

This is the response received from the Sierra Community College Board of Trustees regarding Grand Jury Final Report 1 titled, "Sierra Community College District, Secret Settlement of Gender Lawsuit." This report is reproduced as presented without Exhibits.

RESPONSE TO 1999-2000 PLACER COUNTY GRAND JURY FINAL REPORT I

Provided by:

Sierra College Board of Trustees

Approved:

By vote of Board of Trustees, March 14, 2000
Yes - 5 No - 1 Absent - 1

Written by:

James Bush, Trustee, Roseville
Barbara Vineyard, Trustee, Lincoln

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I. EXHIBITS:

1. Letter from Michael Krill, Sierra Self-Insurance Services
2. Listing of Legal Counsel
3. Listing of Closed Sessions and the Three Member Committee Meeting Dates Related to the Furtado Case
4. Declaration from Sally Robison in Support of Quashing Deposition Subpoena
5. Alan Howard Vanderbelt - Testimony of Arbitration Proceedings - March 31, 1998 (Grievance Arbitration)
6. Partial testimony of Sally Robison (Grievance Arbitration)
7. Declaration of Sally Robison in Opposition to Motion for Summary Judgment - May 4, 1998 (federal Furtado lawsuit)
8. Decision and Findings After Advisory Arbitration by Richard L. Gilbert - November 4, 1998 (Grievance Arbitration)
9. Contingent Settlement - Judge Garland E. Burrell - December 31, 1998 (federal Furtado lawsuit)
10. Letter from Bridget C. Halvorson and Matt Evans to Kevin Ramirez - April 15, 1998
11. Memo from Robert Wickstrom describing Sierra College's Insurance Coverage - February 29, 2000
12. Memo from George Holt concerning discussions with Mike Krill of Sierra Insurance Group about settlement of the Furtado Case - February 25, 2000
13. Motion for Summary Judgment by Sierra College - October 6, 1998 (federal Furtado lawsuit)
14. Complete transcripts of arbitration proceedings before Judge Richard L. Gilbert
15. Excerpts from Jury Verdicts
16. Letter from Bridget Halvorson
17. Paper prepared by George Holt of background information related to response to Grand Jury Report
18. Copy of Annuity Agreement (federal Furtado lawsuit)
19. Letter from Mediator re: Board approval (federal Furtado lawsuit)
20. Letter to Mike Krill from John Falapino re: deductible

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21. Settlement agreement (\$1 and additional consideration) (federal Furtado lawsuit)

II. INTRODUCTION:

On behalf of the Sierra College Board of Trustees, the following report has been prepared as the Board's response to the Placer County Grand Jury Report #1. In preparation of this report, the Board conducted three special meetings and one regular meeting, with discussion totaling at least sixteen hours. All available documents were released, including complete transcripts of the testimony and decision of the Grievance Arbitration hearing, the federal lawsuit depositions, motion for summary judgment, and information on insurance coverage. Due to the volume of the federal court material, a reading room was set up at the Sierra College Library for a period of one month for Board and public viewing of these documents, starting March 16 through April 14, 2000.

In summary, no college funds were used to settle the case. The Coregis Insurance Company settled the case before it went to trial, which, under the terms of its policy with

SIG, Coregis could do without the approval of the college. The entire college Board should have been made aware of the settlement when it was reached. The entire Board should have been made aware of the confidentiality clause. When made aware of the settlement

through the newspaper, the Board should have asked for the details to be discussed in closed session. As discussed in the recommendations, the Board should adopt a new policy to address the terms and conditions of future lawsuit settlements.

III. RESPONSE TO FINDINGS NUMBER 1 THROUGH 11:

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FINDING #1

The lawsuits filed by Debra Furtado against Sierra College, its President and the other named employees were settled for a payment of \$300,000 cash, and a \$250,000 annuity payable to Furtado over a five-year period at the rate of \$55,347.62 per year.

RESPONSE

The Sierra College Board of Trustees agrees with the finding.

The lawsuits filed by Furtado were settled by the District's insurance carrier, Coregis. As far as the Board knows, the amounts shown in the Grand Jury's findings are correct. However, only two written documents are available: Exhibits 18 and 21 as listed below.

