



# Confidential Investigative Report

Peralta Community College District  
Report Concerning Complaint by Jeffrey Heyman  
March 14, 2018



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*Investigations Law Firm*

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## I. Introduction and Executive Summary

The Peralta Community College District (“District”) retained Van Dermyden Maddux Law Corporation to conduct an independent investigation into a Whistleblower Complaint brought by Jeffrey Heyman, the District’s Executive Director of Public Information, Communications and Media.

Mr. Heyman’s allegations which are within the scope of this investigation<sup>1</sup> are set forth below, as are my findings which I make utilizing a preponderance of the evidence standard:<sup>2</sup>

- **Allegations Related to the Ferrilli Contract.** The District, through the actions of Chancellor Jowel Laguerre and the Board of Trustees, violated District Policy with regard to a contract entered into between the District and Ferrilli, a technology services consultant. Mr. Heyman further alleged that Ferrilli did not adequately perform under the contract and that consultants from Ferrilli improperly supervised District Information Technology (“IT”) staff.
  - **Findings.** The District’s contract with Ferrilli was entered into and approved by the Board of Trustees in compliance with District Policy. Ferrilli satisfactorily performed under the contract, and general oversight that Ferrilli consultants provided to District IT staff in the absence of an IT Director and two IT managers was not in violation of Policy.
  
- **Allegations Related to Travel by Chancellor Laguerre and the Trustees.** Chancellor Laguerre and the Trustees violated the District’s Travel Policies. Specifically, Mr. Heyman alleged that travel for the Chancellor and Trustees has not been pre-approved as required by District Policy; the Trustees exceeded their designated travel budget; some of the travel by the Chancellor and Trustees may not be related to District business; and Chancellor Laguerre’s international travel was out of compliance with Policy.
  - **Findings.** First, prior to Mr. Heyman’s Whistleblower Complaint, the Board was not consistently pre-approving travel for Chancellor Laguerre and the Trustees or ratifying their travel. I do not find, however, that this practice was for any improper reason. Instead, it appears to have been an oversight and misunderstanding of District Policy. Second, during fiscal year 2016-17, the Trustees exceeded their travel budget by approximately \$7,500. Third, the purpose of the Chancellor’s and Trustees’ travel was permissible according to District Policy. Fourth, Chancellor Laguerre’s international travel was compliant with District Policy.

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<sup>1</sup> Not all of Mr. Heyman’s allegations are included within the scope of this investigation as they have either previously been investigated or were the subject of external audits or Grand Jury proceedings; are outside the area of expertise of this investigator; and/or, even if true, would not violate District Policy or law.

<sup>2</sup> While I make findings as to whether District policies have been violated, I do not make findings as to whether any laws have been violated.

- **Allegations Against Trustee Meredith Brown.** Trustee Brown used her public office for personal gain with regard to a presentation she made on Dual Enrollment at a Community College League of California Conference in 2016. She also allegedly misused her office for personal gain when she asked Mr. Heyman to assist her with writing an article on Dual Enrollment.
  - **Findings.** Trustee Brown did not misuse her public office for personal gain with regard to a presentation she made on Dual Enrollment at a Community College League of California Conference or with respect to her request that Mr. Heyman assist her with writing an article on Dual Enrollment.
  
- **Allegations Against Trustee Linda Handy.** Trustee Handy was improperly reimbursed from District funds for attending (with selected Peralta students) the Congressional Black Caucus Foundation Legislative Conference in Washington, D.C. Mr. Heyman further alleged that Trustee Handy attended a fundraiser for Presidential candidate Hillary Clinton while at the Congressional Black Caucus Foundation's Legislative Conference in 2016 which was paid for with District funds.
  - **Findings.** The use of District funds to pay for Trustee Handy and selected students to attend the Congressional Black Caucus Foundation's Legislative Conference was an appropriate use of District funds. Trustee Handy did not attend a fundraiser for Hillary Clinton while at the conference, nor was she reimbursed by the District for attending a fundraiser.
  
- **Allegations Related to the Chancellor's Interim Appointments and Restructuring Decisions.** Chancellor Laguerre violated the District's Interim Appointment Policy and made restructuring decisions which adversely impacted the District.
  - **Findings.** I find as an overall matter that Chancellor Laguerre has not misused the Interim Appointment process. He has the right pursuant to District Policy to directly appoint individuals to Interim positions subject to Board approval, which occurred. There have been some Interim Appointments which have lasted longer than a year, which is a technical violation of District Policy. However, Chancellor Laguerre and other knowledgeable witnesses credibly explained the necessity for extending some of the Interim Appointments. Additionally, the preponderance of the evidence does not support a finding that Chancellor Laguerre's restructuring decisions have adversely impacted the District or violated District Policy.
  
- **Allegations Related to the Chancellor's Hiring Decisions.** Chancellor Laguerre improperly interfered with the District's Hiring Policies.
  - **Findings.** Chancellor Laguerre has not interfered with the District's Hiring Policies.

- **Allegations Related to the District’s Affiliation With Paul Cheng.** Chancellor Laguerre and the Board of Trustees violated District Policy with respect to the District’s contractual relationship with Paul Cheng and his business, the U.S. Education Foundation. Mr. Heyman also alleged that Mr. Cheng offered “kick-backs” to District staff and, with Chancellor Laguerre’s knowledge, improperly utilized District staff and resources.
  - **Findings.** Chancellor Laguerre had legitimate reasons for entering into contracts with Mr. Cheng on behalf of the District. The District contracted with Mr. Cheng for the purpose of increasing international student enrollment. Although the Board authorized Chancellor Laguerre to enter into contracts with Mr. Cheng, the amount of one of the contracts was not identified in a Board meeting agenda and the specific amount of the contract was not subsequently ratified by the Board as required by District Policy. Mr. Heyman’s allegations that Mr. Cheng offered “kick-backs” to District staff and inappropriately utilized District staff and resources is not supported by a preponderance of the evidence.
  
- **Allegations Related to the Citizens’ Oversight Committee.** The District’s Citizens’ Oversight Committee is not operating in compliance with District Policy.
  - **Findings.** The Citizens’ Oversight Committee is compliant with District Policy.
  
- **Allegations Related to the District’s Response to Public Records Act Requests.** The District’s practice with regard to responding to requests made under the Public Records Act is not in compliance with District Policy.
  - **Findings.** I reviewed how the District responded to a Public Records Act request made by a San Francisco Chronicle reporter. (Mr. Heyman provided this as a specific example to support his allegation.) Based on a review of the evidence, I find that there were lengthy delays in the District’s response to the reporter and that non-privileged documents exist responsive to the request that were not produced. The initial delay in responding to the Public Records Act request was in violation of District Policy which requires acknowledgment of receipt of the request within 10 days. However, it is unclear whether the subsequent delays violated District Policy, because the Policy does not specify a timeframe for producing documents in response to a Public Records Act request.
  
- **Retaliation Allegation.** Chancellor Laguerre retaliated against Mr. Heyman for making his Whistleblower Complaint.
  - **Finding.** Chancellor Laguerre did not retaliate against Mr. Heyman for his Whistleblower Complaint.

This is the Confidential Investigative Report (“Report”) of my findings. It contains detailed information, witness accounts, relevant documentation, analyses and findings relating to the allegations.

## II. The Investigative Methodology

### A. Witnesses

The following individuals were interviewed:

Name of Interviewee	Title	Date(s) of Interview
Julina Bonilla	Trustee	December 1, 2017
Meredith Brown	Trustee	December 1, 2017
Chuen Chan	Dean of Liberal Arts, Laney College	January 23, 2018
Yashica Crawford	Chief of Staff and Special Assistant to the Chancellor	January 4, 2018
Drew Gephart	International Services Manager, Office of International Education	January 12, 2018
Nicky Gonzalez Yuen	Trustee	November 30, 2017
Linda Handy	Trustee	November 30, 2017
Jeffrey Heyman	Executive Director of Public Information, Communications, and Media	June 26, 2017; August 8, 2017 <sup>3</sup>
Melvinia King	Interim Associate Vice Chancellor of Workforce Development and Continuing Education	January 12, 2018
Jowel Laguerre	Chancellor	December 11, 2017
Trudy Largent	Vice Chancellor of Human Resources and Employee Relations	August 28, 2017; February 12, 2018
Brenda Martinez	Board Clerk	February 12, 2018
Antoine Mehoulley	Director of Network Services, Office of Information Technology	January 12, 2018
Michael Orkin	Statistics Professor, Berkeley City College	January 26, 2018
William Riley	Trustee	December 1, 2017
Nitasha Sawhney	District’s General Counsel <sup>4</sup>	August 28, 2017; January 19, 2018
Karen Weinstein	Trustee	December 1, 2017
Christine Williams	Interim Vice Chancellor of Finance and Administration	January 12, 2018
Bill Withrow	Trustee	December 1, 2017

Mr. Heyman was represented at his interviews by Dan Siegel of the law firm Siegel, Yee and Brunner. Chancellor Laguerre, the Trustees, and Board Clerk Brenda Martinez were represented by Edwin Prather of the Prather Law Offices.

<sup>33</sup> The delay between interviews was caused by the lack of availability of Mr. Heyman’s attorney due to his summer vacation and other commitments.

<sup>4</sup> Although Ms. Sawhney provides General Counsel services to the District, she is not an employee of the District. She is a named partner of Garcia Hernandez Sawhney LLP.

**B. Documents**

I reviewed thousands of pages of documents, not all of which are attached to this Report due to the volume of the documents. This Report does not purport to include every detail described by witnesses or specified in documents. Instead, it assesses the important facts as they pertain to the specific claims. The documents must be read in their entirety in conjunction with this Report to fully understand the underlying reasoning and findings herein.

Attachment	Document
1	Whistleblower complaint submitted by Mr. Heyman on June 1, 2017
2	Retaliation complaint submitted by Mr. Heyman on June 13, 2017
3	Performance Evaluation for Mr. Heyman for July 1, 2015 through June 30, 2016
4	Performance Evaluation for Mr. Heyman for July 1, 2016 through June 30, 2017
5	Ferrilli Professional Services Order dated October 27, 2015
6	Agenda and minutes for November 10, 2015 Board meeting
7	Agenda and minutes for January 26, 2016 Board meeting
8	Ferrilli Change Order dated February 2016
9	Agenda and minutes for March 8, 2016 Board meeting
10	Agenda and minutes for July 12, 2016 Board meeting
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	Memorandum from Chancellor Laguerre to Information Technology Staff regarding Change in Reporting Structure dated May 1, 2016
15	Memorandum from Chancellor Laguerre to All College and District Employees regarding Administrative and Supervision Changes dated May 6, 2016
16	Board approvals of appointment of Antoine Mehoulley to Interim Director of Technology Services – June 14, 2016, December 13, 2016, and May 9, 2017
17	Board approval of appointment of Antoine Mehoulley to Director of Network Services – September 12, 2017
18	Memorandum from District Information Technology Staff to Chancellor Laguerre on September 26, 2016
19	Report prepared by Roger Clague regarding Independent Assessment of Ferrilli services
20	Board Policy 6330 – Purchasing
21	Administrative Procedure 6330 – Purchasing
22	Board Policy 6340 – Bids and Contracts
23	Administrative Procedure 6340 – Bids and Contracts
24	Administrative Procedure 7125 – Hiring Acting and Interim Academic and Non-Academic Administrators
25	Agreement Between the District and SEIU Local 1021 (Permanent Employees) – Articles 5, 8, 13, 14, and 22
26	Agreement Between the District and SEIU Local 1021 (Hourly Employees) – Articles 7 and 8
27	Chart summarizing credit card expenses for Chancellor Laguerre
28	Correspondence from Edwin Prather to Nikki Hall dated March 8, 2018

Attachment	Document
29	Chart summarizing Chancellor’s travel from September 2015 through May 2017
30	Chart summarizing Trustees Travel from June 2015 through May 2017
31	Documents related to Chancellor Laguerre’s travel to China in June 2016
32	Documents related to Chancellor Laguerre’s travel to Cuba in November 2015
33	Documents related to travel by Chancellor Laguerre and Trustee Brown to the American Association of Community Colleges Annual Convention in April 2017
34	Minutes of September 12, 2017 Board meeting
35	Agenda Item Details for Item 6.5, September 12, 2017 Board meeting – Ratification of Out of State Travel
36	Agenda Item Details for Item 6.4, September 12, 2017 Board meeting – Consider Approval of Out of State Travel
37	Board Policy 7400 – Travel
38	Administrative Procedure 7400 – Travel Authorization
39	PowerPoint presentation prepared by Trustee Brown for the Community College League of California’s 2016 CEO Conference on the topic of Dual Enrollment
40	Email correspondence between Trustee Brown, Mr. Heyman and others related to article on Dual Enrollment, dated October and November 2016
41	Board Policy 2710 – Conflict of Interest
42	Board Policy 2715 – Code of Ethics and Standards of Practice
43	Press Release by Congressional Black Caucus Foundation regarding Phoenix Awards Dinner at 46th Annual Legislative Conference
44	Conference registration documents related to the Congressional Black Caucus Foundation’s Annual Legislative Conference in 2016
45	Job announcement for Deputy Chancellor and Chief of Staff
46	Job announcement for Special Assistant to the Chancellor and Chief of Staff
47	Memorandum from Chancellor Laguerre to Board of Trustees regarding Recommendation to Appoint Yashica Crawford as Special Assistant to the Chancellor and Chief of Staff, dated December 4, 2015
48	Minutes of December 8, 2015 Board Meeting (Appointment of Yashica Crawford)
49	Administrative Procedure 7123 – Hiring Procedures for Regular Academic Administrators and Classified Managers
50	Contract between District and Paul Cheng/U.S. Education Foundation dated January 21, 2016
51	Contract between District and Paul Cheng/U.S. Education Foundation dated September 9, 2016
52	Professional Development Training Agreement between District and Ningbo (China) City College dated March 2016
53	Teacher Training Program Agreement between District and Ningbo City College dated April 2016
54	Invoices from the District to Mr. Cheng, dated October 10, 2016 and January 19, 2017
55	Chinese Study Abroad Program and Application Package
56	Mr. Heyman’s notes of meeting with Mr. Cheng on June 9, 2017
57	Email correspondence between Mr. Heyman and Chancellor Laguerre regarding Mr. Cheng dated June 12, 2017 and June 13, 2017
58	Chancellor’s C-Gram dated July 3, 2016
59	Agreement between District and Peralta Federation of Teachers (Article 18)
60	Board Policy 6740 – Citizens’ Oversight Committee



Attachment	Document
61	Administrative Procedure 6740 – Citizens’ Oversight Committee
62	Citizens’ Oversight Committee Bylaws
63	Email correspondence from Ted Andersen to Mr. Heyman dated April 28, 2017
64	Email correspondence from Mr. Heyman to Ms. Sawhney dated May 16, 2017
65	Correspondence from Ms. Sawhney to Mr. Andersen dated June 9, 2017
66	Correspondence between Ms. Sawhney and Mr. Andersen on August 6, 2017
67	Correspondence from Ms. Sawhney’s law firm to Mr. Andersen on August 8, 2017 (including attachments)
68	Email correspondence from Mr. Andersen to Ms. Sawhney dated August 28, 2017
69	Correspondence from Ms. Sawhney to Mr. Andersen dated September 6, 2017
70	Board Policy 3300 – Public Records
71	Administrative Procedure 3300 – Public Records Access
72	Board Policy 7700 – Whistleblower Protection
73	Administrative Procedure 7700 – Whistleblower Protection

**C. Evidentiary Standard**

Measuring it against the policy language, the evidence was reviewed, compared and analyzed under a preponderance of the evidence standard to determine whether the allegations were with or without merit. “Preponderance of the evidence,” for purposes of this Report, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, not quantitative, standard.

The conclusions in this Report are drawn from the totality of the evidence and a thorough analysis of all the facts, and where necessary, credibility determinations are made.<sup>5</sup> In this Report, I make factual findings and policy determinations only.<sup>6</sup> I do not reach legal conclusions.

**D. Independence**

Independence was an important component of this investigation. The District and its representatives allowed me discretion to conduct the investigation as determined to be necessary. No party interfered with, or attempted to influence, the findings in this Report.

**E. Timing**

The timing in which the this investigation was initiated and conducted is determined to be reasonable, given all the factors involved, including the number of witnesses; the complexity of the issues; the voluminous amount of documents to be reviewed and analyzed; the amount of time needed for the Complainant and District representatives to obtain and provide the requested documents; delays in the availability of witnesses for interviews due to vacation

<sup>5</sup> I considered and gave appropriate weight to information that might be considered to be hearsay in legal proceedings.

<sup>6</sup> I utilized a legal analysis in reaching the factual and policy determinations in this Report. These findings are intended to facilitate the rendering of legal advice by the District’s General Counsel.

schedules and/or closure of the District Office during the December 2017 holidays and early January 2018; and the time needed to prepare this Report.

### III. Factual Background

The following facts provide relevant background and context to the allegations.

#### A. The Parties

**Jeffrey Heyman.** Mr. Heyman is the District's Executive Director of Public Information, Communications, and Media. He has held that position since 1998. Mr. Heyman reports directly to the Chancellor.

**Jowel Laguerre, Ph.D.** Chancellor Laguerre has been the District's Chancellor since July 2015. Previously, he served as Chancellor at Solano Community College from 2009 to 2015.

**Board of Trustees.** The current Board of Trustee members are Meredith Brown (Board President), William Riley (Board Vice President), Julina Bonilla, Bill Withrow, Linda Handy, Nicky Gonzalez Yuen, and Karen Weinstein.

#### B. The Whistleblower Complaint

On June 1, 2017, Mr. Heyman submitted a Complaint under the District's Whistleblower Protection Policy. In the Complaint, Mr. Heyman made multiple allegations of wrongdoing by Chancellor Laguerre and, in some instances, members of the Board of Trustees. He claimed that the following legal and/or violations of District Policy have occurred: violations of the Brown Act; misappropriation and misuse of public funds; violations of the District's Board Policies and Administrative Procedures with respect to travel expenses for Chancellor Laguerre and the Trustees and with regard to hiring decisions and interim appointments by the Chancellor; violations of the Public Records Act; violations of Campaign Finance Law and Fair Political Practices Act; and Chancellor Laguerre allegedly providing false or misleading information to the Board of Trustees and other third parties.

Many of the underlying factual allegations raised in the Whistleblower Complaint have previously been investigated and audited or, even if the underlying factual allegations are true, would not constitute a legal or policy violation. Therefore, I have not been tasked with investigating those issues. Instead, my investigation was focused on the factual allegations set forth in the Introduction.

In the Whistleblower Complaint, Mr. Heyman stated the following with respect to his reasons for bringing the Complaint:

I have been concerned about these activities for some time, but feel obligated to come forward now not only because I can no longer allow my professional reputation to be put at risk, but also to shield current and future staff and faculty from these abuses of power – and I do so in the interest of reestablishing the public's trust in the Peralta Community College District.

I am also concerned with Laguerre's arbitrary and capricious firing, reassigning, demoting of staff and creating hostile workplace environments for so many of my qualified and dedicated colleagues. This, and the fear of losing my own job, has caused me a great deal of personal anxiety and emotional distress. As the longest serving member of PCCD Senior Staff and member of the Chancellor's Cabinet, it is also a motivating factor in me coming forward at this time.

#### **Attachment 1.**

Similarly, when interviewed in this investigation, Mr. Heyman reiterated that he feared losing his job due to the number of administrators that have had their contracts terminated or not renewed during Chancellor Laguerre's tenure.

#### **C. Retaliation Complaint**

On June 13, 2017, Mr. Heyman informed the District's General Counsel Nitasha Sawhney that he believed Chancellor Laguerre retaliated against him as a result of his Whistleblower Complaint. Specifically, Mr. Heyman alleged that, on June 12, 2017, Chancellor Laguerre was unfairly critical of an Enrollment Marketing Campaign that Mr. Heyman prepared to increase enrollment for fall 2017. According to Mr. Heyman, the Enrollment Plan was nearly identical to one he prepared for fall 2016 which Chancellor Laguerre praised. **Attachment 2.**

#### **D. Performance Evaluations**

Chancellor Laguerre has prepared two performance evaluations for Mr. Heyman.

**2015-16 Performance Evaluation.** In the performance evaluation for the period of July 1, 2015 through June 30, 2016, Chancellor Laguerre rated Mr. Heyman as meeting or exceeding performance standards in most performance categories. However, there were several categories in which he rated Mr. Heyman as "Developing" or "Needs Improvement." In the Comments section of the evaluation, Chancellor Laguerre wrote:

Mr. Heyman's performance was mixed. It has taken me some time to understand what works well and what does not in his area of responsibility. His personality and enthusiasm for the work he does are very good. He produces excellent videos and good art work for marketing and publicity. He works well with his team and is knowledgeable about the media. He falls short of portraying his authority of the Chief Information Officer and does not leverage his position enough to support the colleges. He has started joint meetings with the College public relations employees or contractors; though that emphasis has yielded some good results, but it is not nearly as unifying or elevating as it should be. While we do well in videos in general, much more leadership is needed from Mr. Heyman in overall marketing, image building and branding of the institutions at no direct costs or at little costs. Two things are needed for improved performance: higher leadership/know how and a total rethinking of the position to allow higher performance.

Despite his reservations about Mr. Heyman's performance, Chancellor Laguerre recommended "Retention" of Mr. Heyman due to his overall rating of meeting or exceeding performance expectations. **Attachment 3.**

**2016-17 Performance Evaluation.** For the period of July 1, 2016 through June 30, 2017, Chancellor Laguerre downgraded Mr. Heyman from "Retention" to "Conditional Retention" which is defined on the evaluation form as follows: "One or more serious or potentially serious problems were observed by evaluator during this Rating Period; however, additional coaching, training, or other corrective actions will most likely lead to improvement."

Chancellor Laguerre wrote the following comments in this evaluation:

Mr. Heyman's performance had several areas that have continued to be problematic from the previous evaluation. After almost two years of supervising Mr. Heyman, I have come to the conclusion significant improvement is still necessary for Mr. Heyman to exhibit the level of management and leadership required for this position. The area where Mr. Heyman performs well is in the production of videos with the support of his staff. His performance in production of videos continues to be his strong area. However, after observing this work for second year and analyzing what it produced and what the results of Mr. Heyman's efforts are for the District, the videos and current standard does not meet the mark. The areas of deficiency that were identified in last year's evaluation continue to need significant improvement. Last year I noted that I believed Mr. Heyman was knowledgeable about the media, in this year I have found that his knowledge is limited and has not translated in better coverage or even adequate coverage of Peralta's accomplishments. Mr. Heyman is failing to provide opportunities for the District and Colleges to highlight positive achievements. Under his leadership; the District has not tried anything new, there are no new relationships or partnerships, no improved coverage or social media that is notable or brings any positive attention to the District. And where negative and false information about the District has been broadcast, Mr. Heyman has failed to respond or develop a plan to respond. Mr. Heyman falls short at exuding and exercising the level of leadership that is needed from the Chief Information Office and does not leverage his position enough to support the colleges. His support of the Colleges has been inadequate, despite the understanding that he would work closely with their PIOs. His partnership with the PIOs has not yielded benefits such as greater media exposure. Notwithstanding our successes in videos in general, much more leadership was needed from Mr. Heyman in overall marketing, image building and branding of the institutions and increasing enrollment. I must note that Mr. Heyman has recently provided me with a new restructuring plan but it is also important to note that this came at the end of May even though I had identified significant needs in last year's evaluation and was produced only after I provided a list of additional concerns to Mr. Heyman. This shows that Mr. Heyman is failing to see the concerns raised last year with the urgency and attention they require.

I am also concerned that Mr. Heyman is not committed to promoting the District which is the core of his job. On at least two occasions, Mr. Heyman has told employees of the District that the District is not worth promoting and to

create promotional materials for recruitment of employees. Mr. Heyman is responsible to promote the District and his attitude toward the District is not conducive to doing the job we need to instill confidence in the District to hire personnel and recruit students. Furthermore, as an executive manager and leader, Mr. Heyman ought to work with his supervisor to make clear what may be tarnishing the image of the District and work to help repair it.

[...]

Mr. Heyman signed the evaluation on June 30, 2017. **Attachment 4.** Although he signed the evaluation after submitting his Whistleblower Complaint, Mr. Heyman has not alleged that the evaluation was in retaliation for the Complaint.

When interviewed in this investigation, Chancellor Laguerre explained that he had planned on giving Mr. Heyman a lower performance rating in the 2015-16 evaluation, but Mr. Heyman convinced him to provide the “Retention” designation. Chancellor Laguerre agreed to change the rating based on Mr. Heyman’s commitment to improve his performance.<sup>7</sup> However, once he did not observe adequate improvement, Chancellor Laguerre decided to give Mr. Heyman the “Conditional Retention” designation in the 2016-17 evaluation.

**Additional Background provided by Trudy Largent.** Ms. Largent is the District’s Vice Chancellor of Human Resources and Employee Relations. Ms. Largent was aware, as far back as 2010, that some members of the Board of Trustees wanted Mr. Heyman “to focus more on publicizing the District and our positive activities and how we’re portrayed in the media,” and that there was some concern that was not being done. However, Chancellor Laguerre’s predecessor (Chancellor Jose Ortiz) had a friendly relationship with Mr. Heyman and gave him a positive performance evaluation prior to leaving the District. Chancellor Laguerre, by comparison, had concerns about Mr. Heyman’s performance which was ultimately reflected in the 2016-17 evaluation.

I provide the information summarized above related to Mr. Heyman’s performance evaluation, “Conditional Retention,” and his admission that he fears for his job security, to provide context for the events that led up to Mr. Heyman’s Whistleblower Complaint.

#### **IV. Allegations, Evidence, Findings and Analysis**

This section summarizes each of Mr. Heyman’s allegations which are within the scope of the investigation, the evidence related to the allegations, and the findings and analysis related to each allegation.

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<sup>7</sup> Documentation in Mr. Heyman’s personnel file confirms that Mr. Heyman asked Chancellor Laguerre to reconsider the performance rating in the 2015-16 evaluation.

## A. Ferrilli Contract

### 1. Allegation

Mr. Heyman made several allegations related to the District's retention of Ferrilli, a technology services consultant. First, he took issue with the fact that the District entered into a "million dollar no-bid contract" without going through a competitive bidding process.<sup>8</sup> Second, he alleged that it was improper and a violation of the Public Contract Code for the District to retain Ferrilli to both evaluate the technology issues at the District and to then fix the problems they discovered. Third, Mr. Heyman took issue with the fact that the "no-bid" contract was approved at a Board meeting that occurred during the summer of 2016 when there was less opportunity for public input. Fourth, Mr. Heyman alleged that Ferrilli did not meet its deliverables. Fifth, he alleged that Ferrilli consultants "took over" the Information Technology ("IT") Department and supervised District staff in violation of District Policy.

