



CAPISTRANO UNIFIED SCHOOL DISTRICT

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September 8, 2016

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

**Re: Capistrano Unified School District's Response to 2015-2016 Grand Jury Report,
"Dealing with Asbestos in Orange County Public Schools"**

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Dear Judge Margines:

In accordance with California Penal Code section 933 and 933.05, this correspondence serves as the response of the Capistrano Unified School District ("District") to the 2015-2016 Grand Jury Report, "Dealing with Asbestos in Orange County Public Schools" ("Report"). Specifically, this correspondence responds to Findings F.1 - F.12 as well as Recommendations R.1 - R.20 of the Report.

DISTRICT'S RESPONSE TO GRAND JURY'S FINDINGS

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

Response: The District agrees with this finding only as it relates to the District. Over the years, the District has maintained AHERA reports relating to the condition and removal of asbestos at its Maintenance & Operations office and at individual school sites.

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.

Response: The District disagrees wholly with this finding. Pursuant to AHERA regulations, the District is required to maintain records of where encapsulated asbestos is located. As required by law, these records are available for public review at the District's Maintenance & Operations office and at individual school sites. The District's facilities, maintenance and

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construction personnel are familiar with the contents of the AHERA reports and the location of where encapsulated asbestos is located.

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.

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on the availability of applicable AHERA reports at other school districts within Orange County. The District is in compliance with AHERA requirements and provides copies of AHERA reports for public review at its Maintenance & Operations office and at individual school sites.

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.

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on whether other school districts within Orange County have identified and trained a “Designated Person”. The District has designated and trained a “Designated Person” who is responsible for asbestos-related activities at the District’s campuses. Please note that the AHERA regulations do not require a Designated Person at each school within the District, which this finding suggests.

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.

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on whether other school districts within Orange County train their teaching and administrative staff on hazardous materials management. The AHERA regulations do not require that teaching and administrative staff be provided with hazardous materials training, therefore, the basis for this finding goes beyond current statutory requirements.

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

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on the frequency at which other school districts within Orange County are inspected by the EPA for AHERA compliance. The District does not control the frequency at which EPA inspections are conducted nor can the District make an assessment as to whether the inspections occur “infrequently” as that term is vague and ambiguous.

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.
- e. Including clear schedule performance requirements in every contract,
- f.
- g. Defining intermediate schedule milestones for all construction-related work that is expected to take over one month to complete, and
- h.
- f. Requiring monitoring by district senior staff of progress on construction work via personal walkthroughs of the work in progress.

Response: The District disagrees wholly with this finding. The District utilizes generally recognized best practices in District construction projects when addressing hazardous materials, as applicable to each specific project. However, because every construction project is unique, the District must have the flexibility to execute its projects without a rigid set of abstract requirements that may be inapplicable to certain projects. In all cases, the District manages its construction projects involving hazardous materials in accordance with state and federal law.

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 hazardous materials and with AHERA regulatory compliance.

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on whether other school districts within Orange County have 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. Under current state law, an independently run charter school is responsible for managing its facilities and for compliance with AHERA regulations. In the case where the charter school leases or utilizes District facilities, the District provides the charter school with all AHERA information and reports. However, the District is not required to oversee the management of a charter school's day-to-day operations. Therefore, the basis for this finding goes beyond current statutory requirements.

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

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on whether other school districts within Orange County rely on paper documents for recording key information such as facilities data, facilities construction and repair plans, and AHERA reports. The District keeps written records of its facilities data, facilities construction and repair plans, and AHERA reports which are generally available to the public pursuant to AHERA requirements. Current state and federal law does not require that the District record facilities data, facilities construction and repair plans, and

AHERA reports electronically. Therefore, the basis for this finding goes beyond current statutory requirements.

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.

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on whether other school districts within Orange County have a documented facilities plan. The District's current master facilities plan contains information about estimated costs, funding sources, and schedules for work initiation and completion. The District's master facilities plan is available online at: <http://capousd-ca.schoolloop.com/MasterPlan>

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.

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on whether other school districts within Orange County fail to post key safety-related information on their websites such as upcoming activities at school facilities involving the abatement of hazardous materials. Whenever the District undertakes any project that involves the abatement of hazardous materials, the District takes all necessary steps to ensure the safety of students and staff members. If the specific project requires that safety-related information be relayed to students and staff members, the District takes all reasonable steps to ensure that such information reaches students and staff members, including the posting of warning signs to separate students and staff from the abatement, if applicable. In most cases, any work involving the abatement of hazardous materials is performed in completely separate buildings that are unoccupied. Notwithstanding the above, current law does not require that the District post safety-related information on its web site. Therefore, the basis for this finding goes beyond current statutory requirements.

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.

Response: The District disagrees wholly with this finding only as it relates to the District. The District is not in a position to comment on whether other school districts within Orange County have a provision for communicating with their community in any language other than English. The District communicates with its community in the most efficient, economical and appropriate manner possible and in compliance with all applicable laws.

DISTRICT'S RESPONSE TO GRAND JURY'S 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)

Response: This recommendation has not yet been implemented, but the District will request that the Orange County Department of Education 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. If the Orange County Department of Education elects to comply with this request, to the extent possible, the District will have at least one representative participate in such meetings.

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)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed below. This recommendation would require that the District develop a communication plan to address how *all* issues relating to hazardous materials will be communicated to parents and other stakeholders, irrespective of whether students, parents and other stakeholders will be exposed to the hazardous materials or if the hazardous materials even pose any safety risk. Therefore, this recommendation will not be implemented because it places an unreasonable burden on the District to develop an overly broad communication plan that could potentially raise concerns and safety issues where none exist.

