

SIERRA COMMUNITY COLLEGE DISTRICT COMPLAINTS 98B-32 AND 99B-32

Introduction

The 1999-2000 Placer County Grand Jury received a complaint in Fall 1999, as well as a complaint forwarded from the 1998-1999 Grand Jury. The complaints had several components concerning the Sierra Community College District. The complaints covered the time period from approximately 1994 to the present and covered a variety of subject areas and conditions. A number of complaint components originated from the construction of the Learning Resource Center (LRC) on the Rocklin campus. Others dealt with management and administrative practices at the College and still others with the conduct of the Board of Trustees.

Because of the scope of these complaints it was felt that an in depth investigation should be undertaken by the Grand Jury to either sustain or clear the complaints. This report will take each complaint component as presented and describe the investigation, its conclusions, and finally propose recommendations as indicated.

Some complaints are not individually addressed as they were incorporated into other subject areas, were not within the jurisdiction of the Grand Jury or were included in the resolution of the Furtado lawsuit. (For more information on the Furtado lawsuit, please see Grand Jury Final Report 1, titled "Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit," included in this document.)

1. Complaint

There were construction project cost overruns on the Rocklin and Nevada City campuses.

Investigation

The Grand Jury reviewed original construction contracts for both projects as well as numerous change orders associated with both projects. The Learning Resource Center on the Rocklin campus had originally been planned to be a four-story building, the first floor to be below ground level. Shortly after groundbreaking, it was discovered that the building site was located on a granite outcropping which ultimately caused the plans to be altered to raise the entire building four feet above ground level as excavation into the granite outcrop was cost prohibitive. Additional problems arose as construction proceeded with building materials that did not meet specifications. A number of change orders were required.

It is true that there were cost overruns on both projects but these costs were well known to the Board of Trustees and ratified by them numerous times over the course of the projects.

The Grand Jury prefers that all public construction projects not have cost overruns; however, given the geological conditions encountered and the changes authorized, most overruns were inevitable.

Finding

There were cost overruns on construction projects at the Learning Resource Center on the Rocklin campus and at the Nevada City campus.

Recommendation

Contractors performed geologic studies. Contractors should be held accountable for their errors. In the case of the construction of the LRC that apparently did not happen. The Board of Trustees should have held the geological survey contractor responsible for the additional costs incurred by their failure to detect the granite outcropping before construction started. As a result, cost overruns were paid for with public funds.

In the future, the Board of Trustees must ensure that contractors are held financially accountable for their errors.

2. Complaint

Liquidated damage provisions contained in construction contracts for the LRC at the Rocklin campus and the Nevada City campus buildings were not enforced by the College administration and the Board of Trustees.

Investigation

The Grand Jury reviewed the original construction contracts on both the LRC project at Rocklin and the building at Nevada City and found that there were liquidated damage clauses contained in both project contracts. The LRC contract provided that the project was to be completed within 500 days. Each day over that completion date was to result in a liquidated damage payment of \$1,000 per day. The project exceeded the completion time by 293 days.

The matter of enforcement of liquidated damages pursuant to both contracts was presented for decision to the Board of Trustees on June 27, 1997, by the College administration. In response to a question by a Board member, an administrator explained that if the liquidated damage clauses were enforced, the contractor would charge the District \$2,000 per day for extended lease costs on equipment.

The veracity of that statement was checked and found to be unverifiable. Testimony revealed that the matter of “extended lease” expenses was discussed in relation to an arbitration concerning Sunrise Steel Company and the general contractor Mark Diversified. The settlement of that dispute was reduced to writing by legal counsel for the District but no provision for “extended lease expenses” was addressed. The explanation given to the Trustees, in response to a question regarding the enforcement of liquidated damages, was hearsay and without verifiable foundation.

Finding

Liquidated damages were provided for in the contracts for construction of the Learning Resource Center in Rocklin and the buildings at the Nevada County campus. The Learning Resource Center project in Rocklin was scheduled under contract to be completed in 500 days but exceeded that time by 293 days. Liquidated damages were apparently not enforced by the Sierra College Board of Trustees based on the testimony of a College administrator on June 27, 1997. The Grand Jury was unable to verify from testimony that the contractor, Mark Diversified, would charge \$2,000 per day if the liquidated damages were enforced.

Recommendation

The liquidated damages ought to be enforced or the decision not to enforce contract provisions should be supported by verifiable facts. The College Board of Trustees, before making decisions that in effect give away public money, should assure themselves that information presented to them from any source is reliable. Apparently, they believed the administrator’s representations, not realizing that the information conveyed was not based on verifiable fact but merely on hearsay conversations.

3. Complaint

The fourth floor plan at the LRC was altered during construction to provide administrative offices for the President/Superintendent and Vice-Presidents of the College, contrary to funding agreements with the State of California.

