

**A REPORT BY  
THE 2015-2016 CONTRA COSTA COUNTY GRAND JURY**  
725 Court Street  
Martinez, California 94553

Report 1611

**Maintaining a Stable Environment for  
our Special Education School  
Children and Staff**

APPROVED BY THE GRAND JURY:

Date: 6/15/16

  
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ACCEPTED FOR FILING:

Date: 6/15/16

  
JOHN T. LAETTNER  
JUDGE OF THE SUPERIOR COURT

## **Maintaining a Stable Environment for our Special Education School Children and Staff**

**TO: Contra Costa County Superintendent of Education; Contra Costa  
County Board of Education**

### **SUMMARY**

Contra Costa County Office of Education (COE) operates five Special Education schools specifically targeted for special needs children. These special needs children include those who are autistic, those with severe physical and developmental disabilities, and those who are wheelchair-bound, needing around-the-clock assistance. State law requires an Individual Education Plan (IEP) for each student. These IEPs are developed annually by the parent(s) of the student, his or her teacher, and school psychologist. The IEP is the plan for the student's progress during that school year. The schools provide K-12 instruction only, but serve students up to and including age 22. In many cases, students of different ages may be mixed together in a single classroom according to their mental capabilities, to sustain continuity of learning.

It is vital that the learning environment in special education schools be one of compassion and serenity to foster the learning process, notwithstanding the behavior issues that may arise with special needs children. Those personnel involved with special needs children must be compassionate, properly credentialed, and trained to administer to the "special" needs of special education children. They must have the confidence and support of the students, their parents and school administrators.

For at least the past three years staff reports persisted of a hostile work environment at two of the COE special needs schools, which are located in Brentwood (subsequently referred to in this report as the "Brentwood Schools"). During this period, a number of qualified teachers claimed they sought transfers, had retired or were forced out by the principal when they expressed concerns about the school environment. A number of these complaints were communicated through union representatives to the COE. However, the complaints were not resolved to the satisfaction of the teachers and staff at the Brentwood Schools until the complaints were aired at public meetings of the County Board of Education in the fall of 2015. At the Board's October 21, 2015 meeting, a representative of the teachers' union announced that a majority of teachers

at the Brentwood Schools had signed a “vote of no confidence” in the principal of the Brentwood Schools. The complaints were raised again by teachers and others at the County Board meeting on November 4, 2015. Shortly thereafter the principal of the Brentwood Schools resigned and a replacement was appointed by the County Superintendent of Schools.

The matter took years to squarely address because teachers and staff at the Brentwood Schools perceived there was no clear and protected procedure in place for filing complaints with the COE about their principal without fear of retaliation. Further, the problem might have been resolved after it was first brought to the attention of the COE and CBOE had those bodies acted decisively at the onset of the complaints.

The Grand Jury recommends that appropriate and well understood internal complaint procedures be put in place that assure employees and teachers that complaints about working conditions supported or tolerated by higher-level administrators will receive professional attention from the Superintendent’s office or the CBOE without fear of retaliation or adverse treatment.

## **Acronyms**

COE	= Contra Costa County Office of Education (Superintendent)
CBOE	= County Board of Education (Trustees)
IEP	= Individual Education Plan
SELPA	= Special Education Local Plan Area
IA	= Instructional Assistant (Classified employee)
CTA	= California Teachers Association (Teacher’s union)
Local One	= Classified employees union
IR	= Incident Report
UCP	= Uniform Complaint Procedures
SARC	= School Accountability Report Card

## **METHODOLOGY**

For purposes of this report and to investigate and confirm the accuracy of the complaint, the Grand Jury performed the following tasks:

- Researched the relevant California statutes governing county Boards of Education and Superintendents of Schools in California;
- Examined the COE website;
- Interviewed representatives of the COE; the CTA; Public Employees Union, Local One; SELPA; current and former school personnel at the Brentwood Schools;
- Visited and toured one of the Brentwood Schools;
- Attended CBOE public meetings; and
- Reviewed minutes and audio recordings of public meetings of CBOE held on October 21, 2015 and November 4, 2015.

## CONFLICT OF INTEREST DISCLAIMER

One or more Grand Jurors recused themselves due to a possible conflict of interest and did not participate in the investigation, preparation or approval of this report.

## BACKGROUND

The Grand Jury investigated allegations of a hostile working environment at the Brentwood Schools, including the following:

- The forced transfer of teachers;
- “Early retirement” of both teachers and clerical personnel;
- Unethical and improper fraternization among administrators, teachers and instructional assistants; and
- The improper use of instructional assistants to perform functions requiring appropriately credentialed special education teachers.

