

**AGENDA**  
**Board Audit Committee**  
9:00 AM  
September 10, 2011  
Superintendent's Conference Room  
East Side Union High School District Education Center  
830 North Capitol Avenue  
San Jose, CA 95133-1398

*In compliance with the Americans with Disabilities Act, if you need special assistance, disability-related modifications or accommodations, including auxiliary aids or services, in order to participate in the public meeting of the Audit Committee, please contact the office of the District Superintendent at (408) 347-5011. Notification 72 hours prior to the Regular Meeting will enable the District to make reasonable arrangements to ensure accommodation and accessibility to this meeting. Upon request, the District shall also make available this agenda and all other public records associated with this meeting in appropriate alternative formats for persons with a disability.*

1. **Call to Order/Roll Call**

2. **Introductions**

3. **Adopt Agenda**

4. **Special Order of Business**

*Individuals may be permitted to present an item out of order on the agenda to accommodate their schedules.*

5. **Public Comments**

*Members of the public may address the Audit Committee on any subject not on the agenda; however, provisions of the Brown Act (Government Code 54954.2(a) and .3) preclude any action. As a unagendized item, no response is required from the Audit Committee or district staff and no action can be taken; however, the Board may instruct the Chair to agendize the item for a future meeting.*

6. **Approval of Minutes**

**Action:** Minutes from the June 11, 2011, meeting will be presented for approval.

**Internal Auditor Work Plan**

7. **Discussion/Action: FCMAT Report: Update the Status of All Actions taken in Response to the FCMAT Report Recommendations**

Ian Marsh, Internal Auditor, will review all actions taken by the Board and the Administration in response to the recommendations included in the FCMAT Report

8. **Discussion/Action: Facilities Development Measure G & E General Obligation Bond Funds**

Ian Marsh, Internal Auditor, will present findings and recommendations for action related to policies and administration regulations for the Measure G & E General Bond Obligation Funds.

9. **Discussion/Action: School Site Cash Handling**

Ian Marsh, Internal Auditor, will present findings and recommendations for action related to policies and administration regulations for the handling of cash at school sites.

10. **Discussion/Action: Attendance Reporting**

Ian Marsh, Internal Auditor, will present findings and recommendations for action related to policies and administration regulations for attendance reporting at school sites.

**11. Discussion/Action: Legal Expenditures**

Ian Marsh, Internal Auditor, will present findings and recommendations for action related to policies and administration regulations related to legal expenditures.

**12. Discussion/Action: Fraud, Waste and Abuse Hotline**

Ian Marsh, Internal Auditor, will report on the implementation of a Fraud, Waste and Abuse Hotline as approved at the August 30, 2011, Board meeting.

**13. Discussion/Action: Other Items and Possible Additions to Internal Auditor's Work Plan**

Ian Marsh, Internal Auditor, will report on any other items that he is investigating and present recommendations for additions to the Internal Auditor's Work Plan. Members of the Audit Committee or the public may also make suggestions at this time.

**External Audit**

**14. Discussion/Action: 2009/10 East Side Union High School District Audit**

Ahmad Gharaibeh, External Auditor, will report on the status of the 2009/10 external audit.

**15. Discussion/Action: Leasing of Facilities**

Ahmad Gharaibeh, External Auditor, will report on the improper reporting of facilities leasing revenues.

**District Administration/Superintendent**

**16. Discussion/Action: Carnival Policies and related Issues**

Superintendent Dan Moser will report on the current Board policy related to the authority to authorize a "Carnival" and the development of an administrative regulation that includes certificate of insurance requirements for liability and workers compensation.

**17. Discussion/Action: E-RATE Reimbursement for 2008**

Superintendent Dan Moser will brief the committee on the current status of the E-RATE reimbursement.

**18. Discussion/Action: Status of Special Education IEP's**

Superintendent Moser will report on the status of the District's efforts to comply with Individual Education Plan (IEP) requirements for Special Education students.

**Audit Committee Business**

**19. Discussion/Action: Annual Review of Audit Committee Charter**

Section V, Self-Assessment, requires the annual review of the Charter. Audit Committee member Dan Juchau will provide recommendation for revisions to the Audit Committee Charter

**20. Discussion/Action Future Meetings**

The next Audit Committee meeting is scheduled for 9:00 AM, Saturday, November 19, 2011.

**21. Superintendent Communications/Comments**

- Superintendent Dan Moser
- Associate Superintendent of Business Services, Marcus Battle

## 22. **Audit Committee Member Comments**

Individual Audit Committee members may report on programs, conferences, meetings attended and/or items of interest to the public. An Audit Committee member may wish to express a concern or observation about a topic not appearing on the agenda, or request items to be scheduled on a future agenda.

## 23. **Adjournment**

FEB 09/01//11

# EAST SIDE UNION HIGH SCHOOL DISTRICT

## Minutes of Meeting

### Unapproved

### Item #6

#### Board Audit Committee

June 11, 2011

9:00 a.m.

East Side Union High School District  
Education Center

Superintendent's Conference Room  
830 Capitol Avenue San Jose, CA 95133-1398

#### 1. Call to Order /Roll Call

*The meeting was called to order by Chair Frank Biehl at 9:03 a.m. Present were Vice Chair Martinez-Roach, Member Berg, Member Neighbors, Member Juchau, and Alternate Member Gonzalez.*

*Staff members in attendance were:*

- *Dan Moser*
- *Ian Marsh*
- *Mary Guillen*

*Presenters:*

- *Ian Marsh, Internal Auditor*
- *Ahmad Gharaibeh, External Auditor*

*Members of the public in attendance were:*

- *Solomon Gebala*

#### 2. Introductions

*Persons present at the meeting introduced themselves.*

#### 3. Adopt Agenda

*There were no changes to the agenda.*

**4. Special Order of Business**

Individuals may be permitted to present an item out of order on the agenda to accommodate their schedules.

*There was no change to the order of items on the agenda.*

**5. Public Comments**

Members of the public may address the Audit Committee on any subject not on the agenda; however, provisions of the Brown Act (Government Code 54954.2(a) and .3) preclude any action. As a unagendized item, no response is required from the Audit Committee or district staff and no action can be taken; however, the Board may instruct the Chair to agendize the item for a future meeting.

*There were no comments from the public.*

**6. Approval of Minutes**

**Action:** Minutes from the April 16, 2011, meeting will be presented for approval.

*Motion by Member Juchau, second by Member Berg, to approve the minutes as presented.*

*Vote: 5/0*

**7. Discussion/Action: FCMAT Report: Update the status of all actions taken in response to the FCMAT Report recommendations**

Ian Marsh will review all actions taken by the Board and the Administration in response to the recommendations included in the FCMAT Report including #14, a review of Administrative Regulations related to adequate billing documentation.

*Internal Auditor Marsh provided an update regarding the status and actions taken in response to the FCMAT report recommendations.*

*He discussed the "Education Code 1241.5(b) Extraordinary" document, which was prepared by the Santa Clara County Office of Education (SCCOE), with the Committee. It was explained that the green boxes signify fully compliant and yellow are items the SCCOE considers have not been corrected or have been partially corrected. In anticipation of a meeting scheduled for May 4 with the SCCOE, Internal Auditor Marsh addressed only the items highlighted in yellow.*

East Side Union High School District  
Board Audit Committee Meeting  
Minutes of June 11, 2011

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*The document titled “FCMAT Extraordinary Audit – EC 1241.5(b), Follow-Up of Open Items” was presented to the Committee for discussion. Internal Auditor Marsh provided the Committee the following responses to the SCCOE’s findings:*

*Number 2 - Finding 2*

*The District is fully compliant with this finding. The District has an Administrative Regulation in place that includes language regarding professional services. A copy of the Administrative Regulation was provided to the SCCOE.*

*Number 5 - Finding 5*

*The District is fully compliant with this finding. A Conflict of Interest Statement was prepared by District’s General Counsel for implementation/use by the District. All consultants will be required to sign and have on file with the District a Conflict of Interest Statement. (Reference Board Policy 3600)*

*Internal Auditor Marsh will independently pull consultant files to audit that each have a Conflict of Interest Statement on file. He will report his findings at the next Audit Committee Meeting.*

*Member Juchau asked who is responsible for looking at contracts and if they each have a Conflict of Interest Statement on file?*

*Superintendent Moser indicated that it starts in Purchasing where it is put into a file and then it would be by the auditor.*

*Alternate Member Gonzalez asked if the District has a list off contractors and if there is a check box next to their name that is either checked or unchecked that indicates whether or not they have a Conflict of Interest Statement on file.*

*Superintendent Moser indicated that the District does not have a checklist document.*

*Internal Auditor Marsh and Superintendent Moser will look into the details as to how the process to track consultant requirements is implemented. This item will be placed on the next agenda for further discussion.*

*Number 8 -Finding 1*

*Contracts extensions are covered in Administrative Regulation 3311.*

Number 13 - Finding 6

*The FCMAT report does not specify individuals or vendors. The report comments on exceptions or weaknesses, but does not identify instance. The Auditor, who worked on the audit, is no longer with FCMAT. The District was not able to adequately respond because the name of the vendor was not known. Internal Auditor Marsh contacted FCMAT and FCMAT researched their work papers. The name of the consultant and sub-consultant was provided: consultant SGI; sub-consultant Community Development Resources, Inc.*

*Internal Auditor Marsh feels that this issue has been adequately addressed by the District.*

Number 14 - Finding 1

*FCMAT believes that the vendor should provide detailed invoices that include specific dates, hours worked, billing rates, detail by person providing the service with the underlying facility project as identified in each charge.*

*This item is related to construction management billings by Blach Construction. Blach, in their billings, showed separate charges for pre-construction, construction and close-out. In reviewing the contract signed with Blach, it states very clearly that consultant services are billed based on a percentage of the total contract. Internal Auditor Marsh feels that the way Blach billed the District was compliant with the contract between Blach and the district.*

*There was some discussion by the Committee that the policy be reviewed by the Board, specifically in the area of billing.*

*Vice Chair Martinez-Roach indicated that the Board gave direction to Administration with the FCMAT report, in a public meeting, that they need to have corrective action on all the issues. At some point, what has been done needs to be presented to make sure the issues have been addressed.*

*Chair Biehl indicated that the District is looking to have the County Office sign off that the District has complied with the recommendations of the FCMAT Report; that is an important factor.*

*There was some discussion on "fixed fee orders" and how some may result in change orders.*

*Member Neighbors indicates that for contracts that are time and materials, the public does not want charges to be ongoing, there should be a cap, which results in a fixed fee. The public wants transparency.*

*Member Juchau indicated that there are change orders that take the purchase orders out of the fixed fee model.*

*Vice Chair Martinez-Roach indicated that change orders is a huge issue and an issue the District needs to address.*

*Chair Biehl feels that this issue is worthy of further investigation. Internal Auditor Marsh will look further into this issue and come back with recommendations if needed. Change orders will be on the agenda for future discussion, unless covered under the Internal Auditor's Work Plan.*

*Number 15 - Finding 2*

*Vavrinek, Trine, Day & Co (VTD) has spent quite some time looking at this. In their June 30, 2010, Audit Report, they concluded that overall project costs were properly allocated to each Bond Program. No material audit exceptions were noted.*

*Number 21 - Finding 5*

*This item was not specific to any individual. The District's response was that there have been no subsequent payouts since the FCMAT audit. Future payouts will be reviewed by the CBO and approved by the Board of Trustees.*

*Internal Auditor Marsh will review the contract of the Superintendent and Associate Superintendents to review the vacation and vacation payouts process.*

**8. Discussion/Action: Measure G & E General Obligation Bond Fund Performance Audit Reports for Fiscal Year Ended June 30, 2010**

Ahmad Gharaibeh, External Auditor, presented this audit's findings at the April 16, 2011 meeting. The Board at its April 21, 2011 meeting accepted the audit. Superintendent Dan Moser will update the committee as to how the audit's findings are being addressed by the administration.

*External Auditor Gharaibeh discussed the audit findings of the Measure G and E General Obligation Bond Performance Audit Reports for fiscal year ended June 30, 2010, specifically the findings of the contracts on what could and could not be charged from a contractor's perspective. The language in the contracts reviewed was general, not specific. A couple of the contracts have been renewed with the contractor and the attorney is reviewing the language of the contract and making it more specific on the new contract. VTD has not seen the new contract, but they will come back in September or October to review the language to make sure that what can and cannot be charged to the District is included in the contract.*



**9. Discussion/Action: Audit Work Plan Report**

Ian Marsh will report on the status of projects included in the Board approved Audit Work Plan.

*Internal Auditor Marsh reported on the status of projects included in the Board approved Work Plan. Items discussed were as follows:*

1) Facilities Development; Measure E & G Bonds

*Due to other work commitments, he has not done much work in this area since the previous Audit Committee meeting. During the summer, there will be more focus on this area.*

*As a follow up to the FCMAT Audit Report discussed earlier in the meeting, documentation supporting billings of the sub-consultant CDR was requested. CDR provides construction management services. The invoices provided only show the hours worked at \$120/hour and no supporting detail on actual services performed and for what project. Bob Bush of SGI did provide some information, but it was not specific on the services provided.*

*The contract between the sub-consultant and SGI was reviewed. The language in the contract is vague as to what services are to be performed. The invoices show that the sub-consultant has billed SGI and the District over \$500,000. The monthly billing has been averaging \$20,000. This area will continued to be researched and an update and recommendation will be provided at the next meeting.*

*Issues relative to change orders and exceeding the 10% were discussed. Superintendent Moser stated that the District does monitor the exceeding of the 10%. In his two years as Superintendent, the District has only had one project that exceeded the 10% and the District recently dealt with that matter, requiring that the excess come out and the District go out to bid because that is the law. When there is an excess of 10%, a process must be followed to mitigate the issue.*

2) School Site Cash Handling

*Since the April 16 meeting, Internal Auditor Marsh has reviewed the school site cash handling at Piedmont Hills High School. For Andrew Hill, Evergreen Valley, Santa Teresa and Silver Creek High Schools he has reports in draft format, which he shall be reviewing with the Principals and will include their response in the audit findings. At the last Audit Committee meeting, he mentioned major internal control issues.*

*At a few sites, bank reconciliations were not being prepared monthly. There was one site where the last bank reconciliation had been prepared on June 30, 2010. Trial balances, income statements and balances sheets are not always prepared monthly. At a few sites, there are long-outstanding deposits, which should clear with a bank within one to two business days. In some, they went back several months. One had the deposit made to the wrong account. The other one, we do not have a good explanation; there will be follow-up on that issue.*

*At a few sites there are non-compliant food sales. As a District, we are committed to following State law, the Education Code and District policy.*

3) Attendance Reporting

*Additional work on this item has not been done. This will be looked into with more detail in the Fall.*

4) E-Rate

*There have been ongoing issues in trying to get reimbursement under the E-Rate Program. There are two major claims pending, which total over \$3 million for years 2008 and 2010. The FCC received confidential information on allegations against the District. As a result, a major investigation was started. The District has been trying for two years to get a resolution on the 2008 claim. The 2010 claim has not been paid because the 2008 claim has not been resolved.*

*Internal Auditor Marsh met with various staff that were involved in the filing of the claims and also responsible for responding to the questions from USAC. He also has been in communication with Fred Brakeman from Infinity Communications who the District has hired to help with the expediting of the claims. Mr. Brakeman concluded that the District has sometimes done a poor job of ensuring the claims are accurate and complete. Mr. Brakeman feels that the District has responded appropriately to all the documents requests by USAC. He is doing everything he can to get resolution on the claims.*

*Internal Auditor Marsh shared with the Committee that, just this past Friday, an e-mail was received from USAC which stated they have completed their review of the District's 2011 claim and the documentation appears complete.*

*Vice Chair Martinez-Roach asked if the District was receiving the correct reimbursement based on the percentage of free and reduced lunches in the District. Mr. Moser will research the question.*

*E-Rate will remain on the agenda under the District receives it reimbursement.*

5) FCMAT Special Audit

*Item discussed under section seven of the agenda.*

6) Procurement

*What has been done on this item has been based on the FCMAT audit.*

7) Legal

*A number of items have been reviewed, such as legal expenses, to identify whether the District has any documented procedures in this area, procedures to review and approve invoices.*

*Chair Biehl indicate that this item will be covered under item ten on the agenda.*

8) Independent Accountants

*Internal Auditor has spoken to this item in a previous Audit Committee Meeting.*

9) Special Projects

*Personnel matters cannot be discussed with the Committee, but there is one significant matter in this area involving accounting for District funds.*

*Under E-Rate, it was noticed that the District was receiving a number of charges for third-party billings through AT&T for items such as personal voicemail. It was found that a number of the charges went back to 2007 or 2005 and range from \$13-\$15 a month, which is a recurring charge. A block of ten charges were questioned with AT&T. They said it was 24/7 personal voicemail. It was asked who ordered the service and when. The information was provided by AT&T. AT&T was informed that the charges were not authorized. In most cases, a partial credit was issued. One charge was over \$800. A few indicated that District was too late for a full credit, but would offer a two to three month credit.*

*Chair Biehl asked Internal Auditor Marsh to identify what is allowing these unauthorized charges to take place and what can be done to prevent unauthorized charges.*

*Internal Auditor Marsh will give a more detailed report at the next meeting. He has confirmed with AT&T who is authorized to order services.*

*Two weeks ago there were two fraudulent transfers out of the Bank of America payroll account into a PayPal account; they were pennies. Payroll and Accounts Payable use a system called "positive pay." When the District goes to disburse the funds, a Microsoft Word file is sent to the bank. The file lists the checks issued and, if a check does not appear on the list, the Bank is not authorized to pay it. These two checks were electronic transfers. While the dollar amounts were small, this may have been a test of internal controls as a prelude to trying to make a larger transfer, but the transactions were caught. The District was able to get a name of an individual, but the individual is not a District employee. The District has been in contact with Bank of America and Wells Fargo to implement additional procedures with positive pay and that electronic transfers are not authorized.*

*10) Redevelopment Income*

*No work has been done in this area.*

*11) Staff Training*

*On April 20, there was mandatory student body training for Finance Clerks. The training was given by FCMAT and was done jointly with San Jose Unified School District staff. There were two or three staff members that did not attend the training, but they had an explanation for not being able to attend. There were also a few Activities Directors and Principals that attended the training.*

*On May 11, additional cash handling training was given to Finance Clerks by Internal Auditor Marsh.*

**10. Discussion/Action: Legal Expenditures**

Ian Marsh will report on his work-to-date regarding the following:

- A. Legal costs, any duplication of services
- B. Policies and Administrative Regulations for authorization of legal expenditures
- C. The relationship between attorneys appointed by the self-insurance Joint Powers Agreement (JPA) and our District Counsel.

