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MODESTO CITY SCHOOLS

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June 22, 2010

The Honorable Jack M. Jacobson
Presiding Judge, Stanislaus County Superior Court
800 11th Street
Modesto, CA 95354

Re: Civil Grand Jury Case No. 10-10C

Dear Judge Jacobson:

On behalf of the Modesto City Schools' Board of Education, I respectfully submit the following response to the Stanislaus County Grand Jury Report issued in April 2010. The specific vote on the Board's response to the findings and recommendations of the Grand Jury is reflected in the Minutes of the meeting of the Modesto City Schools' Board of Education held on June 1, 2010, which will be forthcoming upon approval of the Board.

As to 2009/2010 Grand Jury Findings and Recommendations 1-5, The Modesto City Schools' Board agrees with each finding and the actions regarding the recommendations are detailed in the following document.

Please contact me if there is anything further you require. Thank you.

Sincerely,

Kimberly Gerber Spina
Modesto City Schools
Board President

Finding and Recommendation 1

F1. There is no evidence that any member of the Modesto City Schools' Board of Trustees, as composed prior to 11/2/09, violated the Brown Act.

R1. While there is no evidence that the Modesto City Schools' Board of Trustees violated the Brown Act, the Grand Jury believes that it would be in their best interest to annually evaluate the ongoing education programs for Trustees, with a specific emphasis on the Brown Act.

Response 1

The Modesto City Schools' Board of Trustees agrees with the finding of the Grand Jury and in accordance with the Grand Jury recommendation has determined that the Superintendent shall assume responsibility for scheduling an annual Board of Trustees workshop with a specific emphasis on a review of the Brown Act.

Finding and Recommendation 2

F2. While there is no evidence of a Brown Act violation on the part of the Modesto City Schools' Board of Trustees, the "public reprimand" of a trustee by three fellow trustees, without any notice to the public, the trustee being reprimanded or even those trustees who did not sign the "public reprimand," gives an impression of backroom dealing that is troublesome and should be avoided in the future.

R2. Furthermore, if the Board of Trustees finds it necessary to make a formal "public reprimand" of a member, such action should be placed on the Board's agenda, with appropriate notice to the Trustee involved.

Response 2

The Modesto City Schools' Board of Trustees agrees with the finding and recommendation of the Grand Jury and has adopted the following protocol for any reprimand of a Board member:

- A. An individual Trustee has a First Amendment right to privately question a fellow Trustee. If an individual Trustee chooses to criticize a fellow Trustee in writing, the communication should include a statement that the Trustee is acting in his or her individual capacity, and that the communication is not on behalf of the Board.
- B. Any action to formally censure or reprimand a Board Trustee shall be taken in open session, after proper notice on the Board agenda, with appropriate notice to the Trustee involved, and will comply with all the requirements of the Brown Act.

Finding and Recommendation 3

F3. Insufficient measures were taken by the Modesto City Schools' Board of Trustees, as well as District Administration, to lessen the impact of the transition of hiring a new Superintendent on District staff and employees. Part and parcel of this error appears to be the Board of Trustees' decision to quickly implement sweeping changes Districtwide.

R3. In the future, when the Board of Trustees hires a new Superintendent, it should take into consideration the need for a new Superintendent to familiarize him or herself with the culture of the District.

Response 3

The Modesto City Schools' Board of Trustees agrees with the finding of the Grand Jury regarding the impact of the transition to a new Superintendent amidst Districtwide changes and also agrees that the Board should have a more comprehensive plan in place for transition in the future. This plan will include more time between a candidate's final interview, date of hire, and start date for the position. Additionally, a formal process for meeting with all department/division leaders to gain information regarding current district practices will be scheduled immediately upon hire.

At the same time the District was involved in selecting a new Superintendent, the District was also required by No Child Left Behind Act regulations to immediately implement change to improve student test scores. Many of Modesto City's schools were in Program Improvement. The Board was interested in finding a Superintendent candidate who would address these issues. Many applicants during the selection process cited the fact that Modesto City Schools did not have a Strategic Plan that specifically addressed Program Improvement or remediation plans. Time was of the essence in addressing the needs of Modesto City Schools. Failure of the Board to attend to these issues could have led to severe penalties in which government agencies impose sanctions on the schools and possibly the District in its entirety.

