



2010-2011 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

EAST SIDE UNION HIGH SCHOOL DISTRICT'S PROGRESS IN RESPONSE TO THE FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM AUDIT

Summary

The Santa Clara County Office of Education (SCCOE) received a complaint alleging that the East Side Union High School District (District) was awarding contracts without fair and open competition and that the contract awardees were not properly reporting financial status. The SCCOE conducted an initial audit and concluded that a further thorough investigation by an outside expert was warranted.

The SCCOE engaged the Fiscal Crisis and Management Assistance Team (FCMAT) to perform an extraordinary audit. FCMAT was created by legislation with Assembly Bill 1200 (AB 1200) in 1992 as a service to assist local educational agencies (LEAs) in complying with fiscal accountability standards, a need to ensure that LEAs throughout California were adequately prepared to meet and sustain their financial obligations. AB 1200 is also a statewide plan for county offices of education and school districts to work together on a local level to improve fiscal procedures and accountability standards. The legislation expanded the role of the county office in monitoring school districts under certain fiscal constraints to ensure these districts could meet their financial commitments on a multi-year basis.

Since 1992, FCMAT has been engaged to perform nearly 750 reviews for local educational agencies, including school districts, county offices of education, charter schools and community colleges. Services range from fiscal crisis intervention to management review and assistance. FCMAT also provides professional development training.

FCMAT issued a report on January 28, 2010 entitled "Extraordinary Audit of the East Side Union High School District." This report can be viewed at <http://wwwstatic.kern.org/gems/fcmat/EastSideUHSDExtraordinaryAud.pdf>.

The 2010-2011 Santa Clara County Civil Grand Jury (Grand Jury) reviewed this FCMAT report and undertook to determine whether the recommendations had been implemented.

The Grand Jury found that the District has made slow progress in implementing the twenty-one FCMAT recommendations (the recommendations are listed in Table 1 with progress information provided by SCCOE). Although some positive changes have been initiated (namely tasking key personnel with the implementation of the FCMAT recommendations), the District has been slow to revise procedures guiding District expenditures. Quarterly meetings of the SCCOE with the District, to date, have not driven the changes needed.

Background

In February of 2010 the 2009-2010 Santa Clara County Civil Grand Jury received a complaint regarding contract administration at the District. The 2009-2010 Grand Jury found that a FCMAT audit was in progress and its report was pending. The audit addressed the same issues that the complainant had raised. The 2009-2010 Grand Jury referred follow-up on this audit to the current Grand Jury.

The District provides educational services to more than 25,000 students in grades 9-12, as well as alternative education programs. The District is the largest high school district in Northern California and the fourth largest in the state, operating 23 schools, including 11 comprehensive high schools, six alternative education schools, and six charter schools, all within a general fund budget of \$204 million annually. In addition, there was a \$115 million fund to support capital projects for the 2009-2010 fiscal year.

The District has a poor record of managing its budget as evidenced by three separate FCMAT audits, the first conducted in 2001, the second in 2003 and continuing to the January 28, 2010 FCMAT report reviewed by the Grand Jury. The Grand Jury's investigation was undertaken to ensure that the recommendations of the January 28, 2010 FCMAT report had been implemented.

The scope of what FCMAT was asked to audit by SCCOE contained three major points as follows:

1. Review district policies and procedures related to professional services contracts and capital construction projects from the district's bond fund including Measures A, E, and G.
2. Sample contracts related to the district's bond fund and review vendor invoices regarding sufficient detail to document the material and labor charges being invoiced to the district.
3. Review the district's board policies, administrative regulations and specific contracts and amendments to the former superintendent's contract for the specific period of 2005-06 through 2008-09 fiscal years and confirm whether any violations of such policies regarding vacation accrual and pay outs have occurred that would be deemed illegal practices or a misappropriation of funds.

The Grand Jury chose to follow up on the FCMAT recommendations detailed under the three general categories in their report:

- Contract Services (13 recommendations)
- Bond Funds – Contract Services (3 recommendations)
- Superintendent’s Vacation (5 recommendations)

Methodology

In order to determine to what extent the District has implemented the recommendations contained in the January 28, 2010 FCMAT report, the Grand Jury conducted interviews with the Eastside Union High School District Board of Trustees (Board). They also conducted interviews with the District Superintendent, District staff, the SCCOE Superintendent and SCCOE staff. The Grand Jury reviewed documents and attended monthly meetings of the Board.

Discussion

After the SCCOE received input from outside sources alleging questionable practices by the District, the SCCOE conducted an initial investigation and concluded that further investigation by an outside expert was warranted. The SCCOE engaged FCMAT to conduct an audit at the cost of \$47,800.

