



**San Diego Unified**  
SCHOOL DISTRICT

**William A. Kowba**  
Superintendent  
P - 619 725.5506  
F - 619 291.7182

August 31, 2010

Honorable Judge Kevin A. Enright  
Presiding Judge of the Superior Court  
220 W. Broadway  
San Diego, CA 92101

RECEIVED

SEP 02 2010

SAN DIEGO  
COUNTY GRAND JURY

RECEIVED

AUG 31 2010

**RE: Grand Jury Report: "San Diego Unified School District"**

Dear Judge Enright:

The San Diego Unified School District ("District") has reviewed the Facts, Findings and Recommendations in the Grand Jury Report "San Diego Unified School District," received by the District on May 27, 2010. 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.

The response is in eight sections, each corresponding to the eight "Fact Sets" in the Report. Each section first contains the District's response to the Findings related to that Fact Set, followed by the District's response to the Recommendations related to that Fact Set.

1. **FACT SET ONE: USE OF ASB FUNDS FOR CURRICULAR AND ADMINISTRATIVE PURPOSES (SCPA)**

**Finding 01:** The School used ASB funds for curricular and administrative purposes, and for the benefit of faculty, which is contrary to District Procedures.

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

**Finding 02:** The School has disregarded and failed to apply required internal controls.

Response: The District agrees that The School was not applying required internal controls at the time of the audit. (Penal Code § 933.05(a)(1).)

**Finding 03:** School personnel are not following the 10 Things You Should Know publication.

Response: The District agrees The School was not following the 10 Things You Should Know publication at the time of the audit. (Penal Code § 933.05(a)(1).)

---

**Recommendation 10-81:** Direct the School of Creative and Performing Arts (The School) to return forthwith any remaining balance of the \$65,568 belonging to The School ASB fund.

Response: The recommendation has been implemented. (Penal Code § 933.05(b)(1).) In fact, the recommendation was implemented and the funds were returned prior to the release of the Grand Jury report.

**Recommendation 10-82: Require that the School administrative personnel be informed and trained that ASB funds are not to be used for non-ASB purposes, such as curricular, instructional, or other administrative purposes or for the benefit of faculty.**

Response: The recommendation has not yet been implemented, but will be implemented in the future, by December 31, 2010. (Penal Code § 933.05(b)(2).)

**Recommendation 10-83: Require that The School financial personnel be informed and trained that ABS funds must be administered in accordance with internal control procedures as set forth in 10 Things You Should Know, FCMAT Associated Student Body Accounting Manual & Desk Reference, Fiscal Crisis Management & Assistance Team 2005 and the applicable district procedures.**

Response: The recommendation has not yet been implemented, but will be implemented in the future, by December 31, 2010. (Penal Code § 933.05(b)(2).)

2. **FACT SET TWO: USE OF ASB FUNDS FOR CURRICULAR, INSTRUCTIONAL, ADMINISTRATIVE PURPOSES AND FOR THE BENEFIT OF THE FACULTY (THE DISTRICT)**

**Finding 04: Approximately seventy-five percent of district schools, audited by the District Auditor, misused ASB funds for curricular and administrative purposes and for benefit of faculty, in violation of District Procedure 2225 regarding ASB funds.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

**Finding 05: Various district schools have disregarded internal control procedures required by The District and set forth in the FCMAT ASB Manual.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

**Finding 06: The Certified Public Accountant serving as District Independent Auditor repeatedly found common internal control deficiencies in the handling of ASB funds at various district schools.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

---

**Recommendation 10-84: Require that all principals, assistant principals, school financial clerk and ASB advisors be informed and trained that ASB funds are not to be used for non-ASB purposes, such as curricular, instructional, or other administrative purposes or for the benefit of faculty.**

Response: The recommendation has not yet been implemented, but will be implemented in the future, by December 31, 2010. (Penal Code § 933.05(b)(2).)

