

# **Grass Valley School District Superintendent and Board of Trustees**

## **Summary**

The Grass Valley School District is a public elementary school district responsible for educational services in Grass Valley, California. The Grass Valley School District is governed by a Board of Trustees elected by the district's voters.

The Nevada County Grand Jury received a citizen's complaint regarding the Grass Valley School District. The complainant asked for an investigation into salary increases given to the former superintendent and to the former superintendent's administrative assistant.

The Nevada County Grand Jury finds that the former superintendent of the Grass Valley School District received a salary increase which was not authorized by the former superintendent's employment contract and another salary increase which was not approved by the Board of Trustees. The Nevada County Grand Jury finds that the superintendent's unauthorized salary increases should not have been included in the calculations of his retirement compensation. This has resulted in the former superintendent receiving retirement benefits to which he is not entitled and increased retirement fund liabilities to the Grass Valley School District.

The Nevada County Grand Jury finds that the Board of Trustees created the positions of Administrative Assistant I in 2007 and Administrative Assistant II in 2009 and has not approved defined job duties and responsibilities for these positions as of April 15, 2012.

The Nevada County Grand Jury finds that the Board of Trustees failed to exercise financial responsibility when it promoted an administrative assistant, with an accompanying salary increase, retroactive for one year, one week prior to the employee's retirement date. The Nevada County Grand Jury finds that promotions and salary increases given to employees concurrently with their retirement gives the impression of "pension spiking."

The Nevada County Grand Jury recommends that the Grass Valley School District Board of Trustees notify the California State Teachers' Retirement System of the unauthorized salary increases that were included in the calculations of the former superintendent's retirement compensation. The Nevada County Grand Jury also recommends that the Board of Trustees annually reconcile the salaries approved by the Board of Trustees with salaries actually being paid by the Grass Valley School District and ensure that all positions have defined duties and responsibilities. The Nevada County Grand Jury further recommends that the Board of Trustees ensure that future salary increases do not give the appearance of "pension spiking."

## **Reasons for Investigation**

The Nevada County Grand Jury (Jury) received a complaint regarding the Grass Valley School District (GVSD). The Complainant requested the Jury review the actions of the GVSD Board of Trustees (Board) and the past Superintendent.

Pursuant to California Penal Code Section 933.5 the Jury has the authority to investigate public school districts in Nevada County.

## **Background**

The Jury received a citizen's complaint that questioned the propriety of certain Board actions, including possible "pension spiking," which occurred during 2007-2009. During the course of the Jury's investigation, irregularities were found in the conduct of Board meetings, in the procedures for Board approvals and in a variety of human resource areas, including the administration of benefits, the former Superintendent's contracts, position descriptions, promotions and salary increases.

## **Procedures Followed**

The Jury interviewed past and present personnel from the GVSD and members of the Board. The Jury reviewed related GVSD documents, including Board agendas, Board minutes, memoranda and staff reports. The Jury also reviewed information from the California State Teachers Retirement System (CalSTRS). The Jury's investigation focused on the time period from 2004 to date.

## **Facts**

- F.A.1.** The GVSD is governed by a five-member Board.
- F.A.2.** The GVSD superintendent is selected and appointed by the Board and is accountable to the Board.
- F.A.3.** The superintendent administers the policies and procedures of the GVSD as set forth by the Board.
- F.A.4.** The GVSD superintendent is responsible for the day-to-day operations of the GVSD.
- F.A.5.** The previous superintendent (Superintendent) was in the position for sixteen years, including the period of July 1, 2004 until June 30, 2010, at which time he retired.

- F.A.6.** The current GVSD superintendent was selected by the Board and assumed the duties and responsibilities of superintendent on July 1, 2010.
- F.A.7.** The *Ralph M. Brown Act* (Brown Act) is the California state law which outlines the responsibilities and requirements of open public meetings held by the governing board of a public agency, which includes:
- defining a public school district as a public agency,
  - requiring notice to the public of the agenda of a meeting at least seventy-two hours in advance;
  - requiring publication of approved minutes of a meeting;
  - allowing closed or executive sessions for specified items;
  - requiring a report in open session of any action taken in closed or executive session;
  - requiring the notation in the meeting minutes of any action taken in closed session.

