



WINTERS JOINT UNIFIED SCHOOL DISTRICT

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BOARD OF TRUSTEES

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August 19, 2011

Honorable David W. Reed
Supervising Judge, Yolo County Grand Jury 2010-2011
Superior Court of California, County of Yolo
725 Court Street
Department 6
Woodland, CA 95695

Re: Grand Jury Report dated May 23, 2011:
Winters Joint Unified School District Board of Trustees and Administration Department

Dear Judge Reed:

Pursuant to California Penal Code sections 933 and 933.05, enclosed please find the Response of the Winters Joint Unified School District to the Yolo County Grand Jury Report released to the public on May 23, 2011, entitled "Winters Joint Unified School District Board of Trustees and Administration Department."

We endeavored to respond fairly and honestly to the Findings and Recommendations, and trust that we have adequately addressed all issues about which the District is required to respond. Please contact the undersigned with any questions regarding the District's Response. The District expresses its appreciation to the Grand Jury for its attention to this matter. Thank you.

Respectfully submitted,

Dan J. Maguire
President, Board of Trustees
Winters Joint Unified School District

cc: Freddie Oakley, Yolo County Clerk-Recorder
WJUSD Office of the Superintendent
Electronic copy sent to: grand-jury@sbcglobal.net

WE LEARN TOGETHER / APRENDEMOS JUNTOS

1/11

**RESPONSE OF THE WINTERS JOINT UNIFIED SCHOOL DISTRICT
TO THE YOLO COUNTY GRAND JURY REPORT DATED MAY 23, 2011**
"Winters Joint Unified School District Board of Trustees and Administration Department"
August 19, 2011

GRAND JURY 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.**

District Response to F1:

AGREE that failure to fully and fairly disclose the existence of a financial relationship between the parties to a contract would be a violation of State law and District policies.

AGREE that failure to fully and fairly disclose the existence of a strong personal relationship between the parties to a contract may be a violation of State law and District policies.

AGREE that prior to a consultant performing work reviewing the high school schedule and programs, the designated employee did not disclose to the Board of Trustees that she had any relationship with him at all, even though she was dating him at the time. The consultant who was the lead on the high school work had been recommended by the consultant whom the designated employee was dating. The designated employee was the one who recommended and effectively selected the consultants for this work.

The two consultants worked together to review the high school schedule and programs in February 2010. The consultant whom the designated employee was dating was not paid for the mid-February 2010 work reviewing the high school schedule and programs.

After the mid-February work was performed, the designated employee did disclose in writing to the Board of Trustees that she had a "personal relationship" with one of the consultants. This disclosure did not expressly reveal the true nature of her relationship with the consultant. The consultant was actually her paramour; they were dating. The written disclosure of a "personal relationship" was made after the consultants had already performed their work on the high school schedule and programs; this disclosure to the Board of Trustees was made before the Board's vote on releasing the other designated employee from his administrative position. However, this disclosure was not produced to the public in response to a Public Records Act request. Instead, this disclosure was redacted from the District's response to that Public Records Act request.

Of these two consultants, the one whom the designated employee was dating also subsequently worked as a math consultant for the District with regard to the high school, under a separate

contract entered into in April 2010, with that work being performed during the 2010-11 school year.

AGREE that the designated employee may have placed herself in a position in which her personal interest and bias toward one of the consultants may have influenced her interpretation of and decision to rely upon the work of the consultants in reviewing the high school schedule and programs.

DISAGREE that a consultant contract may be unilaterally nullified by the District for the designated employee's failure to timely and unequivocally disclose she was dating one of the consultants, where no proof of financial conflict of interest existed. AGREE that had there been proof of an undisclosed financial relationship, the consultancy contract may have been subject to nullification.

AGREE that consideration of discipline and/or negative evaluation of the designated employee may be warranted for failure fully and fairly to disclose, prior to commencement of their work, that she was dating one of the consultants whom she had selected to participate in reviewing the high school schedule and programs.

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.

District Response to F2:

AGREE that the consultants' work reviewing the high school schedule and programs may have been a factor in the District's decision to release the other designated employee from his administrative assignment.

AGREE that full and timely disclosure of the amorous relationship may have influenced some Trustees' decisions.

F3. The WJUSD Board of Trustees violated the Brown Act by engaging in serial e-mail discussions preparatory to voting.

District Response to F3:

AGREE that engaging in serial email discussion preparatory to voting, to develop a concurrence on action to be taken, would violate the Brown Act. Thus, if a majority of the Trustees, outside of a duly-noticed meeting, used a series of emails to discuss, deliberate, or take action on any item of business that is within the school Board's subject matter jurisdiction, whether directly or through the intermediary of the designated employee, that would be improper.

