

SAN YSIDRO SCHOOL DISTRICT INDEBTEDNESS

SUMMARY

The San Ysidro School District (SYSD), located in the city of San Diego next to the border with Mexico, has six elementary schools, one middle school and a preschool. It serves over 5,000 predominately Latino students, of which at least one-fifth are homeless¹. The San Ysidro School District has experienced ongoing issues with turnover of superintendents, a declining student population, and a lack of community trust. The 2015/2016 San Diego County Grand Jury reviewed the indebtedness of the San Ysidro School District and the managerial and fiduciary oversight provided by the Board of Trustees. The Grand Jury found:

- SYSD has no strategic plan for facility management
- SYSD administrators failed to implement a strong system of internal fiscal controls and record retention and destruction of document policies
- Former employees destroyed documents
- Former administrators withheld information from the Board of Trustees on issues related to expenditures and bond obligations
- Trustees disregarded their fiduciary responsibility to the citizens of San Ysidro by improper governance and failing to hold administrators accountable for complying with laws, regulations and Board of Trustees policies
- The District had no citizen oversight for expenditures on the General Obligation Bond² and Certificates of Participation.³
- SYSD failed to train staff and failed to ensure that Trustees understood their responsibilities
- SYSD made land purchases without due diligence

The Grand Jury found that San Diego County Office of Education (SDCOE) did not provide adequate guidance and oversight to San Ysidro School District administrators and Board of Trustees regarding bond and certificate issuances and approvals.

To ensure proper oversight and governance, and sound fiscal control, the Grand Jury recommends that San Ysidro School District:

- Develop and implement a strong system of internal controls, formal policies and procedures (including records retention and destruction), and sound business practices.

¹ <http://data.inewsource.org/static/tables/homeless-students-san-diego-schools/>

² A General Obligation Bond (GO bond) is a general obligation of the district, payable solely from the proceeds of ad valorem taxes, without limitation as to rate or amount.

³ A Certificate of Participation (COP) is a lease financing agreement in the form of securities that can be marketed to investors in a manner similar to tax-exempt debt. COPs can be issued by a vote of the Board of Trustees rather than requiring a vote of district residents.

- Hire an independent, experienced certified accounting firm to conduct a forensic audit⁴ of SYSD finances.
- Establish a Bond Oversight Committee to monitor the use of remaining bond funds and increase transparency and accountability to San Ysidro residents.

The Grand Jury also recommends that SDCOE take a more active role in the oversight of SYSD's financial condition and controls until the District has posted a positive financial rating for several years in a row.

INTRODUCTION

The San Ysidro School District, one of the poorest districts in California, has experienced significant financial problems, including a negative financial rating in 2012. The Grand Jury investigated SYSD indebtedness, including a bond and certificates of participation from 1997 through 2015.

PROCEDURE

The Grand Jury interviewed senior SYSD staff, SDCOE management staff, senior staff of the San Diego County Office of Audits & Advisory Services (OAAS) and a representative from the San Diego Taxpayers Association. The Grand Jury reviewed the following materials: relevant sections of the California Constitution and Education Code; SYSD annual financial reports; documents regarding bond expenditures; debt waiver documents; the 2016 San Diego County Taxpayers Association Bond Support Criteria Process & Criteria manual.

The Grand Jury also commissioned an OAAS audit to evaluate expenditures related to SYSD's General Obligation Bond and the adequacy of the process for obtaining additional funding through Certifications of Participation. The resulting audit was instrumental in preparing this report.

DISCUSSION

In 1997, SYSD voters approved Proposition C, which authorized the sale of \$250 million in General Obligation Bonds. Between 1997 and 2015, SYSD issued seven bond series totaling \$142 million (leaving \$108 million unobligated). Two additional series were issued for \$75.5 million to pay off outstanding bonds and accumulated interest. The District also approved five long-term financing Certificates of Participation totaling \$45 million for land acquisition and school construction, and a sixth COP of \$22 million to pay off outstanding COPs.

Nearly all aspects of bond issuance and repayment, as well as the use of the proceeds of the bonds and COPs, are regulated by statutes. Adherence to these statutes and

⁴ A forensic audit is the application of accounting methods to the tracking and collection of forensic evidence, usually for investigation and prosecution of criminal acts such as embezzlement or fraud. www.businessdictionary.com/...forensic-audit.html

regulations is the responsibility of SYSD. Therefore, a strong system of internal controls and management and proper Board of Trustees governance are essential.

