

July 15, 2020

California Community Colleges Chancellor's Office
1102 Q Street, 6th Floor
Sacramento, CA 95811

Dear Chancellor Oakley and Honorable Members of the Board of Governors:

This is in response to your request for a report from the Board and following the May 2020 presentation at the Board of Governors meeting regarding the fiscal health of the Peralta Community College District.

As I (or the District team) shared during the Board of Governors meeting, the Peralta Board of Trustees has taken very seriously the fiscal challenges of the District. As you may recall, it was the Peralta Board that reached out to the Chancellor's office for support and asked for assistance in addressing fiscal and operational issues that we saw plaguing the District for which we were seeking your support. It is still unclear to me how the Board's request for help has now turned into calling into question the Board's role and actions to support the District's fiscal health. I can unequivocally assure you that this Board is fully committed to the fiscal health of the District.

Specifically, after the 2018 election the Board has:

- Brought in new administrative leadership team including a seasoned community college administrator to serve as Chancellor;
- Engaged and welcomed the outside assistance both of the Fiscal Crisis Management Team and the Community College Brain Trust, leading to informative reports and providing a roadmap to help us correct prior administrative errors and omissions;
- Based on these recommendations, driven financial reforms and processes that have in a very short amount of time made dramatic progress is righting our fiscal ship;
- Engaged skilled financial consultants who helped us restructure unstable debt obligations (implemented by prior administrations as a failed attempt to deal with long-term health care obligations --Other Post-Employment Benefits); and
- Engaged the services of former Chancellor Bryce Harris to assist us in successfully recruiting a new chancellor in order to implement the recommendations described above.

The cumulative result of Board action is that of the 75 recommendations made by the Fiscal Crisis Management Team, 72 have been addressed in some manner. We also have a strong ending balance, supported by ongoing parcel tax revenues. We have a large construction bond

and have made significant progress in transitioning our administrative team towards an effective bond management program. Overall, in fact, as our Chancellor reported at the Board of Governors meeting in May, if FCMAT returned today, our financial risk score would be a manageable 5.3%, versus the 69% FCMAT reported after performing the initial financial study the Board requested. In the words of Jim Austin at your May meeting, this is a score that is “clearly below the threshold” [where intervention would be called for.] In other words, the Peralta Board of Trustees initiated actions that have led to a significant recovery from our fiscal cliff.

Of course, like many districts in the state we are facing enrollment challenges, impoverished and working class students trying to overcome serious life challenges in order to find success in their studies, and rising costs of living that have completely outmatched our ability to pay our employee salaries sufficient to support sustainable lives and healthy communities.

Given the dramatic progress our Board has made to insure greater fiscal stability we are frankly disturbed that greater attribution has not been given to the District and the Board of Trustees.

While we are providing specific responses to the questions you have asked below we must note that we remain concerned about this request and the Chancellor’s office failure to provide any tangible support of the District instead of fueling accusations and having a negative effect on the Board’s working relationship with our Chancellor and administrative team either through Mr. Austin or indirectly through this requested report. Please know that Mr. Austin has engaged in an “investigation” of trustees which directly resulted in rumors and innuendos being spread through the District. We had hoped Mr. Austin’s presence was a sign of your office’s support and a response to our initial request for assistance but it is clear that his work has created a wedge between the Board and the administration and we see it now affecting the Chancellor’s office in seeing the Board’s commitment or actions. In at least one way that this is apparent to us is your request for this report and the comments at the BOG meeting came without any support or examples or evidence and was in response to a report by our District that provided lots of evidence of significant progress being made by the District, under this Board.

Concern I

Clearly delineate the delegated authority that the Chancellor of Peralta Community College District has to conduct the business of the district and execute the goals of the Board.

Response:

The Peralta Board of Trustees has a clearly articulated set of Board Policies regarding the delegation of authority to the Chancellor. Please see the following Board Policies which we have attached as addenda to this letter:

- **Board Policy 2430, Delegation of Authority to the Chancellor;**
- **Board Policy 6100 Delegation of Authority, Business, and Fiscal Affairs;**

- **Board Policy 7110 Delegation of Authority for Human Resources;**

The Peralta Board has clearly delineated policies for the delegation of authority with which we are in complete compliance. We have been provided with no evidence to the contrary or even an explanation of what aspects of our delegation of authority we have allegedly violated.

