

RESPONSES TO THE 2003-2004
SACRAMENTO COUNTY GRAND JURY
FINAL REPORT

- **County of Sacramento**
- **Sacramento City Unified School District**
- **Grant Joint Union High School District**

COUNTY OF SACRAMENTO
CALIFORNIA

For the Agenda of:
September 14, 2004
Timed: 10:45 a.m.

To: Board of Supervisors
From: Countywide Services Agency
Subject: Response to 2003-2004 Grand Jury Final Report
Contact: AnnMarie Boylan (874-4627)

Overview

The 2003-2004 Grand Jury Final Report identified issues involving one County department: Correctional Health Services which is now part of the Sheriffs Department. The attached report responds to the findings and recommendations of the Grand Jury.

Recommendation

1. Adopt this report as Sacramento County's response to recommendations contained in the 2003-2004 Grand Jury Final Report.
2. Instruct the Clerk of the Board to forward a copy of this response to 2003-2004 Grand Jury Final Report, to the Presiding Judge of the Superior Court.
3. Instruct the Clerk of the Board to forward a copy of this report, Response to 2003-2004 Grand Jury Final Report, to the Grand Jury Foreman, and to the Administrator of the Countywide Services Agency, and the Sheriffs Department.

Measures/Evaluation

Not applicable.

Fiscal Impact

The costs of responding to this report were not tracked. Both staff from Correctional Health Services and the Countywide Services Agency contributed to this effort. The costs were absorbed by each entity.

BACKGROUND:

Each year the Sacramento County Grand Jury concludes its work and releases its Final Report, typically the last week in June. The report, which can address a variety of activities, functions, and responsibilities of government, typically contains findings and recommendations. State law requires the affected governing bodies to respond to each of these recommendations with a response specifically directed to the Presiding Judge of the Superior Court. This response is required by September 30, 2004.

The form of the County's responses as required by law is as follows:

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.**

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 timeframe for implementation.**
- 3. The recommendation requires further analysis, with an explanation and 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.**
- 4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.**

The recommended responses follow these requirements.

DISCUSSION:

The Grand Jury report for fiscal year 2003-2004 only had one report which related to County operations. The review and subsequent report titled "Sacramento County Jail Health Inmate Psychiatric Services" was undertaken to review whether the County (specifically the Sheriff's Department, Correctional Health Division) was administering psychiatric services to inmates in the Sacramento County Main Jail in a manner that was both effective and efficient. There are two responses to this report, one from the Sheriffs Department and one from the County Executive. Both of these responses are attached.

MEASURES/EVALUATION:

Not applicable.

FINANCIAL ANALYSIS:

The costs of responding to this report were not tracked. Both staff from Correctional Health Services and the Countywide Services Agency contributed to this effort. The costs were absorbed by each entity.

Respectfully submitted:

PENELOPE CLARKE
Agency Administrator
Countywide Services Agency

APPROVED:

TERRY SCHUTTEN
County Executive

Cc: Sheriff Lou Blanas, Sheriff's Department
Chief David Lind, Sheriffs Department
John O' Shaughnessy, Chief of Correctional Health

Sacramento County Agenda and Record Processing Application Approval List

Approval List for Agenda Item 103192

Page 1

Geoff Davey
Penelope Clarke

09/03/2004
09/03/2004

Approved
Approved

Sacramento County Sheriff's Department Jail Health and Inmate Psychiatric
Services

Sacramento County Grand Jury
Final Report 2003-2004

Findings, Recommendations, and Responses

In its investigation, the Grand Jury looked into: A) inmate screening, B) training, C) inmate monitoring and assessment, D) prescription drug storage and dispensing, and E) reorganization and delivery of jail health services pertaining to suicide prevention specifically, and mental health generally.

A. INMATE SCREENING

Grand Jury Finding 1. The Lindsay M. Hayes Report found that the intake forms being utilized were inadequate. In addition, these forms were not automatically being forwarded to the Jail Psychiatric Services (JPS).

In response, the Main Jail staff has revised its current intake forms in accordance with national standards. All appropriate and relevant medical screening forms are now transmitted by fax to the JPS in a timely manner. Also, arresting officers complete newly developed forms to communicate medical information to the county jail medical staff.

Grand Jury Recommendation 1. A yearly review should be conducted to determine the effectiveness of intake screening forms.

Sheriff's Response 1. Agree with Finding - After more than 12 months of study and revisions prompted by recommendations from several correctional consultants and the Sheriff's Suicide Prevention Task Force, the three intake forms were revised and then initiated on October 1, 2003. These forms include the Receiving Screening Form, the Arresting Officer Observation Form and the Special Needs Form.

A subsequent review of the Receiving Screening Form conducted in December of 2003 determined that the new revised version of the form generates the information required to successfully detect suicidal ideation and to appropriately refer new inmates to inpatient and outpatient psychiatric services.

These forms must be restocked approximately every six months. Prior to printing, they are reviewed for necessary modifications or additions. Any significant changes must be approved by the Joint Custody, JPS, CHS Committee and the Sheriff's Suicide Prevention Task Force prior to implementation.

Grand Jury Finding 2. The Lindsay M. Hayes Report stated that classification deputies conduct inmate interviews, examine forms and review two screening fields to capture information on an inmate's prior history. These deputies then use individual discretion to make referrals to the JPS staff. These referrals are not always made on consistent criteria.

In response to the Lindsay M. Hayes Report, new classification forms have been implemented, which include questions regarding mental health and suicide.

Grand Jury Recommendation 2. A software program should be developed to access quickly and accurately an inmate's prior health history for use by the classification deputies to ensure consistency in evaluation and referral.

Sheriff's Response 2. Agree with Finding - The Sheriff's Department is currently partnering with the Department of Health and Human Services to develop a Request for Proposal for a software program and database which can access information on any inmate who has been prescribed medications for medical or mental health conditions which were provided by the Sacramento County Pharmacy. This pharmacy database will include most of the arrestees brought to the Sacramento County Jail.

Grand Jury Finding 3. The Lindsay M. Hayes Report states that contrary to some national correctional standards, JPS staff does not conduct a mental health assessment on each inmate within 14 days of confinement.

In response, the Sheriff's Suicide Prevention Task Force indicated that it would be cost prohibitive to conduct reviews of health records for every inmate. However, there is a mental health screening of all inmates at intake.

Grand Jury Recommendation 3. Inmates who have been in the system before should have their records checked for mental health issues within 14 days.

Sheriff's Response 3. Disagree with Finding - All inmates are interviewed in person by a Registered Nurse at intake. They are screened for mental health issues during this interview. This includes a review of any past mental health problems including previously diagnosed psychiatric issues, hospitalizations, medications and any prior or present suicidality. As stated in the Lindsay M. Hayes Report, it would be cost prohibitive to conduct reviews of health

records for every inmate. In December 2003, Jail Psychiatric Services contracted with another consultant, Dr. Joel Dvoskin to review the program. Dr. Dvoskin stated that the initial intake screening was generating a much higher percentage of referrals than most other jails. Sacramento County intake policies are erring on the side of precaution rather than running the risk of missing any cases. Dr. Dvoskin also states that on average 10-15% of all new inmates will end up receiving mental health services. Sacramento County Jail Psychiatric Services provides care for approximately 16% of the total jail population.

B. TRAINING

Grand Jury Finding 1. The Lindsay M. Hayes Report found that only two hours of suicide prevention training was included in the basic Sacramento County Sheriff's Department academy training. The burden of suicide prevention falls on the custodial officers. Intensive training of custodial officers is essential in detecting mental health issues and in the prevention of suicides. The national recommendation for such initial training is eight hours.

In response, the Main Jail staff has since instituted a multi-session approach for new officers consisting of eight hours of suicide prevention training. These sessions are divided between the academy and the Main Jail orientation of new custodial officers. Suicide prevention training for all other jail staff consists of one-hour yearly training in addition to fifteen-minute quarterly sessions offered during briefings.