Investigation

The Grand Jury interviewed the members of the Board of Trustees regarding the alleged alteration of plans for construction of the fourth floor of the LRC on the Rocklin campus. All but one Board member denied any knowledge of such alterations. The Grand Jury heard testimony that the controversy surrounding these proposed alterations may have been a triggering event in the lawsuit of Furtado v. Sierra College District, et al.

A detailed review of records made available to the Grand Jury, however, appears to support the allegation that alterations were made in the original plans, which were different from the plans submitted to the State of California.

It appears that the alterations were in fact made by a College official to accommodate offices for the College President/Superintendent and two Vice-Presidents and possibly other administrators. These plans were never carried to completion and the fourth floor of the LRC does not now house the offices of the President/Superintendent and/or the College Vice-Presidents. There is no evidence that changes in the fourth floor plans were initiated or approved by the College President/Superintendent.

Finding

The construction plans for the fourth floor of the LRC at the Rocklin campus of Sierra College were altered to accommodate the offices of the President/Superintendent and at least two other administrators, instead of their originally planned use by students. The alterations were contrary to the usage proposed in the original building plans provided to the State of California. The alterations for office use by the President/Superintendent and Vice-Presidents were never carried to completion and the area is not currently used for those purposes.

The Grand Jury was unable to verify the allegations contained in the complaint that the changes were initiated or approved of by the President/Superintendent.

Recommendation

Plans for public buildings paid for by public funds should not be altered from their original proposed usage by students to personal usage by administrators.

4. Complaint

The Sierra College District has given \$250,000 to the Sierra College Foundation over the last five years. The Sierra College Foundation lost \$25,000 in 1995/1996. The records of Foundation finances were inadequate. The Foundation Executive Director made a gift of real property to the Foundation to gain a tax deduction. The property was later sold at a fraction of the value stated when the donation was made. An audit of the Foundation in May 1996 revealed accounting irregularities.

Investigation

The Grand Jury spent an extensive amount of time reviewing Foundation financial records from 1994 to the present. In addition, Sierra College staff, personnel, former employees and members of the Board of Trustees were interviewed. An audit of the Foundation's accounts dated May 1996 was also reviewed.

The Sierra College Foundation has existed for a lengthy period of time. It is a California non-profit corporation with its own appointed/elected 18 member Board of Directors. It qualifies as an Internal Revenue Code § 501 (c)(3), tax-free organization and can

accept donations that allow the donor to take a tax deduction. Its purpose is to receive donations for scholarships for general or specific distribution to students; to receive donations for expenditure on College equipment as identified by the Foundation Board and to raise funds for the above purposes.

Over the lengthy history of the Foundation, it has received periodic infusions of money from the Sierra College District general funds. In testimony given before the Grand Jury, several Trustees and the College President/Superintendent agreed that the sum of money granted to the Foundation was around \$250,000 over the last nine to ten years.

The Foundation, despite its independent status as a California non-profit corporation, is in reality an auxiliary organization of Sierra College. The signatories on Foundation accounts are College administrators and employees with the exception of the Foundation President. The audits of the College are inclusive of Foundation audits and language in the audits indicates that the Foundation is considered to be an arm of the College.

The transfer of College funds to the Foundation has been done with approval of the Sierra College Board of Trustees. The purpose of these infusions of funds into the Foundation's coffers has been described as necessary to keep the Foundation operational as the Foundation has never generated sufficient funds to support itself.

These fund transfers from College to Foundation have been variously described in minutes of Board meetings and/or Board member interviews as both loans and gifts. Board minutes of August 22, 1995 cite a \$22,500 "loan" from the Board of Trustees to the Foundation.

The Grand Jury investigation concluded that such transfers were never repaid nor is there any expectation they would ever be repaid. No documentation, such as promissory notes or collateral papers, has ever been created in any fund transfer. Board members were extensively questioned about this documentation and **not** one indicated any concern about the lack of such documentation. Board members, with few exceptions, consider the transfer of funds to the Foundation as a legitimate expenditure of College funds.

In 1995, the Foundation, with the concurrence of College District administration, hired a new Executive Director. It was felt at the time that the Foundation needed an active program to raise funds. As part of this fundraising plan, several grants administered by the College Economic Development staff were moved to Foundation control so that administrative fees could be collected and a money stream would be created to bolster the Foundation's financial picture.

At about the same time, April 1995, \$300,000 of Foundation funds on deposit with the Placer County Treasurer were withdrawn and deposited into a money market account held by Westamerica Bank. In June 1995, these funds were divided and re-deposited into accounts at the same bank, labeled as Scholarship account, Special account, and

Operating account. From records available, these accounts were holding accounts. Funds were transferred in and out of these accounts and to and from each of the three accounts.

In that same month, June 1995, a \$75,000 revolving line of credit was taken out secured by the funds already on deposit at Westamerica Bank. The \$75,000 line of credit was to be utilized as "seed" money to pay overhead until the grant money fees started to come in. This revolving line of credit utilized \$140,000 over the life of the loan. Repayment of the loan apparently came from Foundation accounts. It is impossible to tell what specific funds were used to repay these loans as the accounts co-mingled all manner of funds from numerous sources.

