



GRAND JURY

SEP 27 2007

RECEIVED

September 25, 2007

Jerel Bagger, Foreperson
The Sonoma County Civil Grand Jury
P.O. Box 5109
Santa Rosa, CA 95402

Dear Mr. Bagger:

This letter constitutes the response of the Sonoma County Junior College District (often referred to as Santa Rosa Junior College or SRJC) to the Findings and Recommendations of the 2006-07 Sonoma County Grand Jury with respect to its report on Proposition 209.

Let me begin by thanking the members of the Grand Jury for contributing their time to benefit not only SRJC but all residents of Sonoma County.

For convenience, this response references those Findings and Recommendations in the order in which responses are requested by the Report.

1. Required responses to Findings by the President of SRJC with respect to F20:

Finding 20:

SRJC management reported that any employee should feel free to express concern or criticism about any subject, including the administration, without fear of retribution.

Response:

As President of SRJC I concur that "any employee should feel free to express concern or criticism about any subject, including the administration, without fear of retribution."

2. Required responses to Findings by the District Compliance Officer with respect to F22 and F24:

Response:

The response of the District Compliance Officer to F22 and F24 are set forth in a memorandum prepared by him, a copy of which is attached and identified as Exhibit 1.

3. Required responses to Recommendations

A. Response from the Board of Trustees with respect to R4:

Recommendation 4:

The Board of Trustees of the SRJC should provide all employees access to an independent ombudsman (not an SRJC employee) so that employees can express concerns without fear of retribution.

Response to R4:

During its regular meeting on August 14, 2007, the Board took action to reject the Recommendation. A copy of the published agenda item and minutes are attached and are collectively identified as Exhibit 2.

B. Response from the President, SRJC with respect to R2, R3 and R5:

Recommendation 2:

The SRJC should include clear definitions, in the context of their use, of terms such as “diversity” and “heritage speaker” that are critical to the meaning of goals, policies, procedures and job announcements.

Response to R2:

SRJC believes that everyone involved in prior hiring decisions understood the proper context of the terms such as “diversity” and “heritage speakers.” Nevertheless, this issue will be the subject of further discussions with the respective Department Chairs.

Recommendation 3:

The SRJC should provide sufficient direction and oversight at all levels of administrative supervision to ensure that SRJC practices equal opportunity employment with absolutely no employment preferences given based on race, gender, ethnicity, etc. at any time.

Response to R3:

SRJC believes that all of its prior hiring decisions have complied with all applicable law, including Proposition 209.

Recommendation 5:

The SRJC should provide the grand jury with a copy of the independent investigation report.

Response to R5:

I have attached as Exhibit 3 a letter from the District's legal counsel, which includes his summary of the independent investigator's report. Whether the full report will be released depends on the Grand Jury's response to our counsel's letter of August 20, 2007. (See Exhibit 4)

C. Response from District Compliance Officer, SRJC, with respect to R1, R2, and R3:

Response:

The responses of the District Compliance officer to R1, R2, and R3 are set forth in Exhibit 1.

D. Response from Human Resources Department Direction with respect to R1, R2, R3 and R5:

Recommendation 1:

The SRJC should review all governing documents and its web sites to remove all language that is contrary to Proposition 209.

Response to R1:

The H.R. Director has reviewed and concurs with the response of the Compliance Officer with respect to R1.

Recommendation 2:

The SRJC should include clear definitions, in the context of their use, of terms such as "diversity" and "heritage speaker" that are critical to the meaning of goals, policies, procedures and job announcements.

Response to R2:

The H.R. Director has reviewed and concurs with the responses of the President and Compliance Officer with respect to R2.

Recommendation 3:

The SRJC should provide sufficient direction and oversight at all levels of administrative supervision to ensure that SRJC practices equal opportunity employment with absolutely no employment preferences given based on race, gender, ethnicity, etc. at any time.

Response to R3:

The H.R. Director has reviewed and concurs with the responses of the President and Compliance Officer with respect to R3.

Recommendation 5:

The SRJC should provide the grand jury with a copy of the independent investigation report.

Response to R5:

The H.R. Director has reviewed Recommendation 5 (R5) and concurs with the response of the President with respect to R5.

I believe the comments set forth above are responsive to the requests of the Grand Jury.