Grand Jury Recommendation 1. The quarterly trainings should be increased from 15 minutes to one half hour. Attendance should be required and records kept in each officer's training file. Attendance at makeup sessions should be required.

Sheriff's Response 1. Agree with Finding - Jail Psychiatric Services increased the length of quarterly training from fifteen to thirty minutes effective August 2004. These training sessions are conducted during the custody briefings. Attendance is mandatory.

Rather than placing documentation in each employee file as recommended in the report, a record of all suicide prevention training will be kept in the Main Jail Administrative Office. The records will be maintained by quarterly training date and will identify which employees were in attendance.

Grand Jury Finding 2. One area of concern identified by the jail staff is the line of communication between the courts and the correctional staff when the inmate is returned to jail after court proceedings. Court actions can have a detrimental effect on the mental state of an inmate.

Grand Jury Recommendation 2. A process of communication should be developed that alerts the correctional staff to the result of court proceedings regarding a particular inmate, when the inmate is returned to the Main Jail.

Sheriff's Response 2. Disagree with Finding - The Sacramento County Court staff routinely communicates results of court proceedings that may result in a negative inmate response to the clinicians of Jail Psychiatric Services. The clinicians evaluate the inmate and make a determination as to whether or not crisis mental health interventions are needed. The clinicians communicate any concerns to the custody staff. JPS provides yearly training for court personnel and the Public Defender's Office regarding suicide prevention and high-risk court events.

Additionally, all defendants who are remanded to custody after a Court appearance are screened at Intake regarding medical and psychiatric conditions.

Grand Jury Finding 3. The SCSD should be commended for its efforts in evaluating and revamping its training program and increasing the attention focused on suicide prevention. In addition to the increased training, they have created a "Suicide Risk" informational pocket card for officers and correctional health staff. A workshop for public defenders has also been developed and will be given annually. Great efforts have been made to improve communications between the correctional staff and JPS.

Grand Jury Recommendation 3. None.

Sheriff's Response 3. Not Applicable.

C. INMATE MONITORING AND ASSESSMENT

Grand Jury Finding 1. The Lindsay M. Hayes Report stated that monitoring of the inmate population is the primary responsibility of the custodial officers. Inmates housed in special housing units, where most suicides have occurred, are presently required to be observed once an hour. The Lindsay M. Hayes Report recommended that the custodial staff be required to physically observe inmates placed in special housing units at 30-minute intervals.

In response, Main Jail staff concluded that to conduct 30-minute cell checks in designated high-risk special housing units would demand an additional 35 custodial deputies. The Sheriff's Suicide Prevention Task Force stated it was unknown what the financial effects or feasibility of such an increase would be. Correctional officers have since been directed to walk the floors and observe inmates with greater frequency.

Grand Jury Recommendation 1. Main Jail staff should adopt the suggested standard of observation of the Lindsay M. Hayes Report due to the possibility of suicide among high-risk inmates.

Sheriff's Response 1. Partially agree with Finding - In addition to the cell checks currently conducted by deputies, it should be noted that direct or incidental observations of inmates in their housing locations are conducted routinely by other jail staff, such as medical and psychiatric personnel. As stated in the report, the additional 30 minute interval checks would result in a demand for additional custody deputies.

Grand Jury Finding 2. The Lindsay M. Hayes Report noted that inmates discharged from the JPS acute inpatient psychiatric unit back to the general population of the Main Jail should have regular follow-up assessment.

In response, JPS does a follow-up within 72 hours but has not adopted the standard as outlined due to the cost of additional personnel. However, there has been an effort to centralize outpatients so they can be more closely monitored. Inmates with suicidal ideation assigned to the medical unit receive a 15-minute check.

Grand Jury Recommendation 2. An effort should be made to develop a regular monitoring and assessment schedule for every inmate released from the acute psychiatric unit. Currently, the nurse doing pill delivery has been delegated the added responsibility of assessing the inmate's condition. This policy is unsatisfactory due to the time constraint on nurses.

Sheriff's Response 2. Disagree with Finding - Jail Psychiatric Services performs a follow up assessment within 72 hours on every inmate released from the acute psychiatric unit. A determination is made at this point as to what level of continuing care the inmate will need. If the inmate meets high-risk criteria, he or she will receive follow up care every 7-10 days. All inmates on medications are seen routinely by the psychiatrists for assessment and on-going care. In addition, a step-down mental health unit for general population inmates is being developed. Both levels of one pod have been designated for mental health inmates. Group therapy has been initiated for these inmates. The therapy focuses on education regarding the symptoms of mental illness and the need for medication management of these symptoms.

Grand Jury Finding 3. The Lindsay M. Hayes Report noted the need for more beds designated for outpatient mental health housing. This need was corroborated by the "Medical-Mental Health Inspection Report" of December 5, 2003.

In response, the jail staff has stated that space limitations of the present jail and budget restraints are barriers to fully address this issue. However, additional beds have been found for inmates discharged from acute psychiatric care, and needing closer supervision than can be supplied in a regular jail unit.

Grand Jury Recommendation 3. Since space at the jail is a premium, the County should aggressively pursue plans to build another tower to accommodate the general need, as well as the need for appropriate housing for inmates requiring medical and psychiatric care.

Sheriff's Response 3. Disagree with Finding - Sacramento County has a Criminal Justice Cabinet. A sub-committee of this Cabinet is the Adult Facilities Planning and Operations Committee (AFPOC). The AFPOC is charged with determining the needs of Adult Facilities for Sacramento County. The committee meets regularly, as needed, to discuss, plan, and formulate the needs of increasing jail space for inmates, to include those requiring medical and psychiatric care. This committee has members from all affected County Departments and stakeholders. An outside consultant has been retained to prepare a report assessing future needs by projecting inmate populations. When this report is finalized and reviewed by AFPOC, the issue will be brought back to the Criminal Justice Cabinet for further evaluation and direction.

D. PRESCRIPTION DRUG STORAGE AND DISPENSING

Grand Jury Finding 1. The "Medical-Mental Health Inspection Report" indicated that there are some serious problems with the storage of drugs and the dispensing program at the Main Jail. Recommendations made over the past several years have not been fully implemented. The County has contracted with a software company to develop a database program to aid the health staff with prescription records. This program has yet to be developed.

Grand Jury Recommendation 1. The County should explore other contractors to develop this database program if the contracted company cannot deliver in a specified period of time.

Sheriff's Response 1. Agree with Finding - The County is in the process of terminating the existing contract due to non-performance. A new Request for Proposal (RFP) is being developed for the automated pharmacy system, which will be a joint project of the Sheriff's Department and the Department of Health and Human Services. The Departments are seeking proposals for a County Medication Management System to manage inpatient institutional and outpatient pharmacy systems. It is anticipated the new system will be implemented in late 2005.

E. REORGANIZATION AND DELIVERY OF JAIL HEALTH SERVICES

Grand Jury Finding 1. In the spring of 2003, the reorganization of Jail Health Services resulted in the transfer of management from the Coroner to the Sheriff. The improvement in coordination and communication between the health and custodial staff has been noted by the chief administrators and staff members, and is verified by the less frequent health care complaints made by inmates. In its December 2003 report, the Medical-Mental Health Inspection team also commented on the improvements in jail health services. Training is better coordinated as well as the communication between custodial and health care staff regarding the status of inmate health issues.

Most importantly, the health care providers have been given more autonomy in the areas of health issues and decision making. Problems are solved more rapidly because of the open lines of communications and the frequent meetings between the health care and custodial staff and their administrators. The creation of a Sheriff's Suicide Prevention Task Force, including a mortality review of inmate suicides, has been a force for change. Medical staff has been increased as their needs were communicated. All of these changes have contributed to improvements in jail health care and hopefully the lessening of future suicide attempts.

Grand Jury Recommendation 1. Even though the County of Sacramento is facing budget cuts, the Board of Supervisors should maintain the present level of staffing of the Medical Housing Unit and its support of Jail Psychiatric Services.