*Internal Auditor Marsh performed a limited review of legal expenses. Some detail information was pulled from the general ledger system of QSS, including a comparison of expenditures of last year versus this year to-date. He also checked if there were documented procedures on the review and approval of legal invoices. The Committee had an interest as to how the District coordinates legal services between General Counsel and GPAs.*

*Last year, the District spent slightly more than \$1 million on legal services, which were mostly with Rehon & Roberts and Garcia, Calderon and Ruiz. This year, up to the end of April, we spent about \$1.2 million. The major part of the expenses was on the KMS litigation. The second and third major categories were general personnel matters and Board matters.*

*As a District, we do not have documented procedures concerning legal expenses. On the coordination of services questioned, following the elimination of the District's risk management position, the Superintendent keeps General Counsel informed of any new claims, which mostly relate to the area of personal injury or property damage. General Counsel has asked the attorney appointed by JPA to keep him informed about matters which may have policy implications for the District.*

*Overall, the District is taking reasonable steps that any work that is being done by outside legal counsel is coordinated with our General Counsel.*

*Superintendent Moser indicated that the District's General Counsel is being informed if there is a pending case so that someone is aware of the legal matters that are taking place. So, that when the insurance group reaches settlement, the District is in the loop on what is taking place. In the area of personnel matters, General Counsel works mainly on matters related to sexual harassment or if a crime has been allegedly committed.*

*Vice Chair Martinez-Roach would like to know if there are policies in place that deal with the use of attorneys and in what instances are they used.*

*Internal Auditor Marsh will research existing policy and will work with administration on this matter. At the upcoming Board meeting, there will also be further discussion on this item.*

*This item will remain on the agenda for further discussion by the Committee.*

- 11. Discussion/Action: Possible Recommended Addition to Internal Auditor's Work Plan**  
Possible recommendation from the Audit Committee to the Board to include in the Internal Auditor's work plan a review of policies and administrative regulations that relate to cash handling; specifically, fundraising and field trips.

*The Board approves the Auditor's Work Plan, but the Audit Committee can make recommendations to the Board.*

*Internal Auditor Marsh reported that he inquired as to what documented procedures the District has in the area of cash handling. His findings resulted in there being very few procedures; there are two that are not very comprehensive. With the concurrence of the Audit Committee, he proposed the development of a comprehensive Administrative Regulation on the area of cash handling, which would address not only student body, but also revolving funds, petty cash and food services. The goal would be no later than the end of September to have a new regulation/policy.*

*Motion by Member Neighbors, second by Member Juchau, to include a section on cash handling in the Internal Auditor's Work Plan.*

*Vote: 5/0*

**12. Discussion/Action: Carnival Policies and Related Issues**

Superintendent Dan Moser will report on the current Board policy related to authority to authorize a "Carnival" and the development of an administrative regulation that includes certificate of insurance requirements for liability and workers compensation.

*Superintendent Moser provided a report on the current Board policy as it relates to carnivals. Keenan provided him information that should be in the contract relative to assurances. A certificate of insurance must be provided as an endorsement.*

*The issue is, "At what level is authority given to authorize a carnival?" The District's current practice is through the Use of Facilities Forms, which is delegated at the school level. There is a desire from a couple of Board Members to change that process as to the same method as how fireworks are handled. He is working towards that and will be bringing to the Board such discussion at a future date.*

*Vice Chair Martinez-Roach indicated that the issue is the liability and the damage to the facilities.*

*Chair Biehl indicated that the Board needs to decide where they want the approval level to be: Principal, Superintendent or Board.*

*This item will remain on the agenda for further discussion by the Committee.*

*Member Neighbors was excused to leave the meeting. Alternate Member Gonzalez became a voting member for the remainder of this meeting.*

**13. Discussion/Action: 2009/10 East Side Union High School District Audit**

Ahmad Gharaibeh, External Auditor, will report on the status of the 2009/10 external audit.

*External Auditor Gharaibeh presented items 13 and 16 together. He reported that the audit is done in three phases. At the end of the audit, there is emphasis put on the prior year findings, 2009/2010, as well as the current year just in case VTD needs to alert the District, to allow them to make corrections prior to the finalization of the audit report.*

*The 2009/2010 audit had three findings: student body, special education IEPs, and Title I eligibility findings. For the eligibility findings for Title I, money is given for eligible students and the school site files an application to become a school wide Title I school, which would make all student eligible. As such, this finding has been cleared. As it relates to the student body, the finding will be repeated again this year. One school was found to be collecting lease of facilities revenues and it was a significant amount of money. It is believed that this has been ongoing between many other sites, as well. This is something that the District needs to follow up on. At one particular site, it was noticed that an estimated \$100,000 of revenues that belong back to the District Office is actually located in the student body account. The school is Evergreen Valley High School. They are collecting fees, such as leasing the use of the field or a gymnasium, and the check is being deposited in the student body fund. This has been going on for quite some time.*

*Chair Biehl would like the Internal Auditor to review the policy and administrative regulation on lease of facilities to determine if a change in the language is needed. He also indicated that the Superintendent will look at the need for training. "Lease of facilities" will remain on the agenda for further discussion by the Committee.*

*External Auditor Gharaibeh stated that the next item, IEPs, had a significant number of students that did not have an IEP or it was outdated. This will be a repeated finding. If a District has a repeated finding several times for several consecutive years when it comes to Federal findings, the Feds will follow-up. They will ask the auditing agency to change it from an audit perspective from a full risk to a high risk type of district where they have to audit more Federal programs so that there is more work on the auditing agency's behalf. The Special Education Program receives ARRA funding and ARRA funding has a separate website called Recovery.Gov where these findings are reported. The report would be available to the public and they will be able to download the report. It was stated by the Federal agencies that the OIG will be following-up on findings related to ARRA funds.*

*VTD is also asking the District to collect all missing PAR forms. Karen Poon will follow-up on the missing forms. This item will not be on the audit finding.*

*The last is the School Accountability Report Card. There are elements with SARC that require the District to tell the public if they have any issues with instructional materials, teacher assignment(s), and facilities. Within the District, there is an evaluation specifically on facilities which is required to be conducted. Some is required to be conducted by the Santa Clara County Office of Education for decile 1, 2, 3 schools. The remaining school sites are required to be evaluated by District staff. There is a specific form that is required to be used by OPSC who sends the form to districts and tells them to use that particular form. When VTD reviewed the SARC, they were unable to know whether facilities problems were or were not reported on the SARC because the form was not completed. The form was unable to be located. The word of mouth received was the individuals responsible for reporting the SARC were touring the facilities and taking notes and the notes were transitioned to the SARC, but there was no evidence of exactly what evaluation was done. This will be a finding on the Audit Report. It is a State compliance finding. It has no impact on funding, but the District will be asked to correct the finding, which is the usage of the form.*

**14. Discussion/Action: Report on GASB 54 Accounting Requirements**

Ahmad Gharaibeh, External Auditor, will report on GASB 54 requirements.

*External Auditor Gharaibeh recently read the policy. It will be coming to the Board on June 16 for a first reading and June 28 for a second reading. It is fully compliant.*

**15. Discussion/Action: E-RATE Reimbursement for 2008**

Superintendent Dan Moser will brief the Committee on the current status of E-RATE reimbursement.

*This item was covered under item 8: Audit Work Plan Report, E-Rate section.*

**16. Discussion/Action: Status of Special Education IEP's**

Superintendent Dan Moser will report on the status of the District's efforts to comply with Individual Education Plan (IEP) requirements for Special Education students.

*Presented under item 13.*



**17. Discussion/Action: Annual Review of Audit Committee Charter**

Section V, Self-Assessment, requires the annual review of the Charter. The Committee will determine the means and timeline to conduct such a review.

*The Charter calls for an annual review to determine if there is a need for changes to the Charter. Chair Biehl asked Member Juchau to review the Charter for any possible changes and to report back at the next Audit Committee Meeting.*

**18. Informational: Brown Act Instruction**

Under Section IV, Duties and Responsibilities, the Charter requires that Audit Committee Members receive training and comply with the Brown Act.

*The Charter calls from Brown Action instruction. It was confirmed that all Members have had Brown Action instruction.*

**19. Discussion/Action: Establish Next Two Meeting Dates**

*It was suggested that the next two meetings be held in September and after mid November. After some discussion, September 10 was the proposed date for the first meeting and November 19 was the proposed date for the second meeting.*

**20. Superintendent Communications/Comments**

*There were no comments under this section.*

**21. Audit Committee Member Comments**

Individual Audit Committee members may report on programs, conferences, meetings attended and/or items of interest to the public. An Audit Committee member may wish to express a concern or observation about a topic not appearing on the agenda, or request items to be scheduled on a future agenda.

*Member Juchau mentioned that it is great to have Ian on board, but to be reminded that the more that is added to his work, the less that things will get done. It is an encouragement to the Board not to overfill his plate so that he can focus on the most important issues.*

**22. Adjournment**

*Chair Biehl adjourned the meeting at 12:11 p.m.*

*Respectfully submitted,*

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*Frank Biehl, Board Audit Committee Chair*

# Item 7

**Agenda Item Details**

Meeting	Aug 30, 2011 - ESUHSD REGULAR BOARD MEETING - 4:00 P.M., DISTRICT OFFICE - BOARD ROOM, 830 N. CAPITOL AVENUE, SAN JOSE, CA 95133
Category	9. BOARD OF TRUSTEES/SUPERINTENDENT - OPERATIONAL ITEMS/BOARD DISCUSSION AND/OR ACTION
Subject	9.02 Discussion and/or Action regarding Response to Santa Clara County Civil Grand Jury Report: East Side Union High School District's Progress in Response to the Fiscal Crisis & Management Assistance Team Audit, and Status of Implementation of Changes to Contracting Practices in Response to FCMAT Audit and Civil Grand Jury Reports – Dan Moser, Superintendent
Type	Action, Discussion
Recommended Action	Administration recommends that the Board consider and approve the draft response to the Santa Clara County Civil Grand Jury.

**EAST SIDE UNION HIGH SCHOOL DISTRICT****Item: 9.02**

**TO:** Board of Trustees

**FROM:** Dan Moser, Superintendent

**SUBJECT:** Discussion and/or Action regarding Response to Santa Clara County Civil Grand Jury Report: East Side Union High School District's Progress in Response to the Fiscal Crisis & Management Assistance Team Audit, and Status of Implementation of Changes to Contracting Practices in Response to FCMAT Audit and Civil Grand Jury Reports

On June 16, 2011, the Santa Clara County Civil Grand Jury issued its report: "East Side Union High School District's Progress in Response to the Fiscal Crisis & Management Assistance Team Audit". Pursuant to the California Penal Code section 933.05, the District shall within 90 days indicate one of the following:

1. The District agrees with the finding.
2. The District disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
  - (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the District shall report one of the following actions:
    - (1) The recommendation has been implemented, with a summary regarding the implemented action.
    - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
    - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
    - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

Attached is a draft response for the Board's consideration and approval. In addition, Internal Auditor Ian Marsh will report on the status of implementation of the FCMAT recommendations.

**FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

Administration recommends that the Board consider and approve the draft response to the Santa Clara County Civil Grand Jury.

[9\\_02\\_Draft\\_Response\\_to\\_SCC\\_Grand\\_Jury.pdf \(104 KB\)](#)

[9\\_02\\_Administrative\\_Directive.pdf \(100 KB\)](#)

[9\\_02\\_East\\_Side\\_EC1241\\_5\(b\)\\_Extraordinary\\_Audit.pdf \(298 KB\)](#)

[9\\_02\\_SCCOE\\_Final\\_Extraordinary\\_Audit\\_Summary\\_Responses.pdf \(132 KB\)](#)

[9\\_02\\_Timeline\\_FCMAT\\_report\\_SCCOE.pdf \(80 KB\)](#)

[9\\_02\\_SCC\\_Civil\\_Grand\\_Jury\\_ESUHSD\\_Progress\\_in\\_Response\\_to\\_FCMAT\\_Audit.pdf \(367 KB\)](#)

## INTRODUCTION

Pursuant to Penal Code section 933.05, the East Side Union High School District hereby submits its response to the June 9, 2011, Santa Clara County Civil Grand Jury Report "East Side Union High School District's Progress in Response to The Fiscal Crisis & Management Assistance Team Audit".

In its report, the Grand Jury concludes that although the District has made some efforts to "update procedures in line with" the FCMAT Report, the District "has been slow to implement the recommendations made" in the FCMAT Report. Included in the Grand Jury Report is a Table 1 "Summary of Recommendations, District Responses and SCCOE Comments" dated February 23, 2011 (nearly four months prior to the issuance of the Grand Jury Report) and which was obtained by the Grand Jury from the Santa Clara County Office of Education.

The Grand Jury Report includes two separate findings and two separate recommendations, and the District's response to each is contained below. The District thanks the Grand Jury for its interest in this important matter, for meeting with District officials to gather information relevant to its investigation, for the opportunity to respond to the recommendations and findings, and welcomes its continuing interest in these important issues.

In its report the Grand Jury expresses disappointment in the speed in which changes in the District's practices have been implemented. The District wants to take this opportunity to assure the Grand Jury and the entire District community that implementation of the FCMAT recommendations and other changes to contracting practices have been and remain a top priority of the District. However, the District also understands the Grand Jury's expressed disappointment; when it comes to protecting and preserving taxpayer and education dollars, change cannot come soon enough. With that fundamental concept in mind, the District wants to assure the Grand Jury and the public that over the last eighteen months the District has undertaken across-the-board preventative measures and actions so that any waste or abuse of District and taxpayer dollars will not be allowed or tolerated. Failure to adhere to the revised policies and regulations and directives has had, and will continue to have, negative consequences to all those doing business with or employed by the District. While those consequences might not always be transparent to the public or even the Grand Jury (because of confidentiality concerns), they have occurred and remedial or disciplinary measures will be meted out ethically and responsibly as quickly as any violations are discovered.

As the Grand Jury is aware, the Santa Clara County Office of Education ("SCCOE") is FCMAT's agent in ensuring that the internal control and other exceptions noted in the FCMAT Report have been appropriately addressed. In that regard the District staff has met with SCCOE periodically and as requested by the SCCOE since January 2010 to discuss and address the District's progress in implementing the FCMAT recommendations. To be clear, the District does not believe that the mere implementation of the recommended revised policies or practices to be "closure" of the FCMAT issues. Instead, the District and its leadership are keenly aware that restoration of the community's confidence and faith in the District's ability to effectively manage its financial recourse will take time and considerable commitment and effort from the entire District team, including its Board, administration,

and teaching and classified staff. To that end, the District welcomes and invites the public's continuing interest in this important matter and we look forward to continuing and productive working relationship with the SCCOE and to continuing collaboration with the SCCOE on how best to ensure implementation sound contracting practices.

Before providing its response below to the recommendations and findings, the District believes it is important to highlight for the Grand Jury many of the efforts and changes implemented by the District in response to the FCMAT Report.

### **RELEVANT BACKGROUND INFORMATION**

On January 28, 2010, FCMAT issued its Extraordinary Audit Report. The audit was prepared pursuant to request from the Santa Clara County Office of Education pursuant to Education Code section 1241.5. Following an extensive audit and review of the District's contracting and personnel practices, FCMAT found:

1. There was no evidence of fraud, misappropriation of funds or other illegal practices in the contracted services transactions observed by FCMAT, but violations of board policy had occurred and gaps in then-existing policy needed to be corrected.
2. Some material and labor invoices of contracted services to bond funds were insufficiently detailed to support charges to the bond funds. FCMAT recommended a more detailed review.
3. There was no evidence that board policies regarding vacation accrual and payouts of the superintendent were violated, but FCMAT concluded that there was room for improvement regarding payout procedures and accrued leave management. (FCMAT Report at p. 5.)

The District and its Board welcomed the FCMAT Report and they have always considered the FCMAT Report and the findings and recommendations therein to be a serious matter meriting the full attention of the District and its staff. Following the issuance of the FCMAT Report the District's Governing Board discussed the report and received comment on the report and its findings in open session at three consecutive Board meetings held on February 9, 2010 (special meeting), February 18, 2010 (regular meeting) and March 4, 2010 (regular meeting). During those meetings the Board also received comment from the County Superintendent as well as specific recommendations for addressing the FCMAT findings and implementing remedial measures. Subsequently, as described in more detail below, remedial measures were implemented and continue to be implemented.