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DISCUSSION

At the time of the lawsuit, the District's liability coverage was through the Schools Insurance Group (SIG), a joint powers authority (JPA), representing all public school districts in Placer and Nevada counties. The actual insurance carrier by the time of the settlement was the Coregis Insurance Company, which provided excess coverage to SIG from \$115,001.00 to \$1,000,000.00.

RELATED DOCUMENTS

- Exhibit 1: Letter from Michael Krill, Sierra Self Insurance Services
- Exhibit 11: Memo from Robert Wickstrom describing Sierra College's insurance coverage.
- Exhibit 18: Annuity Agreement
- Exhibit 21: Settlement Agreement

FINDING #2

At the time of the signing of the settlement agreement stating a payment of \$1.00 and additional valuable consideration all defendants, except the college President, one employee of the college, and the college itself had been dismissed as defendants in the case.

RESPONSE

The Sierra College Board agrees with this finding.

DISCUSSION

The settlement agreement language was agreed to by each party signing the agreement, which included Debra Furtado, Coregis Insurance Company, Kevin Ramirez in his personal capacity, and Susan Davenport in her personal capacity. Both Kevin Ramirez and Susan Davenport were named personally in the suit.

RELATED DOCUMENTS

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Exhibit 21: Settlement Agreement

FINDING #3

The defendants, the college President, the college employee and the college were each represented by separate law firms throughout the litigation process.

RESPONSE

The Sierra College Board disagrees partially with this finding.

DISCUSSION

During the legal proceedings, Furtado was represented by two separate attorneys. All defendants were initially represented by Bridget Halvorson and Matt Evans of Duncan, Ball, Evans & Ubaldi for the litigation paid for by Coregis. In the early stages of the federal litigation, attorney Alesa M. Schacter represented Trustee Nancy Palmer at her deposition and met with Trustee Sally Robison at the request of Bridget Halvorson. Attorney Susan

Schoenig, of McDonough, Holland & Allen, later represented Kevin Ramirez, Bill Tsuji and Peter Kolster in their individual capacities, paid for by Coregis. John Whiteside represented Coregis before the Mediator. Robin Stewart, of Kronick, Moskovitz, Tiedemann & Gerard, advised the Board subcommittee. Michael McKone later represented Susan Davenport. Larry Schapiro represented Sally Robison (Sierra College Board member), paid personally, in moving to quash her deposition subpoena served by Ms. Schoenig, Dr. Ramirez attorney. Mr. Schapiro also represented Ms. Robison when she filed her declaration in opposition to the District's motion for summary judgment. In addition, the College District was represented by Johnson, Schachter & Collins, paid for by the College, in the state court petition for writ of mandate (Brown Act).

RELATED DOCUMENTS

Exhibit 2: Listing of legal counsel.

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RELATED QUESTIONS

3.1: Who authorized the hiring of attorneys to defend the College against John Trumbo s suit to release the details of the settlement to the public?

The College President referred Mr. Trumbo s petition to the District s insurance JPA, which authorized the hiring of Johnson, Schachter & Collins.

3.2: How much money was spent, and is being spent on attorneys fees?

To the best of District staff knowledge, the following amounts have been spent on the **attorneys fees and costs** to defend the Furtado case:

* Federal Litigation

JPA - SIG \$115,000.00

Coregis \$415,000.00

* Petition for Writ of Mandate and Court Appeal

\$10,000.00 by JPA-SIG to Johnson, Schachter & Collins

* Grievance Arbitration

\$36,000.00 by JPA-SIG to Duncan, Ball, Evans & Ubaldi

This does not include the amount paid by Coregis to settle the federal Furtado lawsuit.

FINDING #4

The attorney representing the college President drafted the Settlement Agreement, stating a payment of \$1.00 and additional valuable consideration, as well as the confidentiality clause with penalties of \$100,000.00 for revealing the actual settlement amount.

RESPONSE

The Sierra College Board partially disagrees with this finding.

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The attorney representing the college President (Ms. Schoenig) participated in drafting the settlement agreement, along with each of the other attorneys involved with the settlement. All parties to the settlement agreement signed the settlement agreement. The

boiler plate language for the first paragraph of the confidentiality clause originated from Ms. Schoenig's office. The boiler plate language relating to a penalty for breach of the clause originated from Bridget Halvorson's office. The origin of the specific language relating to the term of \$1.00 plus other valuable consideration and the \$100,000.00 penalty were mutually agreed upon by all parties involved and the final agreement was typed by Ms. Schoenig's secretary.