The Board of Trustees worked diligently with the Superintendent, staff, employee groups, and the community at large to address these immediate needs. The end result of those meetings (after almost a full year) was the District's Strategic Plan. Coupled with the Strategic Plan was the reorganization into Academic Learning Communities that provided horizontal and vertical articulation for the instructional needs of the District. The impact of the Strategic Plan is evident in schools moving toward exiting Program Improvement, the State Superintendent of Schools visiting Modesto to celebrate our student achievement at the elementary level, and the focus of site visitations on the improvement of instructional practices and classroom effectiveness.

Finding and Recommendation 4

F4. During the transition period there was a failure to effectively communicate changes in policies and procedures both internally and externally.

R4. To encourage effective communication both internally and externally, it would be in the District's best interest to designate a person as its Public Information Officer.

Response 4

The Modesto City Schools' Board of Trustees agrees with the finding of the Grand Jury as historically, Modesto City Schools has had a fulltime Public Information Officer. Modesto City Schools acknowledges that the Public Information Officer position is one that encourages and promotes effective District communication. From 2006-2008, there was a full-time Public Information Officer. Due to cutbacks in funding in 2008, the Public Information Officer position was eliminated. Modesto City Schools is in need of a Public Information Officer to again facilitate effective internal and external communications. In support of the Grand Jury recommendation, it is the District's intention to designate staff, effective July 1, 2010, to formally address the Public Information Officer responsibilities.

This designee will be responsible for preparing internal and external communications documents, acting as a liaison for the District and the Board in terms of communication and District programs, projects, and communication and will also help build and maintain strategic plans for effective school to community and District to community Public Relations. Since January 2010, the District has begun implementation of internal and external communications including a District comprehensive webpage with an Employee Services page that contains monthly communications from the Superintendent (ICE- Internal Communications for Employees), Board Highlights are sent to staff and the community following Board meetings, a community publication called the Missive is generated and mailed to families, and a survey requesting staff input on budget issues was presented with results communicated to all stakeholders.

The designation of a person as the Modesto City Schools' Public Information Officer will continue to strengthen and develop both internal and external communications with the goal of increasing positive communications regarding District policies and procedures. The intent is to facilitate effective internal relations and build a community of trust while also communicating with transparency to the stakeholder community.

Finding and Recommendation 5

F5. There does not appear to be a clear and concise personnel policy protecting those employees who bring to their supervisors' attention misbehavior or malfeasance of fellow District employees, or who wish to question the manner in which day to day business is being conducted.

R5. The District should adopt a comprehensive “Whistleblower Policy” which complies with all State and Federal laws.

Response 5

The Modesto City Schools’ Board of Trustees agrees with the finding of the Grand Jury regarding the need for a “Whistleblower Policy.” The Board has adopted the attached “Whistleblower Policy” which complies with all State and Federal laws.

MODESTO CITY SCHOOLS

TO: Board of Education

Regular Meeting

SUBJECT: Approval of Second Reading of Board Policy and
Administrative Regulation 4119.1/4219.1/4319.1,
Whistleblower Protection

June 21, 2010

BACKGROUND

Representatives of the Governing Board have requested the district to develop and implement a "whistleblower" protection policy. This policy and administrative regulation provide protection to the employees from retaliation by the district for reporting improper governmental activities.

Essentials #3, Strong Relationships

ISSUE

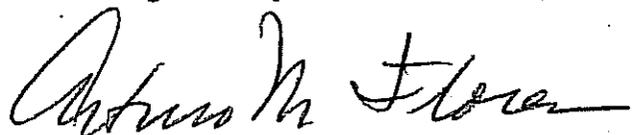
Currently, Modesto City Schools does not have a "whistleblower" protection policy. The proposed policy and administrative regulation are consistent with the Public School Employees of Improper Governmental Activities Act. This act provides protection to employees who report improper governmental activities. Additional verbiage was added after Board recommendation at the May 10, 2010 Board meeting.

