

**BOARD OF EDUCATION**

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**SUPERINTENDENT**

Mark W. McLaughlin, Ed.D.

June 30, 2021



**VIA E-MAIL**

JUL 06 2021

Attention: Richard Boehmer, Foreperson  
2020-2021 Ventura County Grand Jury  
800 South Victoria Avenue  
Ventura, CA 93009



Re: Conejo Valley Unified School District's Response to 2020-2021 Ventura County Grand Jury Report Form

Dear Mr. Boehmer:

On behalf of the Conejo Valley Unified School District Governing Board, and pursuant to Penal Code section 933.05, enclosed is a response to the 2020-2021 Ventura County Grand Jury Final Report on the Conejo Valley Unified School District Board of Education Procedures dated April 15, 2021.

Thank you for your attention and consideration of this matter.

Sincerely,

Dr. Mark McLaughlin  
Superintendent and Secretary to the Board

Enclosure

cc: Governing Board

## Response to 2020-2021 Ventura County Grand Jury Report Form (Please See California Penal Code Section 933.05)

Report Title: Conejo Valley Unified School District Board of Education Procedures

Responding Entity: Conejo Valley Unified School District Board of Education

### FINDINGS

- I (we) agree with the Findings numbered: F-10, F-11, F-14
- I (we) disagree wholly or partially with the Findings numbered: F-01, F-02, F-03, F-04, F-05, F-06, F-07, F-08, F-09, F-12, F-13, F-15  
(Attach a statement specifying any portions of the Findings that are disputed; include an explanation of the reasons.)

### RECOMMENDATIONS

- Recommendations numbered R-01, R-02, R-03, R-04, R-05, R-06 have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered \_\_\_\_\_ have not yet been implemented but will be implemented in the future.  
(Attach a summary indicating the timeframe for implementation.)
- Recommendations numbered \_\_\_\_\_ require further analysis.  
(Attach an explanation to include: scope and parameters of the analysis or study and timeframe for the matter to be prepared for discussion with the agency or department head. The timeframe shall not exceed six months from the date of publication of the report.)
- Recommendations numbered \_\_\_\_\_ will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: 6-30-21

Signed:   
Title: Superintendent

Number of pages attached: 8

**RESPONSE TO 2020-2021 VENTURA COUNTY GRAND JURY REPORT  
BY THE CONEJO VALLEY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION**

**I. INTRODUCTION**

The Board of Education for the Conejo Valley Unified School District ("Board") hereby submits its response to the Ventura County Grand Jury Report dated April 15, 2021. The Board responds to the findings and recommendations below, and also responds to the material issues in this introduction.

**A. Brown Act**

The grand jury's criticism of the District's Board of Education with respect to Brown Act compliance is based on an apparent misunderstanding of the underlying facts and applicable law. One of the grand jury's findings claims that a statement made by the District Superintendent at the December 17, 2019 Board meeting violated the Brown Act. Yet, the Superintendent is not a member of the legislative body that is subject to the Brown Act. Moreover, the record of that meeting clearly demonstrates that the statements made by the Superintendent during that meeting were not items considered or acted upon by the Board during the meeting.

The grand jury further claims that the January 21, 2020 and February 4, 2020 closed session agenda descriptions were somehow inadequate. We disagree. The agendas for those meetings complied with the safe harbor requirements of the Brown Act. (Gov. Code, § 54954.5, subd. (c).) Moreover, the finding ignores subdivisions (d)(2), (d)(3) and (e)(1) of Government Code section 54956.9, which do not require any prior, public disclosure or announcement.

Similarly concerning, there is no support for the grand jury's findings that the Board violated the Brown Act during the closed sessions of its January 21, 2020 and February 4, 2020 meetings when it allegedly discussed the potential exclusion of a Board member from closed session without agendizing the potential exclusion. The Board notes that no action has been taken to waive attorney-client privilege to disclose what was discussed during closed session with its legal counsel, thus limiting the Board's ability to directly respond in detail to these allegations. Further, absent a waiver by the Board, a member cannot disclose confidential information that was acquired during closed session unless "(1) [m]aking a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law ...; (2) expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session including disclosure of the nature and extent of the illegal or potential illegal action; or (3) disclosing information acquired by being present in a closed session under this chapter that is not confidential information." (Gov. Code, § 54963, subd. (e)(1) – (3).) The foregoing circumstances do not apply to the matters raised in the grand jury's report. Nevertheless, as a matter of law, we dispute the finding that a closed session discussion on whether a Board member should be recused is required to be separately agendized under the Brown Act. Moreover, such topic may be discussed in closed session to the extent it also addresses a properly-agendized closed session item which, in this case, is anticipated litigation.

