



2011-2012 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

LUTHER BURBANK SCHOOL DISTRICT MISSES THE MARK IN ITS RESPONSE TO THE GRAND JURY

Issue statement

The Luther Burbank School District (LBSD or the District) was the subject of a 2010-2011 Civil Grand Jury (last year's Grand Jury) report entitled, *Burbank Revisited: A Faltering District Shows Little Improvement* (Report). Because the LBSD response (Response) to the Grand Jury contained statements that were critical of the Grand Jury and its investigatory process and report, the 2011-2012 Grand Jury (the current Grand Jury) revisited last year's Grand Jury's fact-finding in relation to the findings and recommendations and evaluated LBSD's Response criticizing that Report.

Background

Agencies that are the subject of Grand Jury reports are required by statute¹ to submit a formal written response. Grand Juries are responsible for reviewing agency responses. When an agency agrees with the Grand Jury's findings and/or recommendations and commits to taking action, the Grand Jury follows its progress in implementing change. When an agency disagrees with the findings and/or recommendations, the Grand Jury scrutinizes the agency's response for rationale and reasonableness. These follow-up functions by the Grand Jury are called continuity and broadly seek to ensure the work of prior Grand Juries is taken seriously and treated with rigor by the responding agencies.

On occasion, the Grand Jury receives letters from interested parties who respond personally and individually to a Grand Jury report. While these are not considered formal responses because they are not from the agency responsible for preparing the formal response, they are of interest to the Grand Jury. In response to the Report, the Grand Jury received a personal response from then-superintendent Mr. Richard Rodriguez, and a formal response from the LBSD.

¹ California Penal Code Section 933.05

Summary of the 2010- 2011 Grand Jury Report on LBSD²

Last year's Grand Jury received complaints from concerned citizens regarding the operation and administration of LBSD and its Board of Trustees (Board). The complaints covered a wide range of topics from financial matters to management and Board practices. The Grand Jury conducted 25 interviews, including those of staff and administrators of LBSD, current and former Board members, the Superintendent of the Santa Clara County Office of Education (SCCOE), and concerned members of the public. Two areas of concern included excessive authority given to a consultant and the intent to circumvent the Brown Act, summarized below.

Excessive Authority Granted to Consultant Under a Contract Containing Vague Scope of Work

The school principal/superintendent reports directly to the Board of Trustees. In the case of LBSD, however, the Board allowed a consultant, Mr. Rodriguez, authority to operate between the principal/superintendent and the Board. Mr. Rodriguez suggested that he supervise the principal/superintendent and act as the intermediary between her and the Board. His duties were not clearly specified in the contract, and he was reportedly influencing the Board and interfering with the duties of the principal/superintendent.

The Board has relied heavily on consultants to run the District. But in the case of Mr. Rodriguez, the Board did not merely rely on a consultant; it allowed him to direct the activities of the District. In doing so the Board undermined the principal/superintendent and failed to exercise its own independent judgment.

Mr. Rodriguez Misguided the Board about the Legal Requirement for Open Meetings

The Ralph M. Brown Act (Brown Act) requires that the deliberations and actions of the governing bodies of local agencies are open and public. The Brown Act prohibits action on items not placed on the agenda and severely restricts the type of actions such bodies can take in private session. Elected officials are prohibited from using virtually any means—whether “direct communication, personal intermediaries, or technological devices”—to deliberate or reach concurrence on matters outside the public forum. The Brown Act states that any person who is elected but who has not yet assumed the duties of office is bound by the Brown Act.³

² Excerpted from the 2010-2011 Grand Jury Report, *Burbank Revisited: A Faltering District Shows Little Improvement*.

³ See Appendix B for excerpts from the Brown Act. For more on the Brown Act, go to http://ag.ca.gov/publications/2003_Main_BrownAct.pdf

On November 7, 2010, following the 2010 LBSD Board election, but prior to the swearing in of newly elected Board members, Mr. Rodriguez, having no formal relationship with the Board at that time, sent a communication to the three newly elected members and one of the two existing board members. The communication informed the board member and members-elect that the days prior to the members-elect being sworn in were the only days that they could meet as a group. It also stated that after the members-elect were sworn in, Mr. Rodriguez would only be able to meet with the members two at a time to discuss school business. He further informed the member and members-elect that it was urgent that they meet as a group in advance of the December 7th swearing in. He went on to list several issues needing to be discussed with the member and members-elect during the proposed private meetings. He expressed his role as sharing this vital information with the members and members-elect to come to a consensus on Board business. Additionally, Mr. Rodriguez provided his proposed contract with the District stating his expectation that the Board would approve it on December 7.

