

AGENDA
Board Audit Committee
6:30 PM
April 3, 2012
Superintendent's Conference Room
East Side Union High School District Education Center
830 North Capitol Avenue
San Jose, CA 95133-1398

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

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

2. **Introductions**

3. **Adopt Agenda**

4. **Special Order of Business**

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

5. **Public Comments**

Members of the public may address the Audit Committee on any subject not on the agenda; however, provisions of the Brown Act (Government Code 54954.2(a) and 54954.3) preclude any action. As an unagendized item, no response is required from the Audit Committee or district staff and no action can be taken; however, the Committee may instruct the Chair to agendize the item for a future meeting.

6. **Approval of Minutes**

Action: Minutes from the November 19, 2011, meeting will be presented for approval.

Internal Auditor Work Plan

7. **Discussion/Action: FCMAT Report: Update on Status of Action taken in Response to the FCMAT Extraordinary Audit Report**

Ian Marsh, Internal Auditor, will review action taken by the Administration in response to the recommendations included in the FCMAT report.

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

Ian Marsh, Internal Auditor, may present an update on his reviews of Measure G & E General Obligation Bond Funds.

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

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

10. **Discussion/Action: Cash Handling**

Ian Marsh, Internal Auditor, may present findings and recommendations for action related to policies and procedures for cash handling at school sites.

11. Discussion/Action: Fraud, Waste and Abuse Hotline

Ian Marsh, Internal Auditor, will report on the status of the Fraud, Waste and Abuse Hotline, which was approved at the August 30, 2011, Board meeting.

12. Discussion/Action: Inventory of Fixed Assets; Information Technology Equipment Additions and Disposals

Ian Marsh, Internal Auditor, will report on District procedures for the tagging and recording of fixed asset additions and retirements, with an emphasis on Information Technology equipment.

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

Ian Marsh, Internal Auditor, will report on other items brought to his attention. Members of the Audit Committee or the public may also make suggestions at this time.

Possible work plan additions include records retention procedures, controls over the purchase and usage of diesel and petrol, and guidelines for Booster Groups.

External Auditor

14. Discussion/Action: Update by External Auditor regarding East Side Union High School District

Ahmad Gharaibeh, External Auditor, will provide an audit update to the Committee.

District Administration/Superintendent

15. Discussion/Action: School Site Cash Handling

Dan Moser, Superintendent, will present an update regarding recommended administrative regulation for the handling of cash at school sites.

16. Discussion/Action: Legal Expenditures

Dan Moser, Superintendent, will present an update regarding recommended administrative regulation related to authorization of legal expenditures.

17. Discussion/Action: Conflict of Interest

Dan Moser, Superintendent, will present information regarding the conflict of interest statement it relates to Board Policy 3600.

Audit Committee Business

18. Discussion/Action Future Meetings

Under this item the Audit Committee may schedule future meeting dates and times.

19. Superintendent Communications/Comments

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

20. Audit Committee Member Comments

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

21. Adjournment

EAST SIDE UNION HIGH SCHOOL DISTRICT

Minutes of Meeting

Unapproved

ITEM 6

Board Audit Committee

November 19, 2011

9:00 a.m.

East Side Union High School District

Education Center

Superintendent's Conference Room

830 Capitol Avenue San Jose, CA 95133-1398

1. Call to Order /Roll Call

The meeting was called to order by Chair Biehl at 9:02 a.m. Present were Vice Chair Martinez-Roach, Member Berg, Member Juchau, Member Neighbors, and Alternate Member Gonzalez.

Staff members in attendance were:

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

Presenters:

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

Members of the public in attendance were:

- *Jon Reinke*
- *Bill Masching*

2. Introductions

Persons present at the meeting introduced themselves.

3. Adopt Agenda

Motion by Member Berg, second by Member Neighbors, to adopt the agenda as presented.

Vote: 5/0

4. Special Order of Business

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

There was no special order of business.

5. Public Comments

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

None

6. Approval of Minutes

Action: Minutes from the September 10, 2011, meeting will be presented for approval.