SYSD is governed by a five-member Board of Trustees (Board) whose members are elected to four-year terms. The Board, pursuant to State Education Code §42127 and State Government Code 52062(b)(2), adopts policies to govern the District and approves the annual budget and local accountability plan. The Superintendent is directly responsible for the administration of Board-established policies. The District's Chief Business Officer (CBO) has overall responsibility for fiscal oversight and control. The Superintendent is responsible for implementing and enforcing appropriate internal controls throughout the district. The San Diego County Office of Education has responsibility, mandated by the State, to provide oversight to all county school districts' fiscal health.

In 2000, the passage of Proposition 39 amended the California Constitution to require school districts to establish citizens' oversight committees for all general obligation bonds.⁵ These committees are charged with ensuring the bond proceeds are spent only for specific projects listed in the bond measure and that no funds are used for salaries or other operating expenses. San Ysidro school bonds were approved prior to the passage of Proposition 39, when no legal requirement for an oversight committee existed. However, in 1998, SYSD PTA members requested the district appoint an oversight committee. The district has never done so.

In addition to issues raised in the audit, the Grand Jury found other major areas of concern. The district has amassed hundreds of millions of dollars in long-term debt with little to show for it. In 2012, the newly constructed Vista Del Mar School opened, financed from bond proceeds at a cost of \$23.7 million. In the 2012-2013 school years Beyer Elementary was demolished to make way for the construction of a replacement. To date, the school has not been replaced.

Moreover, the SYSD purchased approximately twenty acres of property as the site for a new school, some of which turned out to be environmentally protected and unusable. According to district staff, SYSD is now responsible for payment of significant mitigation costs for the environmentally protected property. The decision to purchase this property is suspect and should be further investigated.

The audit found that SYSD employees were involved with the destruction of records. On July 11, 2013, a Board member addressed allegations that school district records had been burned on SYSD property. The Board directed an internal investigation be done and requested that SYSD cooperate with law enforcement to determine any misconduct. There is no record of any investigation, follow-up report, or even contact with law

⁵ Education Code Section 15278 et seq.

enforcement. According to current management, SDCOE was notified of the incident but SYSD does not know what action, if any, was taken.

School districts in California are given financial ratings by both County Offices of Education and standard financial rating organizations. SDCOE uses a three-tiered scale – positive, qualified or negative--to rate the overall financial health of a district. Financial rating services use a letter scale, with AAA being the highest rated security. In 2012, the SDCOE rated SYSD “negative.” On November 18, 2013, Fitch Rating Service downgraded SYSD’s GO bonds to BB+ and COPs to BB-. Their announcement stated, “The bonds and COPs are placed on Rating Watch Negative.”⁶

In 2012, while SYSD had a negative financial rating from the SDCOE, SYSD secured additional funds through COPs. Due to that rating, SDCOE assigned a financial officer to monitor SYSD. SDCOE’s role was to advise the Board and Superintendent on ways to improve the district’s financial situation so as to avoid takeover by the State Department of Education. It is unclear why, given SYSD’s negative financial rating, SDCOE did not strongly advise against SYSD’s incurring additional debt. In 2009, the California Court of Appeal clarified (in *Polster v. Sacramento County Office of Education*) that Education Code section 42127.6 authorizes county superintendents to exercise special fiscal oversight powers over school districts; courts will defer to the judgement of county superintendents unless their decisions are arbitrary, capricious or entirely lacking in evidentiary support⁷.

In January 2014, the State Department of Education assigned a Fiscal Crisis and Management Assistance Team (FCMAT) to conduct an Organization and Staffing Review of SYSD. FCMAT recommended that SYSD develop a Business Services Division policies and procedures manual, and develop desk manuals for all Division employees. The jury concurs with this recommendation; to date, no manuals have been produced.

In 2008, SYSD entered into a \$12 million contract with EcoBusiness Alliance,⁸ a solar energy company, to install solar panels, to be funded from bond proceeds. In 2011, the Superintendent cancelled the project⁹ due to lack of performance. The contractor sued and the case was litigated. In 2014, the trial jury found in favor of EcoBusiness Alliance, awarding a \$12 million settlement. As of the writing of this report, no solar panels have been installed or any improvements made on SYSD schools,¹⁰ and the projected cost has risen.