Very truly yours,



Robert F. Agrella
Superintendent/President

Exhibit 1

Grand Jury Responses

The Sonoma County Civil Grand Jury issued its final report on June 28, 2007. One of the issues investigated was the hiring practices of Santa Rosa Junior College. Specifically, allegations were made that violations of Proposition 209 (Article 1, Section 31 of the California Constitution) were occurring during the hiring process at the college. Allegations included: a) “successful candidates were being pre-selected, and that hiring committees were being formed in a way to guarantee a pre-selected candidate’s success”, b) “that candidates who didn’t have a chance were being put through the process, at considerable time and expense, without any hope of being chosen” and c) “it was alleged that SRJC was using racial preference as a factor in the selection, among a pool of candidates, for faculty hiring. It was alleged that this is a practice encouraged and directed by all levels of SRJC management.”

The allegations presented to the grand jury concerned the hiring practices employed in a search for a Spanish Instructor. I, as the District Compliance Officer, personally attended and monitored the hiring process for a Spanish Instructor in 2006. I did not observe any of the following happen: a) Anyone being selected or pre-selected during the screening or interview process on any basis, including race or ethnicity; b) Members of the committee using race as an explicit or implicit criteria for choosing interviewees or finalists from the pool of candidates; c) Anyone who was not qualified being put through the hiring process; d) Members of the committee engaged in improper practices, questions, or procedures throughout the entire hiring process. Minimum qualifications were set and observed by the hiring committee, and only persons who met those qualifications were interviewed. The interviews were conducted in a manner that addressed only those qualifications that were advertised and met the needs of the position. Similar procedures that ensure a fair and proper hiring process are observed for all faculty hiring at Santa Rosa Junior College. The hiring practices at SRJC are designed to target individuals with the necessary skills to effectively teach SRJC students.

I am the author of the “White Paper: Increasing Faculty Diversity at Santa Rosa Junior College”, appended to the Grand Jury Final Report. This paper is a draft that was distributed to fewer than a dozen people in the fall of 2005, all of whom were asked for comments. No comments were received. It was not meant as a policy statement of SRJC and has not become so.

Response:

F22: The SRJC hiring policy 4.3.2P as posted on the SRJC web site, has not been updated since April 10, 2001. It still contains references to “affirmative action policy” as part of the hiring procedures.

F22: The new hiring policy 4.3.2P that received approval by the Board of Trustees was posted on the SRJC web site as of March 13, 2007. It contains no references to “affirmative action

policy”. One reason that affirmative action appears in the old policy is Executive Order 11246, more fully explained below in the response to F24.

F24: Testimony was given that SRJC “assiduously” adheres to Proposition 209, that all policies were reviewed intending to bring them into full compliance with Proposition 209. Changes to the hiring procedure went to the Board of Trustees in December of 2006. As of March 2007 it has still not been revised. Proposition 209 became law over 10 years ago.

F24: The policy has been revised and is displayed on the SRJC web site, as stated above. The operations of California Community Colleges are guided by the California Constitution, the California Education Code, the California Code of Regulations, Title 5, State statutes, and Federal statutes and Executive Orders.

Article 1 Section 31(e) of the California Constitution states: “(e) Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.”

SRJC receives over \$1,000,000 from the Federal Government each year. These funds are subject to Executive Order 11246, which protects employees of covered Federal contractors and subcontractors from employment discrimination because of race, color, religion, sex and national origin. Executive Order 11246 also requires that certain employers take **affirmative action** to ensure that all qualified applicants and employees receive equal employment opportunity.

The college is also bound by the California Code of Regulations, Title 5. These regulations are specific as to the hiring process that each community college district must follow. For example, §53022 specifies how the job announcement and qualifications must be written, §53023 specifies that members of the applicant pool may indicate their “gender, ethnic group identification, and disability” which become a measure of “adverse impact” of “monitored groups”, and §53024 specifies the screening of applicants from the pool and the selection procedures. Section 53003(6) requires analysis of the number of persons from monitored groups who are employed in the district’s work force and those who have applied for employment in each of the job categories listed in section 53004(a). Section 53001 (a) defines “adverse impact” as a statistical measure that is applied to the effects of a selection procedure and demonstrates a disproportionate negative impact on any group defined in terms of ethnic group identification, gender, or disability. All of these sections of Title 5 conform to the California Constitution and are closely followed in the SRJC hiring process.

R1: The SRJC should review all governing documents and its web sites to remove all language that is contrary to Proposition 209.