2010-2011 Report Conclusions

Last year's Grand Jury concluded there was excessive authority granted Mr. Rodriguez in his role as consultant. The Grand Jury further concluded that Mr. Rodriguez, a former and future superintendent, clearly misguided the member and members-elect relative to their responsibilities under the Brown Act. The Report issued eight findings with associated recommendations. Of the eight findings, the LBSD response disagreed with all but one. Disagreement, on its face, is not an issue for the Grand Jury; however, LBSD's rationale for disagreement with two findings appeared to be based on false information. Further, the Response makes a serious allegation that last year's Grand Jury drew conclusions without gathering facts from the named parties.

Methodology

The current Grand Jury undertook to re-interview several key individuals to evaluate LBSD's response asserting that the prior Grand Jury's findings appeared to be based on false information.

In addition, the Grand Jury retrieved and reviewed documents from the archives of last year's Grand Jury's investigation into LBSD.

Discussion

LBSD Response to the Grand Jury Report

The Report on LBSD was issued on June 20, 2011. Pursuant to Penal Code Section 933.05, the District was required by law to prepare a response indicating that it either agreed with the Grand Jury's finding or disagreed wholly or partially with the finding, in which case the response was required to specify the portion of the finding that it disputed and explain the reasons for the disagreement.

On June 23, 2011, the Grand Jury received a personal response from Mr. Rodriguez, the consultant whose actions on behalf of the District were criticized in the Report. Mr. Rodriguez' response was prepared on LBSD letterhead, carrying his name as interim superintendent, a position he would hold until the first week in July 2011. Mr. Rodriguez provided a copy of his letter to the Mercury News prior to its receipt by the Grand Jury.

In September 2011, the current Grand Jury received a formal response from the LBSD Board of Trustees (Response). The content of LBSD's formal Response is very similar to the content of Mr. Rodriguez' letter. The full text of the Report and the LBSD Response is available online at the following weblink: http://www.scscourt.org/court_divisions/civil/cgj/grand_jury.shtml. Mr. Rodriguez' letter is included at Appendix A.

The following excerpts present the Report's Findings 1 and 7, statements from Mr. Rodriguez' Letter, and the LBSD Responses to these two findings:

Report Finding 1:

Finding 1 from the Report⁴ states:

Mr. Rodriguez was overly influential in LBSD governance as a consultant. His consultant contract was overly broad and placed inadequate limits on the scope of his duties. Despite his having only a consultant status, Mr. Rodriguez was permitted to exercise direct authority over staff and was given unlimited access to confidential records.

Mr. Rodriguez' letter dated June 23, 2011 states:

On June 20, 2011 a copy of your report was hand delivered to my office at Luther Burbank School District. I have reviewed the report and was rather surprised that you would publish such a report without confirming many of the details with me. It states in your report that the 2010-2011 Grand Jury conducted 25 interviews, however I was not interviewed in regards to conclusions made in your report.

The LBSD Response states:

The District feels the credibility of this Grand Jury report is compromised because some of the Findings express opinions rather than facts, and have needlessly defamed reputations of named parties – without even having taken testimony from the persons who are named.

⁴ 2010-2012 Grand Jury Report, *Burbank Revisited*, p. 12.

Report Finding 7

Finding 7 from the Report⁵ states:

Mr. Rodriguez misled a Board member and board members-elect by suggesting that they could meet and reach consensus on matters coming before the Board. His email dated November 7, 2010 proposed meeting with Board members as a group prior to their swearing in. The email uses language which indicates an effort to circumvent the Brown Act.

Mr. Rodriguez' letter dated June 23, 2011 states:

I just want to clarify once again that the board members elect on November 7, 2010 were not considered "elected officials" and were therefore not bound by the rules and regulations of the Brown Act. The votes were still being counted at that time and the certification of the November 2010 election did not happen until November 20, 2010.

The LBSD Response states:

The Brown Act requirements apply to Board members Because the conversation referred to in the e-mail evidence submitted to the Grand Jury took place between private individuals before any election was certified there were no board-members elect, therefore no violation of the Brown Act.

It is not unusual for an agency to disagree with the Grand Jury's findings. However, it is noteworthy when a response asserts that the Grand Jury had not performed its work with due diligence. Such was the case in the LBSD Response. In particular, LBSD's Response to Report Finding 1 that Mr. Rodriguez was overly influential asserts the Grand Jury drew its conclusions without interviewing named parties. LBSD Response to Report Finding 1 was a particularly concerning assertion given that Penal Code Section 933.05(e) requires that "the grand jury shall meet with the subject of that investigation regarding the investigation" unless excused by the court.