Sheriff's Response 1. Agree with Finding - At this time there is no plan to reduce the staffing in either correctional health or psychiatric services. Future staffing levels may be impacted by budgetary constraints. Due to the increased number of patients, Jail Psychiatric Services will be requesting a small increase in staffing to manage discharge planning, group therapy, and verification of medications prescribed from outside agencies.

Grand Jury Recommendation 2. The Sheriff's Suicide Prevention Task Force should remain in service and continue to review the progress of implemented changes and to monitor jail policies and procedures.

Sheriff's Response 2. Agree with Finding - The Sheriff's Suicide Prevention Task force has already initiated numerous changes directed at reducing suicides in the inmate population. The Sheriff's Department and Jail Psychiatric Services concur that the Sheriff's Suicide Prevention Task Force should remain in service and will continue to monitor jail policies and procedures as well as conduct reviews of the implemented changes.

The responses to the Sacramento County Grand Jury Final Report for 2003-2004 regarding Sacramento County Sheriff's Department Jail Health and Inmate Psychiatric Services have been reviewed and approved.

Lou Blanas, Sheriff
County of Sacramento

Date

Sandra Hand, M.D., Medical Director
Correctional Health Services

Date

Gregory Sokolov, M.D.
Jail Psychiatric Services

Date

County Executive's Office Response to Sacramento County Grand Jury's Final Report 2003-2004

Regarding Sheriff's Department Jail Health and Inmate Psychiatric Services

Findings, Recommendations, and Responses

In its investigation, the Grand Jury looked into: A) inmate screening, B) training, C) inmate monitoring and assessment, D) prescription drug storage and dispensing, and E) reorganization and delivery of jail health services pertaining to suicide prevention specifically, and mental health generally. In the other attachment to this item, the Sheriff's department provided responses to each of the grand jury's findings and recommendations. The County Executive is in agreement with the Sheriff's responses. However, the County Executive would also like to provide additional information in regards to two of the Grand Jury's recommendations. The findings, recommendations and responses are provided below:

C - INMATE MONITORING AND ASSESSMENT

Grand Jury Finding 3. The Lindsay M. Hayes Report noted the need for more beds designated for outpatient mental health housing. This need was corroborated by the "Medical-Mental Health Inspection Report" of December 5, 2003.

In response, the jail staff has stated that space limitations of the present jail and budget restraints are barriers to fully address this issue. However, additional beds have been found for inmates discharged from acute psychiatric care, and needing closer supervision than can be supplied in a regular jail unit.

Grand Jury Recommendation 3. Since space at the jail is a premium, the County should aggressively pursue plans to build another tower to accommodate the general need, as well as the need for appropriate housing for inmates requiring medical and psychiatric care.

County Executive Response 3. Disagree with Finding -The County has and continues to aggressively pursue alternatives to incarceration that mitigate the need for building an additional jail facility. Alternative sentencing programs and other programs that work to avoid incarceration have been implemented and are monitored by Committees of the Criminal Justice Cabinet. There are also efforts to expand the continuum of prevention,

intervention and alternative sanctions for use by the Court. At this point, there is no information or data to suggest the need to build another jail facility.

E - REORGANIZATION AND DELIVERY OF JAIL HEALTH SERVICES

Grand Jury Finding 1. In the spring of 2003, the reorganization of Jail Health Services resulted in the transfer of management from the Coroner to the Sheriff. The improvement in coordination and communication between the health and custodial staff has been noted by the chief administrators and staff members, and is verified by the less frequent health care complaints made by inmates. In its December 2003 report, the Medical-Mental Health Inspection team also commented on the improvements in jail health services. Training is better coordinated as well as the communication between custodial and health care staff regarding the status of inmate health issues.

Most importantly, the health care providers have been given more autonomy in the areas of health issues and decision making. Problems are solved more rapidly because of the open lines of communications and the frequent meetings between the health care and custodial staff and their administrators. The creation of a Sheriff's Suicide Prevention Task Force, including a mortality review of inmate suicides, has been a force for change. Medical staff has been increased as their needs were communicated. All of these changes have contributed to improvements in jail health care and hopefully the lessening of future suicide attempts.

Grand Jury Recommendation 1. Even though the County of Sacramento is facing budget cuts, the Board of Supervisors should maintain the present level of staffing of the Medical Housing Unit and its support of Jail Psychiatric Services.

County Executive Response 1. Agree with Finding - The Final County Executive Recommended Budget for Fiscal Year 2004-2005 does not include any reductions in this area.

**Sacramento
City Unified
School District**

Office of the Superintendent
5735 47th Avenue • Sacramento, CA
95824 916.643.9000 Phone • 916.643.9480 Fax

M. Magdalena Carrillo Mejia, Superintendent

September 28, 2004

Honorable Michael G. Virga, Presiding Judge
Sacramento County Superior Court
720 9th Street
Sacramento, CA 95814-1398

**RE: Response of Sacramento City Unified School District to the
Sacramento County Grand Jury Final Report 2003-2004**

Dear Judge Virga:

The Board of Education of the Sacramento City Unified School District, at a regular meeting held on September 23, 2004, adopted the enclosed as the District's response to the Grand Jury's final report. The District's response is hereby submitted in compliance with Penal Code Sections 933 and 933.05.

I have also enclosed a copy of Resolution Number 2386, authorizing the creation of a citizen advisory council on unrepresented administrator's compensation.

If the Grand Jury has questions regarding how its recommendations have been implemented they should not hesitate to contact me at (916) 643-9000.

Sincerely,

M. Magdalena Carrillo Mejia, Ph.D.
Superintendent

MMCM: smo

cc: Board of Education

Enclosures: Response to the Final Grand Jury Report 2003-04
Resolution Number 2386

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Office of the Superintendent

Sacramento

City Unified

School District

Response to the Sacramento County

Grand Jury Final Report

of June 30, 2004

September 28, 2004

MEMORANDUM

DATE: September 28, 2004
TO: Board of Education
FROM: M. Magdalena Carrillo Mejia, Ph.D.
Superintendent

**SUBJECT: RESPONSE TO THE SACRAMENTO COUNTY GRAND JURY
FINAL REPORT**

INTRODUCTION:

The 2003-2004 Sacramento County Grand Jury has concluded its term and issued its Final Report. A portion of the Final Report analyzes issues related to the District's participation in the joint powers authority known as the California Administrative Services Authority ("CASA"). The Final Report makes certain findings and recommendations to the Board of Education and District administrative staff. State law requires the Governing Board to respond to each finding and recommendation by September 30, 2004. (Penal Code ' 933(c).) This memorandum sets forth a proposed response for consideration and possible adoption by the Board of Education.

REQUIRED FORMAT FOR RESPONSE TO THE GRAND JURY REPORT:

California Penal Code Section 933.05 requires that for 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.

Further, with regard 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 timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and 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.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSE TO FINDINGS FOR THE BOARD OF EDUCATION:

Finding 1. The Sacramento City Unified School District Board of Education did not fully explore, question nor understand the joint powers proposal presented by the Chief Financial Officer (CFO) and supported by the Superintendent.

Response to Finding 1: Partially Disagree with Finding. The Board did explore the proposal presented by the CFO and supported by the Superintendent. Several staff memoranda and presentations were prepared on the subject of the proposed JPA and its alternative pension plan. Throughout this process, the Board was continually reassured by its outside independent legal counsel and consultants that the proposed system was legal, that another public school district had already implemented a similar system and that the entire concept was cost and revenue neutral to the District because the District would only be redirecting money that it was otherwise already obligated to pay.

On March 6, 2000, before the Board approved the formation of CASA, it held a public meeting where the subject of the formation of a JPA was placed on the agenda as a discussion item. The District's outside legal counsel and CFO publicly presented the concept of CASA and discussion ensued. When presenting the features of the proposed JPA, David Girard, then outside counsel for the District, represented to the Board that "We would make sure that it is legally valid, fiscally sound, . . . and cost neutral to the District at least."

Although the Board did explore and question the proposal for creation of a joint powers authority, in hindsight it is now apparent that the Board was presented misleading and inaccurate information (see Finding 5 below), causing the Board not to fully understand the risks and financial exposure to the District.