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

Vote: 5/0

Internal Auditor Work Plan

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

Ian Marsh, Internal Auditor, will review all actions taken by the Board and the Administration in response to the recommendations included in the FCMAT Report. He will provide the Committee with a copy of the district's conflict of interest form.

Superintendent Moser indicated that the close out letter issued by the Santa Clara County Office of Education expressed that the district maintains its diligence in following the recommendations from the FCMAT report. The report was orally presented to the County Board of Education. Chair Biehl, Vice Chair Martinez-Roach, and Superintendent Moser attended the meeting at the County Office of Education. They were permitted to provide oral input to the report.

East Side Union High School District
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Internal Auditor Marsh indicated that the audit states that the district failed to obtain or obtained late conflict of interest statements from independent contractors. Board Policy states that independent contractors shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee depending on the range of duties to be performed by the consultant. This does give the Superintendent discretionary power. The County Office took the position that they expect to see conflict of interest statements on file for all independent contractors. Item 7c is an updated version of the conflict of interest statement the district is requiring contractors to sign. For contractors performing multiple contracts, it is sufficient to have one conflict of interest statement on file.

Item 7(d)1: Internal Auditor Marsh indicated that the district (Business Office) is putting vendors on notice that, if they are non-compliant in terms of the detail they provide on invoices, they will not be paid.

On October 11, the district's General Counsel gave a 3-4 hour Contract Practices Workshop. Attendance was mandatory for all Principals and many district staff. The workshop covered non-compliance contract issues raised by the County Office.

Discussion was held regarding item number four on Conflict of Interest Statement.

External Auditor Gharaibeh indicated that item number 4 on the Conflict of Interest Statement is filled out by the consultant. He feels that the reporting disclosure is required by the Board and management, not the consultant.

Vice Chair Martinez-Roach requested that the item be tabled for further discussion at the next meeting. She asked that the Conflict of Interest Statement be reviewed by Associate Superintendent Battle and Legal Counsel. She also requested that the district seek an opinion from CSBA or someone who has experience with this type of regulation. The language on the document should be specified on process/reporting requirements for Board Members.

Chair Biehl agrees with Vice Chair Martinez-Roach. The document needs to be reviewed by staff, in consultation with the External Auditor and Legal Counsel. The intent is to stay in conformance with FPPC law.

External Auditor Gharaibeh stated that item four precludes a consultant from disclosing information; the requirement should be to disclose information. He also indicated that it is management's decision as to how much and what threshold should or should not be to

disclose and who discloses it. Board Policy states it is the Superintendent's discretion as to which contractor should be submitting a Conflict of Interest Statement.

The following decisions need to be made:

- 1. Who reports it?*
- 2. Certification of threshold?*
- 3. Not to preclude it*

Chair Biehl indicated that we need to find out what the common practice is and follow that common practice.

Member Neighbors asked if item number five covers an employee who helps to get a contractor approved by the Superintendent and Board and then the employee retires and goes to work for the contractor. If it does not, should it be looked into?

Chair Biehl indicated this item will be brought back at the next meeting for further discussion. It will be placed under Superintendent's section of the agenda titled: Conflict of Interest Statement

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

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

Internal Auditor Marsh discussed the arson fire at the Foothill High School Library in August 2006. Citing an emergency, the Board approved a design-build, not to exceed \$2.4 million with an established district contractor. Architectural plans approved by DSA specified douglas fir to be used for the framing. For the glued laminated applications, redwood was specified by the architect for exterior trim applications. During construction, the contractor cited concerns over cost and asked if cedar could be substituted for redwood for the exterior applications. It was approved by the architect.

All invoices were reviewed and did not show use of redwood, only douglas fir and cedar. It was concluded that the district was appropriately billed for each type of lumber and that staff and the contractor followed appropriate procedures.

Internal Auditor Marsh will report his findings at the next CBOC meeting.

Internal Auditor Marsh also mentioned the review of the contract with SGI, specifically the section relating to accounting records – program management. “For recordkeeping and audit purposes, the program manager shall keep records of all work performed, invoices prepared and paid for a minimum of three years after contract termination or expiration. On request by the district or any state agency, such records shall be made available within five working days.”

