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MEMORANDUM

March 17, 2006

**Response to Editorial
“Grossmont Union seeks to quiet its own board members,”
Published by the Union Tribune (“UT”) on March 16, 2006**

This memorandum addresses numerous factual inaccuracies related to proposed revisions to Board Bylaws, set forth in the editorial captioned “Grossmont Union seeks to quiet its own board members,” published by the Union Tribune (“UT”) on March 16, 2006. We do not address the numerous inaccurate factual assertions that, although made in the editorial, are not related to the proposed revisions to Board Bylaws.

The editorial claims generally that the Grossmont Union High School District has tried to change school board bylaws to limit trustees from obtaining information about district affairs, sharing that information with the public, or even from visiting school campuses without the superintendent being notified.

Below we address specific erroneous, incomplete or misleading statements in the order in which they appear in the editorial.

I. **Assertion: “Under the proposed changes, board members would be denied access to legal counsel at district expense. Only board President Jim Kelly and Superintendent Terry Ryan would be allowed access to district counsel. In some cases, board members would not necessarily be privy to the district counsel’s advice on district matters.”**

Response: The description of the purpose and effect of the proposed revisions to the board bylaw addressing access to legal counsel is inaccurate and misleading.

The editorial is likely referring to proposed revisions to Board Bylaw 9124, which would add the underlined language to that bylaw:

The Superintendent may confer with the District’s legal counsel at his/her discretion and shall provide the Board with desired legal information when so directed by a majority of the Board. The Board president may also confer with legal counsel when the Superintendent is unavailable or when deemed expedient by the Board president. By majority vote, the Board may authorize a specific Board member or members to confer with legal counsel on behalf of the Board regarding a particular subject or subjects.

First, it should be noted that it is not uncommon for school district governing boards to enact regulations limiting access to legal counsel at district expense. It is well established that individual board members have no authority to act on behalf of the school board without the permission of (a majority of) the school board. Furthermore, individual board members cannot commit a school district to any policy, act or expenditure, absent permission of (and, in some cases, ratification by) the school board.

The proposed revisions to BB 9124 are intended to clarify conditions under which legal services may be obtained, to avoid duplication of effort, control costs and prevent Board members or administration from using legal counsel for cross-purposes. The reference to providing “desired legal information when so directed by a majority of the Board” is taken directly from the California School Boards Association model board bylaw (of the same number), and is intended to address conditions under which the Superintendent would be required to solicit a legal opinion. That board bylaw is not intended to control dissemination of a legal opinion or other materials obtained from legal counsel.

Specifically, under existing BB 9124, the Superintendent is authorized by the Board to confer with legal counsel at his discretion. The addition of the phrase “and shall provide the Board with desired legal information when so directed by a majority of the Board” clarifies that the Superintendent may be directed by the Board majority, but should not be directed by a single Board member, to confer with legal counsel.

Under revised BB 9124, the Board President is also authorized to confer with legal counsel, in his/her discretion. This is essentially similar to Board Policy 9220 of Sweetwater Union High School District, the other large high school district in San Diego County, which allows the board or the board president to authorize a specific member to confer with the district general counsel on behalf of the board. It is not strange or unusual for such authority to be delegated by the school board to the board president, while not vested in other board members. In fact, school districts commonly limit access to legal counsel in the manner and for the reasons described above. We believe the revisions to BB 9124 are reasonable and find the editorial’s description of the purpose and effect of the proposed revisions inaccurate and misleading.

II. Assertion: “Another proposed change would hamper board members or the public from having items placed on future meeting agendas.”

Response: The description of the purpose and effect of the proposed revisions to the board bylaw addressing placement of items on future meeting agendas by board members or the public is inaccurate and misleading.

The editorial is likely referring to proposed revisions to Board Bylaw 9124, which would add the underlined language to, and delete the stricken language of, that bylaw:

Ordinarily, tThe request must be in writing and submitted to the Superintendent with supporting documents and information, if any, at least 14 days before the scheduled meeting date. However, the Board president and the Superintendent shall determine the

specific meeting at which the item will be presented, which shall be within a reasonable period of time following the request.