***Superintendent's Contract and Income Increases:***

- F.A.8.** The Superintendent and the Board entered into an employment contract entitled *Superintendent's Contract*, on June 1, 2004.
- F.A.9.** The *Superintendent's Contract* was in effect from July 1, 2004 through June 30, 2007.
- F.A.10.** The *Superintendent's Contract*, Section 4, Fringe Benefits, states:
- “The SUPERINTENDENT shall be afforded all fringe benefits of employment (family health, vision and dental) which are granted to the DISTRICT'S employees. The SUPERINTENDENT may, at the SUPERINTENDENT'S discretion, elect not to purchase the above mentioned benefit package and apply the equivalent amount to a DISTRICT approved Tax Shelter Annuity program (TSA).”
- F.A.11.** On June 21, 2006, the GVSD Business Manager received an e-mail from the Superintendent instructing her to discontinue his medical benefits and instead to pay him \$5,613.60 yearly in lieu of receiving medical benefits. The Business Manager followed the Superintendent's instructions.
- F.A.12.** The cash-in-lieu of medical benefits was included in the Superintendent's salary.
- F.A.13.** The cash-in-lieu amount was considered as salary for the purpose of calculating the Superintendent's retirement compensation.

- F.A.14.** The *Superintendent's Contract* did not allow for the Superintendent to receive cash-in-lieu of receiving medical benefits.
- F.A.15.** There is no record in Board meeting agendas of a request for authorization by the Board to allow the Superintendent to receive cash-in-lieu of receiving medical benefits.
- F.A.16.** There is no record in the approved minutes of the Board's meetings of authorization by the Board to allow the Superintendent to receive cash-in-lieu of receiving medical benefits.
- F.A.17.** There is no record of a renewal of the *Superintendent's Contract* which expired on June 30, 2007.
- F.A.18.** The Superintendent continued in his position after the expiration of the *Superintendent's Contract* on June 30, 2007.
- F.A.19.** The Superintendent and the Board entered into an agreement entitled, *Contract Addendum*, dated June 12, 2007, which raised the Superintendent's annual salary to \$116,720, retroactive to July 1, 2006.
- F.A.20.** The Board meeting agenda for June 10, 2008 includes item LL, which states:  
"LL. Consideration/Approval Of Proposal To Add The Equivalent Of A 4% Salary Increase Applied To The Superintendent's Contract Retroactive To July 1, 2007."
- F.A.21.** The approved Board meeting minutes for June 10, 2008 includes an item LL, which states:  
"LL. Consideration/Approval Of Proposal To Add The Equivalent Of A 4% Salary Increase Applied To The Superintendent's Contract Retroactive To July 1, 2007.  
  
(Board Member) made a motion to add the equivalent of a 4% salary increase applied to the Superintendent's contract retroactive to July 1, 2007, seconded by (Board Member).  
  
Motion passed 5-0."
- F.A.22.** The Superintendent and the Board entered into an agreement entitled *Contract Addendum*, dated June 10, 2008, which raised the Superintendent's annual salary to \$121,388.80. This *Contract Addendum* bears the signatures of the Board President and the Superintendent.
- F.A.23.** The Superintendent and the Board entered into a second agreement entitled *Contract Addendum*, dated June 10, 2008, which raised the Superintendent's annual salary to \$134,227.00. This *Contract Addendum* bears the signatures of the Board President and the Superintendent.

- F.A.24.** Both *Contract Addendum* documents reference Item LL on both the agenda for, and the approved minutes of, the Board's meeting on June 10, 2008.
- F.A.25.** The Board President signed the two *Contract Addendum* documents dated June 10, 2008. A Board member identified the signatures on both documents. No Board member could offer any explanation as to why both documents were signed.
- F.A.26.** There is no record in Board meeting agendas of a request for authorization by the Board to raise the Superintendent's salary to \$134,227.00. (See Attachment)
- F.A.27.** There is no record in the approved minutes of the Board's meetings of authorization by the Board to raise the Superintendent's salary to \$134,227.00
- F.A.28.** None of the Board members recalled discussing, granting and/or voting on the Superintendent's salary increase to \$134,227.00.
- F.A.29.** On July 10, 2008, the Business Manager processed the *Contract Addendum* raising the Superintendent's annual salary to \$134,227.00. (See Attachment)
- F.A.30.** The Superintendent retired on June 30, 2010.
- F.A.31.** The Superintendent's retirement is administered by the California State Teachers' Retirement System (CalSTRS).
- F.A.32.** The Superintendent's retirement compensation is determined by CalSTRS using a formula partially based on the Superintendent's highest year's salary.

