



GROSSMONT-CUYAMACA
COMMUNITY COLLEGE DISTRICT

RECEIVED

AUG 25 2008

BUT NOT FILED

August 19, 2008

RECEIVED

AUG 27 2008

SAN DIEGO
COUNTY GRAND JURY

Honorable Kenneth K. So
Presiding Judge
Superior Court of California
County of San Diego
220 West Broadway
San Diego, CA 92101

Re: Grossmont-Cuyamaca Community College District Response to Grand Jury Report

Dear Judge So:

Pursuant to California Penal Code Section 933.05, the Governing Board of the Grossmont-Cuyamaca Community College District provides the following response to the findings and recommendations of the May 22, 2008, Grand Jury Report entitled "Ethics 101: Course Requirement for Community College."

Finding 1: Not all Board members take the time to review and comprehend all supporting documentation provided on agenda items and these members' vote is sometimes merely a rubber stamp of staff recommendation.

The Board disagrees. Individual governing board members bring a wide variety of skills, knowledge, experience, and other talents to their trustee positions. The basis for their individual judgments may be disparate, but no less valid. Board members spend many hours not only in preparation for board meetings but in participation with college district and community members in a wide variety of circumstances. Activities include meeting with constituent groups and leadership, and reviewing minutes and agendas of district and college committee meetings. These experiences are among those that contribute to board members' abilities to effectively evaluate agenda items.

Finding 2: A limit of three four-year terms for Trustees of the Local Community Colleges would be consistent with limits for State legislators, would provide continuity of leadership and also allow newly elected members to acquire the knowledge the position requires.

The Board disagrees. There are term limits, as noted, for members of the state legislature, but there is no documentation or research that indicates that, as a result of term limits, the public has become better served. Further, community college institutions are today quite complex organizations and there is no indication that an arbitrary limitation of 12 years is an appropriate term limit when circumstances and needs continue to change. Finally, the trustees believe that any individual who is willing to offer their services should have the opportunity to do so and the public should be allowed to make its decision without artificial limitations.

Finding 3: 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.

Office of the Chancellor

The Board disagrees. Education Code 7050 *et seq.* and 7051 and the Political Reform Act of 1974 make information widely available and prohibit inappropriate interference. Many interests choose to attempt to influence elections. This district has not experienced either community concern or problems of perception regarding elections and the involvement of “firms doing business with the District.”

Finding 4: Student Trustees play a valuable role in bringing student concerns to the attention of their governing boards.

The Board agrees. Student trustees are encouraged by board policy to be active board members and both board minutes and video tape recordings verify their history of activity. Governing board members, the chancellor, and college presidents also bring student concerns forward.

Finding 5: There is no local entity to enforce the existing codes of ethics and to apply penalties for violations.

The Board disagrees. The governing board has adopted a comprehensive code of ethics policy that identifies steps that can be taken when there is a violation, including public censure. Board Policy 2715 Code of Ethics/Standards of Practice, was adopted in 2001. It was updated April 17, 2007, to specifically identify violations of the Code of Ethics and Conduct and seven actions that “shall be taken” in the event of violations. When allegations have occurred, steps have been taken consistent with this policy, including referral to the San Diego County District Attorney.

Finding 6: 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 did not know that real property in the district, other than personal residence, must be listed on the Form 700.

The Board disagrees. Form 700 includes clear instructions for completion along with instructions from the Agency Official for the district; contacts for assistance are identified at the district, county, and Fair Political Practices Commission; and the Community College League of California provides information at its trustee orientations and workshops.

Finding 7: There is no local entity to monitor randomly the Forms 700 for community college personnel, to respond to complaints of non-disclosure and to refer violators to the Fair Political Practices Commission.

The Board disagrees. The County of San Diego Clerk of the Board of Supervisors has identified an employee of the Grossmont-Cuyamaca Community College District as the Agency Official for Statements of Economic Interests (Form 700). The Agency Official is required by the regulations of the Fair Political Practices Committee (FPPC) to coordinate the completion of Form 700 for each of the designated filers in the district. This coordination includes notifying designated filers of their filing obligation and distributing the Form 700; determining if the statements are filed on time; notifying those who fail to file; reviewing statements for accuracy; assessing fines; and referring non-filers to enforcement authority. The District Attorney is tasked with enforcement of the Political Reform Act of 1974 which is the basis for the Form 700 requirements. The media and any member of the public have access to the reports and may seek court review.

Finding 8: A local Educational 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.

