



NORTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

September 18, 2014

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The Honorable Glenda Sanders
Presiding Judge of the Superior Court
700 Civic Drive West
Santa Ana, California 92701

RE: Response to Grand Jury Report on Community College Trustees

Dear Judge Sanders:

The North Orange County Community College District (“NOCCCD”) and its Board of Trustees hereby responds to the Report of the Grand Jury entitled “Community College Trustees: Responsibilities, Compensation and Transparency.” The Grand Jury is authorized by State law to exercise oversight with respect to public entities in the County, and does so largely in secret. As a result, the public must be able to trust that such power and authority is exercised only for proper purposes by individuals who have no reason to be anything but objective when it comes to the subjects of their investigation. This statement cannot be made with respect to this investigation and resulting Report.

Our concern with respect to objectivity begins with the scope of the investigation and the Report: the Report intentionally, and without offering any reason, omits one of the four community college districts in the County from its analysis. The public is left to guess as to why the report makes no substantive mention of the Rancho Santiago Community College District. It is well known that one member of the 2013-2014 Grand Jury is a former member of the Rancho Santiago District’s Governing Board. Regardless of whether this member of the Grand Jury was favorably or unfavorably disposed toward that district, his participation in this investigation raises questions as to the Grand Jury’s motives and objectivity.

We also question this investigation into the broad topic of “community college trustees,” resulting in various findings and recommendations, in which no Trustee of the NOCCCD was interviewed.

Our concern with the Report is not its negative view of governing board members, but the effect that it might unnecessarily have on the reputation of Orange County’s community college districts. Nothing in the Report calls into question the outstanding programs offered by this District and its sister districts in the County. If the District’s programs were at issue, that is a significant matter for concern. However, here the Grand Jury has chosen to focus on an issue of concern to a very limited segment of the population, to the potential detriment of those being served by the districts in the County.

With these concerns in mind the NOCCCD and its Trustees respond as follows to those portions of the Grand Jury’s Report that require responses.

RESPONSE TO SPECIFIED GRAND JURY FINDINGS

Per section 933.05(a) of the California Penal Code and the direction of the Grand Jury at pages 27-29 of the Report, the NOCCCD and its Board of Trustees respond to the Findings of the Grand Jury.

F.3 Trustees govern under guidelines, restraints and recommendations provided by the California Legislature, State Chancellor's Office, accreditation commissions and professional membership organizations.

The District **agrees** with this Finding. This finding understates the degree of "restraint" under which California's community college districts function. All aspects of the District's operations and decision-making are subject to a wide range of external "restraints."

For example, this Finding perhaps unintentionally fails to reference the wide range of federal laws and agency regulations applicable to District. In addition to requiring districts to be accredited by a regional accrediting commission for such purposes as receiving federal financial aid for students, federal law imposes limitations, for example, on the District's handling of personnel and student matters (e.g., the Fair Credit Report Act, the Family Educational Rights and Privacy Act, and the Fair Labor Standards Act), and specific educational programs (e.g., National Science Foundation grants, and programs intended to benefit specific groups of disadvantaged students).

The NOCCCD does not in this response question the wisdom of any of these laws or their implementing regulations, but points out that the District is subject to a wide range of "restraints" on its operation that impose significant unfunded mandates. These requirements impose additional costs on the District's general fund, and limit the District's expenditure of what would otherwise be dollars available for discretionary spending. Additionally, federal and state laws often overlap and regulate in the same areas, sometimes imposing inconsistent obligations.

F.6 There is a lack of ethics training received by trustees and there is minimal oversight over their actions and behaviors, particularly their spending habits for travel.

The District **disagrees** with this Finding. The California Legislature has made the policy choice not to mandate ethics training for members of community college district governing boards. Nonetheless, NOCCCD Board members and administrative staff do receive ethics training and work extensively under the requirements of various state laws regulating ethics and conflicts of interest in public service. The Grand Jury is aware of the District's broad Ethics Policy adopted by the Board, BP 2715, which was provided to the Grand Jury on November 25 in response to its request dated November 14, 2013. The Ethics Policy articulates requirements and limitations on Board member conduct, and enforces compliance by way of a censure resolution. The Policy broadly prohibits Board members' participation in decisions in which they have a conflict of interest. Each Board member reviews and signs a copy of this policy annually. The ethics policy is required of all districts by the Accrediting Commission for Community and Junior Colleges (AACJC) Standard III.A.13 and III.C.11. Trustees receive formal ethics training through a variety of sources, including their employment or service with agencies subject to Government Code section 53234 et seq. (Statutes of 2005, Chapter 700, section 4 (AB 1234).) Many Trustees serve in leadership positions in statewide educational or service organizations, and not only receive, but also present, ethics training in those roles.