**Administrative Assistant's Promotion, Salary Increase and Retirement:**

- F.A.33.** There is a document within the GVSD entitled *Confidential/Supervisory Salary Schedule 2008/2009 and 2009/2010* (Salary Schedule).
- F.A.34.** The Salary Schedule includes the job positions of Superintendent's Secretary, Administrative Assistant I (AAI) and Administrative Assistant II (AAII).
- F.A.35.** The Salary Schedule stated the job position of Superintendent's Secretary had a salary range of five step increments from \$20.14-\$23.58 per hour.
- F.A.36.** The Salary Schedule stated the job position of AAI had a salary range of five-step increments from \$23.77-\$29.01 per hour.
- F.A.37.** The Salary Schedule stated the job position of AAII had a salary range of five-step increments from \$26.76-\$32.36 per hour.
- F.A.38.** In 2006, the GVSD employed an individual in the position of Superintendent's Secretary.
- F.A.39.** The Board meeting agenda for June 12, 2007, includes an item MM, which states:

“MM. Consideration/Approval Of The Addition Of Administrative Assistant To The Confidential/Supervisory Salary Schedule”.

**F.A.40.** The Board meeting agenda for June 12, 2007, includes an item NN, which states:

“NN. Consideration/Approval To Reclassify The Superintendent’s Secretary As An Administrative Assistant On The Confidential/Supervisory Salary Schedule Effective To July 1, 2006”.

**F.A.41.** The approved Board meeting minutes for June 12, 2007 includes items MM and NN, which state:

“Items MM through OO. (Board Member) made a motion to combine Items MM through OO, seconded by (Board Member). Motion passed 5-0.”

**F.A.42.** The GVSD does not have a document which describes the job duties and responsibilities of the AAI.

**F.A.43.** There is no record of the Board considering or approving any document which describes the job duties and responsibilities of the AAI.

**F.A.44.** The Board meeting agenda for June 23, 2009 includes an item B which states, in part:

“B. Adjourn To Closed Session...Placement Of Public School Employee Administrative Assistant II”

**F.A.45.** The approved Board meeting minutes for June 23, 2009 includes item E which states, in part:

“E. Announcement Of Action Taken In Closed Session If Any. Superintendent (Name) announced the retirement of (the Superintendent’s administrative assistant)”.

**F.A.46.** The approved Board meeting minutes for June 23, 2009 includes item R which states, in part:

“R. Announcement Of Action Taken In Closed Session, If Any...On motion of (Board Member) and seconded by (Board Member) the Board of Trustees approved the following:

- Accepted the resignation of (the Superintendent’s administrative assistant) effective June 30, 2009.
- The Board of Trustees made a motion to place (the Superintendent’s administrative assistant) on the Confidential Salary Schedule as an Administrative Assistant II: Step 5 retroactive to July 1, 2008.”

**F.A.47.** The GVSD does not have a document which describes the job duties and responsibilities of the AAI.

- F.A.48.** There is no record of the Board considering or approving any document which describes the job duties and responsibilities of the AAI.
- F.A.49.** The newly-promoted Superintendent's administrative assistant retired from the GVSD effective June 30, 2009.
- F.A.50.** The Superintendent's administrative assistant's retirement is administered by the California Public Employees Retirement System (CalPERS).
- F.A.51.** The Superintendent's administrative assistant's retirement compensation is determined by CalPERS using a formula partially based on the Superintendent's administrative assistant's highest year's salary.

## **Findings**

- F.I.1** The Superintendent's income was improperly increased by:
- The unauthorized payment of cash-in-lieu of health benefits beginning in 2006.
  - The unauthorized salary increase in 2008.
- F.I.2** The Superintendent's income increases, described in F.I.1, were not approved by the Board.
- F.I.3** The Superintendent's unauthorized income increases, described in F.I.1, should not have been included in calculations of his retirement compensation.
- F.I.4** The failure by the Board to reconcile the salaries approved by the Board with the salaries actually being paid resulted in increased retirement fund liabilities to the GVSD.
- F.I.5** The Board failed to require written job descriptions or to otherwise document the job duties and responsibilities of the AAI and AAI job positions.
- F.I.6** The lack of defined job duties and responsibilities prevents the individual's supervisor from effectively evaluating job performance and eligibility for promotion.
- F.I.7** The promotion of and increase in salary for an individual into an undefined position demonstrates a lack of management and fiscal responsibility by the Board.
- F.I.8** The Board failed to exercise financial responsibility when it promoted an individual, with an accompanying salary increase, retroactive for one year, one week prior to the individual's retirement.

