



NEWPORT-MESA Unified School District

2985 Bear Street • Costa Mesa • California 92626 • (714) 424-5000

BOARD OF EDUCATION

**Dana Black • Walt Davenport • Martha Fluor
Judy Franco • Charlene Metoyer • Vicki Snell • Karen Yelsey**

Frederick Navarro, Ed.D., Superintendent

August 1, 2016

Hon. Charles Margines,
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judges Margines:

The enclosed response to the Grand Juries Report "Asbestos in Orange County Public Schools" is from the Newport-Mesa Unified School District. Thank you for your concern and work on behalf of the staff and Students of the Newport-Mesa Unified School District.

Sincerely,

A handwritten signature in blue ink that reads "Timothy H. Marsh".

Timothy H. Marsh
Administrative Director
Facilities Support Services

TM/lah

Enc.

**2015-2016 GRAND JURY SURVEY ON ASBESTOS
FINDINGS AND RECOMMENDATIONS**

Findings

- F1. All but one of Orange County’s twenty-eight school districts have (encapsulated) asbestos present at one or more its schools.**

The Newport-Mesa Unified School District disagrees wholly with this finding. Each school district keeps records on its own facilities and whether its facilities have encapsulated asbestos. We have no knowledge of the status of facilities in other school districts and, therefore, cannot verify the accuracy of the Grand Jury’s findings.

- F2. Although current EPA standards provide that encapsulated asbestos does not present an immediate hazard to people who come near it, any physical disturbance and/or weathering which damages that encapsulation and releases asbestos fibers into the air will present an immediate hazard to anyone exposed to those fibers. Hence, broad-based awareness of where encapsulated asbestos is located is essential to avoid disturbing it such that it does become a threat to students and staff.**

The Newport-Mesa Unified School District disagrees partially with this finding. Broad-based awareness of where encapsulated asbestos is located may lead to vandalism thereby putting school district facilities, employees and students at risk. Certainly, employees of the school district that may come in contact with Asbestos as part of the job need to be aware of where asbestos is located but we disagree that members of the public need to know as this may create safety and security concerns. Newport-Mesa Unified School District agrees that encapsulated asbestos does not pose a health hazard to the public. A large disturbance would be required to create a possible health hazard.

- F3. Many school districts are not in full compliance with the AHERA regulatory requirement to have applicable AHERA reports available in the main offices of each school for public review.**

The Newport-Mesa Unified School District disagrees wholly with this finding. Our school district is in compliance with AHERA regulations. Our AHERA report is available for public review at our district office and at each of our schools in compliance with AHERA regulations, 40 C.F.R. section 763.80 et seq.

- F4. Many school districts are not in full compliance with the AHERA regulatory requirement to identify at each school in their district a “Designated Person” and to train each Designated Person to EPA-defined standards.**

The Newport-Mesa Unified School District disagrees wholly with this finding. Our school district is in compliance with AHERA regulations and has a designated person at

the district level. The AHERA regulations do not require a trained designated person at each school.

- F5. Although nearly all school districts train their facilities and maintenance staff on hazardous materials management, many fail to provide hazardous materials training to their teaching and administrative staff.**

The Newport-Mesa Unified School District disagrees wholly with this finding. Our school district has trained maintenance staff and other staff as mandated by AHERA regulations.

- F6. Orange County public schools are subject to very infrequent EPA inspections for AHERA compliance.**

The Newport-Mesa Unified School District disagrees wholly with this finding. We do not control the frequency of EPA inspections nor can we make an assessment as to whether inspections are frequent or infrequent.

- F7. Inadequately managed construction efforts at more than one Orange County public school have led to expensive and disruptive hazardous materials events. Many Orange County school districts lack one or more *documented* requirements for contracting for construction that implement generally recognized best practices for dealing with hazardous materials. Such written best practices include:**

- a. Performing all work at schools that deals with, or potentially deals with, hazardous materials at times when students and staff are not present,**
- b. Controlling the scope of construction/modernization/major repairs undertaken in any one year to remain within the district's ability to manage the efforts,**
- c. Separately contracting for hazardous materials inspection, abatement, and construction work once hazardous materials are abated,**
- d. Including clear schedule performance requirements in every contract,**
- e. Defining intermediate schedule milestones for all construction-related work that is expected to take over one month to complete, and**
- f. Requiring monitoring by district senior staff of progress on construction work via personal walkthroughs of the work in progress.**

The Newport-Mesa Unified School District disagrees wholly with this finding. The Newport-Mesa Unified School District manages its construction projects in accordance

with federal and state laws and regulations and utilizes best practices. We are unaware of processes at other districts.