LBSD Response to Report Finding 7 (that Mr. Rodriguez misled board members and board members-elect) asserts a position, championed in Mr. Rodriguez' letter, that an elected official's election results must be "certified" before the official is required to conform his or her conduct to the Brown Act.

⁵ Ibid, p. 14.

To understand how the LBSD Response was prepared and why its assertions were directly counter to the fact-finding of last year's Grand Jury, the Grand Jury interviewed key individuals knowledgeable about the sources and information used to prepare the District's Response.

LBSD Process for Responding to the Grand Jury Report

The letter from Mr. Rodriguez and the content of LBSD's formal response to the Report are similar enough that the Grand Jury could conclude that Mr. Rodriguez either personally assisted in preparing the Response or he and/or his letter was the basis of information used in the Response.

This Grand Jury's investigation confirmed that Mr. Rodriguez was the source for LBSD's Response to Findings 1 and 7.

Officials with the District agreed that Mr. Rodriguez was upset about the Grand Jury Report and, in hindsight, he lacked the objectivity to be a source in preparing the Response and it was improper to rely on him.

Mr. Rodriguez' personal interest in the Report that was critical of him is good reason for the District to have specifically avoided his influence in their Response. His involvement—in any capacity—in preparing the formal LBSD Response was clearly a conflict of interest. Nonetheless, LBSD's Response relied on discussions with Mr. Rodriguez and on his personal response without any independent fact-finding.

Given that the Report was critical of Mr. Rodriguez, his participation in the LBSD's formal Response—whether directly or indirectly—was improper.

LBSD Response to Finding Number One

By statute, the District was required to agree or disagree with the Grand Jury's finding that its consultant was overly influential. The District Response was that the Grand Jury was expressing opinion, not fact, because it failed to interview the necessary parties.

The Grand Jury reviewed archived documents and indisputably confirmed that the parties necessary to support Report Finding 1 were interviewed. After being shown relevant documents, the District conceded that the prior Grand Jury had done due diligence in its fact-finding and, thus, conceded that the Response was an erroneous assertion on behalf of the District. In reaching this conclusion, the District also conceded that it relied on the same official that last year's Grand Jury found was overly influential. As discussed above, and to the District's credit, it also acknowledged that it was an error to rely on the subject of the finding.

LBSD Response to Finding Number Seven

LBSD's Response to Finding 7 was based on Mr. Rodriguez' June 23, 2011 letter and no other source. District officials believed Mr. Rodriguez was very knowledgeable about the Brown Act and took no other steps to investigate the Grand Jury's findings and recommendations at issue. Both the Letter and the Response assert the same notion that until an election is certified, the Brown Act does not apply to members-elect.

Based on this Grand Jury's investigation, Mr. Rodriguez advised the three members-elect and elected member about Government Code Section 54952.1 (requiring that elected officials conform their conduct to the Brown Act) almost immediately after they were elected. That section provides:

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

Contrary to Mr. Rodriguez' and the LBSD Response's assertion, the above states the responsibility to conform to the Brown Act begins upon election and expects elected officials to act as though they have assumed office. Mr. Rodriguez' interpretation – adopted by LBSD in its Response – that an election must be certified before an elected official must conform their conduct to the requirements of the Brown Act is not contained in the text of the statute. This interpretation, offered by Mr. Rodriguez' letter, is certainly counterintuitive to the spirit of the Brown Act encouraging openness in government. In fact, a parsing of the statute that allows newly elected officials to disregard Section 54952.1 until the results are certified would only encourage the sort of closed-door meetings at the “pre-certification stage” to reach concurrence that the statute was trying to prevent in the first place. If the legislature had intended that the statute did not apply before the election results were certified, presumably that carve out would have been expressly stated in the statute. Notably, in the present case the election results were not close such that the newly elected official would be anxiously awaiting certification.

Mr. Rodriguez' communication with the Board member and members-elect stated that they could meet as a quorum to discuss District business before the members were sworn in on December 7. The communication expressed urgency in trying to meet the members at least a couple of times before the December 7th meeting. December 7 was the date the members would be sworn in, not the date the election results would be certified. Thus, the District's view that the Brown Act does not apply is one that appears to be an after-the-fact interpretation that was generated by Mr. Rodriguez for the purposes of his own defense against the Grand Jury Report's finding. The District should have consulted with legal counsel prior to adopting Mr. Rodriguez' interpretation of Brown Act as the official Response.