- F.I.9** Promotions and salary increases given to individuals concurrent with their retirement gives the impression of “pension spiking,” potentially damaging the credibility of the Board.
- F.I.10** The Board’s failure to renew the *Superintendent’s Contract* when it expired in 2007 showed a lack of engagement and responsibility by the Board.

### **Recommendations**

- R.1.** The Board should notify CalSTRS of the unauthorized income increases which were included in calculations of the Superintendent’s retirement compensation.
- R.2.** The Board should annually reconcile the salaries approved by the Board with salaries actually being paid by the GVSD.
- R.3.** The Board should ensure that all job positions have defined duties and responsibilities.
- R.4.** The Board should not award salary increases that could reasonably be perceived as “pension spiking.”
- R.5.** The Board should ensure that the superintendent’s contract is current and accurate.
- R.6.** The Board should develop a procedure to ensure that any change to the superintendent’s compensation is approved by the Board prior to implementation.

### **Responses**

Grass Valley School District Board of Trustees: Due Date: September 4, 2012



August 29, 2012

Honorable Judge Thomas Anderson  
Presiding Judge of the Grand Jury  
201 Church Street  
Nevada City, CA 95959

**Re: Grass Valley School District's Response to the June 4, 2012 Nevada County Grand Jury Report**

Dear Judge Anderson:

Pursuant to California Penal Code sections 933 and 933.05, the Board of Trustees for the Grass Valley School District ("Board" or "Trustees") hereby submits this formal response to the 2011-2012 Nevada County Grand Jury Report ("Report") regarding "Grass Valley School District Superintendent and Board of Trustees."

**OVERVIEW OF DISTRICT RESPONSE**

The Board of the Grass Valley School District ("Board") shares the Grand Jury's commitment to managerial and fiscal responsibility. To that end, the Board has seriously considered the Grand Jury's findings and recommendations; has communicated with the District's administration and either has implemented or will implement responsive measures that address the Grand Jury's findings and recommendations.

The Trustees do, however, strongly disagree with the Grand Jury's characterization of the Board as failing to exercise its financial responsibilities. The Board is vigilant in monitoring and maintaining the District's fiscal well-being; but, it is not the role of the Board to verify employee salaries. Determining the accuracy of salary payments made to the District's 241 employees is the type of activity inherent to the District's day-to-day operations and, as such, is necessarily delegated to the District's administrative staff.

In addition, the Board wants to be very clear that it has always had, and continues to have, the utmost respect for and trust in the District's former Superintendent. The former Superintendent faithfully discharged his duties and for more than two decades, dedicated himself to the students of Grass Valley School District. The Board has never doubted the former Superintendent's honesty and is convinced that the issues outlined in the Grand Jury's report regarding the former Superintendent's salary resulted from an inadvertent lapse in the District's protocol for obtaining Board approval of changes in the terms of an employment agreement.

While we respectfully disagree with some of the Grand Jury's findings, we agree that improvements can be made and have implemented or will implement the vast majority of the Grand Jury's recommendations.

*Rec'd  
9/11/2012  
[Signature]*

## DISTRICT'S RESPONSE TO GRAND JURY'S FINDINGS

### Finding No. F.I.1:

The Superintendent's income was improperly increased by:

- The unauthorized payment of cash-in-lieu of health benefits beginning in 2006.
- The unauthorized salary increase in 2008.

### Response to Finding No. F.I.1:

The Board respectfully disagrees in part with Finding No. F.I.1.

A. The Board agrees that the increase in the Superintendent's income, beginning in 2006 by way of the payment of cash-in-lieu of health benefits, was not authorized to the extent that the Superintendent's contract did not specifically provide for such payment and the Governing Board did not take official action to approve it.

However, the Board also notes that in its Report at F.A.10, the Grand Jury quotes from Section 4 of the former Superintendent's 2004-2007 contract which states that "The SUPERINTENDENT may, at the SUPERINTENDENT's discretion, elect to not purchase the above mentioned benefit package and apply the equivalent amount to a DISTRICT approved Tax Shelter Annuity program (TSA)."