Finding 2. In approving the JPA, the Board authorized transfer of district classified employees to CASA.

Response to Finding 2: Agree with Finding - With Clarification. The joint powers agreement was an agreement between the District and Yolo County Office of Education and did not authorize the transfer of employees to CASA. After the JPA was formed, the District approved an operating agreement between the District and CASA. The operating agreement authorized an unpaid leave of absence for certain classified employees who wanted to become CASA employees. The individual employees were not "transferred" but were instead empowered to choose whether to remain in their existing status or take a leave of absence to join CASA.

Finding 3. The SCUSD Board, once CASA was established, paid little attention to issues of oversight and management of the JPA. For example:

- a. The Board did not appoint representatives to the CASA board but delegated the selection to the Superintendent.
- b. The Board did not require periodic reports or yearly audits of CASA.
- c. The Board allowed CASA bylaws to be amended without approval.
- d. The Board allowed the CFO to assume the position of Executive Director of CASA while serving concurrently as the District CFO.

Response to Finding 3: Partially Disagree With Finding. The Board believed that it was exercising oversight and management of CASA through its trusted administrative staff. As the grand jury recognized in its Final Report, "[i]nasmuch as Board members make decisions in complex areas, they depend on district administrative staff for advice and recommendations" The District's senior administrative staff, including its Deputy Superintendent and Chief Financial Officer, Laura Bruno, and the District's outside counsel, Girard & Vinson, were heavily involved in the creation and operation of CASA. The Board trusted that these professionals would faithfully perform their duties and disclose to the Board any problems or risks associated with CASA or management of the JPA.

Response to Finding 3(a): Agree with Finding. Selection of the original representatives was delegated to the former Superintendent. However, once the Board became aware of problems with CASA it became directly involved in the selection process and remains so to this day.

Response to Finding 3(b): Disagree with Finding. During the open session of the March 6, 2000 District Board meeting, the District's counsel, David Girard, presented the conceptual framework of CASA to the Board, seeking direction on whether to proceed with finalizing the formative documents. During this presentation the Board specifically requested an annual audit requirement and periodic reporting to the District Board.

The Board's request was carried out as reflected in both the District's operating agreement with CASA and CASA's Bylaws. The operating agreement between the District and CASA requires that CASA conduct an audit of itself and its pension plan. (Operating Agreement & 2.C.(1).) CASA's Bylaws require CASA to "Provide within one hundred twenty (120) days after the close of each fiscal year, a complete written report of all financial activities for such fiscal year for each Program to each Member of the [CASA] Board of Directors and to the Chief Administrative Officer of each Member of the Authority." (Bylaws & K.2.G.)

CASA's Bylaws further provide that CASA must retain a certified public accountant to conduct an independent annual audit of the accounts, records and financial affairs of the Authority and that a report of the audit be submitted to each Member of the Authority. (Bylaws & K.2.H.) These independent audits were in fact performed by an outside CPA for the fiscal years ending in 2001 and 2002 and indicated that CASA was a financially stable agency. The audit for fiscal year ending June 2003 has been initiated but has not been completed.

Response to Finding 3(c): Agree in Principle with Finding. It is true that the Board did not formally ratify or approve changes to CASA's Bylaws. According to the provisions of the Bylaws, the Bylaws could be amended by a two-thirds vote of the CASA Board of Directors. The District's governing Board trusted that its appointees to the CASA Board and the District's administrative staff working with CASA would review any proposed changes to the Bylaws and would not approve changes that were adverse to the District's interests. Once the Board became aware of problems with CASA, it became directly involved in the selection process for District appointees to the CASA Board and remains so to this day.

Response to Finding 3(d): Agree with Finding. It is common for employees of public agencies to also serve as officers or administrative staff of a JPA of which the agency is a member. This practice is cost efficient for financially strained local public agencies.

Finding 4. The Board opted to reward its three contract employees (Superintendent, Chief Financial Officer, Legal Counsel) by giving them inflated retirement benefits. For example:

- a. Granting 10 additional years of service credit which was excessive and unprecedented for public service positions.

- b. Granting mileage allowances, travel expenses, and vacation pay to be included in the final compensation calculation for retirement was inappropriate.

Response to Finding 4: Agree in Principle with Finding. The Board did agree to provide the former Superintendent (in recognition that there had been a pay differential with other superintendents), CFO and General Counsel with increased retirement benefits and alignment of their contract termination dates, but only with the express understanding that there would be no additional cost to the District. This was done as part of the normal process for reviewing and updating an employment contract.

Response to Finding 4(a): Agree with Finding - With Clarification. The Board was never informed of the magnitude of the compensation increases granted and in fact was misled to believe that the compensation packages granted to these former employees were within the norm for similar public school districts. Also, current information indicates that the compensation increases would not be cost neutral to the District and this automatically nullifies the provision of the enhanced benefits. The Board has directed its attorneys to void or otherwise extinguish the ten years of service credit granted to these former employees and is working with CalPERS to ensure that elements of reported compensation comply with applicable statutes and regulations.

Response to Finding 4(b): Partially Disagree with Finding. Under the terms of the contracts for the employees at issue, they receive a base salary, a portion of which is deferred through a Flex 125 plan for the employee to allocate between various health benefits, and an allowance for expenses that is part of compensation and retirement creditable. Prior to the creation of CASA and throughout the CASA years, CalPERS and CASA retirement contributions (depending on which year is at issue) from both the District and the contracted employees were paid on the total amount of compensation, including the amount deferred through the Flex 125 plan and the expense allowance. This is also true for all certificated and classified management who have part of their compensation deferred through the Flex 125 plan. The issue of whether the compensation deferred through the Flex 125 plan could be pension creditable arose with CalPERS a number of years prior to formation of CASA. CalPERS audited the District and approved these funds being included in retirement creditable salary. Including the deferred compensation and the expense stipend in pension creditable salary was intended to be a continuation of past practice.

Although the former Superintendent initially sought to convert vacation pay into final salary, this was ultimately not accomplished and vacation compensation was not included in the final compensation reported to CASA upon retirement. The District's General Counsel never sought a conversion of vacation pay to final salary. Only one employee, the former CFO, was allowed to include vacation pay in final compensation. The District is working with CalPERS to correct this issue.

Finding 5. The CFO and the outside consultants she selected appeared to mislead the Board with incomplete information and strong assurances of cost neutrality of the CASA plan.

Response to Finding 5: Agree with Finding. The former CFO has retired and the District has severed its relationship with the numerous consultants who advised the District on the formation and operation of CASA, except that former outside counsel is completing a few totally unrelated litigation matters, where substitution at this point would be uneconomic.

Finding 6. The Board authorized the issuance of an unnecessary \$6.5 million pension obligation bond and incurred financial liability with little or no discussion or understanding of the possible financial impact to the District. The \$420,709 cost to issue the bond could have been applied to educational purposes.

Response to Finding 6: Disagree with Finding. The District relied upon its trusted staff and its independent consultants to properly analyze this very complicated financial transaction. The District's financial advisors, Northcross, Hill and Ach, were serving as financial advisors and underwriter for the CASA bond issuance. The District's bond counsel, Jones Hall, were serving as CASA's bond counsel. The District's outside counsel, Girard & Vinson, were advising both CASA and the District. None of these professionals ever told the Board that their loyalties ran exclusively to CASA with respect to the bond transaction. None of these professionals ever indicated that representations by District staff regarding cost and revenue neutrality were false or incorrect. Rather, the Board was assured that the District's financial responsibility under both the bonds and the loan agreement was no greater than what the District would already owe in the absence of the bonds.

In a November 27, 2001 memorandum from the Deputy Superintendent/CFO to the Board, regarding the proposed bond issuance and loan agreement, the CFO discussed the District's obligations and concluded that "the district's obligations under the bonds are no greater than they would be without the bonds." The same memorandum, when discussing the financial impact on the District of issuing the bonds, concluded that: "The issuance of the bonds will cause no increase in the employer contributions required from the district to fund the pension program. Debt service will be paid from the current level of contribution (about \$1.5 million per year) to fund the program." Thus, the Board was led to believe that all costs associated with the bonds and the loan agreement would be paid by CASA out of the District's existing contribution of 19.22% of covered payroll.