Internal Auditor Marsh indicated that this is a significant issue because Accounts Payable shreds records after four years. OPSC recommends that records be kept for seven years, but it is not mandated.

Superintendent Moser indicated that the district has been very diligent in obtaining the records.

Administration is reviewing a renewal contract with SGI, which includes additional language and records retention is one area of the contract that is being reviewed.

9. Discussion/Action: Attendance Reporting

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

Internal Auditor Marsh is continuing his review of attendance at various sites. This week he visited Foothill and Silver Creek with Attendance Accounting Manager Nadia Davis. There are some ongoing issues, such as a few teachers who fail to take attendance. Weekly attendance registers are not always signed and dated promptly. These issues have been discussed with administration.

Ian will continue to follow up with administration on this area.

10. Discussion/Action: Fraud, Waste and Abuse Hotline

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

Internal Auditor Marsh shared with the Committee that the fraud, waste and abuse hotline is almost ready to go live. A link to the hotline portal will be placed on the district’s website, which will include a hotline telephone number.

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

Ian Marsh, Internal Auditor, will report on any other items that he is investigating and present recommendations for additions to the Internal Auditor's work plan. Members of the Audit Committee or the public may also make suggestions at this time. Possible additions to the Internal Auditor's work plan include a review of the district's records retention policies and related administrative regulations.

Chair Biehl suggested that the investigation surrounding retention, access and destruction of records be added as an area to the Internal Auditor's Work Plan, which includes the development of an Administrative Regulation and Board Policy.

Motion by Vice Chair Martinez-Roach, second by Member Berg, to add to the Internal Auditor's Work Plan the investigation surrounding retention, access and destruction of records, including the development of an Administrative Regulation and Board Policy.

Vote: 5/0

Vice Chair Martinez-Roach out of room.

Alternate Member Gonzalez participated in vote due to Vice Chair Martinez-Roach out of room.

Internal Auditor Marsh discussed the use of the district's tax identification number by booster clubs. He indicated that they are independent of the district. It was suggested that a Board Policy and Administrative Regulation be developed regarding booster clubs.

Chair Biehl indicated that this item will not be added to the Internal Auditor's Work Plan, but that administration will follow up and update the Committee on this item.

Internal Auditor Marsh shared with the Committee an ASB presentation he recently made to the Student/Board Relations Committee. The students asked questions and found the information useful.

External Audit

12. Discussion/Action: East Side Union High School District Extended Audit (2009/2010 & 2010/2011)

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

External Auditor Gharaibeh indicated that as of the final phase of the audit, there will be no additions from what was reported at the last meeting. The interim phase of the audit had findings in special education IEPs; ASB monies / lease of facilities in ASB accounts; School Accountability Report Card (SARC) as it relates to William Settlement reporting / evaluation by County Office of Education and what is reported on the website. They are still following up with the district on time certification to Federal Programs; this item has not been finalized. In summary there is a potential of having four findings on the audit:

1. *Special Education IEPs*
2. *Associated Student Body Account (ASB)*
3. *School Accountability Report Card (SARC)*
4. *Time Certification – Federal Programs*

13. Discussion/Action: Leasing of Facilities

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

External Auditor Gharaibeh stated that monies collected from lease of facilities were being deposited in ASB accounts. Monies collected from use of facilities are to be separated from ASB funds. During the interim phase of the audit, it was discovered that a school had \$80k - \$90k in their ASB account. When they returned to the site for the final audit, their findings show that the monies were submitted to the district. A bank account was established by the district and central procedures were established by the district. There has been significant progress as it relates to funds collected as a result of facilities use.

District Administration/Superintendent

14. Discussion/Action: Carnival Policies and related Issues

Dan Moser, Superintendent, will report on the status recommended policy and administrative regulation modifications related to “Carnivals” and similar activities on school sites.

Superintendent Moser stated that amended Board Policy 1330 Use of School Facilities was adopted by the Board at their last meeting. The policy covers the permission and process for use of facilities. Carnivals will require approval by the Board of Trustees.

