

2002-2003
ALAMEDA COUNTY CIVIL GRAND JURY
FINAL REPORT

ALAMEDA COUNTY BOARD OF SUPERVISORS

Scott Haggerty, First District

Gail Steele, Second District

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ALAMEDA COUNTY GRAND JURY

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FINAL REPORT
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June 16, 2003

Honorable Harry R. Sheppard, Presiding Judge
Alameda County Superior Court
1225 Fallon Street, Department One
Oakland, CA 94612

Dear Judge Sheppard:

It has been my honor to serve as the foreman of the Alameda County Grand Jury during the 2002-2003 term. There were five standing committees this session. They were: Government, Law and Justice, Education, Health, and Social Services. As well, there were two Ad Hoc committees: Coliseum Authority and Public Information.

I can state without equivocation that the members of the 2002-2003 Grand Jury were dedicated to their tasks, worked diligently on their inquiries, and were skilled in researching and writing this report. Mr. Jeffrey Stark, Senior Deputy District Attorney, and Ms. Cassie Barner, Legal Staff Assistant, provided the Grand Jury with invaluable support.

I believe the Grand Jury served the citizens of Alameda County well. In turn, members of the Grand Jury were rewarded with newfound knowledge and appreciation of the workings of County governments and agencies. We wish to share what we have learned with a broad audience.

The Public Information Committee was created to educate the community about the Alameda County Grand Jury and the report the Grand Jury has produced. The committee has designed a web site. It will be accessible through a link located on the Alameda County web site (www.co.alameda.ca.us). The 2002-2003 Grand Jury Final Report will be available on the Grand Jury web site and will be up and running in the near future.

I would like to thank the 2002-2003 Grand Jury members for the sacrifices they made in order to serve their community. They are a talented and dedicated group of people. I am proud to have served with them.

Sincerely,

LEO J. GASPARDONE, SR., Foreman
2002-2003 Alameda County Grand Jury

2002-2003 ALAMEDA COUNTY CIVIL GRAND JURY MEMBERS

NAME	SUPERVISORIAL DISTRICT/CITY	NOMINATING JUDGE
Leonard C. Beckum ¹	District 5 – Piedmont	Judge Julie Conger
Lucinda Ben-David ²	District 3 – Alameda	Judge Jeffrey Horner
Bert Brook	District 1 – Pleasanton	Judge Harry R. Sheppard
Nathaniel J. Bornor*	District 4 – Oakland	Judge Horace Wheatley
Marleen L. Clark	District 3 – Alameda	Judge Kenneth Kingsbury
Oliver M. Ewing, Jr.	District 3 – Oakland	Judge Horace Wheatley
Lillian L. Frazier*	District 2 – Hayward	Judge Ronald M. Sabraw
Leo J. Gaspardone, Sr.*	District 5 – Berkeley	Judge John Kraetzer
Lois Gaudet	District 4 – Oakland	Judge Carl Morris
Neil B. Goodhue ³	District 5 – Piedmont	Judge Vernon Nakahara
Joan L. Honebein	District 1 – Fremont	Judge Joseph Hurley
Carl D. Jaramillo*	District 5 – Berkeley	Judge Carlos Ynostroza
Dan Lindheim	District 5 – Berkeley	Judge Jon Tigar
Carl McCane*	District 4 – Oakland	Judge Carl Morris
Kathryn A. Pearson*	District 3 – San Leandro	Judge William A. McKinstry
Martin Rabkin	District 5 – Berkeley	Judge Vernon Nakahara
Carroll T. Richardson	District 4 – Oakland	Judge David Krashna
Charles B. Simkins	District 3 – Oakland	Judge Carl Morris
Jack Summerfield	District 5 – Piedmont	Judge Henry Needham
Richard M. Warren ⁴	District 1 – Fremont	Judge Harry R. Sheppard
E. Wayne Zimmermann*	District 1 – Sunol	Judge Joseph Hurley

*Jurors held over by Presiding Judge Harry R. Sheppard

1 New juror, November 2002

2 New juror, January 2003

3 Resigned, November 2002

4 Resigned, December 2002

2002-2003 ALAMEDA COUNTY CIVIL GRAND JURY



OFFICERS

FOREMAN: Leo J. Gaspardone, Sr.

FOREMAN PRO TEM: Carl McCane

SECRETARY: Lois Gaudet

SECRETARY PRO TEM: E. Wayne Zimmermann

SERGEANT AT ARMS: Jack Summerfield

LEGAL STAFF

LEGAL ADVISOR: Jeffrey P. Stark, Senior Deputy District Attorney

LEGAL STAFF ASSISTANT: Cassie Barner



2002-2003 ALAMEDA COUNTY CIVIL GRAND JURY

Standing, left to right:

Nathaniel J. Bornor, Jack Summerfield (*Sergeant At Arms*), Lucinda Ben-David, Dan Lindheim, Carroll T. Richardson, Lois Gaudet (*Secretary*), E. Wayne Zimmermann (*Secretary Pro Tem*), Joan L. Honebein, Bert Brook, Martin Rabkin, Leo J. Gaspardone, Sr. (*Foreman*), Charles B. Simkins, Leonard C. Beckum, Kathryn A. Pearson, Carl McCane (*Foreman Pro Tem*), Marleen L. Clark, and Oliver M. Ewing, Jr.

Seated:

Honorable Judge Harry R. Sheppard

Not Pictured:

Carl D. Jaramillo, Lillian L. Frazier, Neil B. Goodhue (resigned) and Richard M. Warren (resigned)

**2002-2003 ALAMEDA COUNTY CIVIL GRAND JURY
COMMITTEE LIST**

EDUCATION

Dan Lindheim, Chair
Leonard Beckum
Nathaniel J. Bornor
Carl McCane
Kathryn A. Pearson
Martin Rabkin
Charles B. Simkins
E. Wayne Zimmermann

COLISEUM

Martin Rabkin, Chair
Leonard Beckum
Marleen L. Clark
Lillian L. Frazier
Dan Lindheim
Carl McCane
Charles B. Simkins
Jack Summerfield

SOCIAL SERVICES

Marleen L. Clark, Chair
Nathaniel J. Bornor
Lillian L. Frazier
Lois Gaudet
Joan L. Honebein
Carroll T. Richardson

GOVERNMENT

E. Wayne Zimmermann, Chair
Lucinda Ben-David
Bert Brook
Oliver M. Ewing, Jr.
Lois Gaudet
Carl D. Jaramillo
Martin Rabkin
Jack Summerfield

LAW & JUSTICE

Carl McCane, Chair
Leonard Beckum
Lucinda Ben-David
Lillian L. Frazier
Joan L. Honebein
Carroll T. Richardson
Jack Summerfield

HEALTH

Kathryn A. Pearson, Chair
Bert Brook
Marleen L. Clark
Oliver M. Ewing, Jr.
Carl D. Jaramillo
Dan Lindheim
Charles B. Simkins

PUBLIC INFORMATION

Bert Brook, Chair
Lois Gaudet
Joan L. Honebein
Dan Lindheim
Martin Rabkin
Charles B. Simkins

**ALAMEDA COUNTY SUPERIOR COURT
PRESIDING JUDGE**



HONORABLE HARRY R. SHEPPARD

Presiding Judge
July 1, 2002 – Present

HISTORY OF THE GRAND JURY

One of the earliest concepts of a Grand Jury dates back to ancient Greece where the Athenians used an accusatory body. While others claim the Saxons initiated the Grand Jury system, the Grand Jury can also be traced back to the time of the Norman Conquest of England in 1066. In the United States, the Massachusetts Bay Colony empaneled the first Grand Jury in 1635 to consider cases of murder, robbery and wife beating. Colonial Grand Juries expressed their independence from the Crown by refusing to indict leaders of the Stamp Act on libel charges against the editors of the Boston Gazette (1765). A union with other colonies to oppose British taxes was supported by a Philadelphia Grand Jury in 1770. By the end of the colonial period, the Grand Jury had become an indispensable adjunct of government.

The California Grand Jury dates back to 1849, with Alameda County's first Grand Jury being impaneled in 1850. The role of the California Grand Jury was unique in that, by 1880, its duties included investigation of county government. Only seven other states provide for investigation of county government by a Grand Jury beyond alleged misconduct of public officials.

FUNCTIONS

The Grand Jury is an investigatory body. The two predominant functions include:

Watchdog Responsibilities - The Grand Jury may examine all aspects of County and City government and over 100 special districts to ensure that the best interests of Alameda County citizens are being served. The Grand Jury reviews and evaluates procedures, methods and systems to determine whether more efficient and economical programs might be employed. The Grand Jury is authorized to: 1) inspect and audit books, records and financial expenditures to ensure that public funds are properly accounted for and legally spent; 2) inquire into the

conditions of jails, detention centers, and hospitals; and, 3) inquire into charges of willful misconduct in office by public officials or employees.

Grand Jury "watchdog" findings are contained in reports that describe problems and recommend solutions. Interim reports are released upon completion of investigations. At the end of its term, the Grand Jury issues a final report on the operations of Alameda County government. The County Board of Supervisors must comment on the Jury's recommendations within 90 days.

Citizen Complaints - As part of its civil function, the Grand Jury receives letters from citizens alleging mistreatment by officials, suspicion of misconduct, or governmental inefficiencies. Complaints are acknowledged and may be investigated for their validity. Such complaints are confidential. If the situation warrants, and corrective action is under the jurisdiction of the Grand Jury, appropriate solutions are recommended.

SELECTION PROCESS

Each of the Superior Court Judges in Alameda County may nominate at least one person for Grand Jury service. It is not necessary, however, to know a Judge personally in order to apply. Citizens who are interested, qualified, able to provide one year of service, and who desire to be nominated for Grand Jury duty may send a letter with their resume and request an application questionnaire from: *Office of the Jury Commissioner, Alameda County Superior Court, 1225 Fallon Street, Room 209, Oakland, California 94612*. On the basis of Supervisorial District, six members from each District for a total of 30 nominees are assigned for Grand Jury selection. After the list of 30 nominees is completed, the selection of 19 jurors who will actually be empaneled are drawn by lot. This is done in late June before the new Grand Jury term begins July 1.

QUALIFICATION OF JURORS

Prospective Grand Jurors must possess the following qualifications pursuant to Penal Code section 893: 1) be a citizen of the United States at least 18 years of age who has been a resident of Alameda County for one year immediately before being selected; 2) possess natural facilities of ordinary intelligence, sound judgment, and fair character; and 3) possess sufficient knowledge of the English language.

Other desirable qualifications include: 1) good health; 2) an open-mind with concern for others' positions and views; 3) the ability to work with others; 4) an interest in community affairs; 5) possession of investigative skills and the ability to write reports; and 6) a general knowledge of the functions, authorities and responsibilities of county and city government and other civil entities.

A person may not serve on the Grand Jury if any of the following apply: 1) the person is serving as a trial juror in any court of this state; 2) the person has been discharged as a Grand Juror in any court of this state within one year; 3) the person has been convicted of malfeasance in office or any felony or other high crime; or 4) the person is serving as an elected public officer.

COMMITMENT

Persons selected for Grand Jury service must make a commitment to serve a minimum of one year (July 1 through June 30). Grand Jurors should be prepared, on average, to devote one to two full days each week to Grand Jury business. Grand Jury and committee meeting days are determined by each new Grand Jury at the beginning of its term. Grand Jurors will be required to complete and file a Statement of Economic Interests as defined by the State's Fair Political Practices Commission and a Conflict of Interest form upon being selected.

COMMITTEES

In order to accomplish the County watchdog functions, committees are normally established to address the following: Government, Audit, Education, Emergency Services, Health, Social Services, and Law and Justice (Public Safety and Detention Facilities). One or more Ad Hoc Committees may be established by each Grand Jury on special issues.

REMUNERATION

Grand Jurors are paid \$15.00 a day for each day served, as well as a county mileage rate, portal to portal for personal vehicle usage. Reserved parking is provided at a reduced rate.

ORIENTATION AND TRAINING

Persons selected for Grand Jury duty are given an extensive orientation and training program about Grand Jury civil functions, as well as city and county government and entities. The program takes place immediately after selection and impanelment and lasts approximately one month. This training includes tours of county facilities and orientation by county department heads. Those selected are required to attend.

HOW TO SUBMIT A COMPLAINT

In order to maintain the confidentiality of complaints and investigations, the Alameda County Grand Jury only accepts complaints from citizens in writing. E-mail complaints are discouraged due to the non-confidential accessibility of Internet mail. Complaints should include the names of the persons or agencies in question, listing specific dates, incidents or violations. The names of any persons or agencies contacted should be included along with any documentation or responses received.

Introduction

All complaints submitted to the Grand Jury are required by California law to be treated with the strictest of confidence. The Grand Jury reviews all complaints received, but due to time, staffing or resources, every complaint may not be investigated.

Complaints should be mailed to: ***The Alameda County Grand Jury, 1401 Lakeside Drive, Suite 1104, Oakland, California 94612.*** An acknowledgment letter is routinely sent within two weeks.

ALAMEDA COUNTY BOARD OF EDUCATION and OFFICE OF EDUCATION

INTRODUCTION

The Grand Jury received numerous complaints from members of the Alameda County Board of Education (ACBE) and the public concerning the workings of ACBE and its relationship with the Alameda County Office of Education (ACOE) and its Superintendent.

