



**Members of the Board:**  
Jeanette J. Amavisca  
Pollyanna Cooper-LeVangie  
Priscilla S. Cox  
Pamela A. Irely  
William H. Lugg, Jr.  
Chet Madison, Sr.  
Brian D. Myers

**Steven M. Ladd, Ed.D.**  
Superintendent

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9510 Elk Grove-Florin Road, Elk Grove, California 95624

September 16, 2008

The Honorable James M. Mize  
Presiding Judge  
Sacramento County Superior Court  
720 Ninth Street, Dept. 47  
Sacramento, CA 95814

RE: Response of Elk Grove Unified School District Board of Education to 2007-2008  
Sacramento County Grand Jury Final Report

Dear Judge Mize:

The Board of Education of the Elk Grove Unified School District, at a regular meeting held on September 16, 2008, adopted this letter as its response to the Grand Jury's 2007-2008 final report. The Board's response is hereby submitted in compliance with Penal Code Sections 933 and 933.05. The Board wishes to thank the members of the Grand Jury for their time and efforts devoted to the Elk Grove Benefits Retirement Trust ("EGBERT"). Specific responses to each finding and recommendation are set forth below.

### **OPEN MEETINGS**

**Finding 1 A:** The EGUSD approves benefit provisions for its employees and retirees. The EGBERT, by "closing" its meetings, has limited the public's ability to oversee how its retired teachers' health and welfare benefit funds are managed.

**Response to Finding 1 A: Partially Disagree with Finding.** The District does not determine or approve benefit provisions for its retired employees participating in EGBERT. EGBERT is governed by a separate Board of Directors. Pursuant to the provisions of the EGBERT agreement, the EGBERT Board of Directors has sole and exclusive authority to determine the benefits that EGBERT will provide to participants. Except as clarified above, the Board agrees with the finding that the restrictions on access to meetings of the EGBERT Board of Directors limits the public's ability to monitor how retiree health benefit funds are managed.

**Finding 1 B:** The Elk Grove Board of Education and current management staff were helpful to this Grand Jury. We commend their openness and commitment to transparency.

**Response to Finding 1 B: Agree with Finding.** The Board appreciates this recognition of District staff and their efforts to assist the Grand Jury with its duties.

The Honorable James M. Mize

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**Finding 1 C:** A recent report on “Funding Pensions and Retiree Health Care for Public Employees”, prepared by the State’s Public Employee Post-Employment Benefits Commission, supports public participation, disclosure, transparency and accountability in these matters.

**Response to Finding 1 C: Agree with Finding.**

**Recommendation 1:** The EGBERT should comply with the Brown Act since it is using public dollars to fund benefits for public employees, and using reimbursed public staff time and facilities.

**Response to Recommendation 1: Cannot Be Implemented.** As discussed above, EGBERT is a separate entity and is managed by its own Board of Directors. The District does not appoint a majority of the EGBERT Board and does not have operational control over EGBERT’s decisions or activities.

It has been clear for some time that the District Board would prefer EGBERT Board meetings to be open to the public. When the EGBERT Board was considering adopting changes to the trust agreement to restrict access to its meetings, two members of the District Board of Education personally appeared at the EGBERT meeting and appealed to the EGBERT Board to open their meetings to any interested person. (See minutes of September 17, 2007 EGBERT Board meeting, Section III, attached hereto as Exhibit 1.) Despite the known preference of the District’s Board for open meetings, the EGBERT Board voted to adopt the amendments to its trust agreement, thereby restricting access to its meetings.

As a separate entity independent from the District, EGBERT retains its own legal counsel. Based upon correspondence from EGBERT’s counsel, it appears clear that EGBERT believes it is correct in its decision to restrict access to its meetings. (See July 11, 2008 letter from the law firm of Beeson, Tayer & Bodine attached hereto as Exhibit 2.) Only the EGBERT Board of Directors can change EGBERT’s current policy.