- F8. Many school districts with public charter schools approved and financed by their district, lack, and have not provided their charter schools with, written definitions of the respective roles and responsibilities of the district and the charter school in dealing with, written definitions of the respective roles and responsibilities of the district and the charter school in dealing with hazardous materials and with AHERA regulatory compliance.**

The Newport-Mesa Unified School District disagrees wholly with this finding. Under state law, it is the responsibility of the independently run charter schools to manage their facilities and comply with AHERA regulations. The Grand Jury's finding is inconsistent with state charter school law.

- F9. Many school districts rely on paper documents for recording key information such as facilities data, facilities construction and repair plans, and AHERA reports.**

The Newport-Mesa Unified School District disagrees wholly with this finding. The Newport-Mesa Unified School District complies with AHERA regulations which require the maintenance of paper records. The Grand Jury's finding is inconsistent with federal law and AHERA regulations.

- F10. Some school districts have no documented facilities plans, and many districts that have plans lack key information in their plans such as estimated costs, funding sources, and schedules for work initiation and completion.**

The Newport-Mesa Unified School District disagrees wholly with this finding. The finding is vague as to the types of plans, key information, costs, funding sources, and schedules that are referred to. The Newport-Mesa Unified School District maintains plans and key information in various forms depending on the nature of the project that is being considered. The Grand Jury's "one size fits all" approach without considering the nature, timing of project implementation, and size of the individual project is impractical, unreasonable, wasteful, and not required by law.

- F11. Many school districts fail to post key safety-related information on their web sites such as upcoming activities at school facilities involving the abatement of hazardous materials.**

The Newport-Mesa Unified School District disagrees wholly with this finding. Posting safety-related information on the school district's website as suggested by this finding may increase safety and security issues. Safety-related information is available at the district office.

F12. Despite the fact that all Orange County school districts serve highly language-diverse communities, several districts have no provision for communicating with their community in any language other than English.

The Newport-Mesa Unified School District disagrees wholly with this finding. The Newport-Mesa Unified School District complies with state law regarding the translation of documents provided to parents.

Recommendations

- R1. Each school district should request the Orange County Department of Education to devote, in the year following publication of this Grand Jury report, one or more of its monthly “all districts” meetings to discussion and advice on handling hazardous materials. Representatives from each school district should participate in these meetings, and discussions should cover, AHERA compliance, resources available for in-depth AHERA training, and contract management. (F1, F2, F3, F4, F5, F6, F7, F8)**

This recommendation will not be implemented because it is not warranted, is not reasonable, and is vague. There is no legal authority that would authorize the Orange County Department of Education to require school district employees to attend meetings at the Orange County Department of Education. The Orange County Department of Education does frequently provide information to school districts on a wide range of subjects and may, in the future, provide information on AHERA to school districts.

- R2. Each school district should within nine months of the publication of this Grand Jury report develop and document a communications plan for parents and other stakeholders and post the plan on its web site. The plan should identify what information will be provided and by what means this communication will be accomplished. The plan should address how issues relating to hazardous materials will be communicated, and in what languages, to ensure effective communication. (F10, F11, F12)**

This recommendation will not be implemented because it is not warranted and is not reasonable. The current practice of making the AHERA report available to the public at the district office and each school site is sufficient. The Grand Jury’s recommendation will raise security and safety concerns that could put school district facilities, employees and students at risk. The Grand Jury’s recommendation is not required by law.

- R3. Each school district should within nine months of the publication of this Grand Jury report create and have a process in place to use and keep up-to-date their web site communications with parents and stakeholders of that district. (F9, F10, F10)**

This recommendation will not be implemented because it is not warranted, is not reasonable and is very vague as to what type of communications are being referred to. The current practice of making the AHERA report available to the public at the district office and each school site is compliant and meets federal law. The Grand Jury’s recommendation will raise security and safety concerns that could put school district facilities, employees and students at risk. The Grand Jury’s recommendation is not required by law.

- R4. Each school district should develop and maintain a computerized database listing all district buildings and structures and post that information in its web site. The database should contain the following for each building: date and types of**

construction, dates and costs of major repairs and modernization, numbers and sizes of classrooms, lists of other facilities including offices, lounges, gyms, cafeterias, laboratories, computers and other data processing equipment, and playground equipment. (F9, F10)

This recommendation will not be implemented because it is not warranted and is not reasonable. The current practice of making the AHERA report available to the public at the district office and each school site is compliant and meets federal law. The Grand Jury's recommendation will raise security and safety concerns that could put school district facilities, employees and students at risk. The Grand Jury's recommendation is not required by law. This recommendation will require additional funding or a transfer of funds from educational programs. Prioritization of funding should be determined by the elected school board in accordance with its Local Control Accountability Plan (LCAP).

