

CAPISTRANO UNIFIED SCHOOL DISTRICT
33122 Valle Road
San Juan Capistrano, CA 92675
BOARD OF TRUSTEES
Board Workshop

September 26, 2018

Workshop: 6:30 p.m.

AGENDA

*Please note that Trustee Reardon will be teleconferencing in from the following location:
Hilton Boston Airport, 1 Hotel Drive, Boston, Massachusetts 02128*

WORKSHOP: 6:30 P.M.

CALL TO ORDER – ROLL CALL

PLEDGE OF ALLEGIANCE

ADOPTION OF THE AGENDA

- 1. **PRESENTATION ON EDUCATION FOUNDATIONS:**
Staff will present information on the legal requirements for charitable foundations and provide information on the District’s current relationship with CUSD Foundation.
CUSD WIG 2: Communicate with, and engage students, parents, employees, and community members in Districtwide and community-specific decisions.
Contact: Clark Hampton, Deputy Superintendent, Business and Support Services

**INFORMATION/
DISCUSSION**
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EXHIBIT 1

Staff Recommendation

It is recommended the Board President recognize Clark Hampton, Deputy Superintendent, Business and Support Services to present information on this item and answer any questions Trustees may have. This is an information item only and no Board action is necessary.

ADJOURNMENT

Motion by _____ Seconded by _____

**THE NEXT REGULAR MEETING OF THE BOARD OF TRUSTEES IS
WEDNESDAY, OCTOBER 10, 2018, 7:00 P.M.
AT THE CAPISTRANO UNIFIED SCHOOL DISTRICT OFFICE BOARD ROOM
33122 VALLE ROAD, SAN JUAN CAPISTRANO, CALIFORNIA**
For information regarding Capistrano Unified School District, please visit our website:
www.capousd.org

**INSTRUCTIONS FOR PRESENTATIONS TO THE BOARD BY
PARENTS AND CITIZENS PRESENT AT THIS MEETING**

We are pleased you can be with us at this meeting, and we hope you will return often. Your visit assures us of continuing community interest in our schools.

The members of the Board of Trustees of this District are locally elected state officials, who serve four-year terms of office, and who are responsible for the educational program of our community from grades kindergarten through twelve. They are required to conduct programs of the schools in accordance with the State of California Constitution, the State Education Code, and other laws relating to schools enacted by the Legislature, and policies and procedures which this Board adopts.

The Board is a policy-making body whose actions are guided by the school District's Mission and Goals. Administration of the District is delegated to a professional administrative staff headed by the Superintendent.

The agenda and its extensive background material are studied by each member of the Board for at least two days preceding the meeting. Board Members can call the administrative staff for clarification on any item, and many of the items on the agenda were discussed by the Board during previous meetings. These procedures enable the Board to act more effectively on agenda items than would otherwise be possible.

WHAT TO DO IF YOU WISH TO ADDRESS THE BOARD OF TRUSTEES

ITEMS ON THE AGENDA. Any person may address the Board concerning any item on the agenda and may, at the discretion of the Board, be granted three (3) minutes to make a presentation to the Board at the time a specific item is under discussion. However, the time assigned for individual presentations could be fewer than three (3) minutes depending upon the total number of speakers who wish to address a specific agenda topic. Prior to the opening of the meeting, a Request to Address the Board card (located in the foyer) should be completed and submitted to the Secretary of the Board. The total time devoted to presentations to the Board shall not exceed twenty (20) minutes, unless additional time is granted by the Board. All presentations shall be heard by the Board prior to the formal discussion of the agenda topic under consideration. Once an agenda item has been opened for public comment, no additional "Request to Address the Board of Trustees" cards shall be accepted for that topic.

ORAL COMMUNICATIONS (Non-Agenda Items). Citizens may address the Board on any item not appearing on the agenda. Individual presentations are limited to three (3) minutes per individual, with twenty (20) minutes in total being devoted for this purpose, but could be less if there are a large number of Oral Communication speakers. Legally, the Board may not take action on items raised by speakers under Oral Communications. However, at its discretion, the Board may refer items to the administration for follow-up or place topics on a future Board agenda.

PUBLIC HEARINGS. Anytime the Board schedules a separate public hearing on any given topic, it shall not hear speakers on that topic before the public hearing, except as to the scheduling of the hearing, nor shall it hear speakers after the hearing, except as to changes in the policy or recommended actions which are directed at the time of the hearing.

CLOSED SESSION. In accordance with Education Code § 35146 and Government Code § 54957, the Board may recess to Closed Session to discuss personnel matters which they consider inadvisable to take up in a public meeting.

REASONABLE ACCOMMODATION

In order to help ensure participation in the meeting of disabled individuals, appropriate disability-related accommodations or modifications shall be provided by the Board, upon request, in accordance with the Americans with Disabilities Act (ADA). Persons with a disability who require a disability-related accommodation or modification, including auxiliary aids and services in order to participate in a Board meeting, shall contact the Superintendent or designee in writing by noon on the Friday before the scheduled meeting. Such notification shall provide school district personnel time to make reasonable arrangements to assure accessibility to the meeting.

