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August 20, 2008

**Response from the MiraCosta Community College District  
to the Findings and Recommendations in the Report of the  
2007-08 San Diego County Grand Jury (dated May 27, 2008)  
"Ethics 101: Course Requirements for Community Colleges"**

**Submitted to:**

**The Presiding Judge of the Superior Court**

**INTRODUCTION**

On May 22, 2008, the foreman of the San Diego Grand Jury sent to the MiraCosta Community College District Board of Trustees (hereinafter "District" or "Board") a copy of a report dated May 27, 2008, entitled "Ethics 101: Course Requirements for Community Colleges." The Board and the District's administration have thoroughly reviewed the report and acknowledge the effort and time involved in obtaining information and in preparing the Report. In the report transmittal, the Board was notified that the Report was being prepared pursuant to Penal Code section 933.5 and was being submitted to the Board for its review and comment to the Presiding Judge of the Superior Court. Based on this invitation, the District submits this reply. In doing so, the Board is hopeful that this response will be helpful in leading to a better understanding of the MiraCosta Community College District's policies and practices.

**BACKGROUND**

As noted by the California Supreme Court: "The California Grand Jury has three basic functions: to weigh criminal charges and to determine whether indictments should be returned; to weigh allegations and misconduct against officials and to determine whether to present formal accusations requesting their removal from office; and to act as the public's watchdog by investigating and reporting upon the affairs of local government." (Citations omitted – *McClatchy Newspaper v. Superior Court* (1988) 44 Cal.3rd 1162, 1170). The Court went on to note: "The numerous statutory provisions . . . which grant the grand jury authority to investigate and report on numerous facets of local government, also limit the grand jury's investigation and reporting authority to the specifically enumerated fields....Although the [grand juries] powers are broad, they are

carefully defined and limited by statute, and the grand jury has no inherent investigatory powers beyond those granted by the Legislature.” *Id.* at 1172; citations omitted.

Grand jury investigative authority for local government is focused primarily on county government. However, in the limited area of financial affairs, which affect the assessing and taxing powers, that investigatory power extends to educational agencies such as community college districts. As recognized by the *Court in Board of Trustees v. Leach*, 258 Cal.2d 260, 281 (1968); however, school districts are agencies of the state for the local operation of the state school system and therefore the districts are state agencies with its board members being state officers. See also, 46 Ops.Cal.Atty.Gen. 144 (1965). Based on this premise, the court’s conclusion in the *Leach* case was that Penal Code section 933.5, pursuant to which the May 27, 2008, Grand Jury Report was issued, does not authorize grand jury investigations into personnel and general governance matters of school districts.

It should also be kept in mind that, as creatures of state statute, a community college district and its governing board are subject to numerous state statutes as well as regulations adopted by the state-appointed Board of Governors, which are enforced by the State Chancellor's Office. These statutes and regulations are found in the Government Code, the Education Code and in Title 5 of the Code of Regulations. Much of the report, which appears to be suggesting another layer of governance, fails to acknowledge the complexity of the existing governance structure and numerous statutes and regulations controlling the conduct of the District business, many of which have significant enforcement mechanisms. For example, political activities together with reporting requirements are governed not only by the Political Reform Act of 1974, which requires campaign disclosures and is enforced by way of criminal penalties through the District Attorney's office, as well as substantial financial penalties that may be enforced by either the District Attorney or interested citizens who may be entitled to attorney’s fees for bringing an enforcement action (see Government Code sections 87100 *et seq.*), but also sections 7050 *et seq.* of the Education Code, which limit the restrictions that the District can impose upon employees in connection with their political activities. Conflicts of interest are also governed by the Political Reform Act of 1974 and Government Code section 1090 *et seq.*, the latter of which is subject to the criminal law enforcement. Public meetings, including the posting of agendas, distribution of materials, and notice of meetings to affected employees, are the subject of the Brown Act, which provides significant detail with respect to its implementation and is subject to enforcement by way of criminal penalties or by any interested person who wishes to bring an action with the potential of recovering attorney fees. Disposal of surplus property is governed by Education Code section 81450 *et seq.* Employees and officials within the organization are also guaranteed protection and investigation when they report corruption or public waste. See Education Code sections 87160 through 87164, which can be enforced by the State Personnel Board. The requirement that employees are hired on the basis of merit as opposed to political connections is established by sections 53021, 53022 and 53024 of Title 5 of the California Code of Regulations, which provides for extensive outreach and evaluations. This provision is enforced by the State Chancellor’s Office. See 5 Cal. Admin. Code section 53026.