R1: The College replaces language on its website as laws and regulations change. Although the home page is controlled by SRJC administration each Department is allowed to make changes to its own web page. As a result no one person maintains and updates everything that is posted on the website.

R2: The SRJC should include clear definitions, in the context of their use, of terms such as “diversity” and “heritage speaker” that are critical to the meaning of goals, policies, procedures and job announcements.

R2: The College’s practice is consistent with the definition of diversity found in Section 44253.2 of the Education Code (a provision of law applicable to K-12 school districts):

(e) "Culture and cultural diversity" means an understanding of human relations, including the following:

- (1) The nature and content of culture.
- (2) Cross cultural contact and interactions.
- (3) Cultural diversity in the United States and California.
- (4) Approaches to providing instruction responsive to the diversity of the student population.
- (5) Recognizing and responding to behavior related to bias based on race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation.
- (6) Techniques for the peaceful resolution of conflict.

A “heritage speaker” is a person who understands and speaks that particular language as well as a native speaker would. A heritage speaker knows the vocabulary, pronunciation, idioms, colloquialisms, and slang of that particular language.

In the spring of 2006, the Modern and Classical Languages Department sought a Spanish Instructor who had the following preferred position requirements as stated in the job announcement:

- Demonstrated ability or potential to succeed as a Spanish instructor at a community college.
- Demonstrated ability or potential to succeed in teaching Spanish to heritage speakers and developing curriculum in that area.
- Ability to speak Spanish with native or near native proficiency.
- Prior study, travel and residence in Spanish-speaking communities.
- Knowledge of the cultures, history, literature, geography and civilization of Mexico, Central and South America, and Spain as well as Chicano history, literature and culture in the United States.
- Demonstrated facility with or interest in computer assisted instruction for enhancing language acquisition.
- Active involvement with Spanish-speaking community.
- Demonstrated ability to implement student-centered, outcomes-based, communicative language instruction.

These requirements were specifically formulated to attract anyone who happened to have or acquired these skills, regardless of that individual’s national origin or ethnicity.

R3: The SRJC should provide sufficient direction and oversight at all levels of administrative supervision to ensure that SRJC practices equal opportunity employment with absolutely no employment preferences given based on race, gender, ethnicity, etc. at any time.

R3: SRJC does provide sufficient direction and oversight at all levels of administrative supervision to ensure that SRJC practices equal employment opportunity with absolutely no employment preferences given based on race, gender, ethnicity, etc. at any time. Extensive training is provided of hiring committees in equal employment opportunity hiring practices, as required by Title 5 §53003(c)(4). For example, during the 2006-07 hiring cycle, about 100 persons serving on hiring committees were trained. In addition, strict monitoring of the hiring process by the District Compliance Officer, or trained monitors, as required by Title 5 §§53003(b)(1) and 53020(b), ensures that SRJC hiring practices are free from any racial, gender, or ethnic bias. During the 2006-07 hiring cycle, all twenty-seven faculty and management hiring committees were monitored.

Sincerely,

A handwritten signature in black ink that reads "Charles O. Prickett". The signature is written in a cursive style with a large initial "C".

Charles O. Prickett, J.D., Ph.D.
District Compliance Officer
Santa Rosa Junior College

Exhibit 2

Santa Rosa Junior College



TO:	BOARD OF TRUSTEES	ITEM NO. 9
FROM:	PRESIDENT	
SUBJECT:	Consideration of Grand Jury Report Recommendation	DATE 8-14-07
REASON FOR BOARD CONSIDERATION ACTION		ENCLOSURES 1 of 2

BACKGROUND

The June 28, 2007 Grand Jury Final Report contains the following recommendation that is required to be addressed by the Board of Trustees:

R4: The Board of Trustees of SRJC should provide all employees access to an independent ombudsman (not an SRJC employee) so that employees can express concerns without fear of retribution.

The report contains two findings (F20, F21, p.51) that appear to be related to this recommendation.

F20 states: "SRJC management reported that any employee should feel free to express concern or criticism about any subject, including the administration, without fear of retribution".

It is difficult to fully understand the context in which this statement may have been made. Taken at face value, the statement is true and one that, hopefully, any member of the college's Management Team might make since it is one the college ascribes to meet.

F21 states: "Some SRJC employees shared their fears of retribution for having spoken with the jury."

