

CAPISTRANO UNIFIED SCHOOL DISTRICT
San Juan Capistrano, California

RESOLUTION NO. 1819-18

**RESOLUTION REGARDING THE
CAPISTRANO UNIFIED SCHOOL DISTRICT
FOUNDATION FOR EDUCATION
(also known as CUSD Foundation)**

WHEREAS, pursuant to Board Policies 1230, 1260, and 3290, the Trustees of the Capistrano Unified School District oversee and regulate charitable and school-connected organizations with respect to the acceptance of gifts, grants and bequests made to the District or the students and staff thereof; and

WHEREAS, pursuant to these policies, Trustees have approved and encouraged the creation of independent education foundations to actively raise funds that will enhance educational opportunities for our students; and

WHEREAS, it is the desire of Trustees to work cooperatively with such foundations in determining the purposes for which funds may be used to meet the changing needs of the District and its students; and

WHEREAS, Trustees must consider the conditions or restrictions imposed by a donor, including an education foundation, when determining whether to accept a gift, grant or bequest; and

WHEREAS, when it is determined by Trustees that violations of law, Board Policies, administrative regulations, or rules of the sponsoring school exist, Trustees may reject donated funds or revoke the authorization of the school-connected organization's authorization to collect funds on behalf of the school or District; and

WHEREAS, according to its website, the Capistrano Unified School District Foundation for Education (a/k/a CUSD Foundation) is organized under California and Federal law for the sole purpose of raising money by developing partnerships with businesses and the community to enhance the quality of education for every student in the Capistrano Unified School District; and

WHEREAS, the CUSD Foundation is an independent education foundation as contemplated by the applicable Board policies referenced herein; and

WHEREAS, on April 12, 2018, the CUSD Foundation issued a statement which indicated, in part, that:

“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”; and

WHEREAS, District administration undertook an initiative to review and fully understand the financial viability of the CUSD Foundation, as well as the impact of the CUSD Foundation’s fiscal problems on students, staff and other members of the CUSD community; and

WHEREAS, the CUSD Foundation staff and Board has shared only limited information with the District and has not supplied the District with sufficient information as to provide Administration and Trustees the opportunity to conduct a thorough audit; and

WHEREAS, during the open session portion of the Trustee’s meeting on September 26, 2018, Administration provided the following detail regarding attempts to establish transparency with respect to CUSD Foundation finances:

- On April 27, 2018, Administration notified the CUSD Foundation that “the District is extremely concerned about the Foundation’s present ability to appropriately manage and direct the funds which it currently controls.” Administration also demanded the CUSD Foundation “turn over to the District all funds currently in its possession that were raised for the benefit of CUSD schools,” “turn over to the District an accounting of all financial transactions,” and that “‘all pending and future request for donations from District employees must be presented’ to Deputy Superintendent.”
- On May 2, 2018, the CUSD Foundation responded by denying each of these demands. First, the CUSD Foundation stated that “our non-profit organization cannot legally transfer or turn over funds or approval authority to any public school district,” and that “we would be breaking relevant laws were we to turn over donations collected by our independent 501(c)(3) corporation...” The CUSD Foundation also stated that, in denying provision of financial information to the District so Administration could conduct an audit, “[t]his is being handled by appropriate law enforcement agencies and an outside accounting firm.”
- Following receipt of the May 2, 2018 letter from the CUSD Foundation, the District researched the claims by the Foundation that it could not transfer money to the District and determined the Foundation’s contentions were unsupported by fact or by law.
- On May 21, 2018, Administration notified the CUSD Foundation that “these laws and regulations do not prohibit charitable organizations from transferring or turning over funds or approval authority to the entity for which the charitable organization was created.” Administration also brought to the CUSD Foundation’s attention that its own bylaws stated the CUSD Foundation’s treasurer “shall disburse the funds of the Corporation as may be ordered by the [Foundation] Board.”

- There have been multiple exchanges by email and in face-to-face meetings with representatives from the CUSD Foundation; however, as of the date of preparation for Trustees' October 10, 2018 meeting, the CUSD Foundation has not complied with the District's demands; and

WHEREAS, the CUSD Foundation has represented, but the District cannot verify, that the CUSD Foundation regularly makes gifts, grants, or bequests to District staff and/or schools; there is no evidence that CUSD Foundation has followed applicable Board Policies when making such gifts, grants, or bequests; and

WHEREAS, during the course of its investigation, Administration learned that CUSD Foundation has amended its bylaws for the stated purpose of distancing itself from the District, by extending its mission to benefit students residing within the District's boundaries regardless of whether they attend District schools, all while continuing to publicly utilize the District's name; and

WHEREAS, Administration has reviewed the financial filings by the CUSD Foundation that are required by law in order to maintain its charitable designation, and has determined there are potentially inaccurate statements and/or incomplete information therein; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Capistrano Unified School District:

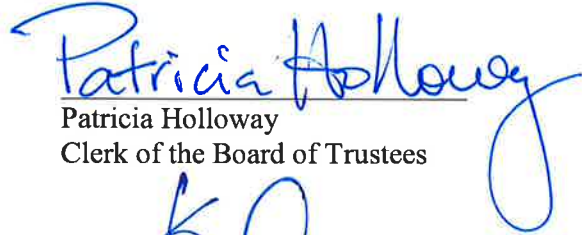
1. That all of the foregoing recitals are true and correct.
2. The failure of the CUSD Foundation to meaningfully comply with the District's demands, as stated above, precludes Trustees from determining whether funds raised in the name of the Capistrano Unified School District are being used in a lawful and responsible manner; and, Trustees are concerned funds may have been misappropriated, misused, or transacted in a manner inconsistent with applicable Board Policies, and state and federal law.
3. The failure of the CUSD Foundation to comply with applicable Board Policies when giving any gift, grant or bequest to District employees has deprived Trustees from exercising its authority to accept or reject such gifts, grants, or bequests; and, the impact of the financial instability of the CUSD Foundation has a direct and immediate effect on District students, staff and school sites.
4. It is appropriate to direct the CUSD Foundation to cease and desist from raising funds as the CUSD or Capistrano Unified School District Foundation, or in any way that suggests to unwitting donors that the CUSD Foundation is endorsed by, or any form associated with, the Capistrano Unified School District.
5. Efforts to educate all community stakeholders including, but not limited to, potential donors, PTAs, booster clubs, school-connected organizations, and other valued education partners regarding alternatives to the CUSD Foundation shall continue.

6. The Superintendent, or her designee, shall take any and all lawful action to implement this Resolution including, but not limited to, financial audits, continued efforts to enforce transparency by the CUSD Foundation, and legal and equitable actions.

APPROVED, PASSED AND ADOPTED by the Board of Trustees of the Capistrano Unified School District this 10th day of October 2018, by the following vote:

AYES: (6)
NOES (0)
ABSENT (2)
ABSTAIN (0)

I, Kirsten M. Vital, Secretary of the Capistrano Unified School District Board of Trustees, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at the meeting on the 10th day of October 2018, by a roll call vote.



Patricia Holloway
Clerk of the Board of Trustees



Kirsten M. Vital
Superintendent
Secretary of the Board of Trustees