The District's administration has also adopted an Institutional Code of Ethics, Administrative Procedure 3050, previously provided to the Grand Jury, which imposes strict limitations on employees participating in decisions in which they have a conflict of interest.

Oversight of District operations and expenditures are far from "minimal." The District's expenditures are dictated and accounted for in accordance with extensive provisions of state law and regulations established by various state agencies, most significantly the Board of Governors of the California Community Colleges. The state dictates how and when the District will report all expenditures. Further, the District is subject to legally required annual audits conducted in accordance with standards established by the Board of Governors, and consistent with national professional accounting and auditing standards. The District's constituent organizations, such as its academic senates, student organizations, and employee unions, carefully scrutinize and question Board meeting agendas, budgets, and expenditure authorizations and patterns. And, contrary to the Report, the District's voters are actively involved in many aspects of District operations, and provide a constant source of oversight.

With respect to "spending habits for travel," as the Grand Jury is aware from the District's response to the Grand Jury's request for information and documents, the District's expenditures for travel are annually reported in public. See Attachment F to the District's November 25, 2013 response. These expenditures are available to the public for inspection at any time. To increase transparency, the District will, commencing with the 2014-2015 fiscal year, include the annual report of travel expenditures for all District Trustees and staff as an item on the Board's agenda.

F.8 Trustees provide extensive personal information on the district website but little information about their performance in office.

The District disagrees with this Finding. The District's website is not intended to provide "extensive personal information" or information regarding Trustee performance. This information is available from a number of other sources, including the Trustees themselves. This finding is ambiguous.

As the Grand Jury is aware, Trustees perform the duties of their office largely in public meetings. While the Board would be pleased if more members of the general public attended its meetings to see how well their tax dollars are being spent, notice of meetings as well as the agendas for meeting are posted in a number of places in the District, and published on line as required by law. Board meeting agendas are sent to a wide range of media outlets, either by request or by District's initiative. (<http://www.nocccd.edu/Trustees/MtgMinutesArchive2011.htm>.) Agendas and minutes of Board meetings going back to 2005 are also available on the District's website. The District and its colleges issue numerous email "blasts," and press releases regarding various issues and activities relating to Board performance, and the activities and operations of the colleges. The Chancellor issues a report of the highlights of each Board meeting. The Board makes all of its activities known to the public it serves consistent with the District's mission of providing a high quality educational programs to the community.

F.9 Laws, regulations, guidelines and ethics require trustees to be fully transparent in all aspects of their actions, behavior, and performance. The actions of trustees should be readily available for public review.

The District **agrees** generally with this finding but is uncertain regarding the Grand Jury's reference to "guidelines."

RESPONSE TO SPECIFIED RECOMMENDATIONS OF THE GRAND JURY

Per section 933.05(b) of the California Penal Code and the direction of the Grand Jury at pages 27-29 of the Report, the NOCCCD and its Board of Trustees respond to the Recommendations of the Grand Jury.

R.1 The chancellor and trustees should complete an “Ethics Training” program similar to the requirements of California AB1234. A record of this should be maintained on the district website. (F.1., F.2., F.3., F.5., F.6., F.7., F.8., F.9.)

Given that the Legislature has made the policy determination not to make the provisions of Government Code section 53234 et seq. (AB 1234), applicable to community college district boards, and Trustees already receive ethics training from a number of sources and are responsible for complying with and enforcing District ethics policies, the District finds this recommendation unnecessary. As authorized by Penal Code section 933.05(b)(4), this recommendation will not be implemented because it is not warranted or reasonable.

R.2 The chancellor and trustees should maintain a list (e.g. CA Form 460) of campaign contributions made to each member of the board during the previous four years. This list should be reported and updated on the district website in July and January of each year. (F.1., F.5., F.6., F.8., F.9.)