Because the contract gave the former Superintendent complete discretion regarding whether to take District provided fringe benefits or not, the Board was not required to formally approve the Superintendent's ultimate decision on that issue. In addition, although, the former Superintendent's contract was specific as to the dollar equivalent of the fringe benefit cost being deposited in a TSA, the Board does not believe that the former Superintendent's decision to take cash-in-lieu was ever motivated by an intention to enhance his retirement income, but rather, because he must have mistakenly misinterpreted the contract terms as permitting the cash-in-lieu payment.

B. However, the Board disagrees with Finding No. F.I.1 in stating that the Superintendent's income was improperly increased by "the unauthorized salary increase in 2008." There were two increases to the Superintendent's salary in 2008. Contrary to Finding No. F.I.1, the first increase in the Superintendent's salary from \$116,720.00 to \$121,388.80 was specifically authorized by the Governing Board. The matter of this increase was properly included as Item LL on the consent agenda for the June 10, 2008 meeting; was approved by unanimous vote of the Board and was recorded in the Board's official minutes.

C. The Board agrees that the second increase in the Superintendent's salary from \$121,388.80 to \$134,227.00 was not listed the June 10, 2008 agenda, nor is there a record of any action by the Board approving such increase in the Board meeting minutes for the June 10, 2008 meeting.

Although he has no specific recollection of signing the Contract Addendum that reflects this increase, the Board President at that time has always acknowledged the signature on that document as his own. In addition, one Board member has given the matter of the increase to \$134,227.00 considerable thought in the months since appearing before the Grand Jury and has some recollection of a discussion between the former Superintendent and the Board regarding a multi-year increase to the Superintendent's salary.

However, the Board understands that there is no documentation to support any recollection of this nature. From the Board's perspective, the failure to include the increase in the former Superintendent's income to \$134,227.00 on the June 8, 2008 agenda for a formal vote was a mistake and as a result, there is no record of a vote by the Board approving the increase.

**Finding No. F.I.2:**

The Superintendent's income increases, described in the Report as F.I.1, were not approved by the Board.

**Response to Finding No. F.I.2:**

The Board respectfully disagrees in part with Finding No. F.I.2 and hereby incorporates its Response to Finding No. F.I.1 by reference as if fully set forth herein.

The Board agrees with this finding to the extent that neither the 2006 increase in the Superintendent's income by way of cash payment in lieu of health benefits, nor the June 2008 increase in the Superintendent's salary from \$121,388.80 to \$134,227.00, were included on any Board agenda or voted on by the Board. The Board is convinced that the failure to include these items on an agenda for a formal vote was the result of an unintentional lapse in the District's longstanding procedure for authorizing changes in the Superintendent's compensation.

However, as stated above, the increase in the Superintendent's salary from \$116,720.00 to \$121,388.80 was included on the June 10, 2008 Board agenda and was approved by a formal vote of the Board.

**Finding No. F.I.3:**

The Superintendent's unauthorized income increases, described in F.I.1, should not have been included in calculations of his retirement compensation.

**Response to Finding No. F.I.3:**

The Board respectfully disagrees in part with this finding based on the reasons stated above in response to Findings Nos. F.I.1 and F.I.2 and specifically, with respect to the June 2008 increase in the Superintendent's salary from \$116,720.00 to \$121,388.80, which was included on the June 10, 2008 Board agenda and was approved by a formal vote of the Board.

It is the Board's understanding that for compensation to be included in calculating an individual's retirement benefit, it must be "creditable compensation" as defined by the laws administered by the California State Teachers Retirement System ("CalSTRS"). Thus, while the

Board is responsible for establishing the Superintendent's compensation and authorizing any changes in the Superintendent's salary and benefits, CalSTRS is responsible for calculating retirement benefit compensation.

CalSTRS has notified the District that it is reviewing the former Superintendent's retirement benefit entitlement and will be notifying the former Superintendent of its determination.

**Finding No. F.I.4:**

The failure by the Board to reconcile the salaries approved by the Board with the salaries actually being paid resulted in increased retirement fund liabilities to the GVSD.

**Response to Finding No. F.I.4:**

The Board respectfully disagrees with this finding. However, the Board does acknowledge its responsibility for establishing the Superintendent's salary and approving the salary schedules governing the compensation paid to the District's management, certificated and classified personnel.