As stated above, the District Board agrees with the Grand Jury that EGBERT Board meetings should be open to any interested person. Accordingly, in furtherance of its commitment to transparency, the District Board has sent a letter to the EGBERT Board encouraging that it hold open meetings. This letter was copied to the exclusive representative for each employee organization participating in EGBERT. (See September 16, 2008 letter attached hereto as Exhibit 3.) Additionally, the District Superintendent will request that the management appointees to the EGBERT Board of Directors schedule a vote by the full EGBERT Board regarding possible amendments to the EGBERT trust agreement opening EGBERT Board meetings to any interested person.

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## **FUTURE UNFUNDED LIABILITIES**

**Finding 2 A:** Admirably, the EGBERT has done well with its investments and with controlling management and consultant costs.

**Response to Finding 2 A: Agree with Finding.** The EGBERT Board and its advisors have acted professionally and responsibly in the management of EGBERT's trust assets. The District Board joins the Grand Jury in commending EGBERT in this regard.

**Finding 2 B:** The EGUSD fiscal staff currently projects that in four to five years EGBERT will have a serious gap between the totals of its current contributions and invested trust fund dollars and its unfunded liabilities for retirees. There is no current plan on how to answer this future and predicted liability.

**Response to Finding 2 B: Partially Disagree with Finding.** The District currently contributes more funds to EGBERT than EGBERT spends on benefits for participants. The current funding trend is projected to continue for approximately 5 years, until 2014, when EGBERT's expenses are projected to exceed cash contributions. On a cash basis, EGBERT is projected to have sufficient funds to provide benefits through 2022. These projections assume that there are no changes to EGBERT's benefits or funding.

As noted by the Grand Jury in its final report, there are two methods for addressing the gap between EGBERT's current assets and its projected liabilities, increase contributions or reduce the cost of benefits. Given recent budget cuts to schools and the state's current fiscal situation, current strategy will necessarily be focused on reducing costs. (See p. 59 of Grand Jury Final Report.) The District has already taken some steps to control retiree benefits costs by negotiating an agreement with each of its employee organizations to increase from 10 to 15 years the amount of service required to qualify for retiree benefits. Once a person has retired, however, the level of benefits is controlled exclusively by the EGBERT Board of Directors.

**Recommendation 2:** The EGUSD needs to prepare for affiliation with an organization such as CalPERS to administer its health and welfare retirement benefits. The District should see that necessary laws are enacted to allow for this transition.

**Response to Recommendation 2: Cannot be Implemented.** EGBERT is not a public agency and therefore does not qualify to participate in the new CalPERS California Employers' Retiree Benefit Trust ("CERBT") for pre-funding of retiree benefits. Even if CalPERS would support allowing private non-profit entities to participate in CERBT, it is not clear whether changes in state law would be sufficient to achieve this result. The CalPERS CERBT was carefully designed to comply with Section 115 of the Internal Revenue Code in order to enjoy tax-qualified status. (See "What about a Private Letter Ruling?" in the FAQ on CalPERS' website at <http://www.calpers.ca.gov/index.jsp?bc=/employer/retiree-ben-trust/faq.xml>.)

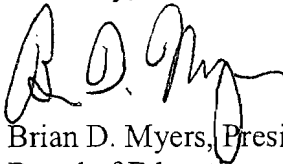
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It is unclear whether EGBERT can participate in the CalPERS CERBT without jeopardizing the tax-exempt status of the trust and such participation may require changes to federal law or regulations that are far beyond the scope of the District's influence.

Additionally, even if it were clear under current state and federal law that EGBERT could transfer its holdings to CalPERS for administration of its investment portfolio, the District Board has no authority to direct such a transfer of EGBERT's assets. As discussed above, the EGBERT Board of Directors has sole and exclusive control over the management of EGBERT's assets and therefore Recommendation 2 cannot be implemented by the District.

In closing, the Board of Education would again like to express its appreciation to the members of the Grand Jury for this timely and helpful dialog regarding EGBERT, and for its recognition of the good job that EGBERT has done managing the assets under its control.