In light of the extensive legislation and regulations that currently exist, the District questions the wisdom of calling for more regulation as opposed to better enforcement of existing laws and regulations. Moreover, the Board of Trustees questions the wisdom of diverting precious educational dollars for the purpose of creating additional bureaucratic

oversight. Ultimately the Board of Trustees is accountable not only to the State Chancellor's Office and Board of Governors but to the voters themselves.

Notwithstanding the significant question of whether the Grand Jury Report exceeds its statutory authority, the District believes that the findings and recommendations merit comment. The Board of Trustees, of course, is not in a position to evaluate the various factual assertions in light of the grand jury procedure of taking testimony in secret and not disclosing any "evidence" received. Therefore, the Board of Trustees can only rely on its collective 50 plus years of governing experience in the matter of community college district business.

## RESPONSE TO FINDINGS

**Finding.** "Not all board members take the time to review and comprehend all supporting documentation provided on agenda items and these members' votes are sometimes merely a rubber stamp of staff recommendations."

**Response.** The Board disagrees. Each Board member, as a public-elected official, brings a unique set of talents, experience, and background to his/her responsibility as a Board member. Many hours are spent not only preparing for board meetings, but in between Board meetings investigating and considering District needs and the issues that are pending before the Board. These experiences provide Board members a unique ability to effectively evaluate agenda items. Agendas with back-up material are provided with sufficient advance time to enable Board members to become familiar with agenda items. In addition, Board members receive input at the Board meetings not only from staff, but also from the public. Board meetings are regularly attended by District Administration, faculty senate representatives, associate faculty union representatives, classified senate representatives, and interested community members, who often have comments and concerns with respect to board items which are presented and considered.

**Finding.** "A limit of three four-year terms for trustees with the local community colleges would be consistent with limits for state legislatures, would provide continuity of leadership, and also allow newly elected members to acquire the knowledge the position requires."

**Response.** The Board disagrees. The trustees believe that any individual willing to engage in public service should be given the opportunity to present himself/herself and his/her credentials before the public through the electoral process every four years and that the voters are capable of determining whether that person's experience and knowledge would be beneficial irrespective of prior length of service.

**Finding.** "The imposition of limits on campaign contributions or restrictions on who may contribute to candidates for trustee would reduce the perception that elections could be influenced by firms doing business with the district."

**Response.** The Board disagrees. At the onset, the District notes that the Education Code has specific sections dealing with the political activities of school officers and employees, which are found in section 7050, *et seq.* These specifically apply to a community college district (Education Code section 7051) and prohibit the District from

placing restrictions on the political activities of officers or employees except as required by federal law or specifically mandated by that article. The District is concerned that the finding calls for a violation of these statutes. The District also believes that the Political Reform Act of 1974 provides a significant basis for providing information to the electorate with respect to campaign financing, which further allows for public accountability.

**Finding.** “Student Trustees play a valuable role in bringing student concerns to the attention of their governing boards.”

**Response.** The Board agrees. State law (Ed. Code 72023.5) requires a governing board to have at least one non-voting student member to be chosen by the students in a manner determined by the Board. Student trustees have the same general responsibilities as all trustees to represent the interests of the entire community; however, they also provide a student perspective on the issues facing the Board. During all meetings of the Board, the student trustee is encouraged and has the right to participate in the discussion of issues, ask questions, and be seated with the Board of Trustees. As an official member of the Board, the student trustee is entitled to receive all materials furnished to regular members of the Board, with the exception of materials related to executive sessions. The student trustee can make and second motions. The student trustee’s vote is recorded in the minutes as advisory.

