



SAN DIEGO COUNTY OFFICE OF EDUCATION

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

RECEIVED
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BY:

August 15, 2016

Honorable Jeffrey B. Barton
Presiding Judge of the San Diego Superior Court
220 West Broadway
San Diego, CA 92101

Re: Review and Comments on San Diego County Grand Jury 2015/16 Report
"San Ysidro School District Business"

Dear Judge Barton:

We have reviewed the facts, findings and recommendations in the "San Ysidro School District Business" from the San Diego County Grand Jury 2015/16 Final Report. The Grand Jury made fourteen findings, to which we respond as follows:

Findings

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

Bond and certificate issuances and approvals is a highly specialized field. Participating districts contract directly with bond counsel and other financial specialists to advise them through the complex statutory requirements (both state and federal).

We have informed our districts that the San Diego Treasurer/Tax Collector's office has volunteered to assist districts with these types of complex financial transactions as an unbiased outside level of review. Several districts have utilized this service to access expertise of the Treasurer's staff.

We provide guidance on contracting and procurement requirements and sample test compliance on payments for school districts through our commercial warrant claims process. All public works contracts are audited, however CFD projects that are paid through wire transfer are not and would be an exception.

We also give instructions on the requirements of Education Code 42133 when a district issues non-voter approved debt (COPs or other debt instruments) and is in a qualified or negative status. Our requirement under the statute is to assess the probability of repayment for the debt service.

Finding 01

Does not apply to the San Diego County Office of Education.

Finding 02

We concur with the finding.

Service and leadership that maximize the success of all students

Board of Education

Mark C. Anderson Guadalupe González Alicia Muñoz Gregg Robinson Rick Shea

Finding 03

We agree with this finding only if the district implements a committee that is established and facilitated under the statutory requirements of a Proposition 39 bond as augmented by the AB 1199 requirements.

Findings 04, 05, 06, 07, 08, 09, 10, 11

Do not apply to the San Diego County Office of Education.

Finding 12

We disagree with the assertions that, "In FY 2012-13 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" and that "SDCOE inadequately monitored San Ysidro School District fiscal condition."

SDCOE was notified on November 7, 2011 by the district's financial advisor that the district board would be acting on the issuance of approximately \$10 million of Certificates of Participation at its December 8, 2011 meeting. The proposed COPs would be paid for using tax revenues from Community Facilities Districts (CFD) #1-#3 along with pass through payments from the San Ysidro project area from the Redevelopment Agency of the City of San Diego. SDCOE reviewed the documentation and commented on the SYSD COP on December 6, 2011, stating that the repayment from the specified source of funds was reasonable. The date of the Official Statement is January 25, 2012 for the issuance of \$10,409,714.55 of Certificates of Participation.

San Ysidro submitted a "positive" certification for its First Interim report in December 2011. The use of funding sources for the debt service outside of the general operating budget of the district made it unlikely there would be a fiscal solvency impact to the certification the district. The district self-certified "negative" at its board meeting on February 28, 2013 over a year later and was assigned a fiscal advisor on March 18, 2013. This was not due to any general fund payments on the referenced debt service.

Finding 13

We concur with the finding. Resources are provided by SDCOE as described later in the recommendations.

Finding 14

We disagree with the finding. The County Office has provided the required support per AB1200, AB2756, and associated education codes. A forensic audit is designed to produce evidence in criminal proceeding and is beyond the scope of SDCOE authority.

RECOMMENDATIONS

In the final report, the San Diego County Grand Jury recommends that the San Diego County Office of Education do the following:

Recommendation 16-23:

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

- Participate in the establishment of the Citizens' Bond Oversight Committee

SDCOE Response

This recommendation can be partially implemented. The district has a pre-Proposition 39 School Facilities Local Vote Act of 2000 bond so is not required to establish a Citizens Bond Oversight Committee (CBOC). However, we agree that the use of a CBOC does provide a level of accountability and transparency to the local community. It also provides an avenue for community engagement in the district's facility program. We support the recommendation that a CBOC be established if it is created in conformance with Prop. 39 and AB 1199, Brownley, School bonds: citizens' oversight committee guidelines. Should the district decide to establish a CBOC, SDCOE can assist the district by guiding the processes for establishing the CBOC and then providing proper training so the committee can fulfil its oversight role of: 1) informing the public; 2) reviewing and reporting on bond expenditures; 3) reporting annually to the School Board and the public in accordance with Education Code Section 15278.

We would not participate as a member of the committee. The committee guidelines and composition are outlined in AB 1199 and transcribed below:

The citizens' oversight committee shall consist of at least seven members who shall serve for a minimum term of two years without compensation and for no more than three consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:

- (1) One member shall be active in a business organization representing the business community located within the district.
- (2) One member shall be active in a senior citizens' organization.
- (3) One member shall be active in a bona fide taxpayers' organization.
- (4) For a school district, one member shall be the parent or guardian of a child enrolled in the school district.
- (5) For a school district, one member shall be both a parent or guardian of a child enrolled in the school district and active in a parent-teacher organization, such as the Parent Teacher Association or school site council.