Most concerning is the conduct of the grand jury during the investigation. As noted, the Board did not waive attorney-client privilege with regard to the discussions with its attorney during closed sessions at its January 21, 2020 and February 4, 2020 meetings, and yet assumptions are made in the report about events that occurred during those closed sessions. Additionally, when the Board President was contacted to review the report, the

foreman attempted to read it to her rather than provide her with a written copy. The Board President had to insist on viewing the writing and cited to Penal Code section 933.05 in order to be presented with the written document and, even then, she was provided with only the draft findings section and not the other portions of the report. Further, the draft findings that were presented to her contained vague and conclusory language which made it difficult to meaningfully respond. Finally, to the extent information was provided, the grand jury failed to include that information in their report. For example, the grand jury's summary of training provided to the Board and Board members failed to include multiple examples of training.

The report also contains multiple references to "the Board" between 2018 through 2020. It must be noted that the composition of the Board evolved in that period of time. The current Board consists of three members whose terms did not begin until December 2018, and two members whose terms only began in December 2020. None of the current Board members were on the Board at the time of the 2018 letter.

In sum, the Board intends to continue to conduct its business in the most appropriate manner, will continue to properly agendaize open and closed session agenda items, and will continue to further the goals of the open meeting laws. The Board and Superintendent will continue to receive annual Brown Act training. In addition, the Board and Superintendent will receive training on Brown Act compliance at this year's California School Boards Association conference scheduled for December 2021. As it has historically done, the Board intends to schedule Brown Act training for new Board members and periodic refresher training for other Board members.

#### **B. Parliamentary Procedure**

There is no statutory requirement that legislative bodies, including school district governing boards, adopt a specific parliamentary procedure. Accordingly, the grand jury's criticism of the District's Board with respect to parliamentary procedure is misguided and misplaced. Boards have the flexibility to determine what rules they will use to conduct their meetings.

Additionally, the grand jury's findings/recommendations relating to parliamentary procedure claim that the Board has not formally adopted parliamentary procedures and should do so. Yet, in finding the Board's procedures somehow inadequate, the grand jury relies on a purported Board Handbook that has not actually been adopted by the Board.

The foregoing notwithstanding, the Board seeks to conduct its meetings in a productive and orderly manner and the process of developing parliamentary procedures is already underway.

#### **II. RESPONSE TO FINDINGS**

**Finding F-01.** The Grand Jury finds that during the December 17, 2019 Board meeting, the Superintendent made assertions of harassment by a Board member that were not on the agenda, thereby violating the Brown Act.

**Response:** The respondent disagrees with this finding. The Superintendent is not an elected public official subject to the Brown Act. Further, under Government Code section 54954.3, members of the public, including the Superintendent, may address the Board on any item of interest to the public that is within the subject matter jurisdiction of the Board "provided that no action shall be taken on any item not appearing on the agenda." Moreover, the Brown Act does not preclude limited responses by Board members to

questions and comments that arise during a Board meeting. Additionally, the Brown Act permits members of the Board to provide brief updates on matters within the subject matter jurisdiction (Gov. Code, § 54954.2(a)(3).)

The statements made by the Superintendent during the December 17, 2019 Board meeting were not items considered or acted upon by the Board. Indeed, the record of that meeting shows that the Superintendent's comments were not discussed by the Board other than to address whether the comments violated the Brown Act, which they do not.

**Finding F-02.** The Grand Jury finds that the Board failed to include the facts or circumstances regarding the Board's possible exposure to litigation arising from the Superintendent's assertions of harassment by a Board member in Item 1.D of the agenda for the January 21, 2020 closed session, or publicly announce them at the meeting, thereby violating the Brown Act.

**Response:** The respondent disagrees with this finding. The January 21, 2020 agenda description complied with the requirements of the Brown Act via the use of the agenda language provided by Government Code section 54954.5(c). The agenda item at issue identified the item as "Conference with Legal Counsel – Anticipated Litigation, Pursuant to Government Code Section 54956.9(d)(2) and (d)(3). Number of potential cases: 1."

The foregoing description relies on the so-called "safe harbor" language provided by Section 54954.5 which further provides: "No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format." Here the agenda unquestionably complies with Section 54954.2. Further, the grand jury's assumption that additional information is required on the agenda or in an oral statement prior to the closed session ignores the availability of Section 54956.9, subdivisions (d)(2), (d)(3) and (e)(1).