Additionally, the December 3, 2001 staff memorandum presented to the Board in support of the proposed resolution authorizing borrowing of the funds and execution of the loan agreement assured the Board that there would be no financial effect on the District. The memorandum stated: "This borrowing will not increase the district's costs because the loan repayments will be made out of funds that the district is currently paying to the Retirement Plan on an annual basis." Staff memoranda in support of Board resolutions were required to follow a specific format that included a discussion and explanation of any financial considerations to the District. This section of the December 3, 2001 memorandum clearly

indicated that approval of the loan agreement had no financial implications for the District. "**Financial Considerations:** None."

Finding 7. The Board of Education and top administrators were dismissive of community concerns regarding the JPA and CASA.

Response to Finding 7: Partially Disagree with Finding. While certain administrators may have appeared dismissive of community concerns regarding CASA, the Board took those concerns very seriously. On November 18, 2002 the Board held a public meeting to respond to questions about CASA. The District's administration, with the assistance of its consultants, made a detailed presentation on the operation of CASA and the CASA bond issuance. Presentations were made by the District's legal counsel, Girard & Vinson, Arnold Bray from School Services of California, CASA's actuary, Robert Dezube, the District's underwriter and financial advisor, Mark Northcross, and CASA's pension expert, Ralph Amadio.

At the November 18, 2002 meeting, the presentations by both the District's outside consultants and CASA's outside consultants were very convincing and reassured the Board that CASA was a legal and viable entity. For example, the District's legal counsel, David Girard, stated that: "Everything that CASA is, or CASA will do, was presented to the court and the court ruled that these proceedings were valid and those activities which CASA intended to take were proper." Thus, the Board and all the members of the public in attendance at that meeting were told that the court had already reviewed the issues and determined CASA's operations to be proper.

Less than a year after the November 18, 2002 meeting, concerns were again raised about the operation of CASA. When these concerns were raised with the new Interim Superintendent in July, 2002, he promptly began a diligent search for a qualified external auditor. After FCMAT declined to provide such assistance, the new Interim Superintendent eventually found and recommended MGT of America, and the Board retained MGT, to perform an independent fiscal and programmatic review of CASA. The Board also retained the law firm of Lozano Smith to perform an independent review of certain legal issues raised by the public and MGT.

RESPONSE TO RECOMMENDATIONS TO THE BOARD OF EDUCATION:

Recommendation 1. The Board needs to fully investigate and research all proposals that incur financial obligations and have fiscal ramifications. A discussion of the pros and cons should be publicly presented with adequate provision for public input.

Response to Recommendation 1: Already Implemented. Every agenda item that comes before the Board for action has an accompanying staff memorandum that follows a mandatory format. One of the subjects that must be addressed in the memorandum is any "financial considerations" the proposed action may have on the District. As recognized by the grand jury, members of the Board must rely upon the expertise of staff to advise them in complex

areas such as school finance and accounting. When District staff does not possess the required expertise, outside consultants are retained.

Except for those circumstances where laws regarding confidentiality require action to be taken in closed session, the Board conducts all of its business in public. Staff recommendations and supporting memoranda for all agenda items are available for public inspection and review. Accordingly, the public has access to the District's documents discussing the financial considerations of actions proposed by the District.

A corrective action has been taken that provides Board members more in-depth information related to financial obligations and transactions. With Board approval, the current CFO has created an audit subcommittee, which meets throughout the school year and includes three members of the Board, along with the CFO, Chief Business Officer, independent external auditor, and the internal auditor. The audit subcommittee has established a procedure whereby, on a quarterly basis, all financial activity that exceeded \$300,000 is reported to the subcommittee for review. All financial activity includes transfers of funds, contracts for services, and purchase orders. Also, Board members are given the opportunity to interact personally with both the internal and external auditors and to request that financial reports and/or data of any nature be provided to them. The internal auditor now reports directly to the Board, which also receives the report of the external auditors. If desired by the Board members on the subcommittee, all district staff will leave the meeting in order for the Board members to interact privately with the external and internal auditors.

Recommendation 2. Future attempts of the Board to compensate district individuals for outstanding service should be within the limits of what is generally given to people in education.

Response to Recommendation 2: Already Implemented. This recommendation matches existing Board Policy and therefore has effectively already been implemented. The Board was never informed of the magnitude of the compensation increases granted to the former Superintendent, CFO and General Counsel and, in fact, was misled to believe that the compensation packages granted to these former employees were within the norm for similar public school districts and did not have the financial impact that later proved to be the case. The Board has directed its attorneys to void or otherwise extinguish the ten years of service credit granted to these former employees and is working with CalPERS to ensure that elements of reported compensation comply with applicable statutes and regulations.

Recommendation 3. The Board should monitor and control all agencies or entities that the school district creates and for which it assumes liability. The Board should not delegate its oversight responsibilities to others. The Board should demand timely reports and audits.

Response to Recommendation 3: Implementation Under Way with Qualification. As the grand jury recognized in its Final Report, "[i]nasmuch as Board members make decisions in complex areas, they depend on district administrative staff for advice and recommendations" To function properly, the Board must be able to delegate technical or

specialized tasks to individuals with the expertise to perform them. Additionally, the Board did demand timely reports and audits of CASA and its pension plan. (See response to Finding 3(b) above.)

The Board of Education believed that since it had the majority of the voting members on the CASA Board, the interests of the Board of Education and the District were being protected. Neither the prior CFO nor the prior Superintendent reported to the Board of Education that, until 2003, the District's representatives to the CASA Board had been hand selected by the CFO, allowing the CFO to select the very people who would be overseeing her in her role as CASA's Executive Director. In effect, the prior CFO was in complete control of CASA, without the knowledge of the Board of Education.

The problem does not appear to be the delegation of responsibilities commonly delegated to district administrative staff as much as ensuring that the person performing the delegated responsibility has appropriate checks and balances on their authority, no conflicts of interest, and their reports or findings are actually presented to the Board.

Corrective action has already been taken by the Board to implement appropriate checks and balances: (1.) the formation of an audit subcommittee discussed under Response to Recommendation #1 above; (2.) the formation of the budget subcommittee; (3.) the separation of duties so that the current CFO does not control budget, accounting, payroll, and personnel departments; and (4.) the creation of a new job description for the Internal Audit Manager so that the position no longer reports to the CFO, but to the Superintendent and the Board.

Recommendation 4. The Board of Education must guard against appearances of potential conflict of interest whether ethical or legal.

Response to Recommendation 4: Already Implemented. Board Bylaw 9270 sets forth a comprehensive policy regarding conflicts of interest, covering incompatible activities, prohibited financial interests, gifts and honoraria. Board Bylaw adopts the Fair Political Practices Commission model conflict of interest code and designates those positions that are subject to the code's disclosure requirements as well as the level of disclosure. The Superintendent, Deputy Superintendent/CFO and General Counsel are all designated positions, along with the rest of the District's Associate Superintendent and Director positions.

In addition to the existing Board policies prohibiting conflicts of interest, the District has taken steps to protect against potential or perceived ethical conflicts by implementing the audit and budget subcommittees and other actions outlined above under Response to Recommendation #3 and has terminated CASA's ability to advise agencies chartered by the District.

Recommendation 5. The Board should establish a process to assure that community and constituent concerns are heard and addressed.

Response to Recommendation 5: Already Implemented. The current Superintendent has implemented a practice whereby all public questions and/or concerns are recorded by her staff and subsequently assigned to the appropriate administrative staff for follow-up, which is promptly provided to the member of the public by phone call or in writing.

RESPONSE TO FINDINGS FOR THE DISTRICT ADMINISTRATION:

Finding 1. The Superintendent allowed the CFO to control the central office without necessary checks and balances. For example:

- a. The Internal Auditor reported directly to the CFO rather than to the Superintendent and the Board.
- b. The transfer of funds between the District and CASA went unsupervised by the Superintendent and the Board.