These complaints were consistent with the report of the prior Grand Jury (see Final Report of the 2001/2002 Grand Jury) which found serious problems of governance in both the ACBE and ACOE. These included: a serious lack of cooperation between the ACOE and ACBE; a lack of a clear understanding of the respective roles and authorities of the ACOE and ACBE; and a serious lack of decorum at ACBE meetings.

Two new board members were elected to the board in March 2002, resulting in a changed political majority. As political divisions were an important factor defining the relations between the ACBE and ACOE, the Grand Jury was interested in the impact of this changed majority on these relations.

The complaints were primarily in three areas:

- Alleged violations of Brown Act notice requirements by the board in: approving a new 2002-2003 budget to replace a previously approved budget; providing a substantial salary increase for the superintendent; and placing in abeyance certain ACBE governing policies;
- The restriction of minority rights such that minority board members have almost no opportunity to place items of their interest (or of their constituents) on the board agenda; and their dissenting views are not properly reflected in the minutes;

- The active involvement of the superintendent in the election of two new board members, which resulted in a new board majority and the granting of a substantial raise to the superintendent.

As part of its investigation, Grand Jury members attended most meetings of the ACBE during the Grand Jury term and interviewed the members of the ACBE as well as the ACOE superintendent and staff. In addition, the Grand Jury reviewed campaign finance records for the 2002 ACBE and ACOE campaigns.

HISTORY

Alameda County has both an elected superintendent and an elected Board of Education. Unlike most school district superintendents who serve at the pleasure of an elected board of education, the duties and authorities of the ACBE and the ACOE are separate and distinct with neither subservient to the other. As elected officials, ACBE members and the superintendent each claim a mandate to represent the interests of their constituents.

As set forth in the California Education Code, the duties of the board are extremely limited. The primary functions of the ACBE are to approve the annual budget of the county superintendent (including the superintendent's salary); to approve the annual budget for county-run schools; to review expulsions in the various school districts, and to set policy for the county school services programs. The superintendent is responsible for the ACOE, including overseeing and approving the 18 local and 3 community college districts' budgets; administering the county education programs; and assisting the various school districts in the county.

Of relevance to the Grand Jury investigation are the following:

- Brown Act: As a public body, the ACBE is governed by the Brown Act. The Brown Act, originally signed into law in 1953, was passed to ensure that public bodies have public deliberations and that substantive discussions not take place out of public view. Sufficient notice of meetings is required to ensure that both members of those bodies, as well as members of the public, have prior notice of meetings and meeting agendas.
- Changed Board Majority: Prior to July of 2002, the ACBE Board had a 4-3 majority on most issues in opposition to the elected superintendent. This opposition created tension and led to heated meetings. During the March 2002 elections, two new members were elected to the board. This changed the majority to 5 – 2 in support of the superintendent.
- Election Campaign: The superintendent aggressively campaigned against one incumbent seeking reelection. The superintendent provided substantial financial support to the insurgent and produced highly negative campaign letters against the incumbent. In the second minimally contested race, the superintendent was the leading contributor to the winning candidate.
- Budget: In June 2002, the ACBE passed a budget for FY2002/2003. The superintendent refused to sign the budget and forward it to the state. When the new board took office in July 2002, the ACBE-passed budget was ignored and the original budget of the superintendent was approved.
- Raise: In December 2002, the ACBE approved a substantial raise (66% over four years) for the superintendent.
- Policies: The new ACBE placed a substantial number of ACBE policies and procedures “in abeyance.” These policies were subjected to revision and modification. The board has now edited or replaced most policies.

Introduction

- Agenda Items: Minority board members claim to have great difficulty placing items on the agenda. Under board rules, members can request the president of the board to place an item of interest on the agenda. If the president decides not to place such items on the agenda, the interested member is entitled to have the board vote on whether the item is to be on the agenda.
- 2001/2002 Grand Jury Recommendations: The 2001/2002 Grand Jury recommended two actions to permit better public access to ACBE actions and proceedings: (i) the ACBE should take the requisite steps to have ACBE meetings televised; and (ii) ACBE meetings should be held in various locations throughout the county.

FINDINGS

Brown Act

The Grand Jury was advised that the primary remedy for Brown Act notice violations is for the board to simply provide adequate notice for a subsequent meeting and act again on those matters improperly acted on at the prior meeting. Given that the new board was now controlled by a 5 – 2 majority, had the meetings been held again, the results would most likely have been the same. In addition, the board counsel asserted that adequate notice had been given for each of the alleged improper meetings. As such, while not minimizing the importance of following the law, the Grand Jury found that little would be gained by pursuing a detailed investigation as to whether there had been proper notice for the relevant meetings.

A second Brown Act issue is whether the superintendent can violate the Brown Act. The ACBE counsel indicated that the superintendent is not subject to the Brown Act. This would not be the case where the superintendent speaks with a majority of board members on a particular issue, and communicates the views of each board member to the others. This would constitute an impermissible serial meeting among a majority of the board.

The Salary Increase

The Grand Jury found that the ACBE is empowered to set the salary of the ACOE superintendent. As such, the Grand Jury did not investigate whether the substantial amount of the raise was justified.

The Grand Jury did investigate the process by which the raise was granted. Board members stated that they commissioned a study comparing salaries of other county superintendents. The study indicated that based on school population, Alameda County was in the second tier of state counties, but based on the size of the ACOE budget and level of responsibility, the ACOE fell into the fourth tier. In setting the salary level for the Alameda County superintendent, the board subcommittee said they took an average of the average salaries in each of these two tiers. They stated that evaluating the performance of the superintendent was not their responsibility, rather it was for the voters to determine; and as such, it was not a factor in their deliberations.

Of particular concern to the Grand Jury was the apparent lack of detailed board consideration or public comment on a raise of this magnitude. Given the state financial crisis, massive reductions in school spending, and the ACOE's inability to provide fiscal oversight sufficient to avoid serious financial crises in a large number of Alameda County school districts, more serious debate would have been appropriate. At a board meeting subsequent to the approval of the raise, one board member commented that the amount of the raise had been determined in a closed meeting of the Budget Committee of the board and then immediately brought forward and approved by the board. It was stated that there was no public notice of the amount of the raise prior to its approval. As some members of the board felt that neither they nor the public had received proper notice of board consideration of the raise amount, the Grand Jury found that the ACBE acted with unseemly haste.

Of greater concern was the proximity of the raise to the superintendent's active involvement in the election of the two new ACBE Board members who approved the raise. The superintendent stated that she campaigned for only one candidate. Moreover, she saw no conflict in her actions as she stated that the matter of the raise was never discussed. The Grand Jury did find that the superintendent's campaign was the leading contributor to the campaign of the other elected board member.

The issue is not that the superintendent campaigned for new members of the board. Elected officials campaign for other candidates all the time. The issue is that there was such close proximity between the campaign for the new board members and the raise approved by those board members.

The Grand Jury found that the granting of the raise so close to the campaign gives the appearance of impropriety and raises public concern.

Budget

The state scheme for approval of COE budgets requires budgets to be submitted by June 30, prior to the start of the fiscal year beginning on July 1. The ACBE of record at that time did pass a budget. That budget should have been signed by the superintendent and forwarded to the state.

Given the superintendent's opposition to that budget, and the reality that a new ACBE majority would take office July 1, it is not surprising that the superintendent chose to ignore the ACBE approved budget and have the newly constituted board approve her proposed budget.

The new board was within its rights to rescind or modify the prior budget. The problem here is that the duly approved budget should have been considered the budget in effect, with the

new board then modifying or rescinding that budget, as opposed to the new board simply ignoring that prior budget.

Abridging minority rights

The new board majority has used its power to limit minority members from placing items of their interest, and possibly of their constituents, on board agendas. For representative democracy to function, elected boards must provide an opportunity for all board members to place items of interest on board agendas, and to provide an opportunity for all board members to speak on agenda items.

The majority is under no obligation to approve minority positions. Once under discussion, if the minority view does not convince a majority of members, the majority should vote the position down. The key issue is that the minority must be provided an opportunity to speak to their issues and those of their constituents and to have their dissenting views properly recorded in the minutes.

2001-2002 Grand Jury Recommendations

The prior Grand Jury recommended that the ACOE should attempt to have meetings broadcast by public access television. The superintendent indicated that she had pursued this recommendation but that there is a major obstacle -- there is no one public access cable station which reaches the entire county. While correct, this is not a sufficient response. The ACBE could videotape their proceedings and provide tapes to each of the respective public access channels in the county that could then broadcast them on a delayed basis.

The Grand Jury also finds that the ACBE has not taken sufficient steps to have meetings in locations throughout the county. It took the ACBE almost the entire term to hold one meeting outside of its central offices. Local school districts have appropriate meeting facilities, and in

many cases television capability. There is no basis for the claim that such local meetings would cause a hardship for the board. The ACBE should develop a regular schedule of meetings in various school districts throughout the county for the next ACBE year.

Additional Findings

Meetings are not conducive to public observation. Closed sessions are typically scheduled in the middle of an open meeting with the consequence that members of the public are forced to spend substantial time (hours) waiting for the public portion of the meeting to reconvene.

There has been inadequate opportunity for public comment. There was a general public comment period following consideration of all other business, but it was too late as action had already been taken on items on that meeting's agenda and it was generally very late at night. The Grand Jury was pleased to learn that the public comment period has recently been moved to a place earlier on the agenda.

CONCLUSION

Duly elected board members must not be deprived of the opportunity to represent the interests of their constituents. Decisions are made by majority vote, but minority views must be given an opportunity to be heard and properly considered. There is no majority obligation to approve minority positions; there is an obligation to have those views heard and considered. Under the current leadership of the ACBE, these basic principles have not always been in effect.

The ACBE process for approving salary increases for the superintendent needs to be changed. Having a sitting superintendent aggressively campaign for new board members, who can then vote that superintendent a substantial salary increase, gives the appearance of improper behavior on the part of board members. To avoid such apparent impropriety, board members

receiving contributions or campaign support from that superintendent should recuse themselves from such votes for a period of one year from taking office.

The view of the superintendent that the ACBE must pass the budget she presents to the board is unique. It is a view that makes a mockery of the statutory scheme allocating power and responsibility between the ACBE and the ACOE. A primary responsibility of the ACBE is to approve the ACOE budget. If that responsibility is limited to simply rubber-stamping the superintendent's proposal, there is no reason to go through the charade of having a budget committee or perhaps for the board to even exist. This view is unacceptable; and where the board's budget ideas differ from those proposed by the superintendent, the Grand Jury finds that it must be the view of the board that takes precedence. The ACBE must be more than a rubber stamp of the proposals of the ACOE superintendent. While the statutory allocation of responsibility and authority between the ACBE and ACOE provides the bulk of responsibility to the superintendent, the board must exercise the independent authority allocated to it. Failing this, the board will become even more irrelevant than it has become this term.

Most important, the workings of the board need to be more transparent. Board proceedings should be televised and more meetings held in the various districts throughout the county. Where items of public interest are to be discussed, the board should go out of its way to provide real, substantive notice to the public and its minority members, and not just meet minimal technical notice requirements.

RECOMMENDATIONS

Recommendation 03-01:

Members of the Alameda County Board of Education must have the opportunity to have their views heard and their items of interest placed on the board agenda in a timely manner.

Recommendation 03-02:

The Alameda County Board of Education must exercise its independent authority in approving the Alameda County Office of Education budget; this authority must not be relegated to rubber-stamping proposals of the Alameda County Office of Education superintendent.

Recommendation 03-03:

The Alameda County Board of Education must make a greater effort to follow the intent of the Brown Act. The board must ensure adequate notice of forthcoming deliberations for both board members and the public. This means exceeding the minimal technical requirements of the act and providing real public access to Alameda County Board of Education deliberations.

Recommendation 03-04:

Appropriate action must be taken to have televised coverage of Alameda County Board of Education meetings. If live telecasts are problematic in the short term, videotaped coverage of these meetings is an absolute minimum requirement with tapes made available on a timely basis to the various public access channels in the county.

Recommendation 03-05:

Schedule closed sessions of Alameda County Board of Education meetings prior to the open session of the meeting as is the custom for most other boards and have a time certain for convening the public meeting. Alternatively, schedule closed sessions on a different date from those of the open sessions.

Education Committee

Recommendation 03-06:

The process for setting the superintendent's salary must be changed to avoid all appearances of impropriety. Board members receiving contributions or campaign support from a sitting superintendent should recuse themselves from such votes for a period of one year from taking office.

RESPONSES REQUIRED

Alameda County Office of Education

Recommendations 03-02

Alameda County Board of Education

Recommendations 03-01 through 03-06

FISCAL OVERSIGHT AND THE OAKLAND UNIFIED SCHOOL DISTRICT

INTRODUCTION

Concerned that an excessive number of Alameda County school districts were in serious financial difficulty, the Grand Jury investigated whether systems exist to help identify and prevent these difficulties, and what steps should be taken to help districts anticipate and address the problems before they reached a state of insolvency. This study built on the concerns and efforts of prior grand juries. The 2000/2001 Grand Jury reported on the financial difficulties in the Emeryville school district. The 2001/2002 Grand Jury reported that three of the eight school districts in California in serious financial difficulty were located in Alameda County.