The Grand Jury, in an effort better to understand the purpose and nature of these accounts, reviewed the bookkeeping records currently utilized and apparently utilized at the time of these transactions. The funds collected from whatever source, i.e., fundraiser, donations, grant fees, etc., were deposited into one holding account. The computer bookkeeping system then broke these funds into numerous sub-funds specifically identifying the monies. It appears to be an effective control system; however, the rationale for the creation of the three Foundation accounts entitled Scholarship, Special and Operating is a mystery to be resolved.

During the same time period (1995/1996), a plan was devised to sponsor a "street fair" to be held on weekends in the College parking lot. This planned event was unsuccessful due to weather conditions at the time, and the Foundation lost approximately \$25,000 on the venture.

Another plan for Foundation fundraising was the establishment of a golf driving range on College property. That never materialized due to financing problems, but substantial attorney fees for preparation of documents were incurred.

In early 1996, an audit was performed which was published in May 1996. In that audit it was stated that the Executive Director had donated a parcel of property located in Nevada County to the Foundation. The donated property was appraised at \$34,500. Several months after that donation, the property was sold by the Foundation for \$10,000: \$5,000 in cash and a \$5,000 note due and payable a few weeks after close of escrow.

The donor - the then Executive Director - had been authorized by the Foundation Board of Directors to sign documents. He did so as the Foundation signing authority on the sale transaction of the property that he had previously donated. This Executive Director subsequently resigned.

The May 1996 audit of the Foundation was reviewed for mention of the above donation. The auditor did note the donation and listed the funds received as \$3,900 (which was after closing costs), but made no mention of the \$5,000 note.

Records were obtained from the Foundation pursuant to subpoena and it was discovered that the \$5,000 note was paid but on an installment basis at the rate of \$250 per month plus interest. That note was paid in full.

The May 1996 Foundation audit did in fact reveal a number of bookkeeping discrepancies, none of which was significant. The audit also revealed that the Foundation investment portfolio had not been adequately accounted for. College personnel subsequently corrected these discrepancies.

Following the May 1996 audit, the Foundation Board, President/Superintendent and the Board of Trustees reduced the size of the Foundation efforts. At present it consists of an organization that receives donations and holds a few fundraisers per year. It also receives income from a weekend car sales lot at the College.

Finding 1

The College did “give” as opposed to “lend” approximately \$250,000 in funds to the Foundation over a period of nine to ten years. This was done at the request of the College administration and the Foundation Board of Directors and with the approval of the College Board of Trustees. There were no supporting documents other than Board minutes to these transactions.

Finding 2

The Foundation financial records are confusing. The creation of three accounts with strange labels and the lateral movement of funds from one account to the other are mystifying and unexplained.

Finding 3

The gift of property appraised at \$34,500 to the Foundation by the former Executive Director is a fact. The money derived from the sale of that property is \$3,900 plus a note in the amount of \$5,000, which was paid in installments of \$250 per month plus interest for a total net to the College of \$8,900 plus interest.

Finding 4

The audit of May 1996 did reveal accounting irregularities which appear to be bookkeeping shortcomings and not serious in nature.

Finding 5

The Foundation’s grant operations have been taken back under College control. Foundation employees housed on campus now keep the books and records of the Foundation.

Finding 6

The Foundation is an auxiliary to Sierra College.

Recommendation

The purpose of the Foundation is to serve as a recipient of donations and a fundraising organization for the benefit of the College and the students. Because of the funding of the Foundation by the College, the Board of Trustees has a responsibility to oversee the use of those funds. Interviews with members of the Board of Trustees revealed that most knew virtually nothing about the operation of the Foundation in 1995/1996 or even in the present. They seemed satisfied that the President/Superintendent and one College Trustee who acts as liaison with the Foundation would take care of Foundation activities without the Board of Trustees' involvement.

The Grand Jury is not as confident of administration oversight as the Board seems to be. The Grand Jury believes the ultimate responsibility for the use of College funds lies with the College Board of Trustees. The Trustees should develop a clearly articulated plan concerning the College's relationship with the Foundation.

5. Complaint

The College President/Superintendent and the Board of Trustees have engaged in the practice of "serial board meetings."

Investigation

The Grand Jury investigated this allegation since the practice of "serial board meetings" is a violation of the intent of the Brown Act (Open Meeting). The Grand Jury found that the President/Superintendent held meetings with members of the Board of Trustees to discuss matters agendaized for full Board meetings before the scheduled meetings.

The practice of "serial board meetings" continued for a number of years until the Board and the administration were criticized by the press for Brown Act violations. Some Trustees have testified that such "serial board meetings" are no longer held. However, other Trustees have testified that they are still being held. The practice of "serial" board meetings violates the intent of the Brown Act.

