

GRANT  
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HIGH  
SCHOOL  
DISTRICT

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Presiding Judge of the Superior Court  
Sacramento County Superior Court  
720 Ninth Street  
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*Formal Response of the Grant Joint Union High School District to the  
2003-2004 Grand Jury Final Report*

Dear Presiding Judge,

On behalf of Dr. Larry M. Buchanan, Superintendent, and the Governing Board of Trustees, the Grant Joint Union High School District hereby submits its formal response to the 2003-2004 Grand Jury Final Report on the *Grant Today*. While we honor and respect the important role of the Sacramento County Grand Jury, we respectfully disagree with the Grand Jury's findings concerning Grant Joint Union High School District's alleged misuse of the *Grant Today*. While we will abide by the findings and recommendations, the District is compelled to fully articulate its legal position in this matter.

**Formal Response**

First and foremost, it is the mandate of the Grant District to abide by all local, state and federal statutes and regulations governing public school districts and public agencies. Under the leadership of Dr. Buchanan and the "Education First" School Board, the District has been radically reinvented with the mission of not only improving the quality of education and student achievement for the students and parents that we serve, but also of becoming more accountable to the parents, students, teachers and classified employees that we serve.

Second, the Grant District is cognizant of the importance of public education to our society and the need to encourage and foster free and open debate of issues of importance to the electorate. The California Supreme Court stated in *Hartzell v. Connell* (1984) 35 Cal.3d 899 at 907-908: "the contribution of education to democracy has a political, and economic, and a social dimension. As this Court has previously noted, education prepares students for active involvement in political affairs (*Serrano v. Priest* (1971) 5 Cal.3d 584, 607-608).

...arising like the Phoenix

"A New Education for a New Economy"

Education stimulates an interest in the political process and provides the intellectual and practical tools necessary for political action. Indeed, education may well be `the dominant factor in influencing political participation and awareness.' (*San Antonio School District v. Rodriguez* (1973) 411 U.S. 1, 114, fn. 72 [36 L. Ed. 2d 16, 90, 93 S.Ct. 1278] (dis. opn. of Marshall, J.))" And, where school system matters are of legitimate public concern in a society such as ours that leaves such questions to popular vote, the United States Supreme Court has ruled that free and open debate is vital to the informed decision making by the electorate. *Pikering v. Board of Education* (1968) 391 U.S. 563, 571-572; 88 S.Ct. 1731, 1736, 20 L. Ed. 2d 811 (1968).

The Grant Districts responds to the Grand Jury's findings and recommendations with the foregoing principals in mind as follows:

**Finding 1.** Grant Joint Union High School District has used public monies inappropriately by advocating against the redistricting plan of Families for Better Education in articles published in its monthly publication, *Grant Today*. The articles did not include any information about the opposing point of view.

**Recommendation 1.** Officially disseminated information from a school district regarding a contested issue should be fair, impartial and balanced -  
**Concurrence.**

While the District disagrees with this factual finding, the District concurs with this recommendation. One of the principal hallmarks of the "Education First" School Board is financial accountability. The District has not misused any public funds to "advocate or present only one side of a political issue" in violation of the California Education Code or the California Government Code.

As you are aware, the Grand Jury admonished the District for not presenting opposing viewpoints in our monthly newspaper, the *Grant Today*, when publishing articles which either (1) reported on the allegations and the status of a pending civil lawsuit filed in the Sacramento County Superior Court challenging the validity of the signature gathering process and of the signatures themselves on citizens' petition proposing the reorganization, (2) responded to inquiries and questions it was receiving from the general public about the effects of a potential reorganization of the District or, (3) discussed the efforts to qualify petitions being circulated to reorganize the District.

The Grand Jury concluded that three articles, which appeared in issues from April 2003 through February 2004, lacked sufficient balance and impartiality. Our comprehensive legal analysis from in-house and outside legal counsel concluded that the District's actions were proper and consistent with the law on this issue under these particular sets of facts and circumstances.

California Education Code Section 7054 provides in relevant part:

- (a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.
  
- (b) Nothing in this section shall prohibit the use of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:
  - (1) The informational activities are otherwise authorized by the Constitution or laws of this state.
  
  - (2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

At all relevant times, the Grant District was in full compliance with California Education Code Section 7054 for at least two separate reasons. First, the preliminary step of gathering signatures to submit a potential school district reorganization to the County Board of Education is not a "ballot measure."