Nonetheless, we would like to address one specific Board policy regarding our delegation of authority because it has recently been a source of “tension” between the Administration and the Board. This is Board Policy 7110, Delegation of Authority for Human Resources which states in part:

*The Board delegates authority **to the Chancellor** to authorize employment, fix job responsibilities, oversee collective bargaining, and approve personnel actions **except as noted below [emphasis added]**:*

- ***The Board of Trustees [emphasis added]** will approve the appointment of management employees.*
- ***The Board [emphasis added]** will approve the appointment of non-academic temporary substitute and short-term employees who are paid for less than 75 percent of the fiscal year (except for professional experts, apprentices and student workers).*

In other words, while the Board has delegated to the Chancellor the right to approve hiring for faculty, and most staff, our human resources delegation policy specifically reserves to the Board of Trustees the right to make appointments of two specific classes of employees based on the needs and history of our District. This regular interchange of ideas and understandings was, until the arrival of our current chancellor, always carried out in closed session which provides the necessary confidentiality for frank discussion of personnel matters. Prior to the current chancellor, the result of this policy and practice, was the nearly-universal approval of all administrative hiring recommendations. In our collective memory, virtually every management recommendation has been approved by the Peralta Board through this policy and practice.

Keeping in mind that our board policy does not delegate final hiring of administrators to the chancellor, the board has nonetheless approved **every single management hiring recommendation except two**. Because this is a personnel matter, unfortunately, we are not at liberty to say more about the board’s decision not to approve these two candidates. We believe the Board has within in its authority to reject a chancellor’s hiring recommendation on a limited basis. It is clear to us that if the Board was never intended to exercise any discretion on these issues, they would not be brought to the Board for consideration. Again, the Board has and will continue to act in compliance with all of our Board policies and best practices in delegation of authority to our Chancellor.

Peralta Board of Trustees will engage in a systematic review of the Chancellor job description, Board/CEO goals, Chancellor's employment agreement and a review of Peralta Board Policies to ensure the board and the chancellor each stay within their respective roles as established in Board policies regarding delegation. Among our next steps, we have a PCCD Board Retreat scheduled for July 21, 2020 and facilitated by former Contra Costa Community College District Chancellor Helen Benjamin.

Concern II

Articulate how the Board will ensure that there will be no interference in the Chancellor's ability to execute their role, as enumerated in the employment contract, and the delegated authority granted by the Board.

Response:

This concern assumes, contrary to evidence, that the Board has interfered with the Chancellor's ability to execute her administrative role or that it has violated the terms of our mutually agreed-upon employment contract. This contract requires that the Chancellor both operate within board policies and to carry out board policies. It also requires the Board of Trustees to support the Chancellor in carrying out her administrative assignment, consistent with board policy. There are numerous references throughout the employment contract to roles, responsibilities and board policy. We have attached a copy of the Employment Agreement for your reference. Here are two specific sections from the Employment Agreement:

Chancellor shall be responsible to the Board for the proper administration of all affairs of the District. Chancellor shall administer and enforce policies established by the Board on behalf of the District and promulgate rules and regulations as necessary to implement District policies.

IX. Board Support of Chancellor

The Board shall operate at the policy level and shall delegate to the Chancellor the authority of the internal management of the district. The Chancellor will provide the Board with appropriate information, in a timely manner, in order that the Board may promulgate policy. The Chancellor, as Chief Executive Officer, is responsible for executing policies and implementing identified goals through the day-to-day management of the district. The Board and its individual members agree not to interfere with or to usurp the responsibilities of the Chancellor.

As noted above in our response to Concern #1, the delegation of authority to the Chancellor is spelled out in the various board policies included at the end of this response. We have not been informed of any Board actions that would constitute a breach of relevant board policy or of the terms of the employment contract or interference with the Chancellor's

administrative duties. In fact, the board has engaged in significant professional development regarding complex financial instruments in order to make informed choices and to exercise administrative oversight and decision-making in the finance area. The Board has engaged in policy revisions, approved internal financial reforms, tightened up budget processes, insisted on more regular administrative updates regarding all fiscal matters to insure that administrators are meeting stated policy goals and objectives, and overall worked with the chancellor to bring about vast improvements in the District's fiscal health, as measured by the District's FCMAT scoreboard which can be accessed by both the BOG and your staff. By any objective measure, this Board has acted with haste and cooperation to insure the fiscal health of the Peralta Community College District.

We would be pleased to discuss any documented specific concerns you or the Board of Governors may have about alleged interference with the Chancellor's contract or delegated authority. Otherwise, we encourage you and the BOG to look at the objective data regarding board actions and administrative fiscal outcomes.

The Board and Chancellor had to reschedule a retreat between the Board and the Chancellor which was called for in the contract. The retreat was initially scheduled and postponed due to the COVID 19 Shelter in Place orders; however, the Peralta Board of Trustees did hold a "Special Board" meeting on May 5, 2020 to discuss the Chancellor evaluation and expectations to ensure both the Chancellor and Board are clear on goals and path forward. Next steps include a rescheduled PCCD Board Retreat scheduled for July 21, 2020 led by Dr. Helen Benjamin.