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)

Response: This recommendation will not be implemented because it is not warranted or reasonable and vague as to the types of communications that are being referenced. As appropriate, necessary and applicable, the District updates its website communications with parents and stakeholders. Moreover, the District provides copies of AHERA reports for public review at its Maintenance & Operations office and at individual school sites.

R4. 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. (F9, F10)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed below. The posting of the above-mentioned information on the District’s website poses serious risk of placing District facilities, employees and students at risk. Moreover, at any given time, there are numerous projects and repairs taking place at each school site; therefore, updating the District’s website each time such projects and repairs takes place imposes an unreasonable burden on District staff. To the extent applicable, the Division of State Architect (“DSA”) website contains information regarding district buildings and structures that were the subject of DSA approval.

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)

Response: This recommendation has been implemented. The District's current master facilities plan is a comprehensive baseline plan for the District's facilities projects. The District's master facilities plan is available online at: <http://capousd-ca.schoolloop.com/MasterPlan>

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)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed below. As this Grand Jury Report notes, current EPA standards provide that encapsulated asbestos does not present an immediate hazard to people who come near it. Although the District recognizes that removal of all asbestos from schools and other facilities should be an eventual goal, the District is faced with budget restraints which require that expenditures be constantly evaluated and prioritized accordingly. The District will make all reasonable efforts to remove all asbestos from its schools and other facilities as soon as possible, but cannot commit to a fixed twenty (20) year time line. Please note that AHERA regulations do not require removal of all asbestos.

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)

Response: This recommendation has been implemented. The District budgets for, and conducts, an AHERA inspection every three (3) 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)

Response: This recommendation has been implemented. The District provides copies of AHERA reports for public review at its Maintenance & Operations office and at individual school sites.

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)

Response: 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)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed below. The District provides asbestos training to its maintenance and custodial staff, as required under AHERA regulations. However, AHERA does not require that management, administrative personnel, and teaching staff be provided with AHERA training; therefore, the basis for this finding goes beyond current statutory requirements. To the extent that hazardous materials other than asbestos are present at District sites, maintenance and facilities personnel work with Certified Industrial Hygienists to identify, and as appropriate, remove those hazardous materials.

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)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed below. Although the District makes every effort to schedule any work involving hazardous materials for days when students and staff are not present in the affected areas, it is not always practical or feasible to do so. Student and staff safety is the primary concern for the District and in the event any work involving hazardous materials is conducted where students and staff are present in the affected areas, the District will ensure that no students or staff members are exposed to the hazardous materials.

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)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed below. The District should be able to maintain the flexibility and autonomy to decide how it hires contractors who are performing work relating to remediation of hazardous materials. Moreover, depending on the specific project, in some cases the most practical and cost-effective solution is to have the same qualified entity perform remediation/abatement of the hazardous materials and the actual construction in areas requiring remediation. This protects the District from unforeseen construction delays that may arise from having multiple contractors working together on a site.

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)

Response: This recommendation has been implemented. Milestone scheduling is a required contractual component of the District's modernization, and/or new construction projects.

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)

Response: This recommendation has been implemented. District staff performs walk-throughs of work in progress on the District's modernization, and/or new construction projects.

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)

Response: The District does not currently have plans for modernization and/or major repairs to its facilities.

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)

Response: This recommendation has been implemented to the extent that the modernization, and/or new construction project which is the subject of the bid is conducted in an area that contains asbestos or asbestos containing materials.

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 paper copies. (F9, F10)

Response: This recommendation has been implemented. The District provides copies of AHERA reports for public review at its Maintenance & Operations office and at individual school sites. The District also maintains an electronic backup copy at the District office.

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 site. (F9)

Response: This recommendation will not be implemented because AHERA regulations do not require that the District make its AHERA reports available online. As required by law, the District provides copies of AHERA reports for public review at its Maintenance & Operations office and at individual school sites.

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)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed below. Under current state law, an independently run charter school is responsible for managing its facilities and for compliance with AHERA regulations. In the case where the charter school leases or utilizes District facilities, the District provides the charter school with all AHERA information and reports. However, the District cannot oversee the management of a charter school's day-to-day operations. Therefore, the basis for this finding goes beyond current statutory requirements.

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)

Response: This recommendation will not be implemented because it is not warranted or reasonable for the reasons discussed herein. Under current state law, an independently run charter school is responsible for managing its facilities and for compliance with AHERA regulations. In the case where the charter school leases or utilizes District facilities, the District provides the charter school with all AHERA information and reports. However, the District cannot oversee the management of a charter school's day-to-day operations. Therefore, the basis for this finding goes beyond current statutory requirements.

The District thanks the Grand Jury for its service and recommendations. Please contact John Forney at (949) 234-9545 with any questions.

Sincerely,



John G. Forney,
Chief Facilities Officer

JF/db

c: Kirsten Vital, Superintendent
Clark Hampton, Deputy Superintendent



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SUPERINTENDENT
KIRSTEN M. VITAL

February 13, 2017

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

Re: 2015-2016 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 Capistrano Unified School District sent on September 8, 2016 in reply to the 2015-2016 Orange County Grand Jury report entitled "Dealing with Asbestos in Orange County Public Schools", was a response on behalf of the Board of Trustees of the Capistrano Unified School District.

The Grand Jury report was distributed to members of the Board of Trustees of the Capistrano Unified School District when it was received. The Board members were aware of the report and aware that District staff was going to respond to the report on behalf of the Board of Trustees. A response was drafted and sent on September 8, 2016. The response was distributed to members of the Board of the Capistrano Unified School District and was ratified by the Board of Trustees at our January 25, 2017 Board meeting.

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

Sincerely,



John G. Forney
Chief Facilities Officer
Capistrano Unified School District

C: Ronald D. Wenkart, General Counsel

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