Sincerely,



Brian D. Myers, President  
Board of Education

cc: Dave Irish, Director of Finance  
County of Sacramento  
County Clerk – Recorder Division  
600 8th Street  
Sacramento, CA 95814

✓ Sacramento County Grand Jury  
Attn: Becky Castaneda, Grand Jury Coordinator  
720 Ninth Street, Room 611  
Sacramento, CA 95814

EXHIBIT 1

**Special Meeting of the Board of Directors  
of the  
Elk Grove Benefits Employee Retirement Trust  
("EGBERT")**

**MINUTES  
September 17, 2007**

**Members:**

Carmen Austin, AFSCME Director (*present*)  
Jack Bowman, Management Director (*present*)  
Charlie Chatten, EGEA Director (*Co-Chair, present*)  
Xavier De La Torre, Ed.D., Management Director (*absent*)  
Bob Fossgreen, Management Director (*present*)  
Jeffrey Markov, Management Director (*Co-Chair, absent*)  
Christy Mason, CSEA Director (*present*)  
Richard Odegaard, Management Director (*present*)  
Brian Wiens, ATU Director (*absent*)  
Crystal Jones, PSWA Director (*absent*)

**Alternates:**

Rich Fagan, Management, Alternate (*present*)  
Debra Ladwig, AFSCME Alternate (*present*)  
Victor Guerra, ATU Alternate (*absent*)  
Robbi Henle, PSWA Alternate (*present*)  
Carol Johnson, CSEA Alternate (*present*)  
Debby Smith, Management, Alternate (*absent*)  
Carl Woodbury, EGEA Alternate (*present*)

**Others:**

Shelly Loller, Recorder (*present*)  
Devon Muir, Alan Biller & Assoc. (*present*)  
Sam Ginsburg, Alan Biller & Assoc. (*present*)  
John Provost, Counsel to EGBERT (*present*)  
Lee Schneider, Mellon Capital

**I. CALL TO ORDER:**

With a quorum present, the meeting was called to order by Co-Chair, Charlie Chatten, at 3:09 p.m.

**II. PRESENTATION BY LEE SCHNEIDER, MELLON CAPITAL**

Mr. Schneider provided a brief overview of the firm's history. Materials were provided to Board members to use as reference during the presentation (copy attached). Highlights of the presentation included:

- a. The product proposed is the Global Alpha I, a Global Tactical Asset Allocation strategy, that invests in the world's stock, bond and currency markets
- b. The goal of Global Alpha is to provide consistent returns in a low risk environment, exceeding the benchmark by 5%
- c. Global Alpha is added to the 60/40 benchmark (60% of investments are made in global equities, 40% of investments are made in global bonds), set by Mellon Capital, to create the Global Alpha I strategy
- d. Global Alpha provides for four (4) different decision factors among 39 match points, considers different risk assessment needs, designed to give exposure to world markets
- e. Mellon Capital exposes clients to established markets only, no emerging market investments
- f. Mellon Capital utilizes a systematic approach of incremental investment changes; investment models are run twice a day, tactical shifts may be made 2-3 times per month (avoids jumping in and out of funds)
- g. Mellon Capital provides a transparent portfolio; Alan Biller & Associates can request current information (month end) as needed and not wait for the quarterly reports
- h. Global Alpha is an alternative strategy, not a hedge fund strategy
- i. Mellon Capital evaluates the market to make the investment decisions for the organization

The Board had the opportunity to ask questions about Mellon Capital's investment management practices. Mr. Schneider explained that the firm is looking for broad market exposure and that the models provide for building forward earnings estimates using such information as purchased IBIS data and commodity studies. The model is constantly examined to include different exposures and factor considerations. The basic notion of projecting future earnings has been in place since 1983 and the basis and fundamentals do not change; what does change are the sources from which the information is received.

Previous Board conversations had included discussion about investing 10%. This level of investment would give the organization exposure into global fund opportunities to consider future investment increases into the fund – "put a toe in the water" approach. Mr. Schneider did note that the Global Alpha product will be closing shortly as capacity has nearly been achieved.

The Board will review the information and revisit the idea of making an allocation at the next meeting.