- R5. Each school district should within nine months of the publication of this Grand Jury report create a comprehensive baseline plan for school facilities construction including new construction, retirement of schools or buildings at schools, modernization, hazardous materials, abatement, and major repairs. Each effort should include estimated cost, planned funding source and status, and schedule for start and completion of work. This plan should be updated annually and posted on the district's web site. (F9, F10)**

This recommendation will not be implemented because it is not warranted and is not reasonable. The current practice of making the AHERA report available to the public at the district office and each school site is compliant and meets federal law. The Grand Jury's recommendation will raise security and safety concerns that could put school district facilities, employees and students at risk. The Grand Jury's recommendation is not required by law. This recommendation will require additional funding or a transfer of funds from educational programs. Prioritization of funding should be determined by the elected school board in accordance with its LCAP.

- R6. Each school district should within nine months of the publication of this Grand Jury report create a plan, identifying funding sources, to remove all asbestos from schools and other facilities in their district within twenty years or sooner and report progress on this plan annually at its board meetings. If the removal of asbestos would include removal of other hazardous materials as part of the same effort, the plan should describe this. (F1, F2, F10)**

This recommendation will not be implemented because it is not warranted and is not reasonable. The current practice of encapsulating asbestos is safe, efficient and cost effective. The Grand Jury's recommendation is not required by law. Prioritization of funding should be determined by the elected school board in accordance with its LCAP. The removal of asbestos is not required by law and would require the transfer of funds from educational programs for students. The recommendation is wasteful and unnecessary because encapsulated asbestos does not pose a safety hazard.

- R7. Each district should within nine months of the publication of this Grand Jury report document and implement requirements to budget for and perform AHERA inspections every three years. (F6)**

This recommendation has already been implemented. The Newport-Mesa Unified School District budgets for and conducts an AHERA inspection every three years and has done so for a number of years.

- R8. Each district should within nine months of the publication of this Grand Jury report document and implement requirements to make available at the main office of each school in its district the AHERA reports applicable to that school. (F3, F6)**

This recommendation has already been implemented. The Newport-Mesa Unified School District maintains a copy of its AHERA school report at each school in the school district.

- R9. Each district should within nine months of the publication of this Grand Jury report appoint an EPA-defined "Designated Person" at each school, and provide the EPA-required training for those persons. (F4, F6)**

This recommendation will not be implemented, because it is not warranted, is not reasonable and exceeds legal requirements. The AHERA regulations only require a designated person at the district level.

- R10. Each district should within nine months of the publication of this Grand Jury report identify the hazardous materials training requirements for management, facilities (including maintenance contractors if they are used), and administrative personnel, and teaching staff in its district. Each district should maintain records on the training provided, including content, to whom it was provided, when it was provided, who provided it, qualifications of trainer(s). (F5)**

This recommendation will not be implemented, because it is unwarranted, is not reasonable and exceeds the legal requirements set forth in the AHERA regulations, 40 C.F.R. section 763.92. Appropriate maintenance staff are trained each year but there is limited time for training teaching staff and that time must be prioritized in conformance with state LCAP priorities and priorities set by the elected school board.

- R11. Each district should within nine months of the publication of this Grand Jury report document and implement requirements to schedule and complete any work involving hazardous materials for days when students and staff are not present in the affected areas. (F7)**

This recommendation will not be implemented, because it is unwarranted, unreasonable, overly broad and not required by law. The Newport-Mesa Unified School District will comply with all applicable federal and state laws and regulations and follow best practices. It is not always feasible to close an entire school when construction work is

taking place. Depending on the nature and scope of the construction project, school district officials will exercise their professional judgment and discretion and decide on a case-by-case basis on what is legally required and what is the safest approach to protect the wellbeing of students and employees while construction is taking place.

- R12. Each district should within nine months of the publication of this Grand Jury report document and implement requirements for district schools to contract separately for hazardous materials inspections, remediation/abatement of those materials, and the actual construction in areas requiring remediation. (F7)**

This recommendation will not be implemented because it is not warranted, is not reasonable, and is overly broad. The use of the term “contract separately” is ambiguous and seems to state the school districts should not, in some cases, contract with a general contractor who then, in turn, retains subcontractors to do the work. It should be noted that in many cases the Newport-Mesa Unified School District has contracted separately for asbestos inspections, remediation and abatement of asbestos and general construction. The Newport-Mesa Unified School District believes that the decision to contract separately or contract with a general contractor who contracts with subcontractors should be left to the discretion of school district officials to decide on a case-by-case basis taking into consideration the size, scope and nature of the construction project.

