FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 19, 2010

Alameda Unified School District
c/o Mr. Chad J. Graff, Esq.
Dannis, Woliver, Kelley
REDACTED

Re: Advisory Letter
FPPC Case No. 10/589 (Alameda Unified School District)

Dear Mr. Graff:

The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act ("Act").[1] In June 2010, the Enforcement Division of the FPPC received a sworn complaint alleging that Alameda Unified School District ("the District") violated the Act in May 2010 by sending one or more mailings regarding a parcel tax ballot measure known as Measure E.

Section 89001 of the Act provides: "No newsletter or other mass mailing shall be sent at public expense."

Along these lines, Regulation 18901.1 provides:

(a) Except as provided in subdivision (b), a mailing is prohibited by Section 89001 if all of the following criteria are met:

(1) The item sent is a tangible item, such as a written document, videotape, record, or button and is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box.

(2) The item sent either:

[1] The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

(A) Expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly indentified measure, as defined in Regulation 18225(b)(1).

(B) When taken as a whole and in context, unambiguously urges a particular result in an election.

(3) Public moneys are paid for either of the following:

(A) The costs of distributing the item.

(B) Costs, exceeding $50, that are reasonably related to designing, producing, printing, or formulating the content of, the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, and consultants, and the costs are paid by the agency with the intent of sending the item other than as permitted by this regulation.

(4) More than two hundred substantially similar items are sent during the course of an election, including items sent during the qualification drive or in anticipation of an upcoming election, but excluding any item described in subdivision (b).

(b) Notwithstanding subdivision (a), a mailing of the following items is not prohibited by Section 89001:

(1) An agency report providing the agency's internal evaluation of a measure sent to a member of the public upon the individual's request.

(2) A written argument sent to a voter in the voter information pamphlet.

(3) A communication clearly and unambiguously authorized by law.

(c) For the purposes of subdivision (a)(2)(B), an item unambiguously urges a particular result in an election if it meets either of the following criteria:

(1) It is clearly campaign material or campaign activity such as bumper stickers, billboards, door-to-door canvassing, or other mass media advertising including, but not limited to, television or radio spots.

(2) When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose.

(d) For purposes of subdivision (a)(4), an item is "substantially similar" to another item if both items expressly advocate or unambiguously urge the election or defeat of the same candidate or measure.

(e) For purposes of subdivision (c)(2), when considering the style, tenor, timing of an item, factors to be considered include, but are not limited to, whether the item is any of the following:

(1) Funded from a special appropriation related to the measure as opposed to a general appropriation.

(2) Is consistent with the normal communication pattern for the agency.

(3) Is consistent with the style of other communications issued by the agency.

(4) Uses inflammatory or argumentative language.

(f) A mailing sent at public expense that features, or includes the name, office, photograph, or other reference to, an elected officer affiliated with the agency which produces or sends the mailing may also be prohibited under Section 89001 as provided in Regulation 18901.

Also, in certain circumstances, newsletters and other mass mailings may amount to reportable independent expenditures, which may trigger filing obligations on the part of the sender. (See, for example, Sections 82013, 84200, et seq., and Regulation 18420.1.)

In this case, it appears to be undisputed that the newsletter in question was sent at public expense, and the newsletter does contain some inflammatory language. (The cuts to the District's schools are described as "devastating.") However, we have determined that the newsletter does not fall squarely within the parameters of a prohibited mailing as set forth in Regulation 18901.1, and similarly, it does not appear that the District was required to file as an independent expenditure committee in connection with sending the newsletter. Accordingly, the Enforcement Division has decided to close its file on this matter.

Although we have decided not to pursue an enforcement action in this matter, the District is advised that its failure to comply with the provisions of the Act in the future could result in an enforcement action. Please refer to the Commission website at www.fppc.ca.gov for current information. In addition, our Legal Division and Technical Assistance Division can provide advice and assistance for issues which may arise in the future. The district may contact either division by calling our toll-free number: 1-866-ASK-FPPC (1-866-275-3772).

If you have any questions regarding this matter, please feel free to contact me at (916) 322-5660.

Very truly yours,

REDACTED

Neal P. Bucknell
Senior Commission Counsel
Enforcement Division

cc: Mr. David Howard