Rather than hamper board members or the public from having items placed on future meeting agendas, the proposed revisions to Board Bylaw 9322 will increase District responsiveness to requests that items be placed on the Board agenda. Current Board Bylaw 9322 imposes a rigid 14-day advance notice requirement and grants unfettered discretion in the Board President and Superintendent to determine at which of any future meeting a matter is placed on the agenda. The proposed revision to BB 9322 removes the rigidity of the absolute 14-day rule, and requires that matters be placed on the agenda of a public meeting within a reasonable period of time following the request, thereby removing the unfettered discretion of the Board President and Superintendent.

This revision recognizes the administrative need for advance notice of matters (with which the administration may be wholly unfamiliar) to be placed on the agenda by the public, and the reality of Board business that sometimes matters (whether originating from the Board, administration or the public) must be deferred based on the volume of other, more pressing business. Given that “agendizing” of items is governed by a “reasonableness” standard, matters should be placed on the agenda for the next regular board meeting, if practicable. Administration will not always need 14 days of lead time. However, there will be times when the Board President and Superintendent will have legitimate reasons to defer a matter to a later meeting – which ordinarily should be the next regular Board meeting.

Contrary to editorial’s claim that the above-described proposed revisions would hamper board members or the public from having items placed on future meeting agendas, the proposed revisions to Board Bylaw 9322 will make the District more responsive.

III. Assertion: **“To protect their constitutional rights to freedom of speech – and the public’s – two Grossmont trustees have taken the extraordinary step of retaining personal counsel at their own expense.”**

Response: As explained herein, none of the proposed revisions to the Board Bylaws unlawfully restricts the free speech rights of Board members or the public. However, it is agreed that retention of personal legal counsel is an extraordinary step. Concerns and disagreements over revisions to board bylaws are ordinarily resolved through discussion during first and second public readings, and during debate prior to final action.

IV. Assertion: **“Each of these (proposed revised) policies is designed to silence board members and our freedom of speech,” said trustee Larry Urdahl, who along with Priscilla Schreiber, has retained the firm of Currier & Hudson.**

Response: A review of each proposed revision to Board Bylaws reveals that the revisions are not intended to, and do not actually, silence Board members or infringe upon their First Amendment rights. The vast majority of proposed revisions were necessary due to changes in the law or intended to align existing Board Bylaws more closely with CSBA models.

Although no facts are described in the editorial to support the above assertion, through their attorney, Mr. Urdahl and Ms. Schreiber have expressed concern that proposed revisions to Board Bylaw 9011 evince an improper attempt to restrict the rights of individual Board members to disclose information to the public by classifying as “confidential” all information acquired as part of a Board member’s official duties. Such concern is unfounded.

A proposed revision to BB 9011 would add the underlined sentence as an introduction to that bylaw:

The Governing Board recognizes the importance of maintaining the confidentiality of information acquired as part of a Board member’s official duties. Confidential/privileged information and records may be released only as allowed by law.

This proposed revision incorporates the language of the model CSBA bylaw. It is not intended to, and does not, have the effect of classifying as “confidential” all information, including otherwise non-confidential information, received by a Board member in the course of official duty. To the contrary, use of the word “maintain” in the phrase “maintaining the confidentiality of information” limits the scope of information covered by the bylaw. The word “maintain” means “acts to prevent a decline, lapse or cessation from existing state or condition.” (*Black’s Law Dictionary*, Sixth Edition.) It is impossible to “maintain” non-confidential information in a confidential state – as that would require a change to the existing state of the information. Only confidential information can be “maintained” confidential. Further, the intent to only prohibit disclosure of confidential information is obvious from the balance of the revised Bylaw. Therefore, despite suggestions to the contrary, the proposed revisions to BB 9011 do not amount to an inappropriate attempt to restrict the rights of individual Board members to disclose non-confidential information to the public.