Mr. Heyman understood that Ferrilli was "supposedly" hired due to an "emergency" situation with the District's technology systems. However, it was never clear to Mr. Heyman what the emergency was, except that "anything could happen at any time and we'd be vulnerable and our students would be vulnerable [...] but no emergency declaration was made." He characterized the purported emergency situation as "more like an afterthought to the actual contract."

With regard to Ferrilli taking over supervision of IT staff, Mr. Heyman said that was necessary because Chancellor Laguerre terminated the contracts of two managers in the IT Department (██████████).

### 2. Background

**Original Ferrilli Contract.** On November 10, 2015, the Board approved a contract between the District and Ferrilli for an amount up to \$80,000. Ferrilli agreed to provide the following services:

- Analyze Campus Technology.
- Review Academic Technology.
- Conduct Diagnostic Interviews.
- Alignment of Technology.
- Evaluation of Technology Staff and Organizational Structure.
- Review Technology Governance.
- Analyze Technology Spending and Benchmarking.
- Present Technology Future Vision and Roadmap.

### Attachments 5 - 6.

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<sup>8</sup> Mr. Heyman also claimed that the District's General Counsel (Ms. Sawhney) expressed "extreme concern" about awarding the "million dollar no bid contract," but, after doing some research, stated that she thought it was "probably okay."

**First Contract Amendment.** On January 26, 2016, the Board voted to increase the contract amount by \$24,900, for a total “not to exceed” amount of \$104,900. The increase was needed to develop a Basic On-Site Disaster Recovery Plan for the District’s Enterprise Resource Planning (“ERP”) system. **Attachment 7.**

**Second Contract Amendment.** On March 8, 2016, the Board voted to increase the contract amount by \$450,000, for a total not to exceed amount of \$530,000. The term of the contract was extended through July 2016. The scope of the contract was expanded to provide the following services: (1) an Interim full-time onsite Chief Information Security Officer; (2) an Interim full-time onsite Director of Enterprise Application; and (3) other part-time Ferrilli team members to provide support to the Chief Information Security Officer in “addressing critical safety and security vulnerabilities.” **Attachments 8 – 9.**

**Third Contract Amendment.** On July 12, 2016, the Board voted to increase the contract amount by an additional \$450,000, for a total not to exceed amount of \$980,000. The term of the contract was also extended through December 2016. The services remained the same. **Attachment 10.**

[REDACTED]

**Memoranda from Chancellor Laguerre regarding change in reporting structure.** On May 1, 2016, Chancellor Laguerre sent the following memorandum to IT Staff:

Vice Chancellor [of Finance and Administration] Ron Little and I met and discussed a change in reporting. Starting today, May 1, 2016, the Information Technology Department will again be reporting to the Chancellor, as it did previously. Information Technology Districtwide presents some challenges that require direct involvement by the Chancellor, and I have come to realize that there is a web created by five IT departments (District and colleges) that need to be addressed. [...]

George Crossland, who heads the Ferrilli colleagues, will report to me. He will have day-to-day leadership over District IT operations. He will handle the first level of issues that fit his role and the rest will be reported to me or Dr. [Yashica] Crawford. Therefore, please review all IT matters with George first and he will decide what needs me and Dr. Crawford’s attention.

There will be regular meetings of the IT team for problem solving which George will lead. [...]

**Attachment 14.**

On May 6, 2016, Chancellor Laguerre sent a memorandum to “All College and District Employees” regarding “Administrative and Supervision Changes.” In the memo, Chancellor Laguerre communicated the following with respect to the IT Department:

The Information Technology unit that reported to Finance and Administration is now reporting to the Chancellor’s Office. George Crossland is serving as our Chief Information Technology Officer, in the role of Associate Vice Chancellor for Information Technology. He will oversee the work of the staff.

There is currently no Interim Director of IT. The position was vacated on Friday and we are currently working on filling the position by this week.<sup>9</sup>

## Attachment 15.

### 3. Witness Statements

#### a. Chancellor Laguerre

As background for what led up to the retention of Ferrilli, Chancellor Laguerre noted that in the summer of 2015, the Financial Aid Director and former Associate Vice Chancellor of Student Services informed Chancellor Laguerre that, because of the lack of information and access from the IT Department, financial aid might not be disbursed to students. Chancellor Laguerre explained that 60% of the District’s students are on financial aid and need those funds to pay their tuition. When such funds cannot be disbursed, “the federal government can get you on that” and it can be “big trouble.” This issue was a significant factor in Chancellor Laguerre’s evaluation of the competency of the leadership of the IT Department.

Chancellor Laguerre stated that another issue with the IT Department related to its implementation of a new phone system, which was built on top of an old phone system. Under the new phone system, 911 emergency calls were not making it to dispatch, which was a “big issue” with safety and security. Data security was another issue; the Chancellor and Trustees toured the data storage room, and they all came “out of there really upset for what had gone on there that we didn’t know about.” It was not just software security, Chancellor Laguerre said, but the physical security of the District’s investment. As one example, Chancellor Laguerre pointed out that there was a barbecue with a propane tank situated outside of the District’s data center.

These factors were all taken into account in hiring Ferrilli. Chancellor Laguerre had worked with Robert Ferrilli to quickly resolve financial aid issues when Chancellor Laguerre was at Solano Community College District. As further background, Chancellor Laguerre explained that there had been a previous evaluation of the District’s technology services of which he and others “could not make any sense.” The District knew it had issues with its IT Department, so when Chancellor Laguerre contacted Ferrilli, it was not so much that Ferrilli was expected to do

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<sup>9</sup> A Vice Chancellor of Information Technology was not hired until January 2017. However, from approximately mid-May 2016 through early September 2017, District employee Antoine Mehoulley was appointed Interim Director of Technology Services. **Attachment 16.** Subsequently, on September 12, 2017, the Board approved the appointment of Mr. Mehoulley to Director of Network Services. **Attachment 17.**



another evaluation of the existing technology situation, but to determine how Ferrilli could help the District improve its technology processes going forward.

Chancellor Laguerre deferred to the District's General Counsel on the question of whether a competitive bidding process was required prior to entering into a contract with Ferrilli. However, Chancellor Laguerre explained that "we don't just hire someone"; contracts go through the General Counsel and the Board, and no objections were raised regarding the contract. Based upon the Board's past practice, Chancellor Laguerre did not believe there was anything wrong with approving the Ferrilli contract without a bidding process.

When asked whether the Ferrilli contract was an "emergency" contract as defined by the Public Contract Code, Chancellor Laguerre said that he would more accurately describe it as an "urgency" contract. For example, "if your 911 isn't working," Chancellor Laguerre said, "you don't have 30-40 days to fix it," as lives can be lost if it is not fixed quickly. When the Board discovered that the data center could be in "jeopardy, [they] wanted to do the best [they could] in order to take care of it right away."

When asked whether he thought it was a conflict of interest for the same contractor to identify problems and then fix those problems, Chancellor Laguerre explained that he has to have a "certain amount of accountability" as a public employee who serves taxpayers. Since a previous consultant had already assessed the District's IT Department and found issues that needed correction, Chancellor Laguerre thought it would be a waste of public funds to ask Ferrilli to review the previous assessment for accuracy. Thus, when Chancellor Laguerre contacted Ferrilli, it was for immediate assistance.

Chancellor Laguerre stated that the timing of the July 2016 Board meeting at which a substantial increase to the Ferrilli contract was approved "had nothing to do with hiding anything." Rather, it was "just the timing," because the contract was set to expire. The Board, he said, operates 11 out of 12 months, and does its work whenever business needs to be done. Chancellor Laguerre further explained that even with short 24-hour notice, and even during the summer, people "show up in force" to Board meetings. This meeting was no different.

According to Chancellor Laguerre, not only did Ferrilli deliver its work on time, but "they kept us and left us in good shape." Ferrilli "went above and beyond," making "tremendous improvement" and allowing the District to transition the IT Department to its own employees. The District is in a better place now than it was before Ferrilli came, he said.

When asked why the Ferrilli contract was not extended beyond December 2016, Chancellor Laguerre said that by the time the second or third contract extension was in place, the urgency was over and the District wanted more "stability." As such, Chancellor Laguerre considered having another consultant come in and train the District's IT staff, pursuant to a Request for Proposal. Chancellor Laguerre sought input from the existing IT staff to see what they wanted to do. The staff came up with two proposals. The first was for the District to hire someone the District "control[led] to run IT," who would in turn hire consultants as necessary. Chancellor Laguerre agreed to this first proposal, and had the staff present it to the Board. He did not recall when the presentation was made, but the District ultimately hired Jason Cole as Vice Chancellor

of Information Technology, effective January 2017. Since Chancellor Laguerre agreed to the staff's first proposal, the staff never told him what the second proposal was.

Chancellor Laguerre acknowledged that Ferrilli consultants – George Crossland and Deb Bennett – supervised staff in the IT Department to an extent, in that they worked with staff and told them what to do on particular projects. However, the consultants did not prepare employee evaluations, sign timesheets, or approve vacations. Chancellor Laguerre stated that IT staff were formally reporting to Yashica Crawford (Chief of Staff and Special Assistant to the Chancellor) and later to Mr. Mehoulley, who served as Interim Director of Technology Services.

[REDACTED]

**b. Trustee Brown**

Trustee Brown said that IT has been an issue at the District since she has been a Trustee. According to Trustee Brown, former Chancellor Ortiz did not take adequate action to address those issues. However, when Chancellor Laguerre arrived, Ferrilli “parachuted in” and “got [the District] back on track.” Trustee Brown denied that Ferrilli failed to meet its deliverables.

When asked why there was no competitive bidding process, Trustee Brown stated that it is not her role as a Trustee to be involved in operational details of that nature. However, she did not see the absence of a bidding process as a “red flag,” because she is not aware of any legal requirement to follow a competitive bidding process for technology services. She also defers to the District’s General Counsel with regard to contracting issues.

When asked whether she thought it was a conflict of interest to hire Ferrilli to both identify problems and subsequently fix them, Trustee Brown said she “supposed we could have left wires hanging from the ceiling,” but the Trustees “wanted to know what the problem was, and we needed a fix.”

Trustee Brown had no issue with the contract amount being increased at a summer Board meeting. She surmised that the increase was likely brought up at that meeting “because we were running out of what we agreed to before.”

**c. Trustee Handy**

Trustee Handy recalled that Ferrilli was brought in to assess the challenges in the District’s IT Department, identify what needed to be fixed, and make recommendations as to how to improve the Department. Trustee Handy thought Ferrilli was knowledgeable and competent to do an assessment of the District’s IT Department. The issues in IT needed to be assessed and fixed immediately, and the Board had no objection to proceeding on an “emergency” basis. She did not recall whether the contract met the criteria for an emergency contract under the Public Contract Code, but she did not think there was anything unusual about the hiring of Ferrilli. This, she said, was how the system works; if there is a breakdown in the system, “you call in a specialist.”

Trustee Handy said Ferrilli was transparent with the issues that they addressed, and she had no qualms about the work they did. She added that Ferrilli “absolutely” did what the Board expected.

When asked why the Ferrilli contract was increased to \$980,000 at a summer Board meeting rather than a meeting during the school year, Trustee Handy said that “that’s when the issue came up.” She recalled that members of the public, including reporters, were present at the meeting.

**d. Trustee Bonilla**

Trustee Bonilla stated that Ferrilli’s role was to come in at a high level and assess the District’s infrastructure and technology needs. When asked why the Ferrilli contract was approved without a competitive bidding process, Trustee Bonilla explained that there was an immediate need for an evaluation and repair of the District’s technology systems. Trustee Bonilla did not know whether it posed an improper conflict of interest for Ferrilli to be hired to both identify and fix the District’s technology problems, but she had no concerns about the scope of Ferrilli’s work.

Like other Trustees, Trustee Bonilla stated that the Board regularly conducts business during the summer. She had no recollection as to whether members of the public were present at the summer Board meeting when the Ferrilli contract was increased and extended.

Trustee Bonilla was not aware of any failure by Ferrilli to deliver its work on time, and did not know that to be true. Ferrilli’s work was adequate as far as she could tell.

**e. Trustee Gonzalez Yuen**

Trustee Gonzalez Yuen stated that when Chancellor Laguerre came to the District, the District’s IT infrastructure was “on the verge of collapse” and needed “immediate,” “desperate,” and “crisis-level intervention” in order to avoid further damage. The Trustees were given a tour of the IT facilities, and Trustee Gonzalez Yuen described those facilities as “desperate looking.” Ferrilli was therefore hired to “patch up deficiencies” in the physical infrastructure and software after almost all of the IT leadership staff was terminated.

When asked why there was no competitive bidding process, Trustee Gonzalez Yuen explained that once the critical flaws in the IT infrastructure were discovered, Chancellor Laguerre made the decision to relieve key IT personnel of their duties and make emergency replacements. Thus, there was no time to go through a formal bidding process. The District needed to make a “clean sweep” of its IT staff, and it was Trustee Gonzalez Yuen’s understanding that bringing in “high level, expensive IT folks was not out of the norm.” The Board was eager to make sure the “whole thing didn’t collapse”; for example, if the District lost its enrollment information, it would lose its entire income flow. Trustee Gonzalez Yuen did not know if the contract qualified as an “emergency” contract under the Public Contract Code, but he relies on the District’s General Counsel to provide legal advice on that type of issue. If the General Counsel does not flag it as a problem, the Board moves forward.

Trustee Gonzalez Yuen did not know whether there was any issue with hiring the same contractor to identify problems and fix them. Trustee Gonzalez Yuen would rely on the General Counsel and the Chancellor to identify whether such an arrangement posed a potential conflict of interest.

Trustee Gonzalez Yuen did not recall why the final increase of the Ferrilli contract was approved during a summer Board meeting rather than a meeting during the school year, but explained that the Board is not limited to the academic year to conduct its business.

Trustee Gonzalez Yuen stated that he and former Trustee Gulassa asked Chancellor Laguerre to hire another consultant to evaluate Ferrilli's work, which the Chancellor did. However, Trustee Gonzalez Yuen did not know what conclusion that consultant reached.<sup>10</sup>

Trustee Gonzalez Yuen said he might have been aware of Ferrilli consultants overseeing the District's IT staff, because the Ferrilli consultant onsite was "basically acting CIO," and in that capacity he would have to oversee staff. Trustee Gonzalez Yuen had no concerns about this; he understood the District was searching for a permanent replacement for the former Associate Vice Chancellor of IT, but since the District had "taken out virtually everyone" from IT, there needed to be someone "at management level running the shop."

#### **f. Trustee Withrow**

Trustee Withrow described the IT situation that the District faced as a "mini crisis" and "nervous breakdown" which had to be "moved on quickly," thus necessitating a contract with Ferrilli.

Trustee Withrow stated that there was no competitive bidding process prior to entering into the contract, because the IT situation presented an "emergency" and, under such circumstances, the law allows for a no-bid contract. As an example of the emergency situation, Trustee Withrow explained that when he and the other Trustees toured the IT Department, he observed the door to a high-security area that only had a locking mechanism on the inside rather than the outside. Given the emergency situation, Trustee Withrow did not find it unusual for Ferrilli to be hired to both identify problems and also fix them.

Trustee Withrow acknowledged that the Board increased the not-to-exceed amount on the Ferrilli contract at a summer Board meeting in 2016, but noted that the District is an "ongoing operation" that "can't come to a halt" in the summer. He also noted that Ferrilli had already started their work by the time of the 2016 summer Board meeting.

Trustee Withrow believed that the contract with Ferrilli "worked out well" for the District, in that it helped the District improve its organization and gain confidence in its IT Department.

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<sup>10</sup> Chancellor Laguerre recalled former Trustee Gulassa asking him to hire another consultant to confirm that Ferrilli did the work they expected. Based on that request, Chancellor Laguerre hired Roger Clague. In his report, Mr. Clague reported that Ferrilli did a good job and that the District "got [Ferrilli] cheap" for the amount of work they did. (See further information related to Clague's Report in Section 4 below.)

Trustee Withrow had no concern that Ferrilli consultants were overseeing the District's IT staff. While he believes the law does not permit contractors to direct the day-to-day work of employees, contractors are permitted to "set the charge," i.e. set the structure and identify goals and timelines for the Department.

**g. Trustee Riley**

Trustee Riley described Ferrilli as a "tech type operation" that was "brought in a couple of years ago." Trustee Riley was not sure what specifically they did, but he acknowledged that technology issues are a "constant battle" for community college districts everywhere. "Things change, [and are] always changing, [so you] get people to come in and help." When asked if Ferrilli's work was adequate, Trustee Riley responded, "I guess. I don't get involved, that's the Chancellor's piece."

Trustee Riley did not know why there was no competitive bidding process. He explained, "Stuff comes up from the Chancellor, he gives a justification, the Board voted it out or voted it up. This time, we voted it up." Trustee Riley did not know if it posed a conflict of interest for Ferrilli to both identify and fix the District's technology problems, but said "it's probably a practice that happens," and if it was a problem, "legal counsel would share it with us."

When asked why the Board increased Ferrilli's contract during a summer Board meeting rather than a meeting during the school year, Trustee Riley responded, "Probably the need. If we needed it, it needed to get done. We don't need to wait until the bell rings."

**h. Trustee Weinstein**

Trustee Weinstein was not on the Board at the time the Ferrilli contracts were approved or while Ferrilli was performing services for the District.

**i. Nitasha Sawhney**

Ms. Sawhney is the District's outside counsel, acting in the role of General Counsel. She explained that "IT [...] is a huge issue" that has plagued the District for several years. This was one of Chancellor Laguerre's primary items to address when he arrived. Before Chancellor Laguerre arrived, Chancellor Ortiz hired an out-of-state firm to assess the IT situation at the District, which advised the Board, in short, that "everything's going in the right direction. It will be alright." The Board did not have confidence in that assessment, [REDACTED]

When Chancellor Laguerre arrived, he brought in Ferrilli to assess the IT situation. Ferrilli's assessment was that the District did not have good IT leadership and that there were "emergent [and] serious crises related to security and vulnerability to data breaches" which required immediate action. The Board and Chancellor discussed this, and the Chancellor asked Ferrilli to "come in and assist the District until they were able to stabilize the Department and get new leadership in the Department." Ferrilli agreed, and the Board approved a contract for Ferrilli to provide these services.

Ms. Sawhney recalled that Ferrilli brought in two full time consultants (Mr. Crossland and Ms. Bennett), and “a bunch of backroom staff” to assist with a couple of large-scale projects. One such project was a password reset for every account in the District. Ms. Sawhney thought the Ferrilli consultants “did a very good job on that.” Ferrilli also helped the District relocate its data storage from an onsite location to an offsite location in order to mitigate a data breach vulnerability.

Ms. Sawhney disagreed with Mr. Heyman’s contention that a competitive bidding process was required prior to the District entering into a contract with Ferrilli. Ms. Sawhney concluded that the contract was not subject to competitive bidding requirements, because it was a “professional services contract” which is exempt from public bidding requirements. She added that the District had an immediate need for individuals with IT expertise given that two managers in the IT Department [REDACTED] and the District had not yet been able to fill those positions.

Ms. Sawhney also explained that in a meeting between Chancellor Laguerre and San Francisco Chronicle reporter Ted Andersen, Chancellor Laguerre used the word “emergency” to describe the issues that Ferrilli had been hired to address. Despite the Chancellor’s choice of the word “emergency,” however, the District never sought to have the Ferrilli contract approved on an “emergency” basis, which has a particular meaning under the Public Contract Code. Ms. Sawhney reiterated that it was not necessary to approve the contract as an “emergency” contract as defined by the Public Contract Code given that the District has the right to contract with a consultant without going through a competitive bidding process when special expertise is required.

Ms. Sawhney denied telling Mr. Heyman she was “extremely concerned” about the Ferrilli contract. She was, however, concerned over the “drama” associated with the Ferrilli contact and what she perceived to be the “gotcha” journalism tactics employed by Mr. Andersen and his colleague, Gabriel Sanchez. Ms. Sawhney explained that Mr. Andersen and Mr. Sanchez asked to interview Chancellor Laguerre about “some soft thing” like the Chancellor’s charitable work in Haiti and other public interest topics. Yet, when the journalists arrived for the interview, they brought cameras and started asking for details on the Ferrilli contact rather than the previously stated areas of inquiry.

When informed of Mr. Heyman’s concern that the Ferrilli contract was extended and increased during a summer Board meeting, Ms. Sawhney stated that “districts everywhere” hold summer Board meetings, but as with Board meetings during the academic year, meetings in the summer are noticed pursuant to the Brown Act requirements so that members of the public are invited to attend and know what will be discussed. Ms. Sawhney further noted that Mr. Andersen attended (and recorded) the Board meeting at which the Ferrilli contract was increased.

Ms. Sawhney further stated that she was not aware of any law or policy that prohibited the District from hiring Ferrilli to both assess the extent of the District’s technology issues and also correct the problems they discovered. She explained that “reasonable minds [could] differ” on how to utilize a consultant under such circumstances. One theory is that a consultant may have a conflict of interest if that consultant is asked to find the very same problems which they will later be paid to fix. Another theory is that the consultant who conducts the initial assessment

will be better able to efficiently and effectively solve any problems they find. The District took the latter approach with Ferrilli.

Ms. Sawhney disagreed with Mr. Heyman's assertion that Ferrilli did not meet its deliverables. She acknowledged, however, that Ferrilli had to deal with issues that came up on an ongoing basis which required them to divert their attention to those issues. She also said that the Chancellor thought Ferrilli did "quality work" which "left the District in a better place than when they started," though she also acknowledged that Ferrilli may not have gotten everything done, as "this is not easy work." [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**j. Yashica Crawford**

Dr. Crawford was the Chief of Staff and Special Assistant to the Chancellor from January 2016 through January 5, 2018.<sup>11</sup> She recalled that Ferrilli was hired to provide expert guidance and support on how to remediate certain issues with the District's information security infrastructure. She recalled that two consultants from Ferrilli (Mr. Crossland and Ms. Bennett) worked through the District's Human Resources Department to provide oversight of the employees in the IT Department. Dr. Crawford said that neither Mr. Crossland nor Ms. Bennett formally supervised the District's IT employees.

Dr. Crawford explained that while Ferrilli consultants were onsite, there were two Directors in IT, Mr. Mehouelley and Kyu Lee, each supervising a different section of the Department. She believed that former District employee, Ms. Tomlinson, might have also been a manager at the same time as Mr. Mehouelley.

During Dr. Crawford's tenure, the IT Department reported to an "administrator of record," which was either the Vice Chancellor of Finance and Administration, or Chancellor Laguerre. While the IT Department was reporting to Chancellor Laguerre, Dr. Crawford was authorized to oversee the IT Department in Chancellor Laguerre's stead while he was away. In that role, Dr. Crawford facilitated and participated in meetings with IT staff.

Dr. Crawford did not know whether any of the IT staff received performance evaluations during the time that Ferrilli was working for the District, but if they did receive evaluations, Dr. Crawford did not know who gave them. She was not aware of Ferrilli consultants giving any performance evaluations.

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<sup>11</sup> Dr. Crawford was interviewed on January 4, 2018, just prior to her departure from Peralta. Dr. Crawford is now on the faculty at the College of Marin.

Dr. Crawford acknowledged that she sometimes signed the IT employees' timesheets, but this "didn't happen too often." She did not recall if that occurred while IT was reporting to the Vice Chancellor of Finance and Administration or to Chancellor Laguerre. Dr. Crawford did not know if Ferrilli consultants ever signed timesheets for employees, but if they did, she would have expected an administrator to confirm or verify them. Dr. Crawford did not recall receiving any vacation requests from IT employees while Ferrilli was present, and she did not know if Ferrilli consultants approved any vacation requests.

**k. Antoine Mehouelley**

Mr. Mehouelley is currently the Director of Network Services in the IT Department. He has held that position since September 2017. Previously, he served as Interim Director of Technology Services from mid-May 2016 until being appointed Director of Network Services. Mr. Mehouelley has been with the District since 2002, when he led the IT Department at Laney College. When Mr. Mehouelley transferred to the District Office in 2016, Ferrilli was still onsite, and would remain there for several more months.

When Mr. Mehouelley transferred to the District Office, Ferrilli consultant George Crossland was acting as Chief Information Officer. The District had not yet hired a Vice Chancellor of IT, [REDACTED]

Mr. Mehouelley recalled that IT staff was reporting to Dr. Crawford and Chancellor Laguerre when Ferrilli consultants were onsite, because the Ferrilli consultants were not allowed to formally supervise IT staff. Mr. Mehouelley's belief that contractors cannot supervise District employees stemmed from his familiarity with the union agreements that apply to District employees. He explained that Ferrilli consultants had no authority to take managerial actions with respect to District employees, such as signing timesheets, issuing write-ups, conducting performance reviews, approving vacation requests, hiring, and firing, but that Ferrilli consultants were permitted to provide "collaboration and guidance" to employees such as Mr. Mehouelley regarding best practices in IT.

To Mr. Mehouelley's knowledge, Ferrilli consultants did not sign employee timesheets, approve leave requests, discipline employees or prepare performance evaluations. Mr. Mehouelley recalled that he only gave one employee a performance review during the time that Ferrilli was onsite, and he invited Ms. Bennett (a Ferrilli consultant who succeeded Mr. Crossland) to participate in the review. Ms. Bennett's role was limited to advising Mr. Mehouelley regarding best practices in evaluating the employee, rather than providing the employee with direct feedback on performance.

Mr. Mehouelley stated that Ferrilli did not hire any employees. He explained that hiring decisions are approved by the Board, based upon recommendations from District administrators. However, Mr. Mehouelley recalled that Ferrilli made some hiring recommendations which prompted Mr. Mehouelley to attend "one or two" interviews with applicants. Ferrilli personnel sat in on the interviews and advised Mr. Mehouelley as to what he should be looking for in a candidate. Ultimately, no employees were hired as a result of the interviews.



#### 4. Other Evidence Considered

On September 26, 2016, the District's IT Classified Staff submitted a memorandum to Chancellor Laguerre to respond to his request for staff input regarding a Request for Proposal to Secure the Services of an IT Management Consultancy Group. In the memorandum, IT staff stated that a consultant "should only be used to address projects or tasks where no such in-house skills exist or when a project's workload exceeds internal capacity." IT staff further stated that consultants should not manage District IT staff and recommended that the District hire a regular employee to lead the IT Department. IT staff also described the skills needed for an effective head of IT.

##### **Attachment 18.**

Sometime after October 31, 2016, Roger Clague submitted a report to Chancellor Laguerre evaluating the work performed by Ferrilli. In his Executive Summary, Mr. Clague wrote the following:

Real world indicators "screamed out loud" IT had major problems. The decision to retain Ferrilli was a bold, but necessary, decision; essential for the district to get a complete understanding of the state of its technology.