### **III. FURTHER DISCUSSION OF SECTION 7.7 – OPEN MEETINGS:**

The directors discussed the language they had directed John Provost to prepare after their last meeting. Two members of the EGUSD school board had appeared at that meeting and appealed to the EGBERT board to open its meetings to any interested persons. The EGBERT directors, however, had directed Mr. Provost to prepare language to specify the many categories of persons to whom they wished their meetings to be completely open -- i.e., school district retirees, EGBERT participants, EGUSD employees and administrators, and consultants to the Trust -- without completely opening the meetings. The proposed language had been circulated by e-mail.

Mr. Provost reported that Ken Mandler had threatened a lawsuit over this issue. The directors said they had no problem providing Mr. Mandler -- or anyone else for that matter -- with copies of minutes, agenda, and other documents generated for and at EGBERT meetings. However, they still wished to maintain a policy of only conferring an absolute right to attend meetings to the retirees, employees, and school district personnel directly involved with the Trust. After lengthy discussion, it was moved, seconded, and passed to approve Amendment No. 5 to the Trust Agreement regarding meeting requirements. Richard Odegaard abstained from voting.

### **IV. MINUTES OF AUGUST 16, 2007, MEETING:**

The minutes of the regular board meeting held on August 16, 2007, were distributed for review. Approval will be sought at the meeting to be held on October 18, 2007. There will be two corrections made to the minutes to be presented for approval. Carol Johnson will be changed to reflect that she was present at the August 16<sup>th</sup> meeting. Carmen Austin's notation that Brian Myers requested that the Board at least consider amending the language so that it was less restrictive will be added to the first paragraph of Item II.

### **V. ADJOURNMENT:**

There being no further business, the meeting was adjourned at 4:40 p.m.

EGBERT  
Special Board Meeting  
September 17, 2007

AGENDA ITEM II:

1. Original language from trust agreement

Meetings of the Board of Directors shall be open to interested persons and be held from time to time at a place designated by the Board of Directors. Unless such place is designated by previous motion of the Board of Directors, meetings shall be held at the principal office of the EGBERT.

2. Language from amendment #4

Meetings of the Board of Directors shall be open to the Directors and Alternate Directors of EGBERT, the consultants of EGBERT, and to the invitees of the EGBERT Directors. Meetings shall be held from time to time at a place designated by the Board of Directors. Unless such place is designated by previous motion of the Board of Directors, meetings shall be held at the principal office of the EGBERT.

3. Proposed language revision (John's email)

Meetings of the Board of Directors shall be open to the Directors and Alternate Directors of EGBERT as well as to all employees of the Elk Grove Unified School District, the Governing Board and administration of the District, EGBERT retirees, participants and beneficiaries, and to the consultants, advisors and business invitees of EGBERT. Other interested persons may request to attend meetings and such requests shall be subject to approval by the EGBERT Directors. Meetings shall be held from time to time at a place designated by the Board of Directors.



## EXHIBIT 2

DUANE B. BEESON  
NEIL BODINE  
ROBERT BONNALL  
GEOFFREY PILLER  
CATHERINE E. AROSTEGUI  
JOHN C. PROVOST  
ANDREW H. BAKER  
JASON RABINOWITZ\*  
SHEILA K. SEXTON  
MATTHEW MORBELLO\*\*  
DALE L. BRODSKY  
TEAGUE P. PATERSON\*\*\*  
COSTA KERESTENZIS  
LISA W. PAU  
DAVID WEINTRAUB  
MARGARET A. GEDDES  
SARAH SANDFORD-SMITH\*\*\*\*  
PETER M. MCENTEE

\*ALSO ADMITTED IN NEVADA AND HAWAII  
\*\*ALSO ADMITTED IN PENNSYLVANIA AND WASHINGTON  
\*\*\*ALSO ADMITTED IN NEW YORK  
\*\*\*\*ALSO ADMITTED IN HAWAII

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OF COUNSEL  
JOSEPH C. WAXMAN

Sender's Email: [jprovost@beesontayer.com](mailto:jprovost@beesontayer.com)

July 11, 2008

Michael E. Smith, Esq.  
Lozano, Smith  
7404 N. Spalding Avenue  
Fresno, CA 93720-3370