The Grand Jury did not choose to talk with Ms. Schoenig nor any of the other attorneys involved in the settlement, except for Furtado's attorney. The Grand Jury also did not choose to talk with Dr. Ramirez. Further discussions with these other parties may have shed more light on this finding and the other findings in the Grand Jury's report.

RELATED DOCUMENTS

Exhibit 21: Settlement Agreement.

RELATED QUESTIONS

4.1: Did Susan L. Schoenig fail to notify her client (Dr. Kevin Ramirez) of the Furtado settlement amount? If in fact she failed to notify him, is that then a violation of the California Code of Professional Conduct of the State Bar of California?

Attorneys are required to communicate settlement offers to their clients. Ms. Schoenig communicated the offer of a mutual release and dismissal of the case to her

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client, Kevin Ramirez. This was the offer which was made to Dr. Ramirez. Ms. Schoenig did not inform Dr. Ramirez of the Furtado-Coregis settlement amount, but this was not a breach of any duty by Ms. Schoenig because Dr. Ramirez was not a party to this settlement amount.

4.2: Who decided that the amount of the settlement should be confidential?

This was undetermined, but the settlement was agreed upon by all involved. Refer to response to Finding #4.

4.3: Who initiated the confidentiality clause?

Refer to response to Finding #4

4.4: Which Board member knew the amount of the settlement and why wasn't that information shared with the others?

Board Member Nancy Palmer was informed of the settlement by Robin Stewart after learning that the case had been settled.

Two members of the Board's Furtado litigation committee (Barbara Vineyard and David Creek) were generally aware of the settlement, but no Board member knew about the details of the full consideration. Ms. Palmer was told that the settlement was for \$500,000, but she did not learn this until after the settlement agreement was signed. Because Coregis settled the suit without District resources, the Board could take no action

on the Coregis-Furtado settlement agreement. Furthermore, the confidentiality clause prevented such knowledge. As written, if anyone (e.g., Furtado or Coregis) disclosed the

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details of the consideration to Board members or Superintendent Ramirez, this would be a breach of the confidentiality clause entitling the aggrieved party to \$100,000.

The full Board was never told by the committee of the settlement. Mr. Creek and Ms. Vineyard met with Ms. Halvorson and Ms. Stewart on December 7, 1998 to be updated on the progress of the negotiations. (The third member of the committee, Ms. Palmer was unable to attend this meeting.) In this meeting Ms. Vineyard and Mr. Creek learned of the possibility of a settlement. After a discussion with Ms. Halvorson and Ms. Stewart, Ms.

Vineyard and Mr. Creek decided not to inform the Board of the settlement prior to its being signed by all parties because they were concerned about the possibility of the information being leaked, with this possible leak causing complications in the settlement.

Mr. Creek and Ms. Vineyard instructed Ms. Halvorson to contact the Board members, which she agreed to do once the agreement was signed by all parties. Ms. Halvorson failed to carry out these instructions. (The last signature on the agreement is dated January 28, 1999.) The individual members of the committee could not contact the non-committee Board members because of the possibility of a Brown Act violation. The committee members reasonably believed that the District's litigation counsel would notify the other members of the Board.

Although the full Board was not informed of the settlement as a body, the subcommittee members, Creek, Vineyard and Palmer were informed. Further, Mr. Bush and Ms. Robison were aware that the testimony they were to give had been postponed and that they were never called to testify. Ms. Robison recalled that Ms. Schoenig's office called to tell her that the settlement was being completed and that she was informed that it would go to the Board.

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FINDING #5

The settlement amount of \$550,000.00 was substantial for an employment case of this type and could not be called a nuisance settlement.

RESPONSE

The Sierra College Board partially disagrees with this finding

The settlement of \$550,000.00 is a substantial amount, however, it is not unusual. Other out of court settlements could not be documented, however jury verdicts for employment discrimination cases often run into the millions of dollars. Also, to our knowledge no one at the District or from the Board of Trustees referred to this settlement as a nuisance settlement.