V. Assertion: **“Schreiber has been pressing for two years for an audit of board policies and a board workshop to review them. To her surprise, substantive changes in the 57 pages of board bylaws surfaced at the February meeting without any formal board request.”**

Response: Introduction of proposed revisions to Board Bylaws is consistent with Ms. Schreiber’s prior requests for an audit of Board policies and should not be a surprise, based on discussion occurring during the previous public meeting. During the public Board meeting on January 18, 2006, while discussing proposed changes to Administrative Regulation 4119 “Sexual Harassment,” Ms. Schreiber questioned the need for revisions to existing policies on sexual harassment. Board president Jim Kelly responded with reference to Ms. Schreiber’s previous request for review of Board Policies “to make sure they are up to date.” During discussion on that same topic, Dr. Terry Ryan stated that the District’s attorney would “be bringing back the bylaws of the Board,” and that they would be reviewed “systematically.” He also referred to Ms. Schreiber’s own request for review of all Board Policies. Each of those comments was recorded on video tape and is available for review.

Based on Ms. Schreiber’s own request and the discussion during the prior Board meeting, Ms. Schreiber should not be surprised that revisions to the Board bylaws were introduced for a first reading at the February Board meeting.

Additionally, no “formal board request” was required, or should have been expected, to place this matter on the agenda. The vast majority of District business is conducted after it is placed on the agenda by the Superintendent, working with the Board president to set the Board agenda, pursuant to Board Bylaw 9322. Matters may also be placed on the agenda based on a request by a Board member during a public meeting, or pursuant to the public’s right (which a Board member shares) to place matters directly on the agenda. (This is also addressed in BB 9322 and Education Code section 35145.5.) In fact, a “formal board request” for placement of a matter on the agenda, which phrase implies formal board action, would be relatively rare.

VI. **Assertion: “Last week, Kelly tried to bring the changes to a final vote but without a thorough public discussion.”**

Response: President Kelly followed accepted procedure for introducing the matter of proposed revisions to Board Bylaws at the meeting of March 9, 2006, which would have provided an opportunity for thorough public discussion before Board action.

During the public Board meeting on March 9, 2006, President Kelly introduced the matter agendized as “Approval of Revisions/Additions/Deletions to Governing Board Bylaws.” According to Roberts Rules of Order and District practice, the Board president opens a matter for debate only when a motion is pending (usually after a motion and a second). Therefore, in the ordinary course of its business, a Board member must move for a final vote on a matter prior to public discussion. However, after a motion and second, the matter is subject to debate. Thus, the matter of the proposed revisions, additions and deletions to Governing Board Bylaws would have been subject to public debate, as well as subsidiary motions, such as motions to amend, commit or postpone. Further, although in most matters, the Governing Board is authorized to take action at the meeting during which the matter is first introduced, revisions to Board Policies and Bylaws are usually subject to a first and second reading. In this case, the revised Board Bylaws had been subject to a “first reading” and introduced for discussion during the previous Board meeting. As a result, this matter was properly introduced and could have been subject to thorough and vigorous public discussion at the March 9th meeting. However, almost immediately after its introduction, Ms. Schreiber brought a motion intended to postpone consideration of the matter, which passed 4 to 1, with Mr. Kelly casting the only vote in opposition. The matter was addressed in a manner that was procedurally correct, was properly postponed, but would have been afforded whatever level of debate Board members chose to pursue.

VII. **Assertion: “Kelly, now in his fourth year as president, refused to allow any name to be placed in nomination against him at the December board election.”**

Response: When the Board considered election of officers for 2006, a question arose regarding proper procedure for nominations and voting. Citing Board Bylaw 9120, Ms. Schreiber and Mr. Urdahl expressed their belief that Board members should be allowed to make all nominations for an office before any vote was taken. In fact, Mr. Urdahl actually nominated Ms. Schreiber for the office of Board President after Mr. Nehring nominated Mr. Kelly. Ms. Schreiber and Mr. Urdahl also appeared to take the position that each Board member should be allowed to vote, by name, for any nominee, rather than successive votes on individual nominees

(as in the usual motion/vote pattern). Mr. Kelly indicated that he had never witnessed a Board election conducted in that manner and was inclined to receive nominations one at a time and vote on each before receiving further nominations. Legal counsel supported Mr. Kelly's interpretation and stated that, should the first nominee not obtain a majority vote, the subsequent nominations could be received and voted on. However, after a majority vote in favor of Mr. Kelly, the nomination of Ms. Schreiber was moot.