Ferrilli was a good choice to undertake this review, which was conducted to high industry standards, consistent with ITIL (Information Technology Infrastructure Library), ITSM (IT Service Management) practices, and ISO/IEC 20000. The evaluation did indeed identify in sufficient detail the many problems with the District's Enterprise Technologies (Hardware Software & Security). In addition, the evaluation identified that the IT staff did not have sufficient Subject Matter Expertise in many critical areas. Moving beyond the Evaluation, the district needed outside help, quickly, and technology consultants represented the only viable option.

Mr. Clague also made the following findings:

- The Technology Evaluation was an essential first step in "Rebuilding the IT Brand", and Ferrilli performed this to a high standard. The District was well served in this effort.
- Due to the exigent circumstances faced by the District at the time, the use of Ferrilli for the post evaluation period was the best solution available to the District. The work effort, product and cost has been consistent with the industry norms and practices.
- The return on this investment will potentially be significant; this was well worth the money paid.
- Due to the exigent circumstances faced by the District, the Ferrilli's engagements have been appropriate and of value to the District. While it is difficult to foresee a substantial [Return of Investment], per se, many risks have been mitigated, and possible penalties [...] avoided, thus it is conceivable that these engagements could have already paid for themselves.

Although Mr. Clague concluded that the District's engagement of Ferrilli was necessary under the circumstances and worth the monetary investment, he noted that there was a lack of trust and communication between Ferrilli consultants and IT staff and that Ferrilli was not able to complete all of its deliverables due to turnover of Ferrilli staff and the time required for Ferrilli to oversee the District's IT staff in the absence of managers who could perform that function. Additionally, Mr. Clague recommended that the District hire a Chief IT Officer as soon as possible. **Attachment 19.**

## 5. Policies and Collective Bargaining Agreement Provisions

### Board Policy 6330 – Purchasing

The Chancellor is delegated the authority to purchase [...] services as necessary for the efficient operation of the District. [...]

### Attachment 20.

#### Administrative Procedure 6330 – Purchasing

##### Authority to Purchase

The authority to contract for [...] services is vested in the Board of Trustees. Authority to purchase [...] services is annually delegated by Board action to designated District officers. The purchase of [...] services shall be made through the Purchasing Department following authorized procedures in accordance with established policies and laws. [...]

[...]

##### Professional Services

Professional services are defined as persons or entities furnishing to the District special services or advice in financial, economic, accounting, engineering, legal, or administrative matters.

### Attachment 21.

#### Board Policy 6340 – Bids and Contracts

The Board delegates to the Chancellor the authority to enter into contracts on behalf of the District and to establish administrative procedures for contract awards and management, subject to the following:

- Contracts are not enforceable obligations until they are ratified by the Board.
- Contracts for work to be done, services to be performed or for goods, equipment or supplies to be furnished or sold to the District that exceed the amounts specified in Public Contract Code Section 20651 shall require prior approval by the Board.

- When bids are required according to Public Contract Code Section 20651, the Board shall award each such contract to the lowest responsible bidder who meets the specifications published by the District and who shall give such security as the Board requires, or reject all bids.
- Contracts in excess of \$25,000 with a single organization, individual, or vendor per fiscal year require prior approval of the Board of Trustees for all funds except Construction/Capital Outlay Bond Funds.
- Contracts that are non-public projects as defined under Public Contract Code 22002 and are funded by Construction/Capital Outlay Bond Funds in excess of \$88,300 (or amount annual adjusted in accordance with Public Contract Code Section 20651) with a single organization, individual, or vendor per fiscal year require prior approval of the Board of Trustees.

[...]

## Attachment 22.

### Administrative Procedure 6340 – Bids and Contracts

The Chancellor directs that the following procedures and regulations apply to Contracts in the Peralta Community College District:

**Definitions:** This administrative procedure uses the following terms as defined below:

[...]

**Services:** Any deliverable resulting from labor performed specifically for the District. The service may result from the application of physical or intellectual skills. Services include, but are not limited to repair work, consulting, maintenance, data processing, custom software design or coding, etc.

[...]

#### Board Approval or Ratification

Each Contract and contract amendment amounting to \$25,000 or more require prior Board of Trustees authorization before they can be executed by the Chancellor [...]. Contracts under \$25,000 are ratified by the Board in a monthly report after execution.

In cases of great emergency, as determined by the Board of Trustees, including, but not limited to, states of emergency defined in California Government Code Section 8558 and California Public Contract Code Section 20654, where a repair, alteration, work or improvement of an immediate nature is necessary to any facility of the District, including any of its colleges, to permit the continuance of existing college classes, or to avoid danger to life or property, the Board of Trustees may by unanimous vote, with the approval of the County Superintendent of Schools, may: Make a contract in writing or otherwise on behalf of the District for the performance of labor and furnishing of materials or supplies in connection with the repair, alteration work or improvement without advertising for or inviting bids.

[...]

All Contracts and amendments regardless of dollar amount must be ratified by the Board of Trustees within 60 days, if not approved in advance as otherwise required herein.

**Contract Types:** Contracts are classified as continuing price, lease/rental, repair/maintenance, personnel services, construction and income generating. District regulations for fulfilling these requirements are summarized in Table AP-6340A, District Business Processes and Contract Types below:

[...]

**Competitive Bidding:** Contracts are subject to the bid limits found in California Public Contract Code Section 20651. Specific transactions may have additional statutory requirements.

[...]

#### **Emergency Repair Contracts without Bid**

When emergency repairs or alterations are necessary to continue existing classes or to avoid danger of life or property, the Chancellor may make a contract on behalf of the District for labor, materials and supplies without advertising for or inviting bids, subject to ratification by the Board.

[...]

### **Attachment 23.**

#### **Administrative Procedure 7125 – Hiring Acting and Interim Academic and Non-Academic Administrators**

##### **Interim Manager Selection and Appointment Process**

An interim appointment is a temporary appointment to a management position that has been vacated and is deemed necessary to fill on an interim basis until a regular appointment is made. An interim appointment will be made either by appointment or through a recruitment process. An interim appointee will serve for the time necessary to allow for full and open recruitment for the position, provided that the acting or interim appointment [...] not exceed one year pursuant to Title 5. [...]

**Direct Appointment.** The Chancellor may make a direct appointment based on the immediate needs of the District and upon approval of the Board.

[...]

**Independent Contractor.** In accordance with Title 5, Section 53021(c)(7), a vacant position may be filled on a temporary basis by an individual not employed by the District, who possesses special skills and experience, and is competent to serve in the position, and who satisfies the minimum qualifications for the position [...]. Appointments may be made following an

unsuccessful search or based on an urgent requirement, at the direction of the Chancellor [...]. Such appointees must serve the District through a professional services contract approved by the Board.

#### **Attachment 24.**

##### **Agreement Between the District and SEIU Local 1021 (Permanent Employees)**

The following provisions of the Collective Bargaining Agreement (“CBA”) between the District and SEIU Local 1021 for Permanent Employees is relevant to the allegation concerning Ferrilli’s oversight of IT staff.<sup>12</sup>

##### **Article 5 – Employee Evaluation Procedures**

5.1 The following procedure shall be strictly adhered to:

- a. Only the first level manager<sup>13</sup> shall evaluate the employee by means of a performance evaluation. At no time will any classified employee be evaluated by another classified employee or by any faculty member.

##### **Article 13 – Leaves**

Certain sections of the CBA related to leaves of absence refer to an employee being required to submit requests for leave to their first level manager. (Court Appearance Leave, Sick Leave, Personal Necessity Leave, and SEIU Local 1021 Leave.)

##### **Article 14 – Vacation**

All vacation requests are subject to the approval of the first level manager.

##### **Article 22 – Disciplinary Action**

The CBA provides that “discipline less than suspension or discharge” (i.e., “Warning”) may be issued by the employee’s first level manager. The CBA further provides that the Director of Employee Relations is authorized to suspend or dismiss an employee for disciplinary reasons.

#### **Attachment 25.**

##### **Agreement Between the District and SEIU Local 1021 (Hourly Employees)**

Article 8 of the CBA between the District and SEIU Local 1021 for Hourly Employees provides that the first level manager is responsible for determining lunch and rest periods for hourly employees in accordance with District needs. The first level manager also has responsibility for approving overtime for hourly employees.

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<sup>12</sup> SEIU Local 1021 is the bargaining representative for District IT staff.

<sup>13</sup> Article 8.11 of the CBA defines “first level manager” as the “first level manager outside of the bargaining unit who is responsible for employee(s) in their unit.”

**Attachment 26.**

**6. Findings and Analysis**

For the reasons set forth below, I make the following findings concerning Mr. Heyman's allegations about the District's contract with Ferrilli. First, I find that the contract was entered into and approved by the Board in compliance with District Policy and practice. Second, I find that Ferrilli satisfactorily performed under the contract. Third, I find the general oversight that Ferrilli consultants provided to District IT staff was not in violation of District Policy or collective bargaining agreements.

**a. The Ferrilli Contract Was Entered Into and Approved in Compliance With District Policy and Practice**

I first find by a preponderance of the evidence that the Board acted in compliance with District Policy and practice when it approved the contract with Ferrilli, including approving increases to the contract amount, without initiating a competitive bidding process. Chancellor Laguerre, the Trustees, and Ms. Sawhney credibly explained why there was an immediate need to address technology issues at the District. They also credibly explained that District Policy and practice does not require a competitive bidding process for all contracts. This was confirmed by a review of the applicable policies which do not require a bidding process for all consulting contracts, particularly those involving professional services requiring special expertise. A review of Board agendas and minutes also shows that the Board regularly approves certain types of professional services contracts without first soliciting a competitive bidding process.

Even though some of the Trustees characterized the situation as an "emergency" that needed to be immediately addressed, the evidence indicates that they were using the term in the general sense and were not referring to the type of "emergency" that requires special procedures to be followed in order to enter into a contract without a competitive bidding process.

I further find that the contract and all amendments to the contract were properly approved by the Board as required by District Policy. While Mr. Heyman took issue with a substantial increase in the contract that was approved at a summer Board meeting in July 2016, the meeting was properly noticed and the meeting agenda set forth the amount of the increase and the services to be provided. There is no policy that prohibits the Board from considering business during the summer and, at the meeting in question, the Board considered a total of 28 agenda items. The evidence further shows that it was necessary for the Board to consider extending the contract and increasing the contract amount, because the contract was set to expire by the end of July 2016 and further work still needed to be done. Thus, there is no evidence to support Mr. Heyman's belief that the Chancellor or Board had an improper motive for approving an extension and increase to the contract during the summer. The fact that a reporter from the San Francisco Chronicle also attended and recorded the meeting shows that members of the public were aware of the meeting and the topics on the agenda.

Additionally, I find that it was not improper or a violation of District Policy for the District to retain Ferrilli to evaluate the technology issues and also to work to remedy those issues. The Chancellor, Trustees, and Ms. Sawhney credibly explained why it made the most sense to retain

Ferrilli to conduct a comprehensive evaluation of the District's technology services and also to provide interim consulting services to implement necessary fixes to the District's technology systems. Ms. Sawhney also recognized that reasonable minds could differ on whether the same consultant should be used to identify and correct the same problems, so while Mr. Heyman's belief in this regard may not have been unreasonable, his disagreement with the District's similarly reasonable belief does not render the District's actions improper. There is nothing set forth in the District's policies to indicate that the District was prohibited from contracting with Ferrilli in the manner it did.

**b. Ferrilli Satisfactorily Performed Under the Contract**

Based on the preponderance of the evidence, I find that Ferrilli satisfactorily performed the services under the contract. The Chancellor and Trustees expressed satisfaction with the services Ferrilli provided and thought Ferrilli left the District in a better position than before Ferrilli arrived. Mr. Clague, an independent consultant brought in after-the-fact to evaluate Ferrilli's services, also concluded that Ferrilli's work product and the cost of their services were consistent with industry standards. While Mr. Clague noted that some deliverables were not met, he explained the reasons for that and still concluded that Ferrilli provided the District with a good value for the monetary investment.

**c. The General Oversight Ferrilli Consultants Provided to District IT Staff was Not in Violation of District Policy or Collective Bargaining Agreements**

The preponderance of the evidence indicates that Ferrilli consultants provided general oversight of IT staff while they were working onsite at the District for several months during 2016. This was necessary because the former head of the Department and two other managers were terminated for performance reasons during that timeframe and a new head of IT had not yet been hired. Despite the general oversight provided by the Ferrilli consultants, the preponderance of the evidence does not support a finding that Ferrilli's oversight violated District Policy or collective bargaining agreements.

The District's Policy regarding Interim Appointments permits the Chancellor to appoint consultants on an interim basis due to an "urgent requirement" so long as the consultant "possesses special skills and experience, is competent to serve in the position, and satisfies the minimum qualifications for the position." Under the circumstances, the Chancellor's appointment of Ferrilli consultants to temporarily fill vacant management positions was appropriate and necessary. No evidence was presented to suggest that the Ferrilli consultants lacked the qualifications to perform their assigned functions.

Additionally, no evidence was revealed to indicate that the consultants prepared performance evaluations for employees, signed timesheets, approved leaves of absence, issued discipline, or hired or fired employees. District IT staff still officially reported to the Chancellor and/or his Special Assistant/Chief of Staff. In addition, Mr. Mehoulley, a District employee, served as Interim Director of Technology Services while Ferrilli consultants were working onsite and supervised staff in that role.

For these reasons, I find Mr. Heyman's allegation that Ferrilli consultants improperly supervised IT staff to be unsupported by the evidence.

## **B. Travel Expenses for the Chancellor and Trustees**

### **1. Allegation**

Mr. Heyman made several allegations related to the travel expenses for Chancellor Laguerre and the Trustees. First, he alleged that Chancellor Laguerre and the Trustees have been reimbursed or advanced travel expenses even though the travel was not approved by the Board prior to the travel dates. Second, he alleged that the Trustees regularly exceeded their annual travel expense budget. Third, he questioned whether the Chancellor's and Trustees' travel was related to District business.

Mr. Heyman provided examples of specific trips he questioned. One example related to the American Association of Community Colleges ("AACC") Annual Conference that took place in April 2017 in New Orleans. Mr. Heyman reported that Chancellor Laguerre and Trustee Brown went to the conference along with the President of Berkeley City College and a faculty member from Berkeley City College who was being honored with an award at the conference. Mr. Heyman thought it was unnecessary and a waste of taxpayer funds for Chancellor Laguerre and Trustee Brown to attend the conference in addition to the faculty member and college president.<sup>14</sup>

A second example related to Trustee Brown's attendance at a conference for the Community College League of California ("CCLC") in 2016 where she presented on the topic of Dual Enrollment. Mr. Heyman believed the District reimbursed Trustee Brown for her expenses related to the conference, and possibly also her husband who attended the conference. Mr. Heyman did not think it was appropriate for the District to reimburse Trustee Brown, because he thought her presentation at the conference was for the benefit of her law firm, not the District. (The evidence and findings related to this allegation is addressed below in Section C.)

A third example provided by Mr. Heyman related to Trustee Handy's attendance, along with a student delegation, at the Congressional Black Caucus Foundation Legislative Conference ("CBCF") in 2016. He believed it was an inappropriate use of District funds to reimburse Trustee Handy and the students for their attendance at the conference because the CBCF is an advocacy organization. He also claimed that Trustee Handy was reimbursed for attending a \$950 per plate fundraising dinner for Presidential Candidate Hillary Clinton. (The evidence and findings related to this allegation is addressed below in Section D.)

Mr. Heyman also raised concerns about trips to foreign countries that Chancellor Laguerre has taken since becoming Chancellor. He said that Chancellor Laguerre has made several trips to China. Although he understands the purpose of the trips was to recruit international students, he thinks the trips were unnecessary because "there are enough kids to educate right here in Oakland; we don't need to go to China." Mr. Heyman also questioned whether the trips were

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<sup>14</sup> Mr. Heyman said that Trustee Brown's husband also went to the AACC conference, and he wondered if the District paid for the husband's conference related expenses.



paid for with taxpayer funds or from international student tuition. According to Mr. Heyman, District Policy requires international travel expenses for the purpose of recruiting students to be paid from international student tuition, not from taxpayer funds.

Mr. Heyman also alleged that Chancellor Laguerre charged \$40,000 on his District-issued credit card to send a group of Peralta students to China. Mr. Heyman did not know the source of District funds used to pay for the travel expenses.

Mr. Heyman further noted that Chancellor Laguerre has made several trips to Haiti since being at the District, including one trip where he was accompanied by District employee Melvinia King and another trip with Student Trustee Marquita Price. Mr. Heyman said that Chancellor Laguerre has also traveled to Cuba once or twice. He did not know whether the District reimbursed Chancellor Laguerre for the trips to Haiti or Cuba but was concerned about the possibility.

## 2. Response

### a. Chancellor Laguerre

Chancellor Laguerre said the Board sometimes approves his and the Trustees' travel expenses "right on time," and that sometimes approval will "lag behind." Chancellor Laguerre does not approve his own travel; rather he submits his expenses to the Board, and the Board President signs off. He did not know how other travel expenses came to the Board for approval, except that they "miraculously show up on agendas." Chancellor Laguerre's Executive Assistant Suzanne Kunkel prepares the paperwork necessary to obtain approval of the Chancellor's travel expenses, and Board Clerk Brenda Martinez does the same for the Trustees.

When asked why the Board retroactively approved several items of travel expenses for the Chancellor and some of the Trustees at the September 12, 2017 Board meeting, Chancellor Laguerre did not specifically recall but said the Board "probably went back to catch up" on travel approvals. He believed the same process was followed in October and November 2017, and he was not aware of this happening prior to September 2017.

Chancellor Laguerre thought there was an aggregate amount allocated to the Trustees for conference and travel related expenses but did not recall the amount. He knew that some Trustees used more of their allocation than others but did not know if the total budgetary allocation had been exceeded.

Chancellor Laguerre was asked about certain charges placed on his District-issued credit card, specifically for \$8,000 and \$29,000 on April 19 and 20, 2016. **Attachment 27.** He explained that there is an exchange program between the United States and China which former President Obama established. In past years, high schools participated, but now that the program is being overseen by U.S. Representative Barbara Lee, community colleges participate instead. The exchange program is funded by college presidents; "what we do is buy tickets for them, and the Chinese government covers the rest of the expenses." The charges made to his District credit card were to purchase airline tickets for the students. When asked why he needed to purchase

the tickets, Chancellor Laguerre explained, “There isn’t any other way that we know of to do it. They would only take a card.”<sup>15</sup>

Chancellor Laguerre confirmed that he has made three trips to China while at Peralta; the most recent trip was in late November 2017. He recalled that two of the trips were funded by Paul Cheng,<sup>16</sup> whereas Chancellor Laguerre paid for the most recent trip himself. The purpose of the trips was to develop relationships with high schools and colleges for the recruitment of students and to develop relationships for a faculty exchange program.

Chancellor Laguerre confirmed that he has made “many” trips to Haiti since he has been with the District. He grew up in Haiti, and since the 2010 earthquake, has done humanitarian work there. He stated that he is “absolutely not” reimbursed by the District for his trips to Haiti. He takes vacation time and pays his own way. Chancellor Laguerre further confirmed that Dr. King and Ms. Price accompanied him on separate trips to Haiti. Dr. King was in Haiti with him in approximately September 2016 to work with a technical college to develop workforce training. Dr. King was not reimbursed by the District; she and Chancellor Laguerre paid for their own travel. Ms. Price was invited to visit Haiti by Chancellor Laguerre’s wife, and brought another student with her. This was a humanitarian trip, and Chancellor Laguerre and his wife paid for both students to go.

Chancellor Laguerre stated that he traveled to Cuba on one occasion with Representative Lee. They were hoping to build relationships to create a student exchange program when it was believed during the Obama administration that relations with Cuba would normalize. The trip was funded by the Peralta Colleges Foundation.<sup>17</sup>

Chancellor Laguerre confirmed that he attended the AACC Conference in New Orleans, in April 2017, at which time a Berkeley City College faculty member received an award. Trustee Brown and the Berkeley City College President also attended. Chancellor Laguerre said he would have attended the conference even if the faculty member was not being honored. He recalled that the conference included a session on study abroad programs which he attended.

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<sup>15</sup> After Chancellor Laguerre’s interview, his counsel provided the following information related to the credit card charges upon my request for additional information:

Chancellor Laguerre’s Cal-Card was used for upfront costs for the student delegation. The costs were reimbursed by an account that was specifically created for the student delegation to China. Our understanding is that the various colleges transferred funding into the account from their Fund 10 (College Designated Funds or Facilities Fees and Rentals) or Fund 30 (Contract Education) monies. The colleges were specifically told that the use of Fund 01 (General Fund) and all other funds is not allowed for supporting students for trips or travel. The colleges provided budget transfers in the amount of \$2,250 per student for their individual colleges.

**Attachment 28.**

<sup>16</sup> Mr. Cheng’s affiliation with the District is addressed in detail in Section G below.

<sup>17</sup> The Peralta Colleges Foundation is “an independent 501(c)(3) non profit auxiliary” to the District. <http://web.peralta.edu/foundation/about-us/>

### **b. Trustees**

None of the Trustees were able to specifically articulate the process by which the Board approves travel for the Trustees and Chancellor. While they all noted that the Board Clerk and Chancellor's Executive Assistant process the travel expense forms for the Trustees and Chancellor, they were unable to state with any certainty whether travel is approved in advance of the travel dates or ratified after-the-fact. They also could not say whether the travel approval process changed after Mr. Heyman's Whistleblower Complaint.

Most of the Trustees were aware that there is a budget for Trustee travel, but some did not know the amount. Trustee Gonzalez Yuen and Trustee Withrow thought the budget was \$7,500 annually, per Trustee. Trustee Withrow believed that the budget was an aggregate amount, such that some Trustees could exceed the \$7,500 budget if the total travel expenses for the Trustees did not exceed \$52,500. Trustee Handy thought the budget was \$5,000 per Trustee but also believed there was a separate budget for professional development needed to maintain accreditation. She did not know the amount of that budget. Trustee Handy also noted that the Trustees who are retired, like herself, travel to more conferences than other Trustees who are still employed full-time.

None of the Trustees had any concern about the appropriateness of Chancellor Laguerre's travel related expenses or of the travel of their fellow Trustees. They believed all of the travel was related to the District's business and mission.

Trustee Brown confirmed that she and her husband attended the 2017 AACC Annual Conference in New Orleans where the Berkeley City College faculty member was honored. Trustee Brown attended the conference in her role as both a Trustee and private attorney. Her law firm paid her expenses. She denied that the District compensated her or her husband<sup>18</sup> for their expenses. Trustee Brown had no concern about Chancellor Laguerre's attendance at the conference. She explained that Chancellors "are supposed to go to these things," and that it is good that Chancellor Laguerre attends such conferences because some of his predecessors did not.

## **3. Other Witness Statements**

### **a. Nitasha Sawhney**

Based on her independent review of the relevant travel documentation, Ms. Sawhney concluded that the travel reimbursements and advancements for Chancellor Laguerre and the Trustees were an appropriate use of District funds. She discovered, however, that the travel had not been placed on the Board agendas for approval in advance of the travel. As a result, beginning in the fall of 2017, the Board ratified earlier travel expenses and began pre-approving future travel.

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<sup>18</sup> Trustee Brown's husband is also an attorney, and is a partner at the same private law firm as Trustee Brown.

Ms. Sawhney did not know whether the Trustees had a budget for travel, but acknowledged the possibility that Board Policy might contain such a limitation. She did not believe the Chancellor had any limit on travel expenses.

Ms. Sawhney was aware that Chancellor Laguerre has traveled two to three times to China, and that he has also been to Haiti. She understood his travel to China was for the purpose of developing potential partnerships in China on behalf of the District. She had no concern about the legitimacy of the Chancellor's travel to China. However, she noted that Chancellor Laguerre paid for his most recent trip to China because there was some confusion as to the logistics of funding the trip. It was her understanding that Mr. Cheng covered Chancellor Laguerre's travel expenses to China through a consulting agreement that Mr. Cheng had with the District. In turn, the District paid Mr. Cheng in accordance with the terms of his contract. However, at the time of Chancellor Laguerre's most recent trip to China (in late November 2017), it was unclear whether Mr. Cheng still had a contract with the District. Therefore, Ms. Sawhney suggested that the Chancellor consider paying his own way, which he did.

To Ms. Sawhney's knowledge, Chancellor Laguerre's trips to Haiti were personal since he has family in Haiti, and the District did not pay for those trips. She was not aware of Chancellor Laguerre traveling to Cuba.

**b. Brenda Martinez**

Ms. Martinez is the Board Clerk. She has held that position for four and a half years. Part of her job duties include making the Trustees' travel arrangements and preparing and submitting the paperwork necessary to process the travel expense payments.

Ms. Martinez stated that the expense budget for the Trustees is \$7,500 per trustee, per fiscal year, for a total amount of \$52,500. The budget was previously \$5,000 per trustee until the amount was raised approximately three years ago. It is Ms. Martinez's understanding that it is permissible for an individual trustee to exceed \$7,500 in a fiscal year as long as the total expenses for all the trustees does not exceed \$52,500.

Ms. Martinez maintains a spreadsheet during the year where she notes each Trustee's conference and travel related expenses, and she gives the spreadsheet to the Trustees at the end of the fiscal year so they know the full amount of expenses for the year. Ms. Martinez stated that she never had to inform the Trustees they exceeded the allotted budget, because she did not believe that ever occurred.

**c. Melvinia King**

Dr. King was the Interim Associate Vice Chancellor for Workforce Development and Continuing Education. She held that position from July 2016 through January 2018. Her contract was not renewed.

Dr. King confirmed that she traveled to Haiti on one occasion, in October 2016. The trip was in partnership with the International Rotary in Atlanta. Dr. King used to work for Morehouse

College in Atlanta, and during her time there she participated in programs that involved student travel to and from Haiti, but she did not previously visit Haiti.

Although Dr. King considered this trip a “vacation,” in that she used vacation time and paid her own way, she nonetheless used some of her time in Haiti to network and build relationships with educational institutions and medical facilities in Haiti which might create future opportunities in workforce development. She confirmed that Chancellor Laguerre was also in Haiti at the same time, and that they spent some time together while they were both there, touring medical facilities, but she clarified that she did not travel to or from Haiti with Chancellor Laguerre. They traveled separately, and Dr. King did other things in Haiti without Chancellor Laguerre.

