

## Via e-Mail

June 25, 2017

State Superintendent of Public Instruction

Attention: Tom Torlakson - [ttorlakson@cde.ca.gov](mailto:ttorlakson@cde.ca.gov)

Categorical Programs Complaints Management Office

Attention: Celina Arias-Romero, Administrator [CariasRomero@cde.ca.gov](mailto:CariasRomero@cde.ca.gov)

Attention: Kerri Ruzicka, Educational Data Management Div - [KRuzicka@cde.ca.gov](mailto:KRuzicka@cde.ca.gov)

STEM Office

Attention: [stem@cde.ca.gov](mailto:stem@cde.ca.gov)

Re: Appeal of the San Dieguito UHSD response to complaint dated January 3, 2017 - Illegal Pupil Fees and Other Violations

Dear Superintendent Torlakson,

I appeal the San Dieguito Union High School Districts response dated June 16, 2017 to my above referenced Complaint. The basis of the Appeal is that the conclusion of facts and law by the school district are wrong. The district separated its response into two letters which I submit as one response to my uniform complaint. Findings in both letters support that fees were collected by school employees and the foundation.

## Baseball

**FACT** – Fall and Winter baseball was communicated to players and parents verbally and in writing that the purpose of Fall and Winter Baseball under the Direction of Head Torrey Pines Baseball Coach Kirk McCaskill was to be considered for the 2017 Baseball Team Roster. His emails state: It's an opportunity for the coaches to see players who will be considered for the Varsity roster in 2017, and an early opportunity for returning players to begin the process of building team chemistry.

**FACT** - Coaches demand the payment from the players during 6 period PE (Baseball PE), we receive the message when our students come home and tell us.

- On or around December 15, 2016 Head Baseball Coach Kirk McCaskill during a class dug out meeting made the statement to the students that some of you have not gotten your paperwork and payments in for winterball. One senior student made a remark back asking Coach McCaskill why is he bothering them about money before Christmas.
- On January 3, 2017 an email was sent from [holly.coughlin@sduhsd.net](mailto:holly.coughlin@sduhsd.net) that in order to register my son for winterball I had to pay \$395. I am a parent and I paid the fee for my son to participate in the school baseball program.
- On January 5, 2017, TPHS Baseball Coach sent an e-mail to “un-disclosed recipients” which my student was a party, but me as the parent was not a party, indicating that “*if you are*

*receiving this email you are not registered for winter league (or you have not turned in all the necessary paperwork/check)."*

These emails illustrate that the coach coordinated with the foundation to obtain the payments. The relationship is intertwined so that school employees are involved in collecting payments and donations for the foundation. The district's response failed to investigate that the coaches demand payments and limited itself to the coach statements: TPHS also provides a sixth period baseball physical education class in the fall and winter that is available to students who intend to play on a TPHS team in the spring. The class is supervised by a certificated employee who is employed by the District, although District coaches are present and provide baseball instruction. These facts refute the findings of the district that: There is no evidence, however, that the Foundation informs coaches which students donated and in what amounts, nor is there evidence that the Foundation otherwise coordinates its donation requests with the District and/or TPHS administration.

**FACT** – The players for the Torrey Pines high school baseball team use the same uniforms when playing in the Fall and Winter Baseball Seasons. Use of the school name and mascot are privileges which the district has given to the foundation and allows the foundation to use without restriction.

**FACT** - The Foundation kept track of who paid and sent out reminders to those who failed to pay.

**FACT** The Foundation informed the Coach who paid and who had not. He sent out his own emails and accosted students to pay the money during class time.

**FACT** - The school district has allowed this group to operate with no oversight. This is indicative that the school has no control over this organization. The foundation gave use of the baseball fields to a donor in exchange for his donation without the knowledge of the district. School administrators knew there was use of the school baseball field during the instructional day by non-students and allowed it as it was a foundation activity. The district determined that the Foundation is operated separately and apart from the District. The facts do not support that the school-affiliated Foundation is a separate entity. As the district states in its Response to Complaint (Non-Uniform Complaint Procedure Allegations), the foundation uses the school telephone number, email, office space, given access to all contact information of students and parents, and is permitted to access all school operations similarly to employees. It is given unfettered access to the school and students. The school is trying to say it is separate from the foundation, yet allowed the foundation to build batting cages on the school property circumventing state requirements such as bypassing the State Architect (DSA).