With respect to the 2006 increase in the Superintendent's income by way of cash payment in lieu of health benefits and the June 2008 increase in the Superintendent's salary from \$121,388.80 to \$134,227.00, the Board's responses to Finding No. F.I.1 and F.I.2 clearly establish that neither of these increases in the Superintendent's compensation were ever presented to the Board as part of an agenda or approved by a formal vote of the Board.

The Board did not vote to approve the cash payment in lieu of health benefits or the salary increase to \$134,277.00 and therefore, had no knowledge that the amounts being paid to the former Superintendent were anything other than the amounts the Board had specifically approved by formal action at duly noticed public meetings.

As stated previously, the Board is responsible for overseeing the management of the District's major systems and the administration is responsible for the day to day operations of the District, including reconciling the amount of the salaries actually paid to employees with amounts approved by the Board. In June 2012, the Board acted to establish a new Personnel Technician position in order to provide the administration with the assistance necessary to maintain accurate personnel information for all its employees and to reconcile employee salaries on a regular basis. On August 6, 2012, the District hired a Personnel Technician who is responsible for the management of all personnel information in the District.

While the addition of a Personnel Technician is an important step in the overall management of the District's personnel processes and procedures, the Board nevertheless cannot agree to Finding No. F.I.4 considering the lack of any information evidencing that the District's retirement fund liabilities increased as a result of the Board's alleged failure to reconcile the former Superintendent's salary.

**Finding No. F.I.5:**

The Board failed to require written job descriptions or to otherwise document the job duties and responsibilities of the AAI and AAI job positions.

**Response to Finding No. F.I.5:**

The Board respectfully disagrees in part with Finding No. F.I.5. The Board must maintain a level of flexibility in responding to the District's staffing needs particularly when as a result of a gradual accretion of job duties, an existing position evolves into a separate and distinct position as occurred in connection with the Administrative Assistant I and Administrative Assistant II positions. In these circumstances, the duties of the new position are already being performed before those duties can be memorialized in a new job description. The District is nonetheless still able to adequately assess the work performance of the employee who has experienced this type of change in job functions because the new duties represent an evolution in the employee's existing work load or level of responsibility as opposed to an entirely new field of endeavor.

Thus, while employees often begin performing duties of what will ultimately become a new position before the job description for that new position is presented to the Board for approval, the Board acknowledges the importance of ensuring that specific job descriptions exist in order that both management and labor understand what is required for each position in terms of the work to be performed and the training/experience necessary to perform that work. Accordingly the Board agrees that the District should have written job descriptions documenting the duties and responsibilities required of the Administrative Assistant I and II positions.

In an effort to ensure that job descriptions exist or are ultimately created for every position in the District, the Board created a new Personnel Technician position and hired an individual to fill that position on August 6, 2012. One of the primary duties required of the Personnel Technician is to "revise and maintain job descriptions for administrative, certificated and classified positions."

**Report Finding No. F.I.6:**

The lack of defined job duties and responsibilities prevents the individual's supervisor from effectively evaluating job performance and eligibility for promotion.

**Response to Finding No. F.I.6:**

The Board respectfully disagrees in part with this finding for the reasons set forth in its response to Finding No. F.I.5 and on that basis, incorporates its response to Finding No. F.I.5 as if fully set forth at this point.

Without waiving the reasons for its partial disagreement with Finding No. F.I.6, the Board again acknowledges the importance of having written job descriptions to enhance employee performance and to facilitate supervisory oversight. Consistent with this acknowledgment and as stated above, the Board has hired a Personnel Technician who will be responsible for creating and maintaining accurate, up-to-date job descriptions for all positions in the District.

**Finding No. F.I.7:**

The promotion of and increase in salary for an individual into an undefined position demonstrates a lack of management and fiscal responsibility by the Board.

**Response to Finding No. F.I.7:**

The Board respectfully disagrees with this finding and for the sake of brevity, generally incorporates by reference its responses to Findings No. F.I.5 and No. F.I.6 above.

In addition, the Board disagrees with Finding F.I.7 on the basis that decisions regarding employee promotions, and resulting increases in salary, depend on the particular circumstances of each case, and as a result, these decisions must necessarily be made on a case by case basis. A blanket conclusion that the Board automatically demonstrated a lack of management and fiscal responsibility simply because it promoted an employee to a position prior to the development of a job description for that position, ignores the specific facts and circumstances relevant to that promotion decision.