The District's Response also asserts that the communication at issue in the prior Grand Jury's report took place between private individuals, thereby suggesting that the Brown Act was not implicated. The Brown Act applies to the Board and in this context requires that the member and members-elect conform their conduct to the Brown Act's requirements. The communication with the member and members-elect requested that these four members (a quorum) set up a nonpublic meeting to discuss District business in order to reach consensus on matters that would be considered by the Board at the first meeting. While it may be a fact that at the time of the communication Mr. Rodriguez was between jobs, given his relationship with the District as a former Superintendent, consultant, future consultant and Superintendent again, it is not clear to the Grand Jury that he was a mere private citizen for many reasons. In particular, the communication to the member and members-elect reveals that Mr. Rodriguez felt his role was to:

- Provide advice on his interpretation on when the Brown Act applied, explaining his view that there is a small window to conduct business as a quorum before the swearing in and, thereafter, he could only meet with two members at a time.
- Express his desire to give the members and members-elect professional advice and recommendations.
- Explain the process for board meeting packets and the necessity to go over the contents of the packets, as well as specific subjects identified by Mr. Rodriguez, in advance of the public meeting.
- Mentioning that the information is being provided so the member and members-elect could come to a consensus on the subjects.
- Providing a copy of his proposed contract with the District indicating his expectation that it would be approved at the first meeting.

The Grand Jury believes that a private citizen would not have the knowledge, status, or ability to advise/instruct the members and members-elect about how District business should be conducted. The District's position that Mr. Rodriguez was a private citizen is not supported by their conduct in relying on him for their response.

Likewise, Mr. Rodriguez' letter to the former Grand Jury, written on LBSD letterhead, also cannot reasonably be considered the comments or position of a private individual. The District obviously considered it to be official enough to draw heavily from it in preparing the LBSD Response. It is reasonable to view the letter as a biased attempt to clear his name. In spite of this clear conflict of interest, the District demonstrated poor judgment in essentially lifting text and concepts directly from his letter in preparing the LBSD Response. The District also failed to seek legal counsel in confirming Mr. Rodriguez' Brown Act interpretation. Ultimately, whether Mr. Rodriguez was a private citizen at the time he communicated with the member and members-elect is irrelevant to the issue of the Brown Act. It is the Board's responsibility to comply with the Brown Act, and whether the Board contravenes the Brown Act at the urging of a private citizen, or one of their consultants, is immaterial.

Conclusions

Last year's Grand Jury report titled *Burbank Revisited: A Faltering District Shows Little Improvement*, was critical of LBSD's reliance on a consultant who had so much influence over the Board and LBSD staff that they may have yielded their responsibilities in relying on him.

Based on reviewing last year's case file and in conducting further investigation, the current Grand Jury concludes that the Board did rely heavily on Mr. Rodriguez for information and guidance, a fact that is further supported by the revelation that he was the source of the Response. It is clear that Mr. Rodriguez misinformed LBSD relating to its Response. His personal interest in the Report that was critical of him is good reason for LBSD to specifically eschew his influence in their Response. His involvement in preparing the formal LBSD Response was clearly a conflict of interest that resulted in a Rodriguez-biased Response that was not truthful or accurate with respect to two key findings. Assertions that last year's Grand Jury Report was compromised with opinion rather than fact were unfounded.

The current Grand Jury concluded that Mr. Rodriguez invented an after-the-fact excuse that would enable newly elected officials to circumvent the Brown Act. The fact that LBSD offered this excuse in its Response raised more questions than were answered about the District's knowledge and concern that it conform its conduct to the Brown Act's fundamental ethic of transparency. A Response simply stating a mistake had been made and a commitment to the Brown Act in the future would have been more acceptable.

The present Grand Jury concludes that last year's Grand Jury report titled *Burbank Revisited: A Faltering District Shows Little Improvement* was properly researched and sound in its findings.

Findings and Recommendations

Finding 1

LBSD's Response was based on information from Mr. Rodriguez, a person with a bias. His information misled or misinformed LBSD, resulting in a Response that was not objective or accurate with respect to Report Findings 1 and 7.

Recommendation 1A

LBSD should prepare a revised response to Findings and Recommendations 1 and 7 that corrects misstatements and is based on information obtained from objective sources.

Recommendation 1B

Future LBSD responses to the Grand Jury should be thoroughly researched, written and verified by knowledgeable, objective persons.



LUTHER BURBANK SCHOOL DISTRICT

Established in 1906

*Richard Rodriguez
Interim Superintendent*

June 23, 2011

Helene I. Popenhager, Foreperson
Santa Clara County Civil Grand Jury
191 North First Street
San Jose, CA. 95113

Dear Ms. Popenhager and Members of the Grand Jury,

On June 20, 2011 a copy of your report was hand delivered to my office at Luther Burbank School District. I have reviewed the report and was rather surprised that you would publish such a report without confirming many of the details with me. It states in your report that the 2010-2011 Grand Jury conducted 25 interviews, however I was not interviewed in regards to conclusions you made in your report. I find that to be very unprofessional work on your part as the Foreperson conducting the investigation.

