



LUTHER BURBANK SCHOOL DISTRICT

Established in 1906

Jan Kaay
Superintendent

FILED

SEP 30 2011

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY D. ALDYCKI

Luther Burbank School District

Response to the June 20, 2011 Grand Jury Findings and Recommendations

Finding 1

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.

Recommendation 1a

The Board should limit consultant contracts to specific purposes and specific time frames.

Recommendation 1b

The Board should ensure that consultants have no direct authority over staff.

Recommendation 1c

The Board should ensure that consultants have no access to confidential records, except for matters within the specific and limited scope and purpose of their contract, and in such cases only under supervision of LBSD staff.

The district disagrees wholly with Finding 1. However, the district finds that all three recommendations of Finding 1 are generally good practice, and will take steps to incorporate these into policies and procedures related to all consultants as the need for consultants arises.

We do however, note that “overly influential”, “overly broad”, and “inadequate” are subjective terms that we feel do not apply to this particular situation. At the time the consultant contract under discussion was written, the members of the Board of Trustees had, with reason, lost all confidence in the administrative staff of Luther Burbank. The Board of Trustees has the authority to word contracts (within legal parameters) the way they choose, for the purpose they are intending.

In addition to the bias expressed in the decidedly judgmental nature of the wording of Finding 1, the district objects to the use of a personal name in an internet released public document. Page 4 of the Grand Jury Report provides information about exorbitant consultant fees of \$168489, yet that individual, properly, was not named in the Findings.

Board of Trustees

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We believe that the intent of the Grand Jury is to report actual wrongdoings and appreciate the efforts to support the Luther Burbank community. However, please know that the district feels that 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 all persons who are named.

Finding 2

There is minimal security or control over financial, personnel, and other sensitive District documents and records. There are inadequate systems in place to track the movement of these records.

Recommendation 2

The Board should establish a secure facility, onsite or otherwise, to store vital LBSD records, and establish a strict protocol, such as formal logs showing document removal and return with reason for request, for access to and removal of confidential documents and records.

The district agrees with Finding 2. The district will review current practice, and update and communicate protocol for storing and working with confidential documents and records. The estimated date for implementation is October/November 2011.

Finding 3

The LBSD has a record of poor management predating the 2007-2008 Grand Jury report. This situation continues to exist with minimal improvement.

Recommendation 3a

The LBSD Board should resolve to consolidate with another school district and take the requisite steps to begin that process. (See the 2009-2010 Grand Jury report entitled "Achieving School District Efficiency Through Consolidation").

Recommendation 3b

Alternatively, the LBSD Board should work with SCCOE to consolidate its business functions with the other one-school school districts in the county through a Joint Powers Authority.

The district disagrees wholly with Finding 3. The statement of "record of poor management *predating* the 2007-2008 Grand Jury report" is unsubstantiated, and clearly beyond the scope of this 2011 Grand Jury investigation. Although we appreciate the time and effort of the individuals of the Grand Jury, the district is not looking to consolidate at this time. The recommendation will not be implemented because it is not warranted or reasonable. There is little research that indicates increased effectiveness or efficiency in providing a service when the size of an organization is increased. Indeed, the Charter movement advocating for small, individualized education is gaining credence in California.

The concept and execution of a JPA for Business Services could be an extremely effective use of resources during a time of shrinking funding in California.

Finding 4

Members of the LBSD Board continue to receive inadequate training to properly fulfill their roles as board members.

Recommendation 4a

The District should obtain educational/training programs for the existing and all new Board members. It should be a requirement that new Board members attend this program after they are elected and before taking office.

Recommendation 4b

The District should obtain continuing education on best practices for school governance for all Board members throughout their tenure in office.

Recommendation 4c

The LBSD Board should attend board meetings at other districts to learn best practices for operating as a board.

The district disagrees wholly with Finding 4. It should also be noted that “Board of Trustees” named in this Grand Jury report were/are two different groups of individuals. Documentation of *continued* inadequate training for either group does not exist. Because the decisions of a Board of Trustees are not agreeable to others, does not mean that they are uninformed. In recent years, members of the Board of Trustees of the Luther Burbank School District attended the CSBA Master’s in Governance Program in 2008-2010, as well as the CSBA annual conferences along with their Superintendent. They attended a variety of workshops at the Santa Clara County Office of Education and study sessions with the Superintendent.

In 2010-2011 members of the current board also attended the CSBA conference. They participated in a workshop on the Brown Act provided by the County Superintendent of Schools, learned about Form 700 disclosure rules and about conflict of interest issues. Upcoming trainings include a study session in Governance 9000 Policies, and professional development from CSBA (online, print and workshop format). The next scheduled CSBA workshop is on November 5, 2011 on the Luther Burbank campus. Pending adequate funding, trustees will be encouraged to participate in the CSBA Annual Education Conference, December 1-3, 2011 in San Diego.