15. Discussion/Action: School Site Cash Handling

Dan Moser, Superintendent, will present a recommended administrative regulation for the handling of cash at school sites.

Superintendent Moser presented the following drafts:

- *Board Policy 3314.4 Clearing Fund*
- *Administrative Regulation 3314.4 Clearing Account*
- *Board Policy 3452 Student Activity Funds*
- *Administrative Regulation 3452 Student Activity Funds*

The Superintendent and Internal Auditor will be meeting to review the draft Board Policies for submission to the Board of Trustees in January for a first reading. They will also meet to review the draft Administrative Regulations for submission to Cabinet for approval.

Item will remain on agenda for further discussion/update.

16. Discussion/Action: Legal Expenditures

Dan Moser, Superintendent, will present a recommended administrative regulation related to authorization of legal expenditures.

Superintendent Moser and Internal Auditor Marsh will be meeting to continue reviewing and working on the language for Administrative Regulation 3360 Purchase of Legal Services. Once finalized, it will be presented to Cabinet for approval.

Item will remain on agenda for further discussion/update.

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

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

Superintendent Moser provided an update on the status of outstanding IEPs. There are approximately 300 outstanding IEPs. Efforts are being made to continue to reduce the numbers. A year ago, the outstanding IEPs were 700-800. The district has started to go through progressive discipline with staff for not complying with the required submission of IEPs.

Audit Committee Business

18. Discussion/Action: Annual Review of Audit Committee Charter

Chair Frank Biehl will report on the actions the Board took in response to the recommended changes to the Audit Committee Charter.

Chair Biehl indicated that the Audit Charter has gone through two readings. The first reading had suggestions for minor changes to the language in the Charter. Suggestions made were:

- *The notification process for the appointment process for public members be posted at least 30 days prior to appointment date.*
- *If a vacancy among voting members occur, the Board may appoint the alternate public member to serve in the vacant position.*

The Charter was adopted by the Board of Trustees at their November 17, 2011, Board meeting. The revised Charter will be posted on the Audit Committee's website.

19. Discussion/Audit Committee Member Appointment Process

Chair Frank Biehl will review the process for appointing members of the Audit Committee.

Chair Biehl indicated that members, whose two-year terms are expiring soon, are eligible to reapply to serve on the Audit Committee. The term of the alternate member is a one-year term. The Audit Committee Chair and Vice Chair, who are appointed at the December 2011 Board Meeting, will work with the Superintendent's Office to post the vacancy announcement 30 days in advance of the appointment date – January Board Meeting.

20. Discussion/Action Future Meetings

Under this item the Audit Committee may schedule future meeting dates and times.

A suggestion was made that the next meeting date be scheduled on March 3, 2012. The Chair and Vice Chair, who will be appointed in December, will establish the next meeting date.

21. Superintendent Communications/Comments

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

There were no comments under this section.

22. Audit Committee Member Comments

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

Member Neighbors said that this is the last meeting of his appointed term. He stated the following, "It has truly been a pleasure to be involved in this process. At the end of my term, I know that I am leaving this district in very good hands and that people are passionate about serving the children of our community I wish you all well and to carry on with the work that you are doing."

Alternative Member Gonzalez thanked Chair Biehl and Vice Chair Martinez-Roach. The work that the Audit Committee has done is amazing and he hopes that this work will be taken to other school boards across the Country.

Chair Biehl expressed his thanks to the members of the Committee, staff and members of the public who have diligently attended the Audit Committee meetings on Saturday mornings. He stated that significant progress has been made on issues. Everyone has worked cooperatively together to move things forward. This Audit Committee is going to be a State model as to how an audit committee and a district should operate on fiscal policies.

23. Adjournment

Chair Biehl adjourned the meeting at 12:04 p.m.