The Board disagrees. Local communities have been proactive in deliberately establishing community college districts. As such, creation of another layer of government without connection to the local district or electorate would add expense without value. The District Attorney is tasked with enforcement of the Brown Act. In this district, Board Policy 2715 Code of Ethics/Standards of Practice, was adopted in 2001 and updated April 17, 2007, to specifically identify violations of the Code of Ethics and Conduct and

seven actions that “shall be taken” in the event of violations. When allegations have occurred, steps have been taken consistent with this policy, including referral to the San Diego County District Attorney.

Finding 9: Items that are placed in the lost and found are not properly inventoried in all districts. Board policies do not provide for proper disposition for items that are not claimed by the owner.

The Board disagrees with this finding with respect to this district. District Lost and Found procedures are operational matters and not the policy focus of the Board. Lost and found items are turned into campus police who maintain a log related to the disposal of such items.

Finding 10: 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 directed sales to college staff is inappropriate.

The Board partially agrees. Disposal of surplus property is governed by Education Code, and local Governing Board policy also addresses these issues. The district processes do not provide for sole-source bidding. At times and when appropriate using a third-party auctioneer, sales to college or district staff is allowable and assists the district in reduction of surplus property, thereby reducing inventory storage and processing requirements.

Finding 11: 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 of prospective candidates for cabinet level positions.

The Board disagrees that this finding is true with respect to this district. The Grossmont-Cuyamaca Community College District does not hire attorneys for any services other than for their legal expertise.

Finding 12: A cost/benefit analysis of an employed legal staff for basic legal services versus a wholly contracted legal counsel would be a useful tool in identifying and controlling a district's legal expenditures.

The Board partially agrees. In this district, a cost/benefit analysis has historically reviewed attorney fees and services as part of the annual budget process and contractual renewals. A wide variety of legal skills has been found to be most beneficial and cost effective for our district. This has been accomplished by retaining the flexibility to obtain different skills for different circumstances such as litigation, personnel, land use, construction, and student issues.

Finding 13: At least one district has sworn peace officers who do not meet California Peace Officer Standards and Training (POST) requirements.

The Board disagrees with this finding with respect to the Grossmont-Cuyamaca Community College District. Our sworn peace officers are all POST certified.

Overview of Responses to Recommendations

Community college districts and governing boards are subject to numerous state statutes (Government Code and Education Code) as well as regulations (Title 5 of the Code of Regulations). The regulations are adopted by the state-appointed Board of Governors of the California Community Colleges and enforced by the State Chancellor's Office. Many of the recommendations below suggest another layer of governance. It would appear that many of the recommendations reflect a lack of understanding of the existing governance structure and the numerous statutes and regulations that control the conduct of district business.

Political activity, including reporting requirements, is governed 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. Substantial financial penalties 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.*). Sections 7050 *et seq.* of the Education Code also limit the restrictions that the district can impose upon employees in connection with their political activities.

Recommendation (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. Others, such as accreditation commissions, have authority over ethics considerations. The Grossmont-Cuyamaca Community College District, like other local boards, has a number of board policies and administrative procedures that address ethics codes and conflict of interest violations (attached and also posted on our web site for easy public access). Creation of a committee at the county level creates a new bureaucracy and another layer of government without any local accountability or local benefit.

Recommendation (08-92): Formulate a ballot proposal, for approval by voters of the district, to limit terms of trustees.

This recommendation will not be implemented because it is not warranted or reasonable. This recommendation contradicts local authority, a clear component of community college bilateral governance. There is no evidence that term limits have served the public well at the state level or the local level (city of San Diego). This would be an added expense with no clear benefit.

Recommendation (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 because it is not warranted or reasonable. This would inhibit the ability to counter independent expenditures and would limit participation of independent candidates. Conflicts of interest are governed by the Political Reform Act of 1974 and Government Code section 1090 *et seq.*, the latter of which is subject to criminal law enforcement.

Recommendation (08-94): Adopt a Governing Board Policy that would limit the total amount of campaign contributions a candidate for Trustee could receive to a reasonable amount to be determined by the governing board.

This recommendation will not be implemented because it is not warranted or reasonable. This would inhibit the ability to counter independent expenditures and limit participation of independent candidates. It could add additional bureaucracy without any clear benefit.

Recommendation (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 is not warranted or reasonable. This recommendation appears to run afoul of freedom of speech when one is on their own time and resources. Current policies explicitly restate that restrictions on political activity relate to inappropriate uses of public resources, time, or equipment, not personal off-site activity. In addition, conflicts of interest are governed by the Political Reform Act of 1974 and Government Code section 1090 and violations are subject to criminal law enforcement.

