Gavilan Joint Community College District
Governing Board Agenda

April 13, 2010

Consent Agenda Item No. 5. (e) Administrative Services
Information/Staff Reports No.
Discussion Item No.
Old Business Agenda Item No.
New Business Agenda Item No.

SUBJECT: Gavilan Joint Community College District Payment to Gavilan Educational Foundation

☐ Resolution: BE IT RESOLVED,
☐ Information Only
☒ Action Item

Proposal:
That the Board of Trustees review and approve a request from the Gavilan College Educational Foundation.

Background:
Please refer to the attached letter dated, April 1, 2010 from the Gavilan College Educational Foundation. The main problem is that the Foundation paid Gavilan College more money than was available for distribution. This action is necessary to correct the mistake and reestablish restricted donations as required.

Budgetary Implications:
The funds that need to be returned to the Foundation will be paid out of the District's General Fund.

Follow Up/Outcome:
Upon approval, the District will process the payments.

Recommended By: Joseph D. Keeler, Vice President of Administrative Services

Prepared By: Joseph D. Keeler, Vice President of Administrative Services

Agenda Approval: Dr. Steven M. Kinsella, Superintendent/President
April 1, 2010

Governing Board of Trustees
Gavilan Joint Community College District
5055 Santa Teresa Boulevard
Gilroy, CA 95020

Dear Governing Board:

RE: Gavilan Joint Community College District Payment to Gavilan Educational Foundation

The Gavilan College Educational Foundation Board of Directors has reviewed the latest financial audit for the years ending 2009 and 2008 dated February 12, 2010. It is the opinion of the auditors that “the financial statements present fairly, in all material respects, the financial position of the Gavilan College Educational Foundation as of June 30, 2009 and 2008, and the respective changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.”

There was, however, one finding and recommendation related to the financial statements and is on page ten (10) of the report. In summary the auditors note that “Due to the depleted net assets of the Foundation, we believe there is some doubt that the Foundation will continue as a going concern for the near future.” Attached is a copy of the auditors’ finding and recommendation.

Over the past three years the Foundation has been paying more money to support Gavilan College’s programs that it has raised. This mistake occurred because the confusing nature of fund accounting and not realizing that money being paid to the college was coming from restricted donations made to the Foundation. Once this mistake was discovered the Foundation Board decided it would work to increase unrestricted contributions and restore restricted balance accounts as the economy improved. As you all realize the economic situation has not improved and this now forces us to ask the Gavilan College return the overpayments to the Foundation. The amount of overpayment that is needed is $270,372; an amount that restores all restricted contributions and allows sufficient operating funds to get the Foundation through the end of the fiscal year. We would like to note that the Foundation has paid out $1.4 million to the programs and students of Gavilan College.
The Foundation is in the process of developing and implementing a financial plan in order to continue as a going concern and have made the changes needed to prevent this type of mistake from occurring again. We apologize for putting the Foundation and the District in this position but would appreciate the Board’s approval of this request.

Sincerely,

[Signature]

Douglas Marshall
President
Gavilan College Educational Foundation

Attachment: 2009-1 Finding
The following finding represents a significant deficiency that we deem important enough to which management's attention should be drawn.

2009-1 Finding

We noted the following regarding the operations of the Foundation:

- The Foundation has substantially spent its funds leaving a minimal amount left for operations. The Foundation began the 2008-09 fiscal year with total fund balances of $185,985, incurred a loss of $161,590, which results in an ending fund balance of $24,395. The condition was caused largely due to expenses continually being made that were well above the revenues being received for this and the previous year.

- The Foundation received donations based on verbal promises and literature provided to donors that the funds were to be used in a particular way which classifies them as temporarily restricted. The temporarily restricted funds have a total ending fund balance of $335,122, however, the Foundation’s total fund balance is $24,395 as of June 30, 2009. The result is that the unrestricted funds have effectively taken a cash loan from the temporarily restricted funds, making the temporarily restricted funds unavailable for their promised use.

Due to the depleted net assets of the Foundation, we believe there is some doubt that the Foundation will continue as a going concern for the near future.

Recommendation

The Foundation’s management and board should develop a plan to develop additional revenues and reduce their expenses to a level that the Foundation will be able to sustain itself. Additionally, the Foundation should develop a plan to increase its fund balances so that there are adequate funds related to their temporarily restricted funds.

