

**WINTERS JOINT UNIFIED SCHOOL DISTRICT  
BOARD OF TRUSTEES AND ADMINISTRATION DEPARTMENT**

**SUMMARY**

The 2010/11 Yolo County Grand Jury initiated an investigation into the Winters Joint Unified School District (WJUSD) in response to citizen complaints regarding 2009/10 Board of Trustees' actions at meetings and treatment of community members, particularly in response to the nonrenewal of a designated employee's contract at the high school. These allegations concern violations of the Board's Policies and Bylaws and the State's open meeting Brown Act. While the Grand Jury's powers to investigate school districts are limited under the law, it may investigate procedural and operational issues but is not permitted to investigate substantive concerns.

The Grand Jury found a clear conflict of interest in the award of a consulting contract to a WJUSD designated employee's paramour, not disclosed at the time the award was made. A related violation occurred when the designated employee participated in the selection of the consultant; the designated employee should have been recused from the selection. The Grand Jury found contracting practices which appeared to have conflicts or disqualifying interests. The Grand Jury recommends the Trustees take several actions regarding the no-bid contract inappropriately awarded by a WJUSD designated employee to that person's paramour. The District was particularly resistive to Grand Jury inquiries and made simple inquiries more procedurally difficult than necessary.

The Grand Jury found that the nonrenewal of another WJUSD designated employee's contract may have been influenced by the conflict. The Grand Jury found that the WJUSD Trustees violated the Brown Act by failing to place their decision about the nonrenewal properly on the agenda for open roll call. The Grand Jury found multiple examples in which the WJUSD Trustees violated open meeting laws and its own Policies and Bylaws.

The Grand Jury found that the District does not have an adequate method for handling citizen complaints and ensuring provision of adequate and respectful responses. The Grand Jury recommends that the Board of Trustees take immediate steps to abide by its own Policies and Bylaws and the State's open meeting act. Particularly egregious behaviors that should be stopped immediately are disrespectful comments and gestures made by the Board to community members during Board meeting public comment periods. The Grand Jury commends the 2010/11 Board on the steps it has taken to improve meeting professionalism.

The Grand Jury found multiple errors in administering the State's annual Standardized Testing and Reporting (STAR) testing in April 2011.

## **REASON FOR INVESTIGATION**

The Grand Jury received complaints alleging violations by the Winters Joint Unified School District Board of Trustees and District administration concerning Board governance and open meeting laws. The Board's decision not to renew a designated employee's contract in March 2010 proved to be highly divisive and generated numerous requests for investigation by the Grand Jury. The Grand Jury's investigation expanded to encompass both the 2009/10 and 2010/11 school years and identified several other areas of concern. The alleged problems and violations include:

1. Conflict of interest in awarding of consultant contract
2. Ralph M. Brown Act (open meeting) violations
3. WJUSD Board of Trustees policy issues and violations
4. STAR administration problems

California Penal Code Section 925 provides: "The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant of state law for which the officers of the county are serving in their ex officio capacity as officers of the districts."

California Penal Code Section 933.5 further provides: "A grand jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such district or commission." Since assessed property within a school district is subject to a special tax for maintenance of schools in the area, school districts are included in this section.

## **ACTIONS TAKEN**

The Grand Jury interviewed WJUSD Board members, District Administrators and staff as well as community members. The Grand Jury reviewed WJUSD Board of Trustee Bylaws, District Policies, Board meeting documents, the Brown Act, WJUSD documents and internal communications.

## **WHAT THE JURY DETERMINED**

The City of Winters is located in the western portion of Yolo County and was founded in 1875 and incorporated in 1878. The current population is approximately 5,500 with an additional 3,000 residing in the surrounding rural areas. The school district serves approximately 1,630 students attending the following schools: Waggoner Elementary, Shirley Rominger and Winters Middle Schools, Winters High School and Wolfskill Continuation High School.