In addition to in-house counsel, the District specifically sought outside legal opinions from law firms with expertise in public agency and education law, on the question of when an issue becomes a "ballot measure" for purposes of school district reorganization. The legal opinions concurred that this factual determination is very difficult to determine before the State Board of Education has decided on the merits of a reorganization/unification petition. However, based on even the Grand Jury's cited authorities, it appears that California Education Code Section 7054 would not apply at least until the State Board of Education had approved the proposed reorganization.

The Grand Jury reviewed legal references including 73 Ops. Cal. Atty. Gen. 255 (1990) in support of its findings and recommendations. That Opinion considered the following three questions:

1. Can public funds of a city, county or district be lawfully used to draft an initiative or referendum measure which will be circulated for signatures among the voters with respect to legislation of another city, county or district?
2. Can public funds of a city, county or district be lawfully used to gather signatures for an initiative or referendum measure with respect to legislation of another city, county or district? Is there a distinction in law between a state measure and a local measure regarding gathering signatures? Is there a distinction in law between the use of public funds regarding gathering signatures for a referendum measure versus an initiative measure?
3. Can public funds be used to promote an initiative or referendum measure that has qualified for the ballot? Can a public agency or official use public funds to provide educational information to the public about a ballot measure? If so, how is a distinction made between "educational materials" and "campaign literature?"

The Opinion reached the following conclusions:

1. Public funds of a city, county or district may lawfully be used to draft an initiative or referendum measure which will be circulated among the voters with respect to legislation of another city, county or district.
2. Public funds of a city, county or district may not be lawfully used to gather signatures for an initiative or referendum measure with respect to legislation of another city, county or district. There is no distinction in law to be drawn between a state measure or a local measure in this respect. Nor is there a distinction in law to be drawn between a referendum measure versus an initiative measure.
3. Public funds cannot be used to promote an initiative or referendum measure that has qualified for the ballot, at least in the absence of clear and explicit legislative authorization. A public agency or official can use public funds to provide educational information to the public about a ballot measure. No hard and fast rule be set forth to distinguish between "campaign literature" and "educational materials" which will govern each case. Circumstances such as the style, tenor or timing of the publication may be determinative.

However, even that opinion analyzed and discussed a ballot measure in its broader sense as one already qualified to be submitted to the electorate. Specifically, the opinion stated "...we also consider ballot measures in their broader sense, that is any measure properly submitted to the voters, whether by initiative, referendum or by the state legislature or any legislative body. (See Elec. Code, 38: 'measure' means any constitutional amendment or other proposition *submitted to a popular vote* at any election)" (emphasis added).

The opinion also analyzed whether a local agency could promote an initiative or referendum measure "which has qualified for the ballot" or provides 'educational information' as opposed to 'campaign literature' to the public concerning ballot measures generally. In this case, at the time *Grant Today* published the questioned articles, not only was there no proposal to be submitted to a popular vote at an election, it was not even clear whether such a measure would ever be submitted to a popular vote.

The State Board of Education in this particular case could have taken a number of actions. It could have found that the proposal for reorganization did *not* substantially meet the conditions enumerated in California Education Code Section 35753, thereby preventing the matter from being submitted to the voters for approval. Alternatively, it could have approved the Petition for Reorganization and called for an election. If the petition had been approved by the State Board of Education, it is undisputed that the matter would have been a "ballot measure," and a school district may not use public funds to advocate or oppose the measure. Alternatively, the State Board could have denied the Petition for Reorganization, thereby preventing the matter from being submitted to the voters for approval.

In this case, at the time the articles were printed by the *Grant Today*, the matter had not even completed the initial rounds of administrative hearings with the Sacramento County Board of Education. Theoretically, the Sacramento County Board of Education could have denied the Citizens Petition and/or given a negative recommendation on the Citizens Petition, which could have ended the process. Furthermore, the Sacramento County Board of Education could have proffered its own petition to the State Board of Education, which it ultimately did.

Lastly, California Education Code Section 7054 may be unenforceable as being vague or overbroad as it impinges on Constitutionally protected free speech. There are essentially no guidelines or limitations on the terms "fair and impartial" in the statutory language. This is particularly critical in view of the educational forum at issue and the importance of free debate of the issues involved which are of great importance to the effected electorate.