You state in your report on page 2 that the new board showed incompetence because they granted me "excessive supervisory authority while working as an unpaid volunteer." Had you bothered to do your homework you would have found that under no circumstances was I ever granted supervisory authority over anyone as a volunteer, let alone "excessive supervisory authority."

On the same page and in the same paragraph you accuse me of circumventing the Brown Act. I would expect a report coming from the Grand Jury would be one based on fact rather than opinion. I am very well versed on the Brown Act and at no time did I try to circumvent anything. Again, had you bothered to do a thorough job of investigation, you would have interviewed me and I could have explained my side of things. When I was encouraging the newly elected board members to meet with me, I was perfectly within my right to do so and I was in no way in violation of the Brown Act. At that time, the election had not been certified, therefore, the board members were officially and legally not "board members elect" and therefore not bound by the rules and regulations of the Brown Act.

Board of Trustees

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Appendix A: continued

In your investigation I find it rather sloppy work that you did not even take the time to find out the date of when the November 2nd election was certified. The November 2, 2010 election was certified on November 30, 2010. Looking at an email sent by me that you included in your report under Appendix B1 you will see that that email was sent on November 7, 2010 weeks before the certification of the November 2nd 2010 election. Not only that, but votes were still being counted and no one had been officially or legally declared the winners. Therefore, no efforts were made to violate the Brown Act.

The fact of the matter is that in my email communication to the board candidates, I specifically state that I intend to follow the Brown Act and even give the board candidates a copy of the Brown Act. By the way, there is a legal clause at the end of my email that says, *"This email contains confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message. Any confidentiality or privilege is not waived or lost if this e-mail has been sent to you by mistake."* As far as I am concerned you violated this legal clause by reviewing the email, using the email, distributing the email and disclosing the email to others. I am currently consulting my attorney for advice on this issue.

Also, on page 2 you insinuate that I have a "history of mismanagement as evidenced by a 119-point audit." For your information I was the initiator of this audit and it was called by me as I suspected that my business manager was mismanaging the business department and I no longer had confidence in her work. The 119-point audit you make reference to clearly substantiated my suspicions regarding the business department. You say on page 9 of your report, "Mr. Rodriguez was Superintendent during the period of the audit and was responsible for many of the district's actions, policies and procedures that led to the 119 findings..." To some extent this may be true, but for you to use this against me and say I have a history of mismanagement is totally unfair. I have many successes with the district that are a matter of public record yet you fail to look at any of that. This makes your report biased. If I have an employee that abuses a child, am I at fault because I am the superintendent? If I didn't do anything about it, then yes, but if I handled the situation professionally then of course I am not responsible for other employees' inability to do their job. The same holds true for the person who is truly responsible for the 119 issues that came out of the audit, the business manager and I was in the process of terminating this employee when the old board (Perez, Diaz, Carrasco and Ortiz) stopped me by buying out my contract.

Again, on page 2 under the heading of 2008 of your report you state, "The buyout of his contract was from January 2009 through May 2010 and totaled \$202, 218." This information is totally inaccurate. The buyout of my contract was from November 2008 through May 2010. There was an eighteen-month buyout clause

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in my Superintendent Employment Agreement. I was also paid for health benefits and unused vacation time, all, which totaled much more than \$202, 218.

On page 3 under the heading of 2009 (June 2009) you state: "Ms. M. Maldonado resigned from her position as Principal of Burbank School. The Superintendent and Principal jobs were consolidated into one person." This statement is completely inaccurate. The old board (Perez, Diaz, Carrasco and Ortiz) created the position of Superintendent/ Principal on or about October of 2009. Marvelyn Maldonado, a very successful and well-liked principal, was forced out of her job by the creation of this position and she ended up resigning and taking a principal position in a neighboring Bay Area school district.

Again on page 3 under the heading of 2010 (June 2010) you state "Dr. Elizondo's contract was terminated." This is inaccurate information. The new board terminated Dr. Elizondo's contract with Luther Burbank School District on January 11, 2011. This serves as another example regarding the accuracy of your report. It's riddled with errors.

On page 3 under the heading 2011 the second bullet, January 2011, states, "A Board member resigned. A new Board member was appointed, which shifted the board's political balance in favor of Mr. Rodriguez." This is an inaccurate assumption because I had the political favor of the majority of the board even before Mrs. Diaz resigned. In fact, that is why Mrs. Diaz resigned. You need to research situations much better before you put this kind of information out to the public.

