



SAN DIEGO COUNTY OFFICE OF EDUCATION

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Superintendent of Schools

Randolph E. Ward, Ed.D.

August 22, 2008

RECEIVED

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SAN DIEGO
COUNTY GRAND JURY

Honorable Kenneth K. So
Presiding Judge of the Superior Court
P.O. Box 122724
San Diego CA 92112

Dear Judge So:

Subject: Review and Comments on San Diego County Grand Jury 2007/2008 Report
"Ethics 101: Course Requirement for Community Colleges"

We appreciate the opportunity to submit comments to the San Diego County Grand Jury 2007/2008 Report "Ethics 101: Course Requirement for Community Colleges," in accordance with Penal Code section 933(c). Our comments on Recommendations 08-79 through 08-90 are attached hereto and incorporate herein. Our comments are provided as specifically prescribed by your response procedures.

The Grand Jury recommendations cannot be unilaterally implemented by the County Board of Education. Neither the County Superintendent of Schools nor the County Board of Education has the statutory oversight authority or responsibility to investigate complaints, conduct administrative hearings, render decisions, or impose penalties for violations of ethics laws or policies of board members, other officers, or employees of the community college districts.

The San Diego County Office of Education ("SDCOE") has a practice of providing support to the school districts and community colleges when requested. Even though we share your interest in improving local district procedures, we respectfully disagree with the Grand Jury's conclusion that the County Board of Education currently is the appropriate body at the county level to investigate ethics violations alleged against both elected members of community college boards and the appointed executives of the districts.

The major changes proposed by the Grand Jury suggest new oversight of the governance of five community college districts by the SDCOE. The California Legislature would have to make statutory changes to redefine duties and responsibilities of the San Diego County Board of Education to prescribe such oversight. In addition, funding necessitated by new mandates for an Educational Ethics Committee would have to be identified. Please see the attached document for a detailed discussion of our concerns.

If you or your staff have any questions regarding these comments, please contact Dr. Randolph Ward at 858-292-3868 or by email at randolph.ward@sdcoe.net.

Sincerely,

Robert J. Watkins
President, County Board of Education

Randolph E. Ward, Ed.D.
County Superintendent of Schools

REW:CDP
Attachment

cc: San Diego County Board of Supervisors
San Diego Grand Jury

Board of Education

Nick Aguilar Susan Hartley Sharon C. Jones Robert J. Watkins John Witt

SERVICE AND LEADERSHIP



**Comments on the San Diego County Grand Jury 2007/2008 Report
“Ethics 101: Course Requirement for Community Colleges”
Submitted by the San Diego County Board of Education and the
County Superintendent of Schools, Randolph E. Ward, Ed.D.**

We have reviewed Discussions 1 and 2, Facts/Findings, and Recommendations for the San Diego County Board of Education in Ethics 101: Course Requirement for Community Colleges” from the 2007/2008 San Diego County Grand Jury Report, May 27, 2008, hereinafter referred to as “Report.”

Grossmont-Cuyamaca (1960), MiraCosta (1960), Palomar (1946), San Diego (1969), and Southwestern (1960) Community College Districts, hereinafter referred to as “Districts,” operate within San Diego County. State law requires every community college district to be under the control of a board of trustees, or governing board. The structure of the California Community Colleges is a three-level "system" consisting of the statewide Chancellor’s Office and Board of Governors, regional districts governed by elected trustees, and individual colleges.

San Diego County Grand Jury’s investigation of issues at MiraCosta, Grossmont-Cuyamaca, and Southwestern Community College Districts consisted of reviews of board policies and administrative procedures, minutes, agendas, and dockets of board meetings, employment contracts of district chancellors/presidents and their cabinet members, codes of ethics of local community college districts, ethical guidelines published by the California College League of California, and campaign disclosure statements filed with the Registrar of Voters by successful community college trustee candidates for the 2004 and 2006 elections; and interviews with community college trustees and student board members, chancellors, presidents, cabinet members, other salaried and certified employees, and a representative of the City of San Diego Ethics Commission. The requested financial audit was not completed.

