- (g) Settle any current litigation involving the Board/District
- (h) Have input on and approval of all future agendas
- (i) Perform any other duties as requested by the Board

(4) Compensation and Conditions

In consideration of Contractor’s provision of services as described above, and subject to payment provisions expressed herein, the Luther Burbank School District shall pay Contractor, upon approval by District, as follows:

- (a) \$98.00 per hour
- (b) Reimbursement mileage at District rate. If rate is not set by District policy, then mileage reimbursement rate shall be at the IRS mileage rate then in effect.
- (c) Contractor will be given access to his former office as his place to work while on campus, be given a master key, have his computer returned to him with all original content and be given access to all his files and all district files/records.

APPENDIX B3 - continued

- (d) This position is intended to be a part-time hourly position for a temporary period as needed by the Board.

(5) Termination

This contract may be terminated by either party, upon two-week advance written notice thereof to the other party, or terminated immediately by written mutual consent of the parties.

(6) Independent Contractor Status

This contract is not intended to and shall not be construed to create the relationship of employee. Further, as the Contractor is not an employee of the District, the District shall not be and is not responsible for obtaining worker’s compensation insurance coverage for Contractor.

(7) Completeness of Agreement

This agreement constitutes the entire understanding of parties. Any change or modification shall be in writing, executed and dated by both parties hereto.

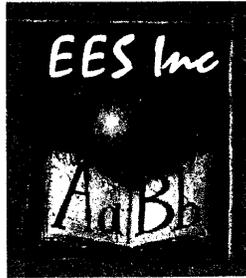
For Contractor:

_____ Date: 12/7/10
Richard Rodriguez
Retired Superintendent LBSD

For Luther Burbank School District:

_____ Date: 12/7/10
President, Board of Trustees

APPENDIX C



FINAL ANALYSIS OF DISTRICT BOARD POLICY AND ADMINISTRATIVE REGULATIONS

November 2010

The enclosed analysis, as requested by Dr. Cohn-Vargas, identifies the specific new and or updated board adopted policies and administrative regulations.

The new and or updated board policies and administrative regulations are identified with an asterisk (*) by each of the nine (9) major categories.

The district's board policies, which were last reviewed in 1992, resulted in the commissioning of this project by the Board of Education in January 2008.

To date, 164 new and or revised board policies and corresponding administrative regulations have been reviewed and adopted by the Board.

The project resulted in three complete and updated board policy manuals.

Currently, there remains outstanding the October 2010 set of board-adopted policies which are being reviewed by staff of the California School Boards Association (CSBA) Policy Division.

These remaining board policies need to be placed in the three sets of updated manuals.

A more detailed report as to this project has been forwarded to Dr. Becki Cohn-Vargas Superintendent-Principal.

Submitted by
Dr. Fernando Elizondo
Consultant to the Board

Fernando R. Elizondo Ed.D 19635 Redding Drive Salinas, CA 92908
831-455-8532 ees.inc@gmail.com

APPENDIX C - continued



FINAL REPORT: DISTRICT BOARD POLICY AND ADMINISTRATIVE REGULATIONS

Prepared by
Dr. Fernando Elizondo
Consultant to the Board
December 2010

Background

This report is the final updating of the District's board policies and administrative regulations.

The process of updating the district's policies commenced on January 23, 2008 when the District entered into a contract with the California School Boards Association (CSBA) Policies Services Division. The policy service division provided a set of possible policies in moving the district toward a more accurate and up-to-date policy manual. The existing district policies were last reviewed in 1992, therefore necessitating a complete review and updating.

Through out 2008, CSBA representatives visited and held several workshops with board members and the superintendent in outlining the review process.

During that time period, district policies were reviewed; modifications and updates were recommended but not processed for board action.

In November of 2008, the Board readdressed the project with interim Superintendent Dr. Fernando Elizondo. Dr. Elizondo working in concert with the board leadership established a review process and during the next 12 months, board policies and administrative regulations were adopted by the board.

In November 2009, the board appointed Dr Becki Cohn-Vargas as Superintendent-Principal.

In November of 2009 the board entered into a contract with Dr. Elizondo to in part continue the updating of the board policies with newly appointed superintendent /principal Dr. Becki Cohn-Vargas and CBO Rudy Avalos-Sanchez

Work Completed

In the ensuing months, a process was structured as to the review process. Dr. Elizondo working closely with District staff established the following process for addressing and updating board policies and administrative regulations

APPENDIX C - continued

2

Final Report: Board Policy and Administrative Regulations

Below is outlined the process used to address the review of board policies and administrative regulations

1. The board policies and administrative regulations receiving the highest priority are those addressed in the AB 139 Audit and Grand Jury reports.
2. Other board policies were requested and submitted through the Superintendent and Board of Trustees.
3. Each board policy was reviewed and, if needed, redrafted utilizing the policies reviewed by the board during the 2007-2008 school year. These policies were completed, although not brought forth for board review and adoption.
4. Upon redrafting, board policies were forwarded to the Superintendent for further review and editing.
5. The superintendent placed policies on the board agenda for review and adoption.
6. The adopted board policies and administrative regulations were returned to Dr. Elizondo and placed in the appropriate format.
7. The final policy was placed in the district's policy manual.
8. The Superintendent or designee placed the policies on the district's website.