Under Government Code section 54956.9(d)(2), litigation is considered pending (thereby allowing the Board to meet in closed session to discuss the matter) when "[a] point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency." Similarly, under Government Code section 54956.9(d)(3), litigation is considered pending (thereby allowing the Board to meet in closed session to discuss the matter) when "[b]ased on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2)." Moreover, a legislative body does not have to disclose facts and circumstances that might result in litigation if the Board believes those facts and circumstances are not yet known to a potential plaintiff. (Gov. Code, § 54956.9(e)(1).) Rather, in such a situation, the safe harbor language described above, and used by the Board in its agenda language for the January 21, 2020 closed session item, is sufficient. In this case, further identification beyond what was stated in the agenda was not required. (See Gov. Code, § 54954.5(c).)

**Finding F-03.** The Grand Jury finds that the Board failed to include the facts or circumstances regarding the Board's possible exposure to litigation arising from the Superintendent's assertions of harassment by a Board member in Item 1.G of the agenda for the February 4, 2020 closed session, or publicly announce them at the meeting, thereby violating the Brown Act.

**Response:** The respondent disagrees with this finding. As discussed in response to Finding F-02, the District's Board agenda complied with the requirements of the Brown Act, by way of use of the safe harbor language found in Government Code section 54954.5(c). The February 4, 2020 closed session agenda identified the item as "Conference with Legal Counsel – Anticipated Litigation, Pursuant to Government Code Section 54956.9(d)(2) and (d)(3). Number of potential cases: 1."

As noted above, the foregoing description relies on the so-called "safe harbor" language provided by Section 54954.5 which further provides: "No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format." Here the agenda unquestionably complies with Section 54954.2. Further, the grand jury's assumption that additional information is required on the agenda or in an oral statement prior to the closed session ignores the availability of Section 54956.9, subdivisions (d)(2), (d)(3) and (e)(1).

Under Government Code section 54956.9(d)(2), litigation is considered pending (thereby allowing the Board to meet in closed session to discuss the matter) when "[a] point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency." Similarly, under Government Code section 54956.9(d)(3), litigation is considered pending (thereby allowing the Board to meet in closed session to discuss the matter) when "[b]ased on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2)." Moreover, a legislative body does not have to disclose facts and circumstances that might result in litigation if the Board believes those facts and circumstances are not yet known to a potential plaintiff. (Gov. Code, § 54956.9(e)(1).) Rather, in such a situation, the safe harbor language described above, and used by the Board in its agenda language for the February 4, 2020 closed session item, is sufficient. In this case, further identification beyond what was stated in the agenda was not required. (See Gov. Code, § 54954.5(c).)

**Finding F-04.** The Grand Jury finds that the Board discussed the issue of excluding a Board member from an agenda item discussion at both the January 21, 2020 closed session and the February 4, 2020 closed session. That discussion regarding excluding a member was not on either agenda, thereby violating the Brown Act.

**Response:** The respondent disagrees with this finding, and disputes this finding to the extent it addresses topics that the Board is not authorized to disclose insofar as it requires disclosure of attorney-client privileged information or is not subject to disclosure under Government Code section 54963, subdivision (e). Without conceding whether the Board held this particular discussion, any discussion during closed session regarding whether a Board member should be recused from participating in a closed session matter is not required to be separately agendaized under the Brown Act. Indeed, such matters may not even be known to the Board until it begins discussion of a closed session item, since Board members may not know in advance of the closed session the specific topic being discussed.

**Finding F-05.** The Grand Jury finds that the discussions of excluding a Board member from the January 21, 2020 and February 4, 2020 closed sessions were not a permissible exception from the open meeting requirements, thereby violating the Brown Act.

**Response:** The respondent disagrees with this finding, and disputes this finding to the extent it addresses topics that the Board is not authorized to disclose insofar as it requires disclosure of attorney-client privileged information or is not subject to disclosure under Government Code section 54963, subdivision (e). That said, discussion during closed session regarding whether a Board member should be recused from participating in a closed session matter is permissible where that discussion is inextricably tied to that closed session item.

**Finding F-06.** The Grand Jury finds no evidence that the Brown Act violations outlined in F-01 through F-05 were intentional.

**Response:** The respondent disagrees with this finding to the extent it assumes that the Board violated the Brown Act. The respondent agrees with this finding to the extent that it states that any actual Brown Act violations were unintentional.

**Finding F-07.** The Grand Jury finds that there was a pattern of Brown Act violations by the Board during the period of 2018 through 2020.

