



# GAVILAN COLLEGE

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Dr. Kathleen A. Rose, Superintendent/President

January 24, 2022

The Honorable Theodore C. Zayner  
Superior Court of California, County of Santa Clara  
191 North First Street  
San José, CA 95113

(ENDORSED)  
**FILED**  
FEB 25 2022

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY Emily Huelbig DEPUTY

Re: *Response to Recommendations to the 2021 Santa Clara County Civil Grand Jury  
Final Report, Gavilan College Measure X Bond Program: Oversight Shortchanged*

Dear Judge Zayner:

Attached is the response of the Gavilan Joint Community College District to the above-referenced Report of the 2021 Santa Clara County Civil Grand Jury. This "Response to Recommendations" is submitted pursuant to the requirements of California Penal Code Sections 933(c), 933.05(a) and 933.05(b).

Sincerely,



Kathleen A. Rose, Ed.D., NCC  
Superintendent/President

Enclosure: District's Response to Recommendations



Board of Trustees: Jonathan Brusco  
Rachel Perez

Edwin Diaz  
Laura A. Perry, Esq.

Irma C. González  
Jeanie Wallace

Patricia Mondragón  
Kimberly Wu, Student Trustee

RESPONSE TO RECOMMENDATIONS OF GAVILAN JOINT COMMUNITY COLLEGE DISTRICT – 2021 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT ON GAVILAN COLLEGE MEASURE X BOND PROGRAM: OVERSIGHT SHORTCHANGED

FINDINGS AND RECOMMENDATIONS

**Finding 1: “The District did not fulfill its responsibility to provide technical support to the Oversight Committee relating to conflict of interest requirements. Although the bylaws reference the Oversight Committee’s ethical responsibilities, the requirements are written in legal terminology. The District did not adopt a Conflict of Interest Policy for the Oversight Committee as suggested by referencing Attachment A in the adopted bylaws.”**

Response to Finding 1: The District disagrees with Finding 1. The District provided an in-person training session to all of the current members of the Oversight Committee which included a discussion of the members’ ethical responsibilities. Section 5.3 of the Oversight Committee Bylaws, and the laws incorporated thereby; include all of the content which might be found in a Conflict of Interest Policy.

**Recommendation 1a: “The District should create a plan to provide a conflict of interest policy to Oversight Committee members and incorporate the subject matter into the Oversight Committee’s training and orientation. This recommendation should be implemented no later than April 30, 2022.”**

WILL BE IMPLEMENTED IN PART. The District agrees that as membership changes on the Oversight Committee periodic training sessions summarizing the roles and responsibilities of Oversight Committee members should be conducted. The District disagrees that there is a need for a conflict of interest policy, inasmuch as the Bylaws adequately describe the rules governing conflicts, and inasmuch as past and future training sessions have and will continue to provide guidance on conflicts of interest.

**Recommendation 1b: “The District should create a process for Oversight Committee members to evaluate and disclose conflicts of interests and incompatible activities. This recommendation should be implemented no later than April 30, 2022.”**

WILL NOT BE IMPLEMENTED. The District already has a process by which it screens applicants who desire to serve on the Oversight Committee which reveals whether the applicant is a District employee or has financial interests associated with the expenditure of bond funds.

**Finding 2: “Current Oversight Committee membership falls below the minimum required by law. Failing to maintain members in the required affiliation category can create crucial vacancies where vital constituencies’ voices may not be heard or adequately represented.”**

Response to Finding 2: The District disagrees with Finding 2. The Oversight Committee membership meets the legal requirements established by the Education Code. From time to time vacancies occur and the Bylaws direct that such vacancies seek to be filled within 90 days.

Inasmuch as the Oversight Committee meets quarterly, the District does not believe that designated groups' voices are not heard or are inadequately represented.

**Recommendation 2: "The Board of Trustees should appoint sufficient Oversight Committee members to meet or exceed the minimum number required by law. This recommendation should be implemented no later than April 30, 2022."**

WILL NOT BE IMPLEMENTED. Membership on the Oversight Committee currently satisfies the legal requirements set forth in the Education Code.

**Finding 3: "The District-approved Oversight Committee bylaws contain inconsistent and incomplete term limit provisions as specified in the Education Code. The District included a bylaw authorizing members to serve beyond the expiration of their third term while waiting for a replacement to be appointed. The District did not comply with the additional term limit provisions associated with the member serving in the student affiliation category. The student member may only serve six months after graduation with the specific approval of the Board of Trustees."**

Response to Finding 3: The District disagrees with Finding 3. The current Bylaws comply with the requirements of the Education Code in all respects. Temporary service beyond a member's third term does not constitute an inappropriate fourth term, but rather, serves the public purpose temporarily assuring that while a vacancy is being filled, there is a person present and participating in the deliberations of the Oversight Committee. Student members are appointed to a term, which they may or may not complete depending on their enrollment status. The most recent student member of the Oversight Committee had not served past her term limit or past her status as a student at Gavilan College.