Respectfully submitted,

Lan Nguyen, Board Audit Committee Chair

East Side Union High School District

Internal Audit - Revised Work Plan FY 2011-12

Approved by Board December 8, 2011

1. FCMAT Special Audit - completed
2. Facilities Development Measure G and E Bonds
 - Review expenditures charged to Measure E and conclude whether they are in accordance with authorizing language.
 - Review sub-contracting practices. Examine whether primary contractors in bid documents appropriately disclose intentions to hire sub-contractors.
 - Review the District's Project Management agreement with Seville Group, Inc. Evaluate whether SGI is fully in compliance with it, and the contract's language is appropriate to the work performed.
 - Review whether project revenues and expenditures recorded in the QSS General Ledger system agree with the numbers reported to the CBOC and District management.
 - Review allowable expenses charged by contractors (including office supplies, office equipment, travel, transportation, administrative fees, utilities, repairs and administrative support) for reasonableness and compliance with contracts.
 - Respond to inquiries from the CBOC and community at large re bond expenditures.
3. School Site Cash Handling
 - Review Associated Student Body compliance with Board Policies, Administrative Regulations, Education Code and FCMAT guidelines.
 - Review procedures to record District revenues, including fees, fines, donations and facility rental income.
4. Attendance Reporting
 - Review Incomplete Teacher Attendance Reports to ensure all teachers who fail to record attendance are contacted daily no later than the last period.
 - Review Caller Reports to ensure parents of missing students are called daily immediately following Period 3 before Tele-parent calls are sent.
 - Review Weekly Attendance Registers to ensure they are run each Friday afternoon after all attendance is posted, completed and returned to the Attendance Office no later than the following business day.
 - Review Single Period Attendance reports. Ensure they are printed each Friday afternoon, completed and returned to the Attendance Office no later than the following business day.
 - Review Substitutes' Rosters to ensure they match the postings in the Infinite Campus system.

- Review procedures for field trips, school activities requiring absence from class, Saturday School and Independent Study.
 - Review Student Folders to ensure excused absences are supported by absence notes and vice-versa.
 - Ensure appropriate SARB procedures are followed.
5. Legal Expenses – completed
- Draft Administrative Regulation re the purchase of legal services.
 - Perform annual analysis of legal expenses.
6. Other
- Fraud Hotline
 - i. With assistance of vendor, implement FW&A hotline – Implemented.
 - ii. Respond to reporters' reporting of alleged fraud, waste or abuse.
 - Record Retention
 - i. Review District policies and procedures.
 - ii. Evaluate District's compliance with BPs and ARs and sound business practices, especially in Facilities Development.
 - Inventory controls over Information Technology equipment – Review:
 - i. Procedures for the receiving of IT equipment
 - ii. Tagging of equipment
 - iii. Recording of assets in fixed asset subsidiary records
 - iv. Delivery of equipment to the District offices and sites
 - v. Periodic physical inventories
 - vi. Compliance with GASB regulations
 - vii. Procedures for the disposal of surplus IT equipment
 - Miscellaneous
 - i. Respond to requests for assistance and advice from staff and Board members.
 - ii. Report periodically to the Audit Committee, and Board of Trustees on request.

Business and Noninstructional Operations

PURCHASE OF LEGAL SERVICES

General Guidelines

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

Purchasing of Legal Services

- 2.1 Legal services shall be purchased in accordance with ~~AR 3311, "Consultants."~~ Government Code Section 53060, Specialized Services.
- 2.2 Prior to a commitment to purchase legal services, staff shall consult ~~evaluate alternative services available through School Services, FCMAT, CASBO, ACSA, CSBA and similar organizations.~~ a Cabinet Level Administrator.

- 2.3 Prior to a commitment to purchase legal services, staff shall perform due diligence in the selection of high quality legal services consistent with Gov. Code Section 53060 and with cost.
- 2.4 To assist in the control of legal expenditures, district staff shall obtain prior approval for the purchase from a Cabinet level administrator.
- ~~2.5 To limit legal expenses, where feasible staff should research Education Code and other statutes on the Internet at <http://www.leginfo.ca.gov/calaw.html> shall consult.~~
- ~~2.6~~ Factors to be considered in contracting for the purchase of legal services shall include, without limitation, professional skills, ethical reputation, education, range of services offered, experience in school districts, maintenance of skills and cost.
- ~~2.7~~ Attorneys shall sign a Conflict of Interest statement when required by District policy.
- 2.6 Attorneys hired by the District shall be members of the State Bar of California and in good standing ~~not have been subject to disciplinary action by the State Bar.~~