**Response:** The respondent disagrees with this finding. The actions alleged by the Grand Jury do not give rise to a "pattern" of violations. Rather, the Grand Jury merely identifies a concern with (1) one public statement made by the Superintendent during a Board meeting in December 2019; and (2) the treatment of one closed session matter discussed at two separate meetings in January 2020 and February 2020. To establish a purported "pattern" of violations, the report then references two prior alleged violations by the Board: one that occurred on May 15, 2018 and one that occurred on August 28, 2019. Yet, this finding does not take into account the fact that none of the current Board members were even on the Board prior to December 2018. Indeed, three of the five current Board members did not start serving until December 2018, and two of the current Board members were not elected until December 2020. Relying on these two prior alleged violations to establish a "pattern" of violations is misplaced in light of the fact that none of the current Board members were even on the Board in May 2018, and two of the current Board members were not on the Board in August 2019.

**Finding F-08.** The Grand Jury finds that the Brown Act training/workshops/conferences attended by the Board and Superintendent between 2018 and 2020 were insufficient to allow the Board to fully understand the Brown Act.

**Response:** The respondent disagrees with this finding. Every Board member and the District Superintendent have participated in Brown Act trainings conducted by CSBA and by outside legal counsel. Further, Board members and the Superintendent are each provided with a Brown Act Handbook created by outside legal counsel. New Board members attend the CSBA "Orientation for New Trustees," receive a Brown Act Handbook, and are provided with copies of Board policies, administrative regulations, and bylaws. Board members annually attend the CSBA Annual Education Conference, which includes multiple sessions about the Brown Act, and Board members also attend Brown Act training through the Ventura County Office of Education and received a training from an outside law firm with expertise in Brown Act matters. In addition, the Board President has attended CSBA's Board Presidents Workshop, which includes information regarding the Brown Act. Indeed, the Board President has read the Brown Act in its entirety, as well as a guide to the Brown Act created by the League of California Cities.

**Finding F-09.** The Grand Jury finds that the Board and Superintendent would benefit from mandatory Brown Act training focused on how to avoid discussing topics not

on the published agenda, the narrowness of the exceptions to open meetings, and the requirements for closed session agendas.

**Response:** While respondent agrees that continuing Brown Act training is helpful, the respondent disagrees with this finding to the extent it implies that the Board's and Superintendent's Brown Act training has somehow been inadequate. As discussed in response to Finding F-08, every Board member and the District Superintendent have received extensive training in the Brown Act.

**Finding F-10.** The Grand Jury finds that the additional training outlined in F-09 is most beneficial when given annually to the entire Board, and repeated when new members join the Board.

**Response:** The respondent does not dispute this finding but objects to the finding to the extent it implies that the Board's and Superintendent's Brown Act training has somehow been inadequate.

**Finding F-11.** The Grand Jury finds that the Board and Superintendent would benefit from reviewing the Brown Act resources found on the California Attorney General's Open Meetings website (<https://oag.ca.gov/open-meetings>).

**Response:** The respondent does not dispute this finding but objects to the finding to the extent it implies that the Board's and Superintendent's Brown Act training has somehow been inadequate. As discussed in response to Finding F-08, every Board member and the District Superintendent have received extensive training in the Brown Act. All governing boards are expected to know and to comply with the Brown Act and therefore would benefit from training.

**Finding F-12.** The Grand Jury finds that the Board bylaws do not identify the parliamentary procedures that the President of the Board is charged with enforcing.

**Response:** The respondent disagrees with this finding. There is no statutory requirement that Boards adopt a specific parliamentary procedure, and the absence of a specific parliamentary procedure does not constitute a Brown Act violation. Further, in finding the Board's procedures somehow inadequate, the grand jury relies on a purported Board Handbook that has not actually been adopted by the Board.

Boards have the flexibility to determine what rules they will use to conduct their meetings. Some Boards have adopted more rigid rules, such as Robert's Rules of Order, whereas others simply apply parliamentary procedure. Boards determine which rules will apply by adopting their bylaws. Here, Board Bylaw 9323 provides that "[t]he Board president shall conduct Board meetings in accordance with Board bylaws and procedures that enable the Board to efficiently consider issues and carry out the will of the majority."

**Finding F-13.** The Grand Jury finds that, without defined parliamentary procedures, the manner of the Board's deliberations is dependent on who is chairing the meeting.

**Response:** The respondent disagrees with this finding. As discussed in response to Finding F-12, Boards have flexibility to determine the rules they use to conduct their meetings. There is no indication that this flexibility adversely impacts a Board's ability to properly conduct its meetings.