RECOMMENDATION

It is recommended that the Board of Education approve the second reading of Board Policy and Administrative Regulation 4119.1/4219.1/4319.1, Whistleblower Protection.

APPROVED

Prepared and Recommended to the
Governing Board by:



Arturo M. Flores
Superintendent

MODESTO CITY SCHOOLS

Board Policy

BP 4119.1/4219.1/4319.1

PERSONNEL

Whistleblower Protection

An employee shall have the right to disclose to a Board member, a school administrator, a member of the County Board of Education, County Superintendent of Schools, or the Superintendent of Public Instruction any improper governmental activity by the district or a district employee that violates state or federal law, is economically wasteful, or involves gross misconduct, incompetency, or inefficiency. When the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation or noncompliance with a state or federal rule or regulation, he/she has the right to disclose such information to a government or law enforcement agency or to refuse to participate in any such activity. (Education Code 44112, 44113; Labor Code 1102.5). Nothing in this provision in any way limits an employee's right to contact a Board member on any matter of importance to the employee.

The Superintendent/designee shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline maintained by the office of the California Attorney General. (Labor Code 1102.8)

No employee shall use or attempt to use his/her official authority or influence to intimidate, threaten, coerce, or command another employee for the purpose of interfering with that employee's right to disclose improper governmental activity. (Education Code 44113)

An employee who has disclosed improper governmental activity and believes that he/she has subsequently been subjected to acts or attempted acts of reprisal shall file a written complaint in accordance with the district's complaint procedures. After filing a complaint with the district, he/she may also file a copy of the complaint with local law enforcement in accordance with Education Code 44114.

(cf. 1312.1 - Complaints Concerning School Personnel)
(cf. 1312.3 - Uniform Complaint Procedures)

PERSONNEL

Whistleblower Protection

Protection Against Liability

No employee shall be liable for harm caused by his/her act or omission when acting within the scope of employment or district responsibilities. For the protection against liability to apply, the act or omission must be in conformity with federal, state, and local laws and must be in furtherance of an effort to control, discipline, expel, or suspend a student, or to maintain order or control in the classroom or school. (20 USC 6736)

The protection against liability shall not apply when:

1. The employee acted with willful or criminal misconduct, gross negligence, recklessness, or a conscious, flagrant indifference to the harmed person's right to safety.
2. The employee caused harm by operating a motor vehicle or other vehicle requiring license or insurance.
3. The employee was not properly licensed, if required, by state law for such activities.
4. The employee was found by a court to have violated a federal or state civil rights law.
5. The employee was under the influence of alcohol or any drug at the time of the misconduct.
6. The misconduct constituted a crime of violence pursuant to 18 USC 16 or an act of terrorism for which the employee has been convicted in a court.
7. The misconduct involved a sexual offense for which the employee has been convicted in a court.

PERSONNEL

Whistleblower Protection

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex

44040 Discrimination based on employee's appearance before certain boards or committees

44110-44114 Reporting by school employees of improper governmental activity

CIVIL CODE

51 Unruh Civil Rights Act

GOVERNMENT CODE

815.3 Intentional torts

820-823 Tort Claims Act

825.6 Indemnification of public entity

3540.1 Public employment definitions

3543.5 Interference with employee's rights prohibited

12940-12951 Discrimination prohibited; unlawful practices

LABOR CODE

1102.5-1106 Whistleblower protections

UNITED STATES CODE, TITLE 18

16 Crime of violence defined

UNITED STATES CODE, TITLE 20

6731-6738 Teacher liability protection

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

2000h-2000h-6 Title IX, 1972 Education Act Amendments

12101-12213 Americans with Disabilities Act

COURT DECISIONS

Garcetti v. Ceballos, (2006) 543 U.S. 1186

O'Conner v. Ortega, (1987) 480 U.S. 709

New Jersey v. T.L.O., (1985) 468 U.S. 325

Management Resources:

WEB SITES

California Attorney General: <http://caag.state.ca.us>

ADOPTED:

MODESTO CITY SCHOOLS

Administrative Regulation

AR 4119.1/4219.1/4319.1

PERSONNEL

Whistleblower Protection

Except as specified below, the following procedure shall be used for any complaint by an employee alleging misapplication of the district's policies, regulations, rules, or procedures or for "whistleblower" complaints by an employee regarding an improper district activity including, but not limited to, an allegation of gross mismanagement, a significant waste of funds, an abuse of authority, or a specific danger to public health or safety.