Concern III

Articulate what steps the Board will take to provide comprehensive and mandatory professional development for all Board members. The professional development should be conducted by qualified and impartial individuals and include at a minimum topics such as: the role of boards in the governance of community college districts, the role of individual board members in relation to the role of the board, CEO/board relationship, and how to develop, implement, and measure district goals.

Response:

The Peralta Community College Board of Trustees is comprised of a skilled, experienced and committed group of elected officials who have collectively spent decades engaging in professional development as trustees. Though we do not always agree with each other, we are collectively committed to the welfare of our District and work hard to be good trustees.

We have scheduled a PCCD Board Retreat scheduled for July 21, 2020, facilitated by Dr. Helen Benjamin, former long-time Chancellor of the Contra Costa Community College District. We believe that we will be able to clarify our respective roles and expectations with our Chancellor at that time. In the meanwhile, in addition to the ongoing internal trustee

education regarding budget, finance and other Peralta matters, members of the Peralta Board of Trustees will engage in a number of professional development trainings including: Virtual CCLC 2020 Annual Convention; 2021 Effective Trusteeship Workshop & Board Chair Workshops; ACCT Board Member Roles & Responsibilities. Board members have and continue to engage in statewide and national professional development.

Concern IV

Articulate what steps the Board is taking to ensure that confidentiality is enforced during all closed session items, that board members are well versed on the district's code of ethics, and that there is a transparent process of engaging with the Chancellor to evaluate their progress and to allow them to express any challenges faced in carrying out duties.

Action

The Peralta Board of Trustees takes the requirements of the Brown Act extremely seriously, especially as regards the sanctity of our closed sessions. Without expectations of confidentiality we cannot successfully do our jobs to establish policy, set direction for labor negotiations, review legal and personnel matters and handle the range of other sensitive matters appropriately and legally dealt with in closed session.

This issue, however, was not raised as a concern at all during the May BOG meeting; and as with other aspects of the concerns raised in Vice Chancellor Navarette's follow up letter, there was no specific data or instance of a breach of confidentiality cited. Accordingly, it is difficult to respond to allegations that might require a Board review of the District's code of ethics. Nonetheless, please be assured that the Board regularly engages in trainings regarding its legal responsibilities as trustees.

We do feel it necessary to share with you concerns regarding Mr. Austin's access and sharing of closed session information. Of deep concern to us is the fact that during Mr. Austin's presentation at the May BOG meeting he himself either knowingly or unknowingly referred to closed session matters in some of his comments to the BOG regarding potential litigation and confidential employee matters. We find it deeply disturbing that someone provided Mr. Austin with details of alleged employment concerns and confidential legal matters. That he cited such concerns as part of his report, especially of completely unsubstantiated claims regarding employees, was a serious breach of his responsibilities not to trade in rumor or speculation, especially about matters he neither fully understand nor has the right to know about. Where and how Mr. Austin came across this information is a matter that we sincerely hope you will pursue with him so that you can assist us in identifying apparent weaknesses in the seal of confidentiality we expect of our closed sessions. Mr. Austin also took it upon himself to investigate the Trustees and most of his questions were related to closed session. We hope that you will counsel Mr. Austin regarding the seriousness of his breach, and we would appreciate support from Mr. Austin in not seeking and sharing closed session information.

Again, if you are aware of actual (not rumors) violations of closed session confidentiality, please help us by providing us with specific details. In the meanwhile, we will bring this matter up with our Chancellor and ask her to engage in appropriate investigations to determine if there are ethics or Brown Act violations we must attend to. In addition, we are currently engaging in other internal investigations to determine through facts and evidence whether we are experiencing other violations of closed session confidentiality.

Finally, to respond to the very last concern, the Board and the Chancellor are currently engaging in a process of clarifying and articulating an evaluation instrument based on transparent performance goals with measurable standards that allow frequent and clear mutual feedback. A Board ad hoc committee has presented the Chancellor with a draft document and the Board will engage in a dialogue with the Chancellor to shape and finalize the evaluation instrument.

Sincerely,

A handwritten signature in black ink, appearing to read "Juliana Bonilla". The signature is written in a cursive style and is enclosed within a hand-drawn oval.

Juliana Bonilla

Peralta Board of Trustees, Board President

Addenda

Board Policies

PCCD Chancellor Employment Contract

CC

Chancellor Eloy Ortiz Oakley

Chancellor Regina Stanback Stroud

Peralta Board of Trustees

Tom Epstein, President Board of Governors

Senator Nancy Skinner, District 9

Assembly Member Rob Bonta, District 18

Assembly Member Buffy Wicks, District 15

Honorable Loni Hancock, Former California State Senator

Honorable Tom Bates, Former Mayor of Berkeley