**Recommendation 10-85: Require that all principals, assistant principals, school financial clerk and ASB advisors be informed and trained that ASB funds must be administered in accord with internal control procedures as set forth in the FCMAT Associated Student Body Accounting Manual & Desk Reference, and the applicable district procedures.**

Response: The recommendation has not yet been implemented, but will be implemented in the future, by December 31, 2010. (Penal Code § 933.05(b)(2).)

3. **FACT SET THREE: THE DISTRICT GENERAL FUND MISUSE, COMINGLING AND OVERPAYMENT**

**Finding 07: The District Auditor, with a staff of only seven auditors and investigators (one dedicated to the Hotline), identified at least 4.1 million dollars in recoverable district funds over a period of twenty months, thus saving The District approximately three times the annualized cost of the staff of the District Auditor.**

Response: The District respectfully disagrees wholly or partially with the finding. (Penal Code § 933.05(a)(2).) Explanation: The District agrees that the District Audits and Investigations Department has identified recoverable District funds over the identified twenty (20) month period, and indeed any period, and asserts that the Department is a "cost savings center" rather than a "cost center." The District also wholeheartedly agrees with the Grand Jury (stated in another report) that the District auditors and investigator have "proven their worth," and that there are additional indirect savings that cannot be specifically calculated resulting from the work of the Department. However, the District cannot completely agree with the specific amount deemed "recoverable" by the Grand Jury because: 1) the Grand Jury does not specifically define the term "recoverable" within the report; and 2) it appears there may be a dispute regarding this definition, to the extent that it implies that all of the listed funds are, in effect, revenue available to fund the Department that would not otherwise have been available to the District absent the work of the Audits & Investigations staff (as opposed to funds already in the budget but misclassified/not yet utilized, reductions of unfunded potential liabilities that may or may not materialize, etc.) Also, while the Department has engaged in tasks that generate savings, there is no guarantee that the same amount of savings in the future could be recovered.

---

**Recommendation 10-86: Significantly increase the auditing and investigating staff of the District Auditor in order to increase the savings realized by thorough auditing of district revenues and expenses.**

Response: The recommendation requires further analysis, to be completed within six (6) months from the date of publication of the grand jury report – i.e. by December 31, 2010. (Penal Code § 933.05(b)(3).) Explanation: For a combination of reasons the District concludes that further analysis is necessary regarding this recommendation. Although the Grand Jury has identified the District as an example of “effective implementation of the combination of internal controls and hotline,” it has made a series of interrelated findings and recommendations (in this report and in another report) regarding an increase in training of District staff at its 200+ schools, an expansion of audit and investigation staff, the generation of recommendations in all reports prepared by these staff members (see below), the degree to which the audit and investigation staff generate dollars to fund the operation, etc. The scope of these recommendations, along with the fact that they come during a time of unprecedented financial strain on the District, require further time for staff, Board of Education, and Board-appointed Audit & Finance Committee study. Specific areas of inquiry will include, but not necessarily be limited to: 1) the degree to which some of the recommendations can be implemented through the involvement of already-budgeted staff in other departments; 2) the degree to which enhanced inter-departmental communication would assist the Audits & Investigations Department with its workload; 3) the cost-benefit analysis of increasing auditor and/or investigator staff; and 4) the degree to which Grand Jury-recommended increases in training of staff (which will be implemented) will result in a reduction in other audit and investigation functions.

4. **FACT SET FOUR: THE ETHICS AND COMPLIANCE EMPLOYEE HOTLINE**

**Finding 08: The Hotline, established contemporaneously with the District Ethics Code, is an essential enforcement arm for the guidelines set forth in the District Ethics Code.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

**Finding 09: The combined effect of the audits and investigations undertaken by the District Auditor and the Hotline are necessary to combat waste, abuse and corruption and to maintain the efficiency, transparency and reputation of the District.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

**Finding 10: The Hotline has contributed an invaluable service for the District, but an additional Hotline investigator is needed to deal with the backlog.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

**Finding 11: The reports from the Hotline indicate that there are some district employees at all levels who have engaged in unethical, and sometimes illegal, activities.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

---

**Recommendation 10-87: Add another investigator to deal with the backlog Hotline cases.**

Response: The recommendation requires further analysis, to be completed within six (6) months from the date of publication of the grand jury report – i.e. by December 31, 2010. (Penal Code § 933.05(b)(3).) Explanation: Same as Explanation regarding Recommendation 10-86, above.

