



**FULLERTON JOINT UNION HIGH SCHOOL DISTRICT**

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**Business Services**

August 17, 2016

The Honorable Charles Margines  
Presiding Judge  
Orange County Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

RE: Fullerton Joint Union High School District's Response to the  
2015-2016 Orange County Grand Jury Report  
"Dealing with Asbestos in Orange County Public Schools"

Dear Presiding Judge Margines:

On behalf of the Board of Trustees of the Fullerton Joint Union High School District ("Board" and "FJUHSD," respectively), FJUHSD appreciates the opportunity to provide the information herein to you and the members of the Grand Jury of Orange County ("Grand Jury").

In accordance with *Penal Code* Section 933.05, FJUHSD respectfully responds to the Findings and Recommendations set out in the 2015-16 Orange County Grand Jury report titled, "Dealing with Asbestos in Orange County Public Schools" ("2016 Grand Jury Report"). The response from FJUHSD as to the Findings and Recommendations of the 2016 Grand Jury Report are set forth below.

It is important to note that FJUHSD's responses are provided with respect only to the schools within the Fullerton Joint Union High School District for which the Board of the FJUHSD is the governing body. FJUHSD does not purport to speak for any other school districts or local educational agencies in Orange County. Responses provided herein are with respect only to the Fullerton Joint Union High School District.

In accordance with *Penal Code* Section 933.05(a) with respect to the Findings outlined in the previously referenced 2016 Grand Jury Report, FJUHSD provides the following responses to the Grand Jury's findings and recommendations:

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

The FJUHSD disagrees wholly with this finding. FJUHSD has 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 FJUHSD disagrees partially with this finding. Encapsulated asbestos at school sites does not pose an immediate health hazard to staff members, students, or public. While employees of the district should be aware of where encapsulated asbestos is located, the District disagrees that broad-based public awareness of where encapsulated asbestos is located is prudent. Broad-based awareness of where encapsulated asbestos is located may lead to vandalism thereby putting school district facilities, employees and students at risk.

**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 FJUHSD disagrees wholly with this finding. FJUHSD is in full compliance with AHERA regulations. AHERA reports are available for public review at the District Service Center and at each of the District's schools in compliance with AHERA regulations, 40 C.F.R. section 763.80 *et seq.* In addition, FJUHSD has no knowledge of the status or location of AHERA reports in other school districts.

**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 FJUHSD disagrees wholly with this finding. The FJUHSD 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. In addition, the FJUHSD has no knowledge of the AHERA regulatory compliance of other school districts.

- 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 FJUHSD disagrees wholly with this finding. FJUHSD has trained maintenance and other staff members as required by AHERA regulations. FJUHSD is in compliance with AHERA regulations with respect to identifying and training the appropriate individuals. In addition, FJUHSD has no knowledge of the training practices of other school districts in the County.

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

The FJUHSD disagrees wholly with this finding. The FJUHSD performs all inspections as required by AHERA regulations. The frequency of these inspections is mandated in the AHERA regulations. The District cannot 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 FJUHSD disagrees wholly with this finding. FJUHSD manages its construction projects in accordance with all Federal and State regulations and requirements with respect to handling hazardous materials and utilizes best industry practices. In addition, FJUHSD has no knowledge of practices of other school districts in Orange County.

- 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 FJUHSD disagrees wholly with this finding. FJUHSD neither charters nor maintains charter schools and therefore cannot speak to the accuracy of this finding.

- 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 FJUHSD disagrees wholly with this finding. FJUHSD 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 FJUHSD disagrees wholly with this finding. FJUHSD recently completed a Facilities Needs Analysis and Facility Master Plan. Furthermore, FJUHSD is currently in the middle of a \$155 million Capital Facility Improvement Program which is being driven by the aforementioned Facilities Needs Assessment and Facility Master Plan. In addition, FJUHSD has no knowledge of practices of other school districts in Orange County with respect to facility plans.

- 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 FJUHSD disagrees wholly with this finding. As previously stated, FJUHSD complies with all Federal and State regulations and requirements with respect to handling hazardous materials, and utilizes best industry practices.

- 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 FJUHSD disagrees wholly with this finding. FJUHSD complies with State law regarding the translation of documents provided to parents. Key communications are translated into Spanish, Chinese, and Korean as appropriate for the school community being served. In addition, FJUHSD has no knowledge of translation practices of other school districts in Orange County.

### 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 by FJUHSD 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 primary source for information and training with respect to hazardous materials handling is not the Orange County Office of Education, that is not their role.

However, the Orange County Department of Education does frequently provide information to school districts on a wide range of subjects and may, in the future, choose to provide hazardous materials information 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 by the FJUHSD 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 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, F11)**

This recommendation will not be implemented by the FJUHSD because it is not warranted, is not reasonable and is vague as to what type of communications are being referred to. The FJUHSD is in compliance with all AHERA regulations with respect to records maintenance and availability. Furthermore, the Grand Jury’s recommendation is not required by law.



**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)**

The District does maintain detailed facilities and building information. However, this recommendation will not be implemented because it is not warranted or reasonable, and would be very costly. 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 raises serious security and safety concerns that could put school district facilities, employees and students at risk by providing detailed building information to the general public that could be used for nefarious purposes. In addition, the Grand Jury's recommendation is not required by law.