On March 1, 2010, just 30 days after the FCMAT Report was issued, the District took the extraordinary measure of issuing an Administrative Directive to all responsible staff which implemented immediate changes to the District's contracting practices designed to address substantially all of the FCMAT findings. The Administrative Directive addressed substantially all of the 21 separate FCMAT recommendations. A copy of the Administrative Directive is attached hereto. All responsible contracting staff were provided a copy of the Directive and were required to acknowledge in writing that

they received a copy of the Directive and understood its requirements and changes in policies and regulations. The Administrative Directive was an unprecedented action by the District and ensured the quickest method for an immediate change in policy and regulation (pursuant to established Board policies, changes to Board policy must first be submitted to “first” and “second” readings in at least two separate open session Board meeting, with administrative regulations thereafter drafted and implemented by Administration).

In November 2009 (following the SCCOE’s initial investigation report which culminated in the FCMAT Audit) the Board approved and created a charter for a District Audit Committee comprised of two Board members and three members of the public. The Board-approved charter vests broad and sweeping oversight responsibilities with the 5 member body.

On April 15, 2010, the Board approved the restoration of the District’s internal auditor position, which was eventually filled by Mr. Ian Marsh, an experienced school district internal auditor.

As noted earlier, the SCCOE is FCMAT’s agent in ensuring that the internal control and other exceptions noted in the FCMAT report have been addressed. In that regard, the District has been in direct communication with SCCOE administrators and staff to keep the SCCOE apprised of the District’s efforts and progress in addressing the FCMAT findings and recommendations. At the on-set of this process District and SCCOE staff discussed and agreed to quarterly meetings to facilitate the oversight and progress review process. Since then, District staff has met approximately quarterly with Cathy Grovenburg/Ken Shelton, Nimrat Johal and other SCCOE staff, to discuss measures taken. Our most recent meeting was on August 25, 2011. In connection with those meetings the SCCOE has requested, and the District has provided, numerous documents detailing and evidencing the District’s efforts to implement the FCMAT recommendations as well as other materials not addressed in the FCMAT Report. Access to any District document or report has not been denied by the District on any basis; throughout this process the district has strived for 100% transparency and cooperation. In addition, throughout the process the SCCOE and the District have maintained a status summary table showing the District’s progress at implementation of each of the 21 FCMAT recommendations. A copy of one of those tables was included as Table 1 in the Grand Jury Report. Unfortunately, the Table published in the Grand Jury Report was out of date and incomplete and did not, in fact, represent the current status of the District’s implementation efforts at that time. What the District believes to be a current table showing the status of the implementation of all 21 recommendations is attached for your review.

We have prepared and attached a timeline which details these communications, responses and efforts to date, as well as the District’s communications with the SCCOE on this subject.

## **RESPONSES TO FINDINGS AND RECOMMENDATIONS**

**Finding #1:** ESUHD has been slow to implement the recommendations of the January 28, 2010, FCMAT audit.

**Response to Finding #1:** Disagree in part; agree in part. Since March 2010, and as detailed above, the District has undertaken several immediate measures and other actions to address and implement the

recommendations in the FCMAT Report. The District agrees that full implementation of the changes is and remains a top-tier and critical priority for the District and that under the best circumstances such changes would have been fully implemented immediately at the time the FCMAT Report was issued, and that the District was not able to meet that objective. The District remains committed to restoring the public's faith in the District's ability to effectively manage its contracting and personnel practices.

**Recommendation #1:** ESUHD needs to make the FCMAT audit a priority and implement its recommendations.

**Response to Recommendation #1:** Agree; implementation of the FCMAT recommendations has been and will remain a priority of the District.

**Finding #2:** According to the FCMAT report, some employees fear reprisal when speaking out. This may prevent them from reporting incidents that could cost the district.

**Response to Finding #2:** Agree that the FCMAT report included that some employees expressed such concerns.

**Recommendation #2:** The District should establish a whistle-blower hotline process directed to the Internal Auditor.

**Response to Recommendation #2:** District administration agrees and is presenting a recommendation to the Board to establish a whistle-blower hotline at the August 30, 2011, Regular Meeting.

The above response was adopted by the Governing Board at its August 30, 2011, Regular Meeting.

Respectfully submitted,

Dan Moser

Superintendent



**EAST SIDE UNION HIGH SCHOOL DISTRICT  
ADMINISTRATIVE DIRECTIVE**

<b>Amended to include: J. Lawrence &amp; D. Barbata</b>
---

**TO:** Jerry Kurr, Associate Superintendent of Administration and Business Services  
Alan Garofalo, Associate Superintendent of Student Services and Facilities  
Catherine Giammona, Interim Associate Superintendent of Human Resources  
and Instruction  
Karen Poon, Director of Finance  
Julie Kasberger, Director of General Services  
Donna Bertrand, Contracts Administrator  
June Rono, Director of Facilities and Planning  
Kathy Lanford, Assistant Director Facilities and Construction  
Dennis Barbara, Director of Information Technology  
John Lawrence, Assistant Director of Maintenance and Operations  
All School Site Principals

**FROM:** Dan Moser, Interim Superintendent

**DATE:** March 1, 2010

**SUBJECT:** **FOR IMMEDIATE ATTENTION AND ACTION;**  
**District's Fiscal Practices**

As you know, on January 29, 2010, FCMAT issued its Report of its Extraordinary Audit of the East Side Union High School District. The FCMAT Audit process was extensive and involved the interview of numerous current and former employees, as well as the review of thousands of pages of District information and numerous District transactions. Significantly, FCMAT found no evidence of fraud, misappropriation of funds, or other illegal practices by the District. However, FCMAT has made a total twenty-one (21) recommendations as to the revision and implementation of Board policies and Administrative Regulations, as well as to contracts administration, and the processing of accounts payable.

On February 9, 2010, the Governing Board met in open session to discuss and review Administration's recommended response to the FCMAT Audit. Attached is a copy of Administration's Board memorandum outlining the proposed recommended response to the FCMAT recommendations. That evening the Board unanimously approved Administration's recommendation, including several immediate actions that must be taken by all responsible administrators, managers and employees as outlined below.

The current economic environment presents challenges for all governmental agencies, especially school districts. With your immediate cooperation, the below actions will help our District operate more efficiently and will demonstrate to FCMAT, our community and the greater public our collective commitment to meet those challenges.

**The below actions and practice shall be implemented immediately. Please review the below actions and requirements carefully, then please sign and date this memorandum in the space provided below, and return the signed copy to Cathy Giammona, Associate Superintendent of Human Resources and Instruction.**

**ACKNOWLEDGEMENT OF RECEIPT AND REVIEW:**

I have received and reviewed this Memorandum and understand the required directives.

By \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

# EAST SIDE UNION HIGH SCHOOL DISTRICT ADMINISTRATIVE ACTIONS AND PRACTICES FOR IMMEDIATE IMPLEMENTATION

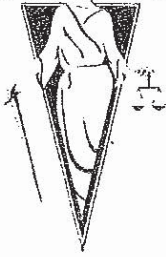
1. All staff responsible for procuring contracts for goods or services or for recommending contracts for approval shall utilize informal bidding practices as outlined in Administrative Regulation 3323 and as set forth in #2 and #3 below.
2. All contracts for any services in a contract amount of \$5,000.00 or more shall be subject to the informal bid requirements set forth in Administrative Regulation 3323. At least three written quotes for such services shall be obtained. No contracts for services in the amount of \$5,000.00 or more shall be awarded to any person for any reason unless and until the informal bid requirements have been met.
3. All contracts for consulting services in any amount shall be subject to the informal bid requirements set forth in Administrative Regulation 3323 although such consulting services would otherwise be exempt from the public bidding requirements under Government Code section 53060. At least three written quotes for such consulting services shall be obtained before any such contract is recommended for approval.
4. Any contract for consultant services shall not be recommended for approval or recommended to the Board for approval unless and until the consultant has submitted a signed conflict-of-interest statement as required by Board Policy 3600. All contracts for consultant services submitted to the Board for approval shall include a statement by the Staff person requesting approval that the required conflict of interest statement has been submitted by the proposed consultant.
5. No contract with any person or firm may be extended beyond the time or amount originally approved by the Board without Board approval per Board Policy 3312 and 3314.
6. All purchase orders for all consulting services contracts must be submitted to the Governing Board for approval.
7. All purchase orders adjustments that do not otherwise meet the criteria of Board Policy 3314 shall be submitted to the Board for approval. Specifically, no invoice shall be paid in an amount in excess of a previously approved purchase order without Board approval unless the excess amount represents sales tax, transportation charges, or charges made for the detention of a shipment during loading or unloading, and such excess charges shall have been approved by the Superintendent or his/her designee.
8. All vendor requests for payment must include detailed invoices specifying the specific dates and hours per day of service, detailed by the professional providing the service, before any payment request may be made or payment authorized.
9. No contract for services may provide for equal payment installments unless the service provider's request for payment includes specific dates and hours per day of service and a description of the work provided detailed by the professional providing the service.
10. For all Measure G and Measure E projects, all requests for payment shall be accompanied by the vendor's detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.

#	CONTRACTED SERVICES			
	Finding	FCMAT Recommendation to ESUHSD Board	District Response as of 3/29/11	SCCOE COMMENTS
1	1	Amend Administrative Regulation 3323 to require informal bids for all service contracts of more than \$ 5,000 with no maximum limit	District provided SCCOE with copies of Administrative Regulation 3311 "Business & Non-Instructional Operations. Subject: Bids."	<b>Fully Compliant.</b> Bidding process addressed in AR 3311
2	2	Amend Administrative Regulation 3323 to clarify that informal bids are required when consulting service contracts are otherwise exempt from bidding per Government Code 56030.		Consulting Services contracts otherwise exempt from bidding per Government Code 56030 was not addressed in AR 3311.
3	3	Enforce Administrative Regulation 3323 regarding utilization of informal bids.		<b>Fully Compliant.</b> Bidding process addressed in AR 3311
4	4	Include specific details on contract approvals in minutes of board meetings.	Practice implemented with March Board Minutes.	<b>Fully Compliant.</b> Spreadsheet attachments to minutes listing Contractor, Reviewer, Period, Amount, & Purpose.
5	5	Require evidence that conflict-of-interest statement has been submitted for every consultant contract being considered for approval as required by Board Policy 3600	District provided blank Conflict of Interest Statement form.	Upon request for completed samples, we were notified that this is new. Requested once from consultant who hasn't returned it as they are consulting with their legal counsel. <b>Please advise if this was developed by an attorney and submit completed forms when received.</b>
6	6	Restore the internal audit function, including funding for an internal auditor position, and operate this function according to industry standards.	Ian Marsh became new Internal Auditor in November 2010. He provided 2010-11 Work Plan at on-site visit.	<b>Fully Compliant.</b> 2010-11 work plan & status provided and reviewed.
7	7	Establish board policy providing guidance to the staff in circumstances where contracted services can be billed to the district by consultants and other service providers.	District provided SCCOE with copies of Administrative Regulation 3311 "Business & Non-Instructional Operations. Subject: Bids."	<b>Fully Compliant.</b> Addressed in AR 3311.
8	1	Submit all contract extensions for board approval per policy 3312	Administrative Directive issued 3/1/10.	<b>Contract extensions not covered in AR 3311.</b>
9	2	Submit purchase orders for all consulting services contracts to the governing board for approval.	Administrative Directive issued 3/1/10.	<b>Fully Compliant.</b> Consulting POs being approved by Board as evident in Board Minutes on District website (reviewed 2/22) detailing Contractor, Period, Amount, & Purpose.
10	3	Submit to the Board for approval all purchase orders adjustments that do not otherwise meet the criteria of board policy 3314	Administrative Directive issued 3/1/10.	<b>Fully Compliant.</b> PO Change orders being approved by Board as evident in Board Minutes on District website

<b>CONTRACTED SERVICES cont.</b>			
<b>Finding</b>	<b>FCMAT Recommendation to ESUHSD Board</b>	<b>District Response as of 3/29/11</b>	<b>SCCOE COMMENTS</b>
<b>11</b>	4 Require all vendors to provide detailed invoices that include specific dates and hours per day of service, detailed by the professional providing the service.	Contract Services PO report provided from which Emma chose a sample of 13 Purchase Orders and requested copies of invoices and supporting documentation from Karen in advance. Documents were provided on-site.	<b>Sample Fully Compliant.</b>
	5 Refrain from utilizing contract provisions that provide for equal payment installments if they do not require itemized invoices with the same detail included in recommendation number four.		
<b>12</b>	6 Review the process utilized to hire the consultant whose payments were made under the purchase order of a different consultant and determine whether these services were authorized.	11/16 response: Administration to identify subject consultant and within the next 60 days investigate facts and circumstances surrounding the subject payments. Administration will report back to the Board on its findings and recommendations. District still cannot pinpoint the vendor.	<b>No report on findings provided to SCCOE regarding District investigation of circumstances surrounding the vendor paid under purchase order of different consultant. No determination of whether services were authorized has been made (or not communicated with SCCOE). District still cannot pinpoint the vendor. Ian Marsh asked Jim Ceretta at FCMAT but he did not provide any information.</b>

<b>BOND FUNDS - CONTRACTED SERVICES</b>				
	<b>Finding</b>	<b>FCMAT Recommendation to ESUHSD Board</b>	<b>District Response as of 3/29/11</b>	<b>SCCOE COMMENTS</b>
<b>14</b>	1	Require all vendors provide detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.	Administrative Directive issued 3/1/10.	<b>Not compliant.</b> This was discussed in detail with FCMAT; Dan Moser & Jerry Kurr were present. In a sample of 14 contracts from 2007-2010 encumbered against Bond Funds, all but 2 consultants provided sufficient details on their invoices. Of the 2010-11 sample, 1 invoice lacked sufficient detail. Blach Construction - "School Name Title IX Constructability Review" with no details as to how amount was calculated, dates, etc.
<b>15</b>	2	Consider a review of all invoices charged to Measure G and Measure E funds to determine that project costs were properly allocated to each bond program.	Draft of VTD audit report for the fiscal year ended 6/30/10 was provided.	<b>Substantially Compliant.</b> <u>DRAFT</u> Audit verified that funds were expended for the purposes specified in Measure E and the funds held in the Bond Fund were used for salaries of administrators only to the extent they perform administrative oversight work on construction projects. In all significant respects, ESUHSD has properly accounted for the expenditures in the Bond Fund and that such expenditures were made for authorized Bond projects. The only recommendation is to amend the contract language going forward to be more specific with the nature and amount of reimbursable expenses such as travel, per diem, communication such as cell phone and internet, food and beverage. <b>Please provide copy of final performance audit report on Measure E General Obligation Bond Fund.</b>
<b>16</b>	3	Fund from other sources any inappropriate expenditures identified as a result of the review per recommendation number two	See immediately preceding recommended response. Remedy to follow outcome of #2 above.	N/A as the DRAFT audit was clean.

<b>SUPERINTENDENT'S VACATION</b>			
<b>Finding</b>	<b>FCMAT Recommendation to ESUHSD Board</b>	<b>District Response as of 3/29/11</b>	<b>SCCOE COMMENTS</b>
17	1 Adopt policy and regulations to require periodic vacations to be taken by all staff that accrue this leave, and implement procedures to periodically confirm vacations are taken.	Superintendent & Associate Superintendent contracts provided.	<b>Fully Compliant.</b> Superintendent & Associate Superintendent contracts provided. Vacation policy covered in Item 7 of both agreements and include the FCMAT Recommendations.
	18		
19	3 Establish board regulations regarding the basis for calculation of administrator daily rates to be utilized for vacation payout calculations.		
20	4 Review all board policy regulations and contracts for administrators and modify if necessary to establish clear language identifying required annual days of paid service, paid holidays, accrued vacation, sick leave and other leaves for members of management.		
	21		



June 16, 2011

COPY

Lan Nguyen  
President  
Board of Trustees  
East Side Union High School District  
830 North Capitol Avenue  
San Jose, CA 95133

Dear Mr. Nguyen and Members of the Board of Trustees:

The 2010-2011 Santa Clara County Civil Grand Jury is transmitting to you its Final Report, **East Side Union High School District's Progress in Response to the Fiscal Crisis & Management Assistance Team Audit.**

California Penal Code § 933(c) requires that a governing body of the particular public agency or department which has been the subject of a Grand Jury final report shall respond within **90 days** to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code § 933.05 contains guidelines for responses to Grand Jury findings and recommendations and is attached to this letter.

**PLEASE NOTE:**

1. As stated in Penal Code § 933.05(a), attached, you are required to "Agree" or "Disagree" with each **APPLICABLE** Finding(s) 1 & 2. *If you disagree, in whole or part, you must include an explanation of the reasons you disagree.*
2. As stated in Penal Code § 933.05(b), attached, you are required to respond to each **APPLICABLE** Recommendation(s) 1 & 2, *with one of four possible actions.*

Your comments are due in the office of the Honorable Richard J. Loftus, Jr., Presiding Judge, Santa Clara County Superior Court, 191 North First Street, San Jose, CA 95113, no later than **Monday, September 19, 2011.**

Copies of all responses shall be placed on file with the Clerk of the Court.

Sincerely,

A handwritten signature in cursive script that reads 'Helene I. Popenhager'.

