



**San Diego Unified**  
SCHOOL DISTRICT

Office of the Superintendent  
EUGENE BRUCKER EDUCATION CENTER  
4100 Normal Street, Room 2219  
San Diego, CA 92103-2682  
Phone: (619) 725-5506  
Fax: (619) 291-7182

August 13, 2013

Honorable Judge Robert J. Trentacosta  
Presiding Judge of the Superior Court  
220 W. Broadway  
San Diego, CA 92101

RECEIVED  
AUG 14 2013

**RE: Grand Jury Report: "Adult to Student Bullying"**

Dear Judge Trentacosta:

The San Diego Unified School District ("District") has reviewed the Facts, Findings and Recommendations in the Grand Jury Report "Adult to Student Bullying" filed on May 16, 2013. Pursuant to California Penal Code section 933(c), the following constitutes the response of the District and its Governing Board ("Board") to the findings and recommendations pertaining to matters under the control of the District.

**INTRODUCTION**

Prior to responding to the Grand Jury Report, we will comment that all students and parents of the District are important participants in the educational program and need to be treated with respect and served in a safe environment. By this response, we do not discount any person or his or her concerns on how his or her child is educated in this District. In serving over 114,000 students, the District strives always to account for curricular and instructional needs of all students and to ensure they are educated in a safe and secure environment. In fact, the District's Vision 2020 identifies safe schools and ongoing, meaningful communications with parents as critical components of the vision. Historically, the District's Operational Expectations have included the expectation that the Superintendent will establish and maintain a learning environment that is "safe, disciplined, respectful and conducive to learning." The Superintendent does not tolerate any behaviors, actions or attitudes by adults that hinder the academic performance or threaten the emotional well-being of the student. Finally, the District has a Bullying, Harassment and Intimidation Prohibition Policy; which, while not expressly focused on adult-to-child bullying, sets forth the overarching policy and stance of the District with respect to bullying of any kind.

**RESPONSE TO SUMMARY**

In the Summary of the Report, we believe<sup>1</sup> the Grand Jury misstated the facts as it pertains to the California Department of Education's ("CDE") response to an appeal on a parent complaint alleging teacher bullying. The complaint was originally filed with the District and was returned by the District as not meeting the requirements of the Uniform Complaint statutes and regulations. CDE agreed that this was not a Uniform Complaint. In the appeal, the complainants raised a new issue that was not raised with the District in the initial complaint. CDE sent the new allegation back to the District for investigation and asked the District to

<sup>1</sup> The Grand Jury does not provide to the District the documents on which it relies for this Report. We respond based on the information we have in the District.



Honorable Judge Robert J. Trentacosta  
Presiding Judge of the Superior Court  
RE: Grand Jury Report: *"Adult to Student Bullying"*

address this new allegation made by the complainants. CDE sent a letter to the complainants on August 3, 2011 noting that the allegation was not contained within the original complaint and; therefore, had not been addressed by the District. CDE stated in its letter to the complainants, "Since the District did not address your [new] allegation regarding the school safety plan in their response; I am referring this allegation back to the District." CDE made no findings whatsoever in their response to any of the complaints raised.

In fact, the child abuse prevention and reporting process, Administrative Procedure (AP) No. 6370, has been in effect in the District and available to the parents and the public, in one form or another, since 1966. The District staff remedied the issue noted in the CDE letter by including a full copy of AP 6370 in each school site safety plan. This is in addition to the other places AP 6370 or a summary could already be found, including the District websites, bulletin boards, school offices, and many other places on school campuses.

Paragraph three of the Summary states that "[t]he 2012-2013 San Diego County Grand Jury found that the SDUSD does not currently have an adult-to-child bullying policy. Additionally, SDUSD does not provide timely and continuing feedback as to the status of parents' complaints concerning adult-to-child bullying." District responds that this finding is inaccurate.

First, the District has several administrative procedures, including AP 6370, in place to address this issue. Child abuse or neglect, including emotional maltreatment of students, is covered by this AP. "Emotional Abuse" is defined to include, "such things as belittling, screaming, threats, blaming and sarcasm." District staff, including principals, teachers, aides, classified employees and school police, are "mandated reporters" under Penal Code section 11165.7(a) and must report any case where it is reasonably suspected a child has been subject to abuse to a protective agency within 36 hours of the event.