⁶ <http://www.businesswire.com/news/home/20131118006561/en/Fitch-Downgrades-San-Ysidro-School-District-CA>

⁷ California 3rd District Court of Appeal case C059733

⁸ <http://www.sandiegoreader.com/news/2012/jun/19/stringers-solar-power-company-sues-san-/>

⁹ <http://www.sandiegouniontribune.com/news/2016/apr/25/manzana-san-ysidro/>

¹⁰ <http://www.sandiegouniontribune.com/news/2016/apr/25/manzana-san-ysidro/>

In July, 2015 the Board hired a new Superintendent, who hired a new Chief Operating Officer. Four new members have been elected the Board of Trustees. The District has hired a consultant, California Financial Services (CFS), to develop and implement a Facilities Financial Management and Reporting system to be integrated with the existing fiscal system. The system will allow the district to track all major revenue and expenditures for GO Bonds, COPs, and state grants. The consultant report was not available at this writing, but the Grand Jury considers it an excellent corrective action.

OAAS AUDIT

The OAAS audit revealed numerous problems with SYSD management, policies, and operations. Though missing records made the audit more difficult, OAAS was able to conclude:

1. SYSD lacks adequate oversight of GO Bond proceeds and expenditures and does not have an adequate process for approving COPs. Errors resulted from inadequate Board oversight and questionable management practices.
2. There was poor fiscal control. Prior administrations had maintained poor control over the business and financial services division. The Board repeatedly granted administrators authority for unilateral decisions, an abdication of the Board's responsibility and a breach of the Board's fiduciary obligations.
3. Prior administrations had no standard formalized accounting policies and procedures for employees and did not provide training or job manuals on regulations or appropriate reporting and record keeping requirements.
4. SYSD improperly recorded expenditures. OAAS found numerous errors in recording and processing of payments from bond proceeds. They also found improper recording of retention payments; payments for impermissible purposes such as travel and administrative functions; improper approvals; purchase orders created after invoices were received; services provided by vender that did not agree with purchase orders; double payments to vendors; failure to reverse cancelled warrants; and lack of supporting documentation.
5. SYSD's prior administration failed to implement a strong system of internal controls and destroyed documents, perhaps illegally, to hide the extent of their mismanagement. They withheld information and failed to sufficiently educate the Board on a number of issues related to bond fund expenditures and the issuance of COPs, mismanaged SYSD's bond proceeds, other school assets, and did not provide public transparency over tax payer money.
6. The Board disregarded their fiduciary duty to govern SYSD and failed to hold SYSD administrators accountable for complying with laws, regulations, and Board policy.

7. Over the last six years SYSD's annual financial statements included findings against SYSD, such as improper year-end closing and insufficient internal controls over purchasing and fixed assets.
8. SYSD lacked any policies and procedures for record retention and destruction. Prior SYSD administrators ordered staff to destroy procurement and accounts payable records. In September 2011, the Board approved the destruction of 215 boxes of documents, but there is no record of what was destroyed.
9. Prior SYSD Boards did not perform due diligence and disregarded their fiduciary duty, approving expenditures from bond proceeds for purposes other than those listed in the ballot measure. The audit gives examples of Trustees' expressing concern that they did not receive sufficient information to make a decision on legal bond counsel, but they approved the contract for new counsel anyway. Again, there was Board concern regarding insufficient information about Bonds proceeds. The auditor also found that the Board approved expenses for management and staff attend training and travel to conference to be paid with bond funds.
10. There was a lack of accountability and oversight of the SYSD bond proceeds:
 - Improper interfund borrowing:¹¹ SYSD borrowed approximately \$18 million from bond proceeds and failed to transfer approximately \$6.1 million back into the fund. Interfund transactions did not consistently reference the corresponding fund. SYSD used restricted bond funds to cover payroll expenses and transfer cash to other funds. SYSD failed to repay the bond fund in the same fiscal year, resulting in noncompliance with laws and regulations. As a result, other SYSD funds may be overstated and owe the bond fund interest.
 - Improper accounting of wire transfers: SYSD was not able to determine the total amount of wire transfer made from the bond proceeds. There was inadequate record keeping of the approximately \$376,900 transferred from the fund.
 - Poor controls over the vendor master file: SYSD does not perform reconciliations of the file.
11. SYSD administrators circumvented Board approvals and entered into contracts without proper authority and approved change orders on behalf of SYSD, also without proper authority. Based on a review of Board meeting minutes and accounts payable documents, it appears that SYSD administrators withheld contract amendments and a number of change orders from Board review. The

¹¹ http://www.documents.dgs.ca.gov/opsc/Resources/Fin_Hrdshp_FAQ.pdf

former Chief Business Officer signed contract amendments and change orders,¹² and authorized payments without Board approval.