According to the Executive Summary in the FCMAT 2010 audit of ESUHSD, “During FCMAT’s interviews, several individuals indicated they feared reprisal if they cooperated with this review or provided certain requested information. One employee requested that meetings be held off site to maintain the requested confidentiality. Several employees provided information orally but refused to provide written documentation to validate and document the allegations. Another employee participated in interviews, but avoided any contact afterward despite several efforts by FCMAT to make contact for follow-up purposes.”

The recommendations and implementation progress are detailed in Table 1.

Table 1: Summary of FCMAT Recommendations, District Response and SCCOE Comments (continued) (source SCCOE)

Finding	FCMAT Recommendation	District Response	SCCOE Comments
CONTRACTED SERVICES: Recommendation to Board			
1	Amend Administrative Regulation 3323 to require informal bids for all service contracts of more than \$5,000 with no maximum limit	3/1/10 (11/16/10 response) District provided SCCOE with copies of Administrative Regulation & Board Policy - 3000 series "Business & Non- Instructional Operations.	AR 3323 not included in binder. (BP 3311 is the section regarding bids but was last amended May 2009; doesn't include FCMAT recommendation.)
2	Amend Administrative Regulation 3323 to clarify that informal bids are required when consulting service contracts are otherwise exempt from bidding per Government Code 56030.		
3	Enforce Administrative Regulation 3323 regarding utilization of informal bids.		
4	Include specific details on contract approvals in minutes of board meetings.	Practice implemented with March Board Minutes.	Fully Compliant. Spreadsheet attachments to minutes listing Contractor, Reviewer, Period, Amount, & Purpose.
5	Require evidence that conflict-of-interest statement has been submitted for every consultant contract being considered for approval as required by Board Policy 3600.	Conflict of Interest Statement form being developed by District Counsel (11/16/10).	SCCOE does not have a copy of form. No form on the Purchasing Department page of District website.
6	Restore the internal audit function, including funding for an internal auditor position, and operate this function according to industry standards.	to the internal auditor to provide sample of reviews & findings in his work plan at the on-site visit.	Implemented. Review sample of procedures audited and results of audits at next on-site visit.
7	Establish board policy providing guidance to the staff in circumstances where contracted services can be billed to the district by consultants and other service providers.	District provided SCCOE with copies of Administrative Regulation & Board Policy - 300 series "Business & Non- Instructional Operations.	Did not find in Board Policy provided. Please advise BP Section # in binder to review or provide at next on-site visit.
CONTRACTED SERVICES: Recommendation to District			
1	Submit all contract extensions for board approval per policy 3312	Administrative Directive issued 3/1/10.	Please provide copy of Administrative Directive or Board Minutes.
2	Submit purchase orders for all consulting services contracts to the governing board for approval.	Administrative Directive issued 3/1/10.	Fully Compliant. Consulting POs being approved by Board as evident in Board Minutes on District website (reviewed 2/22/11) detailing Contractor, Period, Amount, & Purpose.
3	Submit to the board for approval all purchase order adjustments that do not other-wise meet the criteria of board policy 3314	Administrative Directive issued 3/1/10.	Fully Compliant. PO Change orders being approved by Board as evident in Board Minutes on District website

Table 1: Summary of FCMAT Recommendations, District Response and SCCOE Comments (continued) (source SCCOE)

Finding	FCMAT Recommendation	District Response	SCCOE Comments
CONTRACTED SERVICES: Recommendation to District (continued)			
4	Require all vendors to provide detailed invoices that include specific dates and hours per day of service, detailed by the professional providing the service.	Administrative Directive issued 3/1/10.	Please prepare reports from which we will choose a sample at the next on-site visit.
5	Refrain from utilizing contract provisions that provide for equal payment installments if they do not require itemized invoices with the same detail included in recommendation number four.		
6	Review the process utilized to hire the consultant whose payments were made under the purchase order of a different consultant and determine whether these services were authorized.	Administration to identify subject consultant and within the next 60 days investigate facts and circumstances surrounding the subject payments. Administration will report back to the Board on its findings and recommendations. Under discussion with the SCCOE.	No report on findings provided to SCCOE regarding District investigation of circumstances surrounding the vendor paid under purchase order of different consultant. No determination of whether services were authorized has been made (or not communicated with SCCOE). Please present determination of review at the next on-site visit.
BOND FUNDS - CONTRACTED SERVICES: Recommendations to District			
1	Require all vendors provide detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.	Administrative Directive issued 3/1/10.	In a sample of 14 contracts from 2007-2010 encumbered against Bond Funds, all but 2 consultants provided sufficient details on their invoices. Please provide evidence (Policies and Procedures, Administrative Directive, etc.) to show adherence. Substantially compliant. Please provide sample at the next on-site visit.
2	Consider a review of all invoices charged to Measure G and Measure E funds to determine that project costs were properly allocated to each bond program.	In 2008, the District commissioned a Management Review of the District's Measure G bond program by Total School Solutions. (TSS). The TSS Review report was issued in June 2008 and presented to the Board in open session. In addition, in compliance with state law, the Measure G and Measure E bond programs are audited annually by outside independent auditors. Administration recommends that this item be referred to the District Audit Committee for review and consideration by that Committee in light of scope of past and on-going audits, and that the Audit committee prepare a recommendation to be submitted to the Board within the next 60-90 days. Under discussion with SCCOE.	FCMAT's concern was not all invoices paid out of Bond Funds were allowable expenses. The District to provide copy of TSS Review Report though the District believes that the Review did not speak to this issue. If this is the case, we will need to review sample of prior invoices. Previous review did not reveal there was sufficient detail to determine whether the expenses were allowed out of Bond Funds. Did Annual Audit review Bond Funds (need to review)? Please provide a copy of the Audit Committee's review of Measure G and E Funds.

