



# ALUM ROCK

# UNION ELEMENTARY SCHOOL DISTRICT

2930 Gay Avenue, San José, CA 95127 · Phone: 408-928-6800 · Fax: 408-928-6416 · www.arusd.org

August 9, 2013

Mr. Steven P. McPherson  
Foreperson  
Santa Clara County Civil Grand Jury  
Superior Court Building  
191 North First Street  
San Jose, CA 95113

**FILED**

AUG 21 2013

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk,  
Superior Court of CA County of Santa Clara  
BY STEPHANIE WONG

**Subject: Response to the Santa Clara County Civil Grand Jury Final Report: “Pay Practices in Alum Rock Union Elementary School District”**

Pursuant to Penal Code section 933.05, the Alum Rock Union Elementary School District (“District”) hereby submits its response to the Civil Grand Jury’s Final Report titled “Pay Practices in Alum Rock Union Elementary School District” dated June 24, 2013.

The Grand Jury had received a complaint that longevity pay increments were improperly awarded to management employees. The Grand Jury’s report, however, focuses on compensation practices related to the application of longevity points to both management employees and to teachers who are members of the Alum Rock Educators Association (AREA) and subject to the Collective Bargaining Agreement (CBA) between the District and AREA.

With regard to longevity points for teachers, the Grand Jury notes in its report that the District is “paying more than the compensation agreed upon for teachers in the CBA”, and that such payments may have been made as far back as 1996.

The Grand Jury concluded that the District has compensated its teachers in excess of the requirements contained in the CBA, and that longevity points have previously been “awarded at the discretion of District officials” such that the salaries shown in the CBAs and salary schedules do not reflect actual practice.

## **Grand Jury Finding 1**

The District pays more in compensation than is required by its Collective Bargaining Agreement with Alum Rock Educators Association teachers’ union by expanding the definition of “longevity points” to include out-of-district service.



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### **District Response to Finding 1**

The District disagrees with the finding. The Collective Bargaining Agreement (“CBA”) between the District and the Alum Rock Educators Association (“AREA”) has had in place for several years the following provisions:

- 1) Article 16.3.1, “Initial Step Placement and Transfer”, which states, “Employees shall be given full credit, on a year-to-year basis, up to ten (10) years of initial placement on the salary schedule for previous teaching experience. Teaching experience, for salary schedule placement purposes, shall include all similar experience in positions requiring equal certification qualifications.”
- 2) Article 16.3.3, “Career Increments”, which states, “Employees who have completed fourteen (14) years, nineteen (19) years, and twenty-four (24) years of credited service to the District shall receive career increments.”

Available records indicate that at the time that its 2003-2004 school year started, the District had a long standing past practice of counting up to ten (10) years of out-of-District service towards longevity increments for the District’s AREA bargaining unit members. During the 2003-2004 school year then Superintendent, Dr. Alfonso Anaya, took the position that no outside of District work experience should count toward the receipt of longevity increments for AREA unit members and, thus, the practice was discontinued.

Consequently, AREA unit members filed two grievances during the 2003-2004 school year, alleging that the District had a past practice of counting up to ten (10) years of out of District service toward longevity increments, and, therefore, had violated Article 16.3.3 of the CBA by discontinuing that past practice. Early in the 2004-2005 school year, then AREA President, Leti Gutierrez filed a grievance on behalf of all AREA unit members alleging the same contract violations as the two foregoing 2003-2004 grievances. The grievances were proceeding to binding arbitration when Dr. Anaya left the District in late 2004. Dr. Anaya was replaced by Superintendent, Dr. Anthony Russo.

In early 2005, as the result of consulting with legal counsel, the District decided that the three foregoing grievances should be settled. The basis of the settlement was that the District had a high likelihood of losing the arbitration due to the long standing District practice of interpreting Article 16.3.3’s ambiguous language “...credited service to the District..” to mean granting AREA unit members up to ten years of outside District experience towards the receipt of longevity increments. The language was thought to be ambiguous because it was susceptible to two meanings--one that outside experience was not intended to count toward receipt of longevity increments, the other that outside experience was intended to be counted.