It was alleged that the principal created this hostile work environment and that this atmosphere had been in existence for more than three years. In September 2015, over 60 percent of the teachers at the Brentwood schools voted “no confidence” in the principal of the Brentwood Schools.

The California State Education Code sets forth the roles and responsibilities of both the elected County Superintendent of Schools, as well as the five elected trustees of the CBOE. The Education Code provides who has responsibility for investigating and resolving issues of a hostile working environment in county schools and who is charged with oversight of the safety and well-being of the special education students in these schools.

Many special education programs in Contra Costa County are located at school sites within specific unified school districts, and are under the “subject matter jurisdiction” of the school superintendents of those unified school districts with oversight by the local school boards. However, the special education programs operated by the COE are specialized programs that are not under the jurisdiction of a local school district.

The County special education programs have been created to serve students whose IEPs show special needs that are beyond the ability of a local school district to serve their educational requirements and to properly and safely care for them during the school day, either within or outside of a general school population. The COE administers these special education school programs in Contra Costa County. The student’s district of residence provides the funding to pay for the placement of the student in the COE’s classrooms and programs. The COE charges a student’s “home” district approximately \$44,000 per student per year for the County-operated special education programs. These funds are allocated by the Contra Costa County SELPA office to the special education schools based upon demonstrated need.

## Discussion

Complaints concerning the principal and the working environment at the Brentwood schools date back to at least 2012. The specific allegations about the working environment included the following:

- Instructional assistants allegedly made home visits, participated in IEP sessions, represented the school principal at meetings, and delivered messages, including reprimands, to various program staff members at the direction of the principal.
- The principal allegedly arranged improperly to have one or more instructional assistant positions reclassified so that certain instructional assistants could receive substantial increases in compensation.
- The reclassification allowed these instructional assistants to continue performing activities for which they were not properly qualified.
- New classified positions are supposed to be based upon demonstrated need but there was no need.
- The reclassified instructional assistants were granted pay increases retroactive to the beginning of the school year when, in fact, the new positions had not been authorized at that time.
- The unapproved activities of the instructional assistants, prior to creation of the new position, may have been used to justify the creation of the new position.

The complaints and concerns regarding the principal at the Brentwood Schools, also included allegations that the principal favored some teachers and staff, while seeking to arouse fear and mistrust in others. Allegedly, teachers and staff lacked a mechanism to voice their concerns about these issues and feared that airing their concerns would lead to retaliations or other adverse impacts on their job security or careers. The COE school policies did not set forth a specific procedure for making complaints regarding an immediate superior or peer without risk to one's job security or standing. Nor did the Brentwood Schools provide anonymous "suggestion" or "complaint" boxes.

According to the Grand Jury's sources, while complaints and concerns about an alleged hostile working environment had been voiced in varying degrees by teachers and staff at the Brentwood schools since at least 2012, matters reached a head in late 2015. It was reported to the Grand Jury that by this time, various teachers and staff, as well as the parents of certain special needs children, became concerned about the safety of staff and students at the Brentwood Schools. In September 2015, the teachers recorded a CTA vote of "no-confidence" in the Brentwood School's principal with the assistance of their union representative. On October 21, 2015, forty-plus staff, teachers, and parents from the Brentwood Schools appeared in front of the CBOE in a public meeting. Seventeen of them spoke at the public meeting about matters relating to personnel and student safety. At this CBOE meeting, the CTA union representative provided to each Board member and to the COE a packet containing copies of written complaints from teachers and staff at the Brentwood Schools as well as the vote of "no confidence" in the principal of the schools. Many of the complaining staff from the

Brentwood Schools reappeared in front of the CBOE on November 4, 2015, again voicing the same complaints. A number of them stated they felt there was nowhere else for them to complain.

Educational professionals interviewed by the Grand Jury agreed that good staff morale and positive parent attitudes are critical to the success of special need students. As one of them put it, "If the teachers and parents are happy, the kids are happy!" In this case, the professionals also expressed the opposite: the tension and apprehension on the part of the involved teachers and staff had a negative impact on the students, many of whom are non-verbal, but communicate their emotional feelings by facial expression, body movement and other non-verbal means. In at least one case, it was reported that parents had removed their student from the school due to the hostile environment. The stakes in resolving "hostile environment" issues early are important in any organization. They are particularly important in a special needs school.

