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COUNTY GRAND JURY

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BY: Exec Dir

To Legal

June 20, 2013

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

RE: Grand Jury Report: "San Diego City School Website Use for Political Purpose is Unauthorized"

Dear Judge Trentacosta:

The San Diego Unified School District ("District") has reviewed the Facts, Findings and Recommendations in the Grand Jury Report "San Diego City School Website Use for Political Purpose is Unauthorized" filed on May 7, 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.

RESPONSE TO SUMMARY, INTRODUCTION, BACKGROUND, AND DISCUSSION

Although the Penal Code only requires responses to Findings and Recommendation, we believe that it is important for the District to respond to specific parts of the introductory material in the Report.

1. Grand Jury Statements on Violation of Law

The Grand Jury made a statement that District websites had references to matters "that could potentially sway public opinion about legislation issues." The first matter related to statements of support for Assembly Bill 2434 and a number of other matters pending in Washington, D.C. and Sacramento. There is nothing in Education Code section 7054, subsection (a), that prohibits the soliciting of support or opposition to legislation pending in Congress or the California Legislature; section 7054(a) affects only ballot propositions and candidates for office. Congress' and the Legislature's actions affect the present and future management, conditions, needs, and financial support of the District. The Board is permitted to provide studies and information to Congress and the Legislature under Education Code section 35172, subsection (a). The letter dated June 24, 2012 mentioned in the Background section fits directly under that statute. Also, under Education Code sections 35160 and 35160.1 the Board has broad authority to expend funds to carry out programs and activities not prohibited or inconsistent with the laws that govern school districts. The District has long had an active program in Sacramento and in Washington to provide information to our representatives so that the District's viewpoint on legislation is considered. There is no law of which we are aware that prohibits this program.

2. Board President E-mails

Toward the middle of the Background section, the Grand Jury quotes from a San Diego Union-Tribune ("U-T") story about Dr. John Evans using his District e-mail account to contact other

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school board presidents about a press conference on Proposition 30. While the e-mail was a very minimal use of District facilities and possibly not a violation of section 7054(a), we note that, once advised of the concerns, Dr. Evans stopped using District e-mail for organizing meetings. Also, the Grand Jury quotes the U-T story as to legal advice from an attorney in Northern California. It is important to note that the quote related to the e-mail, not the District website, the latter being the focus of the Grand Jury report. This reference to a quote by a lawyer who has no idea of the facts of the situation points out another serious flaw in the Grand Jury Report – the Grand Jury never asked the District to provide the General Counsel's legal reasoning for approving the District website. The gist of that advice is contained in this letter.

3. The Scope of District Employee Access to Websites

The final "point" of the Background section relates to the number of persons who have access to District and school websites. The Grand Jury cites the number of 4,320. However, the reference to that number has no analysis. First, each web page has limited access to known employees. In other words, if there is a violation, we can track a change in any particular page to a particular person. Second, with over 200 schools with numbers of programs and information needs, this number of persons having access to particular pages is small. The websites are primarily to provide current information to students and parents. If we were to restrict access, this information would become stale and useless. Finally, when we were informed of violations, we took take action. We had very few reports of violations of law and District policy and procedure. This monitoring and oversight will continue.

RESPONSE TO FINDINGS

Finding #01: As recently as November 2012, SDUSD employees put politically oriented messages on school-owned internet websites.

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

Explanation: A large part of this Report focused on the District website supervised by the Communications Department. The Grand Jury failed to interview the person responsible for advising that Department as to the legality of the material on the District website, our General Counsel. If it had done so, they would have learned that Education Code section 7054 does not totally prohibit the posting of political material, if done correctly. Education Code section 7054, subsection (b), provides that "[n]othing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met: (1) The informational activities are otherwise authorized by the Constitution or laws of this state [and] (2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure." In addition, Education Code section 7058 provides that "[n]othing in this article shall prohibit the use of a forum under the control of the governing board of a school district or community college district if the forum is made available to all sides on an equitable basis." The District website on the propositions on the November 2012 ballot had informational material and supporting and opposing material provided on an equitable basis. The primary point of the website was to inform the public, but did permit supporting and opposing views.

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The District recognizes and agrees that a very few school employees used the District electronic mail system (not school websites) for activities prohibited by law and District policy. In each instance that was reported to Senior Administration, the supervisors of those employees were advised and directed to contact the offending employee and stop the behavior. We are not aware of any continuing behavior in this regard.

Finding #02: SDUSD is not monitoring all information and postings put on SDUSD and local school websites.

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

Explanation: Monitoring of "all" information and postings on the over 200 school websites is a physical impossibility in the absence of unlimited funds and staffing. The District's interests include both proper management of its facilities and financial expenditures within its means to achieve its mission to educate students. The District does not agree at this point that "more" oversight, time or expertise is required. The District had already taken action and will take action in the future to alleviate the issues identified in this report. We further believe District personnel are currently expending sufficient time and effort, and have always had sufficient expertise, to manage our electronic facilities. Also, each school principal is a trained and experienced site administrator and we trust their judgment as to what is appropriate and what is not. Therefore, while it is true that a very small number of District employees (three complaints) at some times did not follow required procedure in using e-mail, the District disagrees that these persons were not supervised or admonished to adhere to District guidelines.

Finding #03: The SDUSD and local school websites do not generally have an overseer who is familiar with the law or one is willing or able to block unsuitable content.