On page 3, the last paragraph, you do not make it clear that it was the old board (Perez, Carrasco, Ortiz and Diaz) who's "lack of management oversight and governance has resulted in significant unnecessary expenditures" totaling "in excess of \$900, 000 in less than three years." The only expenditure you can attribute to me and/or our new school board is the hiring of a principal for the upcoming 2011-2012 school year, which is practically a no cost item to the district as the former Learning Director position was eliminated by the new board in order to hire a school principal.

On page 4, the first paragraph you write, "In addition to the \$120, 000 administrative staff employee settlement, the Board agreed to additional settlement conditions that included a \$25/month travel allowance, a 2.5% addition in salary for bilingual stipend, 30 days vacation and 18 months added to the seniority calculation." My executive administrative assistant was wrongfully terminated by the old board (Perez, Carrasco, Ortiz and Diaz). When she returned to her original position via a lawsuit and settlement with the District she was reinstated with the above mentioned benefits, which were her employment entitlements due to her via her original contract with the District. She was given 18 months of seniority credit as part of the wrongdoing that was done to her by the inept old board (Perez, Carrasco, Ortiz and Diaz).

Appendix A: continued

In the last paragraph on page 4 you report, "Mr. Rodriguez is now being paid a salary commensurate with the position of Principal/Superintendent while only assuming the duties of a Superintendent and hiring a full-time Principal for an additional \$121, 176 per year." You should be embarrassed for this type of reporting, as this is a completely false statement. My title as given by the new board that hired me is Interim Superintendent. My roles and responsibilities are exactly those of the former Principal/Superintendent, Becki Cohn-Vargas. I don't know where you got your information from, but you need to do a better job at researching these things otherwise you become a useless member of the Civil Grand Jury. Also, The full-time Principal that you refer to above is a position for the 2011-2012 school year and she doesn't even start working for Luther Burbank until August of 2011, long after I will be gone. Your report is beginning to look like sensationalized journalism. In your report you make it sound as though I hired this person to relieve me of my current duties as Principal/Superintendent. Shame on you.

In the first paragraph on page 5 you state "...there were allegations of defacement of lawn signs for candidates known to oppose Mr. Rodriguez, and pro-Rodriguez candidates' election materials being placed inside the voting booths." Then you try to cover your bases by saying, "The Grand Jury is neither accusing, nor implying that Mr. Rodriguez was involved in any of these allegations." Why even put this garbage in your supposedly professional report then? These allegations couldn't be further from the truth. In fact, I have witnesses who will testify that the opposite was done. Supporters of the old board (Perez, Carrasco, Ortiz and Diaz) were taking our signs down and destroying them. I am very familiar with the rules and regulations regarding campaigning as I was a school board member in the Gilroy Unified School District for twelve (12) years and I am a very professional person, so I can assure you we approached the November 2010 election in more than ethical manner. It sounds like you interviewed some individuals with sour grapes because we won.

Again on page 5 paragraph two you refer to the resignation of Blanca Diaz, stating that the appointment resulted in a pro-Rodriguez Board majority. Mrs. Diaz resigned because the new Board entered into a contract with me. Not wanting to face me and be confronted on the many injustices she participated in as a board member she chose to quit. The appointment did not result in a Pro-Rodriguez Board majority, as there was already a Pro-Rodriguez Board majority even before Mrs. Diaz resigned.

The third paragraph on page 5 states, "The Grand Jury concluded that Mr. Rodriguez engaged in what appears to be a deliberate attempt to stack the Board in his favor by supporting specific candidates, then volunteering as an unpaid consultant, in order to ultimately facilitate his return to authority to his current position as the paid Interim Superintendent." As a private citizen, at the time, I had every right to participate in the democratic process of elections. Obviously I

Appendix A: continued

would only support candidates who demonstrated the same ideals, values and political agenda. Where you jump to conclusions is in saying that I was facilitating a return to authority. I was already retired at the time of the November 2010 election. I had no desire to return to full time work. I did, however, have a strong desire to remedy the injustices that were done to friends and colleagues of mine who were once my staff. At the hands of the old board (Perez, Carrasco, Ortiz and Diaz) I had friends and colleagues who had their jobs eliminated, hours cut in half, forced out of the district, or reassigned to positions outside of their scope of expertise. As an example, Marvelyn Maldonado, former principal of Luther Burbank School, was forced out of her position at no fault of her own. She was a beloved principal with excellent administrative skills and we lost her at the hands of an inept board. Jan Kaay, my director of instructional services, was demoted and placed back into the classroom, again at the hands of an inept school board. Diana Benavides, our bilingual Spanish-speaking, school and family counselor had her position cut from full time to two days a week, and our school clerk and school secretary both had their hours cut in half. I made a promise to myself that I would do everything I could to undo these injustices, and I did, by voting out the old board (Perez, Carrasco, and Ortiz) and electing like minded people to manage the affairs of the district. I should not be criticized for being successful. All school board members need to know that they are accountable to the public. The old board members (Perez, Carrasco, and Ortiz) felt that they were untouchable and accountable to no one. I'm proud to have proved them wrong. You should be thanking me, rather than trying to stir up gossip and reporting that I mismanaged my district. The only reason I am here today as the interim superintendent is because the new board, after three months of trying, could not allow the former superintendent to continue "fumbling" through her contracted responsibilities. If you had taken time to interview the current employees and parents since my return you would have heard about the remarkable change for the better at Luther Burbank School District. I invite you to come and see for yourselves.