12. The process for approving COPs was inadequate. To accommodate financing of school facilities, IN 1998 SYSD formed the San Ysidro School Public Financing Corporation, a non-profit corporation with the Board of Trustees as its officers. Board members were not aware of their duties and responsibilities as corporation officers. Currently, the corporation officers' roster has not been updated to include current Board members, and the prior Chief Business Officer is still listed as the corporation's registered agent.
13. District management could not provide a facility needs assessment prior to FY 2007-2008 or for FY 2008-2009 and 2009-2010. The assessments for the four fiscal years from 2011 through 2015 failed to include detailed valuation of existing facilities. SYSD did not develop a district-wide prioritization of facility improvement based on facility need. As a result, it is unclear what information the Board reviewed to demonstrate SYSD's long-term facility funding needs.
14. There are conflict-of-interest issues with financial advisors and bond underwriters hired to oversee long-term debt issuance. For example, SYSD contracted with the Dolinka Group to provide services related to developer fees, planning and demographics, financial advisory services and special taxes and assessments. They also provided services for GO Bonds and COPs. The hiring of the same consultant to provide both those services may create a conflict of interest. Presentations to the SYSD Board made on March 2015 regarding bond issuances contained inaccurate or incomplete information. RBC Capital Markets erroneously informed the Board that SYSD could refund some bond proceeds. The Board unanimously approved RBC as the Bond Underwriter after their presentation. OAAS reviewed SYSD documents and found that RBC Capital Market's guidance may have been incorrect.
15. The 2015 refunding of the GO Bond debt schedule includes questionable interest payments. Specifically, the debt service of \$520,750 for FYs 2015-2016 and 2016-2017 do not have a principal or coupon rate that supports those amounts. It is not known whether those amounts are correct.
16. SYSD lacks public transparency of GO Bond and COP management programs. In 1997, when Proposition C was proposed, the Yes on C support group circulated flyers to the public that included specific projects and stated that bond proceeds would go towards facilities (buildings and equipment) and not for salaries and

¹² A change order is a unilateral written order by a project owner directing the contractor to change contract amount, requirements, or time. <http://www.businessdictionary.com/definition/change-order.html#ixzz47hvKaWRY>

administration. However, while the GO Bonds and COPs included the purpose for the funds, SYSD did not present the public a list of projects, facility priorities or estimated cost. In March 1998, a request from the Parent Teachers Association to establish an oversight committee to monitor bond spending was disregarded by the Board. To date, the Board has not posted current COP information on its website.

17. SDCOE did not provide adequate oversight of SYSD. According to Education Code §1241.5(b), the county superintendent may, at any time, audit a school district's expenditures and internal controls if they have reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred. The county superintendent shall report the findings and recommendations to the school's Board within forty-five days of completing their review. Furthermore, if the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, then Education Code §42638(b) applies and states that the county superintendent should notify the school's governing board, State Controller and local District Attorney. While SDCOE did meet with the Board and top management, they did not take an aggressive enough role in correcting problems.

FACTS AND FINDINGS

Fact: There is no strategic plan for long term facility requirements of San Ysidro School District.

Finding 01: Strategic plans assure accountability and transparency.

Fact: In 1997, San Ysidro School District voters approved a \$250 million school bond to build new schools and modernize outdated ones.

Fact: When the bond was approved, state law did not mandate a Citizens' Board Oversight Committee; as of 2000 it is obligatory for school bond issuance.

Fact: San Ysidro School District did not implement a 1998 request to establish a citizen committee to oversee the spending of bond funds.

Fact: There has never been, nor is there currently, any independent entity giving citizen oversight to the San Ysidro School District bonds and COPs.

Finding 02: A citizen oversight committee for bonds and COPs would increase transparency and accountability.

Fact: San Diego County Office of Education has financial oversight responsibility for school districts in the county.

Finding 03: San Diego County Office of Education guidance on establishing a citizens' oversight committee would strengthen the process.

Fact: San Diego County Office of Audits & Advisory Services found improper expenses and unreimbursed transfers of bond funds.

Finding 04: Absence of internal controls and citizen oversight of bond fund transactions allowed errors to go unnoticed and uncorrected.

Fact: Bond and COPs are still being dispersed, but the information is not publicly available.

Finding 05: To facilitate transparency and accountability, the continuing status of the bond and COPs should be easily available to the public.

Fact: The county audit identified significant deficiencies in San Ysidro School District's internal controls.

Fact: San Ysidro School District purchased environmentally protected land for the purpose of constructing a new school.

Fact: San Ysidro School District must make mitigation payments in perpetuity for environmentally protected land it purchased.

