



CYPRESS SCHOOL DISTRICT

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September 6, 2016

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

Re: Cypress School District's Response to 2015-16 Orange County Grand Jury Report, "Dealing with Asbestos in Orange County Public Schools"

To the Honorable Charles Margines:

In accordance with California Penal Code section 933.05, the Orange County Grand Jury has requested that the Cypress School District ("District") respond to Findings 1 through 12 and Recommendations 1 through 20 in the 2015-16 Orange County Grand Jury Report entitled, "Dealing with Asbestos in Orange County Public Schools."

Finding 1: All but one of Orange County's twenty-eight school districts have (encapsulated) asbestos present at one or more its schools.

District Response to Finding 1: The Cypress 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.

Finding 2: 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.

District Response to Finding 2: The Cypress 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 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. The Cypress 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.

Finding 3: 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.

District Response to Finding 3: The Cypress 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.

Finding 4: 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.

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District Response to Finding 4: The Cypress 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.

Finding 5: 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.

District Response to Finding 6: The Cypress School District disagrees wholly with this finding. Our school district has trained maintenance staff and other staff as mandated by AHERA regulations.

Finding 6: Orange County public schools are subject to very infrequent EPA inspections for AHERA compliance.

District Response to Finding 6: The Cypress 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.

Finding 7: 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.

District Response to Finding 7: The Cypress School District disagrees wholly with this finding. The Cypress 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.

Finding 8: 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 hazardous materials and with AHERA regulatory compliance.

District Response to Finding 8: The Cypress 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.

Finding 9: Many school districts rely on paper documents for recording key information such as facilities data, facilities construction and repair plans, and AHERA reports.

District Response to Finding 9: The Cypress School District disagrees wholly with this finding. The Cypress 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.

Finding 10: 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.

District Response to Finding 10: The Cypress 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 Cypress 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.

Finding 11: 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.

District Response to Finding 11: The Cypress 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.

Finding 12: 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.

District Response to Finding 12: The Cypress School District disagrees wholly with this finding. The Cypress School District complies with state law regarding the translation of documents provided to parents.

Recommendation 1: 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.

District Response to Recommendation 1: 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.

Recommendation 2: 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.

District Response to Recommendation 2: 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.

Recommendation 3: 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.

District Response to Recommendation 3: 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.

Recommendation 4: Each school district should develop and maintain a computerized database listing all district buildings and structures and post that information on 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.

District Response to Recommendation 4: 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).

Recommendation 5: Each school district should within nine months of the publication of this Grand Jury report create 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 website.

District Response to Recommendation 5: 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.

Recommendation 6: Each school district should within nine months of the publication of this Grand Jury report create a plan, identify 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.

District Response to Recommendation 6: 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.

Recommendation 7: Each school 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.

District Response to Recommendation 7: This recommendation has already been implemented. The Cypress School District budgets for and conducts an AHERA inspection every three years and has done so for a number of years.

Recommendation 8: Each school 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.

District Response to Recommendation 8: This recommendation has already been implemented. The Cypress School District maintains a copy of its AHERA school report at each school in the school district.

Recommendation 9: Each school 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.

District Response to Recommendation 9: 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

Recommendation 10: Each school 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).

District Response to Recommendation 10: 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. The 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.

Recommendation 11: Each school district should within nine months of the publication of this Grand Jury report document and implement requirements to schedule and complete any work involving materials for days when students and staff are not present in the affected areas.

District Response to Recommendation 11: This recommendation will not be implemented, because it is unwarranted, unreasonable, overly broad and not required by law. The Cypress 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 the safest approach is for protect the wellbeing of students and employees while construction is taking place.

Recommendation 12: Each school 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.

District Response to Recommendation 12: 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 Cypress School District has contracted separately for asbestos inspections, remediation and abatement of asbestos and general construction. The Cypress 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.

Recommendation 13: Each school 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.

District Response to Recommendation 13: 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.

Recommendation 14: Each school 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 dated of completion of all work.

District Response to Recommendation 14: 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.

Recommendation 15: Each school 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.

District Response to Recommendation 15: 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.

Recommendation 16: Each school 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.

District Response to Recommendation 16: The Cypress School District has implemented this recommendation as this has been standard practice in the district for quite some time.

Recommendation 17: Each school 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 paper copies.

District Response to Recommendation 17: 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

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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.

Recommendation 18: Each school 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 website.

District Response to Recommendation 18: 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.

Recommendation 19: Each school 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).

District Response to Recommendation 19: 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.

Recommendation 20: Each school 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.

District Response to Recommendation 20: 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.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Anne Silavs
Superintendent



Tim McLellan, Ed.D.
Assistant Superintendent, Business Services

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

Board of Trustees
Cypress School District



Office of the Superintendent

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January 4, 2017

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

Dear Dr. Carmody:

This letter confirms the Cypress School District's written response to the 2015-2016 Orange County Grand Jury Report issued June 30, 2106 and entitled "Dealing with Asbestos in Orange County Public Schools" was sent on behalf of the Board of Trustees as required by Penal Code Section 933.

Please let us know if you require any further information.

Respectfully,

Anne Silavs
Superintendent
Secretary to the Board of Trustees

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Superintendent: Anne Silavs