**Recommendation 10-88: Adopt an appropriate Zero Tolerance of Fraud, Waste, Abuse, and Conflict of Interest Policy for administrators, teachers and staff.**

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. (Penal Code § 933.05(b)(4).) Explanation: To the extent this recommendation is based on the premise that the District currently tolerates waste, fraud, abuse and conflicts of interest and should stop tolerating it, or tolerates it too much, the District respectfully disagrees with that premise. It is the District's position that it currently does not tolerate misconduct of any kind – as evidenced by the processes we have in place for which we have been deemed a good example by the Grand Jury, the number of disciplinary actions that arise out of audits and Hotline investigations, and the number of disciplinary actions that arise from general supervision of employees and investigations that are not initiated by a Hotline call and do not involve Audits & Investigations staff. In all of these cases, the legal rules described in this response are applied, and action is taken in accordance with those rules and to the maximum extent attainable.

Also, to the extent this is a recommendation to change current District policy and practice on disciplinary action, to a new policy that imposes harsher penalties for misconduct than the District does now, the District also provides the following as a basis for its response.

First, with the exception of a small group of employees excluded from collective bargaining units as senior management or confidential (as defined in the Educational Employment Relations Act (EERA), Govt. Code §§ 3540, et seq.), all District classified and certificated employees are subject to collectively bargained agreements with seven different employee organizations, some of which contain procedures for various forms of disciplinary action. The “rules of conduct which subject employees to disciplinary action are subject to negotiation both as to criteria for discipline and as to procedure to be followed.” San Bernardino City Unified School District (1982) PERB Dec. No. 255, 6 PERC 13249; see also Trustees of the California State University (2003) PERB Dec. No. 1507-H, 27 PERC 26; San Bernardino City Unified School District (1998) PERB Dec. No. 1270, 22 PERC 29113. All seven of the District's bargaining units are currently subject to closed, three-year contracts that do not expire until June 30, 2013, so the District cannot demand to bargain changes to the discipline provisions of collective bargaining agreements until negotiations commence on successor agreements to take effect July 1, 2013.

Second, in addition to the layer of legal requirements created by EERA, the discipline of certificated and classified employees (including confidential and management employees who are not part of a bargaining unit) is dictated and regulated by the

Education Code, judicial decisions interpreting those provisions, as well as constitutional principles arising from the protected “property interest” these provisions of state law provide to permanent employees. See, e.g. Education Code §§ 44932 et seq., 45113, 45116.<sup>1</sup> Action in any individual case, and any discipline policy of a school district, must be based on a consideration and application of these statutes.

To reiterate the District’s primary response to this recommendation – the District already does not tolerate waste, fraud, abuse and conflict of interest, and when it is uncovered offending employees are disciplined to the maximum extent District staff and the Board considers appropriate and feasible within the parameters of contracts and law.

**5. FACT SET FIVE: CHARTER SCHOOL OVERSIGHT**

**Finding 11: The Education Code and the System require careful review of API, financial, governance and management issues.**

Response: The District agrees with this finding to the extent that it is intended to be consistent with the statutory authorities and duties of the District found in the Education Code and identified in the Report (i.e. footnotes 6-9). (Penal Code § 933.05(a)(1).)

**Finding 12: An annual six hour site visit once per year is insufficient oversight for District charter schools.**

Response: The District respectfully disagrees wholly or partially with the finding. (Penal Code § 933.05(a)(2).) Explanation: To the extent the finding suggests that a once-per-year visit is the only oversight the District conducts of charter schools, the District respectfully disagrees. Oversight of charter schools is an on-going process, and the degree of oversight can vary based on a variety of factors including but not limited to prior issues identified through oversight efforts, specific concerns being raised about the school, etc. Taken as a whole, the District believes it exercises a diligent and appropriate degree of oversight necessary to meet its statutory obligations, and to the extent this finding suggests otherwise the District respectfully disagrees.