DISCUSSION

The suit asked for \$12 million. The excerpts from jury verdicts shows examples of other settlements. Until the Grand Jury report was released, the District and Board of Trustees did not know the precise amount of the settlement.

RELATED DOCUMENTS

Exhibit 15: Excerpts from jury verdicts.

Exhibit 19: Letter from Mediator re: Board approval.

FINDING #6

The attorney for the college denies in a news article dated 11/25/99, that his clients, the college administration, employees and Board of Trustees have knowledge of the true settlement amount of the Furtado lawsuits.

RESPONSE

The Sierra College Board agrees with this finding.

FINDING #7

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At least one of the Sierra College Board of Trustees was notified by legal counsel for the Board of Trustees that the lawsuits had been settled and revealed the dollar amount of that settlement.

RESPONSE

The Sierra College Board disagrees partially with this finding.

Three members of the Board subcommittee knew the approximate amount of the settlement. No Board member knew the details or the exact amount.

DISCUSSION

See 4.4.

RELATED QUESTIONS

See 4.4.

FINDING #8

Testimony from Sierra College Board of Trustees members revealed that the majority of the Board was informed of the settlement of the Furtado lawsuit only when they read about it in the newspapers.

RESPONSE

The Sierra College Board partially disagrees with this finding.

Although the full Board was not informed of the settlement as a body, the subcommittee members, Creek, Vineyard and Palmer were informed. Further, Mr. Bush and Ms. Robison were aware that the testimony they were to give had been postponed and were never called to testify.

DISCUSSION

Some of the Board found out about the settlement when they read it in the newspaper. The attorneys representing the District were asked by members of the subcommittee to contact all Board members. This was not done.

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The college President did not place the item on an agenda for discussion, nor did any of the Board members ask for the settlement to be placed on an agenda.

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RELATED DOCUMENTS

Exhibit 1: Letter from Michael A. Krill.

Exhibit 11: Memo from Robert Wickstrom.

RELATED QUESTIONS

8.1 Who gave the authority to settle the lawsuit, without asking the Board?

The Coregis Insurance Company, under its policy with the Schools Insurance Group, had the right to investigate and settle, at the company's discretion, any claim or suit seeking damages to which the insurance applied.

FINDING #9

The settlement of the lawsuit filed by Furtado in the U.S. District Court, Eastern District, was contingent upon the approval by the Board of Supervisors (sic), as stated by Garland Burrell, Jr., United States District Court Judge, by order dated 12/31/98.

RESPONSE

The Sierra College Board disagrees partially with this finding

DISCUSSION

The Order from Judge Burrell was prepared by the mediator in the case, Steven Block. The purpose of the Order was to continue the imminent trial date to allow the parties to reduce the settlement to writing. At that time, the issue of price had been resolved by Coregis. When Mr. Block prepared the order, it did not appear to him that

Board approval of the terms and conditions of the settlement would be necessary, because the attorneys representing the District had made it very clear that no money would be contributed by the District. Nonetheless, Mr. Block decided to include in the Order the language that the settlement was contingent upon the approval by the Board of

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Supervisors (sic) in order to protect the interests of all parties concerned, in the event that the District changed its position and contributed to the settlement.

No violation of Judge Burrell's Order occurred when Bridget Halvorson, attorney for the District, informed the Furtado litigation committee that the Furtado-Coregis settlement did not need to be brought before the Board. The Board of Trustees likewise did not violate Judge Burrell's Order by not voting on the Furtado-Coregis settlement.

RELATED DOCUMENTS

- Exhibit 1: Letter from Mike Krill.
- Exhibit 9: Settlement Agreement.
- Exhibit 11: Memo from Robert Wickstrom.
- Exhibit 19: Letter from Mediator, Steven Block

RELATED QUESTIONS

9.1: Why didn't we approve it? It was ordered by the Judge that we approve it. The attorney representing the District felt that since Coregis settled the case, the District did not have to approve it.

FINDING #10

The Sierra College Board of Trustees, acting together as a governing body, was never told the actual amount of the settlement of the Furtado lawsuits, nor did they ever vote, ratify, approve or sign any settlement document in their official capacity or any capacity at all.

RESPONSE

The Sierra College Board agrees with this finding

DISCUSSION

As discussed previously, the Board of Trustees did not have jurisdiction over the settlement, which was between Coregis and Furtado. Under the terms of the insurance contract with Coregis,

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Coregis had sole power to settle the law suit and conduct the litigation. This is the same contract with all school districts in Placer County.