When the 2002/2003 Grand Jury began its inquiry in July 2002, the only Alameda County school districts considered to be in financial difficulty were Emeryville, Berkeley and Albany. In a September 2002 introductory briefing by the CEO of the state's Financial Crisis Management Team (FCMAT), the only mention of Oakland was in reference to a comprehensive 1999 FCMAT study which had detailed serious problems in the Oakland Unified School District (OUSD). As OUSD had recently received a "positive certification" from the Alameda County Office of Education (ACOE), indicating that the ACOE believed OUSD to be fiscally solvent for the 2002-2003 fiscal year and for two subsequent years, OUSD was assumed not to be in financial difficulty. Also in September 2002, the Grand Jury heard from the ACOE that although they were concerned about OUSD, they were assured that those areas of concern had been addressed and corrected.

Shortly after the briefings, major financial problems in the OUSD became public. During the Grand Jury's term, financial difficulties became known in other Alameda County school districts and the OUSD situation developed into the largest school system bankruptcy in

California history. Special legislation has recently been enacted to provide a \$100 million bailout. The legislation includes the imposition of a state-appointed administrator and the stripping of the superintendent and Board of Education of power.

The Grand Jury investigated the state/county framework for fiscal oversight of school districts. We then interviewed those persons responsible for implementing the oversight framework in Alameda County. As events transpired during the Grand Jury term and as the Oakland financial situation became of public interest, the Grand Jury looked to Oakland as an interesting case study for our oversight investigation. The Grand Jury interviewed the OUSD superintendent, various past and present deputy and assistant superintendents, the past budget director and controller, school board members, as well as the ACOE superintendent and associate superintendent for business services and the chief and deputy executive officers of FCMAT.

The Grand Jury also interviewed finance directors in Alameda County from school districts in apparent good fiscal health. In addition, the Grand Jury reviewed the oversight communications and transmittals between the OUSD and the ACOE and the principal financial documents of the OUSD for the past three years. The Grand Jury took notice of the financial situations and oversight activities in adjacent problem districts, but did not undertake detailed investigation of the particular facts in those districts.

HISTORY

Fiscal Oversight

The current oversight system was created in 1991 following the bankruptcy of the Richmond Unified School District. There was concern that other districts might be facing fiscal disaster and would need emergency loans from the state. To avoid a series of bailouts, the legislature sought to create a system to improve fiscal management at the local level. It created a

framework for financial oversight commonly referred to as AB1200, now codified in the State Education Code. AB1200 expanded the role of the County Offices of Education (COE) in monitoring school districts and mandated intervention under certain circumstances to ensure districts could meet their financial obligations. It was seen as a way to help ensure that local school districts kept their financial houses in order.

Under AB1200, school districts must submit their accounts to the COE at specified times during the year. These interim reports are used to determine if the school district is keeping within its budget and also take into account more recent information (e.g., changes in state and local funding) impacting that budget. The first step is for districts to submit their budget for the following year by the end of the current fiscal year (June 30). Since most school district dollars come from the state, and state budgets are not generally passed by June 30, district budgets are based on significant uncertainty.

The COE is required to analyze the submitted budgets. Three certifications exist: positive, qualified and negative. For a positive certification, budgets must be in balance for the upcoming year, as well as the following two years (based on projections). In addition, the budgets must include a state mandated financial reserve. The reserve requirement percentage depends on the budget size (e.g., 2% in Oakland, 3% in Berkeley). If a district cannot meet the positive certification requirements, the COE can issue either a qualified certification indicating that the district may not meet the positive requirements or a negative certification indicating that the district will not meet the requirements.

If the COE certifies the budget, nothing more is required until the first interim report is due on December 15, covering the July through October period. By this date, the district should have good state budget information as well as good projections on its own enrollment, the prime determinant of its revenue, for the school year. This report should provide a warning to the district if it is over spending. While such warnings are important, school districts are somewhat constrained in taking substantial mid-year corrective action. By law, teachers cannot

be fired mid-year in order to reduce district spending. Districts must give teachers notice by March 15 of a given school year that they will not be rehired for the forthcoming school year.

The COE reviews the first interim report; and if it receives a positive certification, then nothing more is required until the second interim report due on March 15 covering the period through January 31. This report should provide an even better indication of the state of the district's finances. If approved, nothing more is due until the budget submission by June 30 for the following year.

If at any time during the fiscal year the county superintendent determines that a school district may not meet its financial obligations, the county superintendent can do any or all of the following as necessary:

- Assign a fiscal expert to advise the district.
- Conduct a case study of the financial condition of the district including a review of internal controls.
- Direct the district to submit financial projections.
- Require the district to follow different accounting procedures.
- Direct the district to submit a plan to address the issues.
- Withhold compensation from the governing board and district superintendent for failure to provide requested information.

This gives the county superintendent considerable power over local school districts as well as considerable discretion as to how to exercise that power. The changes in the Education Code were intended to assure the state that local authorities had verified the financial condition of the school districts.

School Finance Basics

To better understand the limits and potentials for fiscal oversight, it is useful to understand the basics of school finance. The determinants of school district revenues and expenditures are relatively few. This makes oversight of such districts relatively manageable.

Revenues are largely a function of enrollment (and attendance); expenditures are largely a function of salaries, in particular teacher salaries. These are closely related as the number of teachers in a district should be based on the number of students. Monitoring enrollment and keeping close check on the number of teachers is basic to keeping budgets in balance.

Predicting enrollment is an inexact art. Enrollment levels can change quickly. Changing birth rates, migration to and from a district, changes in the use of private and charter schools, are all contributing factors. It is argued that OUSD enrollment is decreasing because a substantial number of school age families that cannot afford to live in Oakland are being replaced by families with fewer or no school age children.

The real concern is not predicting enrollment, but closely predicting declining enrollment. As long as enrollment is increasing, more money is coming into the system and the management issue is determining how to spend this increased revenue (e.g., hiring new teachers for the additional students). In contrast, with declining enrollment, there is a continuous cycle of cuts to reduce staffing and other spending. This is complicated as these cuts must be anticipated in advance because of the March 15 notice requirement for laying off teachers.

For example, in a school district with a population of 50,000 students, where the district receives \$5,000 per student from the state, each 1% enrollment drop, or loss of 500 students, means the district would receive \$2.5 million less from the state. Rather than enrollment, state payments are based on Average Daily Attendance (ADA). If enrollment remains constant, but the ADA percentage drops by 1%, this also leads to a drop in \$2.5 million.

While enrollment drives revenue, salaries drive expenditures. In most districts, salaries account for upwards of 85% of all spending. The large majority of salaries are for teachers. Reducing expenditures means reducing teachers. Managing the number of teachers is complicated by the law requiring school districts to notify certificated staff (i.e., teachers, principals, central administration) by March 15 of the current school year of the possibility that they will not be rehired for the following school year. If a school district finds that it is overstaffed in the Fall, there is little it can do in that school year to reduce the costs of that overstaffing. However, districts can take some mid-year action. Classified staff (all employees other than teachers and administrators) can be laid off with 30 days notice; in addition, certain temporary teachers can be removed with similar notice.

This is complicated by the fact that at the start of the school year, salaries must be paid even though funds from the state are not yet available. Since the state owes the school district funds for operating the schools, the districts go to the commercial financial market for bridge loans to cover costs until the state funds are deposited. These tax revenue anticipation notes (TRANS) are used to provide cash flow financing for school districts in anticipation of receiving their state funding allocations. These loans incur interest and funding must be set aside to repay the loans and interest even though the state does not provide extra funding to cover interest payments.

Further complicating this issue is the fact that substantial funding (e.g., Federal, State, and local bond funding) is restricted to specific programs. This requires that accurate accounting of specific revenue sources and expenses be maintained. School districts can get into the contradictory situation where they are financially well off for some types of spending (e.g., school construction), but are without funds to pay normal operating expenses (e.g., teacher salaries).

Oakland Unified School District (OUSD)

Oversight of districts such as Oakland must take into consideration prior decades of financial difficulty and prior attempts to address those difficulties. This review begins in 1999 when severe financial problems in the OUSD resulted in a state-financed FCMAT comprehensive review of the OUSD system.

FCMAT Report

The FCMAT Report, issued in January 2000, after 8 months of detailed review, was damning in its findings and should have put all persons with interest in the OUSD on notice of the potential for impending disaster and the need to closely monitor OUSD finances. The report concluded, "at the current time, the district's future fiscal solvency is in serious question...there are serious concerns regarding the future stability of the district."

Specifically, FCMAT indicated that:

1. The district needed to pay close attention to its declining enrollment and found that its ADA estimates (94% of enrollment) were high and probably couldn't withstand a state audit;
2. Budgeting was inadequate, multi-year financial projections were not prepared with specificity and did not include the requisite current year plus two subsequent years in the analysis;
3. Independent, multi-year, financial projections reflected significant deficit spending and state required budget reserve levels could not be met without significant budget cuts or revenue increases;
4. Special Education programs were overspending budgets by \$13 million and, along with overspending in other funds (e.g., adult ed), eating into reserves making OUSD finances increasingly precarious;

5. The district had difficulty closing its books for the 1998/99 fiscal year and had received a qualified first interim certification for the 99/00 year, indicating ACOE uncertainty as to the district's ability to meet financial obligations for the current and two subsequent years.

The report stated that the district urgently needed a new financial system to integrate the information currently decentralized across the OUSD. And, as the two chief financial officers had either just left or were about to leave the OUSD, it commented on the urgency (and the difficulty) of getting a new chief financial officer.

The report also documented many substantive education problems in the OUSD. Of particular importance, FCMAT "found that the district's salaries were not sufficient to attract and retain new teachers."

A New Administration

In early 2000, shortly after the release of the FCMAT report, a new superintendent was hired. The new superintendent inherited an OUSD on the brink of disaster. He was strongly supported by the elected school board members, but opposed by the mayor.

The new superintendent focused on making changes in the substantive educational portions of the system. He tried to invigorate the system. In his first months, he reassigned more than one-third of the principals, initiated small school programs, and sought to recruit fully credentialed and experienced, teachers to replace the 500 teachers on emergency credentials. In all, he created excitement in the district. Test scores rose and OUSD developed a national reputation as a district to watch.

To placate recently striking OUSD teachers, and to meet recruiting objectives, the superintendent pushed for, and the board approved, a substantial salary increase (24+% over

three years 1999/2000, 2000/2001 and 2001/2002; and retroactive to cover the 1999/2000 school year then in progress). FCMAT argued at the time that OUSD could safely finance the raise for 1999/2000 and possibly for 2000/2001. However, it could not support the raises for 2001/2002 unless OUSD made substantial cuts to cover the amount of the raise. The raises increased OUSD spending by approximately \$5 million for 1999/2000, \$22 million for 2000/2001 and \$31 million for 2001/2002.

In April 2000, a new deputy superintendent of business services was hired. He had previously headed the ACOE financial office, had a reputation as a school finance guru, and had helped various districts out of financial difficulty, including the Alameda Unified School District where the new OUSD superintendent was at the time superintendent. He had been involved in Oakland from the ACOE side for some time, was familiar with their financial situation, and had helped get OUSD through their recent strike.

The deputy superintendent's first effort was to try to reconcile the payroll. Accounting systems were said to be working in isolation from each other on entirely separate computer systems. Budgeting was separate from payroll, payroll was separate from Human Resources (HR), and both payroll and HR were separate from the controller's office. The result was HR could, and did, hire people for positions that were not budgeted. Budgeting would prepare reports based on estimates, or guesses rather than actual spending since they did not have access to the computers that had the actual spending records. Moreover, there was little control over whether restricted (i.e., earmarked) spending was charged to restricted budgets or to the general fund. The deputy superintendent apparently held things together by constantly monitoring the different parts of the system. To keep spending in check, he personally approved all hiring requests. In particular, enrollment numbers were monitored on a daily basis in the fall and excess temporary teachers were dropped from payroll. He urged the district to immediately purchase the integrated computer system recommended by the FCMAT report, but the school board argued that it was improper to avoid standard bidding practices for a \$6 million contract.

While this position may have been correct, rather than having a new system ready for the 2001/2002 year, the new system wasn't in place until the start of the 2002/2003 year.

Multi-Year Projection (MYP) 2001-2006 Report

In February 2001, partly in response to the FCMAT report, the deputy superintendent issued a multi-year projection (MYP) 2001-2006 report. The report summarized the current situation, reviewed what had led to that situation, and provided projections for the subsequent years. In particular, the report provided projections of declining OUSD enrollment and urged substantial budget reductions to cover the impact of the large teacher raises and the increasing deficits in the special education accounts.

The report stated that “students drive the district’s income... (and that) enrollment and student attendance is key to OUSD’s finances....” A substantial part of the report was devoted to enrollment and attendance issues including the prospect of declining enrollments for the foreseeable future. In addition, the report paid close attention to the impacts of special education on OUSD finances stating “one of the keys to maintaining a balanced budget is to control the cost in special education.” The report predicted that the special education deficit (program costs above what is provided for special education by the state and federal governments) for 2001/2002 would be on the order of \$16 million and would probably increase to \$24 million by 2005/2006.

The 2000/2001 budget year ended with a \$1.7 million deficit. This was covered by the OUSD reserve fund balance which was \$8.8 million at the end of the 2000/2001 budget year.

The deputy superintendent had originally planned to retire in 2000 from the ACOE. He agreed to work for the OUSD for one year and left at the end of the 2000/2001 year as planned. A new deputy superintendent was then hired. The new deputy had substantial educational experience as a principal and superintendent and had most recently been an officer at a public

finance firm in Oakland specializing in tax revenue anticipation notes (TRANs) used to provide cash flow financing for school districts in anticipation of receiving their state funding allocations. He had not been the CFO of a large school district.