Table 1: Summary of FCMAT Recommendations, District Response and SCCOE Comments (continued) (source SCCOE)

Finding	FCMAT Recommendation	District Response	SCCOE Comments
BOND FUNDS - CONTRACTED SERVICES: Recommendations to District (continued)			
3	Fund from other sources any inappropriate expenditures identified as a result of the review per recommendation number two	See immediately preceding recommended response. Remedy to follow outcome of #2 above.	This is a remedy to the previous finding and will be important to know the impact to general fund.
SUPERINTENDENT'S VACATION: Recommendations to Board			
1	Adopt policy and regulations to require periodic vacations to be taken by all staff that accrue this leave, and implement procedures to periodically confirm vacations are taken.		
2	Adopt policy and regulations to develop a clear process for cash payouts of unused vacation. Include in this process a requirement that each payout is to be approved by the governing board in advance of the payout.	Administration recommends that staff be directed to prepare the referenced policies and regulations for submittal to the Board for a first reading within the next 60 days.	The SCCOE does not have a copy of the Policies and Procedures for these issues. Please provide copies of Contracts & Time Reporting of Senior Management at the next On-Site Review.
3	Establish board regulations regarding the basis for calculation of administrator daily rates to be utilized for vacation payout calculations.		
4	Review all board policy regulations and contracts for administrators and modify if necessary to establish clear language identifying required annual days of paid service, paid holidays, accrued vacation, sick leave and other leaves for members of management.	Administration to begin review of such items and to report its findings to the Board at a Regular Meeting within the next 60-90 days.	SCCOE believes that the language regarding these issues will be evident in the Contract of the Superintendent & other Senior Officials. Please provide copies of Contracts at the next On-Site Review.
5	Develop and implement forms to be utilized by the staff to request and process accrued vacation payouts.	Recommended forms to be developed and implemented by Staff. Administration will report its progress to the Board on this matter within the next 60 days.	Please provide copies of such forms via e-mail or at the next on-site Review

Source: SCCOE Education Code 1341.5(b) Extraordinary Report 02/23/2011

As of February progress was as noted in Table 1. Since then, the Board has reported progress per the minutes of their April 16, 2011 meeting. See: http://www.esuhd.org/documents/Administration/Audit_Committee/Audit_Committee_Mtg_2011_04_16/Board_Audit_Agenda_and_Supporting_Materials_04_16_2011.pdf

Conclusion

The Grand Jury found that the District has made some efforts to update procedures in line with the January 2010 FCMAT report recommendations as shown in Table 1. In addition, the Board of Trustees recently hired an internal auditor who is required to report directly to the Board. The District also rejuvenated their audit committee to oversee the day-to-day fiscal operations of the District. The SCCOE is and has been meeting quarterly since February 2010 with the District to monitor progress in implementing the FCMAT recommendations.

The Grand Jury concluded that the District has been slow to implement the recommendations made in the January 28, 2010 FCMAT report. In these times of severe budgetary deficits and cutbacks, it is disheartening to see that after SCCOE spent close to \$50,000 to commission an audit, the District has not completed the implementation of the FCMAT recommendations.

Findings and Recommendations

Finding 1

ESUHD has been slow to implement the recommendations of the January 28, 2010 FCMAT audit.

Recommendation 1

ESUHD needs to make the FCMAT audit a priority and implement its recommendations.

Finding 2

According to the FCMAT report, some employees fear reprisal when speaking out. This may prevent them from reporting incidents that could cost the district.

Recommendation 2

The District should establish a whistle-blower hotline process directed to the Internal Auditor.

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 9th day of June, 2011.

Helene I. Popenhager
Foreperson

Gerard Roney
Foreperson pro tem

Kathryn Janoff
Secretary