In connection with setting an agenda for a board meeting in the January-February 2010 timeframe, the Superintendent did canvass the Board via email to determine if the subject of Trustee stipends should be placed on the Board agenda. Board Bylaws permit the Board President and the Superintendent to develop the agenda for the Board meetings. However, apparently as a result of canvassing the Board on this potential agenda item, the subject of Trustee stipends was not placed on the Board agenda. Otherwise, there are no identified specific instances of email discussions during the relevant period in which a majority of the Board, either directly or through an intermediary, discussed, deliberated, or took action on any item of business within the subject matter jurisdiction of the Board.

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.

District Response to F4:

AGREE that the Brown Act requires that, as a condition to holding a closed session to hear specific complaints or charges brought against an employee by another person or employee, the employee shall be given at least 24 hours written notice before the time for holding the session.

DISAGREE that there was a failure to give designated employee at least 24 hours notice prior to closed session meeting in which the Board voted on his release from administrative position. The employee was in fact personally notified, two days in advance of the Board meeting at which the closed session was held, that his release from his administrative position would be under consideration on March 4, 2010.

DISAGREE that the Brown Act was violated by the action of the Board of Education on March 4, 2010, as the action taken in closed session was consideration and decision on a discretionary release of the designated employee from his administrative position pursuant to Education Code section 44951, and not a hearing on specific charges. Certificated administrators have no tenure in their positions as administrators; under Education Code section 44951 no cause is required to be established and no evidentiary-type hearing need be conducted. The trustees were not hearing complaints or charges, but instead were deliberating on a release from an administrative position. The Brown Act 24-hour notice requirement therefore did not apply.

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.

District Response to F5:

AGREE that in March 2010, the WJUSD Board determined that the Brown Act required a roll call vote to be reported out of closed session related to its decision to release a designated

employee from his administrative position. The Board had failed to publicly report out the action it took in its March 4, 2010, closed session, until March 18, 2010.

F6. A Brown Act violation occurred on March 18, 2010 when the Board failed to place a "correct or cure" procedure on the agenda.

District Response to F6:

AGREE that the roll call vote needed to be corrected/cured at the following Board meeting.

AGREE that the "correct or cure" procedure addressing the March 4, 2010, roll call vote was not on the written and posted agenda for the March 18, 2010, Board meeting.

DISAGREE that it was a Brown Act violation not to have the "correct or cure" procedure on the written and posted agenda for the March 18, 2010, Board meeting.

At the beginning of the March 18, 2010, Board meeting, the Board president announced the complete March 4, 2010, closed session roll call vote from the dais, curing any defect in not having reported the vote out of closed session on March 4, 2010. The corrected minutes for the March 18, 2010, meeting accurately record this.

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.

District Response to F7:

AGREE that Board's prior form for public comment, which purported to require members of the public to submit home address information, violated the Brown Act. The intent of having address information on the long-existing public comment form was to ensure that speakers were residents of the District. However, the District is aware of no member of the public who was ever denied permission to address the Board because of not having completed that section of the form.

The Board of Education form for public comment no longer requires members of the public to submit home address information.

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.

District Response to F8:

AGREE, as set forth in the District's responses herein to the specific findings of the Grand Jury with regard to Board and staff member behavior during the 2009/10 school year, that multiple incidents of errors, poor judgment and unprofessional behavior promoted confusion and distrust within the District community.

F9. The Board does not consistently follow its own Policies and Bylaws related to conduct, decorum, civility and respect at public meetings.

District Response to F9:

AGREE that at some meetings in the spring of the 2009/10 school year, following the Board action releasing the other designated employee from his administrative assignment, there were actions, words and gestures from some Board members that were inconsistent with Board policies and bylaws related to conduct, decorum, civility and respect at public meetings.

There were some long and unusually emotional meetings in the spring of the 2009/10 school year, following the Board action releasing the other designated employee from his administrative assignment. Meetings were extremely crowded, the room was hot, and many speakers vigorously expressed opposition to the Board action releasing the other designated employee from his administrative assignment. The media were also present. Although these conditions presented a challenge to Board members to maintain decorum, these conditions were, still, no excuse nor acceptable explanation for some Board members not maintaining appropriate decorum or civility, nor for showing anything other than respect for the members of the public addressing the Board.

The WJUSD Board of Trustees does not condone Trustee behavior inconsistent with appropriate standards of 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.

District Response to F10:

AGREE there were inappropriate gestures made by some Board members at public meetings during the Spring of the 2009/10 school year.

The WJUSD Board of Trustees does not condone any action of any Trustee or Trustees, during Board meetings or otherwise, that are consistent with harassment and intimidation. The Board of Trustees does not condone Trustee behavior inconsistent with appropriate standards of conduct, decorum, civility and respect at public meetings, as required by District Policies and Bylaws.

- 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.**

District Response to F11:

AGREE that during the period covered by the Grand Jury Report there was no Board of Education requirement that Trustees participate in training on the enumerated subjects. During the past few years of state funding reductions, for fiscal reasons the Board limited spending on training for Trustees in the enumerated subjects.