CAPISTRANO UNIFIED SCHOOL DISTRICT
BOARD REPORT

To: Board of Trustees

From: Clark Hampton, Deputy Superintendent, Business and Support Services

Date: September 26, 2018

Board Item: Presentation on Education Foundations

HISTORY

As the Board is aware, for approximately two years Administration has been working with the CUSD Foundation to address questions related to the Foundation’s financial integrity. Since at least April of 2018, Administration’s efforts have centered on obtaining information in the form of financial statements so the District can do a proper accounting of funds within the Foundation’s control. Specifically, on April 12, 2018, the Foundation notified the District and the media that their former executive director had absconded with a substantial amount of Foundation money; law enforcement has been involved. The District’s efforts have been predominately rebuffed, except that some public information has been provided to Administration in the form of past due tax filings. The District has also become aware that, in some cases, the Foundation has stated it is unable to fund previously existing commitments, and that the Foundation has notified some organizations that the Foundation was unable to accurately track fund balances. As a result, Administration asked that any remaining funds be turned over by the Foundation to the District for distribution according to the existing fund restrictions. Administration also sought guidance from Trustees regarding what legal remedies Trustees have to address the issues with the Foundation.

BACKGROUND INFORMATION

Charitable foundations are governed generally by state and federal laws, including section 501(c)(3) of the United States Code, and more specifically by Board Policies 1230, 1260, and 3290.

CURRENT CONSIDERATIONS

There are two main purposes of the current presentation to the Trustees, which will take place in open session: (1) to get direction regarding whether to demand that the CUSD Foundation cease and desist operating in its current form as a non-profit organization which raises funds allegedly to benefit students of the Capistrano Unified School District, and whether to initiate litigation in order to enforce this demand; and (2) to educate stakeholders, including members of the public, of financially responsible ways to donate money for the benefit of the District’s students.

FINANCIAL IMPLICATIONS

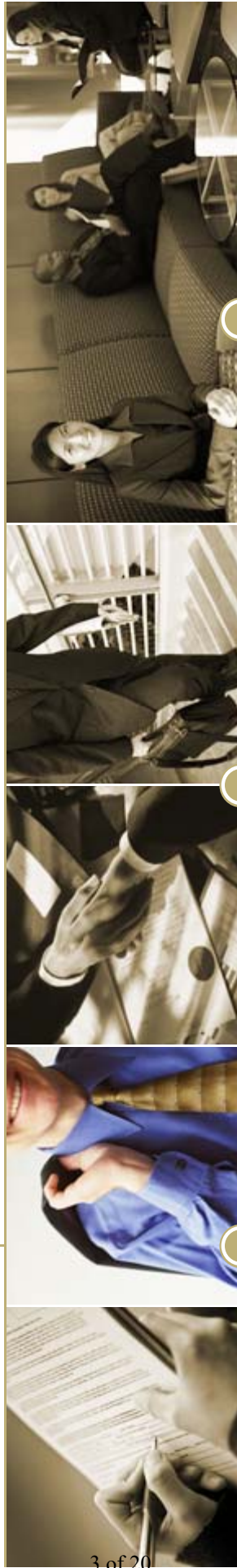
If Trustees direct Administration to initiate litigation against the CUSD Foundation, financial implications would include the cost of litigation.

STAFF RECOMMENDATION

This is an information item only and no Board action is necessary.

APPROVED BY: Clark Hampton, Deputy Superintendent, Business and Support Services

Education Foundations



Capistrano Unified School District
September 26, 2018

Presented by:
Anthony P. De Marco, Partner

aa|rr

Atkinson, Andelson
Loya, Ruud & Romo
A Professional Law Corporation

The Legal Foundation for Charitable Foundations

- Generally, federal tax law permits corporations to organize for a charitable purpose under a “non-profit” designation. (26 U.S.C. § 501(c)(3).)
- State law requires registration and reporting requirements for charitable organizations. (Cal Code Gov. § 12850-12599.8.)

The Legal Foundation for

Charitable Foundations

- State oversight is through the California Attorney General's Office. (Cal Code Gov. § 17510 et seq.)
- The Attorney General may issue a cease and desist order whenever it determines a charitable organization has:
 1. Made a material false statement in an application, statement, or report
 2. Failed to file an incomplete financial report
- Complaints are processed through the Attorney General's Registry of Charitable Trusts

The Legal Foundation for Charitable Foundations

- At the District level, oversight is pursuant to Board Policy:
Board Policy 1260:
“The Board therefore approves and encourages the creation of an independent educational foundation to actively raise funds that will enhance educational opportunities for our students.”
“[T]he Board desires to work cooperatively with the foundation in determining the purposes for which funds may be used to meet the changing needs of the District and its students.”