Billing Procedures

- 3.1 Unless other arrangements have been made, counsel shall bill the District monthly for time in 1/10th of an hour increments for services performed. Out-of-pocket expenses shall be billed at actual cost and itemized. Attorneys cannot bill for travel to / from the District Office or any school site.
- 3.2 Invoices shall reference the district's purchase order number, and show the period covered, services performed, hours worked, who performed them and hourly rates.
- 3.3 Invoices shall identify which District staff or Board member ordered the services billed.
- 3.4 Time billed shall be at hourly rates agreed to in the District's contract with counsel.
- 3.5 Only with prior Board approval sub-contracted legal services are subject to the same requirements as primary contracts.
- 3.6 Prior to payment, invoices shall be reviewed and approved by the Administrative Secretary and a Cabinet Level Administrator and the employee ordering the service. The funding source shall be shown.

Conflict Resolution *Section should be deleted in order to maintain the Board's flexibility.*

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

Interpretation

~~5.1~~ Questions concerning this Administrative Regulation should be directed to the Associate
4.1 Superintendent – Business.

Audit

~~6.1~~ Legal fees are subject to audit by the District's Internal Auditor well as its Independent
5.1 Accountants.

MEMORANDUM

TO: AUDIT COMMITTEE

FROM: Dan Moser, Superintendent

Date: April 3, 2012

Re: Board Policy 3600; Consultant Conflict of Interest Statements

At the November 19, 2011, Audit Committee meeting, the Audit Committee considered the status of the District's response to the 2010 FCMAT Extraordinary Audit and the implementation of Board Policy 3600 including, especially, as it relates to the implementation of conflict of interest statements from consultants in the form currently used by the District. During the meeting some questions arose regarding the form Consultant conflict of interest form. As directed, I have consulted with Legal Counsel regarding the issues and concerns raised and this memo reflects Counsel's input and comments.

Consultant Conflict of Interest form, paragraph 4. This paragraph asks the consultant to certify as follows:

"Within the past year I have not provided or made, and will not provide or make, any promise of any gift of any kind (money, meals, goods, services, entertainment tickets, etc.), in-kind services, commission, or fully or partially expense-paid trips to any District Board Member or District employee whose responsibilities include the selection of District consultants or the evaluation, supervision or oversight of District consultants (a "Responsible Employee"), except:_____."

Footnote 1 states that "'Gifts' do not include promotional or advertising items such as calendars, desk pads, notebooks and other office items valued less than \$25.00 and which are of the type usually offered by business concerns free of charge to all as part of their public relations programs."

Issue #1: The question was raised that the reporting obligation encompassed within this paragraph should lie with the Board members and District management.

Response to Issue #1: Board members and specified management employees (so-called "designated employees") are already covered by the District's conflict of interest provisions in Board By-law 9270. In fact, BB 9270 specifically provides that "Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730." The intention of the Consultant conflict of interest statement was not to supplant Board By-law 9270 or existing law, but rather to impose some obligation of disclosure on prospective consultants which previously did not exist. In addition, it would not be feasible to require every employee (or subset of employees) to fill out a disclosure form each time a new consultant was going to be retained by the District. Board members and designated employees must still comply with BB 9270, applicable requirements of the Political Reform Act and existing conflict of interest law and principles. In addition,

paragraph 4 is more extensive than BB 9270 insofar as it would require disclosure of gifts not just to Board members and “designated employees” (under BB 9270) but also to any district employee involved in the selection, evaluation, supervision or oversight of any district consultants.

Nevertheless, the Committee’s discussion has highlighted an area for improvement in the District’s policies and internal controls. Currently, no Board policy addresses the issue of acceptance of gifts by Board members or any employee from any consultant or vendor seeking to do business with the District. Counsel has prepared and recommends that a new Board Policy 3315 (included as Attachment 1) be presented to the Audit Committee for consideration and to the Board for a first and second reading for adoption.