As stated at the outset, while the District disagrees with the finding, the District concurs with the recommendation of the Grand Jury. The District has already implemented this recommendation with its staff.

**Finding 2.** Grant Joint Union High School District has specific written policies regarding the use of district resources for advocating political issues and activities, but these policies were not followed in several articles published in *Grant Today*.

**Recommendation 2.** Grant Joint Union High School District should make its employees aware of these policies and ensure all personnel understand and interpret these guidelines as intended by state law and case law. Employees should refer to publications by the California School Boards Association to give them direction - **Concurrence.**

The District disagrees with the portion of the finding that the Grant District did not follow its own policies regarding the use of District resources for advocating political issues. Nevertheless, it concurs with the recommendation. The *Grant Today* is a valuable source of accurate information on District programs and activities to the greater North Area community. The District developed the *Grant Today* publication specifically in response to some of the findings and recommendations of the Grant Select Blue Ribbon Commission in July 15, 1998. Specifically, the Commission recommended that the District commence efforts to develop and implement a comprehensive communication network within and outside the District to insure that the community is well informed about ongoing events and activities occurring in the District. A copy of the Grant Select Blue Ribbon Commission Report was provided to the Grand Jury during this investigation.

As the District Administration and School Board began to address the dissolution issue in the community, it became readily apparent that there was a lack of credible information and an over abundance of misinformation in the community. Numerous parents, employees and students were contacting the District and asking serious questions about the ramifications of a potential restructuring of the District.

Interestingly enough, the District found that the Reorganization proponents, including Families for Better Education, never discussed the actual costs of such a restructuring, from school finances and facilities to curriculum and instructional programs to future employment rights of employees in a clear, comprehensive manner. The proponents also failed to discuss the resulting segregative effect of the proposed reorganization. California Education Code Section 35753 lists factors the State Board of Education must consider before it may approve proposals for reorganization of school districts and specifically

requires that a proposed reorganization must *not* promote racial or ethnic discrimination or segregation.

In 1993, a proposed reorganization of the Grant District, structure very similarly to the one discussed in *Grant Today*, was ultimately disapproved because of resulting racial or ethnic discrimination or segregation. It was thus likely that the effort reported in the *Grant Today* publication would suffer the same fate. The students, parents and parties affected had an absolute right to be informed of the racial and ethnic discrimination or segregation that would result from the proposed reorganization and its affect on the likely outcome of the reorganization effort.

Furthermore, the District Administration and School Board began to receive credible and verifiable information from numerous parents, employees and community members that a few of the elementary districts supporting the dissolution of the Grant District were using staff time, public property and public resources to advocate for the Reorganization. It is undisputed that the regular Steering Committee meetings for Families for Better Education were held in the Superintendent's Office of one of the elementary school districts during regular business hours. Moreover, the District Office received an internal memo from a few employees from one elementary school district recruiting petition signature gatherers among the workforce during work time. The Grant District provided this information to the appropriate authorities, but no corrective action was taken for these actions.

It is a strange twist of irony that it was the Grant District that was under investigation, particularly given the actions of some of the proponents of the Reorganization. Through discovery in the litigation initiated in the Sacramento County Superior Court, the Grant District discovered that approximately 1 in 10 of the citizens' signatures gathered on these petitions was a forgery or had been otherwise improperly obtained. The strength of the Grant District's position was apparent when in February 2004 the Sacramento County Office of Education and Sacramento County Committee on School District Organization stipulated to entry of a judgment in the case to the effect that the citizens' petitions were insufficient and not signed as required by law and directing the County Committee to issue a board resolution rescinding and annulling its previous decision approving those petitions.

Accordingly, the District felt compelled to utilize its communication network to respond and correct the proponents' misinformation, answer public inquiries and provide the necessary relevant information in order for the community at large to have a more balanced and accurate view of the proposed dissolution process and to keep it informed of ongoing developments in the pending lawsuit.

The *Grant Today* articles cited in the Findings contained, among other things, information from a publicly filed writ proceeding against the Sacramento County Office of Education and others seeking to nullify the citizen's petitions for, among other things, fraud and irregularities in the petition signature gathering process. In fact, a lead organizer and petition coordinator for Families for Better Education pled *nolo contendere* to one count of election fraud, violating California Elections Code Section 18614. The District ultimately prevailed in this civil lawsuit, and the petitions gathered by the Reorganization supporters were legally nullified. The Sacramento County Office of Education ultimately agreed with the District's position, and entered into a Stipulated Judgment to nullify the citizens' petitions, which was approved by the Superior Court.