Response to Finding 1: Agree with Finding.

Response to Finding 1(a): Agree with Finding. Corrective action has already been implemented whereby the job description for the Internal Audit Manager has been changed so that the position reports directly to the Superintendent and the Board. In addition, through the formation of an audit subcommittee, three Board members are able to meet on a regular basis with both the external and internal auditors.

Response to Finding 1(b): Partially Disagree with Finding. While it appears true that the former Superintendent was not adequately supervising the District's relationship with CASA or the transfer of funds between the District and CASA, the Board thought that it was supervising this relationship through its trusted administrative staff.

In addition, State and County standard accounting rules have always prohibited the transfer of monies between funds without the approval of the Board of Education. In the case of the former CFO, transfers were accomplished without notification to or approval from the Board of Education.

In hindsight, the problem appears to be that the top administrative staff that the Board was relying upon were all beneficiaries from CASA. In part to correct this problem, the Board has terminated its operating agreement with CASA and required all employees to return to District employment.

Finding 2. The centralization of power in the hands of the CFO created a climate of intimidation and coercion within the administrative offices. For example, employees were discouraged from questioning the CASA plan and some stated they felt pressured into joining.

Response to Finding 2: Partially Agree with Finding. The many positive achievements of the former CFO provided the Board with confidence in her judgment and leadership. However, it has become apparent that this confidence was abused. According to staff members, staff simply did not share their concerns and/or knowledge with the Board of Education due to the climate of intimidation created by the former CFO. It wasn't until the former CFO left the District that key employees began to come forward and express their concerns about the formation and operation of CASA as well as some of the financial transactions that had taken place.

Finding 3. The proposed retirement program and the enhanced retirement package put forward by the CFO for herself, the Superintendent and the Legal Counsel were self-serving.

Response to Finding 3: Agree with Finding.

Finding 4. The appearance of a conflict of interest occurred when the CFO of the District served as the unpaid Executive Director of CASA.

Response to Finding 4: Agree with Finding. The District has taken steps to ensure that persons who may have benefited from CASA's programs are not managing CASA's assets and do not have unilateral decision making authority over transactions with CASA.

RESPONSE TO RECOMMENDATIONS TO THE DISTRICT ADMINISTRATION:

Recommendation 1. Community concerns regarding district administration actions or policies need to be fairly and openly addressed. A community oversight committee could be established to directly monitor the response to these concerns.

Response to Recommendation 1: Already Implemented. The Superintendent has implemented a practice whereby all community questions and/or concerns are recorded by her staff who assign prompt follow up to the appropriate administrator.

In addition, community members are included on all district committees, such as the District-wide budget committee. Also, Community Forums are held in order to obtain community input related to education and budget proposals. Community members will be invited to participate in periodic meetings of the budget and audit subcommittees.

The Board and the District are implementing a number of measures to provide transparent information regarding resolution of the various issues involving CASA, including communication during Board meetings, meetings with CASA's former employees and a regular weekly e-mail update.

Recommendation 2. The Superintendent must actively oversee the business administration of the school district, as well as the educational program.

Response to Recommendation 2: Already Implemented. The District has hired a new Superintendent and new CFO who have implemented changes in the organizational structure of the District and how it is managed: (1.) the CFO no longer controls all the departments which implement budget, accounting, personnel and payroll; (2.) the Internal Audit Manager now reports directly to the Superintendent/Board; (3.) the Superintendent has proposed a new top administrative organizational structure; and (4.) the Superintendent has implemented regular one-on-one meetings with top administrative staff.

Recommendation 3. It is one of the responsibilities of the Superintendent to establish and maintain a positive climate within the district office. Communication lines should be structured in such a way as to encourage and permit employee access to the Superintendent, enabling all opinions to be heard.

Response to Recommendation 3: Already Implemented. The Superintendent has established regular meetings with employee groups, community groups, and parent organizations in order to provide access to her office. The Superintendent is regularly out in the community, meeting with individuals and groups, and has been successful in changing the climate to one that is much more positive and open.

Recommendation 4. The Superintendent is responsible for assuring that a system of checks and balances is maintained so no one person or a group can bring undue or unfair influence on decisions.

Response to Recommendation 4: Already Implemented. The District has hired a new Superintendent and new CFO who have implemented changes in the organizational structure of the District and how it is managed: (1.) the establishment of new top administrative organizational and reporting structure; (2.) the CFO no longer controls and is able to exert undue influence on a disproportionate number of departments; (3.) the Internal Audit Manager's job description has been changed so that the position reports to the Superintendent/Board, not the CFO; (4.) a budget subcommittee has been formed; (5.) an audit subcommittee has been formed; and (6.) the Superintendent has established regular meetings with employee groups, community groups, and parent organizations.

Recommendation 5. The internal auditor should be autonomous and responsible and accountable to the Superintendent and report directly to the Board on a quarterly or bi-annual basis.

Response to Recommendation 5: Already Implemented. The Board has approved a new job description for the Internal Audit Manager whereby this position reports directly to the Superintendent/Board and not to the CFO. The Internal Audit Department meets regularly with three Board members who sit on the audit subcommittee.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

Resolution No. 2386

**RESOLUTION TO CREATE A CITIZENS ADVISORY COUNCIL
ON UNREPRESENTED ADMINISTRATOR'S COMPENSATION**

WHEREAS, the Governing Board of the Sacramento City Unified School District and the District Administration endeavor to provide complete and transparent information to the public; and

WHEREAS, the Governing Board of the Sacramento City Unified School District should establish a process to assure that community concerns are heard and addressed; and

WHEREAS, the Governing Board of the Sacramento City Unified School District has no staff independent of the District Administration; and

WHEREAS, the Governing Board of the Sacramento City Unified School District and the District Administration put a premium on the advice of citizens; and

WHEREAS, the Governing Board of the Sacramento City Unified School District and the District Administration seek to attract, retain and fairly compensate the finest administrators possible; and

WHEREAS, the Governing Board of the Sacramento City Unified School District and the District Administration believe in public accountability;

NOW THEREFORE BE IT RESOLVED, that the Governing Board of the Sacramento City Unified School District approves the creation of a Citizens Advisory Council on Unrepresented Administrator's Compensation with the purpose of annually providing advice to the board on fair and just compensation, including but not limited to salaries, benefits, and retirement matters, for unrepresented contracted administrators.

BE IT FUTHER RESOLVED that the Superintendent shall provide to the Governing Board an implementation and support plan for this Advisory Council within three months of the adoption of this resolution.

PASSED AND ADOPTED on September 23, 2004 by the Governing Board of the Sacramento City Unified School District by the following vote:

AYES	7
NOES	0
ABSTAIN	0
ABSENT	0

Jay Schenirer, President
Board of Education

ATTEST:

M. Magdalena Carrillo Mejia, Ph.D.
Secretary to the Board of Education

GRANT
JOINT
UNION
HIGH
SCHOOL
DISTRICT

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SEP 30 2004

September 30, 2004

VIA HAND DELIVERY

LEGAL SERVICES DIVISION
Jacques Sterling Whitfield
District General Counsel
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Presiding Judge of the Superior Court
Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814

*Formal Response of the Grant Joint Union High School District to the
2003-2004 Grand Jury Final Report*

Dear Presiding Judge,

On behalf of Dr. Larry M. Buchanan, Superintendent, and the Governing Board of Trustees, the Grant Joint Union High School District hereby submits its formal response to the 2003-2004 Grand Jury Final Report on the *Grant Today*. While we honor and respect the important role of the Sacramento County Grand Jury, we respectfully disagree with the Grand Jury's findings concerning Grant Joint Union High School District's alleged misuse of the *Grant Today*. While we will abide by the findings and recommendations, the District is compelled to fully articulate its legal position in this matter.