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On March 18, 2005, then AREA President, Leti Gutierrez, entered into a settlement agreement with the District in which the District agreed to resume its long standing past practice of crediting AREA unit members with up to ten years of outside District experience towards the receipt of longevity increments under the CBA. A copy of the March 18, 2005, settlement agreement is attached as Attachment “A”.

Because the March 18, 2005, grievance settlement agreement clarified the CBA, it became a part of the CBA (the parties were agreeing to the interpretation of contract language which arbitrators would have enforced). Therefore, in this instance, the District has not paid more in compensation than is required by its CBA with AREA.

## **Grand Jury Recommendation 1**

The compensation practices of the District should be made to be consistent with the terms of its Collective Bargaining Agreement.

## **District Response to Recommendation 1**

The District compensation practices regarding its AREA bargaining unit members are already consistent with the CBA.

## **Grand Jury Finding 2**

The District’s definition of “longevity points,” when applied to non-union employees, is ambiguous.

## **District Response to Grand Jury Finding 2**

The District agrees with the following facts. On May 13, 2004, the District’s Board of Trustees adopted a policy stating, “Longevity increments in the amounts noted below will be granted and paid to those staff who maintain their consecutive employment with the Alum Rock Union Elementary School District (ARUSD) for 15, 20, and 25 years.” Despite the foregoing May 13, 2004, policy, District Superintendents from May 13, 2004, thru the 2011-2012 school year, continued to grant select management personnel longevity increments based upon outside of District work experience, in order to offer an incentive to attract and recruit experienced, qualified administrators to Alum Rock.

Stephen A. Fiss is currently the Superintendent of the District. He was first appointed as Interim Superintendent effective July 1, 2012, and subsequently appointed Superintendent



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effective January 1, 2013. During Mr. Fiss's tenure as the District's Chief Administrative Officer, the District has abided by the foregoing May 13, 2004, policy.

## **Grand Jury Recommendation 2**

The District's compensation documents for non-union employees should be clarified to define exactly what, how, and under what conditions compensation for "longevity points" is to be applied.

### **District Response to Grand Jury Recommendation 2a**

There is no need to clarify or define exactly how and under what conditions compensation for "longevity points" is to be applied to non-union employees because the foregoing May 13, 2004, policy is clear, and it is being adhered to.

### **Grand Jury Recommendation 2b**

The compensation practices of the District should be made to be consistent with the terms contained in its compensation documents.

### **District Response to Grand Jury Recommendation 2b**

Agreed; in addition, any deviation or change from the District's current pay policies will be pursuant to appropriate Board action in an open meeting and in compliance with the Brown Act.

Sincerely,

Stephen A. Fiss  
Superintendent

SETTLEMENT AGREEMENT

Alum Rock Educators Association

And

Alum Rock Union Elementary School District

Grievance Nos. 019/03-04 & 007/04-05  
(Evelia Rojas-Gonzales, et. al)

In order to amicably settle the above-referenced grievance, the parties agree as follows:

1. Consistent with past practice, the parties hereby agree that "credited service to the District" under Article 16, Section 16.3.3 includes service that was credited to the bargaining unit member under Section 16.3.1 for previous teaching experience outside the District at the time of hire.
2. The District will grant longevity increments pursuant to Paragraph 1 above retroactive to the beginning of the 2003-04 for Evelia Rojas Gonzales and retroactive to the beginning of the 2004-05 school year for all other unit members similarly affected. Payroll action will be initiated within 45 days of the date of this agreement.
3. AREA hereby acknowledges that this agreement does not constitute any admission or evidence of fault, wrongdoing or violation of any law or the District/AREA Collective Bargaining Agreement.
4. AREA hereby withdraws Grievance No. 019/03-04, 010/04-05 & 007/04-05 with prejudice.

Dated: 3.18.05

  
Leti Gutierrez, AREA President

Dated: 3/18/05

  
Ricardo Z. Medina, Assistant Superintendent