Foundation Response

The Foundation agrees. In addition, the District has decided to assist the Foundation with oversight and support.
CALL TO ORDER 6:00 p.m.
The meeting was called to order by Deb Smith at 6:05 p.m.
1. Roll Call
   Trustees: Deb Smith, Kent Child, Laura Perry, Mark Dover, Tom Breen, Mike Davenport, Elvira Robinson

2. Recess to closed session
   The Board recessed to closed session at 6:05 p.m.

OPEN SESSION 7:00 p.m.
1. Call to Order
   The meeting was called to order by Deb Smith at 7:13 p.m.
2. Trustee Smith administered the oath of office to the Student Trustee
3. Roll Call
   Trustees: Deb Smith, Kent Child, Laura Perry, Mark Dover, Tom Breen, Mike Davenport, Elvira Robinson, Hannah Kempis

Dr. Steven M. Kinsella, Superintendent/President
Joe Keeler, Vice President of Administrative Services
John Pruitt, Vice President of Student Services
Dr. Kathleen Rose, Vice President of Instruction
Dr. Debra Klein, Academic Senate
Diana Seelle, Professional Support Staff
Suzanne Bulle, Recording Secretary

Others in Attendance: Ron Hannon, Sherrean Carr, Susan E. Alonzo, Fran Lopez, Susan Sweeney, Annette Gutierrez, Anne Ratto, Jan Bernstein Chargin, Fran Lozano, Rachel Perez, Diane Stone, Bonnie Donovan, Randy Brown, Shaesta Razaqi, Connie Campos, Jennie Gonzales, Sofia Moreno, Denise Apuzzo, Ken Wagman, Carol McEwan-Suarez, Jose Morales, Mitizi Vasquez, Jessica Orozco, Daniel Frieberg, Rosalinda Barbosa Morino

4. Pledge of Allegiance
   Student Trustee Kempis led the pledge of allegiance.

5. Report of any action taken in closed session
   No action taken in closed session

6. Consent Agenda
   MSC (Breen/Dover) Student Trustee voted affirmative to approve consent agenda with change, move Consent Item 6. (e) New Business Action Item 1. (e).
7. Approval of Agenda
MSC (Child/Robinson) Student Trustee voted affirmative to approve agenda.

8. Comments from the Public – This is a time for the public to address the Board.
   None

9. Officers’ Reports
   (a) Vice Presidents
   John Pruitt reported that beginning April 18 a program, “Traveling Gavilan Days”, will
   be going to area high schools to provide information, recruit students, and promote
   three programs, Puente, EOPS and Trio. John congratulated Hannah on her
   election as Student Trustee and Candice Whitney on her appointment as Director of
   Admissions and Records. Approximately 100 students from feeder high schools will
   be on campus April 30 (Transfer: Making it Happen) for a portion of the day to learn
   how to set goals and transfer to universities. Representatives from the Foundation
   for Community Colleges are conducting a site visit to the Early College High School
   as well as representatives from the Jobs for the Future, Washington DC (Gates
   Foundation). They will be discussing additional work in the STEM area with a high
   school and community college perspective.

   Kathleen Rose reported that work is ongoing with federal grant opportunities:
   Sherrean Carr and Terry Newman received an award notification for the Industry
   Driven Regional Collaborative two year grant (Green Technology) to develop and
   implement a Water Technology Associate and Certificate program; the college will be
   working with local industries in developing curriculum; working on several active
   grant projects, adding student success ideas to the Title V grant application, which
   will be announced soon; working on opportunities with the National Science
   Foundation grants; working on the extension of the STEM grant. The Learning
   Council, co-chaired by Scott Sandler and Eddie Cervantes, met last week with
   almost 30 participants from every group including students. A retreat is planned in
   May to work on the mission, vision and a draft board policy for student success.

   (b) College President
   Steve Kinsella acknowledged the active involvement of faculty and staff in the in
   strategic planning process. Steve noted that the economy is at the end of the
   recession and we may begin to see Proposition 98 funds in about one year. The
   college is projecting a budget deficit and as positions become vacant will eliminate
   as many of the permanent fixed costs to get the budget balanced. In another year
   the college should start working on another five-year faculty hiring plan and other
   staffing issues.

   (c) Academic Senate
   Debbie Klein reported that the Senate is involved in the strategic planning process
   that included participating in the successful Strategic Conversations session with
   other staff and students. A second session is scheduled for this Friday. Ideas
   generated will come to the Strategic Planning Committee and be incorporated into
   the Strategic Plan. The Senate has scheduled a retreat at the end of May.