Formal Response

First and foremost, it is the mandate of the Grant District to abide by all local, state and federal statutes and regulations governing public school districts and public agencies. Under the leadership of Dr. Buchanan and the "Education First" School Board, the District has been radically reinvented with the mission of not only improving the quality of education and student achievement for the students and parents that we serve, but also of becoming more accountable to the parents, students, teachers and classified employees that we serve.

Second, the Grant District is cognizant of the importance of public education to our society and the need to encourage and foster free and open debate of issues of importance to the electorate. The California Supreme Court stated in *Hartzell v. Connell* (1984) 35 Cal.3d 899 at 907-908: "the contribution of education to democracy has a political, and economic, and a social dimension. As this Court has previously noted, education prepares students for active involvement in political affairs (*Serrano v. Priest* (1971) 5 Cal.3d 584, 607-608).

...arising like the Phoenix

"A New Education for a New Economy"

Education stimulates an interest in the political process and provides the intellectual and practical tools necessary for political action. Indeed, education may well be `the dominant factor in influencing political participation and awareness.' (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 114, fn. 72 [36 L. Ed. 2d 16, 90, 93 S.Ct. 1278] (dis. opn. of Marshall, J.))" And, where school system matters are of legitimate public concern in a society such as ours that leaves such questions to popular vote, the United States Supreme Court has ruled that free and open debate is vital to the informed decision making by the electorate. *Pikering v. Board of Education* (1968) 391 U.S. 563, 571-572; 88 S.Ct. 1731, 1736, 20 L. Ed. 2d 811 (1968).

The Grant Districts responds to the Grand Jury's findings and recommendations with the foregoing principals in mind as follows:

Finding 1. Grant Joint Union High School District has used public monies inappropriately by advocating against the redistricting plan of Families for Better Education in articles published in its monthly publication, *Grant Today*. The articles did not include any information about the opposing point of view.

Recommendation 1. Officially disseminated information from a school district regarding a contested issue should be fair, impartial and balanced -
Concurrence.

While the District disagrees with this factual finding, the District concurs with this recommendation. One of the principal hallmarks of the "Education First" School Board is financial accountability. The District has not misused any public funds to "advocate or present only one side of a political issue" in violation of the California Education Code or the California Government Code.

As you are aware, the Grand Jury admonished the District for not presenting opposing viewpoints in our monthly newspaper, the *Grant Today*, when publishing articles which either (1) reported on the allegations and the status of a pending civil lawsuit filed in the Sacramento County Superior Court challenging the validity of the signature gathering process and of the signatures themselves on citizens' petition proposing the reorganization, (2) responded to inquiries and questions it was receiving from the general public about the effects of a potential reorganization of the District or, (3) discussed the efforts to qualify petitions being circulated to reorganize the District.

The Grand Jury concluded that three articles, which appeared in issues from April 2003 through February 2004, lacked sufficient balance and impartiality. Our comprehensive legal analysis from in-house and outside legal counsel concluded that the District's actions were proper and consistent with the law on this issue under these particular sets of facts and circumstances.

California Education Code Section 7054 provides in relevant part:

- (a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

- (b) Nothing in this section shall prohibit the use 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.

 - (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.

At all relevant times, the Grant District was in full compliance with California Education Code Section 7054 for at least two separate reasons. First, the preliminary step of gathering signatures to submit a potential school district reorganization to the County Board of Education is not a "ballot measure."

In addition to in-house counsel, the District specifically sought outside legal opinions from law firms with expertise in public agency and education law, on the question of when an issue becomes a "ballot measure" for purposes of school district reorganization. The legal opinions concurred that this factual determination is very difficult to determine before the State Board of Education has decided on the merits of a reorganization/unification petition. However, based on even the Grand Jury's cited authorities, it appears that California Education Code Section 7054 would not apply at least until the State Board of Education had approved the proposed reorganization.

The Grand Jury reviewed legal references including 73 Ops. Cal. Atty. Gen. 255 (1990) in support of its findings and recommendations. That Opinion considered the following three questions:

1. Can public funds of a city, county or district be lawfully used to draft an initiative or referendum measure which will be circulated for signatures among the voters with respect to legislation of another city, county or district?
2. Can public funds of a city, county or district be lawfully used to gather signatures for an initiative or referendum measure with respect to legislation of another city, county or district? Is there a distinction in law between a state measure and a local measure regarding gathering signatures? Is there a distinction in law between the use of public funds regarding gathering signatures for a referendum measure versus an initiative measure?
3. Can public funds be used to promote an initiative or referendum measure that has qualified for the ballot? Can a public agency or official use public funds to provide educational information to the public about a ballot measure? If so, how is a distinction made between "educational materials" and "campaign literature?"

The Opinion reached the following conclusions:

1. Public funds of a city, county or district may lawfully be used to draft an initiative or referendum measure which will be circulated among the voters with respect to legislation of another city, county or district.
2. Public funds of a city, county or district may not be lawfully used to gather signatures for an initiative or referendum measure with respect to legislation of another city, county or district. There is no distinction in law to be drawn between a state measure or a local measure in this respect. Nor is there a distinction in law to be drawn between a referendum measure versus an initiative measure.
3. Public funds cannot be used to promote an initiative or referendum measure that has qualified for the ballot, at least in the absence of clear and explicit legislative authorization. A public agency or official can use public funds to provide educational information to the public about a ballot measure. No hard and fast rule be set forth to distinguish between "campaign literature" and "educational materials" which will govern each case. Circumstances such as the style, tenor or timing of the publication may be determinative.

However, even that opinion analyzed and discussed a ballot measure in its broader sense as one already qualified to be submitted to the electorate. Specifically, the opinion stated "...we also consider ballot measures in their broader sense, that is any measure properly submitted to the voters, whether by initiative, referendum or by the state legislature or any legislative body. (See Elec. Code, 38: "measure' means any constitutional amendment or other proposition *submitted to a popular vote* at any election'" (emphasis added).

The opinion also analyzed whether a local agency could promote an initiative or referendum measure "which has qualified for the ballot" or provides 'educational information' as opposed to 'campaign literature' to the public concerning ballot measures generally. In this case, at the time *Grant Today* published the questioned articles, not only was there no proposal to be submitted to a popular vote at an election, it was not even clear whether such a measure would ever be submitted to a popular vote.

The State Board of Education in this particular case could have taken a number of actions. It could have found that the proposal for reorganization did *not* substantially meet the conditions enumerated in California Education Code Section 35753, thereby preventing the matter from being submitted to the voters for approval. Alternatively, it could have approved the Petition for Reorganization and called for an election. If the petition had been approved by the State Board of Education, it is undisputed that the matter would have been a "ballot measure," and a school district may not use public funds to advocate or oppose the measure. Alternatively, the State Board could have denied the Petition for Reorganization, thereby preventing the matter from being submitted to the voters for approval.

In this case, at the time the articles were printed by the *Grant Today*, the matter had not even completed the initial rounds of administrative hearings with the Sacramento County Board of Education. Theoretically, the Sacramento County Board of Education could have denied the Citizens Petition and/or given a negative recommendation on the Citizens Petition, which could have ended the process. Furthermore, the Sacramento County Board of Education could have proffered its own petition to the State Board of Education, which it ultimately did.

Lastly, California Education Code Section 7054 may be unenforceable as being vague or overbroad as it impinges on Constitutionally protected free speech. There are essentially no guidelines or limitations on the terms "fair and impartial" in the statutory language. This is particularly critical in view of the educational forum at issue and the importance of free debate of the issues involved which are of great importance to the effected electorate.

As stated at the outset, while the District disagrees with the finding, the District concurs with the recommendation of the Grand Jury. The District has already implemented this recommendation with its staff.

Finding 2. Grant Joint Union High School District has specific written policies regarding the use of district resources for advocating political issues and activities, but these policies were not followed in several articles published in *Grant Today*.