- R13. Each district should within nine months of the publication of this Grand Jury report document and implement requirements for district schools to include schedule performance requirements in every contract for repairs, modernization, and/or new construction. Intermediate schedule milestones should be defined in every contract for all work anticipated to take longer than one month to complete. (F7)**

This recommendation will not be implemented because it is overly broad, inflexible, rigid, is not warranted, and is not reasonable. Recommending rigid requirements for every contract, large or small, regardless of the scope or nature of the project is wasteful, capricious and arbitrary and fails to take into consideration the variations in the type of construction projects school districts engage in.

- R14. Each district should within nine months of the publication of this Grand Jury report document and implement requirements for district schools to monitor contractor schedule performance. Such monitoring should be via personal staff walk-throughs of work in progress. Procedure should require every contractor to report monthly on that contractor’s performance in meeting schedule milestones and report on the current estimated date of completion of all work. (F7)**

This recommendation will not be implemented because it is overly broad, inflexible, rigid, is not warranted, and is not reasonable. Recommending rigid requirements for every contract, large or small, regardless of the scope or nature of the project is wasteful, capricious and arbitrary and fails to take into consideration the variations in the type of construction projects school districts engage in.

- R15. Each district with current plans for modernization and/or major repairs to school facilities which lack schedules for completion, which lack cost estimates, and/or which fail to identify funding sources should within nine months of the publication of this Grand Jury report update its plans to include these data. (F10)**

This recommendation will not be implemented because it is overly broad, inflexible, rigid, is not warranted, and is not reasonable. The needs of each school district are different and a blanket recommendation is wasteful of scarce resources and should be left to the discretion of school officials in each school district. It should also be noted that state funding for school construction is erratic making it difficult to plan future construction projects.

- R16. Each district should within nine months of the publication of this Grand Jury report share all site specific AHERA inspection data with all prospective bidders on repair, modernization, and/or new construction at that site. (F7)**

The Newport-Mesa Unified School District has implemented this recommendation as this has been standard practice in the district for quite some time.

- R17. Each district should within nine months of the publication of this Grand Jury report document and implement requirements to maintain all current AHERA reports electronically with a backup at one remote location, and not rely exclusively on that district's web site. (F9, F10)**

This recommendation will not be implemented because it is unwarranted and unreasonable. Maintaining electronic copies is not required by law and the school district maintains paper copies in multiple locations. The AHERA regulations require the maintenance of paper copies. The school district will consider maintaining electronic copies at its discretion.

- R18. Each district should within nine months of the publication of this Grand Jury report document and implement requirements to make its AHERA reports available on that district's web page. (F9)**

This recommendation will not be implemented because it is unwarranted and unreasonable. Maintaining electronic copies is not required by law and the school district maintains paper copies in multiple locations. The AHERA regulations require the maintenance of paper copies. The school district will consider maintaining electronic copies at its discretion.

- R19. Each district should within nine months of the publication of this Grand Jury report prepare written procedures for district charter schools clearly defining roles and responsibilities for facilities maintenance including the handling of hazardous materials. The procedures should address how district charter schools will pay for, achieve, and maintain AHERA compliance (e.g., AHERA inspections, identification**

and training of AHERA Designated Person(s), and availability of AHERA reports). (F8)

This recommendation will not be implemented because it is not warranted and is not reasonable. Under state law, it is the responsibility of the independently run charter school to manage their facilities and comply with AHERA regulations. School districts have no legal authority to oversee charter school compliance with AHERA.

R20. Each district should within nine months of the publication of this Grand Jury report prepare and implement written procedures defining roles and responsibilities for contracting for and monitoring performance of all construction activities at district charter schools. (F8)

This recommendation will not be implemented because it is not warranted or is not reasonable. Charter school boards are independent entities responsible for their school construction. School districts have no legal authority to oversee charter school construction.



NEWPORT-MESA Unified School District

2985 Bear Street • Costa Mesa • California 92626 • (714) 424-5000

BOARD OF EDUCATION

**Dana Black • Walt Davenport • Martha Fluor
Judy Franco • Charlene Metoyer • Vicki Snell • Karen Yelsey**

Frederick Navarro, Ed.D., Superintendent

January 10, 2017

Carrie L. Carmody, Ph.D.,
Foreperson
2016-17 Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response to "Dealing with Asbestos in Orange County Public Schools"

Dear Ms. Cormody:

The District's response to the Grand Jury's report issued on June 30, 2016 entitled "Dealing with Asbestos in Orange County Public Schools" was intended as the response from both the Newport-Mesa USD Superintendent and School Board.

Please contact me at (714) 424-7527 if you need further information.

Sincerely,

Tim Marsh
Administrative Director,
Facilities Support Services

TM/lah