The new deputy focused his efforts on making the new financial system operational. The changeover was time consuming. There was little compatibility between systems, and large quantities of data had to be entered by hand. He tried to address the problems of the separate financial systems by centralizing control in himself; however, it doesn't appear that he did the close monitoring and hands-on detailed work as had his predecessor.

In November of 2001, after repeated warnings from the ACOE, it was realized that enrollment had been overestimated and that the 2001/2002 revenue estimates were overstated by \$5 million. In response, the new deputy called for a hiring moratorium and tried to impose various spending freezes. In addition, he began an internal reorganization of the various financial departments in an effort to force coordination among the various isolated departments.

The new computer system became operational in August 2002. This is when OUSD claims to have discovered the books were out of balance and the 2001/2002 budget was approximately \$27 million in deficit. After informing the superintendent and the board, the deputy superintendent convened a high level committee with his senior staff and outside consultants. The OUSD notified ACOE of its financial difficulties. In October 2002, ACOE finally rejected the OUSD 2002/2003 budget and called in FCMAT as fiscal advisor to determine the exact nature of the 2001/2002 deficit to rework the 2002/2003 budget, and to assist in the preparation of the 2003/2004 budget due in June 2003.

There have been various explanations for what happened. In brief, enrollment dropped more rapidly than anticipated, and teachers continued to be hired. Also, rather than using actual data for the interim reports, OUSD used budget estimates apparently because the budget department did not have access to actual spending figures or other relevant data. In addition,

despite warnings to the contrary, the OUSD continued to operate on the assumption that there were hundreds of teacher vacancies and somehow assumed spending was under control.

The School Board

The school board is responsible for OUSD policy including approving the OUSD budget. The board's view, as presented to the Grand Jury, was that the board had no reason to doubt the data presented to them in the budget and interim reports and they have no independent capability to check the numbers presented to them. They see their role as asking questions, but serious analysis is beyond what can be expected of them. In addition, they actively supported the effort to hire additional teachers, to improve teacher compensation, and to further the support of the apparently successful reforms being pushed by the superintendent.

One board member indicated that the reason why the reports didn't provide sufficient warning was that in his view school finance was mostly "voodoo economics" with incomprehensible transfers from fund to fund making it difficult to accurately know where things stood during the fiscal year. In his view, the FCMAT report was not analytical and mostly listed problems without providing solutions. Nevertheless, he took credit for board action on various FCMAT recommendations including: the hiring of a new CFO; the substantial raise in teacher salaries; the purchase of a new computer system; and a series of substantive reforms in the delivery of educational services.

Alameda County Office of Education (ACOE)

Under AB 1200, the ACOE is charged with fiscal oversight for local school districts. The ACOE is tasked with reviewing district budgets and first and second interim financial reports (covering the first 4 and 7 months of the fiscal year, respectively). If problems are identified, the ACOE has the authority to veto budgets and to force districts to take actions to avoid fiscal problems.

In October 2002, the ACOE superintendent rejected the OUSD 2002/2003 budget after OUSD informed the ACOE they couldn't close the 2001/2002 books and estimated that their 2001/2002 budget was some \$30 million in deficit. Interestingly, the Grand Jury was told that had the OUSD not informed the ACOE of its problems, the ACOE was ready to approve the OUSD 2002/2003 budget.

Using its AB1200 authority, the ACOE superintendent called in FCMAT to act as the ACOE's fiscal advisor to help OUSD determine where they stood and to force mid-year 2002/2003 spending reductions as well as to reduce planned spending for the 2003/2004 budget year beginning July 2003. Because action on the 2001/2002 deficit wasn't started until October 2002, the 2002/2003 budget year (begun in July 2002) incorporated all of the uncorrected 2001/2002 budget problems. This is referred to as the structural deficit.

The ACOE superintendent has been widely criticized for not having acted sooner. She and her associate superintendent for business articulate a consistent view. They argue they did everything they could under the law, and that local districts are ultimately responsible for keeping their own financial houses in order. They argue that it's not the job of the ACOE to run the finances of the various school districts; rather, the job is limited to asking questions of the districts, at least until it is clear that they are in a serious financial situation. The ACOE view is that the ACOE can only analyze the numbers presented to them. If districts present incorrect numbers, which the superintendent says is the case in Oakland, then ACOE argues there is little they can do. However, the Grand Jury was informed that this ACOE view is a minority view among COEs. It was stated that the majority of COEs feel that AB1200 empowers them to intervene much earlier and more aggressively than believed by the ACOE, and that the ACOE view is in the bottom 25% of aggressiveness of COEs in the state.

The ACOE did review OUSD finances and expressed concerns and delineated problems. There were exchanges of letters between the ACOE and the OUSD budget office. The ACOE apparently found the responses they received from OUSD acceptable and found that the OUSD

finances were in compliance. The ACOE did not follow-up to determine if the spending reductions proposed by the OUSD were actually implemented.

During the 2001/2002 year, the ACOE approved the OUSD budget in August 2001 and gave positive certifications to OUSD's first and second interim budget reports in January 2002 and April 2002, respectively. These certifications meant that the ACOE believed OUSD was fiscally sound for the current and two future budget years.

In reviewing the budget and the interim reports, the ACOE did raise various issues. In August 2002, ACOE indicated that OUSD had an "ambitious" ADA projection. They noted that while OUSD had a recent history of declining enrollment, that OUSD was projecting a modest increase. Depending on the interpretation, this "ambitious" projection was seen as over-projecting revenue by between \$3.7 and \$7.5 million.

By November 29, 2001, OUSD recognized that given the actual October enrollment reports, revenue estimates were overstated by \$5 million. Concerned about the need to limit spending, OUSD imposed moratoriums on hiring, travel, placed reductions in a number of areas and created a new budget oversight committee.

On January 15, 2002, ACOE expressed a "high level of concern regarding the district's financial condition." ACOE's specific concerns were the continued enrollment decline and the declining fund balance (that spending was greater than revenue). In particular, ACOE was concerned that OUSD reserves were insufficient to cover the mandated 2% reserve requirements. Nevertheless, ACOE approved the OUSD first interim report.

On April 30, 2002, ACOE expressed further concerns about the declining enrollment and fund balance, stated that the district needed "to carefully monitor the implementation of the budget reductions," but nevertheless approved the OUSD second interim report.

ACOE continued to express concerns about OUSD finances at the time of the 2002/2003 budget submission. The 2002/2003 budget was finally rejected in October 2002, which resulted in the ACOE calling in FCMAT as Fiscal Advisor.

FINDINGS

By whatever standard, fiscal oversight of the OUSD, both internally and externally, was insufficient. What happened in Oakland was not complex: the main source of district revenues decreased; the main area of spending (i.e., salaries) rapidly increased; plus, various restricted programs (special education, adult education, cafeteria fund, etc.) substantially overspent their budgets resulting in additional costs to the general fund. Declining revenue and sharply increasing costs led to large deficits.

While declining enrollment gets much of the deficit blame, it was a comparatively small contributor to OUSD's large deficits. For 2001/2002, second interim budget estimates exceeded actual revenues by \$6.3 million or 2.3% of the \$269.3 million unrestricted general fund revenues. Of this, only \$3.1 million was from overestimating ADA; the remainder was largely from overestimating local parcel tax revenues.

The big deficit hit was in underestimating spending in two key areas. Salary spending (unrestricted) of \$254 million was over budget by 6.9% or \$17.4 million (\$10.4 million from teacher salaries, \$3.6 million from non-teacher salaries, and \$3.4 million from the rapid increase in employee benefits for all employees); and restricted fund spending was over budget by \$9.8 million. Restricted (categorical programs with earmarked funding) fund shortfalls must be covered by the general fund. The budget had assumed a general fund subsidy of \$21.6 million for these restricted funds. The \$9.8 million was over and above the \$21.6 million. As such, the ultimate general fund subsidy for these restricted programs increased to \$31.4 million. The bulk of this \$31.4 million was to cover special education costs in excess of funding provided by the

state and federal governments. Stated differently, 75% of the 2001/2002 deficit resulted from a combination of overspending and underfunding in the area of special education.

Deficit spending was \$39.4 million in 2001/2002 (a roughly similar amount is projected for 2002/2003). This was about 9% of total revenues and approximately 15% of unrestricted general fund revenues. This does not include the 2% reserve which districts of OUSD's size must set aside in their budgets for economic uncertainty. This deficit quickly caused serious cash flow problems, which led to the need for borrowing from the state and the impending appointment of a state fiscal administrator. More important than the size of the deficit in 2001/02 was that it wasn't caught and corrected in 2001/2002. As a result, the deficit was replicated in the present 2002/2003 year, causing a doubling of the deficit.

Those not paying sufficient attention to the budget included the OUSD Board, the OUSD superintendent and his staff, and the ACOE which was responsible with fiscal oversight of each of the local school districts in the county. This was particularly egregious as all were on notice of impending OUSD financial disaster.

Specifically:

1. The 1999/2000 FCMAT report placed all key players on notice of impending financial disaster for the OUSD and without substantial spending cuts the system would have major deficits. The report was explicit that OUSD was experiencing declining enrollment, and OUSD needed to monitor enrollment closely. In addition, the report was clear that the district was overestimating its ADA percentage and as such, was further overestimating its revenues. Finally, FCMAT explicitly warned that if not careful, the special education subsidies would be in the tens of millions of dollars.
2. The ACOE was specifically on notice. They knew the OUSD had difficulty closing its books in 1999 for the 1998/1999 year. They gave a qualified approval to the OUSD

1999/2000 first interim in December 1999, indicating their serious concern with district finances. The FCMAT report should have given them even greater concern. Finally, the ACOE was well aware of the enormous turnover in OUSD financial management with different financial leadership in each of the 1999/2000, 2000/2001, and 2001/2002 fiscal years. This turnover, in itself, should have triggered heightened oversight.

3. The OUSD Multi-Year Projections 2001-2006 report issued in early 2001 made clear the financial situation of OUSD needed immediate attention. The report did not have to be read carefully. The report was printed in color and projected deficits were displayed in red numbers and were clearly visible even for those unable or unwilling to study the details of the report. The report showed the likelihood of large deficits if appropriate actions were not taken.
4. The board delay in purchasing the new computer system cost the district a year in making the changeover. This meant the new system was not operational until July 2002, the beginning of the 2002/2003 year. Had the system been purchased more expeditiously, the fiscal crisis might have been realized a year sooner.
5. Grand Jury interviews indicated that the old computer system, however cumbersome, did provide relevant data. Rigorous analysis of the data from the old system would have produced useful results. The new system made seeing problems easier, but its absence cannot be seen as an acceptable excuse for OUSD fiscal mismanagement.
6. The teacher salary increase may have been necessary to retain teachers and to replace the 500 or so emergency credentialed teachers with fully credentialed teachers. The issue is not whether the teachers deserved the raise, or whether the raise was necessary to forestall a strike; rather, that paying for the \$40+ million per year increase required substantial cuts in other parts of the system. These substantial cuts were not implemented by the board and superintendent.

7. The separation of the various financial departments into isolated enclaves, with little information passed between them, was a recipe for disaster. This isolation was partly responsible for the use of budget estimates, rather than actual spending and revenue data, as the basis for financial reports. This seriously compromised both the internal OUSD control and external oversight systems. Data labeled as “actuals” must be the actual data and must be continually tested for what that partial year spending means for projecting the full year’s costs. The Grand Jury did not determine whether the false data occurred by intent or by negligence. It defies belief that neither OUSD nor ACOE discovered the problem.
8. The increased salaries allowed OUSD to replace emergency credentialed teachers with fully credentialed teachers. This reduced vacancies and also had the predictable impact of radically increasing the total salary bill. Somehow there was no budget for these additional costs.
9. Some of those interviewed pointed accusatory fingers at the Human Resources (HR) department for hiring people without budgeted positions being available. The Grand Jury found that HR was tasked with hiring new credentialed staff to replace those on emergency credentials. They were successful in doing so. The problem was that HR did not require each hire to be properly accounted for in all parts of the financial system or for those separate departments to even coordinate vacancies and hiring.
10. The school board is ultimately responsible for the OUSD. The board was on notice from both the FCMAT and MYP reports that finances were tight and major cuts were required. The board members should have asked more questions and demanded better answers. Had the board done even the most basic calculations, they would have seen that with salary increases of 24%, increases in special education encroachment, and declining

revenue, that the OUSD would not have been able to balance their budget. However, board members are, for the most part, not financial people. Without staff of their own to independently review district finances, it is not realistic to expect the board to do its own rigorous financial analysis. Nevertheless, the OUSD board could have required OUSD staff to provide simple spreadsheets showing how enrollment was meeting budget estimates, and whether salary increases were being offset by spending reductions.

11. The OUSD superintendent was able to take a dysfunctional district and institute important educational changes in a relatively short time. In addition, he constantly asked his financial staff whether the budgets were balanced and was repeatedly assured that everything was in order. These reassurances were all the more credible given the positive ACOE certifications and the KPMG audit. It can plausibly be argued that he did everything a superintendent could be expected to do without being his own chief financial officer. Nevertheless, the superintendent is the person ultimately responsible for the operation of the OUSD. When serious problems arise he must be held accountable.

12. It is not credible that OUSD first “discovered” the deficit problem when the new computer system was activated. More likely, the new system indicated the sheer magnitude of the deficit. The deputy superintendent was on notice from both the FCMAT and MYP reports of the precarious state of OUSD finances. Moreover, he was aware of the declining enrollment (and its financial costs) from his October 2001, attendance reports, which resulted in his declaring spending moratoriums in November 2001. He knew things were amiss; unfortunately, actions taken to remedy the situation were insufficient.