HELENE I. POPENHAGER  
Foreperson  
2010-2011 Civil Grand Jury

HIP:dsa  
Enclosures (2)

cc: Dr. Charles Weis, Superintendent of Schools, County of Santa Clara  
Mr. Dan Moser, Superintendent, East Side Union High School District

**California Penal Code Section 933.05, in relevant part:**

**933.05.** (a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.





**2010-2011 SANTA CLARA COUNTY  
CIVIL GRAND JURY REPORT**

(ENDORSED)  
**FILED**

JUN 10 2011

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk,  
Superior Court of CA County of Santa Clara  
BY D. ALDYCKI DEPUTY

**EAST SIDE UNION HIGH SCHOOL DISTRICT'S PROGRESS IN  
RESPONSE TO THE FISCAL CRISIS & MANAGEMENT  
ASSISTANCE TEAM AUDIT**

**Summary**

The Santa Clara County Office of Education (SCCOE) received a complaint alleging that the East Side Union High School District (District) was awarding contracts without fair and open competition and that the contract awardees were not properly reporting financial status. The SCCOE conducted an initial audit and concluded that a further thorough investigation by an outside expert was warranted.

The SCCOE engaged the Fiscal Crisis and Management Assistance Team (FCMAT) to perform an extraordinary audit. FCMAT was created by legislation with Assembly Bill 1200 (AB 1200) in 1992 as a service to assist local educational agencies (LEAs) in complying with fiscal accountability standards, a need to ensure that LEAs throughout California were adequately prepared to meet and sustain their financial obligations. AB 1200 is also a statewide plan for county offices of education and school districts to work together on a local level to improve fiscal procedures and accountability standards. The legislation expanded the role of the county office in monitoring school districts under certain fiscal constraints to ensure these districts could meet their financial commitments on a multi-year basis.

Since 1992, FCMAT has been engaged to perform nearly 750 reviews for local educational agencies, including school districts, county offices of education, charter schools and community colleges. Services range from fiscal crisis intervention to management review and assistance. FCMAT also provides professional development training.

FCMAT issued a report on January 28, 2010 entitled "Extraordinary Audit of the East Side Union High School District." This report can be viewed at <http://wwwstatic.kern.org/gems/fcmat/EastSideUHSDExtraordinaryAud.pdf>.

The 2010-2011 Santa Clara County Civil Grand Jury (Grand Jury) reviewed this FCMAT report and undertook to determine whether the recommendations had been implemented.

The Grand Jury found that the District has made slow progress in implementing the twenty-one FCMAT recommendations (the recommendations are listed in Table 1 with progress information provided by SCCOE). Although some positive changes have been initiated (namely tasking key personnel with the implementation of the FCMAT recommendations), the District has been slow to revise procedures guiding District expenditures. Quarterly meetings of the SCCOE with the District, to date, have not driven the changes needed.

## **Background**

In February of 2010 the 2009-2010 Santa Clara County Civil Grand Jury received a complaint regarding contract administration at the District. The 2009-2010 Grand Jury found that a FCMAT audit was in progress and its report was pending. The audit addressed the same issues that the complainant had raised. The 2009-2010 Grand Jury referred follow-up on this audit to the current Grand Jury.

The District provides educational services to more than 25,000 students in grades 9-12, as well as alternative education programs. The District is the largest high school district in Northern California and the fourth largest in the state, operating 23 schools, including 11 comprehensive high schools, six alternative education schools, and six charter schools, all within a general fund budget of \$204 million annually. In addition, there was a \$115 million fund to support capital projects for the 2009-2010 fiscal year.

The District has a poor record of managing its budget as evidenced by three separate FCMAT audits, the first conducted in 2001, the second in 2003 and continuing to the January 28, 2010 FCMAT report reviewed by the Grand Jury. The Grand Jury's investigation was undertaken to ensure that the recommendations of the January 28, 2010 FCMAT report had been implemented.

The scope of what FCMAT was asked to audit by SCCOE contained three major points as follows:

1. Review district policies and procedures related to professional services contracts and capital construction projects from the district's bond fund including Measures A, E, and G.
2. Sample contracts related to the district's bond fund and review vendor invoices regarding sufficient detail to document the material and labor charges being invoiced to the district.
3. Review the district's board policies, administrative regulations and specific contracts and amendments to the former superintendent's contract for the specific period of 2005-06 through 2008-09 fiscal years and confirm whether any violations of such policies regarding vacation accrual and pay outs have occurred that would be deemed illegal practices or a misappropriation of funds.

The Grand Jury chose to follow up on the FCMAT recommendations detailed under the three general categories in their report:

- Contract Services (13 recommendations)
- Bond Funds – Contract Services (3 recommendations)
- Superintendent’s Vacation (5 recommendations)

## **Methodology**

In order to determine to what extent the District has implemented the recommendations contained in the January 28, 2010 FCMAT report, the Grand Jury conducted interviews with the Eastside Union High School District Board of Trustees (Board). They also conducted interviews with the District Superintendent, District staff, the SCCOE Superintendent and SCCOE staff. The Grand Jury reviewed documents and attended monthly meetings of the Board.

## **Discussion**

After the SCCOE received input from outside sources alleging questionable practices by the District, the SCCOE conducted an initial investigation and concluded that further investigation by an outside expert was warranted. The SCCOE engaged FCMAT to conduct an audit at the cost of \$47,800.

According to the Executive Summary in the FCMAT 2010 audit of ESUHSD, “During FCMAT’s interviews, several individuals indicated they feared reprisal if they cooperated with this review or provided certain requested information. One employee requested that meetings be held off site to maintain the requested confidentiality. Several employees provided information orally but refused to provide written documentation to validate and document the allegations. Another employee participated in interviews, but avoided any contact afterward despite several efforts by FCMAT to make contact for follow-up purposes.”

The recommendations and implementation progress are detailed in Table 1.

**Table 1: Summary of FCMAT Recommendations, District Response and SCCOE Comments (continued) (source SCCOE)**

Finding	FCMAT Recommendation	District Response	SCCOE Comments
<b>CONTRACTED SERVICES Recommendation to Board</b>			
1	Amend Administrative Regulation 3323 to require informal bids for all service contracts of more than \$5,000 with no maximum limit	3/1/10 (11/16/10 response) District provided SCCOE with copies of Administrative Regulation & Board Policy - 3000 series "Business & Non- Instructional Operations.	AR 3323 not included in binder. (BP 3311 is the section regarding bids but was last amended May 2009; doesn't include FCMAT recommendation.)
2	Amend Administrative Regulation 3323 to clarify that informal bids are required when consulting service contracts are otherwise exempt from bidding per Government Code 56030.		
3	Enforce Administrative Regulation 3323 regarding utilization of informal bids.		
4	Include specific details on contract approvals in minutes of board meetings.	Practice implemented with March Board Minutes.	Fully Compliant. Spreadsheet attachments to minutes listing Contractor, Reviewer, Period, Amount, & Purpose.
5	Require evidence that conflict-of-interest statement has been submitted for every consultant contract being considered for approval as required by Board Policy 3600.	Conflict of Interest Statement form being developed by District Counsel (11/16/10).	SCCOE does not have a copy of form. No form on the Purchasing Department page of District website.
6	Restore the internal audit function, including funding for an internal auditor position, and operate this function according to industry standards.	to the internal auditor to provide sample of reviews & findings in his work plan at the on-site visit.	Implemented. Review sample of procedures audited and results of audits at next on-site visit.
7	Establish board policy providing guidance to the staff in circumstances where contracted services can be billed to the district by consultants and other service providers.	District provided SCCOE with copies of Administrative Regulation & Board Policy - 300 series "Business & Non- Instructional Operations.	Did not find in Board Policy provided. Please advise BP Section # in binder to review or provide at next on-site visit.
<b>CONTRACTED SERVICES Recommendation to District</b>			
1	Submit all contract extensions for board approval per policy 3312	Administrative Directive issued 3/1/10.	Please provide copy of Administrative Directive or Board Minutes.
2	Submit purchase orders for all consulting services contracts to the governing board for approval.	Administrative Directive issued 3/1/10.	Fully Compliant. Consulting POs being approved by Board as evident in Board Minutes on District website (reviewed 2/22/11) detailing Contractor, Period, Amount, & Purpose.
3	Submit to the board for approval all purchase order adjustments that do not other-wise meet the criteria of board policy 3314	Administrative Directive issued 3/1/10.	Fully Compliant. PO Change orders being approved by Board as evident in Board Minutes on District website

**Table 1: Summary of FCMAT Recommendations, District Response and SCCOE Comments (continued) (source SCCOE)**

Finding	FCMAT Recommendation	District Response	SCCOE Comments
<b>CONTRACTED SERVICES Recommendations to District (continued)</b>			
4	Require all vendors to provide detailed invoices that include specific dates and hours per day of service, detailed by the professional providing the service.	Administrative Directive issued 3/1/10.	Please prepare reports from which we will choose a sample at the next on-site visit.
5	Refrain from utilizing contract provisions that provide for equal payment installments if they do not require itemized invoices with the same detail included in recommendation number four.		
6	Review the process utilized to hire the consultant whose payments were made under the purchase order of a different consultant and determine whether these services were authorized.	Administration to identify subject consultant and within the next 60 days investigate facts and circumstances surrounding the subject payments. Administration will report back to the Board on its findings and recommendations. Under discussion with the SCCOE.	No report on findings provided to SCCOE regarding District investigation of circumstances surrounding the vendor paid under purchase order of different consultant. No determination of whether services were authorized has been made (or not communicated with SCCOE). Please present determination of review at the next on-site visit.
<b>BOND FUNDS CONTRACTED SERVICES Recommendations to District</b>			
1	Require all vendors provide detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.	Administrative Directive issued 3/1/10.	In a sample of 14 contracts from 2007-2010 encumbered against Bond Funds, all but 2 consultants provided sufficient details on their invoices. Please provide evidence (Policies and Procedures, Administrative Directive, etc.) to show adherence. Substantially compliant. Please provide sample at the next on-site visit.
2	Consider a review of all invoices charged to Measure G and Measure E funds to determine that project costs were properly allocated to each bond program.	In 2008, the District commissioned a Management Review of the District's Measure G bond program by Total School Solutions. (TSS). The TSS Review report was issued in June 2008 and presented to the Board in open session. In addition, in compliance with state law, the Measure G and Measure E bond programs are audited annually by outside independent auditors. Administration recommends that this item be referred to the District Audit Committee for review and consideration by that Committee in light of scope of past and on-going audits, and that the Audit committee prepare a recommendation to be submitted to the Board within the next 60-90 days. Under discussion with SCCOE.	FCMAT's concern was not all invoices paid out of Bond Funds were allowable expenses. The District to provide copy of TSS Review Report though the District believes that the Review did not speak to this issue. If this is the case, we will need to review sample of prior invoices. Previous review did not reveal there was sufficient detail to determine whether the expenses were allowed out of Bond Funds. Did Annual Audit review Bond Funds (need to review)? Please provide a copy of the Audit Committee's review of Measure G and E Funds.

**Table 1: Summary of FCMAT Recommendations, District Response and SCCOE Comments (continued) (source SCCOE)**

Finding	FCMAT Recommendation	District Response	SCCOE Comments
<b>BOND FUNDS - CONTRACTED SERVICES Recommendations to District (continued)</b>			
3	Fund from other sources any inappropriate expenditures identified as a result of the review per recommendation number two	See immediately preceding recommended response. Remedy to follow outcome of #2 above.	This is a remedy to the previous finding and will be important to know the impact to general fund.
<b>SUPERINTENDENT'S VACATION Recommendations to Board</b>			
1	Adopt policy and regulations to require periodic vacations to be taken by all staff that accrue this leave, and implement procedures to periodically confirm vacations are taken.	Administration recommends that staff be directed to prepare the referenced policies and regulations for submittal to the Board for a first reading within the next 60 days.	The SCCOE does not have a copy of the Policies and Procedures for these issues. Please provide copies of Contracts & Time Reporting of Senior Management at the next On-Site Review.
2	Adopt policy and regulations to develop a clear process for cash payouts of unused vacation. Include in this process a requirement that each payout is to be approved by the governing board in advance of the payout.		
3	Establish board regulations regarding the basis for calculation of administrator daily rates to be utilized for vacation payout calculations.		
4	Review all board policy regulations and contracts for administrators and modify if necessary to establish clear language identifying required annual days of paid service, paid holidays, accrued vacation, sick leave and other leaves for members of management.	Administration to begin review of such items and to report its findings to the Board at a Regular Meeting within the next 60-90 days.	SCCOE believes that the language regarding these issues will be evident in the Contract of the Superintendent & other Senior Officials. Please provide copies of Contracts at the next On-Site Review.
5	Develop and implement forms to be utilized by the staff to request and process accrued vacation payouts.	Recommended forms to be developed and implemented by Staff. Administration will report its progress to the Board on this matter within the next 60 days.	Please provide copies of such forms via e-mail or at the next on-site Review

Source: SCCOE Education Code 1341.5(b) Extraordinary Report 02/23/2011

As of February progress was as noted in Table 1. Since then, the Board has reported progress per the minutes of their April 16, 2011 meeting. See:  
[http://www.esuhd.org/documents/Administration/Audit\\_Committee/Audit\\_Committee\\_Mtg\\_2011\\_04\\_16/Board\\_Audit\\_Agenda\\_and\\_Supporting\\_Materials\\_04\\_16\\_2011.pdf](http://www.esuhd.org/documents/Administration/Audit_Committee/Audit_Committee_Mtg_2011_04_16/Board_Audit_Agenda_and_Supporting_Materials_04_16_2011.pdf)

## **Conclusion**

The Grand Jury found that the District has made some efforts to update procedures in line with the January 2010 FCMAT report recommendations as shown in Table 1. In addition, the Board of Trustees recently hired an internal auditor who is required to report directly to the Board. The District also rejuvenated their audit committee to oversee the day-to-day fiscal operations of the District. The SCCOE is and has been meeting quarterly since February 2010 with the District to monitor progress in implementing the FCMAT recommendations.

The Grand Jury concluded that the District has been slow to implement the recommendations made in the January 28, 2010 FCMAT report. In these times of severe budgetary deficits and cutbacks, it is disheartening to see that after SCCOE spent close to \$50,000 to commission an audit, the District has not completed the implementation of the FCMAT recommendations.

## **Findings and Recommendations**

### **Finding 1**

ESUHD has been slow to implement the recommendations of the January 28, 2010 FCMAT audit.

### **Recommendation 1**

ESUHD needs to make the FCMAT audit a priority and implement its recommendations.

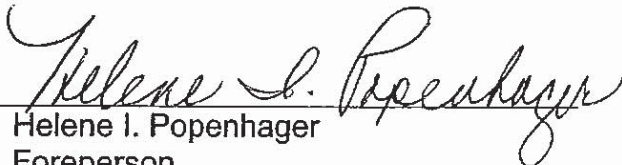
### **Finding 2**

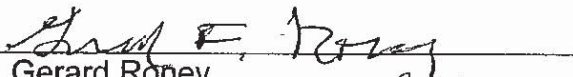
According to the FCMAT report, some employees fear reprisal when speaking out. This may prevent them from reporting incidents that could cost the district.

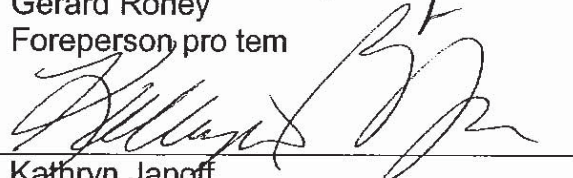
### **Recommendation 2**

The District should establish a whistle-blower hotline process directed to the Internal Auditor.

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 9th day of June, 2011.

  
\_\_\_\_\_  
Helene I. Popenhager  
Foreperson

  
\_\_\_\_\_  
Gerard Roney  
Foreperson pro tem

  
\_\_\_\_\_  
Kathryn Janoff  
Secretary



**East Side Union High School District****Timeline****FCMAT Extraordinary Audit/ District follow-up with SCCOE**

<b>Date</b>	<b>Action</b>
<b>1/28/10</b>	FCMAT Extraordinary Audit Report issued to SCCOE. SCCOE assigned responsibility for follow-up of corrective action re 21 audit exceptions.
<b>2/9/10</b>	Board Discussion/ Action re FCMAT Extraordinary Audit – motion to approve administration’s proposed recommended action; authorization to notify County Superintendent of administration’s proposed action, including restoration of Internal Audit function.
<b>2/18/10</b>	Board presentation/ Discussion/ Action re FCMAT Extraordinary Audit – Dr. Charles Weis, Eddie Garcia, Dan Moser.
<b>3/4/10</b>	Board response to SCCOE re FCMAT Extraordinary Audit – approval of administration’s response to the SCCOE re the FCMAT report, including Internal Audit position description.
<b>11/22/10</b>	Internal Auditor, Ian Marsh, started at ESUHSD.
<b>2/23/11</b>	Quarterly meeting at SCCOE – Ken Shelton, Nimrat Johal, Jenina Salcedo, Dan Moser, Hardy Childers and Ian Marsh. Ian Marsh assigned responsibility for coordination of ESUHSD follow-up. SCCOE scheduled wrap-up meeting for 5/4/11.
<b>2/24/11</b>	Phone call from Alan Bicho, Foreperson of Civil Grand Jury, to Ian Marsh, who told him the SCCOE 2/23/11 meeting very positive and a wrap-up meeting was scheduled for 5/4/11.
<b>3/25/11</b>	Ian Marsh, Hardy Childers met to review district follow-up of five open items from FCMAT report identified in 2/23/11 SCCOE meeting.
<b>3/29/11</b>	Jenina Salcedo from SCCOE reviewed district follow-up in ESUHSD office of five open items: all other items were confirmed as fully compliant.
<b>5/4/11</b>	SCCOE cancelled wrap-up meeting with District staff without explanation. Meeting was not rescheduled.
<b>5/12/11</b>	Ian Marsh e-mailed ESUHSD assessment of status of corrective action with supporting documents to Jenina Salcedo.
<b>5/12/11</b>	Karen Poon forwarded Ian Marsh’s 5/12/11 e-mail to Yen Lam at SCCOE with request to follow-up. Received no response.
<b>5/26/11</b>	Civil Grand Jury issued draft report on FCMAT Extraordinary Audit.
<b>6/3/11</b>	E-mail from Ian Marsh to Ms. Johal reminded her that ESUHSD had sent documentation to Ms. Lam and requested SCCOE response before Audit Committee meeting on 6/11/11.
<b>6/3/11</b>	E-mail response from Ms. Johal to Ian Marsh that she was in Sacramento and promised to contact him on 6/6/11, but did not.
<b>6/6/11</b>	Dan Moser wrote response re draft to Helene Popenhager, new Foreperson of Grand Jury, that it was based on out-of-date information.