Finding

The President/Superintendent met with individual Board members on a regular basis to discuss agendaized matters prior to Board meetings.

Recommendation

The Board of Trustees and the President/Superintendent of Sierra College should cease holding “serial board meetings,” as they are violations of the intent of State law.

6. Complaint

The Board of Trustees adopted an antagonistic and biased attitude toward Trustee Sally Robison.

Investigation

The Grand Jury investigated and found that the Board of Trustees has from time to time become involved in internal strife. At one point in the summer and fall of 1996 considerable time, effort and attorney fees were devoted to an attempt to unseat then Board President Sally Robison.

Testimony revealed that the event initiating the attempted removal was action by Robison to place an item on the Board agenda without the permission and in the absence of the President/Superintendent. Board custom provided that the agendaing of items for the Board was the responsibility of the President/Superintendent. State law allows any citizen to place an item on the agenda of a community college board.

Finding

This allegation is supported by evidence. The Board has had internal strife and the Board President Sally Robison was in fact the object of an effort to remove her from her position as Board President.

Recommendation

The Board's obligation as elected officials is to represent first and foremost the public interest. Internal strife and personal attacks on each other are detrimental to the primary mission of the Board of Trustees. Such behavior should not occur. The press and the electorate should duly note repetitions of such behavior.

7. Complaint

Attorneys representing the Sierra College Board of Trustees attempted to procure telephone records of an elected official, namely Trustee Sally Robison. The contention of the complainant is that such an action is an unwarranted invasion of the privacy of the elected official as well as of the constituents represented by that person.

Investigation

The issue of procurement of the telephone records of Sierra College Trustee Sally Robison first arose on May 26, 1998, when she was confronted in a closed session of the Board. A letter, addressed to the President/Superintendent, dated April 15, 1998, authored by the attorney to the Board and the College, mentioned Robison's resistance to efforts to obtain her telephone records. That letter was shown to the Board in that closed session by means of an overhead projector.

Robison, in testimony before the Grand Jury, stated she was astounded by the revelation on May 26, 1998, as she was totally unaware that anyone was seeking her telephone records. She tried on several occasions following that meeting to get information regarding the attorney's statement. No response was given.

At a public meeting in February 2000, the attorney's letter of April 15, 1998 reappeared as part of the response to Grand Jury Final Report 1 titled, "Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit." It became a public issue and the Grand Jury received a complaint.

Investigation revealed that the law firm representing the President/Superintendent researched the issue of the employment history of Trustee Sally Robison on October 2, 1998. Also on October 8, 20, 27, 28 and 29, 1998, the law firm researched how to obtain the telephone records from the Pasadena Avenue Elementary School within the San Juan School District. Billings indicate a demand letter was sent to the San Juan School District and to Sally Robison's previous employer, the North Sacramento School District, on October 29, 1998.

The Grand Jury issued subpoenas to both school districts to obtain the attorney's demand letters for telephone records. North Sacramento School District had no records. San Juan District responded with a copy of the demand letter, signed by the attorneys representing the President/Superintendent, for telephone records under the Public Records Act. The records, from six phone lines at the Pasadena Avenue Elementary School, utilized by over 50 persons, were apparently obtained for a period of nearly two years.

The fruits of this effort never surfaced, as the Furtado lawsuit never went to trial. Robison never had to testify, and therefore the records, whatever they contained, were never used against her to prove she was a witness adverse to the position taken by the College.

Finding 1

The Grand Jury found evidence that the effort to obtain Trustee Robison's telephone records was an attempt to discredit her potential testimony as a witness in the matter of Furtado v. Sierra College, et al.

Finding 2

Trustee Sally Robison was unaware of any efforts to obtain her telephone records and did not resist a subpoena as alleged.

Finding 3

Testimony from Trustee Sally Robison revealed that she is currently employed as a kindergarten teacher at Pasadena Avenue Elementary School in the San Juan School District and that she had formerly been employed in that same capacity in the North Sacramento School District.

Finding 4

Trustee Sally Robison stated that she has learned from school officials that there are six telephone lines at Pasadena Avenue Elementary School. Those lines are used by over 50 staff members, volunteers at the school, students, police officers at the school on official business and, periodically, by Child Protective Service personnel.

Recommendation

The Sierra College Board of Trustees is ultimately responsible for the actions of the President/Superintendent and the attorneys employed to defend them in litigation. The Trustees as well as the President/Superintendent were aware that attorneys representing the District had tried to obtain telephone records of Trustee Sally Robison.

The Trustees owe an explanation not only to Trustee Robison but also to the public who elected them, as to why they allowed their attorneys to invade the private work life of one of their peers. Apparently it was for the sole reason that she disagreed with their collective opinion on the Furtado litigation.

8. Complaint

The President/Superintendent of Sierra College acted without prior Board approval.