His predecessor was apparently able to keep things together by intensive hands-on involvement and his understanding of the various independent financial systems that kept important information separate. When his successor took over, he apparently did not fully

comprehend the precarious nature of OUSD finances and did not immerse himself at the same detailed level. Instead, he focussed on getting the new computer system up and running and expected that the responsible department heads could manage OUSD finances without his constant oversight. Unfortunately, this was not the case. His predecessor maintains that careful monitoring and consequent action, particularly in the early part of the 2001/2002 year, would have resulted in limiting almost two-thirds of that year's deficit.

13. The Grand Jury found that there was a difference of opinion as to whether the generally applauded OUSD reforms could have taken place without budget deficits. Some argued that absent greatly increased teacher spending the reforms would not have taken place. The increase in teacher salaries resulted in more certified teachers being in the system. Others argued that had they known the true nature of the deficits, they could have acted sooner to reduce spending without seriously jeopardizing the reforms.

14. The Grand Jury learned that COEs are empowered to intervene much earlier and more aggressively than stated by the ACOE. Moreover, the Grand Jury was informed that the ACOE is considered to be in the bottom 25% of aggressiveness of COEs in the state. Under AB1200, the ACOE is clearly empowered to intervene whenever it suspects problems. The ACOE argument that they did everything they could under the law is not acceptable. The ACOE did not need the OUSD financial system on the ACOE computer to request detailed data. The ACOE was aware, and made OUSD explicitly aware, of the problems and impact of declining enrollment. They knew that OUSD was deficit spending. They could easily calculate (or require OUSD to calculate) the cost impacts of the salary increase. They were under no obligation to take the OUSD numbers at face value. Even assuming that OUSD was simply in error (and not deliberately falsifying its books), they had an obligation to help OUSD be clear where they stood financially.

ACOE gave a qualified certification for the 1999/2000 first interim report. They could have done the same in 2001/2002 when they strongly suspected OUSD problems. If the ACOE suspected OUSD financial data was incorrect, ACOE had an obligation to request detailed proof to the contrary. The Grand Jury learned that the previous deputy superintendent, while at the ACOE, would drop into district offices and demand to see actual data. In addition, he kept spreadsheets of 5 years' history of critical budget and enrollment data. It is up to the school districts to satisfy the COE of their financial health. Without that, the COE can give them a qualified rating until they provide sufficient information to satisfy the COE. This is reflected in data available from the state of California, in records of discussions on AB1200, and the subsequent AB139, which clarifies and strengthens the role of the COE.

15. The real tragedy, and the primary failing in oversight, is that the 2001/2002 problems weren't caught sooner. Precarious school district finances can turn negative very quickly. Given the difficulty of reducing spending in the major spending category, teachers salaries, during a particular year, it is understandable that there was a large deficit in one school year. What is unconscionable is that the situation was allowed to roll over to the 2002/2003 year. It took much too long to identify the problems, and even longer to begin solving them.

CONCLUSION

The system for financing public school districts requires overhaul. Districts throughout the state and throughout Alameda County are in serious financial difficulty with many facing financial disaster. However, inadequate funding is not an excuse for failure to operate within those constraints. Similarly, it is not an excuse for those tasked with providing oversight, and who do not act proactively or aggressively until a crisis has gotten out of hand.

More specifically:

1. The primary determinants of revenue (enrollment and attendance rates) and spending (especially teacher salaries) must be closely monitored. While integrated computer systems are valuable, even back-of-the-envelope calculations can provide useful information. The relevant numbers are few and uncomplicated. Monitoring a budget largely consists of having access to accurate data on the numbers of students and teachers in the school system as well as the actual payroll. Everyone, from the board to the superintendent to staff to the ACOE fiscal overseers, needs to question and track these key items which drive district budgets.
2. Special attention must be paid to districts with decreasing enrollment. When enrollment is decreasing, positions need to be eliminated, cuts must be made, costs must be reduced, all on a continual basis. Given the need to notify teachers by March 15 for possible layoff in the next year, enrollment data must be closely scrutinized to avoid over staffing. Successful school districts devise methods, like utilizing temporary teaching positions at the beginning of the school year, to avoid overstaffing until actual enrollment is known.
3. When spending increases are required (e.g., teacher salary increases), these must be accurately calculated, and all aspects of the costs must be properly accounted for in the budget process. This includes accurately projecting the numbers and salaries of teachers being employed, as well as the benefit and retirement load of employing such teachers. It also includes accurately monitoring the actual payrolls. In a school district where expenditures are mostly payroll, it will be difficult to lose control of spending where payroll is closely monitored.
4. The ACOE did not adequately scrutinize the reports submitted to them. When it finds potential problems it needs to make sure that the local district and the ACOE both fully understand the data. ACOE had suspicions of budget problems in OUSD at the time of

the 2001/2002 budget submission. These suspicions were reinforced at the time of the first interim report. Given those suspicions, ACOE should have given a qualified approval and required additional information. Unfortunately, the key areas of overspending (salaries and special education), were not being monitored by ACOE; rather, much of their focus was on a number of relatively small dollar amount issues. Had ACOE been carefully watching the key areas of overspending, they would have been alerted to the serious financial crisis. Even given their limited view of AB1200, this would have justified earlier intervention.

ACOE is clearly correct in its argument that local school districts are responsible for their own finances. It is not the ACOE who caused the OUSD problem; OUSD caused the problem. OUSD should have more closely and rigorously monitored its finances, and done so in a more timely manner. But the task of fiscal oversight by ACOE is meaningless if its only function is to ask questions and to hope the local districts are complying with basic reporting requirements. At a minimum, given their suspicions, ACOE should have required a third interim report. However, unless both the districts and ACOE look beyond the data to see whether it is accurate, no number of additional reports will be of use.

Some criticism directed at the ACOE, and its Superintendent, is misplaced. The district is responsible for keeping its own budgets in balance. But it is the ACOE's responsibility to aggressively monitor district finances on the chance that problems might occur. This is especially true in a district like the OUSD with its history of serious financial trouble. A prior Grand Jury criticized the ACOE Superintendent for not having intervened sooner in Emeryville. The issue is not whether ACOE should have called in FCMAT earlier; rather, it is that ACOE's brand of fiscal oversight was insufficient to force Oakland to take care of its own finances on a more timely basis.

Under AB1200, ACOE has at least three chances to review district finances per year: at budget approval time; at the time of the first interim report; and at the time of the second interim report. If ACOE had serious suspicions, ACOE could have required Oakland to provide detailed responses. While there was correspondence between ACOE and the OUSD at the time of both the first and second interim reports in FY2001/2002, most of it was focussed on relatively small items such as the adult education fund. The one substantive issue raised, that OUSD was overestimating its ADA (and hence its revenues), was not aggressively pursued and OUSD responses were accepted at face value. There was no mention of the largest expenditures (i.e., teacher salaries and teacher numbers). While OUSD was constrained in its ability to reduce 2001/2002 expenditures through mid-year teacher reductions, OUSD certainly could have issued March 15 letters so as not to perpetuate the problem into 2002/2003. This would have meant that they would have reduced permanent positions prior to the school year and utilized temporary teachers, at least until the ADA was known and the need for full time positions could be evaluated in 2002/2003.

The most serious indictment of the lax oversight was not that OUSD deficit overspent by \$40 million in FY2001/2002, but that this situation was not acted upon soon enough so as to not perpetuate the problem into 2002/2003.

5. The board should require more detailed financial reports and demand more intensive testing by their auditors. However, for the board to play a significant oversight role, they need training and access to technical expertise.
6. School districts need to review their special education programs to determine how much special education spending they want, and can afford, to subsidize from unrestricted budget funds. This requires a detailed study of options, alternatives, and serious consideration of the appropriateness of providing additional special education funding at the expense of funding all other programs. The issue is not whether special education

needs more resources. All programs need more resources; particularly special education programs. The issue is to figure out how to address the chronic underfunding for a group that needs special services, and by law is entitled to services, without bankrupting the district.

7. School districts need more resources. School district funding in California is grossly inadequate. Nevertheless, no matter how bad financial realities are, a district must work within those realities. The consequence of having the district run by an outside administrator, and having the board stripped of its governing power, is too severe to allow large deficits to accumulate.

8. There is an inherent problem between the increasing aspirations of teachers and other public employees for decent salary and benefit packages and the severe political and economic limitations on public education financing. School district revenues are fixed or decreasing while expenditures are rapidly increasing (with employee benefits increasing particularly quickly). In a budget like that of the OUSD, where 92% of expenditures are from salary, this situation cannot continue for long. While this problem does not appear to be well recognized, the current system of education finance is heading toward a major crash.

RECOMMENDATIONS

Recommendation 03-07:

School districts must closely and aggressively monitor their budgets and ensure that interim reports sent to the Alameda County Office of Education are based on actual and accurate data. In particular, districts must monitor their average daily attendance and payrolls on a regular and detailed basis. Districts must regularly make detailed spending projections based on actual payroll numbers, not on projections or estimates as were submitted by the Oakland Unified School District.

Recommendation 03-08:

Districts must closely coordinate and link all financial departments and systems. Personnel, payroll, planning, budgeting, as well as internal oversight, functions must be closely linked and coordinated. Districts must maintain accurate and detailed information concerning the number and location of their employees, the cost of the salaries and benefits of those employees, and ensure that positions are budgeted for, prior to making new hires.

Recommendation 03-09:

The Alameda County Office of Education must more closely and aggressively monitor the budgets and interim reports presented by the various districts. In particular, the Alameda County Office of Education must regularly monitor district average daily attendance and district payrolls, and must require explicit accountings and financial viability studies for all new salary contracts. Monitoring must include regular projections based on actual payroll numbers, and not on projections or estimates as were submitted by the Oakland Unified School District. OUSD salaries are estimated at 92% of all spending; if this 92% is closely monitored and analyzed, major spending surprises will be eliminated.

Recommendation 03-10:

The Alameda County Office of Education must be more willing to issue qualified certifications of district budgets and interim reports and to demand any and all additional data they require to provide assurance that district budgets are in order.

Recommendation 03-11:

All district school boards in Alameda County must obtain financial training to be able to carry out their fiduciary duties. Training should be arranged through the California School Board Association (CSBA) or School Services of California.

Recommendation 03-12:

School Boards must avail themselves of independent expertise to check the financial records maintained and presented by district staff.

Recommendation 03-13:

School boards must require more competent and detailed work by their auditors. Auditors must be held accountable for complying with their function of protecting the public trust.

Recommendation 03-14:

Districts should study whether instituting a formal independent auditor position would improve the quality of data and public accountability in their districts.

Recommendation 03-15:

School Districts must conduct thorough studies of the financing and delivery of their special education programs. In particular, they must study how best to keep large general fund subsidies of special education, and other restricted programs, from bankrupting the general fund.

RESPONSES REQUIRED

All Alameda County School District Boards

Recommendations 03-07, 03-08, and 03-11 through 03-15

Alameda County Office of Education

Recommendations 03-09 and 03-10

HIRING PRACTICES AND STUDENT PROTECTION FROM SEXUAL ABUSE

INTRODUCTION

There were news reports of the arrest of a substitute teacher for molestation in San Leandro. The Grand Jury initiated an investigation into whether the hiring procedures of the various Alameda County school districts provide sufficient safeguards to protect students from sexual abuse. In particular, the Grand Jury was concerned about how school districts balanced the need to avoid hiring potential wrongdoers who had no criminal records or formal judgments against them with the need to protect the due process rights of such potential employees.

Requests were made of each school district to provide information concerning their policies and procedures concerning hiring and for preventing and handling issues of alleged sexual abuse. The Grand Jury reviewed these policies and procedures and interviewed representatives of various school districts.

HISTORY

At the beginning of the Grand Jury term, the San Leandro Times newspaper reported on the arrest of a substitute teacher for molestation in San Leandro. According to this report, the person arrested had a past history of accusations and suspicious activity around young girls. He had been excused from substitute teaching duties at another San Leandro school for what the district considered to be “inappropriate games of leap-frog and tag.” Similar allegations had been levied against him while teaching in southern California. The article quoted the police to the effect that this person had moved around the country as a substitute teacher and that suspicious stories seem to follow him. None of the allegations culminated in arrest or conviction; and the district’s fingerprint background check found no information.

San Leandro's Assistant Superintendent for Human Resources was reported to have said that the accused never would have been hired if his past had been known, but that they had no way of knowing he had been suspected of inappropriate activities in the past. In addition, he was allowed to continue substitute teaching in the district after the leap-frog allegations since he was not accused of molestation, just playing games that some schools considered inappropriate. Moreover, other schools in the district considered his "interactive style to be beneficial." In response to questions as to what might be done, the official suggested that districts should set aside resources for doing more rigorous background checks for substitute teachers. He indicated that phone reference checks were done for full-time teachers, but not for substitutes.

In interviews, the Grand Jury learned that the newspaper report of the facts of the case and the statements attributed to the assistant superintendent were accurate. The Grand Jury also learned that the district was now undertaking more rigorous background checks for substitute personnel.

Policies and procedures documents from the various school districts showed that districts routinely conduct background checks of all persons considered for permanent employment. These include fingerprint checks for determining any history of illegal activity including any prior history of sexual abuse.