<b>Date</b>	<b>Action</b>
<b>6/8/11</b>	Follow-up e-mail from Ian Marsh to Ms. Johal. Referred to pending issuance of Civil Grand Jury Report and need for immediate SCCOE review of ESUHSD's responses. Ian Marsh asked to meet with Ms. Johal on June 9, if available, but received no response.
<b>6/9/11</b>	Ian Marsh e-mail to Ms. Johal, again requesting document review and offered to meet to discuss. Ms. Johal e-mailed 8/3/11 she thought the District had a response to the findings already.
<b>6/13/11-6/17/11</b>	Ian Marsh on vacation.
<b>6/14/11</b>	Yen Lam left voice message for Ian Marsh (unintelligible).
<b>6/16/11</b>	Yen Lam left voice message for Ian Marsh (unintelligible).
<b>6/16/11</b>	Final Civil Grand Jury report issued.
<b>6/21/11</b>	Ian Marsh phoned Ms. Lam, who had started review of ESUHSD docs sent on 5/12/11. Ian Marsh explained urgency of the SCCOE's review.
<b>6/23/11</b>	Ms. Lam requested additional documents, including the Government Code reference in AR 3311, which Ian Marsh added. Ms. Lam said she would review documents with Ms. Johal.
<b>6/27/11</b>	Ms. Johal e-mailed response to Ian Marsh received. Stated that of five open items, three remained open; said that AR 3311 had been amended by District without proper authorization; asked for additional documentation not previously requested by FCMAT or Jenina Salcedo.
<b>6/28/11</b>	Article in San Jose "Mercury News" re Grand Jury report. Also posted on FCMAT website, it alleged district has lax financial controls and was slow to implement corrective action requested in FCMAT report. Ms. Johal is quoted as saying that all five items remain open.
<b>7/5/11</b>	Dan Moser wrote to Dr. Weis, County Superintendent, re corrective actions taken in response to FCMAT and Grand Jury reports; expressed concerns re possibly misleading and incomplete statements by Grand Jury and SCCOE.
<b>7/11/11</b>	Jenina Salcedo asked ESUHSD to respond to Ms. Johal's 6/27/11 questions.
<b>7/11/11-7/27/11</b>	District prepared responses for SCCOE.
<b>7/28/11</b>	Ian Marsh e-mailed Ms. Salcedo requesting to discuss District's responses. Received out-of-office reply.
<b>8/3/11</b>	Ian Marsh phoned Ms. Salcedo, who said she was setting up group meeting between ESUHSD and SCCOE. Ian Marsh requested Ms. Salcedo to review the new documents first, and e-mailed revised Excel spreadsheet, plus BP 3600 re consultant Conflict of Interest statements.
<b>8/8/11</b>	Ian Marsh phoned Ms. Salcedo to confirm receipt of docs. Left message.
<b>8/11/11</b>	Ms. Salcedo called Ian Marsh back – said she will review docs next week, and arrange wrap-up meeting.
<b>8/16/11</b>	Ms. Salcedo responded to Ian Marsh's 7/26/11 comments. Requested additional documentation.
<b>8/18/11</b>	Ian Marsh prepared additional documents requested by Ms. Salcedo.

Date	Action
8/22/11	Ian Marsh obtained extra documents from staff re Conflict of Interest Statements and samples of Contract Service agreements in both old and new formats.
8/22/11	Marcus Battle called Ms. Salcedo to arrange meeting 8/23/11 to discuss final responses.
8/24/11	Wrap-up meeting in District office – Nimrat Johal, Jenina Salcedo, Marcus Battle, Ian Marsh. Ms. Johal said she was misquoted in the 6/28/11 San Jose “Mercury” article re the number of open audit items.
8/25/11	Ian Marsh sent Ms. Johal list of 37 Personal Service Contracts approved by the Board in May and June. Excluded known duplicates, change orders, emergency contracts and governmental agencies. Ms. Johal requested 14 corresponding Conflict of Interest statements: 12 were e-mailed to Ms. Johal. For the two missing, one was an emergency contract – response was subsequently received after translation into Spanish; the other is an out-of-state vendor who ignored requests to sign.
8/30/11	Dan Moser reviewed the draft Grand Jury response with the Board of Trustees, which approved it.
9/9/11	District response to Grand Jury report.

**EAST SIDE UNION HIGH SCHOOL DISTRICT**

**M E M O R A N D U M**

DATE: August 22, 2011

TO: Jenina Salcedo – Santa Clara County Office of Education  
- Administrator, Financial Analyst  
cc. Dan Moser  
Marcus Battle

FROM: Ian Marsh, Internal Auditor

SUBJECT: FCMAT Extraordinary Audit - Response to SCCOE Comments 8/16/11

Following are East Side Union High School District's responses to your requests of August 16, 2011. Please note:

Regarding Conflict of Interest (CoI) statements for consultants, staff found 22 signed since April 29, 2011. You asked how many consultants have been hired since then. There were 37 contracts approved by the Board during May and June 2011 which should have CoI statements. Nevertheless, one would not reasonably expect CoI statements for all consultant contracts. For example, several consultants had previously signed statements, while others were for emergency services, change orders or other Governmental agencies.

Schedule 1 (attached) is a certification by Cathy Giammona of Cabinet's review and approval of AR 3311 on July 14, 2011. I have included the first page only, since you have previously received the entire AR 3311. It is not District policy to keep Minutes of Cabinet meetings.

Schedule 2 is Vavrinek, Trine, Day & Co., LLP's audit report for Bond Measure E. Their certification there were no material internal control exceptions is on page 2.9.

Schedule 3 is VTD's audit report for Bond Measure G. Their certification there were no material internal control exceptions is on page 3.9.

Schedules 4 are two samples of Contract Services Agreements using "old" language.

Schedules 5 are three samples of Contract Services Agreements using "new" language suggested by FCMAT and the SCCOE.

If you have any questions or comments, please call me at 408-347-5139.

*Ian Marsh*  
*Internal Auditor*

## Item 7 (c)

### East Side Union High School District

#### FCMAT Extraordinary Audit – EC 1241.5(b) - Responses to SCCOE 8/16/11 comments

#	Finding	District Response 7/26/11	SCCOE Comments 8/16/11	District Response 8/17/11
2	2	<b>We agree Cabinet should review and approve all ARs before implementation.</b>	(Refer to statements in bold). Please provide meeting minutes showing this has been reviewed and approved by Cabinet.	It is District policy for Administrative Regulations to be reviewed and approved by Cabinet. Minutes are not kept of cabinet meetings. AR 3311 was reviewed and approved by Cabinet on July 14, 2011, as certified by Associate Superintendent Cathy Giammona – please see Schedule 1.
5	5	<b>We have on file 22 signed COI statements.</b>	Please advise as to how many consultants have been hired since April 29, 2011.	A review of Board minutes shows that it approved xx consultant contracts since April 29, 2011.
13	6	<b>VTD (the district's outside independent auditor) also reviews expenditures to ensure they are appropriately charged to bond funds: for FY 2009-10 VTD reported no exceptions.</b>	Was VTD's review specific to Bond Funds and, in fact, not a part of the annual external audit? The copy of the Audit Report provided was a draft; please provide the Final Report. The report identifies significant internal control deficiencies that have not been addressed by the District.	Vavrinek, Trine, Day & Co. LLP's audits for FY 2009-10 were specific to the Measures G and E bond funds. Schedules 2 and 3, the final VTD audit reports for Measure G and E respectively, show no material internal control weaknesses.
14	1	<b>The district will take comprehensive steps to ensure all contract language is strengthened. The district's standard form contracts have been and are being revised to address this and other issues. Revised form contracts have been presented to (the) Board for review, consideration and approval at open session Board meetings.</b>	We request a sample of draft contract language if not yet approved by the Board.	Schedules 4 show samples of old Contract Services Agreements. These were used prior to adoption of revised language suggested by FCMAT and SCCOE, as shown in Schedules 5. Sch. 5.1, for example, states in paragraph 3, <i>"Invoices shall be in sufficient details to fully understand the services provided during the time period specified on the invoice...and any other information that is pertinent to the services provided."</i> Most recently, the Board was presented with, and approved, master form of professional service agreements for architectural and inspector of record services. A revised form of agreement for Construction Management services that addresses the FCMAT issues has been circulated for comment and will be presented for Board approval at its Regular September meeting.

FCMAT Extraordinary Audit- EC 1241.5(b)  
 ESUHSD responses to SCCOE 6/27/11 comments

**Item 7 (d)**

#	Finding	FCMAT Recommendation to ESUHSD Board	District Response 3/29/11	SCCOE Comments 3/31/11	District Response 5/12/11	SCCOE Comments 6/27/11	District Response 7/26/11	SCCOE Comments 8/16/11
2	2	Amend Administrative Regulation 3323 to clarify that informal bids are required when consulting service contracts are otherwise exempt from bidding per Government Code 56030.	District provided SCCOE with copies of Administrative Regulation 3311 "Business & Non-Instructional Operations. Subject: Bids."	Consulting Services contracts otherwise exempt from bidding per Government Code 56030 was not addressed in AR 3311.	AR 3311 includes Professional Services. Consulting Service contracts between \$15,000-\$78,500 require three written quotes: contracts over \$78,500 require formal bids. Please see Schedule 1 attached.	Finding #2 and 1 (informal bids): This regulation states that informal bids must be obtained for agreements between \$15,000 and \$78,000. However, the FCMAT recommendation is to require informal bids for contracts starting at \$5,000. Additionally, there is a recommendation to submit all contract extensions for board approval. <b>Although both the recommendations have been included in AR 3311 (pursuant to our communication), these changes have been made unofficially i.e., the regulation was approved by cabinet on 4/29/11 and changes were made subsequent to that approval. This also raises a concern as to the internal control structure i.e., what is the process for ensuring that all amendments to policies are indeed approved by the appropriate authority.</b>	FCMAT recommended AR 3323 be amended to require informal bids for all service contracts over \$5,000. The district's Administrative Directive issued on March 1, 2010, included such a requirement (Directive #2), however implementation of the low dollar threshold posed serious challenges and burdens on administrative staff as it greatly increased the number of informal bids across all of the district's operations. This added burden was discussed by the district's administrative team (Superintendent and Associate Superintendents) with the COE. The district's former CBO, Jerry Kurr, in response to concerns expressed by the increased administrative burden, and after consultation with the COE on this issue, instructed Purchasing to re-set the threshold at \$15,000, which is reflected in AR 3311. AR 3311 and its amendments, which replaced AR 3323, were reviewed and approved by Cabinet in accordance with district policy. Board Minutes show all contract extensions are submitted to the Board for review and approval. Revised AR 3311 references Government Code 53060: SCCOE staff suggested it reference GC 56030, which is not applicable. <b>We agree Cabinet should review and approve all ARs before implementation. Internal Audit will help ensure this is done.</b>	(Refer to statements in bold) Please provide meeting minutes showing this has been reviewed and approved by Cabinet.

FCMAT Extraordinary Audit- EC 1241.5(b)  
 ESUHSD responses to SCCOE 6/27/11 comments

#	Finding	FCMAT Recommendation to ESUHSD Board	District Response 3/29/11	SCCOE Comments 3/31/11	District Response 5/12/11	SCCOE Comments 6/27/11	District Response 7/26/11	SCCOE Comments 8/16/11
5	5	Require evidence that conflict-of-interest statement has been submitted for every consultant contract being considered for approval as required by Board Policy 3600	District provided blank Conflict of Interest Statement form.	Upon request for completed samples, we were notified that this is new. Requested once from consultant who hasn't returned it as they are consulting with their legal counsel. <b>Please advise if this was developed by an attorney and submit completed forms when received.</b>	A Conflict of Interest Statement was prepared by district's General Counsel. For the template, please see Schedules 2.1 - 2.3. For samples of signed Statements, see Schedules 2.4 - 2.7.	Finding #5 (conflict of interest statements): At this time, we have two samples that have been provided by the district. However, one sample is incomplete raising questions as to the verification process employed by the district as to the content and review of completed forms. <b>We would like the district to provide us data on how many consultants have been hired since July 2010 and how many conflict of interest statements have been obtained.</b>	District Board Policy 3600 is a "standard" form of that policy developed by CSBA. BP 3600 "Consultants" does not require Conflict of Interest ("COI") statements from all consultants but rather vests some discretionary authority in the Superintendent ("as determined necessary by the Superintendent or designee") "depending on the range of duties to be performed". Following paragraph 4 of each COI statement is a footnote explanation as to what gifts do not include. It is separated from paragraph 4 by a short line which is not a signature line. SCCOE staff was confused by one consultant (RMA) which signed both pages of its COI in error. The SCCOE requested the district to provide the number of consultants hired since July 2010 and how many conflict statements have been obtained. AR 3311 was first adopted on April 29, 2011. Since then, and notwithstanding the discretionary element in BP 3600, the district has implemented a practice of obtaining signed COI statements from all approved consultants as part of the contract approval process. <b>We have on file 22 signed COI statements</b> since then, the majority being for Facilities Development work.	Please advise as to how many consultants have been hired since April 29, 2011.

FCMAT Extraordinary Audit- EC 1241.5(b)  
 ESUHSD responses to SCCOE 6/27/11 comments

#	Finding	FCMAT Recommendation to ESUHSD Board	District Response 3/29/11	SCCOE Comments 3/31/11	District Response 5/12/11	SCCOE Comments 6/27/11	District Response 7/26/11	SCCOE Comments 8/16/11
13	6	Review the process utilized to hire the consultant whose payments were made under the purchase order of a different consultant and determine whether these services were authorized.	11/16 response: Administration to identify subject consultant and within the next 60 days investigate facts and circumstances surrounding the subject payments. Administration will report back to the Board on its findings and recommendations. District still cannot pinpoint the vendor.	No report on findings provided to SCCOE regarding District investigation of circumstances surrounding the vendor paid under purchase order of different consultant. No determination of whether services were authorized has been made (or not communicated with SCCOE). District still cannot pinpoint the vendor. Ian Marsh asked Jim Cerreta at FCMAT but he did not provide any information.	On April 19, 2011, FCMAT identified the requested documentation. Please see Schedule 4.1. Consultant was SGI, Inc. and sub-consultant was Community Development Resources, Inc. SGI routinely sub-contracts facilities work. Invoices were approved by Alan Garofalo from ESUHSD Facilities and Julio Hernandez from SGI. Please see Schedules 4.2, 4.3.	Finding #6 (payments to a vendor using another vendor's PO): The data provided does not answer the question of whether or not the work paid for was duly authorized. The real question is how do district staff ensure that all payments made using bond funds are legitimate expenses of these funds? That question remains unanswered. Paying a vendor under another vendor's PO represents other issues such as: o Who verifies whether that vendor has back up withholding requirements o Who issues a 1099, if appropriate o Who determines what services were provided and whether they were relevant to the contract. Please explain the process used to make such payment and steps taken to ensure that only valid expenses are being charged to bond funds.	FCMAT provided documentation which shows the transaction was between SGI, Inc. and its sub-consultant CDR, Inc. Invoice #MG-006 was approved by both the former Associate Superintendent Facilities and SGI's Bond Program Manager. CDR bills SGI monthly; SGI adds a 10 % administrative fee, then bills the district. ESUHSD's contract with SGI does not limit sub-contracting (provided SGI has obtained the district's approval of the sub-consultant). Since both SGI and CDR are incorporated and ESUHSD has no contractual relationship with sub-consultants/subcontractors there was no need to issue 1099s. The district ensures 1099s are issued when applicable. Facilities invoices are reviewed and recommended for approval by SGI as part of their contractual responsibilities, and then reviewed and approved by the Facilities Director or other designated District staff. VTD (the district's outside independent auditor) also reviews expenditures to ensure they are appropriately charged to bond funds; for FY 2009-10 VTD reported no exceptions. To strengthen Internal Controls, the district's standard form contracts have been and are being revised to uniformly require the district's pre-approval of sub-consultants; revised form contracts have been presented to Board for review, consideration and approval at open session Board meetings.	Was VTD's review specific to Bond Funds and, in fact, not a part of the annual external audit? The copy of the Audit Report provided was a draft; please provide the Final Report. The report identifies significant internal control deficiencies that have not been addressed by the District.