The Legislature has determined that campaign finance matters are the responsibility of the individuals seeking elective office. The Political Reform Act of 1974, as amended, makes clear that the “candidates and elected officers and their controlled committees” are responsible for “filing their campaign statements required by Section 84200 with the **elections official of the county** in which the candidate or elected official is domiciled.” (Government Code section 84215.) For a variety of good policy reasons, such as avoiding even the appearance of favoritism or involvement in political activity, the District as an entity must not be involved in the campaign finance matters, except as specifically authorized by the Legislature. The Board is authorized by Education Code section 72029 to establish campaign expenditure limitations and to initiate the establishment of term limits pursuant to section 72103, but otherwise it must not be involved in electoral politics. (See Education Code section 7050 et seq.) The Chancellor does not, and should not, have any involvement in maintaining Trustees’ campaign contribution data.

Detailed records of campaign expenditures are available to the public on the Orange County Registrar Voter’s website. (See, <http://www.ocvote.com/voting/campaign-finance-info/>.)

As authorized by Penal Code section 933.05(b)(4), this recommendation will not be implemented because it is not warranted or reasonable.

R.3 The chancellor and trustees should strongly consider advising the entire board of “potential” conflicts of interest on district contracts involving campaign donors from the previous four years. (F.1., F.5., F.6., F.7., F.8., F.9.)

The Legislature has determined that disclosure of conflicts of interest is an individual official’s responsibility and obligation. The Political Reform Act of 1974, as amended, makes clear it is the

responsibility of each public official, including Board members, to not “make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” (Government Code section 87101 et seq.) Section 87105 dictates when certain public officials must recuse themselves from participation in governmental decisions, and section 87200 et seq. establishes the obligation of public officials to file full and complete disclosures of their economic interests. Trustees recuse themselves from matters where there is already even an appearance of a conflict of interest. As authorized by Penal Code section 933.05(b)(4), this recommendation will not be implemented because it is not warranted or reasonable.

R.5 The chancellor and trustees should report their total individual travel expenditures in a public meeting and on the district website. This should be reported four times each year. (F.1., F.2., F.6., F.7., F.8., F.9.)

As the Grand Jury is aware from the District’s November 25, 2013 response to the Grand Jury’s request for information and documents, the District’s expenditures for travel are annually reported in public. (See Attachment F to the District’s November 25, 2013 response.) The District maintains its annual reporting is transparent and sufficient. Pursuant to Penal Code section 933.05(b)(1), this recommendation has already been implemented in part, by the District’s current practice. As authorized by Penal Code section 933.05(b)(4), the recommendation for reporting four times each year will not be implemented because it is not warranted or reasonable.

R.6 Trustees should report, on the district website biography section, any official political party leadership positions. (F.1., F.3., F.4., F.5., F.6., F.8., F.9.)

Whether a Board member holds any political party leadership positions is irrelevant to their service on the District’s Governing Board. Political affiliation has never been and will not be a consideration in Board deliberations. As authorized by Penal Code section 933.05(b)(4), this recommendation will not be implemented because it is not warranted or reasonable.

R.7 The chancellor should report the value of all district compensation received by each trustee during the previous fiscal year. This should be reported at the first board meeting in September of each year and posted on the district website. (F.1., F.4., F.6., F.7., F.9.)

Board member compensation is contained in documents readily available to the public. Pursuant to Penal Code section 933.05(b)(3), this recommendation has already been implemented in part. As authorized by Penal Code section 933.05(b)(4), the recommendation for reporting at a specific Board meeting and on the District website will not be implemented because it is not warranted or reasonable.

R.8 Strong consideration should be given to sending a copy of this 2013-2014 Orange County Grand Jury study and district responses to collaborating educational organizations. (F.1., F.2., F.3., F.4., F.5., F.6., F.7., F.8., F.9., F.10.)

- a) **The appropriate accrediting commission agency,**
- b) **The California Community College Board of Governors and**
- c) **The California League of Community Colleges.**

The District already reports extensively the information sought by these entities. As authorized by Penal Code section 933.05(b)(4), this recommendation will not be implemented because it is not warranted or reasonable.

R.9 Strong consideration should be given to posting the chancellor’s complete employment contract on the district’s website to promote transparency. (F.10.)

Pursuant to Penal Code section 933(b)(2), this recommendation has been implemented. The Chancellor’s contract is posted on the District’s website.

Sincerely,



Jeffrey P. Brown
President, Board of Trustees

- cc: North Orange County Community College District Trustees
- Dr. Ned Doffoney, Chancellor, North Orange County Community College District
- Coast Community College District
- South Orange Community College District