

**Keyes Union School District**  
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Cynthia Schaefer, Superintendent

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September 12, 2012

Honorable Ricardo Cordova  
Superior Court, Stanislaus County  
P.O. Box 3488  
Modesto, CA 95353

**Re: Comment on Stanislaus County Grand Jury Report No. 12-11C(a) Findings and Recommendations**

Dear Honorable Cordova:

Pursuant to California Penal Code sections 933 and 933.05, the Governing Board of the Keyes Union School District ("Board") files this comment with regard to the Findings and Recommendations of the Stanislaus County Civil Grand Jury ("SCCGJ") as set forth in Grand Jury Report No. 12-11C(a) ("Report"), which is attached hereto.

**FINDINGS**

**Finding # 1:**

The SCCGJ finds that Person C should have informed the School Board about the move outside the district to another residence and informed the superintendent of this change of address.

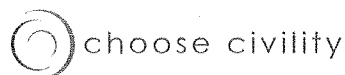
**Response to Finding #1:**

The Board agrees and disagrees with this finding. The Governing Board agrees that if Person C moved outside of the District during any one of her three terms she should have informed the District. However, the Board disagrees that Person C moved out of the boundaries of the District while serving as a District board member. Rather, the Board believes that, while Person C spent time in two different homes, Person C was, for purposes of establishing Board member residency during her terms (November 2, 1999 through November 8, 2011) a resident of Keyes, CA.

The SCCGJ cites California Government Code section 34882 as the controlling "California Law" in determining Person C's residency for purposes of serving as a Board member. Government Code section 34882 states the following:

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*Keyes to Student Success: Family, Responsibility, Pride*



A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in the geographical area making up the district from which he or she is elected and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in section 10227 of the Elections Code.

However, Government Code section 34870 specifies that Government Code section 34882 “applies only to cities.” As such, Government Code section 34882 is not applicable to school districts or the case at hand. Rather, the proper starting point in determining whether Person C was a resident of Keyes is Education Code section 35107.

Specifically, Education Code section 35107(a) states the following:

Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.

“Residence” for purposes of Education Code section 35107 means “domicile,” a place of physical presence coupled with an intention to make that place one's permanent home; a person may only have one domicile at any given time. (See *Walters v. Reed* (1988) 45 Cal.3d 1, 7; *Smith v. Smith* (1955) 45 Cal.2d 235, 239; *Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1113; 79 Ops.Cal.Atty.Gen. 21, 25-26 (1996); 73 Ops.Cal.Atty.Gen. 197, 208-209 (1990); 72 Ops.Cal.Atty.Gen. 8, 11-12 (1989).) A domicile is not lost until a new one is acquired. (Gov. Code, § 244, subd. (c); *Walters v. Weed*, supra, 45 Cal.3d at 7.

Person C had two homes, one in Keyes and another in Oakdale. While Person C split time between her homes in Keyes and Oakdale, Keyes was considered her permanent home. Person C spent time at her Oakdale home on nights when she worked in Oakdale in order to save time and money that would otherwise be spent commuting between Keyes and Oakdale. Person C also spent time at her Oakdale home caring for her ill daughter. However, Person C always used her Keyes residence as her “home base.” Person C had the intent that Keyes was her permanent home. This intent is demonstrated by the fact that she was a registered voter in Keyes while serving as Board member, maintained utility services in her Keyes home until January 2012, and only claimed tax credit for her home in Keyes (not her home in Oakdale) while she was a Board member. In addition, District staffed personally delivered Person C’s Board meeting packet to Person C’s Keyes home prior to each Board meeting, and Person C’s Keyes home appeared to be her primary residence.

Person C’s service on the Board ended on November 8, 2011. Person C had no intent to make her Oakdale house her permanent home until after her Board term ended. Specifically, Person C only had the intent to make her Oakdale house her permanent home after her Keyes home was sold on January 10, 2012.

### **Finding #2:**

Even though a residence was still owned in the district, most of the board member’s time was spent living in a residence that was located outside of the district boundaries. The SCCGJ would classify the later residence as a “domicile.” A court of appeals has defined “domicile” as “the

one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain to which, whenever he is absent, he has the intention of returning...”

**Response to Finding #2:**

The Board disagrees with this finding. As mentioned above, “residency” is defined as “domicile” for purposes of establishing residency for purpose of Education Code section 35107. “Domicile,” is defined as a place of physical presence coupled with an intention to make that place one’s permanent home. Since Person C had a physical presence in her Keyes home and an intent for that home to be her permanent home until it was sold (which didn’t happen until after Person C’s Board term ended), the Board believes that Person C was a resident of Keyes at all times while serving as a Board member.

**RECOMMENDATIONS**

**Recommendation #1:**

The SCCGJ recommends that Person C resign from the school board.

**Response to Recommendation #1:**

The recommendation has effectively already been implemented. Person C’s term expired on November 8, 2011. Person C did not run for another term after the expiration of her term. As such, Person C is no longer a Board member.

**Recommendation #2:**

The SCCGJ recommends the school district should require Person C to reimburse the district for the insurance costs for the time C lived outside of the district (approximately \$980 per month).

**Response to Recommendation #2:**

The recommendation will not be implemented. First, as stated above, the Board does not find that Person C lived outside of the District while serving as a Board member. Thus, the Board believes that Person C was legally entitled to health benefits during her terms of service. Notwithstanding the above, it is unclear from the Report as to the date when SCCGJ considered Person C to be a non-resident of the District for purposes of serving on the Board. Moreover, the Board cannot justify the act of spending public funds to recover costs for health care coverage from Person C, especially when the cost of taking such legal action could likely be more than what SCCGJ believes may be owed to the District.

**Recommendation #3:**

The School Board President should monitor the resident status of board members to assure they comply with residency requirements of California Government Code 34882.

**Response to Recommendation #3:**

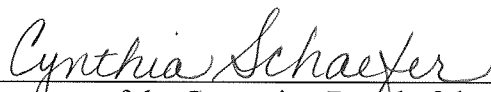
This recommendation will be implemented in part. As described above, Education Code section 35107 sets forth the requirements for Board members. As such, the District must look to

case law interpreting Education Code section 35107 for Board member residency purposes, not Government Code section 34882. Moreover, there is no affirmative obligation of the District or the Governing Board to monitor Board member residency. Thus, the Board does not find it prudent to take on these monitoring obligations. Notwithstanding the above, the Board will take steps to investigate any questions or complaints pertaining to Board member residency.

PASSED AND ADOPTED by action of the Governing Board of the Keyes Union School District on this 12<sup>th</sup> day of September, 2012, at a regular meeting of the Board by the following vote:

AYES: 5  
NOES: 0  
ABSENT: 0  
ABSTAIN: 0

I HEREBY CERTIFY that the foregoing Resolution was duly introduced, passed, and adopted as stated.

  
Secretary of the Governing Board of the  
Keyes Union Elementary School District