   (d) Professional Support Staff
   Diana Seelie reported that efforts are continuing to get more classified employees
   involved in the strategic planning process. Diana attended the Strategic
Conversations session. CSEA is sponsoring a march to Sacramento on April 21 to protest and help stop cuts made to education by elected officials. Buses will leave from San Luis Obispo, Salinas, San Jose, and San Mateo. Diana attended training for CSEA presidents. Diana announced that Annette Gutierrez was awarded a scholarship for $275 to attend the Annual Classified Leadership Institute in June in Lake Tahoe. She was one of four selected statewide to receive the scholarship. CSEA Chapter 270 will be presenting six scholarships ($250 each) at the Scholarship Ceremony on May 6. The fundraiser at Chevy's raised $169.80, thank you to all who participated.

(e) Student Representative

Student Trustee Kempis attended the march to Sacramento, with 15,000 students from the state along with faculty and staff (Fran Lopez, Anne Ratlo, Leslie Tenney, Johanna Stewart, and Michael Giovannini). Events are taking place celebrating Multicultural Week. Elections for a new ASB Board will take place at the end of April; ASB is working on the graduation reception; ASB is participating with Region 4 community colleges in planning a summit. Student Trustee Kempis introduced the ASB President Pro Tem, Mitzi Vasquez.

(f) Board Member Comments

Trustee Davenport reported that he participated as a judge in the Santa Clara County Engineering and Science Fair.
Trustee Breen congratulated the women's softball team, tied for first place with San Jose City College.
Trustee Child thanked Hannah for serving as student trustee.
Trustee Robinson congratulated Hannah as student trustee. Trustee Robinson is partnering with Pastor Gerald Harris in creating a youth center at Bethany Church on Eigleberry Street in Gilroy. Free classes will begin next week with teachers volunteering to teach boxing, folkloric dancing, computer, actors' school, electrician training, and health and nutrition. Trustee Robinson will be teaching a class on the consequences of making wrong decisions.

(g) Board President

Trustee Smith welcomed Hannah as the Student Trustee.

10. Board Committee Reports

Trustee Breen reported that the Board Facilities Committee met to review green possibilities for the campus, among other items.

11. Information/Staff Reports

(a) Recognition of the Employee of the Month

Susan Sweeney introduced Annette Gutierrez as Employee of the Month. Trustee Smith presented the award and two gift certificates for dinner.

(b) Accountability Report for Community Colleges (ARCC) 2010 Report

Randy Brown reviewed the report.

(c) Update on Board Goals for 2010

Trustee Smith thanked Steve for reviewing goals and updating the information.

(d) Month Financial Report
Provided for information

III. ACTION ITEMS

1. New Business

(a) Curriculum
MSC (Child/Dover) Student Trustee voted affirmative unanimously carried to approve curriculum. Trustee Child acknowledged the course developed by Debbie Klein.

(b) FY 2010-11 Tax Revenue Anticipation Note Program, Resolution No. 918
MSC (Perry/Breen) Student Trustee voted affirmative unanimously carried to approve the FY 2010-11 Tax Revenue Anticipation Note Program, Resolution No. 918 on a roll call vote. Joe noted that this is an additional back up plan to have sufficient cash flow, if needed.

(c) GCFA/District Contract Proposal (“Sunshine”)
MSC (Breen/Perry) Student Trustee voted affirmative unanimously carried to approve the GCFA/District Contract Proposal (“Sunshine”). Joe reported that this does not contractually obligate GCFA or the District with any particular changes in the contract. This allows the Board to accept this as a public notice or sunshine that these are the items to be discussed. The District has selected items A, B, C and D; the GCFA selected item E. The GCFA met today and added the following under item E 1. a.: Article 2 Recognition, be mutually reopened; 1. e Reduced Work Load (referred to as the Willy Brown Act); Item 1. f. Article 25, Other Duty and Compensation, lead faculty stipend. The District and GCFA will meet to begin negotiations.

(d) Budget Adjustments
MSC (Perry/Child) Student Trustee voted affirmative unanimously carried to approve budget adjustments.

(d) Gavilan Joint Community College District Payment to the Gavilan College Educational Foundation
MSC (Breen/Dover) Student Trustee voted no, unanimously carried to approve payment to the Gavilan College Educational Foundation. Steve stated that the Foundation paid the college more money than it had available to distribute. The Foundation has restricted and unrestricted funds and over the course of a year they would typically distribute unrestricted funds and over a period of time transferred money from restricted funds to unrestricted funds and also distributed those funds. The treasurer and president, who are volunteers, approved payments and the money was distributed to the college. The Foundation has run out of money is asking for the funds to be returned. The college is the only beneficiary from the Foundation. The Foundation notified the college of the mistake and is requesting the money be repaid. Steve stated that the college has a legal obligation to return the funds. If the Board decides not to approve the request the Foundation can file a claim. Steve stated that he is recommending that the college return the money to the Foundation. The Foundation will reconstitute the restricted funds and have cash flow to operate through June 30, 2010. Joe Keeler is now overseeing the Foundation.