## **1. Conflict of interest in awarding consulting contract**

### ***Rules concerning conflict of interest***

“The Board of Trustees desires to maintain the highest ethical standards and help ensure that decisions are made in the best interest of the District and the public... A Board member or designated employee makes a governmental decision when acting under the authority of his/her office or position votes on a matter, appoints a person, obligates or commits the District to any course of action, or enters into any type of contractual agreement on behalf of the District... Board members and designated employees shall disclose any conflict of interest and as necessary shall refrain from participating in the decision.” (WJUSD Board Bylaws 9270) “Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter... Disqualification shall be required by the Conflict of Interest Code when the designated employee has a financial interest.” (California Government Code 87300 et seq)

### ***District’s designated employee conflict of interest in award of consultant contract***

The Grand Jury reviewed all consultant contracts awarded January 2009 through March 2011. The Grand Jury discovered that a \$20,000 maximum no-bid contract is extant (April 2010 through June 2011). The contract was awarded to a consultant who has an amorous relationship with a WJUSD designated employee who had direct hiring authority. This relationship was not disclosed to the Board prior to the award of the contract. The relationship was later nebulously described as a “personal relationship” after the contract was awarded. The designated employee was then questioned by some on the Board about the appropriateness of the award. The employee informed the Board that District’s lawyers had previously advised the employee that the relationship did not create conflicts in the award process. Seeking legal advice may not qualify as disclosure of a financial interest.

The failure to fully and fairly disclose the existence of a financial or strong personal relationship between the parties to the contract is a violation of State law and District Bylaws. A further violation occurred when the designated employee participated in the selection of the consultant. These violations could allow the District to nullify the contract and consider discipline for the designated employee.

### ***Further conduct of consultant***

The consultant was hired to review class block scheduling, purportedly based on the consultant’s experience with the subject and as a mathematics consultant in similar schools. The Grand Jury received evidence showing this consultant’s opinion may have been a factor in some Trustees voting not to renew another designated employee’s contract. The consultant opined based on observations made for one day or less at the worksite under the auspices of studying class block scheduling. The designated employee was not informed that the consultant was engaged in a personnel evaluation when the consultant was at the worksite. The Grand Jury

learned that some Trustees would have evaluated the consultant's opinion in a different light and may not have made the nonrenewal decision had they known of the conflict of interest.

Later, members of the community discovered a public link on the consultant's Facebook page that they found very disturbing and brought their concern to the Board. The reference (from Wikipedia) concerned a slave-turned-butler in the 1800s. The name of the butler was the same as the designated employee whose contract had not been renewed. Subsequently, the Facebook page was removed from the public domain.

### ***District responsiveness to the Grand Jury***

The District was particularly resistive to Grand Jury inquiries and made simple inquiries more procedurally difficult than necessary. Mindful of the statutory charge of "watchdog organization", the Grand Jury will continue to seek access to District or their representatives with an expectation of respect for the process and confidentiality of the proceedings.

## **2. Ralph M. Brown Act (open meeting) violations**

The purpose of the Brown Act is to allow the public to attend, observe, monitor, and participate in the decision-making process at the local level of government. "The public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." (California Government Code 54952) The Brown Act bars public agencies from conducting nonpublic serial meetings, from taking action on items not placed on the agenda, and from limiting public comment.

### ***Requests regarding compliance with the Public Records Act***

The District provided redacted e-mails to community members regarding the failure to renew a designated employee's contract in response to a public records request. The Grand Jury received a request to review all e-mails between Board of Trustees and a District designated employee to determine if the redactions were valid.

The Grand Jury reviewed subpoenaed copies of redacted and unredacted e-mails between the Board and District Administration. There was insufficient evidence to opine whether a violation of the public records act occurred. However, it is unclear whether all relevant e-mails and attachments were provided. Due to time constraints, the Grand Jury could not thoroughly investigate the matter.

### ***Nonrenewal of another designated employee's contract***

A request was made that the Grand Jury investigate the nonrenewal of a designated employee's contract. California law bars a Grand Jury from inspecting personnel records of school district employees or substantive decisions by school districts such as the actual selection of school personnel. However, the Grand Jury is empowered to investigate what procedure was

followed.

WJUSD met in closed session in March 2010 to consider the nonrenewal of a designated employee's employment contract. "As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void." (California Government Code Sections 54950 et seq, Ralph M. Brown Act)

The Grand Jury determined that the designated employee may have been entitled to notification regarding the Trustees' decision not to renew the employment contract. No such notice was provided the employee.