No employee or official of the district shall be appointed to the citizens' oversight committee. No vendor, contractor, or consultant of the district shall be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code.

Recommendation 16-24:

The 2015/16 San Diego County Grand Jury recommends that the San Diego County Office of Education:

- **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.**

SDCOE Response

This recommendation is implemented as defined by SDCOE responsibilities under Education Code 42100-42142 (otherwise known as AB1200) and the new responsibilities established under the Local Control Funding Formula and Local Control and Accountability Plans.

School districts are independent local education agencies governed by elected officials within their local jurisdictions. SDCOE does not act as a governing body to school districts. The County Superintendent has authority in specifically defined areas of the Education Code. AB1200 (and subsequently AB2756), enacted in 1991, established the fiscal oversight authority regulating school district budgets. It established the certification system whereby school districts certify to the county superintendent at least two times a year the following:

Positive: the district will be able to meet its financial obligations for the current and two subsequent years

Qualified: The district will probably be able to meet its financial obligations for the current and two subsequent years.

Negative: The district will not be able to meet its financial obligations in the current or subsequent fiscal year

The county superintendent then, based on information he/she has, may agree with the district certification or change the certification. The district has the ability to appeal the county superintendent's certification to the California Department of Education. Within the context of each certification, the education code prescribes actions the county superintendent may and shall take with respect to intervention in a school district. County superintendent interventions are progressively more intrusive as a district certification deteriorates.

The San Ysidro School District has a positive certification. The recommendation for additional "intensive monitoring..... for at least several years" is not available to SDCOE in the authority prescribed by the legislature.

However, that being said, no matter the certification, our office conducts sample testing of district (including San Ysidro) payments through our commercial warrant claims process. We check for legality, approvals and documentation. We use this as a training process to explain regulations and best practice to district staff. We also provide resource manuals online such as the Commercial Warrant Claims Manual, Financial Accounting and Reporting Manual, and the Guide to Bidding and Contracting as well as numerous links to other state resources to assist all districts in San Diego County. In addition we provide materials, on site and workshop trainings, phone support for technical questions and business consultant expertise to our school districts. We have always been available and continue to support San Ysidro, upon their request, in the areas requested by the Grand Jury.

Recommendation 16-25:

The 2015/16 San Diego County Grand Jury recommends that the San Diego County Office of Education:

- Provide funding support for a forensic audit of San Ysidro School District's finances and report any irregularities to the State Controller.

SDCOE Response

We will not implement this recommendation for the following reasons:

It is necessary to understand the role of SDCOE in the audit of local school districts as defined under the law. Education Code Section 41020 establishes the process for school district audits, the treatment of audit findings and the roles of the district, the auditor, the county superintendent and the state controller's among other things.

In item 7 the report states that "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."

Education Code sections 41020(i) and (j) outline the responsibilities of the SDCOE for reviewing audit exceptions contained in the annual audit report of the district. These responsibilities include reviewing audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions, use of instructional materials program funds, teacher miss-assignments, and information reported on the school accountability report card and determining whether the exception(s) has been corrected or if an acceptable corrective action plan has been submitted.

If SDCOE determines that the corrective action plan is insufficient or missing, we must notify the district of such determination and request a sufficient corrective action plan to be submitted to us by March 15.

By May 15 each year, the county superintendent must certify that the audit findings under his or her purview have been reviewed by staff and have either been corrected or acceptable corrective action plans have been submitted, unless otherwise noted. Districts that have not corrected their findings or responded with acceptable corrective plans are reported to the Controller as non-compliant and it is the responsibility of the Controller to follow-up (EC 41020(k)). The district's auditor is responsible for ensuring prior year audit findings have been corrected (EC 41020(l)).

We do not have the authority to correct district findings for them. We do provide guidance and resources if they need assistance.

The report also references Education Code 1241.5(b) where .." the county superintendent may review or audit the expenditures and internal controls of any school district in his or her county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination."

This is referred to as an "AB139 Audit." Education Code 42638(b) states that if it is determined this exists then the matter is to be referred to the District Attorney's office. At the time in question, we were aware that the District attorney's office was already in the district investigating, therefore there was no need for an AB139 Audit.

The Grand Jury's recommendation is for support of a forensic audit which can be defined as "the application of accounting methods to the tracking and collection of forensic evidence, usually for the investigation and prosecution of criminal acts such as embezzlement or fraud" (Business Dictionary). This type of audit is different than the requirement of Education Code 1241.5(b) and therefore outside the authority of SDCOE.

Sincerely,



Deborah Beldock
Deputy Superintendent
San Diego County Office of Education