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December 17, 2009

Dr. Stephen Weber
Office of the President
San Diego State University
5500 Campanile Dr.
San Diego, CA 92182-8000

Re: Demand to release documents withheld in response to the Education Consortium's Public Records Act request of October 23, 2009

Dear President Weber:

I am writing on behalf of the Education Consortium of San Diego County. On October 23, 2009, the Consortium submitted a request to your office as President of the San Diego State University (SDSU) under the California Public Records Act for all documents relating to the presidential enrollment management advisory group, consultation with that group prior to the elimination of the local admissions guarantee, communication with the CSU's Chancellor's Office regarding elimination of the local guarantee, and all related public notices. *See Exhibit A.*

On November 17, 2009, a representative of SDSU replied to the request in a letter stating that the university had compiled 2,021 pages, which it would make available upon receipt of \$409.15 to cover the costs of copying the documents. The letter did not seek clarification of the request, indicate that any documents were being withheld, or assert any justification for withholding documents. Within several days, the Education Consortium provided a check for the designated amount. *See Exhibit B.*

On November 30, 2009, SDSU mailed the 2,021 pages with a cover letter that again did not seek clarification of the request, indicate that any documents had been withheld, or assert any justification for withholding. *See Exhibit C.*

However, a review of the documents demonstrates that SDSU has unlawfully withheld requested documents. As explained below, several of the produced records expressly refer to other documents squarely captured by the request which were not provided to the Consortium:

- The September 17, 2009 letter to you from the Chancellor's office (*Exhibit D*) refers to "Dr. Sandra Cook's September 10, 2009 request and supporting data to revise the college year impaction plan at San Diego State University for 2010-2011." Neither Dr. Cook's request nor the supporting data were produced to the Consortium. They are covered by point 4 of the request: "All documents relating to any communication with the CSU Office of the Chancellor in 2009 relating to the elimination of the local admissions guarantee."
- A "Time Line of Consultation/Notification of Fall 2010 Transfer Admission Guarantee Changes" (*Exhibit E*) summarizes or quotes from various e-mail messages that have not been produced. Also, the "Time Line" refers to meetings and other communications, *e.g.*, a request from Rachel Hendrickson of the Chancellor's Office, for which e-mails, notes or other memoranda may exist but which have not been produced. All such documents are covered by point 3 of the request ("documents relating to consultation with advisors") as well as point 4. A summary of requested documents is not an appropriate response. The e-mails themselves should be provided.
- An email from you to Chancellor Reed and others dated December 19, 2008 (*Exhibit F*) apparently contained various attachments, which are covered by point 4 of the request but which do not appear to be in the record.

In addition, it is possible there may be other documents, including emails, letters, notes or other records of communication, which have not been disclosed.

- There appears to be no "Enrollment Management Plan" as required by the 2002 CSU enrollment management policy provided in the record (*Exhibit G*). While there are enrollment updates and a short-term enrollment reduction plan in the record, there is no enrollment management plan as described by the CSU policy. If such a plan exists, it is captured by point 1 of the request.
- Apart from the September 17, 2009 letter from the Chancellor's Office discussing the impaction of the campus, there appears to be no record of communication with the Chancellor's Office concerning the elimination of the local guarantee. It seems implausible that no such documents exist given the significance of the change in the admissions process.

- The September 1, 2009 presentation to the Senate Academic Policy and Planning Committee (*Exhibit H*) refers to a discussion with the Chancellor's Office in which that office "reiterated that the only method of limiting first-time freshman enrollment is to impact all pre-majors and admit by pre-major." No documents are provided that reflect the Chancellor's Office's position. If they exist, such documents are covered by point 4 of the request.
- The first line of "San Diego State University Enrollment Reduction Plan," dated July 23, 2009 (*Exhibit I*) refers to a request from the Chancellor's Office, which was not produced and is also covered by point 4 of the request.
- An e-mail exchange with Sally Roush on or around October 20, 2009 (*Exhibit J*) refers to a scheduled call between you and the Chancellor, for which it is not clear any notes have been disclosed. If such notes or related records exist, they are covered by point 4 of the request.
- There appears to be no record of consultation with the Enrollment Management Advisory Council (EMAC) regarding the elimination of the local guarantee prior to its elimination. If such records exist, they are covered by point 3 of the request.
- While there are notes from the EMAC meetings held in 2002, 2003 and 2004, there are no notes or minutes from EMAC meetings held in the years 2005 to the present. In light of this there may be non-disclosed agendas captured by point 2 of the request.
- Although records of attendance were provided for the EMAC meetings from 2002 to 2005, no records of attendance were provided for the years 2006 to the present. In light of this there may be non-disclosed records of attendance captured by point 2 of the request.
- While agendas are provided for EMAC meetings during 2002-2006, there are no agendas provided for EMAC meetings in 2007 and 2008, and there is no agenda for the March 23, 2009 meeting. In light of this there may be non-disclosed agendas captured by point 2 of the request.

The California Public Records Act requires SDSU to produce copies of requested public records that are not exempt from disclosure. Govt. Code § 6253(b). The agency must promptly "determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency." Govt. Code § 6253(c). Therefore, when a person requests identifiable public records, the agency must "determine whether it has such writings under its control" and is "obliged to search for records based on criteria set forth in the search request." *California First Amendment Coalition v. Superior Court*, 67 Cal.App.4th 159, 166 (1998).

SDSU has not apparently complied with its obligation to conduct a diligent search and produce records covered by the request. As explained above, there is strong reason to believe SDSU has unlawfully failed to disclose requested records. It should go without saying that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Govt. Code § 6250. This principle applies with particular strength to the process by which SDSU decided to revoke its local admissions guarantee, a controversial decision which resulted in significant impact on the community.

The public is entitled to nothing less than full disclosure of all available records concerning SDSU’s actions in this matter. The failure to produce all such records exposes SDSU to a court order directing immediate disclosure of the records and awarding costs and attorney fees. Govt. Code § 6259.

Please contact me if you have any questions. I look forward to your immediate response to the issues addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Blair-Loy", with a stylized flourish extending to the right.

David Blair-Loy
Legal Director