### **The Role of the Unions in Resolving Member Complaints**

Credentialed teachers and instructional assistants are represented by unions, with teachers represented by the California Teachers Association (CTA), and "classified" employees, such as instructional assistants and clerical staff, by Public Employees Union, Local One. Each union assigns a representative to the respective teachers and staff at each school. Additionally, each school, or "unit", has its own elected local union leadership and representatives.

Unions encourage their local representatives to resolve personnel issues at the local "unit" level rather than refer them to the union leadership for action by means of an official contract grievance or by other submitted complaint. Once a complaint by a union member is received by the union, the union is obligated to meet with the COE and apprise them of the complaint. The union keeps contemporaneous notes of these meetings with COE personnel in case the complaint escalates. Both unions maintain files of all correspondence with the COE as well including, but not limited to, formal letters and emails.

In this case, union representatives met with COE on a number of occasions, starting in 2012 to voice concerns about the working environment in the Brentwood Schools. Had the COE undertaken a more vigorous investigation of these complaints and acted on them, the problem in the working environment at the schools might well have been resolved earlier and avoided the public outcry that occurred at the October 21, and November 4, 2015 CBOE public meetings.

Both union contracts are published on the COE website at:

<http://www.cccoe.k12.ca.us/supe/hr/agreements.html>

While the CTA-COE contract relates to credentialed teachers, the Local One-COE contract for “classified” employees such as clerical and instructional assistants has a listing of specific and agreed-upon positions under the contract. The COE may not employ anyone who is “classified” in any other position other than those on this listing without going through a labor-management “Reclassification Committee”. The job descriptions for “classified” employees are generated through collective bargaining by the union and COE.

No changes to job classifications are allowed except through the reclassification process. This process is required whether the job description is revised or whether a new position is created. For example, there is a job description on the list for an “Instructional Assistant”, but there was no job description prior to June 1, 2014 for a “Behavioral Support Assistant”. Employees classified according to a specific job description must adhere to that description unless they change jobs on the contract list. They are not permitted to perform duties not in their assigned description, nor may they perform duties in other job descriptions without being properly assigned.

The reclassification of one or more instructional assistants to the position of Behavioral Support Assistant does not appear to have been done according to the requirements of the contract, and this may have contributed to the perception of a biased work environment by other teachers and staff. The COE has now reversed this reclassification by reducing hours worked, restructuring duties and correspondingly reducing compensation for the new job classification.

### **Union and Other Complaint Procedures**

In neither union contract is there any specific protocol or procedure for teachers and staff subject to these contracts to file complaints about their colleagues or their immediate supervisors. The only mention in the contracts relating to complaints is the process known as the “Uniform Complaint Procedure” (UCP).

The UCP is a general complaint procedure created by the California Department of Education and issued by the COE, applicable to complaints by pupils, parents, and staff members. It does not set forth specific avenues for a teacher or staff member to file a complaint against a superior without fear of retaliation or other adverse impact, other than the protections afforded against retaliation provided by applicable law. In practice, teachers or classified employees typically file such complaints with their respective union, with the hope that the union can resolve it. Because such complaints do not typically meet the definition of a formal “grievance” under the terms of the union contract, the only recourse the union representative has is to try to resolve the matter informally. In such cases, the union representative brings the complaint to the attention of the COE, meet with COE representatives, and seeks to resolve the matter. However, there does not appear to be an appeals process if the COE refuses or fails to resolve such informal complaints. Further, there is no written policy or procedure on the COE’s part that

defines how an “investigation” of a union complaint, as opposed to a formal grievance, is to be conducted, by whom, how long it will take, and who is privileged to participate in it.

When the complaints about the working environment at the schools were not resolved by the COE after discussions with union representatives, staff and teachers felt they had no other recourse but to bring their concerns to the attention of the County Board of Education (CBOE) at a public meeting on October 21, 2015. However, at that meeting, the Superintendent advised the CBOE that issues relating to personnel in County schools were matters falling solely under the Superintendent’s jurisdiction and not a matter for the CBOE.

Regardless of the legal responsibility for personnel issues, the Superintendent and CBOE should cooperate to put together a complaint procedure that is both effective and preserves due process. Such a procedure would assure teachers and staff that their complaints will receive serious, impartial, and prompt attention, even when they concern a superior. The process should result in an explanation of what action will be taken in response to the complaint, or reasons why no action will be taken after careful review.

## **Other Matters of Concern in the Special Needs Schools**

### **1. Incident Reports (IRs)**

Special Education programs involve, by definition, “Special Needs Children”. Many of these children are non-verbal and are so severely disabled that they are confined to wheelchairs and need on-duty nurses during the school day to watch over them so they do not injure themselves, to administer appropriate medications, and to provide needed hygiene.