#### 4. Other Evidence Considered

I reviewed a voluminous amount of documentation related to the travel expenses for Chancellor Laguerre and the Trustees for a two year period from mid-2015 through mid-2017. The documentation included charts summarizing travel expenses for the Chancellor and Trustees which were produced as part of a response to a Public Records Act request. **Attachments 29 - 30.** I also reviewed “7400A” and “7400B” Forms prepared by District staff on behalf of the Chancellor and Trustees. In addition, I reviewed publicly available Board agendas, background information included with the agendas, and Board meeting minutes during the relevant time period.<sup>19</sup>

The travel documentation shows that almost all of the travel expenses for Chancellor Laguerre and the Trustees related to their attendance at conferences, including conferences put on by the Community College League of California, Association of Community College Trustees, and American Association of Community Colleges. Online research I conducted related to the conferences in question revealed that the training sessions at the conferences directly related to the business and mission of community colleges.

None of the travel records showed that the District paid for Chancellor Laguerre’s travel to Haiti.

As noted above in Section 2.a, Chancellor Laguerre’s recollection during his interview was that Mr. Cheng paid for two trips he took to China in March 2016 and June 2016, and Chancellor Laguerre paid for his most recent trip in November 2017. After the interview, upon my request for further information, Chancellor Laguerre’s counsel consulted with Chancellor Laguerre and with other District representatives and confirmed that District funds were not used to pay for any of Chancellor Laguerre’s trips to China. Instead, the trips were paid for by Chancellor Laguerre and Mr. Cheng. The Peralta Colleges Foundation also paid for some costs related to one of the trips. **Attachments 28, 31.** I found no evidence to indicate that District funds were used to pay for the trips.

The records show that the cost of Chancellor Laguerre’s trip to Cuba in November 2015 was paid for by the Peralta Colleges Foundation and Oakland African American Chamber of Commerce. The travel was ratified at the December 8, 2015 Board Meeting. **Attachments 28, 32.**

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<sup>19</sup> Due to the large number of documents, they are not attached to this Report unless otherwise indicated.

The records show that the District paid for Chancellor Laguerre to attend the AACC Conference in New Orleans which took place from April 22 – 25, 2017, at a cost to the District of approximately \$2,030.<sup>20</sup> The Chancellor’s travel was ratified at the September 12, 2017 Board meeting. The records also show that Trustee Brown received a per diem reimbursement of \$300 for attending the same conference. She paid the rest of her conference and travel related expenses. The per diem reimbursement was ratified by the Board on July 11, 2017.

**Attachments 28, 33 - 35.**

A review of the Board agendas and minutes for the relevant time period revealed that in almost all instances prior to September 2017, travel for the Chancellor and Trustees was not pre-approved by the Board but was instead ratified after the travel dates, sometimes many months or a year or more after-the-fact. For example, at the Board meeting on September 12, 2017 (three months after Mr. Heyman filed his Whistleblower Complaint), the Board ratified travel for six trips that Chancellor Laguerre took from July 2016 through September 6, 2017 and one trip that two trustees took in late March through early April 2017. **Attachments 35 - 36.** In some instances prior to the September 12, 2017 Board Meeting, there was no record of travel being pre-approved or subsequently ratified.

Additionally, a review of the available travel records for the Fiscal Years ending June 2016 and June 2017 showed the following conference and travel related expenses attributed to each Trustee.

Trustee	Travel Costs Fiscal Year 2015/2016
Linda Handy	\$10,008.94
Bill Withrow	\$7,401.24
William Riley	\$5,963.06
Meredith Brown	\$5,568.72
Julina Bonilla	\$3,950.43
Cy Gulassa	\$3,783.27
Nicky Gonzalez Yuen	\$2,798.20
<b>TOTAL</b>	<b>\$39,473.86</b>

Trustee	Travel Costs Fiscal Year 2016/2017
Linda Handy	\$13,792.72
Meredith Brown	\$11,967.84
William Riley	\$10,141.46
Bill Withrow	\$7,229.99
Julina Bonilla	\$6,359.68

<sup>20</sup> According to information provided by District representatives, Chancellor Laguerre did not request reimbursement for costs associated with meals, per diem and incidentals. However, based on the available records, the District advanced the costs of the conference registration (\$855), flight (\$577.60), and a three night hotel stay (\$199/night, not including taxes and other fees.)

Trustee	Travel Costs Fiscal Year 2016/2017
Nicky Gonzalez Yuen	\$5,909.50
Cy Gulassa	\$2,959.04
Karen Weinstein	\$1,679.40
<b>TOTAL</b>	<b>\$60,039.63</b>

**5. Policies**

**Board Policy 7400 – Travel**

Members of the Board of Trustees and employees are authorized to travel to attend conferences, meetings, and other activities outside the boundaries of the District that are appropriate to the functions of the District provided such attendance is authorized in advance by the Chancellor. Out of state and international travel also require advance approval of the Board of Trustees. The Chancellor is delegated the authority to approve out of state and international travel if the Chancellor determines that the trip is imperative and could not have been anticipated sufficiently in advance for Board prior approval. All travel must be ratified by the Board of Trustees.

[...]

**Attachment 37.**

**Administrative Procedure 7400 – Travel Authorization**

The Chancellor directs that the following travel authorization regulations apply to the Peralta Community College District.

**I. Travel Purposes:** The District recognizes the following purposes of travel, each of which requires authorization and documentation of participation before processing and/or reimbursement can occur.

**A. Institutional Travel:** The objective of institutional travel is to attend meetings with Federal, State, or local agencies; to meet with elected officials; to consult with colleagues at other institutions for such purposes as curriculum planning, administrative practices, student services, and community college funding, and to serve on an accreditation team.

**B. Professional Travel:** The objective of professional travel is to permit participation in activities of organizations whose primary purpose is advancing the legitimate and constructive cause of community college education in the State of California. Such organizations include, but are not limited to:

- Academic Senate of the California Community Colleges
- American Association of Community Colleges
- Association of California Community College Administrators
- Association of Community College Trustees

- California Association of School Business Officials
- Community College League of California
- National Association of Colleges and Employers
- Other Community Colleges/Districts

**C. Instructional Travel:** The objective of instructional travel is to encourage faculty and staff to keep abreast of new knowledge and new techniques in their areas of responsibility.

**1. International Education.** International travel is appropriate in order to develop or implement an international education program. Tax revenue shall not provide the funding for such travel.

**2. Recruitment of Out of State or International Students.** Out of state or international travel is appropriate in order to recruit out of state or international students to attend Peralta Community College District. The funding for such travel shall be provided by revenue generated by out of state or foreign student tuition.

**II. Applicability:** This regulation applies to all Academic and Classified employees of the District. Members of the Board of Trustees are considered employees of the District for purposes of this regulation.

[...]

#### **IV. Conference Attendance**

Trips requiring overnight absences, payment of a participant fee, and/or reimbursement for employee incurred actual and necessary expenses shall be requested prior to the employee's attendance and participation. All conference attendance must be requested and approved prior to the employee's participation using the District's approved Form 7400A. All expense claims requested for reimbursement shall be on the District's approved Form 7400B.

[...]

b. Travel must be approved or ratified by the Board of Trustees before an advance payment or reimbursement of expenses can be made.

[...]

#### **VI. Operating Procedures**

The Vice-Chancellor for Finance shall establish the Form 7400 and instructions to implement this administrative procedure. Approved travel requests in excess of \$1,000, as well as all out of state travel, will be included in the "Background Materials" as part of the Board of Trustees Meeting agenda.

[...]

### **Attachment 38.**



## 6. Findings and Analysis

For the reasons set forth below, I make the following findings regarding Mr. Heyman's allegations about the travel expenses for Chancellor Laguerre and the Trustees. First, I find that prior to Mr. Heyman's Whistleblower Complaint, the Board was not consistently pre-approving travel for Chancellor Laguerre and the Trustees or ratifying their travel. I do not find, however, that this practice was for any improper reason. Instead, it appears to have been an oversight and misunderstanding of District Policy. Second, I find that during fiscal year 2016-17, the Trustees exceeded their total travel budget by approximately \$7,500. Third, I find that the purpose of the Chancellor's and Trustees' travel was permissible according to District Policy. Fourth, I find that Chancellor Laguerre's international travel was not paid for with District funds. Finally, I find that the costs charged to Chancellor Laguerre's District-issued credit card for a student delegation to China was not reimbursed with money from the District's General Fund.

### a. Prior to Mr. Heyman's Whistleblower Complaint, the Board Was Not Consistently Pre-Approving Travel for Chancellor Laguerre and the Trustees or Ratifying the Travel

The preponderance of the evidence establishes that between July 2015 and September 2017, the Board rarely pre-approved travel for Chancellor Laguerre and the Trustees as required by District Policy. During the same time frame, the Board did not consistently ratify the travel of the Chancellor and Trustees, as also required by District Policy. The Chancellor and Trustees' travel expenses were also regularly advanced or reimbursed prior to approval or ratification of the travel by the Board in contravention of District Policy. The practice changed after Mr. Heyman filed his Whistleblower Complaint. Although District Policy delegates authority to the Chancellor to approve out-of-state or international travel where such trips are "imperative" and cannot be anticipated sufficiently in advance to obtain Board approval, there was no evidence that Chancellor Laguerre exercised such authority or that such an exercise would have been appropriate under the circumstances.

Although the pre-approval and ratification process was not followed, I did not find evidence to indicate that the oversight was intentional. Rather, it appears the Chancellor and Trustees did not have a good understanding of the District Policy as it concerned proper approval of their travel.

### b. During Fiscal Year 2016-17, the Trustees Exceeded Their Total Travel Budget by Approximately \$7,500

Mr. Heyman's allegation that the Trustees exceeded their travel budget is partially supported by the record. The budget is for a total amount of \$52,500 per fiscal year. During fiscal year 2016-17, the total travel related expenses for the Trustees was just over \$60,000. (It is worth noting, however, that during fiscal year 2016-17, there were travel expenses for eight Trustees, because Trustee Weinstein joined the Board in late 2016 and Trustee Gulassa left the Board earlier in the fiscal year.) Based on the available evidence, Mr. Heyman's claim that the Trustees *regularly* exceed their travel budget is not supported by the record. In fiscal year 2015-16, the total travel expenses were \$39,473, which was \$13,000 under the budget.

While the evidence does show that some Trustees individually went over \$7,500 for their travel, based on the witness accounts, it appears that the travel budget is treated as a pool of money for all of the Trustees to utilize, and some Trustees travel less than others. I found no evidence to suggest that the travel was for any inappropriate purpose unrelated to Peralta business.

**c. The Purpose of the Chancellor and Trustees' Travel Was Authorized by District Policy**

Based on my review of the travel records for the Chancellor and Trustees between mid-2015 and mid-2017, I find that the travel related expenses were for purposes authorized by District Policy. Almost all of the travel was to attend conferences related to community colleges, such as conferences sponsored by the Community College League of California ("CCLC"), the American Association of Community Colleges ("AACC"), and Association of Community College Trustees ("ACCT").

District Board Policy 7400 authorizes the Trustees and Chancellor to travel to "attend conferences, meetings, and other activities [...] that are appropriate to the functions of the District [...]." Similarly, Administrative Procedure 7400 authorizes "Professional Travel" which includes "participation in activities or organizations whose primary purpose is advancing the legitimate and constructive cause of community college education." According to the Administrative Procedure, such organizations include the CCLC, AACC, and ACCT. I found no evidence to suggest that the Trustees and Chancellor's attendance at the conferences was for any reason that was not related to the District's functions.

This finding extends to Chancellor Laguerre's and Trustee Brown's attendance at the 2017 AACC Annual Conference in New Orleans. Chancellor Laguerre and Trustee Brown credibly explained their reasons for attending the conference, which were not limited to the fact that a Berkeley City College faculty member was being honored at the conference. (Even if that was the only reason they attended, I would not find that to be a violation of District Policy.) Moreover, Trustee Brown only received a stipend of \$300 for attending the conference. Her law firm paid for the remainder of her expenses. Therefore, the cost the District spent for her attendance at the conference was minimal. Additionally, Chancellor Laguerre did not seek reimbursement for all of the costs associated with attending the conference.

I further find that other travel by Chancellor Laguerre and the Trustees which included meetings with elected officials and representatives of other community colleges was appropriate under District Policy which authorizes "Institutional Travel" for such purposes.

**d. Chancellor Laguerre's Trips to China Were Not Funded by the District**

The undisputed evidence establishes that Chancellor Laguerre traveled to China three times since becoming Chancellor for the purpose of recruiting international students. Even though Mr. Heyman did not believe the trips were warranted because "there are enough kids to educate [...] in Oakland," there was no evidence to suggest that the trips were improper or not in the District's interest. The District receives more tuition from international students than it does from in-state residents, therefore, it is understandable why Chancellor Laguerre would want to increase the enrollment of international students.

Mr. Heyman's belief that taxpayer revenue, instead of international student tuition, was used to fund the trips to China was not supported by the record. Based on the available evidence, the travel was paid for by Chancellor Laguerre, Mr. Cheng, and the Peralta Colleges Foundation, instead of by District funds originating from any source. Although the District paid Mr. Cheng for efforts he made on the District's behalf in terms of international student recruitment, his invoices to the District did not seek reimbursement for costs he incurred for Chancellor Laguerre's travel to China.<sup>21</sup> I found no evidence to indicate that District funds were used for Chancellor Laguerre's travel to China.

**e. Chancellor Laguerre's Trip to Cuba Was Not Funded by the District**

The evidence indicates that Chancellor Laguerre's travel to Cuba with a delegation including Representative Barbara Lee was funded by the Peralta Colleges Foundation and Oakland African American Chamber of Commerce, not by the District.

**f. The District Did Not Pay for Chancellor Laguerre's Travel to Haiti**

I found no record showing that the District paid for Chancellor Laguerre's travel to Haiti. Chancellor Laguerre originated from Haiti, still has family there, and his trips appear to have been primarily for personal reasons. While Chancellor Laguerre confirmed that Dr. King was in Haiti with him during one of his trips and also stated that he invited two students to Haiti on another occasion, I found no evidence of impropriety related to those individuals' travel to Haiti.

**g. Charges Incurred on Chancellor Laguerre's District-Issued Credit Card to Pay for Travel Expenses Associated With a Student Delegation to China Were Not Reimbursed From the District's General Fund**

The preponderance of the evidence indicates that travel costs related to a student delegation to China in 2016 was initially charged to Chancellor Laguerre's District credit card, but subsequently reimbursed by a fund specifically created for the student delegation which did not include money from the District's General Fund.

**C. Allegations Against Trustee Brown Related to Dual Enrollment Presentation at CCLC 2016 CEO Conference and Request for Assistance From Mr. Heyman in Drafting an Article on Dual Enrollment**

**1. Allegation**

Mr. Heyman alleged that Trustee Brown used her public office for personal gain. He explained that Trustee Brown presented on the topic of Dual Enrollment at the CCLC's 2016 CEO Conference. Mr. Heyman opined that, in doing so, Trustee Brown was "definitely pitching [her law firm's services] and her expertise in community colleges, which she wouldn't have had until she was a trustee [...] as one reason to hire [her] firm to help sort out the laws of dual enrollment in California."<sup>22</sup> Additionally, Mr. Heyman believed that the District may have

<sup>21</sup> A full discussion of Mr. Cheng's affiliation with the District is set forth below in Section G.

<sup>22</sup> Trustee Brown is a Partner with the law firm Atkinson, Andelson, Loya, Ruud, and Romo.

reimbursed Trustee Brown and her husband (who also attended the conference) for their expenses associated with the conference.

Mr. Heyman further stated that after the conference, Trustee Brown asked him to help her prepare an article based on the presentation she made. Mr. Heyman thought it was inappropriate for Trustee Brown to make that request because an article on Dual Enrollment would potentially benefit her law firm.

## **2. Response**

Trustee Brown confirmed that she gave a presentation on Dual Enrollment at the CCLC's 2016 CEO Conference in Yosemite. Three employees of the State Chancellor's Office presented with her, as did one of her law partners. Trustee Brown prepared a PowerPoint presentation "on [her] own dime" and volunteered her time in creating the content for the presentation.

While Trustee Brown stated that issues of Dual Enrollment are relevant to community colleges, including Peralta, she acknowledged that she hoped the presentation might have the additional benefit of generating business for her law firm. She explained that this was an instance in which the District receives a benefit by virtue of her being a lawyer who practices in a related field.

Trustee Brown denied that the District reimbursed her or her husband for their expenses related to the conference.

Trustee Brown confirmed that she provided Mr. Heyman with her PowerPoint presentation after the conference and asked if he could help her turn it into an article. She discussed with Mr. Heyman her belief that the article would be more effective in reaching students if it were disseminated on mobile social media platforms rather than in newspapers. Chancellor Laguerre was aware of Trustee Brown's request for assistance and had no objection. Ultimately, Mr. Heyman never wrote an article. Mr. Heyman never explained why he did not write the article, and Trustee did not follow up to ask why not.

## **3. Witness Statements**

### **a. Chancellor Laguerre**

Chancellor Laguerre stated that Trustee Brown's presentation on Dual Enrollment at the CCLC Conference benefited the District. He explained that it is "all a matter of being a leader in the field," and that one cannot always know immediately what the impact of such a presentation will be. There are "many benefits for us," Chancellor Laguerre said. He added that colleges within the CCLC "help one another, learn from each other, and that's how we keep the system going."

Chancellor Laguerre confirmed that he was aware Trustee Brown asked Mr. Heyman to help her with an article on Dual Enrollment and he had no issue with the request.

**b. Nitasha Sawhney**

Ms. Sawhney described the law firm Trustee Brown works for as one of California’s largest education law firms. As such, Trustee Brown “wears two hats” when she presents at conferences such as the CCLC Conference. Ms. Sawhney further explained that Trustee Brown is particularly passionate about Dual Enrollment of local high school students in college courses, and that although there may be some incidental benefit to her law firm practice in doing these kinds of presentations, Dual Enrollment “has nothing to do with her practice.” Ms. Sawhney opined that if the only purpose of the presentation was to market Trustee Brown’s law firm, she would likely have presented on a topic more directly relevant to her practice.

**4. Other Evidence Considered**

Mr. Heyman produced the PowerPoint presentation that Trustee Brown prepared along with email correspondence he had with Trustee Brown related to her request that he help her write and place an article on Dual Enrollment. **Attachment 39.** In response to Trustee Brown’s inquiry as to whether Mr. Heyman would be interested in working with her on an article on Dual Enrollment, Mr. Heyman responded, “I’d be honored too [sic], Madam Trustee!” He also proposed ideas of where the article could be placed and other District staff who could assist with the article. Chancellor Laguerre was copied on the email correspondence between Trustee Brown and Mr. Heyman. **Attachment 40.**

There is no record of Trustee Brown receiving any reimbursement from the District associated with her travel to and attendance at the 2016 CCLC CEO Conference.

**5. Policies**

**Board Policy 2710 – Conflict of Interest**

Board members shall avoid conflicts of interest, or its appearance, between their obligations to the District and private business or personal commitments and relationships.

[...]

A Board member shall not engage in any employment or activity that is inconsistent with, incompatible with, in conflict with or inimical to his/her duties as an officer of the District.

[...]

**Attachment 41.**

**Board Policy 2715 – Code of Ethics and Standards of Practice**

The Board maintains high standards of ethical conduct for its members as evidenced by the adoption of this and all the other Board Policies. As the public’s representatives, Trustees must practice the highest ethical standards in performing their sworn duties. The activities and deliberations of the Board will be conducted following these tenets:

[...]

- **Managing Conflicts of Interest:** Board members avoid any conflict of interest or the appearance of impropriety that could result because of their position. They do not intentionally use their Board memberships for personal gain. [...]

[...]

- **Exercising Authority as Trustees:** Board members respect their elected position as trustees and in no way misuse their authority. [...]

## Attachment 42.

### 6. Findings and Analysis

For the reasons stated below, the preponderance of the evidence does not support Mr. Heyman's allegation that Trustee Brown used her public office for personal gain with regard to the Dual Enrollment presentation she made at the CCLC's CEO Conference in 2016 or as it concerned a Dual Enrollment article she sought Mr. Heyman's assistance in writing.

First, the Dual Enrollment presentation that Trustee Brown gave at the CCLC conference had relevance to the District's mission in that Peralta has a Dual Enrollment program for local high school students. Trustee Brown presented along with three representatives of the State Chancellor's Office which also evinces the relevance of the topic to community colleges. While Trustee Brown acknowledged that she hoped her presentation could potentially lead to business for her law firm, I do not find that fact alone proves that that she made the presentation for personal gain or solely for the benefit of her law firm's business.

Second, contrary to Mr. Heyman's assumption, the District did not compensate Trustee Brown or her husband for their travel to and attendance at the conference.

Third, Trustee Brown stated that she prepared the presentation materials on her own time and at her own expense, and I have seen no evidence to the contrary.

Fourth, Trustee Brown's request that Mr. Heyman assist her with drafting an article on Dual Enrollment to be placed in media outlets was not for her personal gain, or for the benefit of her law firm given the District's Dual Enrollment program. It was also not inappropriate for her to ask for Mr. Heyman's assistance given his role as the District's Executive Director of Public Information, Communications, and Media. She also made Chancellor Laguerre aware of the request and he had no objection. Ultimately, Mr. Heyman never assisted with the article and he presented no evidence showing that he expressed any concern to the Chancellor or Trustee Brown about her request prior to filing his Whistleblower Complaint.

**D. Allegations Against Trustee Handy Related to Her Attendance at the Congressional Black Caucus Foundation's Legislative Conference**

**1. Allegation**

Mr. Heyman made two allegations related to Trustee Handy's attendance at the Congressional Black Caucus Foundation's ("CBCF") Annual Legislative Conference in Washington, D.C. First, he claimed that the organization is an advocacy organization; therefore, it is inappropriate for taxpayer funds to be used for Trustee Handy to attend the conference (or for students to attend the conference with Trustee Handy). Second, Mr. Heyman alleged that Trustee Handy attended the Phoenix Awards Dinner at the 2016 CBCF Legislative Conference which was a fundraiser for Democratic Presidential Candidate Hillary Clinton. It was Mr. Heyman's understanding that the dinner cost \$950 and that Trustee Handy was reimbursed by the District for the cost of the dinner. (He heard this from one or more students that were aware Trustee Handy went to the dinner.)

**2. Response**

Trustee Handy has attended the CBCF Legislative Conference every year since becoming a Trustee. She said the cost to attend the conference is only \$120 per person, and thus over the last 14 years, Trustee Handy has raised money to take student leaders with her to the conference. Each college president selects one student leader to send to the conference, and the associated student government also choose who they want to attend. Student Trustees also have a shared budget that can be used for those students who attend the conference.

Trustee Handy stated that from the moment she and the students "step off the plane" in Washington, D.C. they have "no free time." Daily events start at 7:30 a.m. and include meetings with lobbyists and attending sessions at the CBCF conference for "emerging leaders."

Trustee Handy confirmed that she attended the Phoenix Awards Dinner while at the CBCF Legislative Conference in September 2016. However, she denied that it was a fundraiser for Hillary Clinton. She explained that the Phoenix Awards Dinner occurs every year and is a scholarship dinner for students, not a political fundraiser. She denied that the District paid for her to attend the Phoenix Awards Dinner.

**3. Witness Statements**

**a. Chancellor Laguerre**

Chancellor Laguerre attended the CBCF Legislative Conference in 2015. The purpose of attending the conference, Chancellor Laguerre said, is to advocate for the District on Capitol Hill, develop relationships with other higher education institutions, and to support African-American students.

**b. Nitasha Sawhney**

Ms. Sawhney described Trustee Handy's trips with students to the CBCF Legislative Conference as a "very educational" experience for the students. Ms. Sawhney disputed Mr. Heyman's claim that it is an inappropriate use of District funds for the District to pay for Trustee Handy and the students to attend the conference. She stated that District representatives are permitted to engage in advocacy which is related to the District's mission. Nevertheless, Ms. Sawhney said, the students and Trustee Handy are not primarily engaged in advocacy when attending the conference. Rather, the trip is primarily about "[student] development, about their opportunities to study, [and] to spend time with Congresswoman Barbara Lee."<sup>23</sup> She added, "They're doing things that clearly are in the spirit of an educational experience."

**c. Trustees**

None of the Trustees expressed any concern about Trustee Handy's annual trip with a group of students to the CBCF Legislative Conference.

I did not ask all of the Trustees about how attending the conference specifically benefited the District. However, three of the trustees directly addressed the issue. Like Ms. Sawhney, Trustee Riley and Trustee Gonzalez Yuen stated their belief that attending the conference was a great educational experience for the students who accompany Trustee Handy in that they learn about the workings of the federal government. Trustee Withrow also stated that it is important for District representatives to advocate on behalf of Peralta specifically and community colleges more generally.

**4. Other Evidence Considered**

The CBCF website describes its Annual Legislative Conference as follows:<sup>24</sup>

The CBCF Annual Legislative Conference is the leading policy conference on issues impacting African Americans and the global black community. Thought leaders, legislators and concerned citizens engage on economic development, civil and social justice, public health and education issues. More than 9,000 people attend 70 public policy forums and much more. Join subject experts, industry leaders, elected officials and citizen activities to explore today's issues from an African-American perspective.

In a press release issued on August 24, 2016, the CBCF announced that President Barack Obama would deliver the final keynote address at the Phoenix Awards Dinner at the Annual Legislative Conference. The Press Release stated that the following would be "honorees" at the Awards Dinner: Democratic Presidential Candidate Hillary Clinton, U.S. Representative Charles Rangel, U.S. Representative Marcia Fudge, Robert Smith (founder, chairman and chief executive officer of Vista Equity Partners), and Emanuel African Methodist Episcopal Church. Hillary Clinton was receiving the inaugural Trailblazer Award "in recognition of becoming the first woman

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<sup>23</sup> Representative Lee's congressional district includes several cities in the East Bay, including Oakland, Alameda, and Berkeley where the District has colleges.

<sup>24</sup> <https://www.cbcfinc.org/annual-legislative-conference/>



presidential nominee of a major party in the United States and her remarkable contributions to the nation.” The following was also noted in the press release:

The Phoenix Awards Dinner is the primary fundraising event for the CBCF, a 501(c)(3), non-partisan, nonprofit, educational and research institute.<sup>25</sup> This black-tie event showcases the CBCF’s education and leadership programs, and provides an opportunity to recognize outstanding individuals who make humanitarian contributions to society.

#### **Attachment 43.**

The records provided by the District related to Trustee Handy’s attendance at the CBCF’s Annual Legislative Conference indicate that the District did not pay for Trustee Handy to attend the Phoenix Awards Dinner. The total registration fees for the conference totaled \$2,025. However, that covered the registration fees not only for Trustee Handy but for 10 Peralta students and the District’s Director of Student Activities who also attended the conference. The registration fees did not include tickets for the Phoenix Awards Dinner.<sup>26</sup> **Attachment 44.**

#### **5. Policies**

If the allegations are true, the following policies (already cited above) could be implicated: Board Policy 2710 (Conflict of Interest); Board Policy 2715 (Code of Ethics and Standards of Practice); Board Policy 7400 and Administrative Procedure 7400 (Travel).