**FACT** The school has allowed the foundation to generate revenue any way they want. This includes an agreement to give use of taxpayer facilities to [REDACTED] so that private club teams could use the batting cages at no charge, in acknowledgement of his donation. The district has admitted that it did not know that the foundation gave an individual use of the school property in exchange for a donation which illustrates that it allows the foundation to operate without restriction as long as it is bringing in revenue for the school.

**FACT** The school district does not follow its own school-connected organizations Board Policy 1230/AR-1. It does not have any rules for its foundation nor training.

**FACT** – School-Connected Foundation repeatedly puts out correspondence, stating the District does not have any Money, so if parents don't pay there will be no sports. The sports programs funded by the foundation are school educational activities.

**FACT** District has provided no documentation that fundraisers were approved.

- There has been no evidence presented that the school even knew these fundraisers are occurring. The District has stated that there is no coordination of the donation requests with the District and/or TPHS administration. The district's facts are set out that as part of its fundraising efforts, the Foundation seeks voluntary donations and participation in fundraising activities. However, the school administration did not review the foundations' contribution request communications nor instruct teachers that they cannot demand payments from students. Parents and students were told that payments were due and the amounts.
- There was no correspondence provided that stated the Fall and Winter Ball was a fundraiser prior to the February 21, 2017 letter. The foundation was requesting payments which the coach also told the students to pay.

**FACT** Contrary to the district's finding of fact that *"The Foundation does not directly administer TPHS programs, including baseball"*, the fall and winter sessions are part of the regular baseball program. The coach verbally informs the players and in his emails signed as the TPHS Baseball Coach, he says: It's an opportunity for the coaches to see players who will be considered for the Varsity roster in 2017, and an early opportunity for returning players to begin the process of building team chemistry. The foundation does directly administer this additional baseball activity as it lends the use of its non-profit status for the coach to run these baseball sessions. These sessions are coordinated by school staff, on school property, and supervised by school staff.

The district response categorized the fall ball and winter ball activities as fundraising activities by the school-affiliated group. However, the foundation did nothing to coordinate the activity. TPHS Varsity Baseball Coach, Kirk McCaskill ran the sessions and is the educator which every parent and student expects and will fulfill what the teacher requires. The coach email says, "In all non-spring related programs, we play as the Falcon BBC." The coach recruits the participants, only TPHS ball players are recruited, and use of the school name and mascot is permitted by the school. The coach sends out the emails with his official title on the email using a private email which the school cannot pull up as a public document. Use of his private email effectively hides his requests for money from public scrutiny.

The school permits his use of a private email. The sessions use the name of the school and its mascot: Falcon Baseball. The only involvement of the foundation is as the money collection entity, even accepting credit card payments. The district response - There is evidence that the Foundation also communicates with coaches regarding uniform and equipment needs for the upcoming season - fails to show that the foundation and school are separate entities. Instead, the coaches tell the foundation what to do. There is no evidence that the foundation considers the needs of the baseball team, analyzes its fundraising capacity, and makes its own decisions about how to support the baseball team. Instead, it is told to collect a specific amount by the school coach. The district's

finding that the Foundation does provide significant financial support to TPHS programs is not supported by facts. The coach has shifted the collection of student fees to the boys. The foundation does not raise funds to pay for uniforms and equipment for the TPHS baseball program. It only collects the money from the students involved in the activity. It reimburses the District for the cost of transportation to and from baseball games, as well as stipends the District provides to coaches, but the school allows the foundation to get the money from the boys. The email which states if the bus fee is not paid ASAP then the student cannot ride the bus and cannot play. This is a culture. That is a fee collection.

**FACT** - There are three club baseball teams being operated on the TPHS campus with oversight being given by the TPHS Foundation. You will also see in the correspondence dated June 16, 2017 from the District, that the District/Foundation has given favors to donors with respect to the non-Torrey Pines Club team (Solana Beach Cardinals and Del Mar Power House) which Head Varsity Coach Kirk McCaskill's son plays on (Solana Beach Cardinals), the baseball liaison (Rex McGuire) is an officer of Del Mar Power House, and every Torrey Pines baseball walk-on coach is affiliated with.