**Finding 13: The District is empowered and directed to exercise oversight in order to assure the efficient and effective academic, financial, governance and management performance of District charter schools.**

Response: The District agrees with this finding to the extent that it is intended to be consistent with the statutory authorities and duties of the District found in the Education Code and identified in the Report (i.e. footnotes 6-9). (Penal Code § 933.05(a)(1).)

---

**Recommendation 10-89: Direct the District Manager of Charter Schools to exercise more thorough oversight of charter schools.**

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. (Penal Code § 933.05(b)(4).) Explanation: It is the position of the

---

<sup>1</sup> These provisions apply to employees with permanent status, or tenure as it is often called with regard to certificated employees. Probationary employees are, by statute, “at-will” in their positions.

District that the Board, Superintendent, Charter School office and other District staff already meet the statutory obligation to exercise oversight of charter school operations, within the bounds of its duties and authorities under the Education Code, and there are no facts or findings in the Grand Jury report that contradict this position.<sup>2</sup> To the contrary, the factual findings of the Grand Jury identify multiple revocations/non-renewals specifically because the District has exercised oversight “in numerous notices to remedy, audits, and reports by and for the District charter school office.”<sup>3</sup> Furthermore, a review of data attainable from California Department of Education website reveals that the percentage of District approved charter schools that are no longer in operation is approximately the same as the countywide percentage of approved but no longer operating charter schools. The District believes it exercises a degree of oversight necessary and appropriate to meet its statutory obligations, within the language and intent of the Charter Schools Act.

**Recommendation 10-90: Authorize and direct the District Internal Auditor to conduct annual audits of the books and records of charter schools.**

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. (Penal Code § 933.05(b)(4).) Explanation: It is difficult for the District to respond to this because it is ambiguous. The response above is based on a literal interpretation – i.e. that the District conduct an annual audit of the books and records of every charter school. To the extent that it suggests less than that, under Education Code authorization and policy/practice the District reviews of the books and records of charter schools on an on-going basis, including by Audits & Investigations staff where appropriate. So, District auditors are already empowered to review and audit the books and records of charter schools, have done so in the past, and will do so in the future when circumstances dictate. The benefit and impact of increasing the frequency of these audits will be considered in conjunction with other recommendations that require further study.

**Recommendation 10-91: Require that each charter school post and publicize the District Ethics Code.**

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. (Penal Code § 933.05(b)(4).) Explanation: The District will *recommend* that charter schools post and publicize the District Ethics Code, and that these schools commit to enforcing it, but for reasons that follow the District cannot implement this recommendation as written because it does not have the jurisdiction to dictate this action to a charter school.

---

<sup>2</sup> Since the publication of the Grand Jury report the District has filled a Charter School Program Manager/Program Monitor vacancy.

<sup>3</sup> The Grand Jury notes that charter schools may be revoked based on a material violation of the charter, failure to meet pupil outcomes identified in the charter, failure to meet generally-accepted accounting principles, engaging in fiscal mismanagement, or violation of law. Education Code § 47607(c). Not reflected in the report, but also required by law, is that the district must meet a “substantial evidence” standard, must make factual findings after written notice and public hearing, and that notice and that revocation generally must follow notice and a reasonable opportunity to remedy the violation. Education Code § 47607(d)-(e).

The stated intent of the Legislature in adopting the Charter Schools Act was to “provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure.” (Education Code § 47601.) A school district’s authority to dictate the actions of a charter school are, at the creation, renewal and revocation stages, quite limited.