#### **6. Findings and Analysis**

I find for the following reasons that Mr. Heyman’s allegations related to Trustee Handy’s and the students’ attendance at the CBCF’s Annual Legislative Conference is not supported by the preponderance of the evidence.

First, based on the information provided by Trustee Handy and other witnesses, the annual trip she takes with students to the CBCF Legislative Conference is for educational purposes. Moreover, as advertised, the conference includes sessions related to educational issues along with many other public policy issues impacting African Americans.

Second, Administrative Procedure 7400 permits “institutional travel” which includes travel for multiple purposes, including meeting with elected officials.

Third, Trustee Handy did not attend a fundraiser for Hillary Clinton at the District’s expense when she was at the conference. While Trustee Handy attended the Phoenix Awards Dinner where Clinton was honored, the dinner honored several individuals and there is no evidence to indicate that it was a political fundraiser. Rather, it was a fundraiser for the CBCF which according to publicly available materials is a 501(c)(3) nonprofit, nonpartisan organization

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<sup>25</sup> According to the CBCF website, its mission includes, but is not limited to, “providing leadership development and scholarship opportunities to educate the next generation of leaders.” <https://www.cbcfinc.org/learn-about-us/vision-mission/>

<sup>26</sup> According to the registration form, individual tickets for the dinner ranged from \$750 to \$2,000.

whose mission includes “providing leadership development and scholarship opportunities to educate the next generation of leaders.” The District’s records also show that Trustee Handy was not registered for the Phoenix Awards Dinner which was a separate expense item.

## **E. Interim Appointments and Restructuring**

### **1. Allegation**

Mr. Heyman alleged that Chancellor Laguerre has misused the Interim Appointment process to “hand-pick” administrators. He further alleged that Chancellor Laguerre’s actions with regard to Interim Appointments has violated District Policy, because he has made Interim Appointments without opening a recruitment, has extended Interim Appointments for more than a year, and has filled newly created positions on an Interim basis.

Mr. Heyman also expressed concern about Chancellor Laguerre’s decisions to terminate, or not to renew, the employment contracts of several high-ranking District administrators. Mr. Heyman believed that the Chancellor’s termination and non-renewal decisions destabilized District operations, particularly since some of the positions had to be filled on an extended basis by Interim Appointments. (Although Mr. Heyman disagreed with Chancellor Laguerre’s decision to release certain employees, he did not contend that the Chancellor violated District Policy or law in doing so.)

Mr. Heyman also alleged that restructuring implemented by the Chancellor adversely impacted District operations. As an example, he claimed that the Chancellor’s restructuring of the Facilities Department led to maintenance issues at the colleges.

### **2. Response**

Chancellor Laguerre said that he prefers to find permanent hires for open positions rather than making Interim Appointments, but that there are a few problems with this. First, there are not a lot of qualified candidates from which to choose, and thus there needs to be someone in the position until the right candidate can be found. Second, the District’s employees typically do not give more than two weeks’ notice when they vacate a position, and there is no way for the District to complete its hiring process within such a short window of time. Third, the appointment of an Interim gives the District time to evaluate whether the position should be restructured, so that when the position is advertised, the advertisement accurately reflects the requirements of the job.

Chancellor Laguerre stated that there are three ways to make an Interim Appointment. First, the Chancellor can directly appoint someone. This is usually done in order to “keep things moving,” or to put a “star” in place. Second, the Chancellor can open an internal recruitment. Or, third, the Chancellor can open an external recruitment. It is Chancellor Laguerre’s understanding that Interim Appointments can serve for up to two years, pursuant to the Education Code. He also noted that the Board needs to approve all appointments of administrators, whether interim or not.

Chancellor Laguerre denied that any of his organizational changes, including restructuring the Facilities Department, led to adverse consequences.

### **3. Witness Statements**

#### **a. Trudy Largent**

Ms. Largent is the District's Vice Chancellor of Human Resources and Employee Relations. She stated that the District has had a lot of turnover in management positions in recent years which has necessitated the use of Interim Appointments.

She explained that the District's Administrative Procedure for employing interim managers operates in one of three ways. First, the Chancellor can recommend a direct appointment where there is no recruitment. This is usually a six month or one year assignment to give the District time to recruit. The Board then considers the Chancellor's recommendation for the appointment and determines whether to approve it. Second, the District can hold an internal recruitment or a "truncated open recruitment" to fill the position on an interim basis. Third, the District can hold a "full recruitment" and fill the position on an interim basis as the regular recruitment progresses.

Ms. Largent disagreed with Mr. Heyman's assertion that Interim Appointments were not allowed for positions that were newly created. She said the District has "never appointed someone to an interim position that didn't exist." An example she provided was the position of Registrar. The District did not previously have a position called Registrar, but it did have a Vice Chancellor of Student Services. That Vice Chancellor was not retained when her contract expired on June 30, 2017, and though the District still needed someone to perform some of her functions, the District declined to fill that position with another Vice Chancellor. Instead, the District created the position of Registrar, with the input of the District's Academic Senate President, and filled it on an Interim basis.

Ms. Largent confirmed that there have been instances when the District, upon the recommendation of Chancellor Laguerre and with the Board's approval, has had individuals serve in Interim positions longer than a year which is technically a violation of District Policy, though not a violation of "Title 5" regulations which allow for Interim Appointments for up to two years. She explained that the need to have some Interim Appointments last longer than a year has been due either to not having a qualified applicant pool to fill a position on a regular basis or due to instances when Chancellor Laguerre has been evaluating whether he wants to fill a position with a regular appointment and, if so, what job functions he wants included in the position if filled.

As Vice Chancellor of Human Resources, Ms. Largent was aware that several management-level administrators have not had their contracts renewed or have been terminated for performance reasons over the past couple of years. She noted that District administrators are at-will employees. The decision of whether or not to renew or terminate an administrator's contract is typically based on performance, the continuing need for the position, and the Chancellor's needs in relation to the Board's strategic goals.

Ms. Largent was unaware of Chancellor Laguerre’s restructuring decisions having any adverse impact on District operations.

Additional information that Ms. Largent provided related to Interim Appointments at the District Office is set forth below in Section 4.

**b. Nitasha Sawhney**

Ms. Sawhney stated that under the Title 5 regulations, community college districts have significant leeway to make Interim Appointments. An appointment can be made, the position can be held for a year, and then if it is determined that the position cannot be filled, the Interim Appointment can be extended for another period of time. Generally, the Chancellor will make a recommendation regarding Interim Appointments and the Board decides whether or not to approve the appointment. It is also possible on occasion, Ms. Sawhney said, that the Chancellor may make an Interim Appointment that the Board ratifies at a later date.

**c. Trustee Bonilla**

With respect to Interim Appointments, Trustee Bonilla said that Chancellor Laguerre has fully developed his own organizational structures and needs, as he should have; “that’s why we hired him.” She stated that the Chancellor’s decision-making as to termination or non-renewal of contracts is usually discussed confidentially between the Chancellor and Human Resources; that said, she believes the Chancellor has acted within his expected role and purview when making personnel changes.

Trustee Bonilla said that she could not quote the policy on Interim Appointments, but she believes interims usually serve as a placeholder until the District can complete a recruitment process and find a qualified candidate to fill the role on a regular basis. She believed the District followed all required hiring protocols, and thought (though she was not sure) that a recruitment needed to be open when an Interim Appointment was made. She did not know if there was a time limit on how long someone could serve in an interim capacity. She said the Board takes a recommendation from the Chancellor and can approve extensions of Interim Appointments.

Trustee Bonilla did not know how many Interim Appointments Chancellor Laguerre has made, but she has never been concerned about the quantity. She was also not aware of any adverse consequences related to his restructuring.

**d. Trustee Brown**

When asked why the Chancellor has made Interim Appointments, Trustee Brown said, “We weren’t in the best shape.” There were “persistent problems” and a “lack of stability and leadership which left things unaddressed.” There were “accreditation issues to be sorted out,” and “this Chancellor was hired to sort out issues that others hadn’t handled in the past, either because of unwillingness or lack of competence.” “If you don’t have anyone in a spot,” she said, “this can create more permanent problems.” Previously, the District had not filled certain positions at all, or had filled them with employees who underperformed. Chancellor Laguerre

fixed that, as the Board wanted. Trustee Brown had no concerns over Chancellor Laguerre's Interim Appointments.

Trustee Brown did not know if any of Chancellor Laguerre's Interim Appointments had served longer than one year. She confirmed that the Board signs off on Interim Appointments and extensions thereof, following a vote.

Trustee Brown was not aware of any operational consequences resulting from Chancellor Laguerre's restructuring.

**e. Trustee Handy**

When asked why Chancellor Laguerre has made organizational changes at the District, Trustee Handy replied, "That's why we hired him." In her opinion, Peralta is a "jewel that needed someone to polish it," and Chancellor Laguerre has exceeded her expectations in that regard. She said that, previously, there were people holding positions that they should not have held, and this was harmful to the students.

Trustee Handy said she was "thrilled" with all of the Chancellor's choices for college presidents. Previously, there was a lot of "dead wood" in those positions. With respect to positions in the District Office, Trustee Handy said she is "kind of a wait and see person," but that the people the Chancellor has hired are "brilliant" and the Chancellor is doing "amazing work." In Trustee Handy's opinion, Chancellor Laguerre is the "first real Chancellor we've had," and accomplished more in his first two months than other Chancellors did in their whole tenure.

Trustee Handy further stated that the Chancellor has the power to make Interim Appointments. When an Interim Appointment is made, the District posts the position and candidates apply. If the pool of candidates is not adequate, the Chancellor may decline to hire someone, and this has "ruffled some feathers." The District then re-opens the search and extends the Interim Appointment period. Trustee Handy had no issues with the Interim Appointments Chancellor Laguerre has made.

Trustee Handy disputed Mr. Heyman's claim that organizational changes Chancellor Laguerre has made at the District had adverse consequences.

**f. Trustee Gonzalez Yuen**

Trustee Gonzalez Yuen explained that Chancellor Laguerre came in with a mandate to make changes at the District. He said there were some people who were not a good fit for the job. He also noted that there were "critical holes in administrative functions" which resulted in Interim Appointments in order to ensure those functions continued. It was his understanding that someone can serve in an interim capacity for up to one year, and he had no knowledge that Chancellor Laguerre violated any policies relating to Interim Appointments.

Trustee Gonzalez Yuen was aware that some Interim Appointments have lasted for more than a year, and stated that "I don't think anyone is happy with the slow pace of permanent hiring." He explained that the Board has extended Interim Appointments when the candidate pool for a

regular hire is not adequate, and if a recruiting runs into the summer, the recruitment is further delayed because faculty who may participate on a hiring committee are not working. Under those circumstances, Trustee Gonzalez Yuen said it is better to continue the search rather than to hire someone who may not ultimately work out.

**g. Trustee Withrow**

When asked for his opinion about Chancellor Laguerre's organizational decisions, Trustee Withrow noted that as a "business guy [and] retired career Navy," Trustee Withrow believes in accountability. The Chancellor is the Board's only employee, and is "accountable to the Board for everything." "When you do that," Trustee Withrow said, "you have to give the Chancellor prerogative to put in who he thinks is best to get the job done, and it works that way throughout the organization." The Chancellor "is putting people in who he is comfortable with, but he also defines what he is expecting" from those people. The Chancellor then holds those people accountable; if they don't perform, he will outline goals for them to meet, and if they don't meet the goals, the Chancellor brings in someone else.

Trustee Withrow had no concerns about the Chancellor's Interim Appointments. He felt that the individuals the Chancellor replaced with Interim Appointments were not performing. He also explained that California community colleges are facing "extreme turnover," and this is an area of concern for the Chancellor. Currently, community colleges experience turnover because the Deans, Vice Chancellors, and Presidents get recruited to higher positions at other institutions. "A lot of it," Trustee Withrow said, "is a supply and demand issue." The fact that the District has a lot of Interim Appointments is a reflection of this, as "you have to have someone doing the job."

Trustee Withrow further stated that an employee cannot remain in an interim position for more than one year unless the Board takes action. In "virtually every case" where that has occurred, however, the District has not been able to find someone in the recruitment process that "fits the bill." Trustee Withrow explained that the high cost of living in the Bay Area, as well as Oakland's reputation for being dangerous, contributes to this problem.

**h. Trustee Riley**

When asked why Chancellor Laguerre needed to make Interim Appointments, Trustee Riley said, "We brought the Chancellor in to make changes, to shore up our institution. He came in, looked at our vision, and executed. He did his job." Trustee Riley had no concerns about the changes the Chancellor has made or the people he has appointed. Trustee Riley also noted that filling positions on an interim basis is necessary at times, because "sometimes we can find people right away, sometimes we can't."

Trustee Riley was not aware of any of the Chancellor's organizational changes causing adverse consequences.

**i. Trustee Weinstein**

Trustee Weinstein was aware that Chancellor Laguerre made “at least a few” Interim Appointments since she joined the Board, but she did not recall the names, other than Christine Williams who was Interim Vice Chancellor of Finance and Administration after the prior Vice Chancellor of Finance was terminated. She understood generally that Interim Appointments were made because the position was open or because the Chancellor wanted someone whom he thought would be the best person for the job. She did not know why such individuals were appointed as interim rather than regular, nor did she know whether there were ongoing recruitments for those positions.

Trustee Weinstein said she would like to have a better understanding of the District’s Policy regarding Interim Appointments, as it is somewhat unclear to her. She would like to know who chooses the interim, and if an interim is chosen, whether there is a “deadline” or expiration date for that person in the role. She did not know whether the Chancellor could make an Interim Appointment without opening a recruitment process.

Trustee Weinstein added that she was concerned about the number of Interim Appointments that have been made since she joined the Board. She explained that she likes to see stability in personnel.

**4. Other Evidence Considered**

The chart below provides information related to Interim Appointments at the District Office which were recommended and/or approved by Chancellor Laguerre, and subsequently approved by the Board of Trustees.<sup>27</sup> The chart also notes whether a recruitment was or is open for any of the positions.

Name and Job Title	Dates of Appointment	Board Approval	Recruitment <sup>28</sup>
<b>Melvinia King</b> Interim Associate Vice Chancellor, Workforce Development and Continuing Education (WDCE)	July 1, 2016 – June 30 2017	May 10, 2016	Not Applicable.
	July 1, 2017 - January 31, 2018	February 21, 2017	Chancellor Laguerre is evaluating whether to maintain the Office of WDCE and, if so, how many positions to fill on a regular basis. The WDCE program is still “under development” and in “pilot mode.”
<b>Debra Jones</b> Interim Associate Vice Chancellor, WDCE	February 1, 2018 – December 31, 2018	January 23, 2018	Not applicable.  Chancellor Laguerre is evaluating whether to maintain the Office of WDCE and, if so, how many positions to fill on a regular basis.

<sup>27</sup> All Board approvals referenced herein were made during Closed Session pursuant to California Government Code Section 54957 and Board Policy 2315, but the votes were reported out during open session. The information is available on the District’s website.

<sup>28</sup> I received the information in this column from Ms. Largent.

Name and Job Title	Dates of Appointment	Board Approval	Recruitment <sup>28</sup>
Debra Jones Interim Director of WDCE	March 1, 2017 – June 30, 2018	February 21, 2017	Not applicable.  Chancellor Laguerre is evaluating whether to maintain the Office of WDCE and, if so, how many positions to fill on a regular basis.
Sui Song Interim Budget Director, WDCE	August 3, 2016 – June 30, 2017	September 13, 2016	Not applicable.  Chancellor Laguerre is evaluating whether to maintain the Office of WDCE and, if so, how many positions to fill on a regular basis.
	July 1, 2017 – January 31, 2018	February 21, 2017	
	February 1, 2018 – June 30, 2018	December 12, 2017	
Tamika Brown Interim Assistant Vice Chancellor, Enrollment Management	July 1, 2016 – June 30, 2017	June 14, 2016	Position advertised on October 13, 2017.  Delay in advertising position due to Chancellor Laguerre evaluating appropriate duties for the position after deciding not to fill the Vice Chancellor of Student Services position.
	July 1, 2017 through December 31, 2017	June 13, 2017	
	January 1, 2018 through June 30, 2018	December 12, 2017	
Luis Pedraja Interim Vice Chancellor of Academic Affairs	August 1, 2016 – June 30, 2017	September 13, 2016	Position advertised in April 2017. Position filled with regular appointment in July 2017.  Prior to the position being advertised, Chancellor Laguerre was evaluating the duties of the position after deciding not to fill the position of Vice Chancellor of Educational Services.
██████████ ██████████ Interim Project Manager of Maintenance and Operations	January 3, 2017 – March 14, 2017	January 24, 2017	Not applicable.  Position not advertised pending completion of a study regarding the Department of General Services' functional areas.
	March 15, 2017 – May 31, 2017	March 14, 2017	
	June 1, 2017 – June 30, 2017	June 13, 2017	
██████████ ██████████ Interim Director of Facilities and Operations	August 1, 2016 – December 31, 2016	September 13, 2016	Position recruited and filled in January 2017, but appointee resigned the same month. Position not re-advertised pending a study of the Department of General Services.



Name and Job Title	Dates of Appointment	Board Approval	Recruitment <sup>28</sup>
<b>Timothy Brice</b> Interim Director of Facilities and Operations	February 13, 2017 – July 31, 2017	February 21, 2017	Not applicable.
	July 31, 2017 – August 31, 2017	September 12, 2017	Position not advertised pending a study of the Department of General Services.
<b>Antoine Mehouelley</b> Interim Director of Technology Services	May 16, 2016 – December 31, 2016	June 14, 2016	Position advertised on April 25, 2017. Board subsequently approved appointment of Mr. Mehouelley to regular position effective September 13, 2017.
	January 1, 2017 – June 30, 2017	December 13, 2016	
	July 1, 2017 – December 31, 2017	May 9, 2017	Prior to the position being advertised in April 2017, it was necessary to have an Interim Director of Technology Services in the absence of a Vice Chancellor of Information Technology. Once a Vice Chancellor of Information Technology was hired, the Vice Chancellor decided to fill the position of Director of Technology Services on a regular basis.
<b>May Chen</b> Interim Director of Institutional Research and Planning	June 6, 2016 – June 30, 2017	June 14, 2016	Not applicable.  Chancellor Laguerre decided not to fill the position with a regular appointment.
<b>Christine Williams</b> Interim Vice Chancellor of Finance and Administration	April 17, 2017 – December 31, 2017	April 11, 2017	Position advertised on October 3, 2017. Board approved regular appointment on December 12, 2017.
	June 5, 2017 – December 31, 2017	June 13, 2017	
	January 1, 2018 – February 28, 2018 <sup>29</sup>	December 12, 2017	
<b>Carylon Tyler</b> Interim Project Manager for Maintenance and Operations	July 5, 2017 – December 31, 2017	July 11, 2017	Position not advertised pending completion of a study regarding the Department of General Services' functional areas.
	January 1, 2018 – June 30, 2018	December 12, 2017	

<sup>29</sup> Another person has been hired as Vice Chancellor of Finance and Administration, and began employment effective January 8, 2018. Ms. Williams' Interim Appointment was extended through February 2018 to provide transitional support to the new Vice Chancellor of Finance and Administration.

Name and Job Title	Dates of Appointment	Board Approval	Recruitment <sup>28</sup>
<b>Kelle Lynch McMahon</b> Interim Director of Capital Projects and Facilities	July 12, 2017 – June 30, 2018	July 11, 2017	Position not advertised pending completion of a study regarding the Department of General Services’ functional areas.
<b>Thomas Torres-Gil</b> Interim Director of International Services and Student Support	July 12, 2017 – December 31, 2017	July 11, 2017	Not applicable.
	January 1, 2018 – June 30, 2018	December 12, 2017	Vice Chancellor of Academic Affairs has not yet informed Human Resources whether it wants to advertise the position.
<b>Kimberly Ellis</b> Interim Registrar	August 15, 2017 – June 30, 2018	September 12, 2017	Not applicable.  Chancellor evaluating whether to fill Registrar position with a regular appointment or have the job duties of the Registrar included within the duties of the Vice Chancellor of Enrollment Management.
<b>John (Cody) Pelletier</b> Interim Benefits Manager	December 1, 2017 – June 30, 2018	December 12, 2017	Position advertised on December 21, 2017.
<b>Kyuyong (“Kyu”) Lee</b> Interim Director of Enterprise Services	March 29, 2017 – December 31, 2017	March 28, 2017	Position advertised on August 1, 2017. Recruitment not successful due to weak candidate pool.
	January 1, 2018 – March 31, 2018	December 12, 2017	Position re-advertised on November 22, 2017. Recruitment pending.  Prior to the position being advertised in August 2017, it was necessary to have an Interim Director of Enterprise Services in the absence of a Vice Chancellor of Information Technology. Once a Vice Chancellor of Information Technology was hired, the Vice Chancellor decided to fill the Director of Enterprise Services position on a regular basis.
<b>Venesse Metcalf</b> Interim Director of Human Resources	January 1, 2017 – June 30, 2017	December 13, 2016	Position most recently advertised on December 18, 2017.
	July 1, 2017 – January 31, 2018	February 21, 2017	Prior to the Interim Appointment, the District attempted to recruit for the position multiple times and, to date, the recruitments

Name and Job Title	Dates of Appointment	Board Approval	Recruitment <sup>28</sup>
			have not been successful due to weak candidate pools.

**5. Policies**

**Administrative Procedure 7125 – Hiring Acting and Interim Academic and Non-Academic Administrators**

The Peralta Community College District seeks to attract and employ highly qualified and effective managers that reflect the diversity of our community. The Chancellor has the authority to recommend qualified candidates to the Board for approval.

**Qualifications.**

[...] A person appointed to an acting or interim classified management position shall possess the required qualifications as stated in the job description.

[...]

**Interim Manager Selection and Appointment Process**

An interim appointment is a temporary appointment to a management position that has been vacated and is deemed necessary to fill on an interim basis until a regular appointment is made. An interim appointment will be made either by appointment or through a recruitment process. An interim appointee will serve for the time necessary to allow for full and open recruitment for the position, provided that the acting or interim appointment or series of acting or interim appointments not exceed one year pursuant to Title 5. The following are the options for selecting an interim administrator:

**Direct Appointment.** The Chancellor may make a direct appointment based on the immediate needs of the District and upon the approval of the Board.

**Internal Recruitment.** The Chancellor may authorize the following internal recruitment and selection process open only to regular district employees if the appointment duration is limited to the minimum time necessary to allow for open recruitment.

[...]

**Open Recruitment.** The Chancellor may authorize the following open recruitment and selection process open to all qualified applicants:

[...]

**Attachment 24.**

## 6. Findings and Analysis

For the reasons set forth below, I make the following findings regarding Mr. Heyman's allegations about the Chancellor's Interim Appointments and restructuring decisions. First, I find as an overall matter that Chancellor Laguerre has not misused the Interim Appointment process. He has the right pursuant to District Policy to directly appoint individuals to Interim positions subject to Board approval, which occurred. There have been some Interim Appointments which have lasted longer than a year which is a technical violation of District Policy. However, Chancellor Laguerre and other knowledgeable witnesses credibly explained the necessity for extending some of the Interim Appointments. Second, the preponderance of the evidence does not support a finding that Chancellor Laguerre's restructuring decisions have adversely impacted the District or violated District Policy.

### a. Chancellor Laguerre Has Not Misused the Interim Appointment Process; However, There Have Been Some Interim Appointments Which Have Lasted Longer Than a Year Which Is a Technical Violation of District Policy.

Based on the preponderance of the evidence, I find that Chancellor Laguerre has not misused the Interim Appointment process. He has the right per District Policy to make Interim Appointments, subject to Board approval. The preponderance of the evidence establishes that legitimate business reasons necessitated the appointment of Interims, and the Board approved all of the Interim Appointments including any extension of Interim Appointments as required by District Policy.

While it is true that formal recruitments have not started, been completed, or were delayed for some of the positions being filled by an Interim, based on the credible statements of Chancellor Laguerre and Vice Chancellor of Human Resources Largent, that was due to a weak candidate pool for the positions, or the Chancellor evaluating whether he wanted to fill a position with a regular appointment and, if so, what job responsibilities he wanted included in the position if the position was filled.

It is also undisputed that some of the Interim Appointments have exceeded one year which is a technical violation of District Policy, though not a violation of the Title 5 regulations according to Vice Chancellor Largent and Ms. Sawhney. Even though some Interim Appointments have lasted longer than a year, Chancellor Laguerre, Vice Chancellor Largent, and the Trustees offered a credible explanation for the necessity of extending some of the Interim Appointments.

For these reasons, I find that Chancellor Laguerre has not misused the Interim Appointment process even though some of the Interim Appointments have exceeded one year.

### b. Chancellor Laguerre's Restructuring Decisions Have Not Adversely Impacted the District

While it is undisputed that Chancellor Laguerre restructured some Departments and changed certain reporting relationships, the preponderance of the evidence does not support a finding that the restructuring adversely impacted District operations. Mr. Heyman also presented no

evidence to suggest that District Policy limited Chancellor Laguerre's ability to make organizational changes that he thought was appropriate and necessary.

**F. Interference in Hiring Process**

**1. Allegation**

Mr. Heyman alleged that Chancellor Laguerre interfered with the District's hiring policies by refusing to follow recommendations of the hiring committees related to certain candidates. He provided two examples of such alleged interference.

First, he alleged that Chancellor Laguerre violated District hiring policies by appointing his former Chief of Staff at Solano Community College, Dr. Crawford, to serve in the same role at Peralta. Mr. Heyman stated that Dr. Crawford applied for a Deputy Chancellor position but was not selected as a finalist by the hiring committee. As a result, Chancellor Laguerre "tossed out" the hiring committee's recommendations, "rewrote the job description to Chief of Staff, and then just appointed her."

Second, Mr. Heyman alleged that Chancellor Laguerre rejected a recommendation made by a hiring committee to appoint ██████████ to the position of Director of Facilities; a position which ██████████ had been filling on an Interim basis.

**2. Response**

**a. Hiring of Yashica Crawford**

Chancellor Laguerre stated that Dr. Crawford was the top candidate in a national search for Special Assistant to the Chancellor and Chief of Staff. The hiring committee presented Dr. Crawford and one other finalist candidate to Chancellor Laguerre, and Laguerre selected Dr. Crawford.