Recommendation 2. Grant Joint Union High School District should make its employees aware of these policies and ensure all personnel understand and interpret these guidelines as intended by state law and case law. Employees should refer to publications by the California School Boards Association to give them direction - **Concurrence.**

The District disagrees with the portion of the finding that the Grant District did not follow its own policies regarding the use of District resources for advocating political issues. Nevertheless, it concurs with the recommendation. The *Grant Today* is a valuable source of accurate information on District programs and activities to the greater North Area community. The District developed the *Grant Today* publication specifically in response to some of the findings and recommendations of the Grant Select Blue Ribbon Commission in July 15, 1998. Specifically, the Commission recommended that the District commence efforts to develop and implement a comprehensive communication network within and outside the District to insure that the community is well informed about ongoing events and activities occurring in the District. A copy of the Grant Select Blue Ribbon Commission Report was provided to the Grand Jury during this investigation.

As the District Administration and School Board began to address the dissolution issue in the community, it became readily apparent that there was a lack of credible information and an over abundance of misinformation in the community. Numerous parents, employees and students were contacting the District and asking serious questions about the ramifications of a potential restructuring of the District.

Interestingly enough, the District found that the Reorganization proponents, including Families for Better Education, never discussed the actual costs of such a restructuring, from school finances and facilities to curriculum and instructional programs to future employment rights of employees in a clear, comprehensive manner. The proponents also failed to discuss the resulting segregative effect of the proposed reorganization. California Education Code Section 35753 lists factors the State Board of Education must consider before it may approve proposals for reorganization of school districts and specifically

requires that a proposed reorganization must *not* promote racial or ethnic discrimination or segregation.

In 1993, a proposed reorganization of the Grant District, structure very similarly to the one discussed in *Grant Today*, was ultimately disapproved because of resulting racial or ethnic discrimination or segregation. It was thus likely that the effort reported in the *Grant Today* publication would suffer the same fate. The students, parents and parties affected had an absolute right to be informed of the racial and ethnic discrimination or segregation that would result from the proposed reorganization and its affect on the likely outcome of the reorganization effort.

Furthermore, the District Administration and School Board began to receive credible and verifiable information from numerous parents, employees and community members that a few of the elementary districts supporting the dissolution of the Grant District were using staff time, public property and public resources to advocate for the Reorganization. It is undisputed that the regular Steering Committee meetings for Families for Better Education were held in the Superintendent's Office of one of the elementary school districts during regular business hours. Moreover, the District Office received an internal memo from a few employees from one elementary school district recruiting petition signature gatherers among the workforce during work time. The Grant District provided this information to the appropriate authorities, but no corrective action was taken for these actions.

It is a strange twist of irony that it was the Grant District that was under investigation, particularly given the actions of some of the proponents of the Reorganization. Through discovery in the litigation initiated in the Sacramento County Superior Court, the Grant District discovered that approximately 1 in 10 of the citizens' signatures gathered on these petitions was a forgery or had been otherwise improperly obtained. The strength of the Grant District's position was apparent when in February 2004 the Sacramento County Office of Education and Sacramento County Committee on School District Organization stipulated to entry of a judgment in the case to the effect that the citizens' petitions were insufficient and not signed as required by law and directing the County Committee to issue a board resolution rescinding and annulling its previous decision approving those petitions.

Accordingly, the District felt compelled to utilize its communication network to respond and correct the proponents' misinformation, answer public inquiries and provide the necessary relevant information in order for the community at large to have a more balanced and accurate view of the proposed dissolution process and to keep it informed of ongoing developments in the pending lawsuit.

The *Grant Today* articles cited in the Findings contained, among other things, information from a publicly filed writ proceeding against the Sacramento County Office of Education and others seeking to nullify the citizen's petitions for, among other things, fraud and irregularities in the petition signature gathering process. In fact, a lead organizer and petition coordinator for Families for Better Education pled *nolo contendere* to one count of election fraud, violating California Elections Code Section 18614. The District ultimately prevailed in this civil lawsuit, and the petitions gathered by the Reorganization supporters were legally nullified. The Sacramento County Office of Education ultimately agreed with the District's position, and entered into a Stipulated Judgment to nullify the citizens' petitions, which was approved by the Superior Court.

Contrary to the characterization in the Final Report, Families for Better Education is not an association of District parents or an education advocacy group. Rather, it is a political action committee with a center of operations *outside* of the Grant District. According to political filings with the Sacramento County Registrar of Voters, Families for Better Education is a political action committee with core support from developer and bureaucratic special interests, not District parents and families. Over the course of more than four (4) years, this political action committee raised over \$225,000.00 to finance the petition signature gathering process, a process fraught with petition fraud and a myriad of other irregularities.

As stated at the outset, while the District disagrees with the finding, the District concurs with the recommendation of the Grand Jury. The District has already implemented this recommendation with its staff.

Finding 3. In the August 2003 newsletter of *Grant Today*, GJUHSD's Legal Counsel was a visible advocate opposing the coalition's reorganization plan.

Recommendation 3. The District Legal Counsel should not advocate for a political issue or activity that affects the District. Legal Counsel should ensure that a political issue discussed in district public communications be fair and balanced - **Concurrence (Qualified)**.

The District agrees with this factual finding that its Legal Counsel was a visible advocate opposing the proposed Reorganization Petition. For the following reasons, the Grant District has a qualified concurrence with the last recommendation of the Grand Jury.

It is generally true that the District's legal counsel should insure that a political issue discussed in district public communications be fair and balanced. However, when a political issue challenges a fundamental constitutional right or civil liberty, it is the ethical responsibility of the District's legal counsel to aggressively advocate and defend his public agency client. The Grant Jury Report cited no legal prohibition in any state or federal statute, rule or administrative regulation to support this overly broad recommendation.

In the instant case, the District's legal counsel has been dealing with the issue of school district reorganization during his entire seven (7) year tenure with the Grant District. The most legally problematic portion of the current Reorganization proposal is the segregative effect of the proposed division. It is this portion of the proposal that was successfully challenged in a previous Reorganization attempt that was substantially similar to the current proposal. It is this same portion of the Plan that was addressed in S B 7 99 (Ortiz) to attempt to ameliorate the segregative effects of any Reorganization attempt of the Grant District.

After an in-depth analysis of this issue, the District's legal counsel has formally opined that the current plan is fatally flawed, because it creates segregation, in violation of the State Board of Education regulations, as well as state and federal law. The District's outside counsel, as well as a litany of civil rights organizations, including the NAACP, Urban League, ACLU, Mexican American Legal Defense Fund, Area Congregations Together (ACT), BAPAC, and the California Black Chamber of Commerce, all share this position. All of these organizations have been vocal in opposing this current Reorganization plan.

In hearings before the Sacramento County Board of Education, the District's legal counsel gave formal testimony on this issue. It is anticipated that the District's legal counsel will provide formal testimony on this issue during the hearings before the State Board of Education. The articles in *Grant Today* dealing with this issue constituted a recap of public testimony provided to the Grant School Board and the Sacramento County Board of Education on this issue.

Under the facts and circumstances of the instant case, and in the absence of any expressed legal prohibition, it is completely appropriate for the District's legal counsel to advocate on behalf of its public agency client.

Conclusion

As previously stated, the Grant District remains committed to the principles that public education is the cornerstone of our American democracy. This cornerstone is strengthened when it fosters and encourages free and open debate on matters of public concern to the electorate. The question of determining the optimum educational delivery system in the North Area has been a matter of public concern for decades.

Because the "Education First" School Board is united in its commitment to maximize student achievement in the District, it encourages free and open debate regarding the optimum educational delivery system. The "Education First" School Board will continue to insist that the community have accurate and relevant information in order to safeguard the integrity of the debate, and perhaps ultimately, the electoral process.

The District will fully and swiftly implement the Grand Jury's recommendations. If you have any additional questions or concerns regarding this matter or another matter, please don't hesitate to contact myself at (916) 286-4910 or Dr. Larry M. Buchanan, Superintendent at (916) 286-4921.

Very truly yours,

Jacques S. Whitfield
District General Counsel

cc: David Gordon, Sacramento County Superintendent of School
Annette Emery, Board President
Dr. Larry M. Buchanan, Superintendent
Governing Board of Trustees
Barry T. Heilman, Grand Jury Foreman
Sacramento County Clerk's Office