Contrary to the characterization in the Final Report, Families for Better Education is not an association of District parents or an education advocacy group. Rather, it is a political action committee with a center of operations *outside* of the Grant District. According to political filings with the Sacramento County Registrar of Voters, Families for Better Education is a political action committee with core support from developer and bureaucratic special interests, not District parents and families. Over the course of more than four (4) years, this political action committee raised over \$225,000.00 to finance the petition signature gathering process, a process fraught with petition fraud and a myriad of other irregularities.

As stated at the outset, while the District disagrees with the finding, the District concurs with the recommendation of the Grand Jury. The District has already implemented this recommendation with its staff.

**Finding 3.** In the August 2003 newsletter of *Grant Today*, GJUHSD's Legal Counsel was a visible advocate opposing the coalition's reorganization plan.

**Recommendation 3.** The District Legal Counsel should not advocate for a political issue or activity that affects the District. Legal Counsel should ensure that a political issue discussed in district public communications be fair and balanced - **Concurrence (Qualified)**.

The District agrees with this factual finding that its Legal Counsel was a visible advocate opposing the proposed Reorganization Petition. For the following reasons, the Grant District has a qualified concurrence with the last recommendation of the Grand Jury.

It is generally true that the District's legal counsel should insure that a political issue discussed in district public communications be fair and balanced. However, when a political issue challenges a fundamental constitutional right or civil liberty, it is the ethical responsibility of the District's legal counsel to aggressively advocate and defend his public agency client. The Grant Jury Report cited no legal prohibition in any state or federal statute, rule or administrative regulation to support this overly broad recommendation.

In the instant case, the District's legal counsel has been dealing with the issue of school district reorganization during his entire seven (7) year tenure with the Grant District. The most legally problematic portion of the current Reorganization proposal is the segregative effect of the proposed division. It is this portion of the proposal that was successfully challenged in a previous Reorganization attempt that was substantially similar to the current proposal. It is this same portion of the Plan that was addressed in S B 7 99 (Ortiz) to attempt to ameliorate the segregative effects of any Reorganization attempt of the Grant District.

After an in-depth analysis of this issue, the District's legal counsel has formally opined that the current plan is fatally flawed, because it creates segregation, in violation of the State Board of Education regulations, as well as state and federal law. The District's outside counsel, as well as a litany of civil rights organizations, including the NAACP, Urban League, ACLU, Mexican American Legal Defense Fund, Area Congregations Together (ACT), BAPAC, and the California Black Chamber of Commerce, all share this position. All of these organizations have been vocal in opposing this current Reorganization plan.

In hearings before the Sacramento County Board of Education, the District's legal counsel gave formal testimony on this issue. It is anticipated that the District's legal counsel will provide formal testimony on this issue during the hearings before the State Board of Education. The articles in *Grant Today* dealing with this issue constituted a recap of public testimony provided to the Grant School Board and the Sacramento County Board of Education on this issue.

Under the facts and circumstances of the instant case, and in the absence of any expressed legal prohibition, it is completely appropriate for the District's legal counsel to advocate on behalf of its public agency client.

### Conclusion

As previously stated, the Grant District remains committed to the principles that public education is the cornerstone of our American democracy. This cornerstone is strengthened when it fosters and encourages free and open debate on matters of public concern to the electorate. The question of determining the optimum educational delivery system in the North Area has been a matter of public concern for decades.

Because the "Education First" School Board is united in its commitment to maximize student achievement in the District, it encourages free and open debate regarding the optimum educational delivery system. The "Education First" School Board will continue to insist that the community have accurate and relevant information in order to safeguard the integrity of the debate, and perhaps ultimately, the electoral process.

The District will fully and swiftly implement the Grand Jury's recommendations. If you have any additional questions or concerns regarding this matter or another matter, please don't hesitate to contact myself at (916) 286-4910 or Dr. Larry M. Buchanan, Superintendent at (916) 286-4921.

Very truly yours,

Jacques S. Whitfield  
District General Counsel

cc: David Gordon, Sacramento County Superintendent of School  
Annette Emery, Board President  
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