Investigation

The Grand Jury found that there were a significant number of occasions during the construction projects at the Rocklin and Nevada City campuses that change orders were implemented prior to being approved by the Board of Trustees. These change orders for the most part were routine in nature and were non-controversial.

Finding

The Grand Jury finds that the allegation is true. Given the nature of construction projects, frequent change orders are to be expected.

Recommendation

The President/Superintendent and the Board of Trustees should develop a more responsive method of approving or not approving matters that require immediate action so that late approval of matters brought before the Board can be avoided in the future.

9. Complaint

The President/Superintendent has failed to provide accurate and adequate information to the Board of Trustees, to the public, to the press and to the Grand Jury.

Investigation

❖ Board Agendas and Minutes

The Grand Jury found several disturbing practices which tend to deprive the Board of Trustees of a full and complete flow of information regarding the conduct of College affairs. Several years ago, either by administrative action or Board direction, the information contained in agendas of Board meetings and supporting “packet” documents was substantially reduced. The motivation for such action has been described as an effort “to save paper and thirty trees,” “to streamline the Board agenda,” “to reduce routine paperwork.” Items omitted include copies of warrants paid by the District, among other things. The reasons for such practices may be commendable, but the end result is in fact a diminution of the flow of information to the Board and to the public.

The Grand Jury reviewed minutes of Board meetings for several years and concluded that the description of Board actions were many times so vague that it was impossible to determine what action the Board had taken.

Board members testified that reduction of descriptions of Board activities in the minutes was intentional. It was done to avoid arguments over the wording of minutes copied from meeting tapes by staff secretaries and was legal according to the advice given by the College district’s attorneys.

❖ Media Relations

Several years ago the practice of routinely preparing press releases for the media was discontinued. The staff person responsible for preparation of press releases was ordered by the President/Superintendent to cease performing that service, to

discontinue attendance at Board meetings and to refrain from personal contact with Board members.

During the time period 1996-1997, the Auburn Journal newspaper published a series of articles which were critical of the Sierra College administration and the Board of Trustees. The President/Superintendent and legal counsel for the College on at least four occasions complained to the newspaper publisher about negative press coverage. The President/Superintendent wrote a letter to the newspaper's owner complaining about the newspaper editor.

The result of those efforts is difficult to discern but the "offending" reporter and the editor subsequently left the employ of the newspaper and negative coverage ceased.

Negative coverage of Sierra College, with the exception of the stories related to the publication of and response to the Grand Jury Final Report 1 titled, "Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit," continues to be absent from virtually all Placer County publications, which are owned by the same newspaper organization.

❖ **Tapes of Board of Trustees Meetings**

One of the chronic complaints by members of the public is the difficulty of reviewing Board of Trustee's meeting tapes. Currently, if a member of the public wishes to hear a meeting tape, that person is required to go to the College President/Superintendent's office, request to listen to a tape of the meeting in question, wait, sometimes for a lengthy period, listen to the tape on a tape recorder and provide a blank tape if a copy is desired.

Tape quality, as determined by Grand Jury testimony and from the experience of Grand Jury members, is marginal and the content is frequently undecipherable.

Several suggestions have been made by members of the public about the taping problems. One of them was to make the tapes available in the College library rather than the President/Superintendent's office. The Board has failed to act on these requests.

❖ **Brown Act Violations**

The Sierra College Board of Trustees has been criticized for years over Brown Act violations. Serial meetings by the President/Superintendent with Board members were open and blatant until press coverage curtailed the practice. The use of "Friday Letters," which are prepared by the President/Superintendent and sent to Board members, and which on occasion discuss agendized matters of public business prior to Board meetings, is an ongoing practice.

The Board President has made formal statements of Board positions before any meetings occur at which a Board position could be formalized.

All these acts are examples of a Board of Trustees and President/Superintendent who seem to have forgotten that they are elected and appointed officials of a public, tax-supported institution. They have allowed themselves to adopt the position that their business is not the public's business.

❖ **The Furtado Settlement**

The handling of the Furtado settlement is illustrative of the manipulation and control of the flow of information to the Board of Trustees and the public.

Finding 1

The Grand Jury finds that the information flow to the Board of Trustees, the public and the press has in fact been restricted over the past several years.

Finding 2

The public and the media are unable to receive full accounts of Board actions without cumbersome efforts to review tapes in the President/Superintendent's office.

Finding 3

The Sierra College Board of Trustees has violated the intent of the Brown Act repeatedly over a period of years.

Recommendation 1

Immediately amplify the information flow from the College administration to the Board of Trustees. Publish minutes of Board actions that can be understood by the public without a review of meeting tapes.

Recommendation 2

Develop a method that will allow the public to review Board meeting tapes on a standard recorder in a neutral location such as the College library.

Recommendation 3

Obey the Brown Act.