Originally, the District had recruited for a Deputy Chancellor position, but the salary for the position "attracted people who had no business being a Chief of Staff," such as college presidents. Therefore, after conferring with the Board, Chancellor Laguerre changed the position from Deputy Chancellor to Special Assistant to the Chancellor and Chief of Staff, and Dr. Crawford was ultimately selected for that position. Chancellor Laguerre did not recall if Dr. Crawford applied for the Deputy Chancellor position.

**b. Director of Facilities**

Chancellor Laguerre explained his reasons for not appointing ██████████ to the Director of Facilities position, even though he had been serving in an Interim role in that position and was recommended for the position by the Vice Chancellor of General Services. Chancellor Laguerre stated that there had been a chemical incident which cost the District "a lot of money" when ██████████ was the Interim Director of Facilities, and Chancellor Laguerre did not want to be held accountable if ██████████ made similar management mistakes again.

### 3. Witness Statements

#### a. Trudy Largent

##### i. Hiring of Yashica Crawford

Ms. Largent provided the following background related to Dr. Crawford's appointment to Special Assistant to the Chancellor and Chief of Staff. As Ms. Largent recalled, former Chancellor Elihu Harris had a Special Assistant whose position was reclassified to Associate Vice Chancellor and Special Assistant. Both Chancellor Harris and the Special Assistant retired in 2010, and Interim Chancellor Wise Allen did not fill the position. When Chancellor Jose Ortiz arrived, he wanted a Deputy Chancellor rather than a Special Assistant, so the job description was adjusted to Deputy Chancellor through the typical governance process. When Chancellor Laguerre became the Chancellor, he determined that he did not need a Deputy Chancellor, but a Special Assistant to the Chancellor/Chief of Staff, so that position was openly recruited and Dr. Crawford was hired to fill it. Ms. Largent had no recollection of Chancellor Laguerre directing that a recruitment be opened for a Deputy Chancellor position prior to the recruitment for a Special Assistant to the Chancellor/Chief of Staff.

##### ii. Director of Facilities

Ms. Largent was aware that [REDACTED] was not offered the Director of Facilities position even though he had acted in the position on an Interim basis. She said that, initially, the Vice Chancellor of General Services recommended [REDACTED] for the position and did not provide Chancellor Laguerre with any other candidates. Chancellor Laguerre did not appoint [REDACTED] to the position, because he wanted more candidates to consider. Subsequently, the position was offered to a candidate who formerly worked for Solano Community College; however, that candidate quit Peralta within a couple of weeks of being hired. Another recruitment commenced and the position was next offered to two candidates, both of whom declined the offer. Ultimately, Kelle Lynch McMahon was appointed to serve as Interim Director of Facilities and Operations. She continues to hold that position.

#### b. Trustee Bonilla

Trustee Bonilla had no concerns over the appointment of Dr. Crawford. Trustee Bonilla did not recall if there was a recruitment for the position. But even if there was no recruitment, she would not have been concerned because Chancellor Laguerre needed a Special Assistant/Chief of Staff. Ms. Bonilla did not know if any hiring committee had rejected Dr. Crawford previously, but Ms. Crawford's hiring was "well received" by Trustee Bonilla.<sup>30</sup>

#### c. Trustee Brown

Trustee Brown described Dr. Crawford as "brilliant" and a "great asset to the District." Brown does not, however, get into the "weeds" of the hiring committees. Therefore, she did not know whether Mr. Heyman's allegation that Dr. Crawford was rejected by a hiring committee and

<sup>30</sup> I did not ask Trustee Bonilla or the other Trustees about the Chancellor's hiring decision related to the Director of Facilities position.

then appointed to a special position that Chancellor Laguerre created just for her, was accurate. She recalled that there was a Deputy Chancellor position available to the prior Chancellor, which had not been filled, and when Chancellor Laguerre arrived, he adjusted it to be a Special Assistant/Chief of Staff.

**d. Trustee Gonzalez Yuen**

According to Trustee Gonzalez Yuen, the Board “begged” the last three Chancellors to hire a Chief of Staff to serve as the Chancellor’s “right hand,” as being Chancellor is an “enormous” job. Trustee Gonzalez Yuen felt “enormous” relief when Dr. Crawford was hired for the role. He did not know if Dr. Crawford had unsuccessfully applied for a Deputy Chancellor position before the Chancellor created the Special Assistant/Chief of Staff position. Trustee Gonzalez Yuen was relieved that the Chancellor trusted Dr. Crawford, as she had worked with him at Solano Community College, and Trustee Gonzalez Yuen observed Dr. Crawford to be qualified.

**e. Trustee Withrow**

When presented with the allegation that Mr. Heyman made with regard to Dr. Crawford’s appointment, Trustee Withrow stated that Mr. Heyman was “way off on that.” He explained that the Board has “been after each Chancellor back to Elihu Harris” to bring in an executive officer, or “No. 2,” for many reasons. The scope of operations and intensity of the work as Chancellor is more than just one person can be expected to handle. It was Trustee Withrow’s understanding that the District’s hiring committee was “enthusiastic” about Dr. Crawford and “excited to get her on board as Chief of Staff.” Trustee Withrow added that Dr. Crawford was “well accepted throughout the organization.”

**f. Trustee Handy**

When asked about Dr. Crawford’s appointment, Ms. Handy wondered “how anyone can be that bright that young,” and was very glad to have her working at the District. Trustee Handy explained that she and Trustee Withrow came up with the idea of a Deputy Chancellor position “many years ago,” because at the time they had a Chancellor who lacked certain strengths. When that Chancellor was replaced, the incoming Chancellor added requirements to the Deputy Chancellor position that “no one could meet,” and thus when Chancellor Laguerre arrived, he “revamped” the position to what it is now. Trustee Handy did not recall Dr. Crawford not being recommended by a hiring committee in any prior recruitment for Deputy Chancellor.

**g. Trustee Riley**

Trustee Riley disputed Mr. Heyman’s account of Dr. Crawford’s appointment. Trustee Riley stated, “We’ve been trying to get a Deputy Chancellor in this District for a long time.” When the Board first interviewed Chancellor Laguerre prior to his hire, Laguerre talked about a combined position of Chief of Staff/Deputy Chancellor. Trustee Riley was not privy to the details of any recruitment for the position but stated that Chancellor Laguerre “hired the person he wanted, [and] we’re glad because [Dr. Crawford is] great.”

**h. Trustee Weinstein**

Trustee Weinstein was not on the Board when Dr. Crawford was appointed, and thus she did not know the circumstances of her hiring.

**i. Yashica Crawford**

Dr. Crawford stated that she was hired as Special Assistant to the Chancellor and Chief of Staff in January 2016, following a recruitment process. Dr. Crawford first saw a posting on the Peralta Human Resources website for the position. She applied and received a written confirmation that her application had been submitted to a screening committee. Around November 2015, she participated in the first of two interviews. She recalled that the first interview was held before a committee of about 12 people, chaired by the Vice Chancellor of Finance and Administration.

After the first-level interview, Dr. Crawford moved on to a second-level interview with Chancellor Laguerre. Dr. Crawford had previously worked with Chancellor Laguerre for about a year at Solano Community College, but she did not know Chancellor Laguerre prior to working at Solano. After Dr. Crawford interviewed with Chancellor Laguerre, she estimated that she received a call from Vice Chancellor Largent within a week offering her the position. The Board subsequently approved her hiring, and she started work in January 2016.

Dr. Crawford stated that she was not aware of any open position for a Deputy Chancellor when she submitted her application; she only recalled applying for the Special Assistant to the Chancellor/Chief of Staff position.

**4. Other Evidence Considered**

After conducting the interviews summarized above, I requested and obtained the recruitment files related to the Deputy Chancellor and Special Assistant to the Chancellor recruitments.<sup>31</sup> The documents show that there were two recruitments – the first for the position of Deputy Chancellor and Chief of Staff and the second for Special Assistant to the Chancellor and Chief of Staff. Although there was overlap in the Duties and Responsibilities listed in the job descriptions for each position, there were several duties in the Deputy Chancellor/Chief of Staff position description that were not listed in the position description for the Special Assistant to the Chancellor/Chief of Staff. **Attachments 45 - 46.**

A recruitment process for the Deputy Chancellor/Chief of Staff position opened on August 7, 2015. The salary range advertised for the position was \$180,607 to \$228,768. Twenty-two candidates applied. Eight candidates were selected for first round interviews.<sup>32</sup> Dr. Crawford applied for the position but was not one of the candidates recommended for an interview. On October 8, 2015, Ms. Largent informed all of the applicants that the District had decided not to

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<sup>31</sup> Due to the voluminous size of the recruitment files, they are not attached.

<sup>32</sup> With one exception, the eight candidates selected for first round interviews were Presidents or Vice Chancellors at other colleges.



fill the position. No reason was given for the District's decision. The first round interviews never took place.

A recruitment process for the position of Special Assistant to the Chancellor/Chief of Staff subsequently opened on October 16, 2015. The salary range advertised for the position was \$164,180 to \$207,971. Twenty-one candidates applied. Three candidates, including Dr. Crawford, were interviewed by the hiring committee.<sup>33</sup> Two of those candidates, including Dr. Crawford, were then recommended for an interview with the Chancellor.

Ultimately, Chancellor Laguerre recommended that Dr. Crawford be appointed to the position. The Board unanimously approved Dr. Crawford's appointment at a Board meeting on December 8, 2015. Her annual salary was set at \$175,133. **Attachments 47 - 48.**

## 5. Policies

### **Administrative Procedure 7123 – Hiring Procedures for Regular Academic Administrators and Classified Managers**

These procedures apply to hiring all full-time regular status management personnel except the Chancellor. Separate procedures apply for the selection of an interim/acting appointment.

[...]

#### **VII. Reviewing and Screening the Applications**

- A. The Vice Chancellor for Human Resources and Employee relations or designee, reviews the composition of the pool of applicant[s] to determine if legal requirements related to Equal Employment and non-discrimination have been met. The Office of Human Resources and Employee Relations will review applications for minimum qualifications or the equivalent to determine the eligibility pool.
- B. All applications received on or before the closing date and meeting the published minimum requirements or having qualifications that are at least equivalent, will be made available to members of the hiring committee. Committee members rate each candidate on a district-approved form.

#### **VIII. Preparing for the First-level Interviews**

- A. After screening all applications, the hiring committee, decides those candidates to be invited for an interview.

[...]

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<sup>33</sup> One candidate was the President of another college. The second candidate was Vice Provost and Chief Diversity and Community Engagement Officer at a college. Dr. Crawford was Chief of Staff to the Superintendent/President at Solano Community College. There were three other candidates recommended for first level interviews that withdrew their names from consideration. [REDACTED]

**IX. Conducting the First-Level Interviews**

A. The hiring committee [...] interviews and evaluates each candidate. [...]

B. After all candidates have been interviewed, the committee deliberates and prepares its recommendation of 0-6 finalists to the Vice Chancellor for Human Resources and Employee Relations or designee, without ranking. Strengths and Weaknesses of the finalists shall be prepared under separate memorandum.

C. When it is not possible to submit at least two names, the committee chairperson shall prepare a written explanation to be submitted with the committee's recommendation. The Chancellor/President, in conjunction with the Committee, will decide on a course of action which may include forwarding names of additional candidates from the pool of applicants interviewed.

[...]

**XI. Conducting Final Interviews**

A. The Chancellor conducts the final interviews.

B. The Chancellor may:

1. Make a recommendation for further consideration; OR
2. Reject all candidates; AND
3. Reopen the process

XII. Approval is by the Board of Trustees upon the recommendation of the Chancellor.

**Attachment 49.**

**6. Findings and Analysis**

For the reasons described below, Mr. Heyman's allegation that Chancellor Laguerre interfered with the hiring process as it concerned Dr. Crawford and [REDACTED] is not supported by the preponderance of the evidence.

**a. Chancellor Laguerre's Recommendation to Hire Dr. Crawford Was Appropriate and Consistent With District Policy**

Mr. Heyman alleged that Chancellor Laguerre "tossed out" the hiring committee's recommendation for Deputy Chancellor when Dr. Crawford was not recommended for the position and then "just appointed" Dr. Crawford to a newly created position of Special Assistant to the Chancellor/Chief of Staff. The record does not support the allegation.

While it is true that Dr. Crawford was not recommended for an interview during the recruitment process for a Deputy Chancellor, and Chancellor Laguerre chose to stop that recruitment before any interviews were conducted and open a new recruitment for a Special Assistant/Chief of Staff, it is not true that he "just appointed" Dr. Crawford to that position. There was an open

recruitment for the Special Assistant/Chief of Staff position and Dr. Crawford was recommended by the hiring committee as a finalist for the position.

Chancellor Laguerre provided a credible explanation for why he decided to fill the position of Special Assistant/Chief of Staff instead of Deputy Chancellor. He thought the candidates who applied for the Deputy Chancellor position were more interested in the high salary of the position than in being in a role the Chancellor envisioned as a Chief of Staff. He believed this because most of the candidates who applied were college presidents at other schools. Once the position was re-advertised as a Special Assistant/Chief of Staff with a lower salary range, Chancellor Laguerre received applications from candidates that he considered to be more suited to the role of Special Assistant/Chief of Staff.

The applicable District policy makes clear that the ultimate hiring decision resides with the Chancellor subject to Board approval. The Trustees approved Dr. Crawford's appointment and were complimentary of her job performance. They had no concerns about the Chancellor's decision to hire Dr. Crawford and noted that they wanted the Chancellor to have a deputy, whether that position was classified as a Deputy Chancellor or Special Assistant /Chief of Staff.

Based on these facts, I find that Chancellor Laguerre's recommendation to appoint Dr. Crawford to the position of Special Assistant to the Chancellor and Chief of Staff, following a recruitment process whereby Dr. Crawford was recommended by the hiring committee as a finalist, was appropriate and consistent with District Policy.

**b. Chancellor Laguerre Did Not Violate District Policy by Declining to Appoint ██████████ to the Position of Director of Facilities**

For the reasons stated below, I find that Chancellor Laguerre's decision not to appoint ██████████ ██████████ to the position of Director of Facilities was within his purview and not in violation of District Policy.

Although the undisputed evidence establishes that the Vice Chancellor of General Services initially recommended that Chancellor Laguerre appoint ██████████ to the position, Chancellor Laguerre provided a credible explanation for why he elected not to do so. He explained that while ██████████ was acting as Interim Director of Facilities there was a chemical incident that was costly to the District which caused Chancellor Laguerre to question ██████████ suitability to fill the position on a permanent basis.

Mr. Heyman appears to believe that the fact the Vice Chancellor of General Services recommended ██████████ for the position, along with the fact that ██████████ had been appointed to the Director of Facilities position on an Interim basis meant the Chancellor should have appointed ██████████ as the permanent Director of Facilities. However, there is no applicable policy which required Chancellor Laguerre to accept the recommendation of the Vice Chancellor of General Services when he did not agree that ██████████ was qualified to hold the position on a permanent basis. The mere fact that someone is appointed as an Interim does not give that person an automatic right to the position.

## G. Paul Cheng's Affiliation With the District

### 1. Background

The following information is relevant to provide context for the allegations that follow related to Paul Cheng's affiliation with the District.

**First Contract with Cheng/U.S. Education Foundation.** On or about January 21, 2016, Chancellor Laguerre, acting on behalf of the District, entered into a contract with Mr. Cheng and his company known as U.S. Education Foundation.<sup>34</sup> The contract was for the amount of \$10,000 and the contract term for the period of March 1, 2016 through June 30, 2016. (Mr. Cheng was ultimately paid the full contract amount.) Per the terms of the contract, Mr. Cheng agreed to provide the following services:

- Promote PCCD in China, primarily for the purpose of partnership with colleges and corporations for international education.
- Conduct country surveys and reports, analysis and direct partnership with corporations.
- Provide information and advice for PCCD to make decisions related to international education.
- Engage in direct marketing activities, such as, attending fairs and conducting seminars, visit embassies, educational institutions, agent events, and other relevant student recruitment activities.
- Network with potential partners/agents for PCCD.
- Other duties as assigned under the scope of direct marketing, and reporting for international program.

### Attachment 50.

**Second Contract with Cheng/U.S. Education Foundation.** On or about September 9, 2016, Chancellor Laguerre, on behalf of the District, entered into another contract with Mr. Cheng and the U.S. Education Foundation. The term of the agreement was from August 1, 2016 through July 31, 2017. The contract was for an amount not to exceed \$65,000. In exchange for that amount, Mr. Cheng agreed to provide the following services:

To provide direct international student marketing and recruitment primarily, but not limited to Asia. Contract services include:

- Promote PCCD in Asia, primarily, but not limited to, in China, Vietnam, Malaysia, Indonesia, Korea for the purposes of student recruitment.
- Conduct country surveys and reports, analysis and direct recruiting.
- Provide information and advice for PCCD to make decisions related to international student recruitment.

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<sup>34</sup> The contract was not submitted to the Board for approval, because Board approval is not required for contracts less than \$25,000.

- Develop and analyze annual Recruitment/Marketing Plans.
- Engage in direct marketing activities, such as, attending fairs and conducting seminars, visit embassies, educational institutions, agent events, and other relevant recruitment activities.
- Network with potential partners/agents for PCCD.
- Other duties as assigned under the scope of direct recruitment, marketing, and reporting for international program
- Direct support for recruitment activities in Asia.
- Subcontracting with three individuals in China to recruit and market and serve as liaison to partners.
- Printing exhibition and marketing materials in Chinese and English.
- Two exhibitions in China and a third in an Asian country to be determined.
- Develop at least six more agreements for Chinese institutions.
- Identify additional partners for PCCD to explore.

#### **Attachment 51.**

Prior to entering into the second contract, at a Board meeting on July 12, 2016, Chancellor Laguerre asked the Board to “consider approval of a contract with the United States Education Foundation to provide outreach and partnership support and expertise to develop relationships with countries in Asia, particularly China.” The following information was submitted in support of the agenda item.

Toward the middle of last year<sup>35</sup> we established support through an Independent Consultant Contract with Mr. Paul Cheng of the United States Foundation. He had some great results, including several memorandum of understandings and agreements to work with PCCD. This work is different from the efforts that the International Education Office undertakes. In 2017-2018, these efforts will converge along with other international activities.

The purpose of this work is to build and finalize partnerships with ten colleges universities or high schools (total). The work will include the recruitment of three independent partners and recruitment for two teacher training programs. The work will also establish direct permanent contacts in China and include participation in exhibitions in three countries. All Board approved contracts are subject to final negotiation and execution by the Chancellor.

#### **Attachment 10.**

Six of the trustees approved the agenda item. (Former Trustee Gulassa was absent.)

#### **Attachment 10.**

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<sup>35</sup> There is no record of any agreement in 2015. However, as previously noted, there was a contract between Mr. Cheng and the District dated January 2016.

Neither the agenda nor minutes for the meeting specified the amount of the contract. There is also no record in subsequent Board agendas and minutes to indicate that the specific contract amount was subsequently ratified. Based on information provided by District representatives, Mr. Cheng was not paid any money on the second contract.

**Professional Development Training Agreement.** In March 2016, Chancellor Laguerre and the President of China Ningbo City College of Vocational Technology (“Ningbo College”) entered into “international cooperation agreement”; the stated purpose of which was the following:

- Internationalization, diversification of the overall objective of educational development.
- The introduction of foreign high-quality educational resources to meet the needs of the local economic development of high-quality international talent.
- Enrichment of students’ learning experiences.
- Increase in faculty’s personal and professional development opportunities.

No District funds were obligated as a result of this agreement. **Attachment 52.**

Shortly thereafter, on or about April 30, 2016, Chancellor Laguerre, on behalf of the District, entered into a Teacher Training Program Agreement with Ningbo College. Pursuant to the Agreement, Ningbo College agreed to send four of Ningbo’s teachers to the District “to participate in vocational and technical education as the theme of pedagogical training to enhance [the Ningbo teachers’] ability and quality of vocational education, to deepen [...] international exchanges, and to promote vocational and technical education as well as cooperation between China and the United States.” The training dates were from August 30, 2016 through November 30, 2016. The cost of the training program and accommodations for Ningbo College was \$54,260. The Agreement noted that payments would be made by Ningbo College to the U.S. Education Foundation (Mr. Cheng’s business) and the Foundation/Cheng would reimburse the District for the “instructional aspects of the program.” **Attachment 53.**<sup>36</sup>

## 2. Allegation

Mr. Heyman made several allegations related to Mr. Cheng and his connection with the District.

First, he took issue with the fact that the District approved a contract with Mr. Cheng at the July 2016 Board meeting even though the agenda did not disclose the amount of the contract.

Second, he alleged that Mr. Cheng and Chancellor Laguerre have entered into Memoranda of Understanding (MOUs) with foreign institutions that were not approved by the Board. Mr. Heyman acknowledged that he did not know if any of the MOUs involved the expenditure of District funds.

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<sup>36</sup> The District produced copies of invoices that it sent to Mr. Cheng related to the teaching program which he paid, with the apparent exception of \$476. **Attachment 54.**

Third, he alleged that District faculty was paid “on the side,” in violation of collective bargaining agreements, to educate the Chinese teachers who came from Ningbo College to participate in a teacher training program at Peralta which was facilitated by Mr. Cheng.

Fourth, he alleged that Mr. Cheng offered “kick-backs” to District staff if they helped him “steer” international students to private housing that could financially benefit Mr. Cheng and/or if they recruited Peralta students interested in studying abroad in China. Mr. Heyman identified the following individuals as having information to provide on this topic: Drew Gephart (International Services Manager), Michael Orkin (former Interim Vice Chancellor of Educational Services),<sup>37</sup> and Sean Brooke (former Director of International Education).<sup>38</sup>

Fifth, he alleged that District staff devoted “a lot” of time to preparing materials for Mr. Cheng. He explained that in 2016, Chancellor Laguerre introduced Mr. Cheng to Mr. Heyman, and asked Mr. Heyman to help Mr. Cheng produce a video that could be used to market the District’s aviation program to students in China. The Chancellor’s request for assistance with the video was not itself unusual, but Mr. Cheng gave Mr. Heyman and the video staff “a very weird feeling.” Mr. Heyman did some research and found out that Chancellor Laguerre and Mr. Cheng had attempted something similar while Chancellor Laguerre was at Solano Community College which had “gone down in flames.”

One of the reasons Mr. Heyman was suspicious of Mr. Cheng was that he was asking for raw video files in addition to the finished product, which suggested to Mr. Heyman that Mr. Cheng might want to use the raw files as the basis to create something different from which he could profit. Accordingly, Mr. Heyman was careful to place District branding throughout the video to reduce the likelihood of such unauthorized use.

Thereafter, around May 2017, Laney College put out a flyer advertising a study abroad program, along with an application package. Mr. Heyman was then asked to send the information to all District students. The application specified that Mr. Cheng would pay the cost of students to travel to China for a two week study abroad program. The study abroad program was described as a “course targeting students to learn about Chinese language, history, culture and economic development.” The flyer and application also contained a reference to “Chinese 008,” which looked like a college course number but did not correspond to any courses offered at the District during the summer. Mr. Heyman did not think students would be entitled to course credit if the program was not run through the District’s Office of International Education.<sup>39</sup>

**Attachment 55.**

Subsequently, in early June 2017, Mr. Cheng met with Mr. Heyman to request additional assistance from Mr. Heyman and his staff. Mr. Heyman took notes of the meeting. **Attachment 56.** After the meeting, Mr. Heyman sent an email to Chancellor Laguerre in which he wrote:

Paul Cheng and I met on Friday at his request to discuss how Public Information could provide him support. He asked if I could design and provide him graphics

<sup>37</sup> Dr. Orkin’s interim appointment ended effective June 30, 2017 and he retreated to a faculty position at Berkeley City College.

<sup>38</sup> Mr. Brooke’s employment contract was not renewed and his employment ended effective June 30, 2017.

<sup>39</sup> Ultimately, the study abroad program did not occur because not enough Peralta students expressed an interest.

files for a half dozen items, which, although he said he would pay for the actual production out of his own pocket, would still constitute a fair amount of work on behalf of department staff.

In addition, he asked if we could help promote the Peralta Residence Center and design a new 4-page brochure for him. I noted in the draft of the brochure he gave me that the Peralta Residence Center is not owned or operated by the Peralta Community College District.

I told Paul I would check in with you before moving forward on these projects. I want to make sure that these are an appropriate use of District resources. Please advise.

Chancellor Laguerre responded to Mr. Heyman's email as follows:

Thanks for the heads up! Without seeing what he is asking for, I cannot comment on whether or not they would constitute good use of tax-payers' money. I would say that anything that he will personally pay for should not be done in your shop. There are private vendors who can perform those services for him.

The Peralta Residence Center is not a Peralta operation; therefore, it would be illegal and unethical to perform that type of work for him.

Thanks for letting me know of his request. I have not authorized him to request these services. He has not discussed them with me prior to his request to you.

### **Attachment 57.**

Finally, during his interviews, Mr. Heyman speculated that Mr. Cheng may make money from other sources outside the District, including from foreign institutions or the Chinese government, for work he is purportedly doing on behalf of the District but did not provide any specific details to support that belief.

### **3. Response**

As background, Chancellor Laguerre explained that Mr. Cheng is originally from Singapore, and spent many years in China when he was young. As a result, he is fluent in Chinese, has an "international background," and "loves to help and support international students" and develop international relationships, particularly in China.

Chancellor Laguerre said that he and Mr. Cheng have collaborated to work closely not only on the recruitment of international students, but to build relationships with Chinese institutions. Mr. Cheng, Chancellor Laguerre said, has been successful in bringing international students to the United States, including high school students who became college students. Chancellor Laguerre estimated that Mr. Cheng brought in 15 students to the District last year. The students enroll full-time like any other international student. Currently, Chancellor Laguerre said, Mr. Cheng is working without a contract.



When asked what Mr. Cheng does that is different from the District's Office of International Education, Chancellor Laguerre explained that Mr. Cheng speaks Chinese, which employees in the International Education Office do not. Because Mr. Cheng speaks the language, he can "knock on doors" in China that others cannot do. Chancellor Laguerre further explained that in China, a person's title can provide greater access, so "if you bring the Chancellor, everything is open."<sup>40</sup> Mr. Cheng is also "gifted at developing relationships" and has "never met a stranger."

Chancellor Laguerre previously worked with Mr. Cheng when Chancellor Laguerre worked at Solano Community College. At Solano, however, they only had 13 international students, whereas Peralta has "almost 1200," and they want to grow that number.

When asked why the amount for the second contract with Mr. Cheng was not included in the July 2016 Board agenda, Chancellor Laguerre speculated that it might have been a clerical error. Chancellor Laguerre thought that he had disclosed to the Board how much the contract would be, and typically the amount would be included in the agenda. Chancellor Laguerre also noted that there are times when he is authorized by the Board to negotiate a contract amount, and the Board ratifies it later, but he did not know if that was what occurred with Mr. Cheng's contract in July 2016. Chancellor Laguerre did not believe that Mr. Cheng had been paid on the second contract. Chancellor Laguerre stated that there was no particular reason he could recall for why the Cheng contract was approved in the summer of 2016, versus some other time.

