



# OAKLAND EDUCATION ASSOCIATION

AN AFFILIATE OF THE CALIFORNIA TEACHERS ASSOCIATION AND THE NATIONAL EDUCATION ASSOCIATION

February 15, 2019

## RE: AN OPEN LETTER TO OAKLAND TEACHERS, PARENTS & STUDENTS

Dear Friends & Family:

This report from the neutral factfinder endorses OEA's bargaining positions: that OUSD's teacher retention crisis is much worse than the state average and must be addressed, that lower class sizes will help improve educational outcomes for students, and that more supports for students are possible. Further, the report affirms that the unchecked growth of charter schools is [creating a systemic inequity](#) that is starving our public schools of the resources they need to thrive.

Our vision for Oakland is a community where students attend great schools that are staffed with caring, experienced teachers, counselors and nurses. People who are dedicated to their craft and don't have to drive for Uber on the weekends to make ends meet.

Unfortunately, our School Board is instead following the lead of their billionaire-backed campaign donors, GO Public Schools, who are pushing a competition-based model that has led to a patchwork of privatization, school closures, and unimproved student outcomes in districts like New Orleans, Newark and Detroit. Billionaires have been in control of our district for too long, leading to year-after-year of draconian budget cuts, a plan to close 24 neighborhood public schools in Black and Brown communities, and the largest and least credible school district bureaucracy in California. This bureaucracy has closed 18 district schools since 2004, with fourteen reopening as charter schools.

We are in a struggle for the soul of public education in Oakland, and billionaires can't teach our kids. It's time for the OUSD school board and the Superintendent to decide which side they are on: the side of the billionaires, or the side of Oakland students, parents and teachers. I know which side I'm on.

With love & solidarity,

Keith D. Brown, President  
Oakland Education Association

NAJEEB N. KHOURY  
ARBITRATION, MEDIATION, FACT-FINDING  
P.O. BOX 67, MONTROSE, CA 91021  
213-305-5286, NKHOURYADR@GMAIL.COM

February 15, 2019

Via EMAIL

Dennis Nelson  
OEA  
Bargainingteamdennis@gmail.com

Charles King, Panel Member  
CTA/NEA  
[cking@cta.org](mailto:cking@cta.org)

Jenine Lindsey  
OUSD  
Jenine.lindsey@ousd.com

John D. Gray  
School Services of California  
JohnG@sscal.com

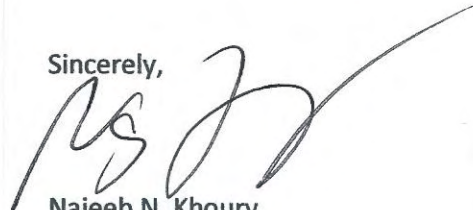
Roy Combs, Panel Member  
Fagen Friedman & Fulfrost LLP  
rcombs@f3law.com

Re: Service of Report For UPTE and Regents Factfinding, SF-IM-3192-E

Dear Advocates and Panel Members:

I am attaching the Factfinding Report to this letter, and this constitutes service of the Report. It was a pleasure working with the parties.

Sincerely,



Najeeb N. Khoury  
Panel Chair

Cc: Wendi Ross, PERB

1 Najeeb N. Khoury, Arbitrator  
2 P.O. Box 67  
3 Montrose, CA 91021  
4 213-304-5286  
5 nkhouryadr@gmail.com

6 IN THE FACTFINDING PROCEEDINGS  
7  
8 PURSUANT TO THE EDUCATIONAL EMPLOYMENT RELATIONS ACT  
9

10 OAKLAND EDUCATION ASSOCIATION,  
11 Union,  
12 &  
13 OAKLAND UNIFIED SCHOOL DISTRICT,  
14 Employer

Case No.: SF-IM-3192-E

FACTFINDING REPORT AND  
RECOMMENDATIONS FOR  
SETTLEMENT

15 Chairperson: Najeeb N. Khoury, Arbitrator  
16 Employer Panel Member: Roy A. Combs, Fagen Friedman & Fulfrost, LLP  
17 Union Panel Member: Charles King, CTA/NEA  
18 Advocate For the Union: Dennis Nelson, Bargaining Chair, Oakland Education  
19 Association<sup>1</sup>  
20 Advocate For the Employer: John Gray, School Services of California, Inc.<sup>2</sup>  
21 Hearing Dates: January 31 & February 1, 2019  
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27 <sup>1</sup> While Mr. Nelson functioned as the lead advocate, the Oakland Education Association's bargaining team  
28 participated in the presentation.