❖ **The College’s Response to the Grand Jury Final Report 1, Titled “Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit”**

In monitoring how the Board of Trustees and the College administration would address the Grand Jury report, it was observed by the Grand Jury that one of the first responses by the College President/Superintendent was to conceal the response process from public view. At a Board meeting of February 8, 2000, the President/Superintendent said to the Board, “I don’t want to be a part of this. I want to be out of this thing, and I think what David [Parker, Board of Trustees’ President] is suggesting is to have a draft of a response mailed to your homes individually and that would be confidential and privileged information because it comes from the law firm.”

Fortunately the President/Superintendent’s suggestion was not implemented. The Sierra College Board of Trustees did conduct a series of public meetings to address Grand Jury Final Report 1, titled “Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit.” From those meetings and from further investigation by the Grand Jury following publication of the report, a series of facts have emerged which help to clarify the role some Trustees had in the decision to maintain the confidentiality of the Furtado settlement and in setting the College on a course of conduct designed to defend the concealment of the terms and conditions of the settlement of the Furtado lawsuit.

❖ **Formation of the Subcommittee**

On May 26, 1998, a three-member subcommittee of the Board of Trustees of Sierra College was appointed pursuant to § 70902 (d), Education Code of the State of California to deal with all aspects of the Furtado litigation. Testimony before the Grand Jury revealed that the subcommittee was formed for the purpose of isolating Trustee Sally Robison from receiving further information regarding the lawsuit. She was considered to be an adverse party to the College.

In § 70209 (d) of the Education Code it states: “Wherever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to district’s chief executive officer or any other employee or committee as the governing board may designate; provided however, that the governing board shall not delegate any power that is expressly made non-delegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.”

The subcommittee was lawfully appointed pursuant to the provisions of § 70902 (d). The Board, from testimony given to the Grand Jury by all members of the Board of Trustees who served on the Board at the time, and from the subcommittee members themselves, limited the subcommittee by prohibiting them from making any decisions regarding the settlement of the Furtado case. Any decisions required were to be taken back to the full Board of Trustees.

Finding

The subcommittee was formed for the purpose of isolating Trustee Sally Robison from the flow of information, thereby disenfranchised the majority of the Board of Trustees.

Recommendation

The formation of the subcommittee to isolate one member of the Board of Trustees from information concerning the Furtado lawsuit resulted in isolating not only that member but a quorum of the Board as well. If the goal was to remove Trustee Sally Robison from information regarding the Furtado lawsuit, the better course of action would have been to seek court approval to remove her from such discussions. Had that been done, there would have been no subcommittee nor would there have been decisions made by two Trustees to maintain the confidentiality of the Furtado settlement.

The Grand Jury strongly recommends that in the future should such circumstances arise, a better course of action be taken.

❖ Decision by the Subcommittee

The subcommittee met with attorneys representing the subcommittee and the Board over a period of months.

On or about December 7, 1998, Trustees David Creek and Barbara Vineyard met with attorneys representing the subcommittee and the Board. Trustee Nancy Palmer, the third member of the subcommittee, was absent.

At that meeting Creek and Vineyard were informed that a settlement of about \$500,000 was to be made. The matter of keeping the settlement and the amount confidential was discussed. The source of the issue of confidentiality is ambiguous. Creek stated at a public hearing on February 17, 2000, that lawyers told him the insurance company wanted confidentiality. On April 5, 2000, both Creek and Vineyard testified before the Grand Jury that the issue was brought up in conversation. There was absolutely no mention of insurance company involvement, even in response to direct questioning by the Grand Jury. The attorney most involved in drafting and researching the confidentiality provision, according to billing records, was the attorney who represented President/Superintendent Kevin Ramirez.

Throughout the investigation of this issue of confidentiality by the Grand Jury, the College, its Board, and its lawyers have continued to insist that, “no decisions were made by the subcommittee” and “the settlement was controlled by the insurance carrier.”

The Grand Jury is mindful that the Furtado case was settled for \$550,000 in damages plus approximately \$576,000 in attorneys' fees by the insurance carrier for the College, and that the terms of that settlement were intentionally withheld from the public.

It is true that the insurance carrier did control the monetary settlement of the case, but the insurance carrier did not control whether or not the settlement was to remain confidential. The decision to keep the settlement confidential rested with the Board of Trustees but was made in violation of § 70902 (d) of the Education Code by Trustees Creek and Vineyard on December 7, 1998. That decision exceeded the authority granted them by the Board of Trustees when the subcommittee was appointed.

The limits of their authority were not as portrayed in the minutes of May 26, 1998 and the College's response to Grand Jury Final Report 1 titled "Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit" issued January 17, 2000. Those minutes erroneously stated that the subcommittee was to handle all related matters in the Furtado litigation.

At an open special Board meeting on June 23, 1998, a concerned citizen asked the Board what authority the subcommittee possessed. Board President Robert Tamblyn told her that the subcommittee could take no action and must return to the Board for decisions.