Continued

BUDGET IMPACT

The cost of employing an Ombudsman without knowing the need, approximate number of hours to be worked on an annual basis, or any other pertinent information is difficult to assess and deemed an unnecessary expenditure.

ADMINISTRATIVE RECOMMENDATION

The President recommends that the Board of Trustees reject Recommendation 4 of the June 28, 2007 Grand Jury Final Report and direct the President to include the Board's decision in this matter in the College's comprehensive response to the report.

Initiator	Supervising Adm/Mgr	Vice President	President
			Robert F. Agrella

Persons appearing before the Grand Jury should have no fear of retaliation and should be assured of this at the time of their appearance. The Grand Jury should also make known what means are available to individuals should they feel retaliated against. Also, since the College does not know who has appeared before the Grand Jury except as revealed in the report itself, the anonymity of appearance likely precludes even the possibility of retaliation.

As to the Recommendation itself, College employees have a number of means to express concerns. Internal avenues include contacting their union representatives, senate representatives, Human Resources Department, following the chain of command within their work area, and addressing the Board of Trustees during regular meetings. In addition, external agencies such as Department of Fair Employment and Housing may be contacted. The report contains no evidence that retribution occurs at the College. The expenditure of funds to employ someone outside the organization to act as an ombudsman is neither a necessary nor a wise use of limited financial resources.

Board Minutes

Sonoma County
Junior College District

AUGUST 14, 2007

OPEN SESSION

The Board of Trustees of the Sonoma County Junior College District reconvened at 4:00 p.m. Tuesday, August 14, 2007, in Pedroncelli Center of the Santa Rosa Campus of Santa Rosa Junior College. Trustees in attendance included: B. Robert Burdo, Richard W. Call, W. Terry Lindley, Onita Pellegrini, and Marsha Vas Dupre. Trustees Jeff Kunde, Don Zumwalt and student trustee Kera Eubank were absent.

ACTION AGENDA

9. CONSIDERATION OF GRAND JURY REPORT RECOMMENDATION

President Agrella summarized his report to the Board regarding Recommendation 4 and Findings 20 and 21 contained in the Grand Jury's 2007 Report.

M/S/C (Lindley/Pellegrini) the Board of Trustees unanimously rejected Recommendation 4 of the June 28, 2007 Grand Jury Final Report and directed the President to include the Board's decision in the College's comprehensive response to the report.

Exhibit 3

SCHOOL AND COLLEGE LEGAL SERVICES of California

General Counsel
Noel J. Shumway

Attorneys
Margaret M. Merchat
Janna L. Lambert
Joseph C. Kinkade
Nancy L. Klein
Marko H. Fong
Adam S. Ferber
Clare M. Gibson
Carl D. Corbin
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CONFIDENTIAL MEMORANDUM

**This communication is protected by the attorney-client
privilege and should not be distributed to anyone
other than board members and administrative officers
with a business need to know.**

Date: September 24, 2007

To: Dr. Robert Agrella, President
Santa Rosa Junior College

From: Robert J. Henry, Of Counsel 

Re: Summary of Prop 209; Summary of the Rhoma Young Report; and
Comments on the Grand Jury's Report

I. Prop 209

As a result of the Grand Jury's Report on Proposition 209 I reviewed the adoption of Prop 209 and subsequent law in California.

Proposition 209 was adopted by California popular vote in the 1996 General Election, which is now found at Article I, Section 31 of the California State Constitution. This requires that the State shall not discriminate or grant preferential treatment on the basis of race, color, ethnicity, or national origin in public employment.

*Connerly v. State Personnel Board*¹ struck down the Education Code Article governing affirmative action hiring at the community college level. Subsequently, the Education Code sections deemed unconstitutional, sections 87100 through 87107, were replaced with new legislation in 2002 (S.B. 2028), which are now found at sections 87100 through 87108. In the new sections the term "affirmative action" has been removed and instead the sections provide that community colleges will conduct "equal employment opportunity hiring." Also, removed from the new sections is any mention of an intent or plan requiring colleges to increase the number of women and minority persons.

¹ (2001) 92 Cal.App.4th 16.