Final Analysis

After 37 months, the district policy manual included the both new and the updating of 164 board policies. There are now three (3) complete sets of district policy manuals. The break down as to those areas what had new or updated policies and administrative regulations were:

Articles and Areas	Board Adopted Policies
Article 0. Philosophy _Goals-Objectives & Comprehensive plans	3
Article 1 Community Relations	6
Article 2 Administration	0
Article 3 Business & Non instructional Operations	17
Article 4 Personnel	43
Article 5 Students	45
Article 6 Instruction	19
Article 7 Facilities	1
Article 9 Bylaws of the Board	30

The AB 139 Performance Audit commissioned by the Santa Clara County Office of Education identified 119 audit exceptions. The performance audit was a driving force in identifying board policies receiving the highest priority. Due to the major deficits addressed in the district's AB 139 fiscal performance audit the areas which had the largest number of new and or updated policies were: business, personnel and students.

APPENDIX C - continued

3

Final Report: Board Policy and Administrative Regulations

Next Steps

- CSBA will be forwarding to the district a set of board policies drawn from recently passed legislation. These policies will be categorized as both (a) new and (b) updated. Within each category will be recommended policies as (a) mandated and (b) optional. If the district is to maintain a current set of policies it's important to continue the review process and incorporate into the district's manual.
- Continue to review established board policies and administrative regulations. These are last reviewed in 1992 and need to be prioritized and processed.
- There're still some board-adopted policies from the October 2010 board meeting being reviewed by CSBA. When they arrive in the district they need to be placed in the three policy manuals.
- Elizondo Educational Strategies Inc has paid the invoice received from CSBA for the three custom board manuals.
- A more specific analysis of specific updated and or new board policies and administrative regulations can be reviewed under a separate cover.

Fernando R. Elizondo Ed.D 19635 Redding Drive Salinas, CA 92908
831-455-8532 ees.inc@gmail.com

APPENDIX D



Charles Weis, Ph.D.
County Superintendent of Schools

February 13, 2009

Mark Buller
Chief Assistant District Attorney
Santa Clara County District Attorney's Office
70 West Hedding Street, West Wing
San Jose, California 95110

Dear Mr. Buller:

Education code 1241.5 stipulates that in the event that a county superintendent has reason to believe that fraud, misappropriation of funds or other illegal activities have occurred, the county superintendent can conduct an audit. I engaged the services of Vavrinek, Trine, Day & Co., LLP (VTD) subsequent to review of audit findings contained in the district's 2006-07 annual financial audit report and subsequent to discussions with a concerned citizen who made formal allegations that fraud, misappropriation of funds and other illegal activities had occurred in the Luther Burbank School District.

VTD cited several material weaknesses in the district's internal controls; all are discussed in detail within the findings of the attached report:

6. The Business Manager indicated that she had prepared budgets, classified expenditures, and prepared journal entries at the direction of the Superintendent that she believed were not appropriate. The Superintendent indicated the Business Manager was given general directions and that he relied on the Business Manager to execute his directions within applicable laws and regulations.
7. There were instances where Board Policies were not followed and/or were unclear.
8. The District did not have written procedures during the 2004-05, 2005-06 and 2006-07 fiscal years. Staff did not agree on the actual procedures being performed in the areas of payroll and human resources, budgeting, and categorical programs.
9. The District's independent auditors identified internal control deficiencies and provided recommendations for improvements in internal controls in the District's 2006-07 annual financial audit report. The district has developed written procedures for only two of the areas in which adequate internal controls were lacking.
10. Journal entries were made at year end to fully expend categorical funding by moving expenditures between funds and between individual programs which were not supported by written documentation or approval. Account distributions were misclassified and resulted in incorrect charges to programs, salaries charged to individual programs without time sheets or semi-annual certification as required by Federal regulations, and in amounts that were not reasonable based upon subsequent time sheets provided.

Board of Education

Leon E. Beauchman • Joseph Di Salvo • T. N. Ho • Jane Howard • Grace H. Mah • Craig Mann • Anna Song
1290 Ridder Park Drive • San Jose, CA 95131-2304 • 408-453-6500 • www.sccoe.org

APPENDIX D - continued

Given the findings noted above, I am required by Education Code 42638(b) to notify your office of the findings and forward a copy of the report to you.

In follow up to the report, I will attend the board meeting of the Luther Burbank School District on March 10, 2009, and report the findings and recommendations. In addition, I will schedule quarterly meetings with the district superintendent over the next eighteen months to monitor the district's progress and to identify any assistance that the SCCOE can provide.

I very much appreciate your support throughout this review and process. Thank you.

Sincerely,



Charles Weis, Ph.D.
County Superintendent of Schools

Enclosure: Luther Burbank School District
Performance Audit
Fiscal Years 2004-05, 2005-06, 2006-07

Xc: Dr. Fernando Elizondo, Interim Superintendent, Luther Burbank School District

REFERENCES

1. LUTHER BURBANK SCHOOL DISTRICT PERFORMANCE AUDIT
Fiscal Years 2004-05, 2005-06, 2006-07 prepared by
Vavrinek, Trine, Day & Company, LLP, completion date February 10, 2009
2. Special Board Meeting Agenda January 7, 2011
Special Board Meeting Agenda January 10, 2011
Board Agenda January 11, 2011
Board Minutes January 11, 2011
Special Board Meeting Minutes January 10, 2011
Special Board Meeting Agenda January 18, 2011
3. Training opportunities for the Board
Vermont School Boards Association <http://www.vtvsba.org/handout.html>
Contains several presentations in all facets of School Board Management

California School Boards Association:
<http://www.csba.org/~media/Files/AboutCSBA2/SchBrdLeadershipBk.aspx>
Describes the role and function of school boards

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 26th day of May, 2011.

Helene I. Popenhager
Foreperson

Gerard Roney
Foreperson pro tem

Kathryn Janoff
Secretary