Every member serving on the Board of Trustees in 1998 has testified before this Grand Jury that the subcommittee had no authority to make decisions. The subcommittee members themselves stated that they had to return to the full Board before decisions could be made.

The decision by the two subcommittee members to maintain confidentiality set in motion a series of events which is currently ongoing. First, that decision exceeded the subcommittee's authority, according to testimony and statements by the Board of Trustees. Second, the decision violated § 72000 (3) (4), California Education Code, which states in pertinent part:

(3) Except as otherwise provided by law, the governing board shall act by majority vote of all of the membership constituting the governing board, and (4) Every official action taken by the governing board of every community college district shall be affirmed by a formal vote of the members of the board, and the governing board of every community college district shall keep minutes of its meetings, and shall maintain a journal of its proceedings in which shall be recorded every official act taken.

That Section requires that all decisions be made by vote of a majority of the Board. Those decisions mandated by law were never made by the Board of Trustees, and despite that fact the Board has apparently continued to take actions or allowed the President/Superintendent and attorneys to act to protect the confidentiality of the settlement, including retaining attorneys to litigate the public's right to know.

Finding 1

Trustees Creek and Vineyard made a decision on or about December 7, 1998, to keep the settlement terms of the Furtado lawsuit confidential.

Finding 2

The decision made by Trustees Creek and Vineyard to keep the terms of the Furtado settlement confidential exceeded the authority granted to them by the Board of Trustees on May 26, 1998, pursuant to California Education Code § 70902 (d).

Finding 3

The decision by two Trustees to keep the terms of the Furtado settlement confidential violated § 72000 (3) (4) of the California Education Code.

Finding 4

The insurance carrier did not control whether or not the Furtado settlement terms were to be confidential.

Recommendation

The Board of Trustees knew or should have known that two trustees exceeded the authority granted them. It is and was the responsibility of the Board to act to restrain excesses by its members in violation of State law. The Grand Jury recommends they take action to rectify as far as possible the results of the unauthorized action of their members.

❖ Expenditure of Public Funds

If no action was taken after the decision of December 7, 1998, by Trustees Creek and Vineyard to enter into a confidential settlement, the damage of that decision would have been confined to a technical violation of several sections of the Education Code, cited above.

The fallout from that decision, however, has had far-reaching consequences.

Following the settlement in late December and early January 1999, lawyers representing the College proceeded to resist the efforts of a reporter to obtain documents related to the settlement pursuant to the Public Records Act. It appears that the lawyers' goal was to maintain the confidentiality of the settlement of the Furtado lawsuit.

The question has arisen as to who authorized the extensive legal defense mounted by the College to resist the reporter; an effort that has thus far involved resistance to a Writ of Mandamus in Placer County Superior Court and an appeal now in the Third District Court of Appeals. That question has been unanswered by College officials. The Board apparently decided to vigorously defend the decision to keep the Furtado lawsuit confidential, since only the Board could authorize the retention of the attorneys and expenditure of funds to defend those actions. However, there is absolutely no evidence, in tape recordings or minutes, that the Board of Trustees ever made such a decision or authorized the expenditure of funds for legal fees as required under state law. If the Board took no such action, the question arises as to who did.

Finding

The Board of Trustees failed to act in its role as governing authority of the District. It knew or should have known that the President/Superintendent had authorized a course of action to defend the College through continuing litigation. This authority should have been the result of Board action.

Recommendation

The Board of Trustees has the responsibility to determine if, when and what should be litigated by attorneys employed by them. The decision to defend against revealing the confidentiality of the terms of the Furtado settlement is the Board's to make. The Board should go on record as either supporting or not supporting such litigation. Such a decision should be made in public and on the record.

❖ The Argument That the College Was a Party to the Lawsuit but not a Party to the Settlement Is Erroneous

When the settlement agreement of January 1999 in the Furtado case was released, the District insisted that no one had signed the agreement on behalf of the College, a named defendant in the lawsuit.

The reason was stated several times in the College's response to Grand Jury Final Report 1 titled, "Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit" — that the College was not a party to the settlement and as a result was not required to produce documents for the reporter and others in the media pursuant to the Public Records Act. The reasoning is that since the College, a public agency, was not a signer of the settlement, they had no obligation under the law to obtain and produce documents. This is an effective tactic to maintain the secrecy of the settlement.

If the College was not a party to the settlement of the Furtado lawsuit, why was it necessary to form a subcommittee of members of the Board of Trustees to monitor the progress of the lawsuit; to be notified of the settlement amount; and to make a decision to maintain confidentiality of the settlement terms and conditions?

One of the signers of the settlement agreement in January 1999 was the President/Superintendent. His signature bears no title. In its response to the Grand Jury Final Report 1 titled, "Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit" the District has stated that the President/Superintendent signed the agreement as a private person, not as President/Superintendent of the College; that he was not signing as a College official and therefore he was not required to respond to requests under the Public Records Act.