### ***Roll call vote***

The Grand Jury learned that a closed session Board vote was held March 4, 2010, regarding the nonrenewal of a designated employee's contract. On advice of District counsel, the Board did not report the roll call vote during the open session. The Board later determined it had violated both the Brown Act law and its Bylaws (Government Code 54957.1, Board Bylaws 9321.1). The Board decided to utilize the "correct or cure" procedure that includes placing the item on an upcoming agenda and announcing the roll call vote at the next open meeting, scheduled for March 18.

The "correct or cure" procedure was not placed on the March 18 agenda. Conflicting evidence was provided to the Grand Jury regarding whether the roll call vote was announced at the March 18 meeting. The Grand Jury was unable to obtain any contemporaneous written, audio or video recording evidence verifying that the "correct or cure" roll call was announced at the March 18 meeting. However, on May 6, 2010, minutes of the March 18 meeting were amended to state that the roll call announcement had properly been made on March 18.

### ***Serial meetings***

"A majority of the members of a legislative body shall not...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. A majority of members may not develop a concurrence as to action on business through serial meetings, intermediaries, communication or other means of subterfuge." (Government Code 54950 et seq, Ralph M. Brown Act) Business decisions agreed upon between two or more Board members outside of a public meeting also constitute a violation of WJUSD Board Bylaws Section 9012 (a) regarding serial meetings via electronic communications.

School personnel decisions are made in closed session and are not governed by the Brown Act. However, if the deliberations are conducted via e-mail, they are no longer in closed

session, lose the protection of confidentiality, and become subject to the Brown Act.

The Grand Jury obtained copies of e-mails that showed Board members were engaging in nonpublic discussions regarding whether to renew a designated employee's contract. They also engaged in nonpublic discussions regarding the Board's response to the public outcry about the nonrenewal. Other prohibited subject areas were also discussed. The e-mails indicate that District staff, privy to the communications, knew the Brown Act was being violated.

### ***Public comments at Board meetings***

Members of the public are encouraged to attend Board meetings and address any item on the agenda. So as not to inhibit public participation, persons attending "shall not be required to sign in, complete a questionnaire, or otherwise provide their name or other information as a condition of attending a meeting." (Board Bylaw, Section 9323(b), April 16, 2009) The Brown Act permits anonymous public comment, allowing for the Board to request individuals to identify themselves by name only and not in any other way.

The Grand Jury reviewed a sampling of Board agendas from the last two school years. Throughout the two years, agendas require members of the public to complete a Request to Speak form, noting their name and address, and submit it before the first speaker is called for public comment. Requiring speakers to provide more than their names is a violation of the Brown Act and Board Bylaws.

### **3.WJUSD Board of Trustees policy issues and violations**

The Board consists of seven members. Any person 18 years or older who is a citizen of the state, a resident of the school district, a registered voter and not legally disqualified from holding civil office is eligible to be elected to the Board without any other qualifications. Members serve a four year term, which is staggered so that as practicable one half of the members are elected in each even numbered year. The Board President is elected from among its members to provide leadership on behalf of the Board and the educational community it serves.

#### ***Meeting misconduct***

The Board of Trustees is elected by the community to provide leadership and citizen oversight of the District. "The Board shall ensure that the District is responsive to the values, beliefs, and priorities of the community... Each member is expected to act with dignity and understand the implications of demeanor and behavior. The Board expects its members to act with dignity and govern in a dignified and professional manner, treating everyone with civility and respect." (Board Bylaws Section 9000 et seq)

The Grand Jury determined that 2009/10 Board members displayed less than professional conduct during both public and closed session meetings. The Grand Jury determined through substantial evidence that, on multiple occasions, Board members engaged in eye-rolling, snickering, and negative body language. One Board member made an explicit sexual hand gesture mimicking male masturbation, and on another occasion a Board member gave an

obscene hand gesture, while community members were attempting to address the Board. Board members raised their voices, “shouted down” people giving public comment and other Board members, and publicly tore up a document provided to them by a community member. Some community members and fellow Trustees felt harassed and intimidated by Board behavior. Harassment is specifically prohibited by WJUSD regulation.