FCMAT Extraordinary Audit- EC 1241.5(b)  
 ESUHSD responses to SCCOE 6/27/11 comments

#	Finding	FCMAT Recommendation to ESUHSD Board	District Response 3/29/11	SCCOE Comments 3/31/11	District Response 5/12/11	SCCOE Comments 6/27/11	District Response 7/26/11	SCCOE Comments 8/16/11
14	1	Require all vendors provide detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.	Administrative Directive issued 3/1/10.	<b>Not compliant.</b> This was discussed in detail with FCMAT; Dan Moser & Jerry Kurr were present. In a sample of 14 contracts from 2007-2010 encumbered against Bond Funds, all but 2 consultants provided sufficient details on their invoices. Of the 2010-11 sample, 1 invoice lacked sufficient detail. Blach Construction - "School Name Title IX Constructability Review" with no details as to how amount was calculated, dates, etc.	Internal Audit reviewed construction management billings by Blach Construction. Blach invoices show charges for: (1) pre-construction, (2) construction, and (3) closeout (Schedules 5.1 - 5.3). In accordance with Article 5 of the contract between ESUHSD and Blach, consulting services are billed <i>based on a percentage of the total contract</i> , not on hours worked and hourly billing rates (Schedules 5.4 - 5.7).	Finding #1 (require vendors to provide detailed invoices): This item is considered completed at this time. However, our review of the contract associated with the sample invoice submitted suggest a lack of review of the contract process. The contract reviewed by us leaves a lot to interpretation and seems to be vague to almost lend an advantage to the vendor.	No further work was performed. <b>We agree with the SCCOE that Facilities contracts should fully document the scope of services to be performed, how services are to be billed and allowable expenses which may be charged by the vendor. The district will take comprehensive steps to ensure that all contract language is strengthened. The district's standard form contracts have been and are being revised to address this and other issues. Revised form contracts have been presented to Board for review, consideration and approval at open session Board meetings.</b> The district has also formed a committee comprised of the Internal Auditor, CBO and Purchasing Director who will review selected contracts to ensure that the district is not disadvantaged, and will recommend language changes to the district's legal counsel to help ensure this.	We request a sample of draft contract language if not yet approved by the Board.

East Side Union High School District  
Draft Documented Procedure  
Cash Handling at School Sites

**1 General Guidelines**

- 1.1 The East Side Union High School District (district) is committed to the prompt and accurate recording of cash receipts and expenditures at school sites in accordance with statute, Board Policy and sound business practices.
- 1.2 Each site Principal has the primary responsibility for the prompt and accurate recording of cash receipts and expenditures at his/ her site.
- 1.3 Unless directed otherwise by the Chief Business Official or designee, district funds (fees, fines, donations) shall be accounted for separately from non-district funds (Associated Student Body or ASB).
- 1.4 Bank accounts should be opened or closed only with the approval of the Board of Trustees. The Director of Finance should be an authorized signatory on all accounts.
- 1.5 Authorized bank account signatures should be kept current.
- 1.6 Except for Petty Cash, cash disbursements are not permitted.

**Associated Student Body****2 ASB General**

- 2.1 ASB activity in the district is to be in accordance with FCMAT's "Associated Student Body Accounting Manual & Desk Reference" manual.
- 2.2 ASB activity shall be recorded by a Bank Clerk or other school site employee qualified through a combination of education, training, job commitment and work experience.
- 2.3 The district shall provide the resources to ensure the Treasurer or other designated employee is properly trained in the recording of ASB activity.
- 2.4 Bank reconciliations, Trial Balance, Income Statement and Balance Sheets shall be prepared monthly.
- 2.5 A Student Council or Leadership group should oversee activities and approve all expenditures by resolution. Minutes of meetings should fully document their activities.
- 2.6 Receipts and expenditures should be documented in a ledger using Blue Bear software.

**3 ASB Disbursements**

- 3.1 An ASB checking account should be opened solely for student activity use. There shall be no commingling of district moneys (fees, fines, donations, etc.) with ASB funds.
- 3.2 Dual signatures are required on all on checks
- 3.3 The Authorization for Expenditure form should be used for all reimbursements, payments, transfers of funds from one club account to another, and other related expenditures. It must be signed and dated by the student representative or officers, club sponsor and principal. All supporting documentation should be attached, including original receipts, itemized invoices and mileage.
- 3.4 Field trip expenses must be fully documented, including evidence supporting mileage, tolls and food. Itemized invoices are required for all accommodations.
- 3.5 Items which may be considered personal, such as gifts, are not reimbursable.
- 3.6 Checks shall be issued in numerical sequence and all accounted for, including voids.
- 3.7 All expenditures shall be approved by (a) the Principal or designee, (b) ASB advisor and (c) student representative.
- 3.8 Debit or credit cards may not be used in lieu of issuing checks.

East Side Union High School District  
Draft Documented Procedure  
Cash Handling at School Sites

**4 ASB Receipts**

- 4.1 Receipts issued in Blue Bear, or other another contemporaneous record such as an acknowledgement letter, shall support amounts received. Manual receipts shall not be issued in lieu of Blue Bear receipts.
- 4.2 For fund raising activities, there are to be dual, independent counts of cash and checks.
- 4.3 Appropriate documentation, where available, shall be retained to support all cash and checks received.

**5 ASB Bank Deposits**

- 5.1 Deposits should be made promptly and intact, preferably weekly. Bank deposits should be balance to a daily Cash Receipts Record or other proof of cash received.
- 5.2 Each site should use a uniform deposit slip and cash count form.
- 5.3 Make copies of all checks received, write the applicable club account number on the face of each check and attach the Daily Proof of Cash plus any cash count forms for fund raising activities.
- 5.4 Retain duplicate deposit slips, authenticated by the bank if feasible, and log the deposit bag number if a contracted courier is used.
- 5.5 For fundraising activities, all receipts are to be deposited promptly and intact. Club sponsors may not substitute personal checks for receipts received from others.

**6 Subsidiary Accounts – To be deleted**

- 6.1 Sites may use their Subsidiary Bank Accounts for non-ASB activity, such recording fees, fines and donations, and for small dollar purchases
- 6.2 Internal Controls are be similar to those listed for ASB accounts, including dual signatures on checks required; issuing manual receipts for collections and preparing monthly bank reconciliations.
- 6.3 Oversight by the Student Council is not required.
- 6.4 Large expenditures (say \$50 and over) should be made through Accounts Payable using site budgets.

**7 Class Trips**

- 7.1 Class trips sponsored by the school, teacher or booster group may be made in accordance with Board Policy and statute. All class trips must be pre-approved by the site's Principal.
- 7.2 A budget for each class trip prepared by the trip sponsor must identify the funding source(s), estimated expenses and expected surplus. In general, General Fund expenditures for class trips are not permitted.
- 7.3 Sponsors must identify the means of transportation. If travel is by common carrier, a current insurance certificate must be submitted to the sponsor.
- 7.4 District employees, parents or guardians, if providing transportation by automobile or van, must be appropriately licensed and show proof of liability insurance with a minimum coverage of \$300,000 per incident. Questions concerning liability coverage should be submitted to Keenan & Associates.
- 7.4 Class trips must be submitted for prior approval to the Board of Trustees. Requests for approval must include proof of liability insurance for transportation.

East Side Union High School District  
Draft Documented Procedure  
Cash Handling at School Sites

**Class Trips (continued)**

- 7.5 Trip sponsors are responsible for the prompt and accurate recording of cash and checks received from students. Receipt forms as confirmation of amounts received should be issued in Blue Bear. The use of manual receipt forms is discouraged.
- 7.6 Cash and checks for class trips must be deposited promptly into a site bank account.
- 7.7 Student Body accounts may be used on a pass-through basis to record amounts received and disbursed for class trips.
- 7.8 There must be a contemporaneous record of all cash and checks received, when received and from whom which agrees with deposit records.
- 7.9 Trip sponsors are responsible for ensuring all vendors are paid promptly and in full.
- 7.10 On the conclusion of trips, there must be a final accounting for all receipts and expenditures prepared by the sponsor.

**8 Athletic events**

- 8.1 The District is committed to accurately reporting tickets sold for athletic events and the corresponding receipts collected from such sales, and in being compliant with applicable statute, regulations, Board Policies and Administrative Regulations.
- 8.2 Tickets should be uniquely and serially numbered ("Ticket Charge Slip" - Sch. 1). To discourage counterfeits, a different ticket color for each consecutive athletic event at the same site is encouraged. Adult and child tickets should be different colors.
- 8.3 A ticket log is to be maintained, with beginning and ending numbers recorded for each event and all tickets accounted for. Unused tickets must be kept under lock and key.
- 8.4 Tickets are to be sold for cash only. Currency of \$20 or higher should be tested for authenticity when received. Bills of \$50 or more and IOU's cannot be accepted.
- 8.5 Change funds should be kept in lockable change boxes. Float amounts at the same location should be the same in each change box, and beginning denominations and quantities of currency and coins unchanged.
- 8.6 Ticket takers must tear tickets to prevent possible reuse and the stubs retained, to be reconciled with tickets sold per the log.
- 8.7 Following each athletic event, there must be a reconciliation between tickets sold per the log with total net receipts. Variances over \$20.00 must be followed up promptly.
- 8.8 Dual, independent counts of receipts following athletic events are recommended. If the total receipt amounts agree, the total, by denomination, should be recorded on a collection envelope. Both counters should initial and date the envelope, which must be sealed, then sent to the Bank Clerk's office no later than the next business day.
- 8.9 As soon as received, the Bank Clerk must recount receipts and agree with the collection envelope amounts. Receipts must be deposited promptly.
- 8.10 Receipts from different athletic events must not be commingled.
- 8.11 For major athletic events, security of staff and receipts is essential. If receipts are held pending deposit until the next business day, they must be placed in a safe which is locked. Receipts must not be carried off-site by staff, parents or volunteers.
- 8.12 Disbursements for athletic events (e.g. payments to ticket sellers), must be made by check only. Cash disbursements are prohibited.

**9.0 Questions**

- 9.1 Any questions concerning this Administrative Regulation should be directed to the Internal Auditor.

# Item 11

**Agenda Item Details**

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Meeting Aug 30, 2011 - ESUHSD REGULAR BOARD MEETING - 4:00 P.M., DISTRICT OFFICE - BOARD ROOM, 830 N. CAPITOL AVENUE, SAN JOSE, CA 95133

Category 12. BUSINESS SERVICES - OPERATIONAL ITEMS/BOARD DISCUSSION AND/OR ACTION

Subject 12.07 Discussion and/or Action regarding Survey of School Districts Legal Expenses/Costs - Marcus Battle, Associate Superintendent, Business Services

Type Action, Discussion, Information

Recommended Action It is recommended that the Board of Trustees accept survey report presented

## EAST SIDE UNION HIGH SCHOOL DISTRICT

### Item: 12.07

**TO:** Board of Trustees

**FROM:** Dan Moser, Superintendent

**PREPARED BY:** Marcus Battle, Associate Superintendent of Business Services

**SUBJECT:** Discussion and/or Action regarding Survey of School Districts Legal Expense/Costs

Based on a review of the data, the district incurred total legal costs for fiscal year 2010-11 of 1.23 million. From the total \$1.23 million incurred in FY 2010-11, \$373,000 was attributed to General-Legal costs which include costs related to special education, employment, and other general litigation expenses. The remaining \$863,000 is related to legal expenses associated with the districts bond and construction program. In FY 2009-10, the district's legal costs totaled \$794,000. In comparing FY 2009-10 with FY 2010-11 legal costs, the district's general legal costs declined by \$122,000 and the bond/construction legal cost increased by \$564,000. A review of billing invoices indicate that most of the increase in bond/construction costs for FY 2010-11 was related to the KMS litigation.

In comparing the district's legal costs with those from districts of similar size, the findings suggest that the district's general-legal costs for FY 2010-11 compared favorably with those districts. In regard to bond/construction related legal costs, the district is above the average for the fiscal year ending 2010-11. As was noted earlier, the increase in bond/construction related costs was primarily attributable to the KMS litigation.

**FISCAL IMPACT:**  
Not Applicable

**FUNDING SOURCE:**  
Not Applicable

**RECOMMENDATION:**  
It is recommended that the Board of Trustees accept survey report as presented.

## Survey of School Districts Legal Expenses

School District	2009/2010 General-Legal	2009/2010 Bond/Construction	2009/2010 Total Expenses	2010/2011 General-Legal	2010/2011 Bond/Construction	2010/2011 Total Expenses	Enrollment	Cost per Enrollment
East Side UHSD	495,898	298,830	794,728	373,707	863,663	1,237,370	24,000	\$ 15.57
Grossmont UHSD	583,414	64,993	648,407	319,263	58,939	378,202	19,655	\$ 16.24
Long Beach USD	2,511,853	515,263	3,027,116	2,286,507	46,959	2,333,466	80,954	\$ 28.24
San Lorenzo USD	158,365	10,000	168,365	121,746	10,000	131,746	11,052	\$ 11.02
Alum Rock USD	480,645	2,183	482,828	615,009	-	615,009	12,668	\$ 48.54
San Jose USD	563,215	170,227	733,442	371,384	154,533	525,917	30,960	\$ 11.99
Cupertino USD	-	-	-	183,000	-	183,000	18,400	\$ 9.95
Castro Valley USD	-	-	-	155,991	23,058	179,049	8,995	\$ 17.34
Palo Alto USD	124,326		124,326	181,150	8,405	189,555	14,400	\$ 12.58
Morgan Hill USD	362,579	46,933	409,512	246,499	21,982	268,481	9,300	\$ 26.50
Kern HSD	721,197	20,903	742,100	599,933	39,983	639,916	37,492	\$ 16.00
West Contra Costa USD	697,257	365,318	1,062,575	1,223,902	254,711	1,478,613	27,395	\$ 44.68
Sweetwater SD	1,137,254	115,147	1,252,401	1,617,229	142,000	1,759,229	41,426	\$ 39.04
Santa Clara USD	375,096	105,557	480,653	278,249	32,152	310,401	15,500	\$ 17.95
Milpitas USD	109,907	-	109,907	94,862	-	94,862	9,800	\$ 9.68
Fremont UHSD	252,404	23,115	275,519	307,137	28,223	335,360	10,467	\$ 21.34

**East Side Union High School District  
Legal Cost Summary 2010/2011**

**Vendor: Rehon & Roberts**

<b>2010/2011 Legal Cost</b>	<b>Board Matters</b>	<b>Business Services</b>	<b>Personnel Matters</b>	<b>Union/Layoffs Matters</b>	<b>Student Matters</b>	<b>General</b>	<b>Sub Total</b>	<b>Bond Matters</b>	<b>KMS</b>	<b>Total</b>
July 2010	10,885.50		11,013.50		8,015.50		29,914.50	9,840.00	91,297.83	<b>131,052.33</b>
August 2010	6,252.50	1,067.00	11,603.00				18,922.50	5,764.49	153,444.97	<b>178,131.96</b>
September 2010	6,252.50	61.50	18,327.00		984.00		25,625.00	11,726.00	185,761.87	<b>223,112.87</b>
October 2010	10,250.00		19,249.50		2,254.50		31,754.00	6,847.00	167,404.60	<b>206,005.60</b>
November 2010	10,147.50	307.50	23,226.50		82.00	2,071.50	35,835.00	6,006.50	60,781.68	<b>102,623.18</b>
December 2010	5,637.50		13,653.00		61.50		19,352.00	4,428.00	50,807.25	<b>74,587.25</b>
January 2011	7,913.00		15,682.50	1,599.00	1,271.00		26,465.50	9,204.50	37,031.15	<b>72,701.15</b>
February 2011	4,264.00	164.00	24,067.00	4,284.50	82.00		32,861.50	4,243.50	20,086.00	<b>57,191.00</b>
March 2011	4,551.00	738.00	22,406.50	14,968.40	1,025.00		43,688.90	13,120.00	3,802.50	<b>60,611.40</b>
April 2011	15,662.00		14,637.00	14,431.07	635.50		45,365.57	3,321.00	292.50	<b>48,979.07</b>
May 2011	7,298.00		17,917.00	1,496.50	1,435.00		28,146.50	8,351.50	90.00	<b>36,588.00</b>
June 2011	11,931.00	287.00	15,334.00	82.00	389.50		28,023.50	7,946.50	-	<b>35,970.00</b>
<b>Total</b>	<b>101,044.50</b>	<b>2,625.00</b>	<b>207,116.50</b>	<b>36,861.47</b>	<b>16,235.50</b>	<b>2,071.50</b>	<b>365,954.47</b>	<b>90,798.99</b>	<b>770,800.35</b>	<b>1,227,553.81</b>

**Vendor: McArthur & Levin**

<b>2010/2011 Legal Cost</b>										
July 2010					2,442.05		2,442.05			<b>2,442.05</b>
August 2010					1,334.50		1,334.50			<b>1,334.50</b>
September 2010							-			-
October 2010							-			-
November 2010					2,032.80		2,032.80			<b>2,032.80</b>
December 2010							-			-
January 2011					1,032.50		1,032.50			<b>1,032.50</b>
February 2011							-			-
March 2011							-			-
April 2011							-			-
May 2011							-			-
June 2011							-			-
							<b>6,841.85</b>			<b>6,841.85</b>

**East Side Union High School District  
Legal Cost Summary 2010/2011**

2010/2011 Legal Cost	Board Matters	Business Services	Personnel Matters	Union/Layoffs Matters	Student Matters	General	Sub Total	Bond Matters	KMS	Total
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**Vendor: Garcia Calderon & Ruiz**

**2010/2011 Legal Cost**

July 2010							-			-
August 2010			348.00				348.00			348.00
September 2010			123.00				123.00			123.00
October 2010							-			-
November 2010							-			-
December 2010			336.90				336.90			336.90
January 2011			102.50				102.50			102.50
February 2011							-			-
March 2011							-			-
April 2011							-			-
May 2011							-			-
June 2011							-			-
			<b>910.40</b>				<b>910.40</b>			<b>910.40</b>

**Vendor: Dannis Woliver Kelley**

July 2010							-			-
August 2010							-	1,491.50		1,491.50
September 2010							-	583.00		583.00
October 2010							-	79.50		79.50
November 2010							-			-
December 2010							-			-
January 2011							-			-
February 2011							-			-
March 2011							-			-
April 2011							-			-
May 2011							-			-
June 2011							-			-
							-	<b>2,154.00</b>		<b>2,154.00</b>

<b>Year Totals</b>	101,044.50	2,625.00	208,026.90	36,861.47	16,235.50	2,071.50	373,706.72	92,952.99	770,800.35	1,237,460.06
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## **Memorandum**

**From:** Ian Marsh  
**To:** Audit Committee, Dan Moser, Marcus Battle, Karen Poon  
**Date:** September 2, 2011  
**Subject:** **Review of Legal Expenses**

### **Overview**

As requested by the Board of Trustees, Internal Audit reviewed legal expenditures for FY 2009-10 and FY 2010-11. Audit scope included:

1. A review of District documented procedures, if available
2. Evaluation of District procedures to purchase legal services, review and approve invoices.
3. Review legal expenses by vendor and expense category for the period FY 2009-11.
4. Document procedures to coordinate legal services between District's legal counsel and JPAs.