Finding 06: San Ysidro School District failed to conduct due diligence on land purchases.

Fact: San Ysidro School District lacks adequate oversight of bond proceeds and expenditures.

Fact: Prior administrations failed to implement a strong system of internal financial controls and records retention and destruction.

Finding 07: The lack of standard formal accounting policies and procedures contributed to San Ysidro School District financial problems.

Fact: Staff were unaware of approved California school accounting practices.

Fact: District personnel destroyed records without regard or knowledge of state-mandated records retention and destruction requirements.

Fact: San Ysidro School District lacks a staff financial policies and procedures manual.

Finding 08: Written standard operating procedures provide would provide essential information to employees.

Finding 09: Staff without proper training contributed to errors in accounting practices.

Fact: School District Trustees have been uninformed concerning their membership and duties as directors of the San Ysidro School Public Financing Corporation.

Finding 10: A corporation with directors who do not know their responsibilities cannot function properly.

Fact: San Ysidro School District Trustees failed to perform their fiduciary duties to the citizens of San Ysidro School District.

Fact: San Ysidro School District Trustees lack training and/or understanding of their role and responsibilities.

Findings 11: Poor decisions by the Board of Trustees significantly contributed to San Ysidro School District financial problems.

Fact: Improper and unauthorized activities occurred at San Ysidro School District, including intentional destruction of records, purchases of unusable land, and contracts made by prior superintendents without proper authority.

Fact: The OAAS audit, primarily focused on bond and COP issues, does not examine the entire financial status and operations of San Ysidro School District.

Finding 12: To assure transparency and accountability, and to restore public trust in San Ysidro School District's operations, an independent forensic audit of San Ysidro School District is warranted.

Fact: San Diego County Office of Education is the link between San Ysidro School District and the California Department of Education.

Fact: In FY 2012-2013 San Ysidro School District issued a COP after San Ysidro School District was rated negative and under San Diego County Office of Education financial supervision.

Fact: The San Diego County Auditors and Controllers' Office Report found that the San Diego County Office of Education inadequately monitored San Ysidro School District fiscal condition.

Finding 13: San Diego County Office of Education needs to be directly involved in providing proper accounting policies and procedures to ensure San Ysidro School District's financial stability.

Finding 14: San Diego County Office of Education's strong support of an independent forensic audit would demonstrate to San Ysidro School District citizens that significant actions beyond the district are being taken to fulfill SDCOE's duties to the state and to rectify San Ysidro School District's financial problems.

RECOMMENDATIONS

The 2015/2016 San Diego County Grand Jury recommends the Superintendent and Board of Trustees of San Ysidro School District:

- 16-12: Create a long-term strategic plan for facility needs.**
- 16-13: Immediately assemble a Citizens' Bond Oversight Committee that complies with Proposition 39 membership requirements to oversee bond and COP transactions.**
- 16-14: Reconcile bond fund transfers and expenses and present the reconciliation actions to the Citizen's Bond Oversight Committee for review prior to full Board review.**
- 16-15: Post on the San Ysidro School District website the status of bond and COP disbursements, with timely updates.**
- 16-16: Conduct due diligence on all future property transactions.**
- 16-17: Establish strong formal accounting policies and procedures governing all financial transactions to ensure internal controls and promote sound business practices.**
- 16-18: Produce and distribute to all business service employees a manual of standard operating procedures.**
- 16-19: Provide ongoing staff training on state school accounting practices (CSAM)¹³ and any additional San Ysidro School District policies to ensure accurate record keeping and retention.**
- 16-20: Educate the Board of Trustee members on their duties and responsibility to the San Ysidro School Public Financing Corporation.**

¹³ <http://www.cde.ca.gov/fg/ac/sa/>

- 16-21: Require all Board members receive California Association of School Board training and certification on their duties and responsibilities.**
- 16-22: Hire an independent, experienced certified accounting firm to conduct a forensic audit of San Ysidro School District finances.**

The 2015/2016 San Diego County Grand Jury recommends that the San Diego County Office of Education:

- 16-23: Participate in the establishment of the Citizens' Bond Oversight Committee.**
- 16-24: Provide more intensive monitoring of San Ysidro School District for at least several years to ensure fiscal sustainability and the development and implementation of a strong system of internal controls, formal policies and procedures, and sound business practices.**
- 16-25: Provide funding support for a forensic audit of San Ysidro School District's finances and report any irregularities to the State Controller.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
San Ysidro School District Board & Superintendent	16-12 through 16-22	8/22/16
San Diego County Office of Education	16-23 through 16-25	8/22/16