The last sentence on page 5 says, "Mr. Rodriguez was permitted to interfere in District affairs." Obviously this statement came from former superintendent Becki Cohn-Vargas, who at this time was running scared for her job, as she rightfully should have. I never interfered in anything that the governing board did not ask me to work on for them. They had no trust in Cohn-Vargas at the time and relied on me to carry out certain very specific duties for them, which is their prerogative as a governing board.

Page 6 states that I "was constantly on campus." I was only on campus at the request of the board to work on very specific confidential assignments. I have records of those days when I was on campus, and had you bothered to talk to me I could have shown this information to you. The accusation of being constantly on campus prior to my appointment as interim superintendent is clearly false and obviously reported to you by Cohn-Vargas.

Appendix A: continued

On page 6 I just want to clarify once again that the board members elect on November 7, 2010 were not considered "elected officials" and were therefore not bound by the rules and regulations of the Brown Act. The votes were still being counted at that time and the certification of the November 2010 election did not happen until November 30, 2010. No Brown Act violation occurred as your report seems to insinuate. As the new board members told you themselves, no meeting ever took place. Your report appears to me to be filled with speculation rather than facts.

The last sentence on page seven of the report states, "closed session discussion of the Ruiz v. LBSD matter." For your information, I was not involved in any discussions, closed sessions, or action related to the Ruiz v. LBSD matter. The new board specifically did not want me involved in this matter, as Ms. Ruiz was my former executive administrative assistant.

In the second paragraph on page 8, the report states "The minutes for the meetings reflect that actions were taken on these matters consistent with the recommendations that Mr. Rodriguez made to the member and members elect in his November 7 email." For the third time, these were not "members elect" as the election results declaring the winners of the election did not occur until November 30, 2010. So to suggest a violation of the Brown Act is a stretch on your part. In this same paragraph you go on to say, "Further, Mr. Rodriguez' claim that he can meet with Board members two at a time after the members elect take office could constitute a serial meeting, which is still precluded by the Brown Act." As an experienced Superintendent I am very well versed on the Brown Act and discussing district business with two board members is perfectly legal as long as there is no discussion regarding voting or how board members will vote. Being that none of that took place there is no violation of the Brown Act, just your insinuation that there was. The Civil Grand Jury should not deal with insinuation but only with facts.

On page 8 in paragraph four you write, "In response to citizen complaints, in 2009, the Santa Clara County Office of Education (SCCOE) commissioned a fiscal performance audit of LBSD." This statement is completely false and another example of how your report is full of errors. This audit was commissioned by me in January of 2008, when I placed a called to then interim County Superintendent Joe Fimiani asking him for help auditing our financial records going back three years, as I was having many difficulties with my business manager at the time. We mutually agreed to have this audit done and in the end I was cleared of any wrongdoing or outlandish accusations made of me by this disgruntled employee.

Looking at the second paragraph on page 9 you state, "The outgoing superintendent was being paid a doctoral stipend. Mr. Rodriguez does not have a doctorate degree." You are correct, I do not have a doctorate degree, however, contrary to your report I am not being paid for having a doctorate. That additional

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pay was deducted from the rate of pay of the former superintendent to come to an appropriate salary for me. In regards to an expense allowance and being reimbursed for expenses this refers to expenses requiring receipts to be reimbursed on and expenses that are common to the position and do not require the submission of receipts. This was the policy of the old board with both previous superintendents Elizondo and Cohn-Vargas, so as Interim Superintendent, in calculating my salary I was entitled to this. When I was Superintendent the prior eight years, unlike Elizondo and Cohn-Vargas, I did not have this "perk" as part of my salary package negotiated with the board.

In the last paragraph you say, "Mr. Rodriguez was given carte blanche access to personal records during his capacity as a volunteer consultant." The fact of the matter is that I was given very specific instructions by the board to research a handful of employees as the board was going to be making personnel decisions. I consulted with the board's attorney regarding my access to these confidential records and he informed me that, as a consultant working for the board, I had every legal right to access those records. I did not go into any files that were not part of my assigned task by the board. Also, the files are under lock and key and I had to request from a district administrator access to those files. Also, my work on those files was done in complete view of the Superintendent's Executive Administrative Assistant who is ultimately responsible for all district employee personnel records.