<sup>2</sup> While Mr. Gray functioned as the lead advocate, several of the District's leaders participated.  
FACTFINDING REPORT AND RECOMMENDATIONS FOR SETTLEMENT - 1



## BACKGROUND

The Oakland Education Association (OEA or Union) represents non-management, non-supervisory certificated employees at the Oakland Unified School District (OUSD, District, or Employer). There are approximately 3,000 employees in the unit. The previous collective bargaining agreement ran from July 1, 2014 to June 30, 2017. The parties made their initial proposals public on February 8, 2017, had their first bargaining session on December 7, 2016, and held 30 bargaining sessions for a total of 200 hours of bargaining. On May 18, 2018, impasse was declared pursuant to Public Employee Relations Board (PERB) Regulation 32792(a), and OEA filed a Request for Impasse Determination and Appointment of a Mediator on May 23, 2018. Per the Request for Impasse Determination, the parties reached agreement on five articles, with eleven articles remaining open.

After mediation failed to produce an agreement, PERB appointed Arbitrator Najeeb N. Khoury to chair a factfinding panel. The factfinding hearings occurred on January 31 and February 1, 2019 in Oakland, California. Both parties presented through their designated advocates and provided additional testimony and documents.

## ANALYTICAL FRAMEWORK

Unlike interest arbitration, where a third-party neutral sets the terms of a new contract, a third-party neutral in an Educational Employment Relations Act (EERA) factfinding simply provides recommendations. In essence, this makes factfinding an extension of bargaining. Ultimately, the parties must persuade one another of their positions, and the neutral factfinder simply provides an outside perspective to help the parties along.



1 Neutral factfinders have typically required the party seeking a change to the status quo to  
2 carry the burden of persuasion, and I will follow that convention. Further and as set forth in  
3 California Code Section 3548.2, EERA requires factfinders to consider the following criteria:  
4

- 5 1. State and federal laws that are applicable to the Employer.
- 6 2. Stipulation of the parties.<sup>3</sup>
- 7 3. The interest and welfare of the public and the financial ability of the public schools.
- 8 4. Comparison of the wages, hours, and conditions of employment of the employees  
9 involved in the factfinding proceeding with the wages, hours, and conditions of  
10 employment of other employees performing similar services and with other  
11 employees generally in public school employment in comparable communities.
- 12 5. The Consumer Price Index for goods and services, commonly known as the cost of  
13 living.
- 14 6. The overall compensation presently received by the employees, including direct wage  
15 compensation, vacations, holidays, and other excused time, insurance and pensions,  
16 medical and hospitalization benefits, the continuity and stability of employment, and  
17 all other benefits received.
- 18 7. Such other factors, not confined to those specified in paragraphs 1 through 6,  
19 inclusive, which are normally and traditionally taken into consideration in making  
20 such findings and recommendations.  
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27 <sup>3</sup> The parties stipulated that the District is a public school employer under EERA, that OEA is a recognized  
28 employee organization under EERA, that the parties have met all the procedural EERA requirements for factfinding,  
that I was appropriately assigned as the factfinding chairperson, and that there are eleven outstanding articles.  
FACTFINDING REPORT AND RECOMMENDATIONS FOR SETTLEMENT - 3

1 I will reference these specific criteria when discussing specific recommendations to  
2 which they apply.

### 3 ISSUES AND RECOMMENDATIONS

4 Before getting into the specific issues, I would like to make some general comments.  
5 First, all the parties to this factfinding proceeding have dedicated their professional lives to  
6 public education in Oakland. Public education is a right and a quality public education is  
7 essential to an ethical society that values the dignity and uniqueness of each child. The  
8 importance of public education is magnified in communities that have historically lacked  
9 resources. This makes the administrators, teachers, librarians, psychologists, nurses, counselors,  
10 and certificated staff of Oakland Unified heroes of the community.

13 California's current educational funding system is complicated and flawed in a number of  
14 ways. These flaws make finding resolutions to this contract and other teacher contracts  
15 throughout the state very difficult. As a general matter, the parties should recognize these flaws  
16 and work together to address these shortcomings. I will explain the shortcomings as I see them  
17 to encourage the parties to see that much of their fight lies at the state capitol and not with each  
18 other.

20 California ranks in the bottom quartile nationally on base per pupil funding. It also  
21 provides funding on the basis of attendance as opposed to enrollment. This often negatively  
22 impacts urban school districts where truancy rates tend to be higher. Further, state spending on  
23 education plummeted with the Great Recession. The Brown administration gradually provided  
24 more funding per year until pre-recession funding levels were reached during his final year in  
25 office. Yet, as those funding levels increased, the state also required that school districts pay  
26 dramatically higher pension contributions for their employees.