Re: *Sacramento Grand Jury report regarding Elk Grove  
Benefits Employee Retirement Trust (EGBERT)*

Dear Mr. Smith:

Richard Odegaard has asked me to contact you about the recent Sacramento Grand Jury report regarding the Elk Grove Benefits Employee Retirement Trust (EGBERT). More specifically, because the Elk Grove Unified School District must respond to the report by October 1, 2008 -- even though the report primarily addresses *EGBERT*, and its procedures, funding and benefits -- many of the EGBERT directors thought it would be a good idea for me to share some information with you regarding the report.

I find the report to be inaccurate in several respects and to be illogical and ill conceived in several others. Most obviously, although one of the two issues cited in the beginning of the report is whether or not EGBERT has to comply with the Brown Act, EGBERT is not asked to respond to the report, just the District. This makes no sense, and this incongruous thread, by which the District and EGBERT are not treated as separate entities, runs throughout the report.

With regard to the specific findings and recommendations in the report, my own conclusions follow the quoted sections of the report below:

*"Finding 1A: The EGUSD approves benefit provisions for its employees and retirees. The EGBERT, by "closing" its meetings, has limited the public's ability to oversee how its retired teachers' health and welfare benefit funds are managed." The fact is that EGBERT's meetings are not completely closed, as the report suggests. The Trust Agreement for EGBERT provides that besides EGBERT directors and consultants, all employees of the Elk Grove Unified School District, the Governing Board and administration of the District, EGBERT retirees, participants and beneficiaries may attend EGBERT meetings, as well as other interested persons by invitation. Thus, there is ample opportunity for the public, and particularly the individuals who are or who*

*may receive EGBERT benefits, to monitor how EGBERT is administered. The report also completely ignores the fact that in the 12 ½ years of EGBERT's existence only one person has ever been denied access to a directors' meeting. The report also ignores the fact that insofar as this one individual is concerned, the EGBERT directors have agreed to provide him -- and have provided him -- with copies of all relevant documents from directors meeting, including agendas, minutes, financial reports, and actuarial reports.*

*All of this shows that EGBERT is hardly operating in a closed or secretive manner as the report would suggest.*

**“Recommendation 1:** The EGBERT should comply with the Brown Act since it is using public dollars to fund benefits for public employees, and using reimbursed public staff time and facilities.” *This recommendation seems to suggest that EGBERT should comply with the Brown Act because it is legally required to do so. However, there is absolutely no legal analysis employed in the report, and the fact is, there is legal authority supporting the EGBERT directors' determination that it is not covered by the Brown Act. Both the text of the Government Code and an Attorney General's opinion support this determination.*

*You and I have discussed this authority at length in the past, so I will not repeat it here. But I am a bit incredulous that the Grand Jury, which is supposed to operate within a legal framework, is reaching conclusions here that not only fail to use any legal analysis, but actually ignore legal precedent that goes against its conclusions and recommendations. I would be happy to provide you with the relevant citations so you can include them in any District response to the report, if you need them.*

**“Finding 2B:** The EGUSD fiscal staff currently projects that in four to five years EGBERT will have a serious gap between the totals of its contributions and invested trust fund dollars and its unfunded liabilities for retirees. There is no current plan on how to answer this future and predicted liability.” *I do not know what the District's staff has projected, but the April, 2008 EGBERT actuarial report indicated that EGBERT's income each year will exceed its benefit expenses through 2014, and it currently has approximately \$44 million in assets that are in trust exclusively to fund retiree medical benefits.*

*That is not to say there is no funding issue with regard to long-term unfunded liabilities. But although there is no definite “plan” to fund these liabilities, the EGBERT directors and the collective bargaining parties have taken actions at various times in recent years to increase funding and to reduce liabilities. They continue to discuss these issues and no doubt will continue to act where necessary and appropriate.*