The Grand Jury received conflicting information concerning the employment of temporary personnel. It appears that most districts provide detailed checks of substitute and temporary personnel, but in many cases it is possible for them to initiate employment prior to completion of all relevant background checks.

FINDINGS

The Grand Jury found that current hiring procedures seem sufficient for determining whether job applicants have been convicted or otherwise disciplined for prior acts of sexual

abuse, but procedures do not provide information concerning unproven allegations against job applicants. The Grand Jury also found that school district staff providing references have an affirmative obligation to report on alleged problems in an employee's performance in their district that relate to sexual abuse or molestation.

CONCLUSION

Rigorous background checks protect most students from potential molesters or abusers. By definition, they will be less effective in determining the histories of those with no criminal record or record of disciplinary actions.

There are important competing interests between protecting children from the possibility of sexual abuse and providing due process rights of prospective employees. Such prospective employees should not be unfairly barred from employment opportunities on unproven allegations. Policies and procedures provide information sufficient to protect children from persons judged to be abusers; however there is much less protection from persons who have been accused of abuse in prior situations, but were never convicted or disciplined for such acts. At the same time, it is important to protect prospective applicants against being unfairly barred because of unproven allegations against them. These competing interests properly exist, and will continue to exist, in the school districts located in Alameda County.

RECOMMENDATIONS

Recommendation 03-16:

Rigorous background investigations, including phone reference checks, must be undertaken by all school districts in their hiring of all permanent, temporary and substitute staff who will have contact with children.

Recommendation 03-17:

The staff making background checks of potential school district employees be trained to ask for thorough references including a question asking if the referring district would re-hire the applicant.

RESPONSES REQUIRED

All Alameda County School District Boards
Alameda County Office of Education

Recommendations 03-16 and 03-17
Recommendations 03-16 and 03-17

CITY OF OAKLAND – PLAN CHECKER OVERTIME

INTRODUCTION

The Grand Jury investigated the city of Oakland's Community and Economic Development Agency (CEDA) following media reports alleging that excessive overtime was paid to one City-employed plan checker. The Grand Jury reviewed numerous documents and interviewed the Oakland City Manager and the chief of CEDA's Building Services Division.

Plan checkers are employed by the city of Oakland's Community and Economic Development Agency, Building Services Division, and are responsible for reviewing residential and office building plans. Plan checkers are registered civil engineers.

The Grand Jury's investigation focused on alleged excessive overtime payments to one plan checker in Oakland's Building Services Division. According to reports, the plan checker in question made over \$273,000 during fiscal year 2001/2002 with over \$190,000 of that amount constituting overtime pay. The Grand Jury reviewed the job description for plan checkers, plan checker payroll, time sheets for the period of July 1, 2001 through September 27, 2002, the city of Oakland's protocol for overtime, the plan check overtime request form, and the difference between regular and overtime costs for all civil engineer jobs in Oakland.

HISTORY

Records show that one plan checker employed by the city of Oakland was paid for 1,597.5 regular hours and 3,123.5 overtime hours for July 2001 through June 2002. The total amount paid to this one plan checker for a 52-week period was \$273,392, including holiday, vacation and meal allowance pay. Additionally, this employee received an automobile allowance of \$4,200 (\$350/month) for the time

period indicated. The base salary of this employee was \$75,757 a year. According to records, all work completed by this plan checker was performed at his office location.

The city of Oakland charges applicants \$128/hour for expedited (overtime) plan checking services. The Grand Jury found that the city of Oakland received a total of \$262,421.37 in payments from applicants for overtime services of this same plan checker. The director of CEDA's Building Services Division reported that requests to hire additional plan checkers had been denied. The city previously used outside plan checkers, but this practice is no longer utilized.

Applicants may request expedited plan checks if they wish to pay the overtime fees. Working overtime to perform this service is not a requirement for plan checkers. An applicant has the ability to request a specific plan checker to perform the overtime services.

Some plan checkers receive a car allowance of \$350/month in addition to their regular salary. Plan checkers also receive an \$11.00 meal allowance if they work 2 or more overtime hours in addition to working their regular shift in one day. An additional \$11.00 is paid for each successive 4 hours of overtime on that same day. For example:

Total Hours Worked	Meal Allowance Paid
9	\$0
10	\$11.00
13	\$11.00
14	\$22.00

The city's overtime policy allows plan checkers to work overtime in the same week they take vacation. A plan checker is permitted to use one vacation day at a time. There is no requirement that vacation be taken in any specific increment (e.g., one week at a time).

FINDINGS

Based on time sheets verified by the Grand Jury, the plan checker who earned the most money reported working overtime every week during fiscal year 2001-2002 without exception. In the same time period, the city of Oakland reported one other plan checker had also worked a large amount of overtime. That employee reported 2,227.5 regular hours and 2,080.0 overtime hours for a fifteen-month period. These two plan checkers accounted for nearly 75% of all overtime hours worked in the department. Supervisors do not verify time reports, double check against time logs, or even randomly check to assure an employee is in fact working overtime. Access cards are used to obtain entry to buildings after-hours or on weekends, but security personnel are not always present to verify if an employee is on site. Records of entry and exit are not used to verify hours reported.

Plan checker time sheets are prepared, signed, approved and submitted midweek (on Wednesday) for work to be done through the coming Sunday. Mistakes have occurred, as discovered on a weekly timesheet for November 2001, where the plan checker reported eight meal allowances and the supervisor submitted the time sheet reporting eight hours of overtime instead. This error would cause the employee to be paid \$478.80 in overtime pay rather than correctly receiving the meal allowance of \$88.00. In reviewing all timesheets for this fiscal year, no indication was found that this or any other error had been corrected.

CONCLUSION

Due to the finding that an applicant may request a specific plan checker, this leads to the perception of possible collusion or favoritism between the applicant and the plan checker.

There is no evidence that hours reported are observed or verified by anyone. The subject plan checker worked 12 to 16 hours per day in every week reported and took all vacation in one-day increments throughout the year. Allowing a plan checker to take vacation in one-day increments permits him to draw maximum overtime pay because it allows him six other days in the same week to accumulate overtime. If he were to take vacation for longer periods he would have to forego overtime during those weeks. Permitting a plan checker to take his entire vacation in one-day increments violates the principle of providing recuperative time from the accumulations of work stress.

It is management's responsibility to ensure that work and overtime policies account for applicants needs, in conjunction with employees' health needs, job efficiency and public safety. Allowing an employee to consistently work 12 to 16 hours per day, each and every week, violates proper human resources practices.

There is little evidence to show that time sheets are actually checked. In reviewing the entire year's time sheets which were pre-approved, there was not a single instance of correction based on reported hours worked.

If the subject plan checker would suddenly become unavailable, the department would find itself short the equivalent of three plan checkers. As a result, the time for applicants to have their plans reviewed would increase dramatically. While overtime costs are reimbursed to the city, spreading overtime hours among more employees would be more effective and would also benefit applicants.

The base salary of a city of Oakland plan checker is approximately \$76,000 per year. During one calendar year, a plan checker earned \$273,000 and received an additional car allowance of \$4,200. Based on the fact that the subject plan checker performed all of his work in the office, a car allowance is unwarranted.

RECOMMEDATIONS

Recommendation 03-18:

Plan check supervisors must verify time sheets for accuracy.

Recommendation 03-19:

Plan check supervisors must verify that overtime has actually been worked and accurately documented.

Recommendation 03-20:

Plan checker overtime must be pre-approved. Post-approval must be limited and include documented reasons for such approval.

Recommendation 03-21:

Hire additional plan checkers to reduce the amount of overtime.

Recommendation 03-22:

The practice of allowing day-at-a-time vacation when combined with overtime must be discontinued.

Recommendation 03-23:

Management must evaluate and plan for future staff requirements to eliminate the need for excessive overtime.

Recommendation 03-24:

Eliminate the automobile allowance for employees who do not use automobiles as an integral part of their job.

Recommendation 03-25:

Permanently change the plan check application form so that applicants can no longer designate a specific plan checker.

RESPONSES REQUIRED

Oakland City Manager

Recommendations 03-18 through 03-25

Oakland City Council

Recommendations 03-18 through 03-25

Mayor, City of Oakland

Recommendations 03-18 through 03-25

CITY OF OAKLAND – FIREFIGHTER OVERTIME

INTRODUCTION

The Grand Jury investigated overtime payments for city of Oakland firefighters and the reasons for staffing two fire stations solely on an overtime basis. The investigation began after a local newspaper alleged excessive overtime payments. The Grand Jury interviewed the Oakland City Manager and reviewed documents from the city of Oakland.

The Grand Jury reviewed Administrative Instruction AI-1303, a financial analysis of costs of new hires with benefits. Firefighters are participants in the state of California's Public Employees Retirement System (PERS). PERS does not allow overtime payments to be used in calculating retirement benefits.

FINDINGS

A comparison of overtime hours was made with the Fremont and Hayward fire departments for a period of one year. The average overtime per person paid by Oakland was nearly double that of the other two departments (636.6 hours vs. 319.3 and 352.1 hours). A comparison was made of the amount of overtime worked by the 20 people working the most overtime in each department. One department's overtime ranged from 540 hours to 915 hours, the second department ranged from 679 hours to 1,497 hours, and Oakland's range was 1,054 hours to 1,603 hours of overtime.

The city of Oakland is obligated to pay a 78.61% benefit package added to the salary of a firefighter. Since no additional benefits are paid on overtime, only the 50% overtime premium is added to costs when firefighters work overtime. Therefore, it costs less to pay firefighters overtime than it costs to hire additional full-time firefighters (178.61% for a new hire vs. 150% for overtime).

The reason given for staffing two stations on an overtime-only basis was that these stations are classified as seasonal and operate with reduced staff from October through April.

Because of budget problems facing the city of Oakland, fire department overtime is currently under review and may be substantially reduced.

CONCLUSION

Despite the differences noted in comparison with two other fire departments, the Grand Jury found no abuse of overtime. Due to the structural overtime created by the use of two seasonal stations and based on the directives of the Oakland City Council, the overtime expenditures are justified. It is apparent that the Oakland Fire Department exercised due diligence in comparing overtime costs to the costs of hiring additional full time staff.

RECOMMENDATIONS

Recommendation 03-26:

Because of safety and fatigue factors, the use of overtime should be more evenly distributed among qualified fire fighter personnel.

RESPONSES REQUIRED

Oakland City Manager

Recommendation 03-26

Oakland City Council

Recommendation 03-26

Mayor, City of Oakland

Recommendation 03-26

OAKLAND-ALAMEDA COUNTY COLISEUM AUTHORITY

INTRODUCTION

In January of 2002, the board of commissioners of the Oakland-Alameda County Coliseum Authority (OACCA) hired a chief administrative officer/executive director. Eight months later, in September 2002, the person hired to fill that position was dismissed. In addition, contracts between the OACCA and its tenants and concessionaires were negotiated by individual members of the board of commissioners in what was reported to be a questionable and informal fashion.

The Grand Jury examined the structure, function and operation of both the board of commissioners of the OACCA and the functions of the chief administrative officer. The investigation was aimed at reviewing the structure of the board, its relationship to its chief administrative officer, its efficiency and effectiveness, and in general, the governance of the coliseum complex.

The Grand Jury obtained and inspected the following documents: financial statements for the OACCA for three years, a roster of past and present members of the board, the job description, employment agreement, the resume of the former chief administrative officer/executive director, and the job description and employment agreement for the current chief administrative officer/executive director.

Interviews were held with the previous and present chief administrative officer/executive director of the coliseum, the legal counsel to the OACCA, past and present members of the board of commissioners, past presidents of the board, management of SMG, Inc. (the organization hired to manage and market the coliseum properties), and senior city of Oakland and Alameda County staff members who provide support services to the OACCA.

HISTORY

The OACCA is responsible for the overall direction and management of the Oakland-Alameda County Coliseum Complex. The complex includes a stadium that is home to the Oakland Raiders and the Oakland A's, and an arena, the home of the Golden State Warriors. These facilities are also used for other sporting and entertainment events. The complex was built with public funds, currently operates at a loss, and is subsidized by the taxpayers of Alameda County and the city of Oakland through increased taxes.

The governing body of the OACCA is a board of commissioners (board). The OACCA and the board were established by a joint powers agreement between the city of Oakland and the County of Alameda. The OACCA board is composed of two members from the Oakland city council, two community members appointed by the council, two members from the Alameda County Board of Supervisors, and two members of the community appointed by the Board of Supervisors. The Oakland city manager and the county administrative officer serve as chief staff members and advisors to the board. In addition, the Oakland city attorney and the Alameda county counsel serve as the legal advisors to the Authority. The OACCA also has a full time executive director and part time legal counsel. In response to former Grand Jury recommendations, the board expanded from 4 to 8 members and created and filled the position of executive director.

Day-to-day operations of the coliseum complex are handled by SMG, a company that manages sports and entertainment venues around the world. SMG also has the responsibility for marketing the facilities to other potential tenants. Compared to other similar facilities, the coliseum complex is one of the busiest in the world. Each major sports tenant has its own contractual agreement with the OACCA. Concessionaires have direct contracts with the OACCA, with tenants or with SMG.

There is a long and tumultuous history between the OACCA and the major tenants. A number of lawsuits have taken place. This has led to significant communication problems between the OACCA board and its major tenants.