- F12. The 2009/10 Board did not receive any training in its roles and responsibilities.**

District Response to F12:

AGREE that the former Board ("the 2009/10 Board") received only limited training during the period of the 2009/10 school year through to the end of calendar 2010. The 2009/10 Board did in fact participate in such training in Fall 2010. Such training included candidates for Board of Trustees for the upcoming Board.

- 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.**

District Response to F13:

AGREE with this finding. Another governance training was in fact conducted in May 2011, resulting in the adoption of a new Governance Handbook for 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.**

District Response to F14:

AGREE that there was a lack of clarity and consistency regarding handling complaints during the period covered by the Grand Jury Report. The Board could have better handled complaints from staff and community members during the period covered by the Grand Jury Report.

AGREE that no response at all, or responses that simply acknowledge and thank the complaining parties for their letter or for sharing their concerns, can be interpreted as disregarding and demeaning.

During Board meetings in the period covered by the Report, the Trustees often did not respond to public comment out of concern not to engage in debate with the public, and not to inadvertently divulge any confidential personnel information.

In addition, the District maintains effective complaint procedures in its Board Policies and Administrative Regulations.

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.

District Response to F15:

AGREE the District was inadequately prepared for the STAR testing at Winters High School scheduled in mid-April 2011. The District, at the direction of the Director of Assessment, Accountability and Awards Division of the California Department of Education (CDE), undertook an investigation to determine whether reported breaches in security were accurate, and outlined steps it will take or has undertaken to resolve these matters. By letter dated June 21, 2011, the CDE informed the District that it had reviewed the District's response, and concurs with the District's conclusions. Because the District did have one confirmed irregularity affecting less than five percent of the total students tested, however, the CDE determined that Winters High School will not be eligible for awards for two years.

F16. The District was particularly resistive to Grand Jury inquiries and made simple inquiries more procedurally difficult than necessary.

District Response to F16:

AGREE that the District took a strict view of its duty and obligations in responding to Grand Jury requests for information. This prolonged some responses to Grand Jury inquiries.

GRAND JURY 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.**

District Response to R1:

AGREE with this recommendation; it has been implemented. The Board has sought legal advice as recommended.

- 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.**

District Response to R2:

AGREE with this recommendation; it has been implemented.

The designated employee has resigned from her position with the Winters Joint Unified School District.

- 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.**

District Response to R3:

AGREE with this Recommendation; it has been implemented.

COMMITMENT going forward, effective immediately: WJUSD Trustees shall participate in effective, cost-efficient training, ideally annually or more frequently, on the Brown Act, Board Bylaws, Board Governance, meeting management, professional behavior at meetings or other subject matter pertaining to District oversight.

- 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.**

District Response to R4:

AGREE with this recommendation; it has been implemented. The Board does not condone any Trustee engaging in uncivil or rude conduct toward the public, including engaging in sexual and/or obscene gestures.

COMMITMENT going forward, effective immediately: Members of the public will be treated with respect at all times.

- 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.**

District Response to R5:

AGREE with this Recommendation; it has been implemented.

COMMITMENT going forward, effective immediately: A majority of the Board shall not discuss, deliberate, or take action on any item of business except in duly noticed meetings pursuant to the Brown Act. Nor shall Board members use emails to develop a concurrence on action to be taken, whether by serial emails or any other means. The Board shall not require members of the public to disclose their addresses or any other non-pertinent information in order to speak during Board meetings. Speakers will be allowed 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.**

District Response to R6:

AGREE with this Recommendation; it has been implemented.

COMMITMENT going forward, effective immediately: The Board shall be responsive to public comments. They shall treat members of the public with respect. They shall support District policy and procedures regarding concerns and complaints. During the course of a Board meeting, such responsiveness shall be expressed through the Board President in his/her acknowledgment of each speaker and by responding in an appropriate fashion. In response to complaints from the public, Board members will (1) receive and acknowledge the complaint, (2) repeat the issue back to the complainant to ensure it was understood, (3) remind the person that individual Board members have no authority to act on behalf of the District on their own, (4) re-direct the complainant to the appropriate staff person at the District level, and (5) report the complaint to the Superintendent to ensure that an appropriate response is forthcoming.

- 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.**

District Response to R7:

AGREE with this Recommendation; it has been implemented.

COMMITMENT going forward, effective immediately: The District and its representatives shall comply with and respect the Grand Jury and all its lawful requirements. The District shall take all necessary steps to expedite the provision of complete information to the Grand Jury consistent with California Penal Code requirements related to Grand Jury roles and responsibilities. The Grand Jury is entitled to question witnesses without interference or assistance from any third parties including attorneys.

- 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.**

District Response to R8:

AGREE with this Recommendation; it has and shall be implemented. The Grand Jury Report has been on each of the public agenda of Board of Education meetings since the Report was issued, for the purposes set forth in this Recommendation. In addition, the Response is agendaed for an open meeting action item for August 18, 2011. The final Response shall also be agendaed as an open session item prior to September 30, 2011.