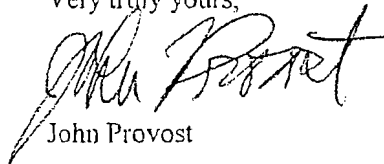
**“Recommendation 2:** The EGUSD needs to prepare for affiliation with an organization such as CalPERS to administer its health and welfare retirement benefits. The District should see that necessary laws are enacted to allow for this transition.” *It is difficult to respond to this because I cannot tell what the Grand Jury means by suggesting CalPERS “administer” District retiree medical benefits.*

*Do they mean EGBERT should in essence purchase retiree healthcare through CalPERS? If so, I would respond that EGBERT has obtained better premium rates from its HMO providers than CalPERS would offer, so that makes no sense. Do they mean CalPERS should truly "administer" the program by collecting contributions, paying HMOs and other providers, determining retiree eligibility, etc.? If so, I have seen absolutely nothing to lead anyone to believe CalPERS could do these things more effectively or cheaply than they are being done now. If they mean that CalPERS should handle EGBERT investments, I do not know why the Grand Jury thinks that would be preferable to what EGBERT is doing now. CalPERS could possibly achieve slightly greater returns, but we do not know (and I venture to say, neither does the Grand Jury) whether the increased volatility that would come with CalPERS's investment allocation would be tolerable for EGBERT and its specific needs.*

*This recommendation also says the District should "see that necessary laws are enacted for this transition." I have no idea what laws they are talking about, nor do I understand what the District could do to ensure that such laws get passed, or by whom. This also begs the question of the role of the collective bargaining parties in this process. The Grand Jury essentially ignores the fact that EGBERT is a creature of collective bargaining. Unless state law is changed in some way as to eliminate the rights of employee organizations to collectively bargain over retiree benefits (which is, practically speaking, not going to happen), neither the District nor EGBERT can force the District's five unions to agree to dissolve EGBERT and go to CalPERS.*

For whatever use you may find them, these are my thoughts on the Grand Jury report and what I would say in response if I were charged with drafting a response. If I can assist you in any way or answer any questions concerning EGBERT and its operations please let me know.

Very truly yours,



John Provost

JP/slj

cc: EGBERT Directors  
Geoffrey Kischuk  
Sam Ginsburg  
Devon Muir

## EXHIBIT 3



**Members of the Board:**  
Jeanette J. Amavisca  
Pollyanna Cooper-LeVangie  
Priscilla S. Cox  
Pamela A. Irey  
William H. Lugg, Jr.  
Chet Madison, Sr.  
Brian D. Myers

**Steven M. Ladd, Ed.D.**  
Superintendent

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sladd@egusd.net

September 16, 2008

Board of Directors  
Elk Grove Benefits Employee Retirement Trust  
9510 Elk Grove-Florin Road  
Elk Grove, CA 95624

RE: Opening EGBERT Board Meetings to all Members of the Public

Dear Members of the EGBERT Board of Directors:

The Elk Grove Unified School District Board of Education believes that meetings of the Board of Directors of the Elk Grove Benefits Employee Retirement Trust ("EGBERT") should be open to all members of the community, whether they are District employees, parents of District students, or interested members of the public. While Amendment No. 5 to the EGBERT Trust Agreement expanded the groups of individuals able to attend EGBERT Board meetings, it still does not provide a general right of access for any member of the public.

The Board of Education understands EGBERT's position that, since it is not a local public agency, EGBERT is not subject to the Brown Act (Government Code §54950 *et seq.*). However, there are strong policy reasons why the EGBERT Board should conduct open meetings with publicly available agendas. Even though the law may not require EGBERT to do so, the Board of Education believes that the public interest and the interest of the Elk Grove community will be best served if the EGBERT Board adopts a broad open meeting policy. Accordingly, the Board of Education hereby encourages the EGBERT Board to further amend the Trust Agreement, or adopt a set of Bylaws, to provide that meetings of the EGBERT Board will be open to any interested member of the public.

Sincerely,

Brian D. Myers, President  
Board of Education

cc: Robert Rader, President, AFSCME  
Murt Anderson, Executive Board, ATU  
Mary Deutsch, President, CSEA  
Tom Gardner, President, EGEA  
Armando Fernandez, President, PSWA