FINDINGS

The governance of the board is surprisingly informal. There are no written operating policies or procedures. There is no existing business plan for the OACCA. Individual members of the board contacted and negotiated with tenants and concessionaires. Likewise, individual board members spoke freely with the media about coliseum matters without consulting either the board or the executive director. Such actions contributed to ill will and confusion between one of the tenants and the OACCA.

The board has an even number of members from the city council and the Board of Supervisors who can take parochial points of view. This leads to situations wherein no decision or action is reachable because of the divergence of city and county interests. Some principals asserted that the lack of senior and independent business leaders from the community serving on the board is a detriment. While others spoke of the possible benefit of a board composed of such senior business leaders, all seemed to agree that with public funds at stake this is not a viable suggestion.

There was no formal performance review for the former executive director prior to his dismissal, nor was there provision for such a review in his employment agreement. In fact, the employment agreement between the former executive director and the OACCA referred to him as “chief administrative officer” in one place and in another as “coliseum authority executive officer.”

There was some confusion as to what the executive director’s job should be. Some saw it as little more than that of an administrative assistant, others as a paralegal, others as the key

figure in the organization. Hiring for the position has been done in part on the basis of marketing experience, yet the prime responsibility for marketing the facilities rests with SMG, which has contractual obligations and receives financial rewards for marketing. The current executive director's job description is vague with respect to the authority granted to the office holder.

Some change is evident with respect to board/executive operations. While the job description is still vague with respect to the authority granted the current executive director, at least nomenclature is clear. Both the employment agreement and job description use the title of executive director. A new job description is being developed to define the executive director's authority more clearly. The executive director's employment agreement includes a schedule for performance evaluations, although no performance goals have been set by the board.

CONCLUSION

The board of commissioners of the Oakland-Alameda County Coliseum Authority is not well organized nor does it function effectively.

An executive director is needed to coordinate the diverse needs of three athletic teams, an entertainment facility and a board representing public entities. This is particularly true when the board itself is not skilled in the sports or entertainment business. For an executive director to work successfully, that person must have the authority to manage and negotiate for the OACCA. Managing and negotiations should only be done with the consent of the board. The board should set policy and the executive director should implement that policy.

There has been tension between politically appointed members of the board and its executive director. Ultimate decision-making will, and must as long as public funds are involved, rest in the hands of the appointed directors.

The short tenure of the previous executive director suggests deficiencies in either hiring or organizing or both. The casual nature of the board's operations, with no business plan, no written policies or procedures and a vague job description for its executive director, indicates a lack of professional business operations.

RECOMMENDATIONS

Recommendation 03-27:

The OACCA board develop formal policies and procedures.

Recommendation 03-28:

The OACCA board develop a business plan for the coliseum.

Recommendation 03-29:

The OACCA board limit itself to setting policy rather than administering or managing coliseum affairs.

Recommendation 03-30:

A specific individual be designated as official spokesperson for the OACCA.

Recommendation 03-31:

A revised job description be developed that makes the authority of the OACCA executive director more specific.

Recommendation 03-32:

Annual goals and objectives be set in writing for the OACCA executive director.

Recommendation 03-33:

The OACCA executive director have regular performance reviews.

Recommendation 03-34:

On an annual basis, the board task the OACCA executive director or an outside consultant to review the performance of the coliseum in comparison to similar facilities. Such a comparison should lead to operational, policy or procedural reviews at the coliseum.

RESPONSES REQUIRED

OACCA Board of Directors

Recommendations 03-27 through 03-34

JAIL HOLDING FACILITY INSPECTIONS, 2002-2003

According to Penal Code section 919(b), a Grand Jury is charged with conducting inspections of jail holding facilities and considering the complaints, if any, from inmates. The Grand Jury inspected certain jails and holding facilities in Alameda County. In connection with these inspections, the Grand Jury had available to it inspection reports from previous Grand Juries together with current inspection reports from the Alameda County Department of Public Health and of the California Board of Corrections.

The primary focus of this Grand Jury's inspections was to verify the recommendations made by the Alameda County Department of Public Health and the California Board of Corrections. The Grand Jury visited the Santa Rita Jail on July 18, 2002 as part of its orientation. The Grand Jury inspected the Alameda City Jail on November 14, 2002; the Oakland City Jail on December 5, 2002; the Berkeley City Jail on December 12, 2002, and the new Oakland Police Department, Eastmont Substation, on March 13, 2003. No major discrepancies were uncovered during the course of inspections. Consequently, there are no recommendations by this Grand Jury regarding jails and holding facilities. We suggest that the 2003-2004 Grand Jury make unannounced visits to the various jails within Alameda County.

RECOMMENDATIONS

None.

JUVENILE HALL CONSTRUCTION

INTRODUCTION

As a part of the orientation process, the 2002-2003 Grand Jury toured the Alameda County Juvenile Hall. Alameda County is the government agency responsible for Juvenile Hall. The Chief Probation Officer and staff are in charge of the day to day operations of Juvenile Hall.

The Grand Jury took a walking tour of the facility and then met with the Chief Probation Officer, senior staff, and on-site supervisors. During the meeting the Grand Jury focused on some disturbing conditions at the current facility and the delay in building a new facility, that has been in the planning stage for over ten years.

HISTORY

There are three reasons why the County of Alameda considered building a new facility: 1) the current site sits on an active earthquake fault, 2) the current facility is seriously deteriorated, and 3) there had been debate as to whether its capacity is sufficient. For over a decade the need for a new facility has been recognized but there had been no definitive action taken by the Board of Supervisors except the initiation of an EPA report on four possible sites. Previous grand juries expressed serious concerns for the delays in building a new facility.

The Board of Supervisors has approved the need for a new facility. Alameda County has been awarded a \$33.2 million federal grant by the state Board of Corrections (BOC) to assist in financing this project. However, the grant is contingent on a start and completion date. The original start date was 2/28/02, with a completion date of 6/30/05. The start date was extended to January 2003. This date has passed. Alameda County asked for another extension date and received verbal approval. According to the Alameda County general services administrator, the completion date has been extended to June 2006.

Three major issues contributed to the delay in building the new juvenile hall. The first was the selection of a building site and size. The site selected limits the size of the hall (number of beds).

Four sites were evaluated: the county-owned property in the city of Dublin near the Santa Rita Jail; the Glen Dyer Detention Center site (North County Jail in Oakland); the Pardee/Swan Site, a 34-acre Port of Oakland owned property near the Oakland airport; and the existing San Leandro property site.

The second issue that contributed to the delay dealt with construction costs. Preliminary estimates, including furnishings and fixtures, are estimated at close to \$175 million for the entire complex, including the court and probation facilities. The cost to build on property not owned by the county, the Pardee/Swan site, if the property could be purchased from the Port of Oakland, increases building costs by more than \$30 million.

The third issue that contributed to the delayed decision revolves around the family of juvenile detainees. How far the family and friends may have to travel to visit or return home with juveniles who are released was a concern.

FINDINGS

During the Grand Jury's tour of Juvenile Hall, staff pointed out examples of poor conditions including seismic problems, cracked buildings and walls, electrical problems, and the age of the building, which opened in 1953. Old gas lines break frequently and PG&E is often involved in repairs.

Deliberations on building of a new Juvenile Hall began in 1992. Political interests and various community pressures delayed the decision making process for nearly eleven years.

CONCLUSION

The inability of the Board of Supervisors, due to political concerns, to reach a decision on the location and size, delayed the selection of a construction site. After hearing concerns from citizens at three environmental impact hearings, some supervisors changed positions on the construction site and size issues. The existing San Leandro site (330 beds) has finally been selected by the Board of Supervisors. Any further delays may contribute to the loss of the BOC grant, and cause the county to face rising construction costs. Most importantly, until the new facility is built, juveniles held at the hall are at serious risk.

RECOMMENDATIONS

Recommendation 03-35:

The Board of Supervisors ensure the beginning of construction of the new juvenile hall without further delay.

RESPONSES REQUIRED

Board of Supervisors

Recommendation 03-35

PUBLIC GUARDIAN'S OFFICE

INTRODUCTION

During the current term the Grand Jury received a complaint alleging that the Public Guardian's office improperly handled the finances of an elderly Alameda County resident unable to manage her own affairs. The complainant alleged that the conservator(s) in the Public Guardian's office did not properly account for proceeds of property sales and rental income. In addition, it has been alleged that the office failed to inform family members of actions to be taken with regard to the person and property of said resident. The Grand Jury reviewed the documentation provided by the complainant.

When an individual becomes unable to manage their own affairs and there is no person capable, qualified or willing to do so, the courts order the Public Guardian's Office to handle the conservatorship of the individual.

The Grand Jury requested files and information concerning this case and interviewed the division director of Adult Protective Services/Public Guardians Office and the director of the Adult and Aging Services of the Social Services Agency.

FINDINGS

The interviewees provided a chronology for the case, which has been under the jurisdiction the Public Guardian's Office for eight years. The directors explained the reasons for the actions to which the complainant objected. The Public Guardian's Office, when named as a conservator, is responsible for both the person (approving medical care which has been recommended by a physician and determining the type and extent of care needed) and the estate (in this case, several houses, social security income, a small pension, and rents, where available, from the houses).

CONCLUSION

By law, the conservator's primary responsibility is to the conservatee: to protect assets, if any, and make sure they are used for the care of the individual. The Public Guardian's Office followed its own procedures. A court investigator independently reviewed their work and a Superior Court judge approved the administration of the case.

RECOMMENDATIONS

None.

CHILDCARE FRAUD IN ALAMEDA COUNTY

INTRODUCTION

The Grand Jury investigated the extent of fraud within the childcare system for welfare recipients in Alameda County. The purpose of the investigation by the Grand Jury was to determine the size of the problem and whether or not it is increasing, decreasing, or remaining the same.

Directors of three childcare referral agencies, staff from the Social Services Agency, and staff from the District Attorney's Welfare Fraud Division were interviewed or provided written information. The information described the operation of the childcare agencies and calendar year 2002's fraud incidents referred to the District Attorney's Office from two of the agencies.

HISTORY

Alameda County, through the Social Services Agency (SSA), offers the California Work Opportunity and Responsibility to Kids Program (CalWORKs). The program is California's version of Temporary Assistance for Needy Families (TANF) which replaced Aid to Families with Dependent Children (AFDC) and The Greater Avenues for Independence (GAIN). CalWORKs serves families whose parent(s) require education, training, or job-finding assistance. The overriding goal of CalWORKs is to promote independence and self-sufficiency. Critical to its success is the provision of childcare subsidies available to families with children under the age of 14.

FINDINGS

SSA contracts with several agencies in the county to administer child care subsidies. Agencies verify work or school attendance and provide referrals. Care can be provided through

licensed day care facilities or through private arrangements with other family members (exempt providers). Providers are paid through the contracting agencies. Agency provided-timesheets are signed by parent and provider, then sent to the childcare agency for processing and payment.

Childcare fraud can be committed in various ways. The most prevalent is when the parent makes a false claim of work or school attendance, even though the agencies verify work or school attendance at regular intervals. Other types of fraud exist, many of which require the collusion of at least two people, the parent and the provider. Children may be registered at two different agencies or a parent may claim that an exempt provider is caring for a child, when the child is actually cared for elsewhere. Also, there may be fraud in the licensed day care facilities.

Within the SSA, the Welfare Fraud Prevention Division investigates and confirms documentation provided by the recipient before benefits are actually provided. However, once benefits are being paid and a case manager or other party reports the possibility of fraud, the case is referred to the District Attorney's Welfare Fraud Division. SSA contracts with the District Attorney's Office for this investigation.

Detection and prosecution of childcare fraud is an important step in prevention and deterrence since the rate of recovery of fraudulently obtained funds is often low. The District Attorney's Office works with the county and the state to alert policy makers and administrators about the cost of childcare fraud.

Childcare agencies and the District Attorney's Office were queried as to their estimates of the percentage of cases that might involve fraud. Since there is no verifiable data, estimates range widely. To clarify the extent of fraud, both San Diego and Orange counties have completed 100% verification surveys. At this time there is little factual evidence of the amount of childcare fraud in the families served by CalWORKS in Alameda County.

CONCLUSION

Dollars lost through fraud are dollars not available to other CalWORKS recipients who need childcare to attend school or begin working.

The Grand Jury was unable to determine the extent of childcare fraud in Alameda County due to the lack of verifiable data. There is no doubt that fraud exists and county agencies are to be commended for their pursuit of a solution to this problem. However, it appears that more definitive and consistent information on the amount of childcare fraud is imperative for monitoring not only how much fraud exists, but also whether it is increasing, decreasing or remaining the same.

Greater information sharing among the referral agencies is necessary to alert them to instances of multiple claims through multiple agencies. The Grand Jury was advised that a computer system to link the agencies was being developed, but estimates as to when it would be operable were varied and vague.

RECOMMENDATIONS

Recommendation 03-36:

The Social Service's Agency and the District Attorney's Office develop a reporting system to identify and differentiate the types, amounts, and resolution of fraud cases.

Recommendation 03-37:

The Social Services Agency rapidly implement a computerized system to allow childcare agencies to compare case information to ensure that parents or providers are receiving childcare dollars from only one source.

Recommendation 03-38:

The Social Services Agency, in conjunction with the District Attorney's Office, conduct a 100% verification study that would include differentiation between child care fraud and other types of welfare fraud.