The Report states in Summary:

Over the last several years the actions of some governing board members and high-ranking officials of most of the community college districts in the County have come under public scrutiny. Issues have arisen of no-confidence votes, termination of contracts, criminal investigations and prosecution. The Grand Jury investigation into many of these issues has made it obvious that there is need for a change, if not a complete overhaul, of the Boards of Trustees system. A more comprehensive method of overseeing and evaluating the Superintendents/Presidents and other high-ranking officials is needed. There also needs to be more oversight of the conduct of the various community college governing boards (Report, page 1).

The Report states in Discussion 2 Ethical Oversight:

The Grand Jury believe there should be a body at the county level to investigate ethics violations alleged against both elected members of community college boards and the appointed executives of the five community college districts. This entity would also impose appropriate penalties, such as censure or fines, for proven violations. The only entity with countywide responsibility in educational matters is the San Diego County Board of Education (SDCOE). We realize that SDCOE is primarily responsible for K-12 education, but in the past has had greater responsibilities with respect to community colleges (Report, page 10).

Recommendation 08-78: Establish an Educational Ethics Committee for the five local Community College Districts modeled on the City of San Diego's Ethics Commission.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

Establishment of an Educational Ethics Committee, hereinafter called "Committee," for the five local community college districts modeled on the City of San Diego Ethics Commission does not appear to be reasonable at this time. The City of San Diego Ethics Commission is governed by San Diego Municipal Code Chapter II, Article 6, Division 4, Sections 26.0401 to 26.0456.

The County Board of Education is the governing board for the San Diego County Office of Education in areas under its jurisdiction and derives its authority under the California Constitution, acts of the state legislature, the Charter of the County of San Diego, and the regulations of the State Board of Education. The County Board of Education was established by the Charter of the County of San Diego, section 603 et seq. The County Board of Education appoints the County Superintendent of Schools, who is the County Board's sole employee (California Constitution, Art . 9, Sec. 3).

Education Code section 35160.1 provides county boards of education broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the county board of education are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated.

Education Code section 70902 provides that every community college district shall be under the control of a board of trustees, or governing board. The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program or activity, or may otherwise act, in any manner that is not in conflict with, inconsistent with, or preempted by, any law, and that is not in conflict with the purposes for which community college districts are established.

The County Board of Education is authorized pursuant to the Ralph M. Brown Act (Brown Act) to create standing committees of the legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction. However, state law provides no legal authority for the County Board of Education to create a Committee with jurisdiction over the five Districts in San Diego County, to specify mandated duties and responsibilities, i.e., establish a code of ethics, monitor, administer and enforce ethics laws, conduct investigations, referring violations to appropriate law enforcement agencies, and audit disclosure statements (see Recommendations 08-79 through 08-90), and to employ staff for the Committee.

The proposed Committee would be an appointed body, with the County Board of Education appointing the members, succeeding to specified duties and responsibilities of the governing boards. We believe that this is not an acceptable alternative to locally-elected governing boards.

Recommendation 08-79: Compose said Committee with a membership of persons, selected from each of the five Community College Districts and appointed by the County Office of Education.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

The County Board of Education is authorized pursuant to the Ralph M. Brown Act to create standing committees of the legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction. However, no state law provides legal authority for the County Board of Education to create this Committee and to mandate membership selection.

Recommendation 08-80: Establish a policy that a member of said Committee chosen from a Community College District shall recuse himself or herself from issues involving that District.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

The County Board of Education is authorized pursuant to the Ralph M. Brown Act to create standing committees of the legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction. However, no state law provides authority for the County Board of Education to establish a Committee or to establish a policy to restrict actions of its appointed members.