**Finding.** “There is no local entity to enforce the existing code of ethics and to apply penalties for violations.”

**Response.** The Board disagrees. Existing District policy specifically provides for enforcement by the Board, including the process of censure. Further, the standards regarding ethics for governing boards are also established and enforced by the Western Association of Schools and Colleges through the accreditation process.

**Finding.** “Board of Trustees members and upper-level administrators within the local community college districts are ill-prepared to fill out annual financial disclosure statements. Some staff members do not know that real property in the district, other than personal residence, must be listed on the Form 700.”

**Response.** The Board disagrees. The Form 700 specifically provides instructions for filling out the form. Training is available to Board members through the League of California Community Colleges. The District has no information to substantiate that portion of the finding as it relates to staff members’ knowledge about real property disclosure obligations.

**Finding.** “There is no local entity to monitor randomly the Form 700 for community college personnel, to respond to complaints of nondisclosure, and to refer violators to the Fair Political Practices Commission.”

**Response.** The Board disagrees. The District notes the District Attorney is specifically tasked with enforcement of the Political Reform Act of 1974, which is the basis for the Form 700 request. Moreover, any local resident may seek court review of failure to comply with the Act.

**Finding.** “A local education ethics committee is needed to establish and enforce a uniform code of ethics for officials of the five local community colleges, as well as to monitor compliance with the Brown Act.”

**Response.** The Board disagrees. The District does not believe there is a need for an additional bureaucratic layer of government to draft additional legislation. The Board has adopted a code of ethics and has enforcement capability with respect to that code of ethics as previously noted. The District Attorney for the County of San Diego is tasked with ensuring compliance with the Brown Act. In addition, any citizen may bring an action to compel Brown Act compliance.

**Finding.** “Items that are placed in the lost and found are not properly inventoried in all districts. Board policies do not provide for proper disposition of items that are not claimed by the owner.”

**Response.** The Board disagrees. District lost-and-found procedures are operational matters and not the policy focus of the Board. Lost-and-found items are turned in to the campus police who maintain a log related to the disposal of such items.

**Finding.** “In some districts, college vehicles and other assets that are no longer needed are not always made available for public auction. Sole-source bidding or direct sales to college staff is inappropriate.”

**Response.** The Board agrees that sole-source bidding or direct sales to college staff is inappropriate; however, such practices do not exist within the District. District assets are disposed of in accordance with the Education Code and existing policy requiring public auction where appropriate.

**Finding.** “At some colleges, attorneys are being paid for services that do not require legal expertise, such as acting as parliamentarian at open sessions of governing board meetings and attending interviews with prospective candidates for cabinet-level positions.”

**Response.** The Board disagrees that this finding is true with respect to MiraCosta Community College District. The District does not regularly employ attorneys to attend Board meetings, act as parliamentarian, or attend interviews of prospective candidates for cabinet-level positions.

**Finding.** “A cost/benefit analysis of an employed legal staff for basic legal services versus a wholly contracted legal counsel would be a useful tool for identifying and controlling a district’s legal expenditure.”

**Response.** The Board agrees. District staff has historically evaluated the costs of legal services and determined that it would not be cost effective to hire in-house legal counsel.

**Finding.** “At least one district has sworn police officers who do not meet California Police Officer Standards in Training (POST) requirements.”

**Response.** The Board disagrees to the extent that this statement applies to the District. The District is audited annually for Peace Officer Standards and Training (POST)

compliance by the Commission on Peace Officer Standards and Training and has documentation on file that demonstrates all sworn officers meet POST requirements.

## RECOMMENDATIONS

**08-91.** “Endorse and support the County Educational Ethics Committee for Community College Districts, as proposed above in this Report.”