RESPONSES REQUIRED

Alameda County Social Services Agency	Recommendations 03-36 through 03-38
Alameda County District Attorney	Recommendations 03-36 and 03-38
Board of Supervisors	Recommendations 03-36 through 03-38

THE ELECTRONIC BENEFIT TRANSFER PROGRAM

INTRODUCTION

Alameda County was chosen as one of two counties in California to begin the implementation of the Electronic Benefits Transfer (EBT) program. The program began in July 2002. It provides cash and food stamp benefits through an electronic system. The Grand Jury initiated an inquiry to determine how the new program is working and interviewed the Alameda County project leader for this program. The Grand Jury also interviewed the lead investigator in the District Attorney's Office, Welfare Fraud Division.

HISTORY

EBT is a federal program. The county determines eligibility and benefits for each client. It then transfers this information to Citicorp Electronic Financial Services (CEFS), which operates the system through a contract with the state. CEFS establishes accounts for all clients for both their food stamp benefit and their cash assistance. In the past, eligible recipients received paper food stamps and checks or direct deposit for cash assistance. The EBT program establishes electronic accounts for recipients that can be accessed with a plastic card similar to a debit card. The card may be used at stores that previously accepted food stamps and through ATMs, using a user-defined PIN.

Most stores that previously accepted food stamps accept the EBT card; and many ATM's are available for accessing cash benefits. There can be no surcharge from a store for using the food stamp benefit portion of the card, although a store may elect to charge a fee for providing cash. There are small transaction fees charged by CEFS after the first four ATM cash withdrawals in a month (\$0.85 per transaction). Many ATMs are available which do not charge a surcharge (the county provides a list of these); other ATMs may charge.

The county provides extensive information to recipients, available in several languages, prior to participation in the program. There are videotapes and other assistance available at service centers to help recipients understand how to use the card.

FINDINGS

Surveys in states that have already implemented EBT show that most recipients prefer EBT to previous methods. The advantages of EBT are:

- elimination of the stigma associated with food stamps,
- increased security and reliability of benefits,
- modernization of benefit redemption.

There is no longer a need for paper food stamps that are subject to loss, theft, misuse, or fraud. There is no longer a need for everyone at various stages to count paper food stamp coupons. EBT receipts report the remaining balances in recipients' accounts.

CEFS provides the District Attorney's Office with reports identifying suspicious use of EBT cards. These reports can be used by the District Attorney's Office to follow up possible fraudulent use of the cards. Expectations are that food stamp fraud, long a problem with the coupons, will be minimized through the EBT system.

The Grand Jury heard that some vendors might set a minimum total amount for food stamp purchases. This is not legal, nor is charging for the use of the EBT card to access food stamp benefits. However, as is so often the case in programs funded and governed through various agencies, the United States Department of Agriculture controls the vendor system. With only 150 inspectors in the entire country, charged with overseeing over 30 programs, unless there are blatant and reported infractions, stores may avoid prosecution.

CONCLUSION

The implementation of the program appears to have been efficient due in large part to the efforts expended by county staff.

RECOMMENDATIONS

Recommendation 03-39:

The Social Services agency monitors this new program to identify possible problems.

Recommendation 03-40:

The Social Services Agency surveys food stamp recipients annually with regard to vendor compliance with fees and surcharges.

RESPONSES REQUIRED

Alameda County Social Services Agency

Recommendations 03-39 and 03-40

Board of Supervisors

Recommendations 03-39 and 03-40

COUNTY HEALTH CARE

INTRODUCTION

The Grand Jury received no health care complaints during its term. However, in light of the state of the economy, reduced revenues from all sources and the \$35 billion budget deficit of the State of California, it was readily apparent the funding for public sector health care in Alameda County would be drastically reduced. The Grand Jury undertook an investigation of the impact of these potential reductions in the provision of health care services for the underinsured and uninsured residents of Alameda County. The Grand Jury also reviewed the efficiency of pharmaceutical procurement by the Medical Center.

During the course of its investigation, the Grand Jury interviewed the chief executive officers from the Alameda County Medical Center, La Clinica de la Raza, Asian Health Services, the Alameda Alliance for Health, and the chief operating officer of the Medical Center's ambulatory care clinics. The Grand Jury toured the critical care unit, which was still under construction, in the fall of 2002.

Much of the information received concerning reduced funding was based on preliminary proposals in the Governor's budget. Legislative action has not been taken as of the date of this writing.

HISTORY

Over 140,000 Alameda County adults between the ages of 19 and 64 years of age are uninsured and 53% of these are immigrants. Latinos comprise 38% of the uninsured, 18% are Asian, and another 18% are African-American. In Alameda County, only 41% of low and moderate income residents have job-based health coverage. Additionally, in 1999, nearly 1/3 of

the uninsured non-elderly adults in California reported that they did not seek medical care when needed because of cost.

In 2001, a UCLA survey stated that approx 17,000 (5%) of Alameda County's children (age 0-18 years) are uninsured. The overall uninsured non-elderly rate in Alameda County is estimated to be between 10% and 16%. This study was conducted before the downturn in the economy and the projected budget cuts.

In Alameda County the medically uninsured and underinsured receive services from two primary sources: the Alameda County Medical Center as well as independently run community based organizations such as La Clinica de la Raza and the Asian Health Center. Additionally, the Alameda County Alliance for Health facilitates access to a variety of medical services for residents in Alameda County.

Alameda County Medical Center

The Alameda County Medical Center (ACMC) provides public outpatient care at four clinics (Central Health Center, Eastmont, Winton and Newark) and two hospitals (Highland and Fairmont) serving 1,500 patients per day. Services include adult primary care, pediatrics, prenatal care, and health education, emergency and urgent care. Diabetes and hypertension are the most common diagnoses. Additional programs administered through the clinics include care for tuberculosis, communicable diseases and HIV. The ACMC works closely with the Public Health Department in providing 24-hour health care at Juvenile Hall.

Emergency and Urgent Care

The Alameda County Medical Center's emergency room, as part of the county trauma center, provides medical care services to the community and treats many uninsured who have no other medical resources. Alameda County is obligated to provide medical care for all residents.

Emergency room (ER) care is one of the most expensive methods of providing non-urgent treatment to uninsured residents of Alameda County. Triage is performed as soon as a patient is registered in the emergency room to determine the level of medical care needed. This allows the emergency room staff to provide appropriate levels of attention to each patient. For non-urgent care, patients may be referred to the appropriate APMC Highland campus clinic.

The medical center staff spends considerable resources treating non-urgent care patients who enter the emergency room. The patients who enter the ER for non-urgent treatment usually have limited prior medical contact, and the ER staff are forced to provide more extensive care because of the likelihood that the indigent patient will not seek follow-up care at one of Highland's clinics. This greatly increases the overall cost of the ER and the medical center.

Pharmaceutical Procurement

The use of pharmaceuticals is growing and is an underfunded portion of medical cost reimbursements. The Grand Jury reviewed the cost efficiency of pharmaceutical purchasing by the Alameda County Medical Center.

The APMC saves money in acquiring drug and medical supplies in four ways: 1) the APMC is a member of the University Hospital Consortium, and this group of 80 to 100 institutions uses its collective purchasing power to obtain the lowest purchasing price available in the industry; 2) the APMC receives free vaccines provided from the state for public health clinics; 3) a federally-backed program provides for the lowest cost pharmaceuticals to public health service outpatient pharmacies; and 4) the Pharmacy Indigent Care (PIC) program provides in excess of \$1 million of free pharmaceuticals to APMC.

It appears that APMC utilizes every available program to minimize drug costs. Nevertheless, the burden on the Medical Center is still increasing. Drug costs are rising rapidly. There is increasing use of new and more expensive drugs in medical treatment. Medical reimbursement through federal, state

and insurance sources has not kept pace with these changes. In addition, expiration of the PIC program on January 1, 2003 and reduced funding due to federal and state budget constraints have further exacerbated the problem of obtaining affordable pharmaceuticals for the indigent.

Community Based Organizations

Two of the largest Community Based Organizations are La Clinica de la Raza and Asian Health Services (AHS).

La Clinica de la Raza, established in 1971, is a non-profit corporation of community health centers providing health care services to a large, primarily Latino population base in East Oakland.

With some 70% of its population uninsured, La Clinica provides services on a sliding scale basis and is funded through a combination of sources, including 65% from state and federal funds and 21% from MediCal. The remainder comes from client payments, grants, and cost reimbursements for its insured clients. The CEO indicated that the Latino population was the most likely to be uninsured as they tend to be employed in low wage jobs without health benefits.

La Clinica serves approximately 30,000 clients and provides some 125,000 primary care visits per year. La Clinica de la Raza has a budget of \$28 million, has 400 employees, and is ranked as the 5th largest non-profit organization in the region.

La Clinica provides services at three sites: La Clinica de la Raza, Clinica Alta Vista (a teen clinic), and San Antonio Neighborhood Health Center. La Clinica also operates a school-based clinic at Hawthorne-Whitton Elementary School.

Asian Health Services, located in Oakland's Chinatown area, provides clinical services, health education, special programs, and support services to the Asian and Pacific Islander population in Alameda County. AHS currently services approximately 13,500 clients, resulting in 55,000 visits per year. It has a \$12 million budget to support a staff of 130, including 12 physicians.

Approximately one quarter of its clients are uninsured, 66% are below poverty level, and 90% do not speak English. Of the uninsured, 65% are working, but not covered by employer health care benefits.

Alameda Alliance for Health

Established in 1994, the Alameda Alliance for Health (Alliance) is a managed care plan serving more than 80,000 county residents. The Alliance provides medical, dental, and mental health care benefits from a network of public and private providers and provider organizations including over 1,300 physicians, 15 hospitals, 26 community health centers and more than 170 pharmacies.

The stated purpose of the Alliance was to develop and implement a plan for Alameda County that improves access to quality health care services and competes with the managed care industry. Several Alliance programs assist the targeted population:

- Alliance Family Care is a comprehensive solution to providing health and dental coverage to low-income children and their families.
- Alliance First Care is an affordable individual health plan that also includes dental coverage.
- Alliance Group Care, the Alliance's only group plan, covers in-home supportive services workers in the county.

FINDINGS

Financial issues are a major concern for all county health providers. Cuts at the state and federal levels decrease the amount of money available to the county. At the same time there is a rise in the uninsured population, further straining the delivery of health care services. As a result of proposed cuts in MediCal eligibility and scope of coverage, La Clinica and the Asian Health Center will be negatively impacted.

La Clinica projects a \$2 million funding reduction. Currently proposed state cuts will come in the area of some MediCal services, which include dentistry, podiatry, optometry, and mental health services. These services are now funded either through a 50/50 state-federal match or 100% by the state.

In addition, more restrictive MediCal eligibility will substantially reduce reimbursements for provided services. La Clinica expects that, for the most part, child health services will remain intact.

Asian Health Services is expecting a \$600,000 deficit this year as a result of state budget cuts. This may threaten the opening of a new dental facility. Changes in state eligibility requirements for recipients will impact the number of clients served and the funding available for services.

The state's massive current and projected deficits will result in significantly decreased funding for Alameda County health programs. These decreases include:

- Reduced funding for MediCal county administration, with Alameda County suffering a \$1.2 million decrease;
- Elimination of advertising for MediCal Healthy Families Program and grants to community based organizations;

- The governor's veto of the Legislature's \$22.1 augmentation for a 2-month bridge from MediCal to the Healthy Families Program for parents and children.

The Alameda Alliance for Health is projecting a \$5 million loss for the current year and has adjusted its budget accordingly. In an attempt to continue coverage, the Alliance has established a provider network. With the Alliance's mixed model network, including a continuum of direct solo physician contracts, Alliance members have choices in their health care. However, the Alliance still has problems recruiting specialty physicians in areas such as rheumatology, orthopedic surgery, dermatology, neurology and urology. There is also a shortage of physicians willing to contract in the Tri-Valley area. The high cost of living in the Bay Area and concerns regarding the financial viability of provider groups affect the recruitment of physicians. The Alliance may respond to budget cuts by reducing or eliminating coverage.

The major provider of health services for the under- and un-insured is the APMC. Unlike the community-based organizations, the APMC is obligated to provide medical services regardless of budget cutbacks. The cutbacks faced by the community-based organizations will result in an increased service burden at APMC. However, the APMC itself is facing severe cutbacks. Major cuts to both inpatient and outpatient services have already been approved for the Fairmont facility. Substantial reductions and services are also expected at the APMC itself which will further limit access to County health care services.

CONCLUSION

An estimated 44 million Americans are without health insurance in the United States. This issue needs to be addressed at both the national and state level and requires sufficient resources and adequate funding. However, the immediate day-to-day effects of the health care crisis remain with the county.

The increase in number of uninsured and underinsured, the state budget deficit, and lack of health care reform will put overwhelming pressure on local organizations such as the Alameda Alliance for Health and all of its subprograms. Reduction of MediCal enrollment and coverage, closure of the ACMC clinics and elimination of previously covered services does not reduce the needs of the people who will still seek health care, wait longer and have more critical health needs. These patients can rapidly overload the ER and this will impact the ability of the ACMC to respond to large-scale disasters, natural or otherwise.

The burden will fall upon Alameda County, as the provider of last resort, which faces the problem of reduced funding and greater demand.

The Grand Jury encourages the staff of the ACMC to continue addressing all issues associated with uninsured patients who use the emergency room as their primary source of medical care.

The Grand Jury is impressed with the quality of the leadership of the organizations interviewed. Nevertheless, the widening gap between resources and need will have a negative impact on the health of all citizens of Alameda County.

RECOMMENDATIONS

None.