The Board substantially complied with its own Bylaws and *Roberts Rules of Order*. Although there was some question as to their propriety, nominations of more than one candidate for Board President were made before the election. The vote was taken on the first nominee, with an understanding that, if that nominee failed to obtain a majority vote, the Board would vote on subsequent nominees. However, Mr. Kelly received a majority and the voting ended.

Mr. Kelly implemented the correct voting procedure. Board Bylaw 9120 states "vote shall be by voice," which is a reference to a *viva voce* election. Under Robert's Rules of Order, a *viva voce* election is conducted one candidate at a time, in the order in which they were nominated, until one is elected. ("When there is more than one nominee for a given office in a viva-voce election . . . the candidates are voted on in the order in which they were nominated." *Robert's Rules of Order*, §46, p. 428.)

VIII. Assertion: **"It was Keeler who wrote the proposed bylaw changes, one of which would effectively block consideration of competing nominations and perpetuate Kelly's rule indefinitely."**

Response: Contrary to the above assertion, the revisions to Board Bylaw 9120 expressly allow consideration of competing nominations, consistent with usual voting procedures set forth in Robert Rules of Order (described immediately above), and would not benefit any one nominee.

The proposed revisions to Board Bylaw 9120 would add the underlined language to that bylaw, as follows:

The election of each officer shall be conducted as follows:

1. Open nominations. All nominations shall be received before a vote is taken on any one candidate.
2. Seconds are not required, but may be made if desired.
3. Vote shall be by voice.
4. If there is more than one nominee for an office, the election is conducted one candidate at a time, in the order in which they were nominated, until one is elected by majority vote.
45. A majority vote of total Board membership is required for election.

Therefore, under the revised Board Bylaw, all nominations must be received before any vote is taken on a candidate. Candidates are voted on, in the order in which they are nominated, consistent with Robert's Rules of Order (§46, p. 428). The foregoing is intended merely to clarify the existing Board Bylaw and would not benefit any one candidate.

IX. Assertion: **“Trustee Urdahl said that when he tried to familiarize himself by visiting district schools in October, ‘the scene turned ugly.’”**

Response: The foregoing conveys insufficient information to permit an intelligent response.

X. Assertion: **“The district superintendent says the surprise bylaw changes were introduced because of Schreiber's urging. Given her comments at the board meeting and her motion to postpone, that does not ring true.”**

Response: Dr. Ryan did not refer to the proposed Board Bylaw revisions as “surprise bylaw changes,” and did not claim that they were introduced at Ms. Schreiber’s “urging.” As described in Section V., however, introduction of proposed revisions to Board Bylaws is consistent with Ms. Schreiber’s prior requests for an “audit” of Board policies and should not be a surprise, based on the comments of President Kelly and Dr. Ryan, directed to Ms. Schreiber, during the previous public meeting.

XI. Assertion: **“C. Anne Hudson, who represents Urdahl and Schreiber, said each board member has First Amendment rights of his own and also on the basis of the people who elected him or her. If the board restricts their ability to participate fully, civil rights procedures can be brought to bear.”**

Response: Clearly individual Board members have First Amendment rights and statutory rights and duties related to their elected office. The Governing Board has taken no action, and no revisions to Board Bylaws have been proposed, that would restrict the ability of any Board member to exercise his or her First Amendment rights or participate fully as a Board member of the Grossmont Union High School District. Neither the editorial, nor any Board member, directly or through an attorney, has identified any proposed revision to Board Bylaws that would violate such constitutional or statutory rights.

XII. Assertions: **“Should we chalk this up as just another unseemly chapter in the history of a dysfunctional district under the leadership of board President Kelly and Superintendent Ryan? Perhaps. But what is truly troubling is that now there is an effort to keep some trustees – as well as the public – in the dark about the education of 24,000 East County high school students.”**

Response: The Governing Board has taken no action, and no revisions to Board Bylaws have been proposed, that are intended to or would have the effect of keeping some trustees, or the public, in the dark about the education of 24,000 East County high school

students. Neither the editorial, nor any Board member, directly or through an attorney, has identified any proposed revision to Board Bylaws that would have such an effect.

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