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

Explanation: The District has sufficient staff to oversee, advise, and monitor/block unacceptable content on District websites. We have hundreds of site administrators and a number of District administrators who are professional and strive to follow the law and District procedure. The District does not agree at this point that "more" oversight, time or expertise is required. The District had already taken action and will take action in the future to alleviate the issues identified in this report. We further believe District personnel are currently expending sufficient time and effort, and have always had sufficient expertise, to manage our electronic facilities. Additionally, the District's interests include both proper management of its facilities and financial expenditure within its means. Therefore, while it is true that a very small number of District employees (three complaints) at some times did not follow required procedure in using District e-mail, the District disagrees that these persons were not supervised or admonished to adhere to District guidelines.

Finding #04: Lack of SDUSD resources does not justify violating California Education Code 7054(a) and SDUSD policies.

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

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Explanation: The District does not agree that it violated Education Code section 7054(a), as stated above, and that, at this point, that "more" oversight, time or expertise is required. The District had already taken action and will take action in the future to alleviate the issues identified in this report. We further believe District personnel are currently expending sufficient time and effort, and have always had sufficient expertise, to manage our electronic facilities. Additionally, the District's interests include both proper management of its facilities and financial expenditure within its means. Therefore, while it is true that some very few school employees (three complaints) at some times did not follow the required procedure in using District e-mail, the District disagrees that the cost of hiring and training more staff to monitor all 200 plus school sites would be superior and a proper expenditure of District funds to apprehend the very few employees that may have not followed District procedure.

RESPONSE TO RECOMMENDATIONS

Recommendation 13-22: Comply with California Education Code 7054(a), which states, "No school district funds, services, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate."

Response: This recommendation was implemented at all times prior to the Grand Jury Report and will continue to be implemented in the future. (Penal Code § 933.05(b)(1).)

Explanation: The Grand Jury Report failed to account for Education Code section 7054, subsection (b), which provides that "[n]othing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met: (1) The informational activities are otherwise authorized by the Constitution or laws of this state [and] (2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure" and Education Code section 7058 which states, "[n]othing in this article shall prohibit the use of a forum under the control of the governing board of a school district or community college district if the forum is made available to all sides on an equitable basis." The website had primarily information on the effects of Propositions 30, 38 and Z, whether they passed or not, and links to supporting and opposing websites on all of the propositions on the ballot for November 2012. Any request to add links or other opposing statements was honored.

Recommendation 13-23: Ensure that there is closer monitoring of all school-owned websites to prevent posting of unauthorized political activities.

Response: This recommendation will not be implemented because it is not warranted or not reasonable. (Penal Code § 933.05(b)(4).)

Explanation: The District does not agree that it violated Education Code section 7054(a), as stated above, and that, at this point, that "more" oversight, time or expertise is required. The District had already taken action and will take action in the future to alleviate the issues identified in this report. We further believe District personnel are currently expending sufficient time and effort, and have always had sufficient expertise, to manage our electronic facilities.

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Additionally, the District's interests include both proper management of its facilities and financial expenditures within its means. Therefore, while it is true that some very few school employees (three complaints) at some times did not follow the required procedure in using District e-mail, the District disagrees that the cost of hiring and training more staff to monitor all 200 plus school sites would be superior and a proper expenditure of District funds to apprehend the very few employees that may have not followed District procedure.

Recommendation 13-24: Ensure that there is closer monitoring of The Education Issues Action Center, which is designed to sway public opinion about legislation issues.

Response: This recommendation will not be implemented because it is not warranted or not reasonable. (Penal Code § 933.05(b)(4).)

Explanation: The Grand Jury misunderstood the coverage of Education Code section 7054, subsection (a). That section does not prohibit, in any way, the petitioning of Congress or the Legislature to pass or not pass legislation that affects this District and other local school districts. A school district has the right under the federal and California Constitutions to petition Congress and the Legislature for support of its budget or ameliorative legislation or for relief from onerous legislation. Clearly, the Grand Jury was confused about the difference of urging the passage or defeat of a ballot measure with the normal and legal communication with our overseeing legislative bodies and elected representatives. Those bodies, given the crucial federal and state monetary support and close regulation of the schools, hold the life or death of this District in their hands and this District cannot unilaterally disarm itself in the legislative process. We have long had a presence in Sacramento and Washington in order to ensure the support of the District, its programs, and its students. There is no law of which we aware that would prohibit this.

Recommendation 13-25: Develop a more robust monitoring system to ensure that District employees are not allowed to use school resources, paid employment hours, or any school funds in the promotion of political views or election activities.

Response: This recommendation will not be implemented because it is not warranted or not reasonable. (Penal Code § 933.05(b)(4).)

Explanation: The District does not agree that it violated Education Code section 7054(a), as stated above, and that, at this point, that "more" oversight, time or expertise is required. The District had already taken action and will take action in the future to alleviate the issues identified in this report. We further believe District personnel are currently expending sufficient time and effort, and have always had sufficient expertise, to manage our electronic facilities. Additionally, the District's interests include both proper management of its facilities and financial expenditure within its means. Therefore, while it is true that some very few school employees (three complaints) at some times did not follow the required procedure, the District disagrees that the cost of hiring and training more staff to monitor all 200 plus school sites would be superior and a proper expenditure of District funds to apprehend the very few employees that may have not followed District procedure.

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Recommendation 13-26: Develop a plan to restrict access to the SDUSD and individual school websites that limits additions/changes to a webmaster/gatekeeper.

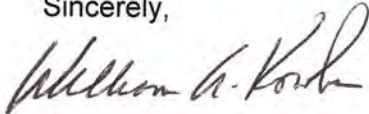
Response: This recommendation was implemented at all times prior to the Grand Jury Report and will continue to be implemented in the future. (Penal Code § 933.05(b)(1).)

Explanation: The District already has a system in place to restrict access to websites and provide accountability for employees violating law or District policy and procedures.

Conclusion

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

Sincerely,



William A. Kowba
Superintendent