Internal Audit found no district documented procedures relating to the purchasing of legal services, or the review and approval of legal invoices. Internal Audit drafted an Administrative Regulation to address this.

Legal invoices are reviewed by Administrative Secretary, Betty Banderas, who codes them with the applicable General Ledger code, then forwards them to the approving authority. Ms. Banderas summarizes invoices by vendor and expenditure type – see Schedule 1. It shows the following:

- Legal expenses for FY 2010-11 totaled approximately \$1.24 million (FY 2009-10 = \$1.02 million). Four firms were used, with the majority of work performed by general counsel Rehon & Roberts.
- In descending dollar value, the largest expenditures during FY 2010-11 were for KMS litigation (\$771k), personnel matters (\$208k), Board (\$101k) and Bond matters (\$93k).
- In comparison, legal expenses for San Jose Unified for FY 2010-11 totaled \$462k. The major expenditures were for facilities (\$165k) and personnel matters (\$124k).

After the District's Risk Manager position was eliminated, responsibility was assumed by the Associate Superintendent - Business. To assist in the coordination of legal services with outside agencies, such as JPAs, (which may have their own legal counsel), when the Superintendent is notified of new claims received and/ or tendered to the JPA, he informs general counsel. To help ensure all interested parties are aware of actual or potential claims, JPS's legal counsel has

been asked to keep both the District and general counsel informed when he/ she is representing the District.

At its meeting on August 30, Associate Superintendent Marcus Battle reviewed updated data on legal expenses – Schedule 2. No Board action was taken.

**Conclusions, recommended actions**

1. Legal invoices should identify who at the District requested each service.
2. Board-related items should be approved by the Board President or Deputy.
3. Prior to the payment of legal invoices, Accounts Payable should ensure payments are not duplicated.

If you have any questions or comments, I would be pleased to respond.

Attachments

East Side Union High School District  
Draft Documented Procedure  
Legal Services

**1 General Guidelines**

- 1.1 The East Side Union High School District (District) is committed to the acquisition of legal services in accordance with Board Policy and sound business practices.
- 1.2 The District shall appoint a General Counsel who shall have primary responsibility to represent it and the Board of Trustees, attend all Board of Trustee meetings and such other meetings as mutually agreed.
- 1.3 With the approval of the Board, General Counsel shall have authority to hire sub-counsel.
- 1.4 Legal counsel shall be Independent Contractors and not entitled to employee benefits.
- 1.5 Legal counsel shall have current professional liability insurance of not less than \$1 million per incident.
- 1.6 Legal counsel shall be compensated on a time and materials basis, unless expressly authorized otherwise by the Board of Trustees.
- 1.6 In all matters related to services performed, legal counsel shall maintain confidentiality.
- 1.7 The work product of legal counsel shall be and remain the property of the District.
- 1.8 Legal counsel shall retain District work product for a minimum of seven years or as required by statute, whichever is longer.
- 1.9 To the extent possible, services performed by General Counsel shall be coordinated with outside counsel representing the District.
- 1.10 Counsel shall report to the Superintendent at least monthly all potential and actual litigation, in a manner as mutually agreed.

**2 Purchasing of Legal Services**

- 2.1 Legal services shall be competitively bid in accordance with AR 3311, "Consultants."
- 2.2 Factors to be considered in contracting for the purchase of legal services shall include professional skills, ethical reputation, education, range of services offered, experience in school districts, maintenance of skills and cost.
- 2.3 District staff shall perform due diligence in the selection of the highest quality legal services consistent with cost.
- 2.3 Contractors shall sign a Conflict of Interest statement when required by District policy.
- 2.4 Legal counsel shall be currently licensed in California and shall not have been subject to disciplinary action by the State Bar.

**3 Billing Procedures**

- 3.1 Unless other arrangements have been made, counsel shall bill the District monthly for services performed. Out-of-pocket expenses shall be billed at actual cost and itemized.
- 3.2 Invoices shall reference the District's Purchase Order number, and show the period covered, services performed, hours worked and who performed them and hourly rates.
- 3.3 Invoices shall identify which District staff or Board member ordered the services billed.
- 3.4 Time billed shall be at hourly rates agreed to in the District's contract with counsel.
- 3.5 Sub-contracted legal services are subject to the same requirements as primary contracts.
- 3.6 Prior to payment, invoices shall be reviewed and approved by the Administrative Secretary and employee ordering the service. The funding source shall be shown.

East Side Union High School District  
Draft Documented Procedure  
Legal Services

**4 Conflict Resolution**

- 4.1 Conflicts between legal counsel and the District shall, if the parties are unable to resolve them, shall be subject to binding arbitration.

**5 Interpretation**

- 5.1 Questions concerning this Administrative Regulation should be directed to the Chief Business Official.

## **Memorandum**

**From:** Ian Marsh – Internal Audit  
**To:** Audit Committee, Dan Moser, Marcus Battle  
**Date:** September 2, 2011  
**Subject:** **Fraud, Waste & Abuse Hotlines**

### **Definitions, scope**

Fraud, waste and abuse (FW&A) hotlines (also sometimes called whistleblower hotlines) are an established mechanism to receive complaints involving misuse of public resources. Typically a hotline program will investigate complaints and determine whether the complaint is justified. Examples of F, W & A complaints include theft of cash and other assets, accounting irregularities, misuse of agency property, payroll or timekeeping fraud, kickbacks or bribes. Hotlines do not usually handle labor-related claims such as sexual harassment or alleged discrimination, which are Human Resources' responsibility, or customer service type calls. Follow-up of complaints about district policies and procedures not being followed would normally be the responsibility of Internal Audit.

### **Support for Hotlines**

Various professional organizations and the State of California support the use of hotlines. The *Government Finance Officers Association (GFOA)*, for example, recommends that each government establish a hotline "to permit the confidential anonymous reporting of concerns about fraud or abuse and questionable accounting or auditing practices...."

*California State Government Code* §53087.6 adopted in 2008 implemented Whistleblower legislation allowing City Auditors to establish and manage hotlines, and to maintain confidentiality of persons providing information. AB 1666 in 2010 amended the legislation to further define the auditor's role in maintaining the hotline and providing copies of substantiated reports to the appropriate parties.

The *League of California Cities / Institute for Local Government* identified auditors as "another tool in the Ethics Toolbox" and recommends the use of hotlines to help promote ethical behavior.

The *Association of Certified Fraud Examiners (ACFE)* strongly supports hotlines to prevent and detect fraud. Its surveys show the following:

1. Between 2002-09, survey respondents reported the median loss caused by occupational fraud was \$160,000, frauds lasted a median of 18 months before being detected, and occupational frauds are much more likely to be detected by tip than by any other means.
2. The ACFE believes fraud reporting mechanisms are a critical component of an effective fraud prevention and detection system, and recommends implementing hotlines to receive tips from internal and external sources.
3. Clearly, employees should be encouraged to report suspicious activity without fear of reprisal. The ACFE believes there is an over-reliance on audits to detect fraudulent behavior, and internal controls are insufficient to fully prevent occupational fraud.
4. In the ACFE survey, respondents, when asked to identify how frauds were first discovered, reported that three times as many frauds were uncovered by a tip as by any other method. Management review and Internal Audit were the second and third most common forms of detection, while by accident was fourth.
5. Not surprisingly, employees were the most common source of fraud tips, but customers, vendors, competitors and acquaintances were other common sources.
6. Concerning hotlines, the ability to report fraud anonymously is key because employees may fear risk of retaliation by supervisors or negative reaction from their peers. ACFE data shows that in organizations that had hotlines, 47% of frauds were detected by tips, while in organizations without hotlines, only 34% were so detected.
7. In 67% of cases where there was an anonymous tip, that tip was reported through an organization's hotline. This suggests that hotlines are a very effective way to encourage tips from employees who might not otherwise report misconduct.

## East Side Union High School District

The FCMAT Extraordinary Audit and Grand Jury report recommended the District implement a Fraud Alert line. I identified three potential vendors who appeared to be able to meet the District's requirements, and requested bids from EthicsPoint, The Network and Global Compliance. After carefully checking the bids and talking to references (two of them school districts), I recommended to the Board we hire EthicsPoint, and they approved at its last meeting. The first year cost will be about \$3,900, which includes a one-time set-up fee of \$1,500. I know several of the users personally and they are very pleased with the service.

Features of EthicsPoint include the following:

- EthicsPoint's Vision and Focus – EthicsPoint has concentrated its efforts on Governance, Risk and Compliance and have not ventured into non-related business.
- Call Center Proficiency – Heavy training focus on interview vs. interrogation to generate actionable reports that reflect what was observed or experienced not what the reporter thinks we want to hear. All focus on GRC as noted above. EthicsPoint doesn't do 1-800-How's My Driving, Secret Shopper or claims related calls in our contact center. Strong security component in contact center.
- Utilization of Technology (Software as a Service) - EthicsPoint pioneered web-based reporting and integration of hand-helds so tends to be ahead of competitors in technological solutions. SaaS allows clients to share in upgrades (typically 3 to 4 times a year) without requiring IT to put on the mainframe. Highly efficient workflows.
- Commitment to Security - SAS70 Type II certified with high degree of Business Continuity and Network Security Protocols. Have had organizations like Verisign, Siemens and others select EthicsPoint over the other two providers based on their security evaluations.
- Dedication to Clients - Not only does EthicsPoint have annual user forums to determine additional needs but our client services department is consistently communicated client articulated needs which serves for the creation of a developmental road map to drive our 3-4 upgrade releases annually. Its Product Engineering Department boasts over 30 employees.

## Conclusion

I look forward to working with EthicsPoint and believe the Audit Committee and Board will be pleased with the results.

# Item 12 (b)

## Proposal for EthicsPoint GRC Solutions

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Developed For  
EAST SIDE UNION HIGH SCHOOL DISTRICT

**ethics•point**  
integrity at work



## EthicsPoint: GRC Solution for East Side Union High School District

### Executive Summary

#### PRESENTED BY

Pete Crosby  
Senior Account Manager - Government /  
Non-Profit  
(866) 297-0224 ex 1103 direct

#### COMPANY DETAIL

EthicsPoint Inc.  
6000 Meadows Road, Ste 200  
Lake Oswego OR 97035

#### STRATEGIC ORGANIZATIONAL GOAL

Streamline the capture, resolution and measurement of all risk related issues, some of which are currently being captured on an adhoc basis in each operational entity, to ensure an effective workflow process and mitigate risk.

- Develop consistency in the collection of risk related information.
- Identify clear trends and oversight for Management Team to help better protect the organization, improve policies and identify areas of process improvement.
- Provide a unified database to simplify the generation of required reports for key funders, compliance and regulatory bodies.
- Provide a solution which supports legislation requirements like ARRA or FAR.

#### KEY TACTICAL DRIVERS/REQUIREMENTS

- An intuitive, easy-to-use solution that scales according to need and complexity.
- Ability to create an efficient and measurable process for routing and notification to ensure consistency and thoroughness within the investigative module.
- Aggregate data feeds into one centrally accessible system of record.
- Simple sharing of information and case assignment by function, branch and allegation type.
- Easily track, analyze, assign and collaborate on cases across the organization.
- Robust analytic and reporting features.
- Solution must be cost effective.
- Solution must incorporate stringent privacy/security measures to meet HIPAA and other standards.

#### CRITICAL SUCCESS FACTORS

- Accelerate the number of written, not oral, employee reports through intake simplification and optimization while reducing the overall time to respond to and resolve issues.
- Ensure consistency through clearly defined workflow.
- Increase productivity & collaboration to reduce duplicative efforts between functions.
- Gain more cost effective insight to patterns and trends with risk areas.
- Identify opportunities to strengthen policies and controls or validate existing policies.
- Create a centralized and integrated database for improved analysis and reporting.
- Take advantage of EthicsPoint's expertise-gained from working with over 2,400 clients to implement best practices for your Governance, Risk and Compliance operations.

#### OUR RECOMMENDATION

To best meet the above stated goals, requirements and success factors, we recommend the EthicsPoint's Hotline/Helpline solution with its integrated Issue & Event Manager-Foundation with Advanced Analytics and an optional location database.

## EthicsPoint: GRC Solution for East Side Union High School District

Program Pricing

## East Side Union High School District-Foundation Recommended Solution

Description	One-Time Setup	Annual Recurring
Hotline/Helpline		
<a href="#">Hotline/Helpline Subscription / 1720 Stakeholders</a>	\$750.00	\$2,408.00
<a href="#">Portal Page Setup</a>	\$1,000.00	\$0.00
<i>Discount:</i>	<i>(\$250.00)</i>	
Issue and Event Manager		
<a href="#">IEM Foundation Subscription</a>	\$0.00	\$0.00
<a href="#">Included Dedicated Seat License - Foundation</a>	\$0.00	\$0.00
<a href="#">Included Concurrent Seat License - Foundation</a>	\$0.00	\$0.00
Issue and Event Manager Add Ons		
<a href="#">Advanced Analytics Module Subscription</a>	\$0.00	\$750.00
<i>Discount:</i>		<i>(\$750.00)</i>
<b>TOTAL COMBINED FEES:</b>	<b>\$1,500.00</b>	<b>\$2,408.00</b>
	<b>TOTAL (YEAR ONE):</b>	<b>\$3,908.00 USD</b>

### Optional Components *(Not included in current quote)*

Description	One-Time Setup	Annual Recurring
Services		
<a href="#">Location Database Module Setup</a>	\$500.00	\$0.00

## EthicsPoint: GRC Solution for East Side Union High School District

### Product Descriptions

#### Hotline/Hotline Subscription

The epHotline solution has been designed to enable your employees and other stakeholders to easily and confidentially report any issue or instance of misconduct. The Contact Center is globally accessible 24/7/365 with system availability ensured by end-to-end network redundancy, scalability, and reliability. Live telephone interpretation support is available in 188 languages.

Includes:

- Unique Domestic Toll-free Number (or transfer of existing)
- Toll-free hotline access for all domestic & most international calls
- Unlimited Reports via web, telephone, or internal
- Access to EthicsPoint Standard Awareness /Rollout Materials
- Includes Basic Membership to Open Compliance Ethics Group with Free 90-day trial Premium Membership

#### Portal Page Setup

Customized Setup and Implementation:

- Project management from the Client Services team Transfer or redirect of existing numbers
- Setup of telephony services: ITFS, AT&T Direct, Domestic Toll Free
- Defining the call tree for emergency situations
- Website/portal creation in English
- Custom Hotline Greeting in English

#### IEM Foundation Subscription

EthicsPoint Issue & Event Manager | Foundation is a Software-as-a-Service case management solution designed to manage the collection of issues and events that may expose an organization to risk, and to document the subsequent investigation and resolution of these reported issues. The Application includes basic reporting and analytic capabilities into collected data.

This module supports assignments, participants, synopsis, reminders and will be tailored for Client to align with the various telephone and web intake mechanisms.

Included in the Annual Subscription Fee are the following:

- One (1) GB of storage
- EthicsPoint Analytics
- (2) Dedicated Seat Licenses
- (3) Concurrent Seat Licenses

Customized Setup and Implementation

- Account Specialist serving as a single point of contact to guide you through the implementation
- Initial kick-off Email providing an overview of expectations, documentation, and client responsibilities for a successful implementation
- 60 minute kick-off call to establish key stakeholders, implementation goals, and timelines
- Recommendations on implementation best practices
- Customized issue types
- Dedicated user interface, database, and application for the administration of epIEM
- Mapping of the hotline/helpline and web portal to the single-schema case management system
- System Structure creation to support key business and reporting needs
- Guidance with single-schema dropdown creation
- Guidance with single-schema role, user, and access level creation
- Two hours of EthicsPoint Administrator/User training (via the web), training thereafter \$150/hour

## EthicsPoint: GRC Solution for East Side Union High School District

### Product Descriptions

#### **Advanced Analytics Module Subscription**

EthicsPoint Advanced Analytics is a web-based query and analysis system, making it easy to create insightful reports from the wealth of data contained in the solution. epAdvanced Analytics contains a library of pre-formatted reports, and enables the creation of ad-hoc analysis through database queries.

