

SAN JOSE UNIFIED SCHOOL DISTRICT

**RESPONSES TO
2019-2020 GRAND JURY REPORT
FINDINGS AND RECOMMENDATIONS**

To Presiding Judge, Santa Clara County Superior Court,

The San Jose Unified School District Board of Education and the members of the Board of Education (the “**District**”) respectively provide the following responses to the above-referenced report of the Santa Clara Superior Court Civil Grand Jury (“**Report**”).

The District thanks the Grand Jury for impliedly approving the District’s proposed employee housing project (“**Project**”). The District is appreciative that after its investigation, the Grand Jury found nothing problematic with the Project. After over a year of investigating the District’s actions, evaluations, assessments, etc., related to the actual Project that the Grand Jury was ostensibly investigating, the Grand Jury found nothing to report related to the Project. All the Grand Jury found was it wanted one of the District’s contracts to use the word “lobby” in the scope description and that there may be a potential conflict of interest related to one consultant—although there is not.

We provide for the Presiding Judge’s review, not only the responses below, but also the Conclusion section at the end of this document.

Respectfully Submitted,
The Board of Education of the San Jose Unified School District

Grand Jury Finding 1: *The District repeatedly misrepresented [1] the lobbying activity that the housing entitlement consultant Schoennauer would perform [2] on its behalf. These misrepresentations undermined the integrity of the public contracting process and sowed mistrust in the District’s community relations.[3]*

District Response: The District disagrees wholly with this finding.

1. When District staff made comments at the March 2019 Board meeting regarding Mr. Schoennauer’s duties, Mr. Schoennauer was not lobbying on behalf of the District. There was no advocacy for a Project site yet; there was nothing to lobby for. There was no need to try to persuade the City to do anything; not yet. Mr. Schoennauer had meetings with the City to assist the District, but that was after the City provided information to the District regarding (1) where the City indicated where it would support (and not support) a District employee-housing project and (2) the City’s process for approving that type of project.

2. The Grand Jury is jumping ahead and admits as much by finding what Mr. Schoennauer “would perform” an action. At a time in the future when Mr. Schoennauer might have started lobbying for the District, the District could have included that scope as an amendment to his contract moving forward. Mr. Schoennauer’s practice of diligently logging his meetings at the City does not indicate that he is lobbying during every meeting. The City may broadly apply its sunshine laws – which is a laudable practice – but that is not indicative of the substance of every meeting. It certainly did not warrant the Grand Jury’s obsession with Mr. Schoennauer’s activities.
3. The Grand Jury’s conclusory and unfounded opinion is irrelevant. The District operates its contracting process with the utmost integrity and it is honored to have well-earned, and decades-long, trust from its community.

Note: The Project raised the ire of specific individuals in a specific area within the District – the Almaden Valley area. Those residents are strongly motivated to not have the District’s Project in their neighborhood. (FYI: The District owns an unused 70-acre site in Almaden Valley, which was a potential location of the Project.) The Grand Jury interviewed all Board members and many District staff members and, except for perhaps one Board member, all District interviewees confided to their counsel that some of the Grand Jury members were fiery and appeared self-interested in reaching a specific outcome from the investigation. In other words, the conclusion was established at the beginning of the investigation and the Grand Jury process was abused to find facts to justify that conclusion. This is admittedly conjecture, but since none of these Board members or staff conferred prior to the Court issuing the Grand Jury report, it is astounding that virtually everyone came away with the same impression from at least some of the Grand Jury members’ actions. After one interview, one Grand Jury member walked one Board member to their car and apologized for the behavior of other Grand Jury members. During at least one interview, a couple of Grand Jury members suggested questioning of a particular interviewee should end, but instead had to leave disgusted when other Grand Jury members continued with redundant and increasingly bitter questions. To reiterate, after all the Grand Jury probing about the Project, the Grand Jury only found that the Board should have used the word “lobby” and there may be a potential conflict of interest.

Grand Jury Recommendation 1: *The Board should provide clear direction on transparency, truthfulness, and accuracy in contracting and communications with the public. [1] This direction should be incorporated in the Board's self-evaluation process and the expectations for the superintendent's performance to ensure accountability for the actions of District staff. [2] The evaluation of necessary changes should be finalized and delivered in an improvement plan by July 2021.*

District Response: The District will not implement this recommendation.

1. The District’s Board approves or ratifies all contracts and those are all agendized with a description of the services to be performed and links to

the contracts themselves. That is already transparent, truthful and accurate and fully open to the public. No change is needed.

2. Any Board self-evaluation or evaluation of the Superintendent will be performed pursuant to the Board's existing policies, informed not by the Grand Jury's baseless findings, but instead based on experts in California school governance including the recommendations, guidance or draft policies of the California School Boards Association, School Services of California, the California Association of School Business Officials, the District's legal counsels, etc.

Grand Jury Finding 2: *The descriptions of the services provided under consultancy contracts awarded to Schoennauer and Ball/Frost failed to specify lobbying, and therefore the public and Board were not fully informed as to their purposes.*

District Response: The District disagrees wholly with this finding. As stated above, Mr. Schoennauer was not yet lobbying on behalf of the District. At a time that Mr. Schoennauer might have started lobbying for the District, the District could have amended his contract moving forward. The Grand Jury Report itself states that the District's current contract with Ball/Frost "spells out more precisely the political and legislative services that the District is receiving" before the Report goes on to complain that it was a ratification of that contract. (Report, pg. 12)

Note: It is disingenuous for the Grand Jury to imply that these contracts were not transparent or not clearly intended to be with consultants, regardless of their title, to assist the District in its relationships with other public entities. The Grand Jury spent a year investigating, demanding multiple interviews of every Board member and multiple staff members, to come to the conclusion that the District should have used the word "lobby" in the scope description of these contracts. First, this desire of the Grand Jury is not required in any statute or regulation. Second, we note that the initial "multiple complaints" the Grand Jury alleges it received were "about District efforts to build employee housing on District-owned property." (Report, pg. 3) It is extremely telling that after over a year of investigating that one Project, the Grand Jury found nothing to report related to the District's actions, evaluations, assessments, etc., related to the actual Project. The Grand Jury only found that the Board should have used the word "lobby" and there may be a potential conflict of interest (see below).