Notwithstanding the above, the Board shares the Grand Jury's commitment to managerial responsibility and fiscal oversight. The strength of the Board's commitment can be measured by the fact that it created an entirely new Personnel Technician position for the purpose of reviewing all of the District's personnel practices, including those related to the creation of new positions and the promotion of existing employees.

**Finding No. F.I.8:**

The Board failed to exercise financial responsibility when it promoted an individual, with an accompanying salary increase, retroactive for one year, one week prior to the individual's retirement.

**Response to Finding No. F.I.8:**

The Governing Board respectfully disagrees with this finding and for the sake of brevity, incorporates its responses to Finding Nos. F.I.5, F.I.6, and F.I.7 above as if fully set forth herein. In deciding whether to promote an employee, the Governing Board is obligated to analyze specific facts and consider the particular circumstances relevant to an employee's job duties, work history and performance. The Grand Jury would have the Governing Board ignore this obligation and automatically reject the promotion at issue based first, as stated in Finding F.I.7, on the lack of a job description, and now, as stated in this finding, on the timing of the employee's ensuing retirement.

However, automatically rejecting the promotion on either of these two grounds without further inquiry into the nature and extent of the actual duties performed by the employee in question during the prior school year would have been arbitrary. In addition, an automatic rejection would have left the District vulnerable to a claim from the employee for "out of class" pay and interest.

In addition, it is important to note that school districts in California have a mandatory duty to negotiate with employee unions regarding salary, benefits and other terms and conditions of employment. Collective bargaining is a time consuming process and more often than not, it will take months for the parties to reach final agreement. As a result, it is not uncommon for school districts to be retroactively increasing employee salaries at the end of the school year. Because most school districts treat represented and unrepresented employee groups alike in terms of salary increases, management and confidential employees will also receive increases on a retroactive basis back to the beginning of the school year.

But, regardless of the exigencies that result in the need for retroactive salary increases, the Board shares the Grand Jury's commitment to managerial responsibility and fiscal oversight and to that end, the Board will ensure that the Personnel Technician reviews the District's personnel practices and procedures to ensure that all promotional decisions are reasonable and can be supported by the specific facts relevant to each particular case.

**Report Finding No. F.I.9:**

Promotions and salary increases given to individuals concurrent with their retirement gives the impression of "pension spiking," potentially damaging the credibility of the Board.

**Response to Finding No. F.I.9:**

The Board respectfully disagrees in part with this finding. For the sake of brevity, the Board incorporates its responses to Finding Nos. F.I.5, F.I.6, F.I.7 and F.I.8 as if fully set forth herein.

Without waiving its objections to this finding as set forth in the above-listed responses, the Board acknowledges unless the factual basis supporting the decision to promote an employee who is about to retire is either well known or can legally be disclosed, such a promotion is susceptible to being characterized as "pension spiking" and has the potential of damaging the Board's credibility. Accordingly, the Board intends to seriously consider the Grand Jury's observation as set forth in Finding F.I.9 in an effort to foreclose the possibility for public misapprehension in connection with employee promotions in the future.

**Finding No. F.I.10:**

The Board's failure to renew the *Superintendent's Contract* when it expired in 2007 showed a lack of engagement and responsibility by the Board.

**Response to Finding No. F.I.10:**

The Board respectfully disagrees with this finding on the basis that the Board did, in fact, act to extend the former Superintendent's contract prior to its expiration date of June 30, 2007. The Board's June 12, 2007 agenda included as Item PP the approval of a Contract Addendum increasing the former Superintendent's salary to \$116,720.00. This Contract Addendum was approved by the Board in open session at the June 12, 2007 meeting and remained in effect through June 30, 2008.

Moreover, as stated above in the responses to Finding Nos. F.I.1 and F.I.2, the agenda for the Board meeting of June 10, 2008 included as Item LL approval of a Contract Addendum increasing the former Superintendent's salary from \$116,720.00. This Contract Addendum was approved by the Board in open session at the June 10, 2008 meeting and recorded in the Board's official minutes.

Based on the foregoing, the Board did take action consistent with its contractual obligations to extend the term of the former Superintendent's contract.

## **DISTRICT'S RESPONSE TO GRAND JURY'S RECOMMENDATIONS**

### **Recommendation No. 1:**

The Board should notify CalSTRS of the unauthorized income increases which were included in calculations of the Superintendent's retirement compensation.