In all cases, behavior must be closely monitored as these children may lash out at other children or hurt themselves. When such incidents occur, a form known as an Incident Report (IR) must be completed by the teacher, reviewed by the school psychologist, and routed to the school principal for review and acceptance. The IR is required to be completed by credentialed staff.

There did not appear to be a formal training program at the Brentwood Schools for dealing with IR procedures, nor was a training handbook provided to teachers and staff regarding policies and procedures at the Brentwood Schools. The matter of IR procedures appears to have been covered only through verbal instructions at the beginning of each school year.

In some cases, instructional assistants were permitted to complete the form. These IRs are filed in the child’s personnel file at the school, with a copy sent to the COE. No evidence was found that the COE maintained a separate file of these IRs, or maintained any log of acceptance. It was reported that any time an IR was completed, the child’s parent was verbally notified. There does not appear to be a written policy or procedures



in place to handle IR reporting. Without reporting procedures, the COE and the local school administrator likely lack the ability to track and trend IRs. Such tracking and trending can indicate patterns of behavior, which enable appropriate corrective action. Local police have been called to the Brentwood Schools from time to time due to either mandatory reportable situations of suspected child abuse, or severe behavioral situations involving students. No evidence of a centralized file was found of these police interventions at the Brentwood School, nor were any copies ever forwarded to COE subsequent to each event. There likewise does not appear to be any written policy or procedure in place at the COE to track police intervention and reporting. Again, a lack of policies or procedures may handicap the COE in its ability to track and trend such occurrences and then determine the appropriate corrective action.

## **2. School Evaluations:**

Currently the only published “scorecard” for Special Education programs is the School Accountability Report Card (SARC):

<http://www.cccoe.k12.ca.us/stsvcs/sarcs.html>

This report is a generalized report that applies to all public schools and does not have relevant measures that apply only to Special Education schools. Thus, it is difficult for a parent to obtain any objective measures or benchmarks that reflect the quality of instruction and outcomes achieved of any given program at a special needs school. Instead they have to rely on word of mouth information from other parents or involved professionals to make decisions on which school would best serve their child.

While the very nature of IEPs is to provide “individual education plans”, they can still be measured as to their overall effectiveness, and again track and trend the goals that were or were not met. It was also learned the SELPA office does not track and trend how specific Special Education schools are performing.

## **FINDINGS**

- F1. There are over three years of complaints about a hostile work environment at the Brentwood Special Education Schools operated by the COE (Brentwood Schools).
- F2. Complaints of a hostile work environment at the Brentwood Schools were made known to COE from at least 2012 through 2015, both verbally and in writing by various entities including the two labor unions representing staff at the school locations.
- F3. Although complaints continued to be made about a hostile work environment at the Brentwood Schools from at least 2012 through 2015, the complaints were not resolved to the complainants’ satisfaction.

- F4. A vote of no confidence in September, 2015 by the Brentwood Schools teachers against the principal was passed by over 60 percent of CTA members.
- F5. On at least two occasions, evidenced by audio recordings and the published CBOE meeting minutes, teachers appeared at the Board of Education public meetings to voice their complaints about the work environment at the Brentwood Schools.
- F6. Over forty teachers appeared at the COE/CBOE public meeting on October 21, 2015 and seventeen of those teachers were permitted to make public comment.
- F7. The perceived hostile working environment at the Brentwood Schools may have had a detrimental impact on the students themselves, many of whom reportedly expressed signs of distress through body movement, sounds or facial expressions.
- F8. There is no written protocol for staff of the Brentwood Schools to follow in deciding if, how, and when to file an incident report on any incident occurring in their classroom or facility.
- F9. Verbal instructions, but not written instructions, are given to staff of the Brentwood Schools at the beginning of each school year concerning when and how to file an incident report.
- F10. Incident reports are not logged into any central index either at the Brentwood Schools or the COE.
- F11. Incident reports are not tracked and trended for possible patterns or recurrent problems either by the Brentwood Schools or the COE.
- F12. Neither the Brentwood Schools nor the COE have a written protocol concerning who should complete, review, and respond to incident reports.
- F13. At times, incident reports at the Brentwood Schools have not been given to the school psychologist for review prior to being finalized, as required in the verbal briefings to school staff.
- F14. Currently incident reports are only filed in the student's personnel folder and a copy is forwarded to the COE, but no copy is maintained elsewhere at the Brentwood Schools.
- F15. The incident report form used at the Brentwood Schools requires the class teacher of the student involved in the incident, school psychologist, and principal to sign the form.
- F16. Incident reports at the Brentwood Schools were sometimes completed by an Instructional Assistant.