The Board of Governors for the California Community Colleges, after complying with the rule making process, adopted Title 5 Regulations designed to govern the equal employment opportunity programs at the colleges² on July 12, 2002 (effective on August 11, 2002). In the July 8-9, 2002 agenda item the Board provided the following statement regarding the term “diversity:”

Earlier versions of the regulation changes attempted to retain the use of the term “diversity” while telling districts they could not use it to justify any action that wouldn’t fit into an equal opportunity framework. However, the Chief Human Resources Officers and outside attorneys with whom we consulted advised that this strategy was confusing and risked renewed litigation against the Board of Governors and the districts. The version of the regulations presented at the May meeting addresses this problem by eliminating the use of the term “diversity” while taking the portions of the definition of diversity which are not objectionable under Proposition 209 and including them in the definition of the term “equal employment opportunity.” This emphasizes that true equality of opportunity can only be achieved in an environment which fosters diversity and is welcoming to people of all backgrounds. At the same time, it makes clear that any actions taken to create this climate must fit within the framework of equal opportunity. This will help ensure that the restrictions of Proposition 209 are respected and avoid the possibility of litigation over potentially controversial terminology.

On the basis of the changes in the statutes and the change in the regulations, described above, I would recommend that colleges not use either the term “affirmative action” or “diversity” in connection with hiring practices. Instead, the term “equal employment opportunity hiring” should be used.

5 C.C.R. section 53003 requires colleges to review their district-wide written equal employment opportunity plan at least every three years. The regulations provide legal guidelines in which to document the underrepresentation of certain groups (5 C.C.R. § 53003(c)(7)), methods for addressing the underrepresented (C.C.R. § 53003(c)(8)), what additional steps the College may take to ensure equal employment opportunity for the underrepresented groups (C.C.R. § 53006), recruitment issues (C.C.R. § 53021), job announcement issues (C.C.R. § 53022), applicant pool issues (C.C.R. § 53023), and the permissible selection process (C.C.R. § 53024).

² 5 C.C.R. §§ 51010; 53000-53034.

II. The Rhoma Young Report

Earlier this year I retained Ms. Rhoma Young to conduct an independent investigation of allegations relating to allegations of non-compliance with Proposition 209 in the Modern and Classical Languages Department. Ms. Young is a licensed private investigator with considerable experience in investigating claims of employment discrimination.

Last month Ms. Young completed her investigation and submitted a 37 page report to me. After reviewing the report, and discussing it with Ms. Young, I have concluded as follows:

1. There was no manipulation of the selection criteria or the selection process in 2006 or 2007 to give preference to or foster the selection of an ethnic minority.
2. In each case, the successful candidate was chosen as the most qualified after a lengthy process conducted by the Selection Committee and affirmed by separate administrative staff.
3. Based on Ms. Young's report, it is my opinion that the policies and practices for employee selection and equal employment within SRJC are comprehensive, straightforward and comply with applicable law and policy.
4. The 2006 and 2007 selection processes to fill Spanish language instructor positions incorporated layers of evaluations in the preliminary search, screening, and selection process. In my opinion, the additional layers insulate against potential bias.
5. The design of the preliminary outreach, screening and ultimate interview and decision-making processes to select full time Spanish instructors in both the 2006 and 2007, was job-related, multi-layered, involving several departmental and non departmental staff with very broad-based participation, had open discussion and had many protections to prevent discrimination.
6. The documented facts and information I reviewed contradict the allegations that there was preferential treatment favoring ethnic minorities. It is my opinion that the recruitment and selection processes were reasonable and conducted by knowledgeable and professional staff in multi-layered, highly scrutinized manner. It is my opinion that SRJC met, recognized and accepted management practices in its recruitment and selection processes.

III. Specific Comments on the Grand Jury Report

The "findings" of the Grand Jury contain numerous errors and evidence a fundamental lack of sound investigative techniques.

By way of example:

1. Finding 6 concludes that a heritage speaker preference was included in job announcements for "Spanish instructors but not for a French instructor." This is not accurate. In both 1991 and 1996 a similar preference was expressed in job announcements for French instructors.
2. Findings 11 through 14 completely ignore the "checks and balances" that are used in every recruitment process to assure that no illegal preferential treatment will influence hiring decisions.
3. Finding 18 claims that the Fall 2006 Schedule of Classes included the name of an instructor who had not yet been hired. This is not correct. The instructor in question was offered and accepted the position on April 20, 2006. The last day to add instructor names to the fall schedule of classes was April 25, 2006.

RJH:dlh

Exhibit 4