At the charter school creation stage, a school district governing board cannot deny a petition to establish a school unless it makes written factual findings specific to the petition, setting forth specific facts stating the reasons for the denial. The permissible reasons specified by Code, which must be supported by factual findings, are: 1) The charter school presents an unsound educational program for the students to be enrolled in the charter school; 2) The petitioners are demonstrably unlikely to successfully implement the program set forth the petition; 3) The petition does not contain the number of signatures required; 4) The petition does not contain an affirmation of conditions specified in the Code, none of which relate to this topic; or 5) The petition does not contain reasonably comprehensive descriptions of sixteen required “elements” of a petition, none of which specifically relate to mandated ethics codes or rules related to operators or employees of the charter school. (Education Code § 47605(b).) All charter school petitions must be reviewed on their own merits, and it is the District’s opinion that it would be precluded by law from adopting a position that no petition will be approved unless the charter school agrees to abide by an Ethics Code created by the District.<sup>4</sup>

Similarly, the standards for renewal of a charter school petition are the same as described above, with variations based on the academic performance of the school. (See Education Code § 47607(a)-(b).) So, for the same reasons as stated above, it is the District’s opinion that it would be precluded by law from adopting a position that no charter school petition will be renewed unless the school agrees to abide by an Ethics Code created by the District.

Finally, the bases and process for revocation of a charter school (described above) would not allow a school district to require the adoption of an ethics code or face revocation of the petition. Failing to adopt the District’s ethics code would not be evidence of material violation of a charter, of a failure to meet pupil outcomes identified

---

<sup>4</sup> A good example of the ambiguity regarding the degree to which school districts can impose ethics rules on charter schools is reflected in unsuccessful attempts to legislate this issue at the state level. The most recent was AB 572 (Brownley), which would have (among other things) subjected charter school board members to the conflict of interest provisions of the Political Reform Act and most of the requirements of Government Code section 1090. The bill died in the Legislature in the fall of 2009. The bill followed unsuccessful attempts to address this issue through AB 1197 (Wiggins, 2003-04 Session), which would have required individuals who govern charter schools to file statements of economic interest in compliance with the Political Reform Act. This bill died on the Senate Floor. Subsequently, AB 2115 (Mullin, 2007-08 Session) proposed to require charter schools to adopt a conflict of interest policy that would require charter school board members to follow the same standards as school district board members. The bill passed the Legislature but was vetoed by the Governor, wherein he stated that “the measure runs counter to the intent of charter schools to be free from many laws governing school districts.” So, given the ambiguity of what provisions of the Government Code can be imposed on a charter school without its consent, the District is of the opinion that it does not have the authority to dictate that it will not approve a charter school petition unless it adopts the local district’s ethics code.



in the charter, of a failure to meet generally-accepted accounting principles, of fiscal mismanagement, or of a violation of law.

**Recommendation 10-92: Require that each charter school post and publicize the availability of the District Ethics and Compliance Hotline to charter school employees, students and teachers.**

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. (Penal Code § 933.05(b)(4).) Explanation: For the same reasons as described in the District's response to Recommendation 10-91, above, the District cannot implement this recommendation as written because it does not have the jurisdiction to dictate this action to a charter school. The District will *recommend* that charter schools post and publicize the availability of the Hotline, and the District will follow-up (and it has in the past) within the boundaries of its jurisdiction over charter schools and their employees.<sup>5</sup>

**6. FACT SETS SIX: ASSESSMENT OF STUDENT FEES (SCPA)**

**Finding 14: The 2009/2010 catalog requirement that students of The School purchase choir outfits and provide their own instrument and text for brass, woodwinds, and small strings is in violation of California law and the guidelines issued by District Counsel.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

**Finding 15: To the extent that the 2010/2011 policy implicitly requires that students of The School for whom no instruments for loan are available must purchase or otherwise provide their own instrument and text for brass, woodwinds, and small strings or forego the class, the policy is unlawful.**

Response: The District respectfully disagrees wholly or partially with the finding. (Penal Code § 933.05(a)(2).) Explanation: This finding is ambiguous, in that it presents an either/or related to the interpretation of the 2010-11 policy. If the finding is meant to state or imply that the policy does require students for whom no instruments for loan are available to purchase or otherwise provide their own instrument and text for brass, woodwinds, and small strings, or to forego the class, the District respectfully disagrees because that is not the policy.