Recommendation 08-81: Establish a policy that said Committee hold regularly scheduled monthly meetings and special meetings as needed – both subject to the provisions of the Ralph M. Brown Act.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

The County Board of Education is authorized to create standing committees of the legislative body, which have a meeting schedule fixed by formal action of the County Board of Education, and are legislative bodies for purposes of the Ralph M. Brown Act. However, no state law provides authority for the County Board of Education to establish this proposed Committee or to establish a policy about its meeting schedule.

Recommendation 08-82: Determine a method for allocating funding for said Committee. It is anticipated that the Districts would be able to offset costs by reduction in legal fees.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

The County Board of Education has no identifiable source of funds to pay for ethical oversight of the community colleges within its jurisdiction, and no legal authority to charge the Districts for the costs of establishing, staffing, supporting, and maintaining the required activities of this proposed Committee. Funding for the unknown and potentially substantial time and cost burdens that would be necessitated by new mandates for this proposed Committee would have to be apportioned through the State Budget Act or established by state law.

Recommendation 08-83: Provide in the policy that said Committee would develop and promulgate of [sic] a uniform Code of Ethics applicable to all five Community College Districts in San Diego County. Such a code would incorporate a restating of selected items from existing District codes and the recommendations of the Community College League of California.

The recommendation will not be implemented because it is not warranted or is not

reasonable, with an explanation therefore.

Each of the five community college districts is a separate local public agency with governance provided by its elected Board of Trustees in accordance with law and regulations of the Board of Governors. Each governing board develops a set of board policies, administrative regulations, and board bylaws with varying levels of participation from faculty, classified staff, students, and other stakeholders. As noted in Discussion 2 Ethical Oversight, "As part of its accreditation process, the Western Association of Schools and Colleges (WASC) determines that each governing board has Board Policies on ethics and ramifications for violations." (Report, page 7)

To mandate the development and implementation of a uniform Code of Ethics that would apply only to the five community college districts within the jurisdiction of the County of San Diego would require changes in state law or regulations to repeal current governing board authority to develop and maintain individual ethics policies. New state law would be necessary to subject the five community college districts to one Code of Ethics created by the Committee from existing codes and recommendations of the Community College League of California.

This explanation generally applies to Recommendations 08-84, 08-85, 08-86, 08-87 and 08-88 insofar as the topics therein are included in the scope of a uniform Code of Ethics or duties of the proposed Committee.

Recommendation 08-84: Mandate that such a Code of Ethics contain provisions for said Committee to impose appropriate penalties for violations. Penalties might include public sanctions, fines, and recommendations for recall of elected trustees or dismissal of appointed personnel.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

To mandate the uniform Code of Ethics contain provisions for penalties for violations that would apply only to the five community college districts within the jurisdiction of the County of San Diego would require changes in state law or regulations to authorize establishment and imposition of penalties by this proposed Committee.

The provisions for recall of local elective officers, including governing board members of community college districts, currently exist in Elections Code section 11000 seq. The Office of the Attorney General's Web site states that local government authorities are responsible for handling complaints against their employees. Dismissal of employees requires appropriate protection of confidentiality and due process rights for the parties to the contracts of employment, and should not be the subject of a public Committee meeting.

Recommendation 08-85: Mandate that among the ongoing tasks of said Committee shall be to provide an avenue of appeal for Brown Act violations, especially lack of required notice for terminations and other disciplinary actions and unauthorized meetings of elected trustees.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

We believe that to mandate the authority for the proposed Committee to establish another appeal process for alleged violations of the Brown Act that would apply only to meetings of the five community college districts within the jurisdiction of the County of San Diego is unwarranted and would require changes in state law or regulations.

The Brown Act provides an appropriate avenue of appeal for alleged violations of the open meeting laws by Districts. Government Code section 54960.1 of the Brown Act specifically provides authority for the district attorney or any interested person to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of specified sections of the Brown Act is null and void. Prior to any action being commenced, the district attorney or interested person shall make a written demand of the legislative body to cure or correct the challenged action and alleged violation. The governing board may cure or correct an action challenged pursuant to this section by subsequent action.