**Recommendation 3a: "The District should develop a plan to update the Oversight Committee bylaws to rescope the term limit bylaw addressing replacement holdovers as well as incorporate the additional student term limit provisions outlined in the Education Code. This recommendation should be implemented by April 30, 2022."**

WILL BE IMPLEMENTED IN PART. Membership on the Oversight Committee is governed by the Education Code and the Bylaws implement the Education Code. The Bylaws currently satisfy all legal requirements. However, for clarification of the limits of service of a student member on the Oversight Committee, the District agrees that the application form for membership on the Committee can be amended to include a specific reference to Section 15282(a)(4) of the Education Code.

**Recommendation 3b: "The District should develop a plan to ensure that it abides by the term limit provisions required by law for its student affiliation category. The plan should also address the student's term limit provision on the Committee Member Term Chart provided by the District. This recommendation should be implemented by April 30, 2022."**

WILL BE IMPLEMENTED IN PART. The Bylaws properly describe the legal term limits on Oversight Committee membership, and the District has been in full compliance with those

requirements. The District does not need to develop a plan to assure continued compliance. The District agrees to update the Committee Membership Term Chart to clarify that once a student member of the Committee has no longer been a student at Gavilan College for six months, that the student will resign, and the remaining period of the student's term will be filled by such member's successor.

**Finding 4: "There are areas in which the Oversight Committee might be perceived as having its independence questioned or compromised in relation to the administrative and technical support it receives through the District's contractor."**

Response to Finding 4: The District disagrees with Finding 4. Since the Oversight Committee is a statutory committee (created by action of the State of California Legislature) "independent" means (i) members not having a conflict caused by being a District employee or vendor to the District and (ii) members being free to exercise members' responsibilities without interference by the elected Board which appointed them to the Oversight Committee. The independence of the Oversight Committee cannot be compromised by the form of administrative or technical support it receives from the District.

**Recommendation 4: "The District should identify and communicate to both the Oversight Committee and the public, the relationship the District's contractor has to the Oversight Committee regarding the Measure X program. The District should clarify the level of authority and independence the Oversight Committee has to request services from its contractor, AKG. This recommendation should be implemented by April 30, 2022."**

WILL NOT BE IMPLEMENTED. The Oversight Committee has no authority to request services from a District contractor. Such requests can only be made to the District who has the responsibility to determine if such services are required to assist the Oversight Committee perform its statutory functions. As appropriate, the District may choose to provide such additional services through a particular contractor, or provide them by some other means.

**Finding 5: "The "Measure X Bond Newsletter" has been dormant despite the District inviting members of the public to sign up for program updates. The newsletter service is identified in a contract agreement but has not been posted since the September 2019 issue as reflected on the Measure X website."**

Response to Finding 5: The District disagrees with Finding 5. The "Measure X Bond Newsletter" has not been dormant since September 2019, and in fact five additional newsletters have been issued between September 2019 and August 2020. The Newsletter Archive webpage had not been kept up-to-date to reflect the more recent issues. The Newsletter Archive webpage has been updated to include copies of all the Measure X Bond Newsletters.

**Recommendation 5: "The District should develop a plan to provide the necessary resources to revive the "Measure X Bond Newsletter". This recommendation should be implemented no later than April 30, 2022."**

WILL NOT BE IMPLEMENTED. The District presently commits the necessary resources to prepare and distribute the Measure X Bond Newsletter. The Newsletter will continue to be published as new developments regarding Measure X are approved by the Board of Trustees. The District will, however, implement a plan to better maintain the record of Newsletter distributions on the Newsletter Archive webpage.

**Finding 6: “The District does not provide Oversight Committee members with a clear, direct, or transparent way of receiving electronic communications from the public. There is a standing agenda item for this type of direct communication, but an effective accompanying tool does not exist for Oversight Committee members to receive and respond to this type of communication.”**

Response to Finding 6: The District disagrees with Finding 6. The Oversight Committee is subject to the public meeting requirements of the Brown Act. Communications from the public to the Oversight Committee and from the Oversight Committee to the public should occur at a properly noticed public meeting. Nonetheless, members of the public can communicate to the Oversight Committee by using the existing “Contact” link of the Measure X website. The “Contact” link is a clear and direct way for the Oversight Committee to receive electronic communications from the public. Notices of meetings of the Oversight Committee are provided in accordance with the requirements of the Brown Act. Violations of the Brown Act might likely occur in the event members the Oversight Committee had the ability to electronically respond to members of the public outside of the context of a properly noticed public meeting of the Oversight Committee.

**Recommendation 6: “The District should develop a plan to institute an electronic communication tool to contact the Oversight Committee directly. The District needs to provide an appropriate communication tool to foster public engagement, correspondence, and feedback. This recommendation should be implemented no later than April 30, 2022.”**

WILL NOT BE IMPLEMENTED. The District currently has a tool by which the Oversight Committee can be contacted by members of the public, described above. To avoid a violation of the Brown Act all communications and public engagement should occur at a properly noticed public meeting.