**R4. 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)**

As previously stated, the FJUHSD recently completed a Facilities Needs Analysis and Facility Master Plan. Furthermore, FJUHSD is currently in the middle of a \$155 million Capital Facility Improvement Program which is being driven by the aforementioned Facilities Needs Analysis and Facility Master Plan. This recommendation will not be implemented beyond what has already been accomplished in the needs assessment and facilities plan; it is simply not warranted or reasonable. The Grand Jury's recommendation is not required by law and would require that funding be diverted from other educational programs.

**R5. 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 in full compliance with current law and is considered safe. The Grand Jury's recommendation would require the commitment of significant financial resources to accomplish. It should also be noted that the removal of asbestos is not required by law; complete removal of asbestos would be wasteful and unnecessary because encapsulated asbestos does not pose a safety hazard.

- R6. 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 FJUHSD currently budgets for and performs the required AHERA inspection every three years and has been doing so for many years.

- R7. 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 FJUHSD maintains a copy of the AHERA school report as required by law at each of the District schools.

- R8. 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 or reasonable and exceeds legal requirements. AHERA regulations only require one designated person at the district level.

- R9. 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 and unreasonable and exceeds the legal requirements set forth in the AHERA regulations, 40 C.F.R. Section 763.92. Appropriate FJUHSD staff members are trained and records are maintained as required.

- R10. 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 FJUHSD will comply with all applicable Federal and State laws and regulations as well as follow best industry practices. It is not always feasible to close an entire school when construction work is taking place. FJUHSD staff members will exercise their professional judgment in accordance with applicable laws and regulations as to the safest and most prudent approach to protect the wellbeing of students and staff members while construction is taking place.

- R11. 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 FJUHSD complies with all applicable laws and regulations with respect to hazardous materials inspections, remediation/abatement of those materials, and the actual construction in areas requiring remediation and will exercise its professional judgment in accordance with applicable laws and regulations as to the safest and most prudent approach to protect the wellbeing of students and employees while remediation/abatement 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 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, not reasonable, inflexible, and unwarranted. Recommending specific requirements for every contract, large or small, regardless of the scope or nature of the project is arbitrary and fails to take into consideration the variations in the type of construction projects undertaken. FJUHSD staff members will use their professional judgment in accordance with applicable laws and regulations as to the appropriate means and methods for repairs, modernization, and/or new construction projects.

- R13. 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, not reasonable, inflexible, and unwarranted. Recommending specific requirements for contractor monitoring is not efficient, expedient, or unnecessary. FJUHSD staff members will use their professional judgment in accordance with applicable laws and regulations as to the appropriate means and methods for monitoring and managing construction projects.

- R14. 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, not reasonable, inflexible, and unwarranted. Recommending specific requirements with respect to project schedules and identification of funding sources is not efficient, expedient, or necessary.

Each project is unique and often requires a tailored approach. A blanket approach is wasteful especially given limited funding availability. FJUHSD staff members will use their professional judgment in accordance with applicable laws and regulations as to the appropriate means and methods developing project schedules and cost estimates.

- R15. 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)**

This recommendation has already been implemented. The FJUHSD adheres to this requirement.

- R16. 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. The FJUHSD maintains paper copies in multiple locations; AHERA regulations require the maintenance of paper copies.

- R17. 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. FJUHSD maintains paper copies in multiple locations; AHERA regulations require the maintenance of paper copies.

- R18. 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)**

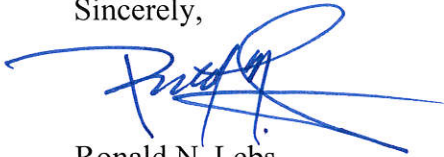
This recommendation will not be implemented because it is not warranted and is not reasonable. FJUHSD neither charters nor maintains charter schools. This recommendation is therefore not applicable.

**R19. 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 and is not reasonable. FJUHSD neither charters nor maintains charter schools. This recommendation is therefore not applicable.

If you have any questions, please feel free to contact me at (714) 870-2810.

Sincerely,



Ronald N. Lebs  
Assistant Superintendent, Business Services

RL/wd

cc: Orange County Grand Jury, 700 Civic Center Drive West, Santa Ana, CA 92701



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*Office of the Superintendent*

February 7, 2017

Carrie L. Carmody, Ph.D.  
Foreperson  
2016-2017 Orange County Grand Jury  
700 Civic Center Drive West  
Santa Ana, California 92701

Re: 2015-16 Grand Jury Report on Asbestos

Dear Dr. Carmody:

In response to your letter of December 23, 2016, please be advised that the response that the Fullerton Joint Union High School District sent on August 17, 2016 in response to the 2015-2016 Orange County Grand Jury report entitled "Dealing with Asbestos in Orange County Public School," was a response on behalf of both the governing board of the Fullerton Joint Union High School District and the Superintendent.

The Grand Jury Report was distributed to members of the governing board of the Fullerton Joint Union High School District when it was received. The Board Members were aware of the report and aware that the District Superintendent (and Secretary to the Board of Trustees) was going to respond to the report on behalf of both the Board of Trustees and the Superintendent. A response was drafted and sent to the Orange County Grand Jury on August 17, 2016. The response was distributed to members of the governing body of the Fullerton Joint Union High School District after it was sent.

If you have any further questions or need additional information, please contact us.

Sincerely,

Dr. V. Scott Scambray  
Superintendent  
Fullerton Joint Union High School District

SS/wd

cc: Ronald D. Wenkart, General Counsel  
Joan Velasco, Assistant Superintendent Business Services