### **Response to Recommendation No. 1:**

The Board will not implement this recommendation because it is not warranted. CalSTRS has already initiated communication with the District regarding the former Superintendent's retirement compensation, and therefore, no notification from the District to CalSTRS is necessary.

### **Recommendation No. 2:**

The Board should annually reconcile the salaries approved by the Board with salaries actually being paid by the GVSD.

### **Response to Recommendation No. 2:**

While the Board agrees with this recommendation, the Board itself cannot implement it. As stated previously, the Board oversees the management of the District's major systems. The administration is charged with directing the District's day-to-day operations, including such tasks as annually reconciling the salaries paid to individual employees with amounts approved by the Board. For this reason, the Board created a new Personnel Technician position and the employee serving in that position will implement Recommendation No. 2 by establishing a procedure for reconciling employee salaries on an annual basis.

### **Recommendation No. 3:**

The Board should ensure that all job positions have defined duties and responsibilities.

### **Response to Recommendation No. 3:**

Although the Board generally agrees that the District's jobs should have defined duties and responsibilities, the Board itself is unable to implement this recommendation as the Board manages the District's major systems, not its day-to-day operations.

Moreover, as set forth in the response to Finding No. F.I.5, the Board must maintain a level of flexibility in responding to the District's staffing needs particularly when as a result of a gradual accretion of job duties, an existing position evolves into a separate and distinct position and the duties of that new position are already being performed before the administration can memorialize those duties in a new job description.

Based on these reasons, the Board will not implement Recommendation No. 3, but instead, has hired a Personnel Technician who, under the Superintendent's supervision, will analyze whether the District currently has any positions not covered by job descriptions and if so, will prepare the necessary job descriptions and establish the timeline for their implementation.

**Recommendation No. 4:**

The Board should not award salary increases that could reasonably be perceived as "pension spiking."

**Response to Recommendation No. 4:**

While the Board agrees that as a general rule, salary increases that can be perceived as "pension spiking" should be avoided, the District cannot implement this recommendation as written without abandoning its responsibility to decide matters of employee compensation and/or promotion on a case by case basis, consistent with all applicable facts and circumstances. Moreover, the Board must maintain ability to provide employees with salary increases when factually warranted regardless of any pension spiking perception.

**Recommendation No. 5:**

The Board should ensure that the Superintendent's contract is current and accurate.

**Response to Recommendation No. 5:**

The Board has implemented Recommendation No. 5 to the extent of ensuring that the existing Superintendent's contract is current. The term of the Superintendent's contract was recently extended by formal action of the Board taken in open session consistent with the agenda for June 12, 2012 meeting and that action was recorded in the official minutes for that meeting.

As to the recommendation that the Board ensure the Superintendent's contract is "accurate," the Board will not implement this recommendation itself; but as set forth in response to Recommendation No. 2, will ensure that on an annual basis, the Personnel Technician reconciles the amount of salary actually paid to employees with the salaries as approved by this Board.

**Recommendation No. 6:**

The Board should develop a procedure to ensure that any change to the superintendent's compensation is approved by the Board prior to implementation.

**Response to Recommendation No. 6:**

While we agree with this recommendation that any change in the Superintendent's compensation must be approved by the Board prior to implementation, there is no need for the Board to develop a procedure in this regard. Government Code section 53262(a), as well as the Ralph M. Brown Act, Government Code section 54950 et seq., already require that superintendent contracts be approved by the school district's governing board in open session at a properly noticed public meeting and that the Board's action be memorialized in the Board's official minutes.

**CONCLUSION**

The Board of Trustees of the Grass Valley School District appreciates the time and dedication of the Grand Jury members in providing the District with its report and recommendations. The Board will implement the Grand Jury's recommendations to the extent and in the manner set forth above.

In closing, the Board wishes to reemphasize its conviction that during the former Superintendent's 21 years of dedicated service, he always acted with integrity and in the best interests of the Grass Valley School District. As the Grand Jury knows from its exhaustive review of the Board's agendas and minutes from 2004 to the present, the District has consistently met its Brown Act obligations with respect to employment contracts and that the two incidents outlined in the Report regarding the former Superintendent's salary were procedural failures in otherwise a strong record of compliance.

If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in red ink that reads "Paula Noediger". The signature is written in a cursive style.

President, Governing Board