#### **Location Database Module Setup**

EthicsPoint's Location Database service makes available a method for storing client defined location information within EthicsPoint Issue & Event Manager that enables users and reporters to select appropriate case specific locations based on client provided data. Location accuracy is ensured by the utilization of consistent parameters throughout the database.

## **Memorandum**

**From:** Ian Marsh, Internal Audit

**To:** Board of Trustees, Dan Moser, Hardy Childers, Karen Poon

**Date:** May 2, 2011

**Subject:** American Express Card

### **Overview**

At an April 2011 Board meeting, Ms. Martinez- Roach noted district payments to American Express on the Warrant Register. She asked Internal Audit to inquire how many credit cards the district has, and why it made payments to Amex.

I met with Karen Poon, Director of Finance, to discuss the above. There are two known bank cards in the district office:

1. Visa purchasing card.
2. American Express credit card.

When visiting school sites, Internal Audit noted that debit cards connected to checking accounts may be issued by banks. While I prefer such cards not be used, site personnel state they may obtain more favorable pricing for purchase of supplies and equipment. Current Administrative Regulations do not prohibit the use of such cards.

The Visa purchasing card, Account no. [REDACTED], is in the name of Donna Bertrand, Contracts Administration Coordinator. Issued by U.S. Bank, it is intended to be used for Board of Trustee or senior management travel and to guarantee reservations, and not to purchase other goods and services. Its use requires completion of an authorization form.

The Amex card, obtained by the former Associate Superintendent - Business, Jerry Kerr, is in the name of Finance Director Karen Poon. Its purpose is to obtain a one per cent rebate for purchases from certain vendors. The card is kept in a locked safe with limited access. Kaiser Permanente was the intended principal vendor for the payment of medical insurance premiums using the card. Since the district's annual Kaiser premiums total \$14 million, this would have earned rebates of about \$140,000. The district was one month late in applying, so Kaiser refused to pay the rebate. Nevertheless, there are other district vendors offering rebates, including Apple, Follett Educational, Unisource and Waste Management. Purchases from these vendors using the Amex card during the period November 2010 through February 2011 totaled \$97,212.43. Annualized, if continuing purchases from the above vendors were comparable, the one percent rebate would total approximately \$3,000.

**Conclusion**

Because of the effort required to administer the Amex program, Internal Audit recommends the district no longer participate. Should Kaiser Permanente rejoin the program, I recommend that future payments be made using the district's Amex card.

If you have any questions or comments, I would be pleased to respond.

## **Memorandum**

**From:** Ian Marsh – Internal Audit  
**To:** Audit Committee, Dan Moser, Marcus Battle  
**Date:** September 2, 2011  
**Subject:** **E-Rate - Settlement of 2008, 2010, 2011 Claims**

At the last Audit Committee meeting, I reported briefly on the reasons for delays in the District's settling E-Rate claims. I told you E-Rate is the name commonly used for the Schools and Libraries Program of the Universal Service Fund, administered by the Universal Service Administrative Company (USAC) on behalf of the FCC. The E-Rate program provides discounts to assist most schools and libraries in the U.S. to obtain affordable telecommunications and Internet access. It is funded by the Universal Service Fee charged to companies that provide interstate and or international telecommunication services.

I subsequently met with staff to further research this matter. The District also worked with a consultant who was our liaison to USAC. As a result of staff's on-going efforts, Dennis Barbata and Raj Villivalam in particular, we received good news in early August that our long-outstanding claims for 2008 and 2010 had been approved. Partial funding for 2011 was also approved. The amounts follow:

2008 - \$1,153,766.97

2010 - \$1,401,286.61

2011 - \$670,165.55

Total = \$3,225,219.13

I understand these amounts will be applied as credits against future telecomm bills, resulting in zero net expense through June 2013.

**East Side Union High School District  
San Jose, California  
Audit Committee Charter  
Adopted 11/19/2009  
Revised**

## **I. Audit Committee Authority**

The East Side Union High School District (ESUHSD) has established an Audit Committee to assist the Board of Trustees (Board) in the oversight of both the internal and external audit functions. The ability to create an Audit Committee was established by ESUHSD BP 3460.

~~This charter includes provisions to define the relationship of the Audit Committee to any internal audit function or position that may be created by the Board in the future. It is understood that with the writing of this draft the Board has not yet determined if it wishes to create an internal auditor position. Inclusion of these provisions does not imply support for or against the creation of such a position.~~

## **II. Mission**

The primary responsibility for financial and other reporting, internal control, and compliance with laws, regulations, and ethics within the ESUHSD rests with the Superintendent and his / her management team. The Board has oversight responsibilities in these areas and the Audit Committee is to assist the Board in fulfilling these responsibilities.

The Board Members who are members of the Audit Committee shall, on behalf of the Audit Committee, have unrestricted access to all information, including documents and personnel, and have adequate resources in order to fulfill its oversight responsibilities. All confidential information shall be maintained as confidential in accordance with Board policy and law, and shall not be provided or distributed to public members of the Committee.

In adopting this Charter the Board directs that District Administration shall work cooperatively with the Committee to promptly and fully respond to all requests for information and documentation.

The Board has established an Audit Committee to serve in an advisory capacity to the Board and shall:

- 1) Assist the Board in providing oversight of the external/internal audit functions by:
  - a. Making recommendations regarding the selection of the external independent auditor,
  - b. Reviewing the plan for the audit process with the independent auditor to determine the adequacy of the nature, scope, and timetable of the audit,
  - c. Reviewing the results of the audit and participate with the independent auditor and the Board in preparing final recommendations and responses,
  - d. Participating with the independent auditor in presenting the audit report to the Board,



- e. Reviewing Board policies and administrative regulations to recommend any revisions needed to ensure effective financial reporting,
- f. Periodically reporting to the Board regarding the status of previous audit recommendations for improving the accounting and internal control functions,

and  
f.g. Providing input on the effectiveness of the external independent auditor.

- 2) Assist the Board in providing oversight of the external/internal audit functions
- 3) Assist the Board in complying with its fiduciary oversight obligations;
- 4) Provide a communication link between the external and/or internal auditor and the Board
- 5) Provide greater transparency over public funds while improving public trust

### **III. Membership**

The Audit Committee consists of five voting members appointed by the Board as follows:

1. Two Board members, who shall serve as Chair and Vice Chair of the Committee as determined by the Board. The Board President may not concurrently serve on the Audit Committee.
2. Three public members.

The Board may appoint an alternate public member. The alternate's responsibility is to temporarily substitute, with full voting powers, for any Audit Committee member who is absent from a meeting.

All voting members of the committee must reside within the boundaries of the East Side Union High School District.

The Board may appoint non-voting members with specific expertise to the committee. There is no residency requirement for non-voting members.

Appointments-Appointment of Board members to the Audit Committee will be made at the Board's annual organizational meeting in December or as vacancies occur.

Board member terms shall be for one year beginning on the date of appointment at the Board's annual organizational meeting in December and ending the following year at the Board's next annual organizational meeting.

Public members will be appointed at the first regular Board meeting in January. Public member terms will be for two years. The alternate public member term will be for one year. In order to coincide with the annual presentation of the external audit report to the Board, public member terms shall -begin on February 1 and end two years later on January 31.

Public member's terms will be staggered so that all terms do not start and end at the same time. Immediately after the initial appointment of the three public members, the Board shall determine by lot which two of the public members shall serve an initial term of two years with the third public member serving an initial term of one year. The maximum number of consecutive terms a

member may serve is four. A termed out member is eligible for appointment again after not serving for at least one year.

The members of the Audit Committee must collectively possess knowledge and experience in accounting, auditing, financial reporting, and school district finances needed to understand and evaluate the district's financial statements, the external audit of those statements, and the district's internal audit activities. Accordingly, the Audit Committee members should:

- 1) Be independent of the day-to-day management of the ESUHSD,
- 2) Possess the required skills and experience necessary to understand technical and complex financial reporting issues,
- 3) Have the ability to communicate with and offer advice and assistance to the Board, the external auditors, and the internal auditor,
- 4) Be knowledgeable about internal controls, financial statement audits, and managerial/operational audits
- 5) Be available to take training in educational finance

The following individuals cannot serve on the Audit Committee:

- a) Any person who, within the two years prior to appointment, has been an employee of the ESUHSD or sold goods or services to the ESUHSD,
- b) Anyone who, within the past two years, owns or has a direct and material interest in an entity, or who holds a leadership position in any entity, which provides substantial goods or services to the ESUHSD pursuant to purchase order or contract (either individually or under a fictitious business name),
- c) A close or immediate family member of anyone who would be prohibited from serving on the Audit Committee under a) through b) above. The term "close or immediate family member" includes parent, sibling, nondependent child, spouse or domestic partner, or dependent (whether or not related),

Exceptions are as follows:

- d) An individual who would otherwise be excluded may serve if, after full disclosure to the Board, the potential conflict of interest is not material,
- e) Any member who develops a conflict of interest while on the Audit Committee must disclose such conflict. The other Audit Committee members at the next meeting shall, by majority vote, make a recommendation to the Board. The Board shall decide whether or not to remove and replace the affected member. Should a vacancy occur, the Board will notify the public of the opening, accept applications and appoint an individual to serve the balance of the vacated term.

**If a vacancy among the voting public members occurs, the Board shall appoint the alternate public member to fill the term of the vacated member.**

The Audit Committee Chair and Vice Chair shall recommend to the Board as to when (as quickly as possible or in conjunction with the annual appointment of public member(s)) a new alternate public member shall be appointed.

#### **IV. Duties and Responsibilities**

##### *Internal Control*

The Audit Committee monitors the fiscal health of the ESUHSD and the relationship between its spending and its adopted budget. To carry out this duty, the Audit Committee:

- 1) Reviews the effectiveness of the ESUHSD's accounting organizational structure, and operations
- 2) Reviews the ESUHSD's internal controls, the adequacy of such controls, and recommends changes to management and the Board,
- 3) Reviews with the Superintendent and other management personnel the adequacy of systems and procedures for protecting information,
- 4) Inquires of the Superintendent and other management personnel about significant financial risks or exposures facing the ESUHSD, assesses the steps the ESUHSD has taken, or proposes to take, to minimize such risks to the ESUHSD, and periodically review compliance with such steps,
- 5) Review with the Superintendent and other management personnel;
  - a. Significant findings with respect to any management financial review including that of the Audit Committee, during the year and responses thereto,
  - b. Any difficulties review teams or personnel encountered in the course of their review, including any restrictions on the scope of their work or access to required information,
  - c. Any changes required in the scope of the review.
- 6) Reviews with the independent auditors, the Superintendent, and financial management personnel:
  - a. The adequacy of the ESUHSD's internal controls including computerized information system controls and security,
  - b. Any related significant findings and recommendations of the independent auditors together with management's responses thereto, and
  - c. The clarity and transparency of financial information and disclosures.

The Audit Committee reviews the ESUHSD's procedures for monitoring compliance with the Code of Conduct.

The Audit Committee recommends procedures for the confidential, anonymous submission of concerns about questionable accounting or auditing matters or suspected fraud. At the request of the Board, it reviews any submissions that are received, the current status of the review, and the resolutions, if any.

Assist the Board in providing oversight of the external audit functions

##### *General*

## The Audit Committee

- Shall perform its duties in good faith, in a manner to be in the best interests of the Audit Committee and the ESUHSD which a reasonably prudent person in a similar position would use under similar circumstances,
- Shall have an obligation to the ESUHSD to maintain strict confidentiality regarding confidential information it may have access to,
- Shall meet at least three times per calendar year, and at additional times when necessary, to fulfill its responsibilities,
- Shall receive training and comply with the Brown Act
- May ask members of management or others to attend its meetings and provide pertinent information as necessary,
- In consultation with the Board may have access to all information it deems necessary to carry out its duties, consistent with California law,
- May request information from the ESUHSD that is deemed necessary to carry out its duties and responsibilities. ~~These requests for information will be made only by the Audit Committee Chair~~ Only the Audit Committee Chair will make these requests for information. Any member wishing to request information will do so by submitting the approved Committee request form to the Audit Committee Chair for approval. If the Audit Committee Chair approves the request, the Chair will send the request to the Board for processing. If the Chair does not approve the request, a majority of the Audit Committee may override the request denial. In the event of an override, the Chair is required to submit the request to the Board.

A quorum constitutes a simple majority of the total voting membership and meetings will not be conducted unless a quorum is present.

Every attempt will be made to make decisions by consensus of the voting members present. Consensus is defined as an acceptable solution that all can agree to support. If consensus cannot be reached, polling of the voting membership will take place. Any decision of the Audit Committee requires an affirmative vote by the majority of the committee's voting membership. Voting members who are physically absent from a meeting can participate through audio or video means. Proxies CANNOT be granted.

The Audit Committee may recommend to the Board the engagement of professional consultants. The authority to engage professional consultants rests exclusively with the Board.

The Audit Committee shall report to the Board, at least annually, its activities, findings, and decisions. Reported findings should include any suspected fraud or abuse or material defects in internal management controls, and any significant failure to comply with laws, or district policies or regulations.

The Chair prepares the agenda with consultation with the Vice Chair. Any member wishing to place an item on the agenda will do so by communicating in writing to the Chair.

The Audit Committee shall prepare minutes of each meeting that, at a minimum will include:

- Copies of the meeting agenda,
- Date, attendance, and location of the meeting
- A brief summary of the topics discussed, and

- Any recommendations forwarded to the Board

The Audit Committee may recommend to the Board the dismissal of any member who has had two unexcused absences during the member's term or three absences, for any reason, in any twelve month time period. Dismissal requires a majority vote of the Board.

### External Auditors

The Audit Committee oversees the ESUHSD's engagement of any independent accountants for the purpose of preparing or issuing an independent audit report or performing other independent audit, review, or attest services. The Board, acting on the recommendation of the Audit Committee, makes all final decisions concerning the appointment, compensation, and retention of such accountants. All accountants thus engaged report directly to the Audit Committee that will oversee the accountant's work and evaluates their performance.

The Audit Committee's oversight responsibility includes:

- 1) Monitoring the periodic selection of and contracting with, the outside independent auditor in accordance with State law, and reviewing the independence of the audit,
- 2) Meeting with the independent auditors prior to commencement of the annual audit to review the engagement letter (scope of the work to be performed)
- 3) Receiving and reviewing the draft annual audit report and draft management letter comments,
- 4) Reviewing all non-privileged significant written communications between the independent auditors and management, such as any schedule of unadjusted differences,
- 5) Making a recommendation to the Board concerning acceptance of the annual audit report,
- 6) Reviewing with management and independent auditors:
  - a. The ESUHSD's annual financial statements, related footnotes, and management's discussion and analysis,
  - b. The independent auditor's audit of the financial statements and their report thereon, including any management letter comments or schedule of unadjusted differences,
  - c. The independent auditor's judgments about the quality, not just the acceptability, of the ESUHSD's accounting policies as applied in its financial reporting,
  - d. The auditor's assessment of the ESUHSD's system of internal controls,
  - e. Any significant changes required in the independent auditor's audit plan,
  - f. Restrictions on the auditor's activities or access to information, and any significant difficulties or disputes with the Superintendent or management encountered during the audit,
  - g. Matters required to be discussed by applicable government and professional literature and standards,
  - h. All critical accounting policies and practices used by the ESUHSD, any significant changes in these policies and practices, and the degree of aggressiveness or conservatism in applying these policies and practices,
  - i. Recent and proposed professional and regulatory pronouncements, especially those having a material impact on the ESUHSD's financial statements,
  - j. All alternative treatments of financial information within Generally Accepted Accounting Principles (GAAP) that have been discussed with the Board, the

- ramifications of each alternative, and the treatment preferred by the ESUHSD, and
- k. Any corrective action plans developed by the ESUHSD.

The Audit Committee considers, with the Board, the rationale for employing audit firms other than the principal independent auditors for services that the ESUHSD or the independent auditors determine would not be appropriate for the principal independent auditors to perform.

### Internal Audit

The Audit Committee:

- a) ~~Makes-If requested, may make~~ recommendations to the Board regarding the ~~establishment-selection~~ of an internal auditor ~~position~~,
- b) ~~If such a position is created by the Board, recommends the selection of the Internal Auditor,~~
- c) Assists in the oversight of any internal audit function,
- d) Reviews the annual internal audit plan to ensure that high risk areas and key control activities are periodically evaluated and tested,
- e) Reviews the results of internal audit activities and significant recommendations and finding of the internal auditor,
- f) Monitors implementation of the internal auditor's recommendations by the Superintendent and/or Board,

The Audit Committee and the internal auditor(s) shall maintain a degree of professional independence when assessing management's performance of its responsibilities. However, this does not mean that an adversarial role is necessary or desirable as both parties share common goals.

In working to ensure the independence of the internal auditing function and that appropriate actions are taken on audit findings, the Audit Committee shall promote and enhance the mutual cooperation among the Committee, internal auditor(s), and executive management.

### **V. Self-Assessment**

The Audit Committee shall review its charter annually, reassesses the adequacy of the charter and recommends any proposed changes to the Board. The Audit Committee considers changes that are necessary as a result of new laws, regulations, or accounting or auditing standards.

The Audit Committee conducts an annual self-assessment and describes to the Board, in a written report, how it discharged its duties.

Adoption and amendments to this charter shall be recommended by an affirmative vote of a majority of the committee and by passage of the Board.

The Audit Committee Chair, at the request of the Board, shall take responsibility for the immediate review and approval of the Internal Auditors hours, vacation requests and expense reimbursements.