Grand Jury Recommendation 2a: *The District should revise its contracting procedures to require that any lobbying service agreements clearly and explicitly describe the lobbying activities for the Board's and public's knowledge. This revision should be completed by July 2021.*

District Response: The District will implement this recommendation.

To clarify and while not required by any existing law, the District's will endeavor to use the word "lobby" in the scope of services descriptions of any future contracts with consultants whose activities include lobbying efforts.

Grand Jury Recommendation 2b: *The District should revise its agendizing procedures to require that the Board and public receive timely and understandable notice of any action on lobbying service agreements. These procedures should be implemented by July 2021.*

District Response: The District will not implement this recommendation. To clarify, this Recommendation 2b is already part of the District's agendizing procedures. Every contract that comes to the Board is timely and has a description of the scope. In conjunction with the District's implementation of Recommendation 2a above, there are no additional steps the District must take related to this Recommendation 2b.

Grand Jury Finding 3: *The Board has no legislative advocacy plan [1] so state lobbying efforts are directed solely by District staff without appropriate Board oversight or public awareness. [2]*

District Response: The District disagrees wholly with this finding. The Grand Jury states an untrue conclusory opinion that, without a legislative advocacy plan, the District's Board must not be overseeing lobbying efforts. That statement is untrue and a failure of logic.

1. The District does not engage in the amount of advocacy or lobbying insinuated by the Grand Jury, or as much as Los Angeles USD, Oakland USD, Palo Alto USD or San Francisco USD, which the Report references. (Report, pg. 15-16.) If the District becomes more involved in Sacramento politics, the District may choose to spend the time, money and energy to pull together a "legislative advocacy plan."
2. Again, the Board approves or ratifies all contracts and those are on open session agenda items for the public's review. Without engaging the Grand Jury's obsession with staff's comments related to the actual scope of Mr. Schoennauer's March 2019 agreement, the Grand Jury takes a specious leap and comes to the mistaken conclusion that District staff is somehow operating without the Board's oversight or without all those agreements coming to the Board for approval or ratification.

Grand Jury Recommendation 3: *If the Board elects not to have a legislative advocacy plan, the District should specifically agendize each lobbying effort in a way that is transparent to the Board and the public so the District's position on legislative matters is transparent. The District should develop a plan to ensure transparency about its lobbying activities by September 30, 2021.*

District Response: The District will not implement this recommendation.

To clarify, this Recommendation 3 is already part of the District’s agendaing procedures. Every contract that comes to the Board is timely and has a description of the scope. In conjunction with the District’s implementation of Recommendation 2a above, there are no additional steps the District must take related to this Recommendation 3.

Grand Jury Finding 4: *The District has no discernable method to analyze its hundreds of contracts to determine which contractors are consultants subject to financial disclosure laws. Therefore, the Board and the public may not have the information necessary to assess potential conflicts of interest.*

District Response: The District disagrees wholly with this finding. The District’s Businesses Department reviews contracts for potential conflicts of interest. In addition, virtually all contracts issued by the District’s business office have a requirement for consultants to disclose any potential conflicts of interest.

Grand Jury Recommendation 4a: *The District should have a method in place to review current and future contracts for determination of whether the contractor qualifies as a consultant under the FPPC. This method should be in place by July 2021.*

District Response: The District will implement this recommendation. To clarify, the District already reviews its independent contractors, consultants and vendors for potential conflicts of interest. The District will re-double its efforts to ensure that it performs this review for all consultant contracts and that all of its forms of contract moving forward include a requirement for consultants to disclose any potential conflicts of interest.

Grand Jury Recommendation 4b: *For those contracts appropriately identified by the District, the District should notify each contractor of the contractor’s obligation to file a Form 700 to meet the guidelines required by the FPPC. Notification for current contracts should be sent no later than July 2021.*

District Response: The District will implement this recommendation. To clarify, the District will require some consultants to complete a Form 700 if the District determines, in consultation with the District’s legal counsel, that a consultant may have the potential to exert considerable influence over a contracting decision, may influence the development of a contract including during negotiations, or whose actions demand the public trust.

Conclusion

The Board reiterates the following points for the Presiding Judge's consideration as she determines if the empaneled Grand Jury that prepared the Report was behaving in the public's interest or was it searching for nonexistent evidence to support a pre-determined conclusion from a group of "not-in-my-back-yard" individuals who knew Grand Jury members.

1. The Grand Jury found no fault with the substance of the District's activities, which were completely transparent. Instead, the Grand Jury wasted its (and the District's) time, money and energy for over a year to find that the detailed scope of work for a consultant did not use the word "lobby," even though that is not required.
2. The Grand Jury insinuated that one of the two District consultants assisting the District in managing some aspects of the Project might have a potential conflict of interest by owning land near one of the sites the District was considering for the Project. The complete vagueness of the Grand Jury Report in this regard (Report, pg. 22) is odious and accusatory with no factual justification. As stated above, the District will determine if it will require specific consultants to prepare a Form 700.

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