Chancellor Laguerre acknowledged that he has entered into MOUs with foreign institutions. There have been at least six such MOUs, including one with Ningbo College. He explained that "whenever you have a conversation that may lead to something with a Chinese entity [...] they want you to confirm that you discussed things, put that in writing. It does not commit to anything except that if we're both interested in the future, we can do things." Chinese entities, he further explained, often need permission from the Chinese government to conduct business, and they need time to secure that permission. Chancellor Laguerre denied making any monetary commitments with foreign institutions on the District's behalf.<sup>41</sup>

Chancellor Laguerre confirmed that a group of teachers from Ningbo College spent three months at the District in the fall of 2016, to expose them to American teaching methods. This was managed through the District's Workforce Development and Continuing Education Office ("WDCE"). Mr. Cheng was not paid by the District for this, but he was in charge of providing accommodations. Chancellor Laguerre did not know if Ningbo College compensated Mr. Cheng for that service. The payment arrangement was that Ningbo College gave Mr. Cheng the funds for the cost of the training program, and the WDCE invoiced Mr. Cheng. The Board was not required to approve the Ningbo teacher training program, as the funds at issue were being received by the District, rather than spent.

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<sup>40</sup> At this point in the interview, Chancellor Laguerre's representative, Mr. Prather, spoke up to say that "every school hires a network of marketers," and if the District has only one such person, it is "behind the times." UC Berkeley, for example, has "half a dozen" such individuals doing local marketing in China. Chancellor Laguerre added that the University of San Francisco also has an office in China.

<sup>41</sup> In a "Chancellor's C-Gram" dated July 3, 2016, Chancellor Laguerre listed efforts that had been made to create partnerships with institutions in China. **Attachment 58.**

Originally, the plan was for “a variety of folks,” including faculty, Department Chairs, and Deans, to teach the Ningbo teachers,<sup>42</sup> but ultimately the Ningbo teachers simply attended a variety of courses to observe the District faculty’s teaching methods. The Ningbo teachers observed courses at Laney College, Merritt College, and Berkeley City College. There was supposed to be a stipend for the District faculty who taught these courses. Chancellor Laguerre thought that the WDCE would have information related to that.

Chancellor Laguerre recalled that the international students were housed somewhere in Emeryville, not at Patten University in Oakland. However, he was aware that Mr. Cheng had been working with Patten to secure housing for international students. Chancellor Laguerre was not familiar with their arrangement, but he believed Mr. Cheng was compensating Patten University rather than vice versa. He explained that there is a vacant dormitory at Patten University that was built in 2005, but since Patten University “went online” shortly thereafter, the dormitory is empty and has capacity for 100 students. There was a possibility, about a year ago, for the Peralta Foundation to take over the dormitory, but the Foundation elected not to proceed. The Foundation, Chancellor Laguerre said, was unwilling to act unless scholarships to students were involved. He further explained that the District could not directly get involved because it is not in the housing business, and thus it needed an auxiliary enterprise to do it. Now that the Foundation has declined to assist, Mr. Cheng is working on this himself.

Chancellor Laguerre understood that Mr. Cheng has housed students from the Beijing Management School in the Patten dormitory, and that Mr. Cheng had been reimbursed by Patten for doing so. The District was not involved in that, and did not pay Mr. Cheng for the service.

Chancellor Laguerre acknowledged that Mr. Heyman helped Mr. Cheng with video and brochures in connection with trips Mr. Cheng and the Chancellor made to China as part of their recruitment efforts on behalf of the District. Chancellor Laguerre did not know if Mr. Cheng sought assistance from Dr. Orkin, Mr. Gephart, or Mr. Brooke. Chancellor Laguerre also did not know whether Mr. Cheng has relationships with Chinese government officials. “That’s his business,” Chancellor Laguerre said.

#### **4. Witness Statements**

##### **a. Trustee Handy**

Trustee Handy did not know Mr. Cheng. When shown the July 2016 Board Agenda in which the Chancellor sought approval to enter into a contract with Mr. Cheng, Trustee Handy had no specific recollection of the agenda item but thought the proposed services looked like a great benefit for the District. She further explained that the Board may have given approval for the Chancellor to negotiate the final contract amount, which would explain why no amount was

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<sup>42</sup> Another witness, Michael Orkin, noted the possible confusion with respect to the visiting Ningbo teachers being called “students.” The Ningbo teachers could also be considered students, as they were receiving education in teaching methods from Peralta.

listed on the agenda or in the minutes. The absence of a monetary figure on the agenda did not look unusual to her or raise any “red flags.”

**b. Trustee Gonzalez Yuen**

Trustee Gonzalez Yuen had no recollection of Mr. Cheng. He did not know why the amount of Mr. Cheng’s contract would not have been included in a Board agenda, and had no memory of noticing that at the time. He acknowledged, however, that in some cases the Board will authorize the Chancellor to negotiate a contract (e.g., if the matter is time-sensitive and the Board does not have all the details), but he did not recall whether that occurred in this instance.

Trustee Gonzalez Yuen “vaguely” recalled a training program for teachers from Ningbo, China. If it was the group that he recalled, he said that the teachers were part of a pilot project to create a pipeline of Chinese educators who would foster a potential revenue stream and cultural partnership that might lead to greater Chinese student participation at the District. He was not sure of the details, but he thought the program was intended to determine whether Chinese teachers could learn from American teaching methods.

Trustee Gonzalez Yuen also pointed out that increasing international student enrollment would lead to a significant increase in revenue for the District since international students pay significantly more tuition than in-state residents.

**c. Trustee Withrow**

Trustee Withrow did not know who Mr. Cheng was. When shown the Board’s July 2016 approval of the contract with Mr. Cheng, Trustee Withrow stated that he did not recall this item being discussed. He thought the Board would “normally catch” a contract that did not have a specific amount on it, and did not know how this one “slipped through” without an amount.

Trustee Withrow explained that most community colleges in California, including Santa Monica Community College (“the best in California for international education”), use “agents” to recruit international students. This is what Trustee Withrow surmised that Mr. Cheng was trying to do for the District based on the description of his services set forth in the agenda. He believes that such agents work on a commission basis; therefore, “if they don’t produce, they don’t get paid, but the more they produce, the more they get paid.”

Trustee Withrow did not know the specifics of Chancellor Laguerre’s discussions or MOUs with foreign institutions, but he said, “That’s how you work whether it’s in China or South America. You work with the organization because the organization does the recruitment of students.” The goal, Trustee Withrow said, is not only to increase the number of international students coming to the District, but the right students with the “academic and cultural wherewithal to be successful.” Trustee Withrow did not know whether Chancellor Laguerre’s MOUs with foreign institutions made any monetary commitments on the District’s behalf, and to the best of Trustee Withrow’s recollection, the Board has not been presented with an MOU for approval.

**d. Trustee Brown**

Trustee Brown did not know who Mr. Cheng was. She also did not recall what efforts Chancellor Laguerre was making to recruit students from China, but she hoped he was making such efforts.

Trustee Brown confirmed that agendas and minutes typically include the contract amount ultimately approved. She pointed out, however, that the agenda and minutes for the July 2016 meeting indicate that the Board approved the Chancellor to negotiate the specific terms of the contract. When shown the \$65,000 contract that resulted from these negotiations, Trustee Brown thought that was a reasonable amount for the services to be provided.

**e. Trustee Riley**

Trustee Riley had never heard of Mr. Cheng. When shown the Board's July 2016 approval of a contract with Mr. Cheng, Trustee Riley did not take issue with the absence of a contract amount and pointed out that the agenda and minutes noted that the contract was "subject to final negotiation and execution by the Chancellor." The Board has approved such contracts before, and according to Trustee Riley, it was up to the Chancellor to negotiate after the Board approved his right to enter into a contract.

Trustee Riley was not aware of the Chancellor signing MOUs with institutions in China. However, he knew that the Chancellor had traveled to China which he assumed was for the purpose of recruiting international students.

**f. Trustee Bonilla**

Trustee Bonilla thought she may have heard Mr. Cheng's name in connection with the Chamber of Commerce in Chinatown, but she was not sure. When shown the July 2016 Board agenda and minutes, Trustee Bonilla acknowledged that the contract amount is usually contained in Board agendas and minutes. However, she said that information may have been contained in the source documents which are also available online.<sup>43</sup>

Trustee Bonilla knew that the District worked in partnership with an educational institution in China to develop a teacher training program, in which Chinese teachers came to the District. But she did not know whether this program was set up by Mr. Cheng.

**g. Trustee Weinstein**

Trustee Weinstein did not know who Mr. Cheng was, and she was not on the Board when the Chancellor entered into contracts with Mr. Cheng.

**h. Nitasha Sawhney**

Ms. Sawhney did not have a full understanding of the relationship between the District and Mr. Cheng, but to the best of her knowledge, Mr. Cheng was recruiting students from China and

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<sup>43</sup> The District website does not provide any information related to the amount of the contract.

other countries to come to the District, and developing relationships and partnerships with colleges and universities in China. She was aware of two contracts between the District and Mr. Cheng.

Ms. Sawhney disputed Mr. Heyman's assertion that the Board approved a contract with Mr. Cheng that did not include a contract amount. It was her recollection that the Board approved a contract with Mr. Cheng, and that although the contract may not have called for the payment of a specific amount, there was a "not to exceed" amount. As far as Ms. Sawhney knew, Mr. Cheng had not reached the not to exceed amount.

Ms. Sawhney thought that Chancellor Laguerre may have entered into a MOU with an institution in China, and that he could provide the details. As she understood it, Chancellor Laguerre entered into an agreement by which the District would be a U.S. partner of a Chinese institution if the Chinese government approved such a partnership. Pending such approval, the District would not have committed any resources or money. If the Chinese government approved, the parties would at that time enter into a more formal agreement with specific terms.

#### i. Melvinia King

Dr. King recalled that Mr. Cheng brought Chinese students to Peralta in August 2016, as well as in January 2017. The students were housed at the dormitories at Patten University. Although Dr. King was aware of the housing provided by Patten, her office had no involvement in arranging the housing. Dr. King also stated that the Department she oversaw (Workforce Development and Continuing Education) hosted the Ningbo College teachers who came to Peralta from China for a study program.

Dr. King confirmed that the District – through her Department – charged Mr. Cheng an administrative fee, which he paid, and which the District used to support the work of the District faculty who hosted the Ningbo teachers.<sup>44</sup> The bulk of these funds, Dr. King said, were distributed to the faculty in accordance with the terms of and the rates specified in their union agreements. Dr. King did not know if the payment was considered a stipend or additional salary, but whichever it was, it was within union guidelines. Dr. King also believed that there might have been about \$1,500 left over after the Peralta faculty received their funds, which would have been allocated to her Budget Director's work in supporting this program, including certain other administrative costs.

Dr. King further explained that her office "hosted" the Ningbo teachers by setting up meetings with Trustees, the Chancellor, faculty, and Human Resources, and touring the four colleges and the State Chancellor's office. The Ningbo teachers "wanted to know everything possible" about community colleges in the United States. The Peralta faculty involved in the training program permitted the Ningbo teachers to attend and observe their classes. Before and after the classes, Peralta faculty and the Ningbo teachers would discuss what worked and what did not. Dr. King believed that the faculty enjoyed the exchange, but acknowledged that the program took up some faculty time outside of the classroom.

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<sup>44</sup> According to records provided to the investigator, Mr. Cheng was invoiced for a total of \$26,476. **Attachment 54.**

Dr. King did not observe anything which led her to question Mr. Cheng's relationship with the District. Mr. Cheng, she said, "has a big heart" and "is pretty transparent" and will sometimes use his own personal time and resources to support the arrangements he has made with Peralta. Dr. King thought Mr. Cheng always acted in the best interest of students and faculty.

Dr. King also said that it is not uncommon for educational institutions (including, for example, the University of San Francisco and Morehouse College) to maintain a network of individuals who can help with overseas recruitment efforts, particularly if those individuals can help navigate cultural differences. According to Dr. King, Mr. Cheng is able to bridge cultural differences in China.

**j. Michael Orkin**

Dr. Orkin is currently on the faculty at Berkeley City College, teaching statistics. From approximately 2012 to 2017, Dr. Orkin was the Vice Chancellor of Educational Services. In that role, his oversight included the District's Office of International Education.

Dr. Orkin has met Mr. Cheng, but was not directly involved with Mr. Cheng's business. However, Sean Brooke, the former Director of the Office of International Education, had many dealings with Mr. Cheng, and Dr. Orkin's knowledge of Mr. Cheng's activities stems primarily from conversations with Mr. Brooke.<sup>45</sup> According to Dr. Orkin, Mr. Brooke knew Mr. Cheng from student recruitment fairs, and viewed him as a "hustler" with no academic credentials.

Dr. Orkin explained that Chancellor Laguerre brought Mr. Cheng "in this vague way" from Solano Community College. Mr. Cheng had helped Chancellor Laguerre with international student recruitment. Mr. Cheng then came to Peralta as a consultant, and Dr. Orkin was unclear how Mr. Cheng was being paid and what exactly he was doing. Dr. Orkin attended a couple of meetings with Mr. Cheng, who talked about taking Chancellor Laguerre to China, which he had done in the past and ultimately did again.

Dr. Orkin thought Mr. Cheng and Chancellor Laguerre, at Solano, had made an arrangement with a broker in China which would give Mr. Cheng a sum of money from which Mr. Cheng was to pay the international students' fees, then keep a portion for himself. Dr. Orkin did not believe the arrangement was illegal, but "a little weird." He did not know if Peralta had the same arrangement, but he thought Mr. Cheng was trying to make that happen.

Mr. Cheng was also involved in housing international students at Patten University. Patten had previously transitioned to an online school, and thus its dormitories could be used by Peralta students. The dorms were "presumably managed" by Mr. Cheng, and Dr. Orkin thought Mr. Cheng was "getting a cut of that." Mr. Cheng also reportedly told Mr. Brooke that Mr. Brooke should try to encourage international students to use the housing at Patten. Dr. Orkin said that

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<sup>45</sup> Mr. Brooke is no longer employed by the District and has a pending claim against the District for issues related to the termination of his employment. I reached out to Mr. Brooke, through his attorney, to request an interview. Mr. Brooke's attorney declined to allow Mr. Brooke to be interviewed.

Chancellor Laguerre helped Mr. Cheng set up the arrangement with Patten, but he did not know how Chancellor Laguerre did so.

Dr. Orkin also said Mr. Cheng was trying to get Mr. Brooke to help him recruit students to attend a nearby ESL school. Mr. Brooke told Dr. Orkin that Mr. Cheng was “literally offering him money on the side.” Dr. Orkin did not believe Mr. Cheng offered a specific amount, but rather stated that he could make it “worth [Mr. Brooke’s] while.” Dr. Orkin interpreted this as an attempt to feel out Mr. Brooke for a bribe. Dr. Orkin had no reason to believe Chancellor Laguerre was aware of this, but, his “general assumption” was that Mr. Cheng did not do anything without Chancellor Laguerre’s knowledge.

Dr. Orkin was “peripherally involved” with the teachers who came from Ningbo College, which was “completely outside” of Mr. Brooke and his group. Since Mr. Brooke was not involved, Dr. Orkin said, the “students” (i.e., the Ningbo teachers) could not have had student visas, as Mr. Brooke typically facilitated visas. Dr. Orkin noted that the teachers could have also come in on tourist visas, which would not have been improper. The teachers were housed at Patten, and it was “very unclear” what they were doing, or how long they would be staying. Part-time faculty were teaching these teachers, and Dr. Orkin said that Laney College Dean Chuen Chan was also unclear as to how these faculty were being paid.

Dr. Orkin did not report his concerns about Mr. Cheng to anyone, except to have discussions with his colleagues. “None of these things,” he said, “were ever really launched except for the Ningbo thing” and Mr. Cheng’s attempts to steer students to the Patten dormitories. Dr. Orkin had concerns about the lack of transparency with Mr. Cheng, but never expressed his concerns to Chancellor Laguerre.

Dr. Orkin confirmed that Mr. Cheng never offered him a bribe, or felt him out for the same. Mr. Cheng did say, after the Ningbo teachers arrived, that he wanted to cooperate with the faculty’s union agreements, and apologized for any confusion. The teacher exchange was an experiment, so it was “loosely handled.”

**k. Drew Gephart**

Mr. Gephart is the District’s International Services Manager. He has been in that position since August 2015. In that role, he oversees Peralta’s study abroad programs, assists the Director of International Education with recruitment of international students, and oversees the support of international students after they arrive.

Mr. Gephart first met Mr. Cheng in 2015, and spoke with him as recently as early January 2018. To Mr. Gephart’s knowledge, Mr. Cheng is an independent contractor, hired by the Chancellor, to recruit international students, primarily from China. Mr. Gephart was aware that Mr. Cheng had traveled to China with Chancellor Laguerre “a couple” of times. He thought that Mr. Cheng also traveled to China without the Chancellor for the purpose of recruiting students on behalf of the District.

Mr. Gephart was also aware that Mr. Cheng facilitated a visit from Ningbo College teachers, who came to the District and visited the colleges for “a month or two weeks.” Mr. Gephart believed

that Mr. Cheng was working toward a program by which Peralta students could visit Ningbo College, but no such program ever materialized. Mr. Gephart confirmed that Mr. Cheng asked if Mr. Gephart could find any students to participate in a study abroad program at Ningbo College.

Mr. Gephart recalled that there was an expectation from Ningbo College that the District would send students to Ningbo in exchange for the Ningbo teachers coming to Peralta. During the summer of 2017, the District had been planning a study abroad program to China through Laney College, but the course did not have enough students, and there was “too short of a timeline to really promote it.” Mr. Gephart thought that Mr. Cheng had “worked something out” with Ningbo “that said we were going to send some students, so [Mr. Cheng] contacted [Mr. Gephart] and [said], ‘Hey, I have full ride payments for students to go to China,’ and [Mr. Cheng] had asked if [Mr. Gephart] could find any students.” Mr. Gephart referred a couple of names to Mr. Cheng, but he did not recall who they were, and the trip did not ultimately take place. Mr. Gephart did not know how Mr. Cheng was compensated for any such recruitment services, or what he meant by “full ride.” Mr. Gephart assumed the students would be able to stay at the college for free, but he did not know who would be paying for airfare and other expenses. Mr. Gephart did not find Mr. Cheng’s request unusual, and denied that Mr. Cheng offered him anything in exchange for his assistance in locating students to participate in this program.

Mr. Gephart explained that it is very common (and in fact a “best practice”) for community colleges to work with “agents” to recruit international students, and that the agents may receive some kind of referral fee. Mr. Gephart has never had any concerns about Mr. Cheng’s affiliation with the District.

Mr. Gephart stated that Mr. Cheng has been successful in bringing over a “handful” of students. Mr. Cheng does not only bring students to Peralta, but he also supports them if they have questions about classes or other issues. Mr. Cheng has in turn asked Mr. Gephart for assistance with some of the students’ questions.

Mr. Gephart said that Mr. Cheng is also involved in a partnership between the District and the Beijing Economic Management School, through which students in China might be able to take online courses from Peralta. There is no formal agreement yet, but Mr. Cheng is serving as the “middleman” for that initiative.

Mr. Gephart thought that Mr. Cheng had a separate partnership with Patten University for the housing of international students, which Mr. Cheng runs without the District’s assistance. Mr. Gephart was not familiar with the financial arrangement by which Mr. Cheng houses students at Patten University.

## I. Chuen Chan

Dr. Chan has been the Dean of Liberal Arts at Laney College since 2014. Dr. Chan met Mr. Cheng for the first time in July 2016, while Mr. Cheng was making some last-minute preparations to host a group of students from Ningbo College. Dr. Chan was “shocked because [Mr. Cheng] was looking for [his] faculty.” It was a Thursday, and Mr. Cheng’s students were coming in the following Monday. The next day (Friday), Mr. Cheng asked Dr. Chan for help finding faculty to



assist with the program. Dr. Chan found four faculty members who were willing to assist. Otherwise, Dr. Chan said, he was not involved.

The students stayed at Patten University during their visit, and attended classes taught by Laney College faculty. Dr. Chan did not know if the District paid the faculty to teach the visiting students, but said “they should have.” Dr. Chan was not involved in the logistics of any payments the faculty received.

Dr. Chan estimated the Ningbo students visited for “at least three weeks.” Mr. Cheng was the leader of the group and was “very involved” in the students’ activities. Dr. Chan did not know to what extent Chancellor Laguerre was involved in this program. He thought Chancellor Laguerre might have been involved in planning the program with Mr. Cheng, but Dr. Chan reiterated that he only learned about the program right before the students arrived.

Dr. Chan did not know how Mr. Cheng was compensated for bringing the Ningbo students to Peralta. Dr. Chan did not know if the Board approved a contract with Mr. Cheng, or whether the Board was required to approve such a contract. Dr. Chan did not know to what extent Mr. Cheng still has business with the District.

Dr. Chan stated some concern over the fact that he “did not know all the details” of Mr. Cheng’s arrangements, of which he did not learn until the last minute. But, Dr. Chan said, since he was not involved in Mr. Cheng’s programs, he thought maybe he did not have all the facts. He never voiced any concerns to anyone about Mr. Cheng, and Mr. Cheng never made any requests of Dr. Chan which he found unusual.

#### **m. Yashica Crawford**

Dr. Crawford met Mr. Cheng when he visited the District Office. She was aware that he has been active in recruiting international students for the District, but did not know if he had been successful in that regard. She was also aware that Mr. Cheng has supported the District’s efforts to create a “robust international education program,” including the formalization of agreements to have educators come from China to learn American teaching methods.

Dr. Crawford further explained that Mr. Cheng was the “primary facilitator” in bringing teachers from Ningbo College to study at Peralta. She said he helped them identify what they wanted to learn from Peralta, and arranged for those meetings to take place. Mr. Cheng, for example, asked Dr. Crawford if she could provide the Ningbo teachers with an overview of the District’s organizational structure, which Dr. Crawford did. She estimated this took about 30 minutes. Otherwise, she was not involved in the teacher training program. She did not know the details of any contractual arrangement with Mr. Cheng, and did not know who (as between the District or a Chinese institution) was paying Mr. Cheng.

## 5. Policies and Collective Bargaining Agreement Provisions

### Board Policy 6340 – Bids and Contracts

[...]

Contracts are not enforceable until they are ratified by the Board.

[...]

### Attachment 22.

#### Administrative Procedure – Bids and Contracts

[...]

Each Contract and contract amendment amounting to \$25,000 or more require prior Board of Trustees authorization before they can be executed by the Chancellor [...]

[...]

All contracts and amendments regardless of dollar amount must be ratified by the Board of Trustees within 60 days, if not approved in advance as otherwise required herein.

[...]

### Attachment 23.

#### Agreement Between the District and Peralta Federation of Teachers

ARTICLE 18 HOURS, WORKLOAD, CLASS SIZE

C. Extra Service

1. Regular full-time instructors may not teach beyond their regular full-time assignments more than .2 equated load or one (1) class on an extra service basis, whichever is greater, except by mutual agreement between the faculty member and the District.

[...]

4. Extra service assignments for non-teaching faculty shall be equated at a 0.5 factor. (Two (2) hours of extra service equals one (1) equated hour.)

### Attachment 59.

## 6. Findings and Analysis

For the reasons described below, I make the following findings with regard to Mr. Heyman's allegations related to Mr. Cheng's affiliation with the District. First, I find that the Board approved a contract between the District and Mr. Cheng without disclosing the contract amount in a Board meeting agenda. The Board did not subsequently ratify the contract once the contract amount was established. Second, I find that Chancellor Laguerre has entered into MOUs with foreign institutions, but he has not obligated any District funds as a result of the MOUs. Third, I do not find sufficient evidence to support Mr. Heyman's allegation that faculty was paid in violation of the collective bargaining agreement for participating in a teacher training program for teachers who visited Peralta from Ningbo College. Fourth, I do not find sufficient evidence to support Mr. Heyman's claim that Mr. Cheng offered "kick-backs" to District staff. Fifth, I do not find that the record supports Mr. Heyman's allegation that Mr. Cheng, with the Chancellor's knowledge and permission, inappropriately utilized District staff and resources.

I further find that Chancellor Laguerre had legitimate business reasons for entering into contracts with Mr. Cheng on behalf of the District. Several witnesses stated that it is common and considered a "best practice" for colleges to use agents, like Mr. Cheng, to facilitate international student recruitment efforts. This benefits the District because international students pay higher tuition than in-state residents.

### a. **The Board Approved a Contract Between the District and Mr. Cheng Without Disclosing the Contract Amount in a Board Meeting Agenda; It Also Did Not Subsequently Ratify the Contract**

Mr. Heyman's allegation that the Board approved a contract between the District and Mr. Cheng without identifying the contract amount in the Board agenda or minutes is supported by the record.

The agenda for the July 12, 2016 Board Meeting and minutes for the meeting did not identify the contract amount. Instead, the agenda and minutes noted that "All Board approved contracts are subject to final negotiation and execution by the Chancellor." Thereafter, on or about September 9, 2016, the Chancellor, on behalf of the District, entered into a contract with Mr. Cheng in the amount of \$65,000. There is no record showing that the contract was subsequently ratified by the Board.<sup>46</sup>

While Chancellor Laguerre and the Trustees acknowledged that the contract amount is typically included in the Board meeting agenda, they also noted that there are occasions when the Board authorizes the Chancellor to negotiate the specific terms of a contract. Additionally, when shown the applicable contract, the Trustees expressed no concerns about the amount of the contract or the other terms and conditions of the contract.

Even though the Trustees did not have concerns about the specific terms of the contract and gave the Chancellor prior authorization to enter into the contract, I nevertheless find that

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<sup>46</sup> To date, no money has been paid by the District to Mr. Cheng on the \$65,000 contract.

District Policy was violated in this instance. Board Policy and Administrative Procedure 6340 requires the Board to ratify all contracts, regardless of amount. There is no evidence showing that ratification occurred.

**b. Chancellor Laguerre Has Entered Into MOUs With Foreign Institutions, but He Has Not Obligated Any District Funds As a Result of the MOUs**

The record establishes that Chancellor Laguerre has entered into MOUs with foreign institutions for the purpose of establishing partnerships with foreign institutions in the hope that the District and the foreign institutions can reach a formal agreement in the future regarding the education of students. However, there is no evidence showing that Chancellor Laguerre obligated the District to spend any District funds by entering into the MOUs.