The provisions for recall of local elective officers, including governing board members of community college districts, are contained in Elections Code section 11000 seq. The Office of the Attorney General's Web site states that local government authorities are responsible for handling complaints against their employees. Dismissal of employees requires appropriate protection of confidentiality and due process rights for the parties to the contracts of employment, and should not be the subject of a public Committee meeting.

Recommendation 08-86: Mandate that among the ongoing tasks of said Committee shall be to investigate "whistle blower" complaints against trustees and administrators.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

We believe that to mandate the authority for the proposed Committee to investigate whistleblower complaints against trustees and administrators of the Districts within the jurisdiction of the County of San Diego is unwarranted and would require changes in state law or regulations.

The "Reporting by Community College Employees of Improper Governmental Activities Act" (RCCEIGAA) pursuant to Education Code section 87160 et seq. defines illegal order, improper governmental activity, or condition that threatens the health and safety of employees or the public and provides protections and appeal rights to community college employees and applicants for community college employment. We understand from Internet research that the State Personnel Board has jurisdiction over complaints of retaliation that a state or community college employee or applicant for state or community college employment has experienced as a result of engaging in whistle-blowing activities. The California State Auditor has jurisdiction to investigate the underlying improper governmental activity itself.

We believe that investigations of these types of complaints are inconsistent with the purposes for which the County Board of Education was established, and should not be under its jurisdiction. The County Board of Education does not supersede local law enforcement agencies in these matters.

Recommendation 08-87: Mandate that among the ongoing tasks of said Committee shall be to investigate allegations of conflict of interest and the taking of bribes or kickbacks on the part of elected trustees and administrators.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

We believe that to mandate the authority for the proposed Committee to investigate allegations of conflict of interest and the taking of bribes or kickbacks by trustees and administrators of the Districts within the jurisdiction of the County of San Diego is unwarranted; however, such a mandate would require changes in state law or regulations.

We believe that investigations of these types of alleged crimes and violations are inconsistent with the purposes for which the County Board of Education was established, and should not be under its jurisdiction. The County Board of Education does not supersede local law enforcement agencies in these matters.

Recommendation 08-88: Mandate that among the ongoing tasks of said Committee shall be to investigate campaign irregularities on the part of elected trustees and to refer violations to Fair Political Practices Commission.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

We believe that to mandate the authority for the proposed Committee to investigate allegations of campaign irregularities on the part of elected trustees of the Districts within the jurisdiction of the County of San Diego and to refer violations to Fair Political Practices Commission is unwarranted; however, such a mandate would require changes in state law or regulations.

We believe that investigations of these types of alleged crimes and violations are inconsistent with the purposes for which the County Board of Education was established, and should not be under its jurisdiction. The County Board of Education does not supersede local law enforcement agencies in these matters.

Recommendation 08-89: Mandate that among the ongoing tasks of said Committee shall be to investigate allegations of improper use of District property, supplies, and equipment.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

We believe that to mandate the authority for the proposed Committee to investigate allegations of improper use of District property, supplies, and equipment of the Districts within the jurisdiction of the County of San Diego is unwarranted; however, such a mandate would require changes in state law or regulations.

The District is responsible for handling complaints against their employees. Education Code section 70902(b)(6) requires the governing board to manage and control district property. Education Code section 7054 prohibits the unlawful use of school property and establishes criminal penalties for violation.

We believe that investigations of alleged crimes and violations are inconsistent with the purposes for which the County Board of Education was established, and should not be under its jurisdiction. The County Board of Education does not supersede local law enforcement agencies in these matters.

Recommendation 08-90: Mandate that among the ongoing tasks of said Committee shall be to monitor on a random basis the completeness and accuracy of Statement of Economic Interest (700) forms of elected trustees and appointed senior administrators.