**FACT:** The response from the district states that students who do not donate receive uniforms, equipment and transportation free-of-charge. It failed to interview those students to learn that there is no free ride. Those three-to-seven students per year that do not donate, if the District cross referenced those players they would see that they are paying fees to participate on the Del Mar Powerhouse or Solana Beach Cardinals.

**FACT** - The 2017 Baseball Program Roster will show that a majority of the players on the Roster are also on the Solana Beach Cardinals and Del Mar Power House Baseball Clubs.

**FACT** The District has not shared the full investigation report conducted by the Sobel Group with the Complainant or CIF.

### *Legal Conclusions*

Participation on a high school baseball team is an educational activity that must be free according EC Section 49011. If participation in a fall or winter baseball session is a condition in order to be considered for the final baseball roster during the season of sport, then the fall and winter sessions must also be free.

The District decided to offer a club baseball team during the "out of season" period of baseball.

The monopoly by the TPHS foundation and the recurring annual offering of the for-fee club team, illustrates that the program is a school-connected educational activity. Please see attached letter(s) from the District dated June 16, 2017 Response to Uniform Complaint ("RUC") and Response to Complaint (Non-Uniform Complaint Procedure Allegations) ("RCNU")

- RUC pg. 5 "The Foundation also directly runs a club baseball team, named the Falcons"..."It is common for TPHS baseball players to play for the Falcons club team in the fall and winter. They often use the same hats and club shirts as "practice shirts" when playing for TPHS."

- RCNU pg. 2 Item 5 “The District considers the Foundation to be a school-sponsored organization that BP/AR 1330 expressly exempts from paying fees for facilities use.”

This school connected “club-team” cannot be designated as a fundraiser under IRS or California charity laws as the payments were not donations to a fundraiser but a fee for an exclusive club baseball team comprising of only Torrey Pines High School Students. Use of the school name and mascot make it easy for the foundation to solicit monies from the community / public given it instant trust and credibility because the public believes the foundation activities are being monitored by the school. Torrey Pines High School has violated the provision of prohibiting school-affiliated groups to collect otherwise unallowable fees.

Torrey Pines High School and the foundation are "in essence the same organization"; and that the foundation has acted as the high school, giving individuals associated with the school baseball team exclusive access to the players. It had knowledge that its employees and facilities were used to run the club sports, and Students were required to make a payment which were tracked by individuals. There was no sign which stated "DONATIONS" and no document posted about "donations." Payments in exchange for a service are not donations. The foundation kept track of who paid and sent out reminders to those who failed to pay. The foundation tracks the monies by sport and "bills" each sport section booster. Further, there is no public record that shows the School Board ever approved the acceptance of these “donations” at School Board Meetings.

Torrey Pines High School may not be able to insulate itself from liability for actions taken by the TPHS Foundation to which it is so closely tied that they are, "in essence the same organization."

Further, the distributed documents which bear the imprimatur of the government entity (LEA) is to inform students and their parents of all requirements for this school baseball team activity. TPHS Varsity Baseball Coach, Kirk McCaskill being the educator which every parent and student expects and will fulfill what the teacher requires. The courts have consistently noted teachers' power and influence; determining *“that the State exerts great authority and coercive power through mandatory attendance requirements and students are impressionable”*. The TPHS Varsity Baseball Coach, Kirk McCaskill, use of a private email and signs his signature the TPHS Varsity Baseball Coach and labeling the high school baseball team as CLUB does not outweigh his power of authority over students as noted by the courts. (Rather, the considerable resources schools spend in attempting to create trust, obedience and admiration for teachers operate with every instruction, request or question a teacher asks of his or her pupils. (See *Edwards v. Aguillard*, supra, 482 U.S. at p. 584 [96 L.Ed.2d at pp. 519-520]; *Roberts v. Madigan* (10th Cir. 1990) 921 F.2d 1047, 1053.)