- F17. It was reported that police were called to the Brentwood Schools on a number of occasions.
- F18. There is no written protocol requiring the Brentwood Schools to maintain a record of police visits, nor to require them to report the event to the COE.
- F19. The Brentwood Schools do not provide their staff with a handbook to inform them of school protocols and complaint procedures.
- F20. Instructional Assistants at the Brentwood Schools are not provided a handbook concerning rules and requirements related to the job.
- F21. Instructional Assistants at the Brentwood Schools are not required to attend orientation meetings at the beginning of each school year.
- F22. The Brentwood Schools have no protocol that would allow school staff to make anonymous suggestions concerning how to improve the school environment.
- F23. There is no procedure or mechanism that allows staff at the Brentwood Schools to anonymously report concerns to the COE about issues with peer staff and Peter supervisors, such as personality conflicts, favoritism, nepotism, or hostile work environment.
- F24. The Brentwood Schools, the COE, and the CBOE do not maintain a record by special education school location for the reason of staff turnover, e.g., transfer, resignation, retirement, etc.
- F25. The COE publishes School Accountability Report Cards (“SARC”) on its website that provide an annual picture of the schools in the County under the auspices of the COE.
- F26. While there are published SARCs for several special education locations, the data published, other than the front page, does not accurately pertain to the schools named.

## **RECOMMENDATIONS**

- R1. The COE should consider tracking and trending complaint data at the Brentwood Schools by location to better identify the nature and extent of staff concerns, and to respond to such complaints promptly; after identifying funds to do so.
- R2. The COE should provide all Brentwood Schools’ staff with written instructions as to when, how, and to whom incident reports should be copied and routed.
- R3. The COE should require each of the Brentwood Schools to maintain a log of incident reports, in addition to filing a report in a student’s personnel file. The COE

should require that each incident report and any accompanying analysis be forwarded to the COE for their review to decide the appropriate follow-up action, if any.

- R4. The COE should require that instructions for completing incident reports provide that the incident report be completed only by the class teacher before being forwarded to the school psychologist, principal and the COE.
- R5. The COE should consider establishing a written protocol to require a log of incident reports and require each of the Brentwood Schools to maintain a file of incident reports so that they may be easily retrieved.
- R6. The COE should consider regularly reviewing incident reports from the Brentwood Schools to determine any patterns, needed corrective action, and follow up necessary to ensure such corrective action was accomplished, and requiring school principals to do the same; after identifying funds to do so.
- R7. The COE should consider producing an employee handbook for the Brentwood Schools which is reviewed and approved by the COE, and regularly updated; after identifying funds to do so.
- R8. The COE should require that all staff of the Brentwood Schools receive a copy of a handbook for employees, and updated copies.
- R9. The COE should consider requiring that instructional assistants at the Brentwood Schools attend the part of the annual orientation for teachers that relates to Instructional Assistants; after identifying funds to do so.
- R10. The COE should consider requiring each of the Brentwood Schools to maintain a suggestion box to provide a mechanism for staff to anonymously provide ideas concerning how each school environment could be improved.
- R11. The COE should consider regularly reviewing with Brentwood Schools' administration suggestions received to determine if there are any transferable best practices that could be shared with other schools.
- R12. The COE should consider immediately drafting a written protocol that will allow Brentwood Schools' staff to bring concerns to the attention of the COE in a timely manner and without fear of possible retaliation so as to preclude further escalation to a grievance or vote-of-no-confidence level; after identifying funds to do so.
- R13. The COE should create a form that can be used in a staff exit interview that clearly indicates the reason for terminating employment with the Brentwood Schools.
- R14. The COE should consider requiring that information in forms completed during exit interviews concerning reasons for employment termination at the Brentwood

Schools be categorized so that specific trends can be detailed for use in recruiting and retaining employees and this accumulated data can be reduced to an annual report to the CBOE and made available to the public; after identifying funds to do so.

R15. The COE should consider creating SARCs applicable to Special Education programs that track data such as performance, progress of the special education programs and IEP goals met to give a true picture of the effectiveness of the programs offered.

## REQUIRED RESPONSES

	<u>Findings</u>	<u>Recommendations</u>
County Office of Education Superintendent	F1 – F26	1-15
County Board of Education	F4, F5, F6 & F24	N/A

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to [epant@contracosta.courts.ca.gov](mailto:epant@contracosta.courts.ca.gov) and a hard (paper) copy should be sent to:

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