This recommendation will not be implemented because it is not warranted or reasonable. The report tasks the San Diego County Board of Education with creating an ethics committee and legislating ethics for community college districts. The San Diego County Board of Education has no jurisdiction over community college districts. (The recommendation shows a lack of understanding of the jurisdiction and responsibilities of a County Board of Education. While a community college district may have limited interaction with the County Superintendent, the interaction is limited to assisting with fiscal matters as opposed to governance. See Education Code sections 85230 and 85237.) Moreover, the creation of additional levels of governmental bureaucracy at public expense is not warranted given the District’s ethics policy with existing Board oversight, oversight provided by the State Chancellor’s Office and State Board of Governors’ Office, the accreditation process, and other governmental entities tasked with the responsibility of monitoring conflicts of interest and campaign financing, viz. the District Attorneys Office and the Fair Political Practices Commission.

**08-92.** “Formulate a ballot proposal for approval of voters by the district to limit the terms of trustees.”

The recommendation will not be implemented because it is not warranted or reasonable. The Board believes that any individual willing to engage in public service should be given the opportunity to present himself/herself and his/her credentials before the public through the electoral process every four years and that the electors are capable of determining whether that person’s experience and knowledge would be beneficial irrespective of prior service.

**08-93.** “Adopt a governing board policy that would limit campaign contributions to a candidate for trustee, whether to a candidate or to a political action committee (PAC) on behalf of that candidate.”

This recommendation will not be implemented in that it is not warranted or reasonable. As previously noted, political practices, including campaign contributions, are regulated by the Fair Political Practices Committee. Contributions are publicly reported in accordance with the Political Reform Act of 1974. Furthermore, the governing board’s ability to adopt rules and regulations with respect to political activities is limited by Education Code section 7052 and 7055. Education Code section 7052 provides:

“Except as otherwise provided in this article or as necessary to meet requirements of federal law as it pertains to a particular employer or employees, no restriction shall be placed on the political activities of any officer or employee of a local agency.”

Education Code section 7055 empowers the Board of Trustees to establish rules and regulations, but limits those rules and regulations to political activities during working hours and political activities on the premises of the local agency.

**08-94.** “Adopt a governing board policy that would limit the total amount of campaign contributions a candidate or trustee could receive to a reasonable amount to be determined by the governing board.”

This recommendation will not be implemented for the same reasons as set forth in response to recommendation 08-93.

**08-95.** “Adopt a governing board policy that would set standards for staff members from soliciting campaign contributions. The policy should include a provision prohibiting staff members from soliciting campaign contributions for governing board candidates from contractors and other firms doing business with the district.”

This recommendation will not be implemented because it appears to call for action that is contrary to expressed statutory limitations contained in California Education Code section 7050, *et seq.*, and in particular, section 7052.

**08-96.** “Adopt a governing board policy that provides disclosure standards for trustees. The policy should include a requirement that a trustee disclose the fact that a bidder on a contract donated to his or her campaign.”

This recommendation will not be implemented in that it is not warranted or reasonable in light of the existing laws, rules, and regulations relating to disclosure of campaign contributions and providing adequate information to interested members of the public about the source of campaign contributions. Moreover, the District has already adopted a disclosure policy consistent with that act.

**08-97.** “Adopt a governing board policy that would set standards for buyouts of administrative contracts. The policy should include a provision limiting administrative contract buyouts to an amount specified in the contracts. No salary or benefit should exceed the 18-month period specified in the State Education Code. No damages or special payout should be granted.”

The buyout of administrative contracts is already covered by the California Government Code. To the extent that the recommendation is based on circumstances related to the MiraCosta Community College District’s settlement agreement with a past president, further review or comment is not appropriate at this time in light of the fact that issues relating to that matter are currently pending before the Superior Court and no final decision has been rendered.

**08-98.** “Endorse a policy to expand the public governing board meeting agendas according to the spirit of the Brown Act. For items concerning the awards of contracts, approving bids, and hiring consultants, the agenda should include amounts of bid and award, scope of award, time period, name and address of contract, and any college contact.”