The Grand Jury determined that that 2010/11 Board of Trustees has made strides to improve its conduct since last year. This year’s Board has sought to improve how the Board operates, including more structure, better management and increased civility.

### ***Board training gaps***

The Grand Jury determined the Board is not required to attend or sponsor for itself any training with regard to governance, open meetings, Robert’s Rules of Order, or similar subject matter commonly used to conduct public meetings. The District is not required to and does not maintain any written record of training attended by Board of Trustees members.

Trustees did not attend training during the 2009/10 academic year. Some Board members attended governance training in fall 2010 and additional training is planned for spring 2011, organized by District staff. Board members are expected to participate in professional development and encouraged to attend workshops and conferences relevant to their individual needs or the needs of the Board. Individual current Board members recognized the need for Board training to help them understand their responsibilities and develop “boardsmanship” skills.

### ***Citizen complaint process***

The Grand Jury reviewed the WJUSD Policy Manual that specifies the process for the public to submit written complaints to the District (Section 1312). The public may complain about matters concerning both academic matters and the administration of the District.

The WJUSD Board of Trustees Bylaws establish Board conduct and set the standards of governance. The Bylaws state “To maximize Board effectiveness, and public confidence in District governance, Board members are expected to govern responsibly and hold themselves to highest standard of ethical conduct.” (Board Bylaws 9905(b))

There is a lack of clarity and consistency in the Bylaws regarding the process for submitting, receiving, and responding to complaints from community members and school personnel to the Board. When concerns are brought to the Board through letters and e-mails, there is no clear policy whether such communications constitute complaints and are therefore left to judgment. At times, complainants believe they have submitted complaints but may not receive written responses. The District is unclear about whether a response should be generated and, if so, by whom.

There is a lack of follow up and accountability to ensure issues are resolved. The Board does not seem to embrace its role as overseer of the District. Some Board members and District staff dismiss any issues and concerns expressed by certain community members, viewing them as complainers, characterizing these individuals’ expressions of desires to meet to discuss

problems as “disingenuous”. Even written communications among Board members and District staff during the period of January 2010 through May 2010 revealed unprofessional and disrespectful comments.

#### **4. Standardized Testing and Reporting Results (STAR) 2011 administration problems**

##### ***History of STAR***

The STAR (Standardized Testing and Reporting) program began in 1998. In this annually administered program, most students in grades 2 through 11 take the State's academic content standards test plus a nationally normed standardized test. Each school must report individual students' scores to their parents, and group results are released in mid-August. Schools are required to report these results to the State. Failure to properly report these results can affect funding and accreditation for the school.

Rules regarding which students must take or can be excused from the tests are quite specific. Parents may request in writing to the principal that a student not be tested. The Individual Education Programs (IEPs) of some special education students specify they should not be tested. Other special education students are tested in alternate ways, e.g., in Braille or with extra time, if included in their IEP. English learners, no matter what their proficiency, must take the STAR tests unless excused by their parents or their IEP.

##### ***WJUSD STAR testing issues***

The Grand Jury learned that there was a 10-day window in mid-April 2011 in which STAR testing was to be administered and completed. Numerous problems were identified regarding the planning, training and implementation of the 2011 STAR testing at the Winters High School. The Grand Jury determined that:

- There was an absence of adequate training and preparation provided to staff;
- There were no high school administrators present to provide oversight on the day of testing;
- There were not enough copies of tests ordered and some students could not be tested; and
- Staff had advised administration of their concerns prior to the testing date.

It is unclear to the Grand Jury why these issues were unresolved prior to the start of testing.

April 13, 2011, was the first scheduled day of testing. On April 14, 2011, the District Administration finally began to address the continuing issues by scheduling additional training for the teachers, securing additional test copies and rescheduling tests. As of early May 2011, the Grand Jury was unable to determine if the issues were resolved. These problems have led to frustration, confusion and distrust by segments of High School personnel, parents and the Winters community towards District administrators and the Board.