There are no plans to attend board meetings of other districts at this time, nor to require training before taking office, as we find these recommendations unwarranted and not reasonable, because we already take on the task of training. The district intends to continue to train board members to increase the level of knowledge of board members about educational finance, political action, academic standards and instructional programs, compliance, advocacy and more through regular sessions and by acting on “on demand” issues.

Finding 5

Staff and Board Members have been restricted from contacting authorized legal counsel without permission of the Board President. There is no Board Policy to support this directive.

Recommendation 5

The Board should develop a Policy and Procedure defining the process for authorized legal counsel contact.

The district agrees with part of Finding 5, and disagrees with Recommendation 5. There is no board policy about contacted legal counsel, and a board policy for this topic is unwarranted. Board members and the superintendent will discuss their roles within the district and as representatives of the district in an ongoing conversation that begins on August 9, 2011. Procedures are already in place. Authorizing regular expenditures falls under the responsibilities of the Superintendent, including when and under what circumstances to expend funds by consulting an attorney. The high cost of legal expertise makes it prudent for the Board of Trustees to be aware of, and, be able to suggest action when, or if, in the course of running the district the superintendent jeopardizes the financial health of the organization. Simply put, the Superintendent has authority over the district. The Board of Trustees has authority over the Superintendent. The Superintendent shall be the point of contact for legal representation, unless and until, the issue needing legal input is the Superintendent.

Finding 6

In response to the 2008-2009 Grand Jury Report, the LBSD made a commitment to publish an audit report on the use of Measure A funds. There is no published audit report regarding expenditures of Measure A funds, as promised.

Recommendation 6

The District should meet its commitments to the community by conducting an audit and creating an audit report regarding expenditures of Measure A funds.

The district agrees with Finding 6, and disagrees with Recommendation 6. There is no published audit report. Measure A funded construction on the Luther Burbank campus. The students, staff and community enjoy a completely new gymnasium/cafeteria/performance arena, new field, new playground and twelve new classrooms designed and built in 2006-2009. The district feels that it is unreasonable and unwarranted to spend very limited staff resources to go back two years in time to conduct an audit, but will use this experience to take care, in future projects, to create a more inclusive oversight committee to communicate more effectively to a broader audience on all matters related to the expenditure of bond monies.

Finding 7

Mr. Rodriguez misled a Board member and 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. This email uses language which indicates an effort to circumvent the Brown Act.

Recommendation 7

All LBSD administrators and Board members should be trained to understand their responsibilities and obligations with respect to the Brown Act and abide by them.

The district disagrees wholly with Finding 7. The Brown Act requirements apply to Board members. "In addition, any person elected to serve as a member of a legislative body (local agency) who has not assumed the duties of office shall conform his or her conduct to the requirements of the Act, and shall be treated for the purposes of enforcement of the Act as if he or she had already assumed office. (954952.1) 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.

The district finds that the wording of "misled", "suggesting" and "language which indicates" in Finding 7, in conjunction with inaccurate information presented as "truth", along with using a specific name in a very public document highly defamatory considering that in the body of this report it is noted that no evidence of illegal activities took place.

Training in the Brown Act is an annual event, and also part of a new member's orientation. The most recent training, conducted by the Santa Clara County Superintendent of Schools was in January 2011. The next training will take place in November 2011.

Finding 8

It is difficult for the general public to reach individual Board members.

Recommendation 8

The LBSD Board should institute procedures to facilitate improved citizen communication with the Board and District officials. The Board should post email contact information on the LBSD website for each Board member.

The district disagrees partially with Finding 8. There are multiple ways to contact board members that are not particularly difficult and longtime practice. E-mail addresses have been updated on the district website. While, we do not know the status of non-Luther Burbank families in our community, we do know that many or even most parents of our students do not have e-mail access, so a technology solution to issues of improving citizen communication is not completely effective.

Board members may be reached in four ways.

By email:

E-mails are linked to the district website. They consist of
firstinitiallastname@lbsd.k12.ca.us

By mail at:

4 Wabash Ave. San Jose CA 95128

By message:

Persons may call the district office and leave a phone message, or stop by and leave a note for any of the board members. They collect their mail or we deliver it to them on a regular basis.

In person:

At regularly schedule meetings of the Board of Trustees held on the second Tuesday of each month in the school library. Most meetings begin at 6:15. Agendas are posted at the school site and online at the district website at least 72 hours in advance of the meetings.

We, at Luther Burbank are reminded again by the June 20, 2011 Grand Jury Report that it is critical to work together and focus on the task of educating children. While disagreeing with many Findings, the district is committed to strengthening and communicating procedures, conserving resources for effective use, and building collegial relationships to provide a quality education for the young people in our care.

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