RELATED DOCUMENTS

Exhibit 1: Letter from Michael Krill.

Exhibit 11: Memo from Robert Wickstrom.

Exhibit 19: Letter from Mediator

FINDING #11

The members of the Board of Trustees testified that they did not ask questions regarding the settlement because this matter was handled by the insurance company.

RESPONSE

The Sierra College Board agrees with this finding.

RELATED QUESTIONS

11.1: Did the insurance premiums go up as a result of the settlement?

Michael Krill, of Sierra Self Insurance Services, reports that The settlement by Coregis, of the Furtado case(s) did not and has not lead to any increases in rates.

RELATED DOCUMENTS

Exhibit 1: Letter from Michael Krill

IV. RESPONSES TO RECOMMENDATIONS NUMBER 1 THROUGH 3:

RECOMMENDATION #1:

The practice of confidential settlements of lawsuits by a publicly supported institution is misleading to the public and unacceptable to the Grand Jury. Such confidential settlements erode public confidence in the integrity of its elected and appointed officials and could be perceived as a cover up whether or not an actual cover up is intended. The Grand Jury believes that Sierra College specifically

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and public institutions generally should not enter into confidential settlement agreements such as were utilized in the Furtado lawsuits.

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RESPONSE

The Sierra College Board, in reviewing the findings of the Grand Jury, and discussing the Furtado case feels that settlements should be provided to the Board before being signed in order for the Governing Board to fully understand the reasons for settlement. All school districts in Placer County belong to the same insurance JPA. The Governing Board of the JPA holds the policy with the insurance carrier beyond \$115,000.00 suits. Once a suit is referred to the insurance company, that company can settle the case at its discretion.

The College District, and for that matter all school districts in Placer County, cannot afford individually to refuse policies with insurance companies that have the discretion to settle suits without approval of the governing board. JPAs are necessary in order for school districts to be adequately covered.

According to John Wilson, an insurance company representative who made a presentation to the College Board at a special meeting held on February 24th, 2000, confidentiality clauses in settlement agreements with public entities are sometimes used in order to prevent copy cat claims, to prevent the settlements of one claim from influencing settlement demands in another claim, and to avoid encouraging lawsuits, and therefore increased insurance costs.

CONCLUSION FOR RECOMMENDATION #1

Public institutions in general are forced to accept confidential settlements by their insurance companies because state law does not prohibit it. It is recommended that the Sierra College Board of Trustees take two actions.

1. Adopt a Board policy within 90 days that requires all settlements that the college District is involved with be forwarded to the Board of Trustees for review.

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2. The Board will investigate the viability of legislation that would limit the authority of insurance companies to settle suits without the approval of the Governing Board and to limit their ability to apply confidentiality clauses.

RECOMMENDATION #2

The Sierra College Trustees are elected officials. As such, they have a responsibility to see to it that the institution is well managed. They are expected to set policy for governance of the College, its officials, employees, students and physical assets. To achieve these goals, they must receive information that is accurate and reliable. Such information may come from many sources, but principally it should come from college administrators. In the Furtado matter the Trustees were ill informed in that they had not received the details of the settlement. Despite that lack of knowledge, none of them, either individually or collectively, made any inquiries into the terms and conditions

of the settlement of a multimillion dollar lawsuit that attacked the discriminatory personnel practices of the Sierra College administration. The Grand Jury believes that the Board of Trustees in their role of fiduciaries should never relinquish control over settlement of lawsuits as they did in the Furtado matter.

RESPONSE

The Board of Trustees held numerous closed session discussions about the Furtado case between 2/14/95 and 5/26/98, and were well informed on the proceedings. Unfortunately, circumstances occurred that resulted in the formation of the three member committee due to a perceived conflict of interest by one Board member. The three member committee structure prevented a majority of the Board from being informed about the details related to the case. In the author's sixteen years on the Board, this circumstance has never happened, and for that matter, may have never happened in any of the school

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districts in Placer County. Hopefully, the Board will never again be faced with this type of conflict of interest. The Board should have been informed of the settlement after the three member committee was informed. The committee requested that this happen, but it never did.