## **FINDINGS**

- F1.** The failure to fully and fairly disclose the existence of financial or strong personal relationship between the parties to a contract is a violation of State law and District Bylaws. A further violation occurred when the designated employee participated in the selection of the consultant. These violations could allow the District to nullify the contract and consider discipline for the designated employee.
- F2.** The consultant may have been a factor in WJUSD's decision not to renew another designated employee's contract. Disclosure of the amorous relationship between the consultant and a designated employee may have influenced the Trustees' decision.
- F3.** The WUJSD Board of Trustees violated the Brown Act by engaging in serial e-mail discussions preparatory to voting.
- F4.** The WJUSD may have violated the Brown Act by failing to provide 24 hour notice to a designated employee whose contract was not renewed.
- F5.** In March 2010, the WJUSD Board itself determined that it violated the Brown Act by failing to report a roll call vote during an open session related to its decision not to renew a designated employee's contract.
- F6.** A Brown Act violation occurred on March 18, 2010 when the Board failed to place a "correct or cure" procedure on the agenda.
- F7.** The Board's requirement that the public submit home address information when addressing it is a violation of its Bylaws and the Brown Act and dampens public participation. At most, the Board can require speakers to state their names.
- F8.** There were multiple incidents of errors, poor judgment, and unprofessional behavior by Board members and District staff during the period covered by this report. Viewed together, these actions promoted confusion and distrust within segments of the community and Winters High School staff towards the Board and District Administration that still exists.
- F9.** The Board does not consistently follow its own Policies and Bylaws related to conduct, decorum, civility and respect at public meetings.
- F10.** The explicit sexual gestures made by Board members in the 2009/10 school year were consistent with harassment and intimidation.
- F11.** There is no requirement that Trustees participate in training on Brown Act, Board Bylaws, Board Governance, meeting management, professional behavior at meetings or other subject matter pertaining to District oversight.
- F12.** The 2009/10 Board did not receive any training in its roles and responsibilities.

- F13.** The 2010/11 Board of Trustees is commended for participating in training held in fall of 2010 on the Brown Act, Board Governance, leadership and meeting management organized by the District office staff. District staff are planning another governance training for May 2011.
- F14.** There is a lack of clarity and consistency regarding the process and procedure for handling complaints from staff and community members about District administrators submitted to the Board. No response at all or responses that in effect, simply say “Thank you for your letter/sharing your concerns” are not sufficient and can be interpreted as disregarding and demeaning.
- F15.** The District was inadequately prepared for the STAR testing at Winters High School scheduled in mid-April 2011. As of early May 2011, it is unknown whether the District’s attempts to resolve the problems have been successful.
- F16.** The District was particularly resistive to Grand Jury inquiries and made simple inquiries more procedurally difficult than necessary.

## **RECOMMENDATIONS**

- R1.** The Board should seek legal advice regarding the appropriateness of rescinding or otherwise voiding the consulting contract and the disgorgement of improperly obtained funds.
- R2.** The Board should consider discipline for the designated employee whose actions created a conflict of interest with WJUSD in connection with awarding a consulting contract.
- R3.** All Board members and District administrators should participate in annual mandatory training on Brown Act, Board Governance and Board Bylaws. Trustee participation records should be maintained within the District Office.
- R4.** The Board should immediately discontinue harassing conduct such as sexual and/or obscene gestures, uncivil and rude conduct between Board members and the public.
- R5.** The Board should immediately begin to follow its own Bylaws, Policies and procedures, as well as the Brown Act, including stopping meetings by serial e-mail communications and allowing speakers to disclose only their names at Board meetings.
- R6.** The Board should develop a plan for responding to citizen complaints and monitoring the process to ensure adequate follow-through and resolution.
- R7.** The District and its representatives should familiarize themselves with California Penal Code related to Grand Jury roles and responsibilities in order to minimize confusion and resistance to future Grand Jury investigations.

**R8.** The Board should place this report on an agenda for an upcoming public meeting so the community has the opportunity to listen to and comment on WJUSD responses by September 30, 2011.

### **REQUEST FOR RESPONSES**

Pursuant to California Penal Code Sections 933(c) and 933.05, the Grand Jury requests a response as follows:

From the following governing body:

- The Winters Joint Unified School District, Findings F1 through F16, Recommendations R1 through R8