The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

We believe that to mandate the authority for the proposed Committee to monitor on a random basis the completeness and accuracy of Statement of Economic Interest (700) forms of elected trustees and appointed senior administrators of the Districts within the jurisdiction of the County of San Diego is unwarranted; however, such a mandate would require changes in state law or regulations.

Remedy for conflict of interest violation is found in Government Code section 91003, which authorizes designated civil enforcement officers as well as any person residing in the jurisdiction to sue to enjoin violations, compel compliance or set aside any action as void. The Superior Court may require that a complaint be filed with the Fair Political Practices Commission (FPPC) that conducts administrative hearings, issues orders, and imposes penalties under Government Code section 83116. The FPPC provides individual assistance in completing Form 700 and the filing requirements. Form 700 instructions are suggested as an informative resource by the City of San Diego Ethics Commission.

We believe that these types of monitoring activities for the Districts are inconsistent with the purposes for which the County Board of Education was established, and should not be under its jurisdiction.

Conclusion:

We share your interest in improving local District procedures. We respectfully disagree with the Grand Jury's conclusion that the County Board of Education is the appropriate body at the county level to investigate ethics violations alleged against both elected members of community college boards and the appointed executives of the Districts. The County Board of Education has no oversight authority, responsibility for investigation of complaints and conduct of administrative hearings, or power to render decisions or impose penalties for violations of ethics laws by District officers or employees. However, the County Board of Education and the San Diego County Office of Education remain open to exploring options with individual Districts to contract for services on a voluntary basis.

Neither the County Board of Education nor the San Diego County Office of Education has ever had responsibility for District governance oversight and enforcement recommended by the Report. The County Board of Education does not make judgments on the legitimate choices for community college governance made by District governing boards pursuant to law and regulation, or invalidate their legal policies or contractual agreements without the legal authority to do so. Investigations of alleged crimes and violations are inconsistent with the purposes for which the County Board of Education was established, and should not be under its jurisdiction. The County Board of Education does not supersede local law enforcement agencies in these matters.

The County Board of Education and the San Diego County Office of Education primarily focus on K-12 education in the hierarchical structure of school districts, county offices of education, and State Board of Education. State law authorizes the County

Superintendent of Schools to perform financial services on behalf of those community college districts in the county. An example is the legal requirement for the County Superintendent to examine and approve community college district expenditures. Duties of county boards of education and county superintendents of schools regarding the community college districts have been minimized since the Legislature separated responsibility for the community colleges from the State Board of Education to the Board of Governors and Chancellor's Office in 1967.

The California Community Colleges system consists of the statewide Chancellor's Office and Board of Governors, regional districts governed by elected trustees, and individual colleges. "Assembly Bill 1725 (Chapter 973, 1988 Statutes) mandated shared governance in California's community colleges--responsibility for institutional decisions is shared among governing boards, district administrators, and faculty, with participation of staff and students" (www.ericdigests.org/2000-2/shared.htm, pp. 1-2). According to the Community College League of California, AB 1725 clarified and delineated the bilateral governance system. In the bilateral governance system, local governing boards provide the oversight necessary to ensure that local needs are being met. The Board of Governors is responsible for state policy leadership and support to locally governed community college districts" (www/ccleague.org/i4a/pages/Index/cfm?pageID=3479, p. 2).

Current law is a balanced blend of state and local control among statutory educational agencies. Each elected community college district governing board makes policy decisions affecting its District and hires employees to administer the District. State law additionally requires governing boards to establish procedures consistent with standards established by the Board of Governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration, and to ensure the right to participate effectively in District and college governance.

We feel that further restriction of local control at the District level in favor of new investigatory, enforcement, and intervention powers by the County Board of Education interferes with the democratic process of elected trustees running the community college districts with participation of faculty, staff, students, and other stakeholders. We believe the current balanced blend of state, county, and local control to be a workable compromise of legal authority among educational agencies to ensure sound, ethical, and legally compliant educational operations.