Despite several years of publicity regarding illegal student fees, a widely publicized lawsuit by the ACLU versus Arnold Schwarznegger / State of California, and fiscal advisories by CDE and FCMAT, TPHS Varsity Baseball Coach, Kirk McCaskill used his position of power as coach to continue an illegal practice. He requires student- athletes to be ready when the official baseball season begins, according to his standards, approved by the high school. The courts have said: "The relationship between co-employees has none of the elements of power and influence which exist between elementary and secondary school students and their instructors."

*Note: The District takes great care in its public response to try and confuse the complainant and the public that may read this without access to the full complaint and the evidence submitted. There are three club baseball teams being operated on the TPHS campus with oversight being given by the TPHS Foundation. You will also see in the "RCNU" document that the District/Foundation has given favors to donors with respect to the non-Torrey Pines Club teams which the coaches son plays on, the baseball liaison is an officer of, and every Torrey Pines baseball walk-on coach is affiliated with.*

Torrey Pines High School and the San Dieguito District has permitted the school-affiliated group to operate as a business, and as a monopoly, with sole access to the student-athletes. The district provided free use of taxpayers facilities to the foundation so it could funnel revenue for the educational programs through the foundation. Meanwhile, taxpayers must pay for the maintenance and replacement of taxpayer facilities for which no revenue was collected by the school district in accordance with the Civic Center Act. These rules and laws do not differ on what are considered allowable and non-allowable fees for school programs whether it is the district or booster club collecting the money. If a district decides to offer curricular and extra-curricular activities, including athletics, there cannot be a membership fee nor can the students be charged for supplies necessary for the activity to exist. Donations were not optional. Asking booster clubs to "collect non-allowable fees" does not make them legal, rather, that is being done to circumvent the law in most cases and is just as illegal. The foundation was simply a conduit to collect illegal pupil fees for the coaches.

The students and parents must be reimbursed for the payments made to TPHS Foundation demanded in the past school year.

### **Volleyball**

The district's findings that the bus transportation fee will be refunded if parents state they did not make the contribution as a donation, but instead as a payment, further exploits students and their families, using humiliation to prevent families from requesting reimbursements.

The District's proposed corrective actions are insufficient. It failed to adopt procedures to ensure compliance of school-affiliated groups to ensure a free public education. The District (not the Foundation) needs to send out a generic transportation letter to Everyone that says because the District requires its student athletes to travel on buses to events, the District is responsible for paying the transportation fee.

### **Other Uniform Complaint Items**

The Appeal basis is that the conclusion of facts by the school district are wrong as it pertains to items that fall under the Uniform Complaint items.

In reviewing the complete evidence and the items covered under Uniform Complaint Procedures it should be determined that:

1. Fiscal aspects of LCFF have been violated since the district is not properly reporting all its expenses and revenue.
2. There have been school safety violations in allowing improper construction on a school site.

3. There should be a review of Educational Equity as through the course of the investigation there were continued questions with regards to girls' softball receiving equal treatment; did they get the same uniforms; did they get equal access to training facilities?
4. The Swim Team and Water Polo Teams at all four high schools have to pay fees to participate in the school sponsored CIF sport. It was reported in a public session at school board meeting that Five Boys at Torrey Pines were not able to participate in Water Polo this year because they could not afford to pay the fees.
  - a. 20170511 - 22. AQUATIC FACILITIES AT SCHOOL SITES UPDATE PUBLIC COMMENTS: Comments in support of building pools were made by Chris Ryan, Susan Siljander, Virginia Kofler, Daniel Sullivan, Heather Reider, Krish Summons, Joe Benjamin, and Shannon Delaney. Steven Prince, John Miller, Lucille Lynch made a presentation proposing pools be built at the high schools, as presented. (A revised page 20 of the presentation handout available in the Superintendent's Office upon request.) They requested that they be able to work with staff to include the pool projects into the facilities masterplan sometime in the future.
  - b. See attached Aquatics Facilities 2017May7
  - c. See 20170202 Public Comment
5. The San Dieguito Union High School District's website is outdated and does not have appropriate pupil Fee policies. It has not complied with the requirements of the CPCM as prescribed in August 1, 2014 Appeal Response.

Finally, the district did not provide the proper information to appeal its decision. This is an improper response that fails to spell out to a complainant where to send the appeal, to whom it should be addressed and which office it should be directed.

**That is my appeal.**

[REDACTED]

[REDACTED]