Complaints alleging unlawful discrimination on any basis specified in the district's nondiscrimination policies, including complaints of sexual harassment, shall be resolved in accordance with the district's procedure for complaints regarding discrimination in employment.

(cf. 4031 - Complaint Procedure for Discrimination in Employment)
(cf. 4119.13/4219.13/4319.13 - Sexual Harassment)

Complaints regarding unlawful discrimination in district programs or the district's failure to comply with state or federal laws regarding educational programs shall be resolved in accordance with the district's Uniform Complaint Procedures. Complaints regarding sufficiency of textbook materials, teacher vacancy or misassignment, an urgent or emergency facility condition, or the failure to provide intensive instruction to students who did not pass the high school exit examination by the end of grade 12 shall be resolved in accordance with the district's Williams Uniform Complaint Procedures. (Education Code 35186; 5 CCR 4621)

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 1312.4 - Williams Uniform Complaint Procedures)

For complaints regarding working conditions or other subjects of negotiation, the employee shall use the grievance procedure specified in the applicable collective bargaining agreement.

Any of the time limits specified in this procedure may be extended by written agreement between the district and complainant.

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Whistleblower Protection

Step 1: Informal Complaint Process

Prior to instituting a formal, written complaint, the employee shall first discuss the issue with his/her supervisor or the principal of the school where the alleged act took place. Formal complaint procedures shall not be initiated until the employee has first attempted to resolve the complaint informally. However, “whistleblower” complaints, as defined herein, related to the employee’s supervisor, principal or central office administrator, shall be initially filed in writing with the Superintendent within 60 days of the act or event which is the subject of the complaint. “Whistleblower” complaints, as defined herein, related to the Superintendent shall be initially filed in writing with the Board within 60 days of the act or event which is the subject of the complaint.

Step 2: Site Level Formal Complaint Process

If a complaint has not been satisfactorily resolved through the informal process in Step 1, the complainant may file a written complaint with his/her immediate supervisor or principal within 60 days of the act or event which is the subject of the complaint. If an employee fails to file a written complaint within 60 days, the complaint shall be considered settled on the basis of the answer given at the preceding step.

In the written complaint, the employee shall specify the nature of the problem, including names, dates, locations, witnesses, the remedy sought by the employee, and a description of informal efforts to resolve the issue.

Within 10 working days of receiving the complaint, the immediate supervisor or principal shall conduct any necessary investigation and meet with the complainant in an effort to resolve the complaint. Within five working days after the meeting, he/she shall prepare and send a written response to the complainant.

Step 3: District Level Appeal

If a complaint has not been satisfactorily resolved at Step 2, the complainant may file the written complaint with the Superintendent/designee within five working days of receiving the written response from the immediate supervisor or the

PERSONNEL

Whistleblower Protection

principal. The complainant shall include all information presented to the immediate supervisor or principal at Step 2.

Within 10 working days of receiving the complaint, the Superintendent/designee shall conduct any necessary investigation, including reviewing the investigation and written response by the immediate supervisor or principal at Step 2, and shall meet with the complainant in an effort to resolve the complaint. Within five working days after the meeting, he/she shall prepare and send a written response to the complainant.

Step 4: Appeal to the Governing Board

If a complaint has not been satisfactorily resolved at Step 3, the complainant may file a written appeal to the Board within five working days of receiving the Superintendent/designee's response. All information presented at Steps 1, 2, and 3 shall be included with the appeal, and the Superintendent/designee shall submit to the Board a written report describing attempts to resolve the complaint and the district's response.

The Board may uphold the findings by the Superintendent/designee without hearing the complaint or the Board may hear the complaint at a regular or special Board meeting. The hearing shall be held in closed session if the complaint relates to matters that may be addressed in closed session in accordance with law.

(cf. 9321 - Closed Session)

The Board shall make its decision within 30 days of the hearing and shall send its decision to all concerned parties. The Board's decision shall be final.

REVIEWED: