

# FOUL BALL!

## ***INTRODUCTION***

Few scenes can match the pure joy of children kicking a soccer ball around the schoolyard on a Saturday morning; made possible because school district policy generally allows community-based youth sports groups the free use of athletic facilities. The usual qualifications for free use of the facilities are the organization must be local, have insurance, and be tax-exempt per Internal Revenue Service regulations. If an organization lacks the requisites, most districts have procedures to allow the rental of gymnasias, ball fields and other facilities. Rental schedules are designed either for simple cost recovery, as for churches, or to make a profit if the renter is turning a profit. This symbiotic relationship between schools and neighborhood organizations, such as volunteer-run sports leagues, has served communities well over the years. However, the schools and ultimately taxpayers are cheated when district policies governing for-profit groups are subverted or ignored

The Grand Jury's recommendations will encourage San Diego Unified School District (SDUSD) to ensure all principals and athletic staff follows the district policy for renting athletic fields and charging fees. The Grand Jury recommends more executive oversight of the process, which includes field rental procedures and fee collection. The Grand Jury also recommends other San Diego County schools review their policies on this issue and make improvements where needed.

## ***INVESTIGATION***

Months ago, the 2010/2011 San Diego County Grand Jury (Grand Jury) fielded a complaint alleging several irregularities in the baseball and softball programs at a high school within SDUSD. Since then, some of the irregularities at the specific school have been mitigated. However, during the investigation, the Grand Jury discovered three ongoing issues that affect significantly SDUSD and reach into other districts:

- For-profit sports groups using taxpayer-funded school facilities at reduced rates or no charge at all.
- Coaches controlling off campus bank accounts for school related funds.
- Coaches making policy decisions on athletic facility use that do not conform to district policy.

These issues are tightly conjoined because a number of principals and/or athletic directors give their coaches virtual sovereignty over school athletic facilities.

The Grand Jury investigated allegations and found, at least, one SDUSD high school baseball coach allowed an organization the use of facilities for cash payments and purportedly used the cash to benefit the baseball program. This violated provisions of the district's policies on facility use and presented several ethical questions. While verifying those allegations, the Grand Jury learned an organization, assumed by many to be a non-profit baseball league while applying for field use, clearly was a for-profit business. It is *prima facie* not a local little league when fee schedules of several hundreds of dollars per player are cross-referenced on multiple websites.

## ***DISCUSSION***

The Grand Jury is not suggesting there is anything wrong with packaging sport dreams and selling them to starry-eyed parents. However, the Grand Jury believes SDUSD coaches and administrators should not abet the process by providing facilities at low or no cost to some organizations while other commercial interests must pay full price. Further, the Grand Jury is confident this occurs in districts other than SDUSD and sports other than baseball. During the investigation, the Jury discovered tournaments scheduled at 28 public high schools, from Olympian in the south, El Camino in the north, out to El Capitan in the east. The lists also included several private schools and commercial facilities. Since the leagues charge for tournament participation and charge spectators admission, it's apparent someone is turning a profit.

In addition to SDUSD, three other San Diego County school districts, which had fields listed for tournament play, were studied and all have policies regarding use of school facilities. Each has a graduated rental schedule based on the type of activity and status of the organization. For example, established national sports organizations and 501 (c) (3) organizations rarely pay anything, while commercial interests could be required to pay hundreds of dollars for the rights to use a baseball field for a minimum number of hours. It is an erosion of school board authority when unauthorized individuals at a school have unilateral power to allow certain organizations the use of athletic fields for significantly reduced or no rent. Conversely, those same individuals should not be able to thwart policy by arbitrarily denying access to non-favored organizations.

The Grand Jury's investigation found a league trumpeting that "all profits" are donated back to school baseball teams. This, of course, is not a league's or a school coach's call. Any discretionary funds should be spent at the direction of the school's administrators per district policy.

The Grand Jury learned that it is easy to avoid paying SDUSD's commercial fee to hold a league tournament at a high school field. A league representative simply called a school's baseball coach with the tournament dates and the coach relayed the request to the athletic director. Someone at the school "authorized" the request and the coach informed the requesting league. After the agreed upon number of games were played, a check for only \$75 per game was delivered to the coach who purportedly deposited it in an off-campus checking account. That check, and others totaling more than \$3000, became a "slush fund" for the school's baseball program. Funds were used without oversight to finance field improvements and to buy baseball equipment. In addition to the many issues around an individual having unfettered use of "school funds", this transaction begs the question: Were Title IX requirements and wider campus needs considered when doling out the proceeds? District policymakers and school administrators should be responsible for deciding where rental income is used, not coaches with parochial interests.

Prior to 2006, when the rental policy was instituted at SDUSD, those transactions were tacitly approved with benign neglect because schools and the community were viewed as one and the same. However, today's litigious society forces schools to protect themselves with policies and the proper paperwork. In addition, any monies must be handled according to district policies.

SDUSD has not received a DIME for baseball field rentals over the past few years. Yet, based only on the games scheduled by just one league, almost \$100,000 could have flowed into district coffers. The Grand Jury verified tax status, and found 16 leagues and sports camps across San Diego County that appear to be commercial. Based on their schedules of regular games and tournaments over the past two years, hundreds of thousands of dollars could have been generated for various County schools.

### ***FACTS AND FINDINGS***

***Fact:*** School districts recognize the need for and benefit of sharing facilities with community groups.

***Fact:*** School districts understand school facilities can and should be rented to commercial enterprises if it does not interfere with the educational process. To ensure these requests are equitably met, most districts developed facility use policies.

***Finding 01:*** Some for-profit baseball leagues (and other organizations) received preferential use of San Diego Unified School District facilities in exchange for cash payments that were collected and spent without district oversight. And, the Grand Jury sees the potential for misconduct in other County school districts because the same leagues hold games outside San Diego.

***Finding 02:*** Properly protecting the district's interest in rental transactions requires more oversight, time and expertise than has been demonstrated by some schools.

***Finding 03:*** Principals, athletic directors and coaches at some district high schools have ignored policies regarding fees collected for and the use of athletic fields.

### ***RECOMMENDATIONS***

**The 2010/2011 San Diego County Grand Jury recommends that the Superintendent of the San Diego Unified School District:**

**11-36:**        **Ensure all district principals, athletic directors and coaches are well versed on the policy of allowing community organizations the free use of facilities and charging for commercial use.**

**11-37:**        **Enhance the authority of the district's "rental agent" department to provide more oversight of how schools adhere to policies for athletic field rental. This would include how monies obtained from rental fees are deposited, audited and distributed.**

### ***ADDENDUM***

**The 2010/2011 San Diego County Grand Jury made the recommendations in this report specific to SDUSD because of the specific allegations. However, the Grand Jury will provide courtesy copies of the report upon its release to other districts that may have similar issues.**

**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:

<b>Responding Agency</b>	<b>Recommendations</b>	<b>Date</b>
San Diego Unified School District	11-36 through 11-37	8/15/11