---

**Recommendation 10-93: Direct The School of Creative and Performing Arts administration to cease requiring that students for whom there are no musical instruments for loan, must purchase or otherwise provide their own instrument and text for brass, woodwinds, and small strings or forego the class.**

---

<sup>5</sup> It is worthy of emphasis that in most cases employees working at a charter school are employees of the school and not employees of the District. This limits the degree to which the District can dictate actions vis-à-vis those employees.

Response: The recommendation has been implemented. (Penal Code § 933.05(b)(1).) In fact, the recommendation was implemented prior to the release of the Grand Jury report.

**Recommendation 10-94: Direct The School of Creative and Performing Arts administration to provide instruments for all who wish to take an instrumental music class and are eligible to do so.**

Response: The recommendation has been implemented. (Penal Code § 933.05(b)(1).) In fact, the recommendation was implemented prior to the release of the Grand Jury report.

7. **FACT SET SEVEN: ASSESSMENT OF STUDENT FEES (DISTRICT)**

**Finding 16: The assessment of student fees for activities, including mandated purchases of services, materials, supplies, equipment, or uniforms associated with the activity, is prohibited, except as expressly allowed by law.**

Response: The District agrees with this finding. (Penal Code § 933.05(a)(1).)

---

**Recommendation 10-95: Clarify the circumstances in which student fees may or may not be assessed for equipment, instruments, or materials, required to be furnished by the student.**

Response: The recommendation has been implemented. (Penal Code § 933.05(b)(1).) In fact, the recommendation was implemented prior to the release of the Grand Jury report, through the posting and on-going updates to materials provided on the issue via the District's website.

**Recommendation 10-96: Publish a guide for schools setting forth criteria and examples regarding the assessment of student fees and the furnishing of equipment, instruments, or materials.**

Response: The recommendation has been implemented. (Penal Code § 933.05(b)(1).) It is not clear whether this recommendation was provided with knowledge of the materials the District has already prepared and posted on its website, in addition to the November, 2009 Guidelines for District Staff and Parents Regarding Student Fees, Donations and Fundraising. In addition to the Guidelines there are other posted resources for Faculty, Staff, Administrators, Coaches, Parents/Guardians, as well as posted Frequently Asked Questions (FAQs) regarding the topic. (See <http://www.sandi.net/studentfees>). Since the intent of the District is to continue to augment these materials, and reinforce the materials through training of staff (see below), the District considers this recommendation to have been implemented.

**Recommendation 10-97: Require that school personnel be regularly informed and trained concerning the circumstances in which student fees may or may not be**

**assessed for equipment, instruments, or materials required to be furnished by students.**

Response: The recommendation has been implemented as it relates to the information already distributed to school sites, and training that has already occurred both before and after the release of the Grand Jury report. (Penal Code § 933.05(b)(1).) Specifically, prior to the release of the report District legal staff has met with principals, athletic directors, and school clerks to provide information and answer questions on this subject. The recommendation has not yet been implemented as it relates to a regular, on-going training program, but will be implemented in the future, initiated by December 31, 2010. (Penal Code § 933.05(b)(2).)

**8. FACT SET EIGHT: REPLACEMENT OF STUDENT FEES BY DONATIONS**

**Finding 17: The shortfall resulting from those who cannot or will not donate must be filled. Otherwise, many activities may well be reduced or even canceled.**

Response: The District respectfully disagrees wholly or partially with the finding. (Penal Code § 933.05(a)(2).) Explanation: It is difficult if not impossible for the District to respond directly to this particular finding, because it is unclear whether a response is expected only to Finding 17, or also to the paragraph inserted before the finding. To the extent it is the former, the District cannot agree with this finding because it is speculative to assume that a combination of District funding, permissible voluntary donations, and the scaling back of certain program aspects when/if necessary will be insufficient to maintain the programs. To the extent that a response is expected to the paragraph preceding the finding, the District cannot agree because the paragraph contains general assumptions, not stated as facts in the report. Specifically, the only two facts described to support the finding are that FCMAT, the Sonoma County Counsel, and the District's General Counsel all agree that donations to support curricular and extracurricular programs are lawful so long as they are truly voluntary and in no way a prerequisite to participation in the program or activity. However, the report goes on to state (not as part of the fact set) the following assumptions: 1) that if a student's family is asked to donate and cannot, the student would have to "admit" this to his peers; and 2) that students/families that choose not to donate would be stigmatized; and 3) that there would be a necessary process to apply for a waiver or "hardship scholarship" in order to not make a "solicited participatory donation;" and 4) the District will persist in "camouflaging" unlawful fees as "donations." In other words, the assumptions are that donations are not really lawful, voluntary donations as allowed by law.<sup>6</sup>