District AP 9430 also provides a vehicle for investigation of complaints by parents and others. It requires there be an investigation of the complaint against an employee within five workdays, a response to complainant and an opportunity to move the complaint up the chain of command to Senior Leadership if the complainant is not satisfied with the resolution of the complaint. These are typically handled by the District's Human Resources Department in conjunction with the subject employee's supervisor. If the complainant is not satisfied with the resolution from Senior Management, the complaint may be presented to the Board of Education or a subcommittee of the Board. The Board may decide to conduct a hearing to include the complainant and their representative.

While AP 9430 is not expressly titled to reference "adult-to-student anti-bullying" procedures, it is within the framework of an AP 9430 investigation that the District has historically investigated claims of adult-student bullying. If and when such an investigation uncovers or confirms behavior constituting unprofessional conduct or evident unfitness for duty as defined in Education Code section 44932, employee discipline is initiated.

As to the issue of feedback to a parent, the District strives to keep parents fully informed of the results of any investigation of alleged adult-to-student bullying. However, there are certain restrictions not of the District's making which may limit the flow of information. First, in the case of mandated reporting of alleged emotional abuse, such reports are confidential and the



investigation must be conducted by a qualified protective agency. The District cannot interfere with such an investigation. With complaints of bullying which do not rise to the level of abuse, the ability of the District to discuss the results of the investigation of a District employee is governed by federal and state constitutional and statutory provisions and collective bargaining agreements. These provisions require due process (notice of the charges and an opportunity to be heard), privacy and confidentiality requirements for personnel information, progressive discipline, and actual evidence of unprofessional conduct or evident unfitness for duty in order to proceed to termination or other discipline. The District is not at liberty during an investigation to release much, if any, information to or interact on a routine basis with a parent other than interviewing the parent and seeking any information that parent may wish to provide.

The District recognizes this must be frustrating to parents. However, an ongoing, in-depth dialogue with a parent will undermine the prosecution of any disciplinary or criminal matter. When the complaint centers on non-physical conduct, the determination of unprofessional conduct or evident unfitness for duty requires much clearer information and evidence that the conduct is not acceptable in the professional teaching community. Sometimes, there is no or little valid evidence to proceed to criminal prosecution or to disciplinary termination. Also, under the tenets of progressive discipline, the sanctions imposed must fit the evidence found and the behavior identified, particularly if it is a first time offense. Often times, other administrative action or counseling/training or both are used to improve the performance of the employee and end any conduct falling below acceptable professional standards. The District is not at liberty to disclose those intermediate steps of progressive discipline/performance improvement without the consent of the affected employee and, often for good reason, that consent is usually not forthcoming.

However, within these constraints, the District does strive to provide timely and continuing feedback to parent complaints alleging teacher "bullying." The District also strives to make its complaint processes as transparent and easy to understand as possible. The District has taken note of the concerns of the Grand Jury and, while the District does not necessarily agree with its findings, has continued to improve its practices and policies as discussed below.

### **RESPONSE TO FACTS, FINDING AND RECOMMENDATIONS**

**Facts:** The District agrees that there have been parent complaints which alleged adult-to-student bullying or harassment. However, the District disagrees that it lacks a policy addressing adult-to-student bullying. The District also disagrees that there is no policy within the School Safety Plans to address this issue. Finally, the District disputes that officials involved in the appeal process reviewed their own decisions. Rather, these complaints were investigated, then handled through the appropriate chain of command.

**Finding #01:** SDUSD lacks effective investigative policies and procedures when adult-to-student bullying occurs and is reported.

**Response:** The District disagrees wholly with this finding. (Penal Code § 933.05(a)(2).)

**Explanation:** As noted above, the District has extensive systems, procedures, and persons in place to investigate unprofessional conduct and evident unfitness for service or to review the



Honorable Judge Robert J. Trentacosta  
Presiding Judge of the Superior Court  
RE: Grand Jury Report: "*Adult to Student Bullying*"

status of an adult volunteer and the conduct of District employees. Simply because a complainant is unsatisfied with any complaint investigation result does not mean that policies, procedures, and staff are not in place to address those complaints.

**Finding #02:** Parents appear to lack a forum to address adult-to-child bullying complaints and do not receive timely feedback concerning the status of an appeal.