The Board should have acknowledged publicly the existence of the contingent settlement even though we were not a party to the settlement and the insurance company had complete authority to settle the case.

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CONCLUSION FOR RECOMMENDATION #2

Same as Recommendation #1.

RECOMMENDATION #3:

The Grand Jury believes that Sierra College is a fine educational institution that delivers a sound educational product for its students and that its employees who provide that instruction are dedicated professionals. It is unfortunate for the college and its employees that the matters addressed in this Grand Jury report were ever allowed to occur. The Grand Jury further believes that truth in the conduct of public affairs is essential and to that end recommends that the facts of the Furtado lawsuits and settlement be investigated and revealed to public scrutiny by the Board of Trustees and administration as promptly as possible.

RESPONSE

The Board of Trustees, through the Grand Jury response process, has conducted three special meetings, totaling approximately eleven hours of discussions, related to the circumstances of the Furtado case. All of these meetings were held in open session. Available information and documents were released as part of this process. Materials related to the federal case were made available in the Sierra College Library for a period of one month (March 16 to April 14, 2000) for viewing by the Board and the public. The

intent of the Sierra College Board is not to retry the case publicly, but to disclose the available facts.

Additional Information:

The Board of Trustees, at its meeting on March 8th recognized several items that still need to be discussed:

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1. The matter of who was responsible for initiating the confidentiality and penalty clauses in the settlement.

2. The need to have further clarification of the order by Judge Burrell that the settlement be approved by the Board.

3. The matter of how we agenda future settlements of lawsuits.

Response to Above Questions:

1. See letter from Bridget Halvorson (Exhibit 16) and response to Finding 4.

2. See Exhibit 19: Letter from Mediator and letter from Bridget Halvorson referring to page 14 and 15.

3. New Board policy as referred to in conclusions as part of response to Recommendation 1 shall include this.

V. ADDITIONAL QUESTIONS AND COMMENTS FROM BOARD MEMBERS:

The following questions were raised by individual Board members, which were not addressed as part of the responses to the findings:

1. Barbara Vineyard: Why did they think they should settle the case rather than go to court?

COMMENT

This issue was addressed in comments received from Mike Krill in that Coregis settled for what they thought would be the minimum amount that would have been spent if the case would have gone to court. The settlement eliminated the risk of paying additional money for damages if the case prevailed. Coregis representatives would not respond to inquires. Information on the amount of Furtado s legal fees to date which the District might have had to pay if Furtado had prevailed in even a small matter was taken into consideration also.

2. Sally Robison s Comments:

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Statement made by Sally Robison at the February 17, 2000, Sierra Community College Special Board Meeting, addressing Recommendation 3 of the 1999-2000 Placer County Grand Jury Final Report

1.

The Grand Jury further believes that truth in the conduct of public affairs is essential and to that end recommends that the facts of the Furtado lawsuits and settlement be investigated and revealed to public scrutiny by the college Board of Trustees and administration as promptly as possible.

The point is not the amount of money paid for the Furtado settlement or if the money was paid by private, public, or insurance funds. The point is the Furtado settlement should have been a red flag to the members of the Sierra College Board of Trustees that at least one person (namely the insurance carrier) felt that there was merit to the Furtado case.

If there was merit to the Furtado case (if paying over one-half million dollars shows merit), then the Board of Trustees had a duty to make an in-depth inquiry into the facts of the case; and to come to a conclusion as to whether or not the personnel practices of the administration should be continued, discontinued, or altered. There is no way a Board should make that decision without an independent investigation. The results and facts of the investigation would be revealed and made available to public scrutiny. Additionally, the entire Sierra College Board of Trustees should also conduct an in-depth exhaustive investigation.

COMMENT

The Board has conducted three public hearings with no closed sessions to reveal to the public the events of the Furtado case. It is not the purpose of this report to try the case in public, but to release the information that was available as a result of the discovery process.

I. **JUDGE RICHARD L. GILBERT S ARBITRATION DECISION:** (Discussion provided by George Holt of Johnson, Schachter and Collins)

In addition to the federal Furtado lawsuit and her state court petition for writ of mandate, Ms. Furtado litigated the decision of the District to deny her tenure in a grievance filed on February 21, 1997. See Exhibit 8, Decision and Findings after Advisory Arbitration (arbitration decision). In this proceeding, Ms. Furtado alleged that the failure to grant her tenure . . . was the result of or a subterfuge

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for discrimination or retaliation against her because of her sex, marital status or ethnicity or because of the fact that she has brought

an action against District and others on similar grounds These are the same allegations that Ms. Furtado made in her federal lawsuit.