**Finding 7: “The District did not follow established norms and protocols for posting meeting notifications and announcements specifically associated with cancelled meetings. Additionally, the District has inhibited the public’s ability to access agendas and meeting materials because the link to the agenda is not clear and the multiple steps required to navigate to the meeting materials is unduly complicated.”**

Response to Finding 7: The District disagrees with Finding 7. Notices of all meetings of the Oversight Committee are provided in accordance with the requirements of the Brown Act.

**Recommendation 7a: “The District should create a plan to update meeting announcements published on the Measure X homepage to prominently identify the webpage links to access the meeting agenda. This recommendation should be implemented no later than April 30, 2022.”**

WILL BE IMPLEMENTED. The District agrees to post a link to the agenda on the Measure X homepage for additional ease of access.

**Recommendation 7b: “The District should review the structure and navigation to meeting agendas and create a plan that addresses the public’s need for efficient access to agendas and meeting materials. This recommendation should be implemented no later than April 30, 2022.”**

WILL NOT BE IMPLEMENTED. The District already utilizes BoardDocs, a standard agenda and meeting management tool, commonly used by K-14 educational institutions, that provides efficient access to agendas and meeting materials.

**Finding 8: “The orientation the District provides to the Oversight Committee does not adequately prepare members to effectively carry out their roles and responsibilities. The District provides a general overview using reference materials. More in-depth and specialized training is needed to ensure committee members are equipped to fulfill their oversight responsibilities.”**

Response to Finding 8: The District disagrees with Finding 8. The District has provided in-depth and specialized training regarding their role and responsibilities to all current members of the Oversight Committee, including a one-on-one training session for the member of the Oversight Committee who missed the orientation meeting when such group training was conducted. Training has been conducted by a knowledgeable attorney, expert in the field.

**Recommendation 8: “The District should provide detailed and targeted training to members of the Oversight Committee. A training plan should be developed with input from the Oversight Committee. This recommendation should be implemented no later than June 30, 2022.”**

WILL NOT BE IMPLEMENTED. The District current provides detailed and targeted training to members of the Oversight Committee. The District agrees that as new members join the Oversight Committee it will arrange for a knowledgeable attorney to provide follow-up trainings as to the roles and responsibilities of the Oversight Committee. Input from the Oversight Committee regarding topics for discussion during training sessions has been and will continue to be welcome.

**Finding 9: “The District did not provide the Oversight Committee with any information about initiatives to maximize bond revenues through the use of cost-saving measures such as joint-use facilities. As a result, the Oversight Committee was not able to communicate those initiatives to the public, which led to the mistaken impression that none were considered.”**

Response to Finding 9: Education Code Section 15278(b)(5) outlines examples of cost saving measures that the Oversight Committee might address. During the training session members of the Oversight Committee were informed of their duty to ask questions designed to inform them of such cost-saving measures. Because the State Constitution restricts the use of bond proceeds exclusively for “school facilities,” joint use facilities are very difficult arrangements. The District will, however, be more cognizant of informing the Oversight Committee of project delivery mechanisms which are designed to reduce construction costs.

**Recommendation 9: “The District should develop a plan to communicate the ways in which the District has identified or enacted cost-saving measures to the Oversight Committee. This recommendation should be implemented no later than April 30, 2022.”**

WILL NOT BE IMPLEMENTED. An independent plan is not required in order for the Oversight Committee to request relevant information regard cost-savings measures, if any, which have been implemented with respect to a particular bond funded project. The District, nonetheless, can identify such measures, if any, and bring them to the attention of the Oversight Committee.

**Finding 10: “The District did not provide the Oversight Committee with timely, certified final financial and performance audits to review. The District’s 10-month drawn-out process put the Oversight Committee in the position of issuing an annual report with a constitutionally mandated compliance statement using draft audits. Those draft audit reports remain on the Measure X website. The draft audits lack a date and auditor’s signature and therefore are not certified, despite final versions being provided to the Board of Trustees Budget and Audit Planning Committee.”**

Response to Finding 10: Due to the pandemic and other internal accounting concerns, the District’s comprehensive financial audit, as well as subsidiary financial and performance audits for 2020 were delayed. There is no constitutional imperative for the Oversight Committee to have received the bond financial and performance audits prior to the submission of their Annual Report. The District agrees that when the audits have been completed they should be signed, dated and posted on the Measure X website. The District further agrees that the bond audits should be provided to the Oversight Committee concurrently with being provided to the Board of Trustees,

**Recommendation 10a: “The District should provide the dated and certified 2020 Financial and Performance Audits to the Oversight Committee. The audits should also be posted to the Measure X website for public disclosure. This recommendation should be implemented no later than April 30, 2022.”**

WILL BE IMPLEMENTED.

**Recommendation 10b: “The District should create a plan with appropriate milestones to ensure the timely completion of annual, independent financial and performance audits. Milestones should include when audits are expected to be available for the Oversight Committee to receive and review, the District’s responses to the audits for Oversight Committee review, and when the final signed and dated audits are to be posted to the**

**Measure X website. This recommendation should be implemented no later than April 30, 2022.”**

WILL BE IMPLEMENTED.