**c. Mr. Heyman's Claim That Faculty Was Paid in Violation of the Collective Bargaining Agreement for Participating in the Teacher Training Program for the Ningbo College Teachers Is Not Supported by the Record**

Mr. Heyman's claim that faculty was paid "on the side," in violation of the District's collective bargaining agreement, to teach the Chinese teachers who came from Ningbo College to participate in a teacher training program at Peralta is not supported by the preponderance of the evidence.

As an initial matter, I find there is evidence to establish that some District faculty received a stipend for services they provided as part of the Ningbo College teacher training program, but it is unclear from the available evidence how many faculty members received a stipend or the specific amount they received.

Even though a stipend of an undetermined amount was likely paid to some District faculty, I found no provision in the applicable collective bargaining agreement to indicate that payment of a stipend was in violation of the contract. Additionally, based on the witness statements, it does not appear that the time commitment of the faculty members was significant enough to constitute "Extra Service" as defined in the collective bargaining agreement.

**d. Mr. Heyman's Allegation That Mr. Cheng Offered "Kick-Backs" to District Staff Is Not Supported by the Record**

Mr. Heyman's allegation that Mr. Cheng offered "kick-backs" to District staff if they helped him steer international students to private housing that could financially benefit Mr. Cheng and/or if they recruited Peralta students interested in studying abroad is not supported by the preponderance of the evidence.

Mr. Heyman identified Dr. Orkin, Mr. Gephart, and Mr. Brooke as witnesses concerning this allegation. As previously noted, Mr. Brooke has a pending claim against the District related to the termination of his employment and declined to participate in the investigation. However, based on Dr. Orkin's statement, there is hearsay evidence to indicate that Mr. Brooke perceived that Mr. Cheng was willing to offer a bribe to Mr. Brooke if he helped Mr. Cheng recruit students for a nearby ESL school. Without having the opportunity to interview Mr. Brooke, I am unable

to find by a preponderance of the evidence that Mr. Cheng in fact offered (or suggested) a bribe to Mr. Brooke, or that Chancellor Laguerre had knowledge of Mr. Cheng's conduct in that respect. Moreover, Dr. Orkin and Mr. Gephart denied that Mr. Cheng offered them "kick-backs." Mr. Heyman also did not allege that Mr. Cheng attempted to bribe him. For these reasons, I find Mr. Heyman's allegation to be unsupported by the available evidence.

**e. Mr. Heyman's Allegation That Mr. Cheng, With the Chancellor's Knowledge and Permission, Inappropriately Utilized District Resources Is Not Supported by the Record**

Mr. Heyman's allegation that Mr. Cheng, with Chancellor Laguerre's knowledge and permission, utilized significant District staff time and resources is not supported by the preponderance of the evidence.

Based on the information provided by Mr. Heyman, the time he actually spent preparing printed and video materials for Mr. Cheng appears not to have been extensive and, more importantly, was directly related to the efforts Mr. Cheng was making on behalf of the District. There was one exception when Mr. Cheng requested additional assistance from Mr. Heyman and his staff in June 2017. After meeting with Mr. Cheng about his requests, Mr. Heyman informed Chancellor Laguerre of the requests Mr. Cheng had made. Upon learning what Mr. Cheng was asking for, Chancellor Laguerre told Mr. Heyman that he had not authorized Mr. Cheng to make the requests. I was not provided with any evidence from Mr. Heyman to indicate that Mr. Heyman or his staff provided the information that Mr. Cheng requested in June 2017.

Additionally, other witnesses interviewed in this investigation who interacted with Mr. Cheng (Dr. Orkin, Mr. Gephart, and Dr. Chan) did not report being burdened with tasks related to Mr. Cheng's involvement with the District.

For these reasons, I find Mr. Heyman's allegation that Mr. Cheng inappropriately utilized District resources to be unsupported by the record.

**H. Citizens' Oversight Committee**

**1. Allegation**

Mr. Heyman raised allegations related to the Citizens' Oversight Committee ("COC") which is responsible for ensuring the proper use of Bond funds. Mr. Heyman alleged that the COC is not legally constituted due to vacancies; that the COC continues to meet despite vacancies; that agendas are either not posted or posted late; and that meetings are scheduled at times and locations which minimize the likelihood for public input. Under former Chancellor Ortiz, Mr. Heyman provided administrative support to the COC. But once Chancellor Laguerre started working for the District, he appointed then Vice Chancellor of Finance and Administration Ron Little to provide administrative support.<sup>47</sup>

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<sup>47</sup> According to Chancellor Laguerre, the current Vice Chancellor of Finance and Administration continues to provide administrative support to the COC.

## 2. Witness Statements

### a. Chancellor Laguerre

Chancellor Laguerre confirmed that there are vacancies on the COC. He explained that the vacancies exist because it can be difficult to find members who are qualified and willing to sit on the COC. He anticipated, however, that two of the vacancies may be filled soon. To Chancellor Laguerre's knowledge, there was only one occasion when a staff assistant (Richard Ferreira) inadvertently posted an agenda for a COC meeting after the deadline.

### b. Trustee Weinstein

Trustee Weinstein was on the COC prior to her election to the Board in November 2016. She recalled being on the COC for at least a year, and left the committee when she joined the Board.<sup>48</sup> Trustee Weinstein was aware that vacancies existed on the COC at the time of her interview, but she did not recall whether there were vacancies when she was on the COC and, if so, how many. Trustee Weinstein did not recall any instances in which the agenda for a COC meeting was not posted, or was posted late.

### c. Trustee Brown

Trustee Brown stated that she "begged" prior Chancellor Ortiz to fill vacancies on the COC, and asked him to post the openings, but even though Chancellor Ortiz said he would do it, he did not follow through. She further explained that there are certain criteria which need to be met in order for someone to sit on the COC. For example, it is not enough to be a taxpayer or an elderly person in the community, but a committee member needs to be an active member of a taxpayers' association or an elderly advocacy group. These criteria sometimes result in vacancies, and Trustee Brown understood that Chancellor Laguerre was working on recruiting new qualified members for the COC.

### d. Other Trustees

The other Trustees had no more specific information to provide related to the COC.

### e. Nitasha Sawhney

Ms. Sawhney did not know whether any of the COC's agendas had been posted late, but noted that posting the agendas was Mr. Heyman's job. In 2015, Mr. Heyman "was doing the agendas wrong," and Ms. Sawhney advised him "on how to do them right." She explained that the Brown Act requires agenda items to be designated as action items or as information items, and that given the limited authority of the COC to take any action, most of the items on their agendas would have been information items related to District spending.

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<sup>48</sup> Based on information available on the District's website, Trustee Weinstein was a member of the COC from the inception of the committee in or about February 2015 until November 2016.

**f. Christine Williams**

Ms. Williams was the Interim Vice Chancellor of Finance and Administration. She was appointed to that position in April 2017, and although her term was to expire on December 31, 2017, it was extended to February 28, 2018 to permit her to assist with the transition period for the newly hired Vice Chancellor of Finance and Administration.

In her role, Ms. Williams attended and facilitated meetings of the COC. Ms. Williams' staff also provided administrative support for the COC, including posting meeting agendas. She recalled an occasion in approximately May 2017 when Mr. Ferreira mistakenly failed to post the meeting agenda on time. Ms. Williams estimated that Mr. Ferreira missed the cut-off by "a few hours," and the meeting could not be held as a result. Ms. Williams did not know specifically what the former Vice Chancellor of Finance and Administration did with respect to administrative support for the COC, or whether his staff failed to timely post agendas.

Ms. Williams was unaware of any COC meetings being held at unusual times or places that would reduce the likelihood of public input. The scheduling of the meetings is agreed upon between the Chair and other members of the COC. As far as Ms. Williams knew, all of the COC meetings during her time at the District were held in the Department of General Services Conference Room, located at the District Office in Oakland. She also said that public comments vary from meeting to meeting; there have been meetings where only one or two public comments were made, and others where six or seven public comments were made.

**3. Policies**

**Board Policy 6740 – Citizens' Oversight Committee**

If a bond measure has been authorized pursuant to the conditions of Proposition 39 as defined in the California Constitution, the Chancellor shall establish a Citizens' Oversight Committee in accordance with the applicable law and necessary regulations.

**Attachment 60.**

**Administrative Procedure 6740 – Citizens' Oversight Committee**

The Chancellor directs that the following regulations apply to the Citizens' Oversight Committee at the Peralta Community College District:

**Membership.** The committee shall consist of at least seven (7) members to serve for a term of two (2) years and for no more than three (3) consecutive terms. [...] The committee shall be comprised of at least:

- One member active in a business organization representing the business community located within the district;
- One member who is a resident of the district and active in a senior citizen's organization;

- One member who is a resident of the district and active in a bona fide taxpayer's organization;
- One member enrolled as a student and active in a campus group. [...]
- One member active in an organization supporting the district such as a foundation.
- Two members who are residents of the district representing the Community-at-Large.

**Membership exclusion.** No employee, official, contractor, consultant, or vendor of [the District] shall be appointed to, or serve on, the committee. No Peralta district elected official shall be appointed to, or serve on, the committee.

[...]

#### **Meetings, Minutes and Records**

All meetings of the Citizens Oversight Committee shall be open to the public as specified in the Ralph M. Brown Act.

[...]

A quorum of the committee shall consist of any four members plus the Chancellor or the Vice Chancellor of General Services.

Minutes of the proceedings of the committee, all documents received by the committee and all reports issued by the committee are public records which, to the extent the Chancellor or the Vice Chancellor of General Services deems feasible, will be made available on a website maintained by the District.

### **Attachment 61.**

#### **4. Other Evidence Considered**

The COC's Bylaws restate the information contained in Administrative Procedure 6740. The Bylaws also provide that the District shall provide the COC with "necessary technical and administrative assistance," including but not limited to, preparation of and posting of public notices as required by the Brown Act. **Attachment 62.**

Based on information available on the District's website, the COC is comprised of the following five members: (1) Michael Mills (District Support Organization);<sup>49</sup> (2) John Caner (Business Organization); (3) Zach Unger (Labor Organization); (4) Debra Weintraub (Senior Citizens Organization); and (5) Dr. Oscar Porter (member of Community-at-Large). There were three vacancies for the following constituency representatives – Taxpayers Association; Student Representative; and a second representative of the Community-at-Large.

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<sup>49</sup> Mr. Mills is the Chair of the COC. He did not respond to a request for an interview.



There were three vacancies at the most recent meeting of the COC in January 2018; four vacancies at the November 2017 meeting; three vacancies at the January and April 2017 meetings; two vacancies at the November 2016 meeting; and no vacancies at the first two meetings of 2016 and at all of the 2015 meetings.

According to information on the District's website, the COC met three times annually in 2015, 2016, and 2017.<sup>50</sup> One meeting has been held this year. With one exception (July 2016), the meetings all occurred during the academic year. The meetings typically occur at the Department of General Services' conference room at the District's administrative office. One meeting took place at Laney College (across the street from the District's Office), and one meeting was held in the Board of Trustees meeting room at the District Office. All the meetings took place in the late afternoon and/or early evening.

## 5. Findings and Analysis

I make the following findings as it concerns Mr. Heyman's allegations about the COC.

First, it is undisputed that vacancies have existed on the COC since late 2016, ranging from two to four. The vacancies have been necessitated by the challenges inherent in finding qualified individuals to participate on the COC. The committee members may not be employees, elected officials, contractors, consultants, or vendors of the District and they must actively represent the interests of certain constituencies. While the COC's Bylaws and Administrative Procedure 6740 provide that the committee "shall" consist of at least seven members, it is unclear from the Bylaws and Administrative Procedure whether the COC is prohibited from meeting and voting if there are vacancies on the committee. The Administrative Procedure and Bylaws provide that a quorum exists when four members of the committee in addition to the Chancellor and Vice Chancellor of General Services are present. Based on the available evidence, the quorum requirement was likely met at all meetings of the COC based on the number of members on the committee during the relevant time period. Thus, I find that the preponderance of the evidence does not support Mr. Heyman's claim that the COC has not been "legally constituted."

Second, the preponderance of the evidence does not support Mr. Heyman's claim that, as a matter of course, meeting agendas have been posted late or not at all. According to witness accounts, there was only one instance when a staff assistant inadvertently posted the meeting agenda after the posting deadline and the meeting was delayed as a result.

Third, the record does not support Mr. Heyman's claim that meetings are scheduled at times and locations which minimize the opportunity for public input. All meetings have occurred at the District Office or at nearby Laney College. The meetings have occurred in the late afternoon or early evening hours, and only one meeting took place during the summer.

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<sup>50</sup> The COC first met in February 2015.

## I. Response to Public Records Act Requests

### 1. Allegation

Mr. Heyman alleged that the District has not complied with the Public Records Act (“PRA”) when responding to PRA requests. Generally, Mr. Heyman alleged that the District fails to respond to PRA requests or does not do so in a timely manner; does not fully respond to PRA requests; provides misleading or evasive responses; or omits relevant material from its responses. A specific example Mr. Heyman provided related to the District’s response to PRA requests made by San Francisco Chronicle reporter Ted Andersen.

According to Mr. Heyman, the District’s General Counsel (Ms. Sawhney) took approximately five weeks to send an initial response to Mr. Andersen’s PRA request. In that response, she only indicated that some responsive documents existed and would be produced within several weeks. While Ms. Sawhney did subsequently produce documents in response to the PRA request, Mr. Heyman believed there were additional documents that existed which should have been produced to Mr. Andersen. Mr. Heyman also took issue with Ms. Sawhney’s claim that some documents requested were exempt from disclosure under the PRA.

### 2. Response

In her initial interview, Ms. Sawhney explained that responding to PRA requests was typically handled by Mr. Heyman, the District’s “Business Office,” or herself (if the request was more complicated and required legal review). Ms. Sawhney further stated that Mr. Heyman “misunderstands the law in this, and I’ve briefed him on it more than one time.” According to Ms. Sawhney, the law gives the District 10 days to assess whether or not it has documents responsive to the request. Mr. Heyman, she said, incorrectly believes that the PRA requires that the documents actually be produced within 10 days. The goal, Ms. Sawhney explained, is for the District to write back to the requesting party within 10 days stating that documents exist and will be produced within a given timeframe (ideally 14 days, though sometimes it can take weeks to compile and produce documents in response to a complicated request), that documents exist but are exempt from disclosure, or that no responsive documents exist.

Ms. Sawhney acknowledged in her initial interview that it may have taken the District “a little longer than we said in our initial response” to provide documents in response to Mr. Andersen’s PRA request, because they were responding to the request during summer 2017 and the District was short staffed. This prompted Mr. Andersen to write to the District, saying something like, “Hey, it’s been six weeks, where are the documents?” The District promptly responded and produced the documents within two to three days.

I received documentation related to the District’s response to Mr. Andersen’s PRA requests after my initial interview of Ms. Sawhney. After reviewing the documents – which are summarized below – I conducted a follow up interview with Ms. Sawhney. At that time, Ms. Sawhney explained the cause of the delay in producing additional documents to Mr. Andersen after he clarified his PRA request at the end of August 2017. She explained that there is limited staff available at the District to assist with responding to PRA requests since the District no longer has an in-house Office of General Counsel. There is one District employee – Brandi Howard – who is

a Legal Affairs Coordinator who has responsibility along with other duties for responding to PRA requests. Mr. Heyman also assists with responding to some PRA requests, and Ms. Sawhney is involved in responding to PRA requests that are more complicated and require legal review.

Ms. Sawhney further noted that the District was “inundated” with PRA requests during fall 2017 after it was reported in the media that the Oakland A’s were interested in purchasing District property in order to build their new stadium. The number of PRA requests related to the Oakland A’s stated interest in purchasing District property impacted the District’s ability to respond to Mr. Andersen’s (and other) PRA requests in a timely manner.

When asked if the District intended to produce any other documents to Mr. Andersen, other than what was produced in its initial document production, Ms. Sawhney stated that the District did intend to produce more documents but wanted to make sure the document production was complete. They were concerned that Mr. Andersen would write a “false story” if he did not have all the information. Ms. Sawhney explained that she questioned Mr. Andersen’s journalistic ethics based on how he initially approached Chancellor Laguerre for a story. (As previously noted, he led Chancellor Laguerre to believe he wanted to do a “soft” story related to the Chancellor’s charitable work and other public interest matters but then challenged the Chancellor about the District’s contract with Ferrilli.)

Ms. Sawhney stated that there was additional information related to how the District chose to respond to Mr. Andersen’s PRA request that she could not disclose without violating the attorney client privilege.

### 3. Documentary Evidence

**April 28, 2017 PRA Request.** On April 28, 2017, Mr. Andersen sent an email to Mr. Heyman requesting documents pursuant to the PRA. The documents he requested, included but were not limited to, travel records for Chancellor Laguerre and the Trustees, and contracts and records of payment with Mr. Cheng. **Attachment 63.** Email correspondence from Mr. Heyman to Ms. Sawhney indicates that Mr. Heyman forwarded the PRA request to Ms. Sawhney to seek her assistance. **Attachment 64.**

**June 9, 2017 Response.** On June 9, 2017, Ms. Sawhney responded to Mr. Andersen regarding his April 28, 2017 PRA request. In the response, Ms. Sawhney indicated that there were documents responsive to his request which were not exempt from disclosure under the PRA. She represented that she would send Mr. Andersen the documents within five to six weeks. **Attachment 65.**

**August 6, 2017 Follow Up by Mr. Andersen.** On August 6, 2017, Mr. Andersen followed up with Ms. Sawhney to inquire about the status of the document production. Ms. Sawhney responded the same day and informed Mr. Andersen that one of her colleagues who had been assisting with responding to the PRA request was no longer with her firm and she would follow up on his request and get back to Mr. Andersen by August 8. **Attachment 66.**

**August 8, 2017 Response.** On August 8, 2017, an employee in Ms. Sawhney’s office sent Mr. Andersen documents in response to the PRA request. **Attachment 67.**

**August 28, 2017 Follow Up by Mr. Andersen.** On August 28, 2017, Mr. Andersen wrote to Ms. Sawhney and stated that it had “come to [his] attention” that the documents previously provided were “incomplete and incompliant with state public records law requirements.” “In order to correct this situation,” Mr. Andersen revised his request for documents as it related to travel by Chancellor Laguerre and the Trustees. He specifically requested the following:

1. Chancellor Laguerre’s complete travel schedule from 2015 – present.
2. Copies of original documents associated with Chancellor Laguerre and the Peralta Board of Trustees members’ travel from 2015-present including but not limited to: a) all reimbursement documents; b) copies of original receipts; c) copies of district travel forms; d) actual copies of credit card statements; e) copies of airline tickets; f) copies of boarding passes; g) copy of Chancellor Laguerre’s most recent Form 700.

**Attachment 68.**

**September 6, 2017 Response.** On September 6, 2017, Ms. Sawhney acknowledged receipt of Mr. Andersen’s August 28 correspondence, produced documents that were previously produced with the August 8 response, and stated that more records would be provided within the next two to three weeks. **Attachment 69.** As of the date of this Report, I have not been provided with any records showing that additional documents were provided to Mr. Andersen. Nor was I provided with any record of communications between the District and Mr. Andersen after September 6, 2017.

**4. Policies**

**Board Policy 3300 – Public Records**

The Chancellor shall establish administrative procedures for records management, including access by the public, that comply with the requirements of the California Public Records Act.

**Attachment 70.**

**Administrative Procedure 3300 – Public Records Access**

Members of the public may request to inspect or receive copies of public records. A request by a member of the public may be communicated to the General Counsel’s Office.

Any request shall identify with reasonable specificity the records that are sought.

Any request to inspect records shall be made sufficiently in advance of the date of inspection to allow staff members time to assemble the records and identify any records that may be exempt from disclosure.

Records that are exempt from disclosure under the Public Records Act or any other provision of law may not be inspected or copies by members of the public. [...]

Members of the public shall be assisted in identifying records or information that may respond to their request. Assistance that will be provided includes: the information technology and physical location in which the records exist; practical suggestions for overcoming denial of access to the records or information; and the estimated date and time when the records will be made available.

Within ten days, General Counsel's Office will determine whether or not the records can be produced and will communicate the determination to the member of the public requesting the record(s) and identify the fair market value of production costs as allowed by law.

[...]

## **Attachment 71.**

### **5. Findings and Analysis**

As previously noted, I only evaluated how the District responded to the PRA requests made by Mr. Andersen. I did not conduct a broader investigation into how the District responds to all PRA requests.

For the reasons set forth below, I find that Mr. Heyman's allegations related to the District's response to the PRA requests made by Mr. Andersen are partially supported by the record.

First, there were lengthy delays in the District's response to Mr. Andersen's PRA request. Forty-two (42) days elapsed between Mr. Andersen's initial request and Ms. Sawhney's correspondence informing Mr. Andersen that responsive, non-privileged documents existed related to his request. District Policy provides that an individual requesting documents pursuant to the PRA should be informed within 10 days whether any responsive documents exist. Therefore, the 42-day delay was in violation of District Policy.

Second, three and a half months passed between Mr. Andersen's initial request for documents and the date when documents were first produced. District Policy does not speak to how soon documents should be produced in response to a PRA request so I am unable to opine on whether the three and a half month delay was unreasonable or in violation of District Policy.

Third, the District represented to Mr. Andersen that it would produce additional documents in correspondence dated September 6, 2017, after Mr. Andersen augmented and clarified part of his earlier PRA request. Ultimately, however, no further documents were produced to Mr. Andersen. Again, because District Policy does not address the timing for production of documents, I am unable to determine whether the Policy was violated in terms of the continued delay in producing documents to Mr. Andersen.

Based on Ms. Sawhney's statement, the evidence indicates that the delay in producing documents was due to a variety of factors, including the limited number of District staff available to assist with PRA requests, the large number of PRA requests the District received when it was publicly reported that the Oakland A's were interested in purchasing District property for their new stadium, and strategic attorney client privileged discussions related to how to respond to Mr. Andersen's PRA request.

Fourth, there is evidence to support Mr. Heyman's claim that the District did not produce all non-privileged records in its possession to Mr. Andersen. For instance, I received more records than Mr. Andersen with regard to the travel expenses for the Chancellor and Trustees. While Ms. Sawhney stated that the District had intended to provide the same information to Mr. Andersen, I was not provided with any evidence showing that Mr. Andersen received the same documents I received.

Finally, Mr. Heyman questioned the legitimacy of some of the exemptions that Ms. Sawhney claimed under the PRA as a basis for not disclosing additional documents to Mr. Andersen. I am unable to make a finding on this issue because doing so would require a legal conclusion based on the express terms and legal interpretation of the exemptions set forth in the PRA. Further, District Policy does not specify which categories of documents can properly be withheld from a document production pursuant to the PRA.

For the above reasons, I find that Mr. Heyman's allegations related to the District's response to Mr. Andersen's PRA request are partially supported by the record.

## **J. Retaliation Complaint**

### **1. Allegation**

Mr. Heyman submitted his Whistleblower Complaint on June 1, 2017. Thereafter, on June 13, 2017, Mr. Heyman reported to Ms. Sawhney that he believed Chancellor Laguerre retaliated against him for the Whistleblower Complaint when the Chancellor was critical of an Enrollment Marketing Plan that Mr. Heyman prepared for fall 2017.

After receiving the Enrollment Plan, Chancellor Laguerre wrote the following email to Mr. Heyman:

There is nothing exciting about what you presented. It is the excitement and the potential for success that could make the plan draw resources. What you presented here is a budget or a plan to spend money, but not a plan to generate the enrollment we need. There is no indication that this would do any better for us than what you already plan.

I have heard some of these ideas before. Stepping up your game and our game would give us something more comprehensive and reassuring and targeted to drive the enrollment. A plan would have some predictability of results.

Thanks for your effort! But, I hope you get my feedback and [are] able to generate something different.

**Attachment 2.**<sup>51</sup>

Mr. Heyman was “astonished” when he read this email because Chancellor Laguerre had not criticized any prior marketing plans he submitted, which used the “exact same format.” Mr. Heyman further stated that Chancellor Laguerre had praised him for a similar Enrollment Plan that he submitted for fall 2016.

**2. Response**

Chancellor Laguerre confirmed that he was not satisfied with the Enrollment Plan that Mr. Heyman prepared for fall 2017. He explained that for fall 2017, the District wanted to increase enrollment from 18,500 students to 20,000, and thus he wanted “something to give us a boost, not just what we normally get.”

Chancellor Laguerre reiterated that Mr. Heyman’s plan was to “spend money” but offered “nothing in terms of expected results or strategies to drive enrollment.” It was “a budget, not a plan,” and did not include specific goals or ways to meet those goals. Since Mr. Heyman was in charge of the District’s marketing efforts, Chancellor Laguerre “really wanted something that would get us somewhere,” and what Mr. Heyman provided was not acceptable.

**3. Policies**

**Board Policy 7700 – Whistleblower Protection**

For purposes of this policy and any implementing procedures, “unlawful activity” refers to any activity – intentional or negligent – that violates state or federal law, local ordinances, or District policy.

The procedures shall provide that individuals are encouraged to report suspected incidents of unlawful activities without fear of retaliation, that such reports are investigated thoroughly and promptly, remedies are applied for any unlawful practices and protections are provided to those employees who, in good faith, report these activities and/or assist the District in its investigation.

Furthermore, District employees shall not:

- Retaliate against an employee [...] who has made a protected disclosure, assisted in an investigation, or refused to obey an illegal order;

[...]

**Attachment 72.**

**Administrative Procedure 7700 – Whistleblower Protection**

Individuals are encouraged to report suspected incidents of unlawful activities by District employees in the performance of their duties. Reports will be investigated promptly and appropriate remedies applied. Employees who, in

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<sup>51</sup> It is undisputed that Mr. Laguerre was aware of Mr. Heyman’s Whistleblower Complaint prior to sending this email.

good faith, reported such activities and/or assist the district in the investigation will be protected from retaliation.

[...]

**Attachment 73.**

**4. Findings and Analysis**

The preponderance of the evidence does not support Mr. Heyman's claim that Chancellor Laguerre retaliated against him for filing a Whistleblower Complaint. Although it is undisputed that Chancellor Laguerre was aware of the Whistleblower Complaint when he offered his criticism of the Enrollment Plan prepared by Mr. Heyman, the record does not support that the criticism was for a retaliatory reason. Chancellor Laguerre offered a credible explanation for why he was not satisfied with Mr. Heyman's plan: he did not think the plan set forth a specific enough proposal for achieving the goal of increasing enrollment by 1,500 students for fall 2017 and instead merely presented a budget for spending money. Based on the evidence, I find that Chancellor Laguerre's email to Mr. Heyman constituted constructive feedback which Chancellor Laguerre had the right to provide to his direct report and was not a form of retaliation in violation of District Policy.



This concludes the investigation.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Nikki Hall".

Nikki Hall