That argument does not stand up under scrutiny. The President/Superintendent was sued as a College official in the course and scope of his employment. The College provided a legal defense, through its insurer, for the President/Superintendent. That insurance coverage insures employees pursuant to the doctrine of "Respondeat Superior." Respondeat Superior ("let the master answer") means that a master (the College) is liable in certain cases for the wrongful acts of its servant (the President/Superintendent). This doctrine is not applicable if the injury occurs while the servant is acting outside the scope of his authority.

In this case, *Furtado v. Sierra College, Ramirez et al.*, the College defended Ramirez for acts alleged to have been committed in the course and scope of his employment as College president. The District has never contended that Ramirez acted outside the course and scope of employment. It is in that capacity and that capacity only that the case could be settled and the District's insurance money paid to Furtado. To allege that the converse is true, that is, that President/Superintendent Ramirez settled only in a private capacity and not as a College employee is to have him personally responsible for payment of damages to Furtado and therefore outside of his official capacity as an employee of the College. Obviously this did not occur.

How does the President/Superintendent appear on the settlement agreement signing as a private party and not as President/Superintendent of Sierra College? This position was apparently taken to avoid media scrutiny by protecting the confidentiality of the settlement from disclosure to interested parties and the media under the Public Records Act. It is a legal contrivance, a device to avoid exposure by the College to the potentially embarrassing details of the Furtado settlement.

Finding 1

The College was a named defendant in the Furtado lawsuit.

Finding 2

The Sierra College President/Superintendent was a named defendant in the Furtado lawsuit.

Finding 3

The Sierra College President/Superintendent was provided a defense by his employer, the Sierra Community College District, under the doctrine of “Respondeat Superior.”

Finding 4

A legal defense was provided the College President/Superintendent by the insurance carrier for the College.

Finding 5

The President/Superintendent of Sierra College was acting in the course and scope of his duties as President/Superintendent at all times alleged in the Furtado lawsuit.

Finding 6

The College President/Superintendent alleges that he signed the settlement agreement in the Furtado lawsuit as a private litigant and not as President/Superintendent.

Finding 7

The College President/Superintendent in his alleged capacity as a private litigant in the Furtado lawsuit did not pay any of the litigation expenses or the settlement damages.

Finding 8

The College was a party to the lawsuit and a party to the settlement since the settlement included a confidentiality agreement.

Finding 9

The settlement agreement, its terms and conditions, were drafted by the attorneys representing the President/Superintendent with input from the attorney representing the College.

Recommendation

The contention of the College through its attorneys is that the President/Superintendent signed the settlement agreement as a private litigant. The settlement money paid to Furtado in his behalf was from the College’s insurer, not the insurer of Kevin Ramirez, private litigant. If the insurer paid a settlement on behalf of Kevin Ramirez as a private litigant, should not Ramirez be required to reimburse the insurance carrier for the funds paid to Furtado in his behalf?

Of course, such a recommendation would not be contemplated by the College or the insurer because Kevin Ramirez was never a private litigant.

The Grand Jury recommends that the College conduct a final resolution of the Furtado in an open and forthright manner.

❖ **Is this a Conspiracy of Silence?**

Billings from the attorney for the President/Superintendent reveal that research was done into “confidentiality” as early as December 14, 1998. The billings reveal extensive efforts in drafting, redrafting and receipt of input from the attorneys for the District into the agreement. This was a well thought out plan concurred in by the two Trustees/subcommittee members on or about December 7, 1998, and executed by the attorneys representing the subcommittee, the District and the President/Superintendent, presumably on behalf of their clients.

The response by the Sierra College Board of Trustees to Grand Jury Final Report 1 titled, “Sierra Community College District, Secret Settlement of Gender Discrimination Lawsuit” is illustrative of the efforts taken to divert public attention away from the central issue of confidentiality of the settlement and onto Trustee Robison for her role as a party adverse to the position taken by the Board of Trustees and the President/Superintendent in the Furtado litigation.

The statements and transcripts portraying Robison as the District’s adversary are overstated. Trustee Robison had absolutely no role in the confidentiality of the settlement.

Trustees Creek and Vineyard and the attorneys agreed to keep the settlement confidential. In furtherance of that agreement, the two Trustees testified before the Grand Jury under oath. Their testimony was determined to be inaccurate and misleading.

Finding

The Grand Jury firmly believes that there was a “conspiracy of silence” to maintain the confidentiality of the Furtado settlement amount and to conceal from the public information that it had a right to know.

Recommendation

Public entities should never enter into arrangements or agreements that deprive the public of its right to know the facts.

RESPONDENT

Sierra Community College Board of Trustees

RESPONSE REQUIRED WITHIN 60 DAYS TO:

The Honorable Larry D. Gaddis
Presiding Judge, Superior Court
County of Placer
Historic Courthouse
101 Maple Street
Auburn, CA 95603