**Finding F-14.** The Grand Jury finds that the Board bylaws allow the Board to develop and adopt procedures governing Board operations by a majority vote.

**Response:** The respondent does not dispute this finding.

**Finding F-15.** The Grand Jury finds that that Section 4 of the Board Handbook reference to Robert's Rules of Order does not constitute Board Policy.

**Response:** While the respondent does not dispute that a Board Handbook reference to Robert's Rules of Order may not constitute Board Policy, the respondent disagrees with the premise on which this finding is based. The Board Handbook relied on by the Grand Jury has not actually been adopted by the Board. Moreover, as discussed in response to Finding F-12, there is no statutory requirement that Boards adopt a specific parliamentary procedure, such as Robert's Rules of Order.

### **III. RESPONSE TO RECOMMENDATIONS**

**Recommendation R-01:** The Grand Jury recommends that the Board and the Superintendent undergo mandatory Brown Act training that includes topics focused on how to avoid discussing topics not on the published agenda, the narrowness of the exceptions to open meetings, and the requirement for closed session agendas. (F-01, F-02, F-03, F-04, F-05, F-06, F-07, F-08, F-09, F-10)

**Response to Recommendation R-01:** This recommendation has been implemented to the extent it can be implemented. The Board is already charged with Brown Act compliance, and will continue to comply. In order to continue to best comply with the Brown Act, the Board will receive Brown Act training for itself and the Superintendent at the 2021 California School Boards Association conference, and will endeavor to hold Brown Act training for new Board members within six (6) months of the new Board member's election to the Board and refresher training for current Board members annually.

**Recommendation R-02:** The Grand Jury recommends that the training referred to in R-01 be given annually to the entire Board, and repeated when new members join the Board. (F-01, F-02, F-03, F-04, F-05, F-06, F-07, F-08, F-09, F-10)

**Response to Recommendation R-02:** This recommendation has been implemented to the extent it can be implemented. The Board is already charged with Brown Act compliance, and will continue to comply. In order to continue to best comply with the Brown Act, the Board will receive Brown Act training for itself and the Superintendent at the 2021 California School Boards Association conference and will endeavor to hold Brown Act training for new Board members within six (6) months of the new Board member's election to the Board and refresher training for current Board members every two years.

**Recommendation R-03:** The Grand Jury recommends that the Board members and Superintendent periodically review the Brown Act resources found on the California Attorney General's Open Meetings website (<https://oag.ca.gov/open-meetings>). (F-01, F-02, F-03, F-04, F-05, F-06, F-07, F-11)

**Response to Recommendation R-03:** This recommendation has been implemented to the extent it can be implemented. The Board is already charged with Brown Act compliance, and will continue to comply. In order to continue to best comply with the Brown Act, the Board will have its members and the Superintendent periodically review the Brown Act resources found on the California Attorney General's Open Meetings website (<https://oag.ca.gov/open-meetings>). It is worth noting that the California Attorney General's guide has not been updated for nearly two decades and therefore does not reflect the current provisions of the Brown Act.

**Recommendation R-04:** The Grand Jury recommends that the Board adopt written parliamentary procedures, either directly or by reference, by which it will be governed. (F-12, F-13, F-14, F-15)

**Response to Recommendation R-04:** This recommendation has been implemented to the extent it can be implemented. Board Bylaw 9323 provides that "[t]he Board president shall conduct Board meetings in accordance with Board bylaws and procedures that enable the Board to efficiently consider issues and carry out the will of the majority." In addition, the Board is in the process of developing parliamentary procedures to assist it with the conduct of its meetings.

**Recommendation R-05:** The Grand Jury recommends that, upon the adoption of such procedures, the Board undergo additional training. (F-12, F-13, F-14, F-15)

**Response to Recommendation R-05:** This recommendation has been implemented to the extent it can be implemented. The Board will endeavor to include training in its parliamentary procedure within six (6) months of the new Board member's election to the Board and refresher training for current Board members every two years.

**Recommendation R-06:** The Grand Jury recommends that each time a new member is elected to the Board, the training referred to in R-05 be repeated for all members. (F-12, F-13, F-14, F-15)

**Response to Recommendation R-06:** This recommendation has been implemented to the extent it can be implemented, and it is duplicative of the recommendations in R-01 through R-05. The Board will endeavor to include training in its parliamentary procedure as part of its Brown Act training within six (6) months of the new Board member's election to the Board and refresher training for current Board members every two years.