Recommendation (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 because it is not warranted or reasonable in light of the many existing laws, rules, and regulations that already apply. Conflicts of interest are specified by local district board policy and administrative procedures, governed by the Political Reform Act of 1974 and Government Code section 1090, and violations are subject to criminal law enforcement.

Recommendation (08-97): Adopt a Governing Board Policy that would set standards for buy-outs of administrator contracts. The Policy should include a provision limiting administrator contract buyouts to amounts specified in their contracts. No salary or benefits should exceed the 18-month period specified in the State Education Code. No damages or special payments should be granted.

This recommendation will not be implemented because it is not warranted or reasonable. This is currently covered appropriately in state law (Government Code not Education Code). It would cost the public more if all decisions related to contract disputes are forced into court rather than allowing for locally elected representatives to negotiate appropriate settlements. Such a restrictive requirement would override local circumstances and local control while increasing costs due to litigation or other legal processes.

Recommendation (08-98): Endorse a policy to expand the public Governing Board meeting agendas according to the spirit of the Brown Act. For items concerning awards of contracts, approving bids and hiring consultations, the agenda should include amount of bid and award, scope of work, time period, name and address of contract, and college contact.

This recommendation will not be implemented because it is not warranted or reasonable. Content of the agenda listing is in law and Board Policy. Public notification of governing board meetings includes the posting of agendas, distribution of materials, and notice of meetings to employees and other interested parties.

Recommendation (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.
Implemented. This has been, and continues to be, our local practice and is reflected in the district organization chart. This should be locally determined.

Recommendation (08-100): Review the qualifications of all sworn campus police officers for compliance with requirements of the California Commission on Peace Officer Standards and Training (POST).

Implemented. This district's campus police office has been, and continues to be, POST certified and the California Commission on Peace Officer Standards and Training conducts an annual review to ensure adherence to its standards. This is also part of our hiring process.

Recommendation (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. This data should include the current assessed valuation and information on amounts of all sales in the last two years for comparison with the amount of the current purchase price.

Not implemented at this time. The recommendation will not be implemented because it is not warranted or reasonable at this time. The acquisition of real property requires board action. Board action can only occur at a public meeting with the 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. 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.

Recommendation (08-102): Undertake cost/benefit analysis on the feasibility of employing a Counsel for the District as opposed to contracting for all legal services.

This recommendation has been implemented in this district by our staff as an ongoing business practice. District staff continually monitors and reviews the cost of contracted legal services and periodically provides this information to the Governing Board. Board discussions have included a review of the variety of legal skills that have been accessed for different circumstances such as those needed for litigation, personnel, land use, construction, and/or student issues. The District has found that retaining the flexibility to obtain different skills for different circumstances has proven to be the most beneficial and cost effective approach for our District's legal services. Contracting for outside legal services avoids the costs that would be incurred by having an in-house counsel who would need to consult with outside counsel for special legal expertise that the inside counsel does not have. Finally, by contracting for legal services, the District also avoids incurring the various administrative costs associated with staffing a legal office such as secretarial, research, and library support.

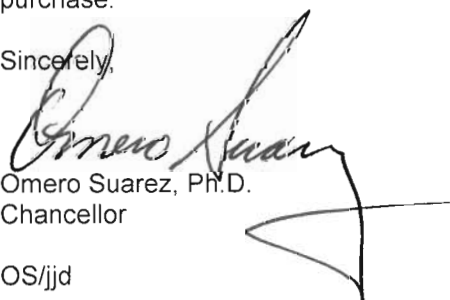
Recommendation (08-103): Direct District Human Resources officers to adopt procedures to avoid the appearance of nepotism and inappropriate supervisory relationships in the hiring process. These procedures should include the identification and screening of applicants who are close friends and relatives of elected Governing Board members and staff.

This recommendation will not be implemented because it is not warranted or reasonable. However, our local board policies on nepotism, supervision, and conflict of interest appear to address these issues. The requirement that employees 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 California Administrative Code section 53026.

Recommendation (08-104): Adopt Governing Board Policies regarding the disposition of surplus property. Said Policies should include a requirement that any college surplus property donated to non-profit organizations or sold by means of public auctions and prohibit purchase by college staff/employees or relatives.

This recommendation will not be implemented because it is not warranted or reasonable. Disposal of surplus property is governed by Education Code section 81450. This district has a comprehensive process in Board Policy and operating procedures. If not otherwise successful, items may be open to purchase.

Sincerely,



Omero Suarez, Ph.D.
Chancellor

OS/jjd

cc: County of San Diego Board of Supervisors
Trustee Rick Alexander
Trustee Greg Barr
Trustee Timothy Caruthers, D.C.
Trustee Bill Garrett
Trustee Deanna Weeks