---

**Recommendation 10-98: Amend Administrative Procedure 9325 re Activities by Foundations, Booster clubs, and other Non-District Organizations to enable the replacement of student fees by non-profit organizations, foundations,**

---

<sup>6</sup> As the Guidelines state, "any statement or explanation related to a donation that could lead a reasonable person to believe the donation may not be truly voluntary is to be avoided." So, when/if a practice is in place that refers to a donation but, in substance, it is an impermissible fee, the District will continue to correct and remedy this practice, and will continue to include references to it in its training of staff.

associations, and/or booster clubs, for example, by adding Administrative Procedure 9325.C.3.k as follows:

- k. *Replacement of Impermissible Student Fees by Donations to Non-Profit Organizations, Foundations Associations, and/or Booster Clubs (i.e. Non-Profit Organizations) May be Accomplished in the Following Manner:*** The costs of materials, supplies, equipment or uniforms and other goods and services that are required for curricular and/or extra-curricular activities of a District school but are neither funded by the District nor lawfully assessed as student fees, may be raised by donations to Non-Profit Organizations and disbursed to The School for those purposes pursuant to Administrative Procedure 9325.D. (Implementation) provided that the funds are allocated and used as follows:
- (1) Donors may specify that the donated funds be used for specified purposes (e.g. football program, cheerleading program or woodwinds program) and 60% of the donation must then be allocated and used for the specified purpose, and the balance of the donation must be allocated and used as funds not donated for specified purposes.**
  - (2) Funds not donated for specified purposes must be allocated and used as directed by the Donations Committee composed of representative parties such as the Principal of The School, the Physical Education Director of The School, the President of the Student Body, the President of the Parents Advisory Board and the duly appointed representative of each Non-Profit Organization that has contributed funds not donated for specified purposes.**
  - (3) The Principal of the School shall notice and chair a meeting of the Donations Committee, for the purpose of establishing the allocations, quarterly in the first week of September, December, March and June, or more often, as called by the Principal.**

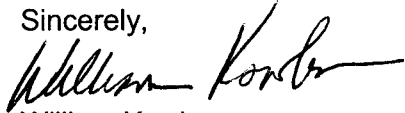
Response: The recommendation requires further analysis, to be completed within six (6) months from the date of publication of the grand jury report – i.e. by December 31, 2010. (Penal Code § 933.05(b)(3).) Explanation: The District's Guidance document on fees, donations and fundraising introduces the general issue by emphasizing that it is designed to promote "the twin goals of school-community cooperation to support programs and legal compliance while providing that support," and emphasizes that "the question is not whether schools and their communities can raise money to support programs – they can – but how funds can be raised through lawful means." The District continues to endorse these twin goals, and will conduct further study on the issue to develop a recommendation on amendments to District policy/procedure/practice that promotes school-community program support and legal compliance. This process will involve multiple stakeholders and include consideration of the role of booster clubs and foundations in the fundraising process, fundraising by individual teams and program that may or may not be supported by a booster club or foundation, the degree (if any) to which raised funds are shared with other programs/activities, and steps to ensure that all solicitations of donations and fundraising is voluntary and in no way an obstacle to student participation.

On behalf of the Superintendent and Board of Education of the San Diego Unified School District, I thank you for your acknowledgement of the steps the District has already taken to

Letter to Judge Enright  
Page 13  
August 31, 2010

address issues raised in the report, and applaud your efforts and interest in ensuring that we remain diligent in these areas.

Sincerely,

A handwritten signature in black ink, appearing to read "William Kowba", with a long horizontal flourish extending to the right.

William Kowba  
Superintendent