Issue #2: Should discretion remain with the Superintendent under BP 3600 as to which consultants must submit conflict of interest forms and what they should be required to report?

Response to Issue #2: BP 3600 is based on the standard CSBA form, which vests discretion with the Superintendent. This form is standard and almost universally adopted by all subscribing CSBA districts. Nevertheless, in response to the FCMAT report the District instituted a policy of required conflict of interest statements from all vendors and consultants, a requirement well beyond that stated in the standard CSBA form and not commonly in practice by other school districts. Counsel recommends that discretion remain with the Superintendent and Administration regarding the extent of disclosure and reporting requirements depending on, among other things, the size, length of term, and complexity of the proposed consultant engagement.

ATTACHMENT 1

DRAFT Board Policy 3315 for Consideration

[Presented to Audit Committee for consideration on April 3, 2012]

No district employee or Governing Board member shall accept personal gifts, commissions or expense-paid trips from individuals or companies seeking to do business with the district or selling equipment, materials or services required in the operation of district programs. Gifts include any gift purchased specifically for an employee or Governing Board Member which is not generally offered to other buyers.

This policy does not prohibit employees from accepting promotional or advertising items such as calendars, desk pads, notebooks and other office gadgets which are offered by business concerns free to all as part of their public relations programs.

District employees who work for or serve as consultants for potential vendors shall not participate in evaluating, marketing or offering any equipment, materials or services of that vendor or its competitors.

(cf. 6161.1 - Selection and Evaluation of Instructional Materials)

(cf. 9270 - Conflict of Interest)

This policy does not prohibit the acceptance of materials and/or services which are of use and benefit to the district.

(cf. 3290 - Gifts, Grants and Bequests)

Legal Reference:

EDUCATION CODE

60071 Prohibited offers to influence adoption or purchase of instructional materials

60072 Acceptance of consideration or inducements by school official

60073 Penalties for violation of article

60074 Supplying sample copies

60075 Receiving sample copies

60076 Inapplicability of article; royalties or other compensation of school official for writing or preparing instructional materials; claim of district to royalty



East Side Union High School District

CONFLICT OF INTEREST STATEMENT

(Consultants)

[This form must be filled out, signed, dated and submitted by all persons seeking to serve as a consultant to the District]

Board Policy 3600 of the East Side Union High School District provides in part:

“Independent contractors applying for a consultant contract shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend the consultant's employment.”

The Superintendent has determined that all persons seeking to serve as a consultant to the District shall fill out truthfully, sign, date and submit this Conflict of Interest Statement prior to performing any consultant work or services for the District.

I, _____ [NAME OF CONSULTANT], hereby certify the following:

- 1 I am not an employee of the District.
- 2 Within the past year I have not been a member of the District Board of Trustees of the District.
- 3 Neither I nor any member of my immediate family (includes parent, spouse, domestic partner, or child) or member or resident of my household is a member of the District's Citizens Bond Oversight Committee for the District's Measure G or Measure E bond programs.
- 4 Within the past year I have not provided or made, and will not provide or make, any promise of any gift¹ of any kind (money, meals, goods, services, entertainment tickets, etc.), in-kind services, commission, or fully or partially expense-paid trips to any District Board Member or District employee whose responsibilities include the selection of District consultants or the evaluation, supervision or oversight of District consultants (a “**Responsible Employee**”), except:

¹ “Gifts” do not include promotional or advertising items such as calendars, desk pads, notebooks and other office items valued less than \$25.00 and which are of the type usually offered by business concerns free of charge to all as part of their public relations programs.



5 I do not employ or retain, and will not employ or retain, any current District **Responsible Employee** as a consultant, independent contractor or employee during the term of my consultancy agreement with the District.

6 I am authorized to make, and do make, this certification on behalf of _____
[CONSULTANT].

The foregoing certifications are true and correct. I make this certification under penalty of perjury under the laws of the State of California.

Signature of Consultant

Signature Date