The grievance was heard by Judge Gilbert (retired) for four days between March 30, 1998 and June 8, 1998. Among the witnesses presented by Ms. Furtado on her behalf was Trustee Sally Robison, who testified directly against Dr. Ramirez and the District. After evaluating the evidence from both parties, including the testimony of Ms. Furtado and Ms. Robison, Judge Gilbert decided that Ms. Furtado's claims . . . have not been proven. Arbitration decision, p. 2. Judge Gilbert also held that:

Ms. Furtado has failed to present any credible evidence, direct or circumstantial, that any act or omission of the District was motivated by bias toward her on account of her marital status, gender, or ethnic origin. Arbitration decision, pp. 10-11.

. . . no action was taken with the intent or result that she was discriminated against on account of illness or disability. Arbitration decision, p. 11.

Likewise, Furtado has presented no credible evidence of bias or retaliation against her because she filed suit against the District. Arbitration decision, p. 11.

The evidence of alleged statements of bias or improper motive attributed to Superintendent Ramirez are wholly lacking in credibility. The suggestion that Ramirez or the District Administration designed a process to get Furtado or attempted to influence the outcome of the [Tenure Review Committee's] work, including that Kastanis was somehow improperly planted on the [Tenure Review Committee] or as Furtado's supervisor in order to aid this effort is unsupported by any evidence that is not the wildest conjecture.

This is the response received from the Sierra Community College Board of Trustees regarding Grand Jury Final Report 1 titled, "Sierra Community College District, Secret Settlement of Gender Lawsuit." This report is reproduced as presented without Exhibits.

VII. FURTADO S PETITION FOR WRIT OF MANDATE: (Discussion provided by George Holt of Johnson, Schachter and Collins)

Another procedural development that the Grand Jury should consider was the filing of Ms. Furtado s petition for writ of mandate alleging a Brown Act violation which she claims occurred during the Board meeting at which the Board decided voted not to re-employ Ms. Furtado. The Superior Court rejected this claim and denied the petition. Ms. Furtado appealed, and the Third District Court of Appeal upheld the decision. Furtado v. Sierra Community College (1998) 68 Cal.App.4th 876.

VIII. REASONS WHY THE THREE MEMBER COMMITTEE WAS FORMED:

A three-member committee of Board members was appointed on May 26, 1998, because it was felt that a potential conflict of interest existed with one Board member pertaining to the Furtado case.

Delegation of authority by a Board of Trustees to a committee is governed by Education Code 70902(d). A board may delegate its power to a committee and the motion delegating the authority sets the limits of the delegation. The Board delegated its authority to monitor all matters related to the Furtado litigation, the committee was not empowered to act in place of the Board.

The committee was necessitated because Sally Robison had a perceived conflict of interest in the case, based upon the following:

1. Sally Robison was subpoenaed by Furtado in the Grievance Arbitration hearing.
2. On March 12, 1998, Sally Robison filed a Declaration in Support of Quashing a Deposition Subpoena, which was set on behalf of Dr. Ramirez, thus refusing to answer questions from Dr. Ramirez s attorney. (Exhibit 13)

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3. Sally Robison hired a personal attorney to file an Opposition to the college's Motion for Summary Judgment, which had been filed on behalf of the college to dismiss Furtado's suit. (Exhibit 7)

4. On May 12 and May 26, 1998, Matt Evans (attorney for the college) advised the Board that Sally Robison's testimony, due to the fact that she was a sitting Board member, was very damaging. (Exhibit 10) He further advised that in his law firm's opinion, Furtado was using Sally Robison's testimony as her major weapon, and that it was clear that Ms. Robison had been prepared to testify at the grievance hearing by Furtado's attorney.

For all of the reasons set out above, the Board felt that any future closed session discussions could be compromised.

IX. EXHIBITS 1 THROUGH 21:

See separate volume.

(Editors note: The Grand Jury chose not to reprint the Exhibits to this report.)