Ken Wagman, speaking on behalf of the Executive Board of the Gavilan College Faculty Association, reported that faculty is extremely concerned regarding the payment to the Foundation of $270,000 from the general fund since the Foundation gave the money inappropriately. This is equivalent to 60-65 3 unit classes and Dr.
Kinsella has stated that classes need to be cut in spring 2011. This mistake will have an impact on the GCFA membership and students. The $270,000 was not budgeted for anything else. The Foundation has the college name in its title and the college will be damaged in the eyes of the community. Ken stated that over the life of the Foundation the college has contributed over $500,000 of the $1.4 million of its annual support payments. In addition a significant amount of student scholarship money is run through the Foundation, but the money comes from other organizations. Over half the money the Foundation has raised for the college in its life has actually not been raised. Of the requested $270,000 payment it appears that the Foundation has raised less than one third of that amount. By making this payment the Board has let the Gavilan Foundation dictate Gavilan College’s priorities and forced the board to use general fund money to pay for items the administration or the Board would not have supported out of the general fund. The GCFA respectfully asks the Board to demand dramatic changes in how the Foundation is run in order to use our name and to raise unrestricted funds so the Board, as the elected members of the community can be in the rightful position of determining the direction of the college not volunteer members of the Foundation board.

Steve Kinsella stated that he appreciated Ken contacting him prior to the board meeting. The $270,000 is coming out of the ending fund balance and has nothing to do with the classes in the schedule. The need for the reduction in the class schedule is due to the college being over the 350 full time equivalent students which is over the amount that the state will pay. The college is reducing the class schedule to get back to cap. Mistakes were made and there is no excuse offered. One Director has contributed $40,000 – $75,000 of his own money. Steve stated that a one time payment will not cause the loss of any job nor will it have any impact on the budgets. The factors causing us to act have nothing to do with the $270,000 payment to the Foundation. Steve stated that the college has had an operating agreement with Foundation for about four years, where the college pays $65,000 for marketing and fund raising activities. The Foundation in turn raises money and puts on events. The typical arrangement that exits between foundations and colleges is the college hires an executive director and the person is part of college staff because foundations have a difficult time raising unrestricted money. Steve noted that when he arrived at Gavilan a lot of work went into raising very little and the person serving as the Development Officer worked for over two years for virtually nothing. This is a volunteer organization and mistakes can happen.

Trustee Robinson stated that she was disturbed by the legal dilemma and wants to make sure this does not happen again. The Foundation is a separate entity from the college and the Board needs to keep the two separate.

Trustee Child stated at one time the operation of the Foundation took up much of staff time as part of their assignment. If everyone looked at all the money paid from the general fund to the Foundation and the amount contributed in the most recent span of years there is a net plus gain. The money raised by the Foundation has gone to programs that have benefited Athletics, Puente, and Fine Arts. The college does need to put decision making processes in place to prevent this from happening again. We do not want to lose sight of long range benefits. If payment is not made the college will have to spend money on legal counsel fees. Trustee Child indicted that he would vote in favor of the motion.
Trustee Perry shared her experience as a volunteer for the United Way of the Santa Clara County Board, which went bankrupt overnight because of a same problem. The problem needs to be corrected and there needs to be stronger oversight of the Foundation. It is very important to the donors who contribute to the college.

Student Trustee Kempis expressed a concern about how this makes Gavilan look the cuts in classes and does not want to see this happen again.

Denise Apuzzo, professional support staff, an advisor to the Gilroy Foundation for over 10 years and other boards, stated that this was a rookie mistake. The Foundation needs to be closer to Gavilan College. Denise stated that a lot of the money was funneled through the Foundation, not raised. As a member of the Gavilan Expenditure Reduction Task Force a review of the tax returns for the Foundation and noted that the it had not been making money for the last couple of years because of the economy. There needs to be better oversight of the Foundation. This is devastating news for the college and its reputation.

IV. CLOSING ITEMS
1. The next regularly scheduled Board meeting is May 11, 2010, 7:00 p.m. City Council Chambers, Hollister.

2. Adjournment at 8:18 p.m.