The Legal Foundation for Charitable Foundations

- At the District level, oversight is pursuant to Board Policy:

Board Policy 3290:

“The Board of Trustees may accept any gift, grant, or bequest of money, property, or service to the District from any individual, private agency or organization, or other public agency that desires to support the District’s educational program.”

The Legal Foundations for Charitable Foundations

- At the District level, oversight is pursuant to Board Policy:
Board Policy 3290 (continued):
“Before accepting any gift, grant, or bequest, the Board shall carefully consider any conditions or restrictions imposed by the donor to ensure their consistency with the District's vision, philosophy, and operations. If the Board believes the District will be unable to fully satisfy the donor's conditions, the gift shall not be accepted.”

The Legal Foundation for Charitable Foundations

- At the District level, oversight is pursuant to Board Policy:
Board Policy 3290 (continued):
“In addition, the Board shall ensure that acceptance of the gift, grant, or bequest does not:
 1. Involve creation of a program which the Board would be unable to sustain when the donation is exhausted
 2. Entail undesirable or excessive costs
 3. Promote the use of violence, drugs, tobacco, or alcohol or the violation of any law or District policy”

The Legal Foundation for Charitable Foundations

- At the District level, oversight is pursuant to Board Policy:
Board Policy 1230:
“School-connected organizations that desire to raise money to benefit any District school or student shall submit a request for authorization to the Superintendent or designee, in accordance with Board Policy and Administrative regulation.”
“All funds raised to support any new District programs, personnel, facilities, or projects must receive prior approval from the Superintendent or designee before fundraising begins.”

The Legal Foundation for Charitable Foundations

- At the District level, oversight is pursuant to Board Policy:
Board Policy 1230 (continued):
“Violations of law, Board Policies, administrative regulations, or rules of the sponsoring school may result in the rejection of donated funds or revocation of the school-connected organization’s authorization to collect funds on behalf of the school or District.”

Oversight of Foundations

- Collection of federal, state, and local rules establish layers of oversight by various agencies:
 1. Federal oversight of whether an entity adheres to rules for 501(c)(3) charitable organization
 2. State oversight related to charitable purposes, and required paperwork
 3. District oversight with respect to acceptance of donations, use of donations, and use of District's name in raising funds

The CUSD Foundation



“The mission of the CUSD Foundation is to raise money by developing partnerships with businesses and the community to enhance the quality of education for every student in the Capistrano Unified School District.”

The CUSD Foundation

- April 12, 2018 statement from CUSD Foundation:
“The Board of Directors of the Capistrano Unified School District Foundation recently became aware of serious financial irregularities that we believe involve the Foundation’s former executive director who resigned in December 2017.”
“The Foundation is shocked and deeply saddened by this situation, but remains absolutely committed to providing financial support to assist in meeting the educational needs of the many students in the Capistrano Unified School District.”

The CUSD Foundation

- District's April 27, 2018 response:
“In light of these allegations, the District is extremely concerned about the Foundation's present ability to appropriately manage and direct the funds which it currently controls.”
- Evidence contributing to District's concerns:
 1. Foundation's inability to pay invoice for vendor approved by a school site based on promises of funding from the CUSD Foundation
 2. Inability of Foundation to accurately inform District and site-based organizations of amount of money on account for specific sites

The CUSD Foundation

- District's April 27, 2018 demands included:
 1. "Turn over to the District all funds currently in its possession that were raised for the benefit of CUSD schools."
 2. "Turn over to the District an accounting of all financial transactions."
 3. "All pending and future requests for donations from District employees must be presented" to Deputy Superintendent.

The CUSD Foundation

- Foundation’s May 2, 2018 response:
 1. “Turn over to the District all funds currently in its possession that were raised for the benefit of CUSD schools.”

Request denied. “Our non-profit organization cannot legally transfer or turn over funds.....”
 2. “Turn over to the District an accounting of all financial transactions.”

Request denied: “This is being handled by appropriate law enforcement agencies and an outside accounting firm.”

The CUSD Foundation

- Foundation’s May 2, 2018 response (continued):
 3. “All pending and future requests for donations from District employees must be presented” to Deputy Superintendent.
Request denied: “Our non-profit organization cannot ... turn over ... approval authority to any public school district.....”

The CUSD Foundation

- Additional interactions:
 - Multiple meetings between District Administrators and Foundation Board Members
 - Email exchanges reiterating demands for information, donations, accounting, etc.
- CUSD Foundation was informed that:
 1. Trustees would remain fully informed
 2. Consent to raise money in the name of the Capistrano Unified School District could be withdrawn
 3. The public would be informed of other donation opportunities

Next steps:

- Receive direction from Trustees on how to proceed
- Educate stakeholders on options for donations:
 1. Directly to the District for uses that can be restricted by the individual making the donation.
 2. Directly to the site, through the District, for uses that can be restricted
 3. No funds donated to the District are appropriated for uses other than those specified by the donors
 4. All funds donated to the District are tax deductible