**Response:** The District disagrees wholly with this finding. (Penal Code § 933.05(a)(2).)

**Explanation:** As noted above, the District has extensive systems, procedures, and persons in place to investigate unprofessional conduct and evident unfitness for service or to review the status of an adult volunteer or the conduct of a District employee and to report back to parents within the confines of the law. However, in many cases, the District is constrained by federal and state constitutional and statutory law from releasing confidential personnel information during the course of an investigation and prosecution of a law enforcement or disciplinary matter.

**Finding #03:** There is a conflict of interest when school officials review appeals to their own original findings and decision.

**Response:** The District disagrees partially with this finding. (Penal Code § 933.05(a)(2).)

**Explanation:** The District agrees that a school official should not review an appeal of his or her own decision. However, this is not the District's practice. While there is no law or policy which would prohibit an employee from reconsidering his or her own work if there were a change in the facts or circumstances; there is always a supervisor available to review the conclusions of any reconsideration; and subsequent review is handled further up the chain of command. In this particular complaint at issue, the matter was, in fact, reviewed at three levels of supervision.

## **RESPONSE TO RECOMMENDATIONS**

**Recommendation 13-70:** **Develop a policy to address adult-to-student bullying, harassment, or intimidation, whether physical or emotional, by school district employees or volunteers. The policy should be added to the Administrative Procedures and School Site Safety Plans.**

**Response:** This recommendation will be implemented in part, within the next six months. (Penal Code § 933.05(b)(2)); but requires further analysis, including discussion with stakeholder groups, and other public agencies involved in the protection of children (Penal Code § 933.05(b)(3)).

**Explanation:** Although the District has a number of procedures and practices in place to deal with parent complaints of this nature, as explained above, the District recognizes the need always to improve its policies and procedures to ensure the safety of its students. The District also recognizes and values participation by involved stakeholders, including parents, staff and

Honorable Judge Robert J. Trentacosta  
Presiding Judge of the Superior Court  
RE: Grand Jury Report: "Adult to Student Bullying"

community members; as well as the role of other public agencies in providing for the protection of students. With those concepts in mind, the District has created a Superintendent's Focus Group to engage the stakeholders and create a broad public agency coalition to create consensus for best practices for investigation of complaints alleging adult-to-child bullying and other forms of child abuse. The parents who filed the complaints at issue in the Grand Jury Report have and will participate in this process. The District will also revise AP 9430 to expressly identify adult-to-student bullying as the proper subject of a complaint.

**Recommendation 13-71:**      **Revise the adult-to-student bullying, harassment or intimidation employee appeal and review procedures to forbid Area Superintendents or other administrators from reviewing their own original findings and recommendations.**

Response: This recommendation has been implemented. (Penal Code § 933.05(b)(4).)

Explanation: The District has undertaken a new organization, which includes (among other things) reassignment of its Parent Support Liaisons to the department of the Deputy Superintendent of Support Services. Complaints of adult-to-student bullying, etc. will be handled by this department and not by the Area Superintendents or school administrators. The relevant Administrative Procedures will be revised to reflect the new structure.

**Recommendation 13-72:**      **Provide all complainants timely and continuing feedback as to the status of their complaints.**

Response: This recommendation will not be implemented fully as requested because it is not reasonable, as explained above and below. (Penal Code § 933.05(b)(4).)

Explanation: As discussed above, there are certain legal restraints on what information may be shared with complainants. However, the District believes in complete transparency within that framework. As also discussed above, the Superintendent has formed a Focus Group, and intends through the work of that group to provide clarity on when and to what extent the District can provide information to parents, in light of confidentiality protections provided to employees and students under the California Constitution and the Education Code.

Penal Code § 933.05(b)(3) states that a public agency may defer a response if the recommendation requires further analysis. However, that deferral requires an explanation and the statement of the scope and parameters of an analysis or study and a timeframe 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 timeframe shall not exceed six months from the date of publication of the grand jury report. Penal Code § 933.05(b)(3) is not being utilized here since six months is too short a time to analyze, examine, and resolve the issue noted and also because the recommendation may not be legally capable of implementation in full in any event.

## **Conclusion**



Honorable Judge Robert J. Trentacosta  
Presiding Judge of the Superior Court  
RE: Grand Jury Report: *"Adult to Student Bullying"*

On behalf of the Board of Education and its staff of the San Diego Unified School District, we appreciate your concern for our District.

Sincerely,

A handwritten signature in dark ink that reads "Cindy Marten". The signature is written in a cursive, flowing style.

Cindy Marten  
Superintendent of Public Education