On page 10 you make reference in paragraph two stating, "There was no Board policy in this regard and the Board President, as an equal to other elected members, cannot and should not be the gatekeeper regarding whether other Board Members or the Superintendent can obtain legal advice." Obviously you are not familiar with the procedures of a full functioning school board. School board members are not only guided by board policies but also by board protocols. It has been a long-standing board protocol that access to the district's attorney would be funneled through the board president and superintendent. This is common practice for most school boards and a recommendation by the California School Board Association as a cost savings measure for school districts. At \$300 per hour, it is not economically feasible for board members to be calling the district's attorney at will, especially inexperienced board members whose questions may easily be answered by fellow board members, CSBA, or the superintendent at no cost to the district. As far as the Superintendent being restricted from calling the attorney at will, Cohn-Vargas was given a directive by the board based on her abuse of the system and unnecessarily generating large legal bills for the district.

In the same paragraph you say, "Further, some Board members accepted coaching from Mr. Rodriguez who misled them regarding their responsibilities for the Brown Act." This again is a matter of opinion and not based on fact. I am well versed on the Brown Act and actually, since my retirement, have been asked by CSBA to do trainings for them on the Brown Act. As I mentioned before, not only have I been a Superintendent for eight years, I have served as a school board

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member for twelve years.

Lastly, on page 12 in the first paragraph you state, "Although Mr. Rodriguez was not charged or accused of any personal wrongdoing, under his supervision as superintendent LBSD was mismanaged according to the 2009 final audit report, and he should not have been rehired by the district." Just to correct you again, it was not a 2009 final audit report, it was 2008. More important than that for you to make a statement that LBSD was mismanaged based on one report is absolutely disrespectful of the outstanding work I did as Superintendent of Luther Burbank School District.

Under my leadership I brought LBSD from being an underperforming school district to one of distinction having won many awards during my years as Superintendent. We have won the CSBA Golden Bell Award, the Glenn Hoffman Award, and the San Jose Excellence in Education Award. We became a Santa Clara County model school for our ability to gain extraordinary academic results with a high population of English learners. Our API scores jumped several hundred points during my administration as Superintendent. The school district facilities improved 100% with the main school building being remodeled in 2004 and a new twelve-classroom building and cafeteria/gymnasium built in 2008. I was responsible for securing the \$12 million for this project. Under my leadership attendance went up, referrals and suspensions went down, and academic achievement soared. These are just a few of the reasons why the new board felt more than comfortable hiring me back as interim superintendent.

Since my return staff moral has improved, board and staff relationships have improved and parent satisfaction has improved. You are welcome to visit and interview my staff to validate this statement. During my short time back at Luther Burbank, all litigation with the district has been resolved. Lupe Ruiz, the wrongfully terminated Executive Administrative Assistant has returned full time to work. Dominga Ramirez, the school secretary and Carlos Casas, the school clerk have regained their full time hours. Diana Benavides, the family/school counselor has been hired back full time. The former principal, Marvelyn Maldonado, has been rehired as principal for the upcoming school year. And Jan Kaay, Director of Instructional Services, who was demoted to a teaching position by the old board (Perez, Carrasco, Diaz and Ortiz), has been hired as the new Superintendent of LBSD beginning July 11, 2011. Contract negotiations with the teachers' union have been successfully and amicably settled ending a two-year battle with the old board (Perez, Carrasco, Diaz and Ortiz), regarding health and welfare benefits. Class sized reduction has been reinstated in the district and seven new teachers have been hired for the 2011-2012 school year. If you call this mismanaging LBSD, then I guess I would have to agree with your statement in the report that I mismanaged LBSD.

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Sincerely,

A handwritten signature in cursive script, appearing to read "Richard Rodriguez".

Richard Rodriguez, Interim Superintendent & Former Superintendent
Luther Burbank School District

Cc: Gerard Roney
Kathryn Janoff
Members of the Board, Luther Burbank School District
Jan Kaay, In-coming Superintendent, Luther Burbank School District
Dr. Charles Weis, Ph.D., Santa Clara County Superintendent

APPENDIX B: BROWN ACT (selected sections)

54952.1. Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

54952.2. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

54952.2. (b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

For more information on the Brown Act see:

http://ag.ca.gov/publications/2003_Main_BrownAct.pdf

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 17th day of May, 2012.

Kathryn G. Janoff
Foreperson

Alfred P. Bicho
Foreperson pro tem

James T. Messano
Secretary