The recommendation will not be implemented because it is not warranted or reasonable. It is unclear what the recommendation believes to be the spirit of the Brown



Act. The Brown Act itself specifically states that agenda items should be “brief”, generally need not exceed 20 words.” (Government Code section 54954.2) Moreover, the contracts themselves are available to the public for review both prior to and after Board action.

**08-99.** “Adopt a district policy that the campus police chief reports directly to the chancellor or president/superintendent or an appropriate vice chancellor or vice president.”

The recommendation will not be implemented because it is not warranted or reasonable. The superintendent/president is responsible for assigning and delegating duties and responsibilities within the District. A Board policy limiting that responsibility is not warranted. The District does note, however, that the campus police chief, by direction of the superintendent, does now and for an extended period of time has reported to a vice president.

**08-100.** “Review the qualifications of all sworn campus police officers for compliance with the requirements of the California Commission on Peace Officers Standards and Training (POST).”

The recommendation for MiraCosta Community College District is not warranted in that the District has conducted such a review and will continue to conduct such a review on an annual basis. Moreover, the District is annually audited by the California Commission on Peace Officers Standards and Training (POST).

**08-101.** “Adopt a governing board policy for all real property purchases that specifies the data to be listed on the public agenda when the purchase is voted on. The status should include the current assessed valuation and information on amounts of all sales in the last two years for comparison with the amount of a current purchase price.”

The recommendation will not be implemented because it is not warranted or reasonable. The acquisition of real property requires Board action. Board action can only occur at public meetings, with notices and agenda descriptions as required by the Brown Act. The Brown Act itself specifically recognizes that during the course of negotiating for real property, the Board may meet in closed session with its negotiator based on the disclosure of specific information as required therein. See Government Code section 54956.8. Any final purchase agreement is approved by the Board in open session. Documentation with respect to that purchase, including the purchase price, is a matter of public record. Any interested member of the public may also access information from the records of the County Assessor’s Office as it relates to the assessed valuation. Comparable sales are now also widely available through the internet.

**08-102.** “Undertake a cost/benefit analysis on the feasibility of employing a counsel for the district as opposed to contracting for all legal services.”

The recommendation has been implemented on an informal basis by staff. District staff constantly reviews the cost of contracted legal services for the District. Contracting for outside legal services enables the District to utilize various attorneys with specific expertise, as opposed to having in-house counsel who often has to consult with outside counsel. Also, by contracting for legal services, the District does not incur the various



administrative costs associated with staffing a legal office, such as secretarial support and research and library support. With respect to specific litigation matters, the District relies on its liability carrier with respect to the selection and compensation of legal counsel.

**08-103.** "Direct district human resources officers to adopt procedures to avoid the appearance of nepotism and inappropriate supervisory relationships in the hiring process. The procedures should include the identification and screening of applicants who are close friends and relatives of elected governing board members and staff."

The recommendation will not be implemented because it is not warranted or reasonable. The District already has a policy in place that deals with nepotism and supervision of family members. The filling of vacant positions within the District is governed by sections 53021, 53022, and 53024 of Title 5 of the California Code of Regulations. Those regulations require an extensive recruitment, often on a statewide basis, as well as a documented selection process. Moreover, the hiring of immediate members of a Board member's family is prohibited by Government Code section 1090."

**08-104.** "Adopt governing board policies regarding the disposition of surplus property. Said policies should include a requirement that any surplus college property donated to nonprofit organizations or sold by means of public auctions prohibit purchase by college staff/employees or relatives."

The recommendation requires further analysis, which staff will undertake in order to review the requirements of Education Code section 81450 and to present a recommended policy to the Board of Trustees within the next six months.

## CONCLUSION

Extensive legislation and regulation currently exists with respect to the governance of community college districts. Moreover, the District's Board of Trustees has established extensive policies and regulations in connection with the further implementation of those laws and regulations. The District's Board is committed to continuing its ongoing process of regular review of local policies and procedures to ensure that they adequately fulfill the Board's stewardship and responsibilities to the electorate.

Sincerely,



Susan A. Cota, Ed.D.

Interim Superintendent/President

Responding for the MiraCosta Community College District Board of Trustees