1 On the positive side, the Brown administration radically restructured the state's funding  
2 formula, with the new formula providing more resources for students who are English learners,  
3 eligible for free and reduced-price meals, or foster youth. Each student who falls within at least  
4 one of these categories receives a 20% supplemental grant (however, a student who falls into  
5 multiple categories does not receive multiple levels of additional funding and is referred to as an  
6 unduplicated pupil). When a school district has more than 55% of its population receiving  
7 supplemental funding, it also receives a concentration grant of 50%. However, charter schools  
8 have proliferated most in districts that receive concentration funding. Because funding is tied to  
9 attendance, districts with high charter density rates are losing funding at an alarming rate even  
10 when they are concentration grant districts.

13 Put differently, as certain state policies have helped high-needs urban districts (returning  
14 spending levels to pre-recession levels, providing supplemental and concentration grants), other  
15 policies have undercut the financial health of those districts (tying revenue to attendance,  
16 increasing pension contribution rates).

18 As part of its presentation, OEA presented on the impact of charter schools on Oakland  
19 Unified. I have no doubt that charter advocates and indeed charter policies are driven by a desire  
20 to increase options for disadvantaged children. Unfortunately, there are ways that the current  
21 system creates an unlevel playing field for traditional public schools and undermines those  
22 districts serving the very same disadvantaged children that charter advocates seek to aid.

24 Daily attendance revenue is apportioned to salaries, pensions, facilities costs, legal costs,  
25 administrative costs, etc. Some of these costs can shrink with declining enrollment. Other  
26 costs—namely legacy costs—do not shrink regardless of enrollment. Consequently, when  
27 attendance numbers shrink due to declining enrollment, the percentage of attendance generated



1 revenue going to legacy costs increases because there is a smaller population servicing these  
2 fixed costs, meaning there is less per pupil money for instruction. Charter schools, however,  
3 receive the same level of attendance-level funding but do not inherit any legacy costs. This  
4 means that the funding level per child for instruction is higher at charter schools, thereby creating  
5 an uneven playing field.  
6

7 Further, there is data suggesting that charter schools do not enroll a proportionate number  
8 of special education students. While this data is contested, OEA provided data showing that the  
9 percentage of OUSD's special education population has grown. This is important from a  
10 financial perspective because special education is underfunded. The federal and state  
11 governments mandate certain special education services, yet they do not provide nearly enough  
12 funding to meet all the mandates. This leads to the special education budget "encroaching" on  
13 the general budget. In other words, a certain percentage of general student-based revenue is  
14 diverted to special education. If the percentage of special education students increases, then a  
15 greater percentage of per pupil spending on general student population education must get  
16 diverted into special education dollars. If indeed charters do not enroll a proportionate number  
17 of special education students, then they will have more general education dollars to provide  
18 instruction to their general education student body than traditional public schools. Again, this  
19 creates an uneven playing field.  
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22 Ultimately, the question should not be whether economically disadvantaged families  
23 should have educational choices—they clearly should. The question should be whether the  
24 state's current funding system is sufficient, fair to traditional public-school children and allows  
25 all schools funded with public dollars to compete on an equal playing field. The parties should  
26 be able to work together to advocate for increased state spending on public education and for  
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1 sensible reform that will ensure Oakland Unified can compete on an equal playing field. Such a  
2 joint project can help rebuild trust that has been tested during this lengthy negotiating cycle.

3         Before tackling the specific issues raised in bargaining, I think it is important to explain  
4 how OEA and OUSD generally see the shared world they inhabit. OEA's general thesis is that  
5 its package of proposals, if adopted, would improve student success by addressing four key  
6 areas: teacher retention, smaller class sizes, lower caseloads for support providers (nurses,  
7 psychologists, counselors), and environmental justice. Oakland Unified agrees that there is a  
8 teacher retention crisis and wants to dedicate as many resources as possible to improving  
9 salaries.  
10

11         OEA acknowledges that the state should increase K-12 funding but emphasizes that  
12 OUSD actually receives higher revenues per pupil than most districts because of Oakland city  
13 parcel taxes and because OUSD is a concentration grant district. OEA claims that OUSD  
14 overspends on administrators and consultants, and that its economic proposals are feasible if  
15 OUSD more wisely spends its resources.  
16  
17

18         While OUSD does not make an inability-to-pay argument, it points to the fact that the  
19 county office of education and its state trustee must approve any deals it makes and that it is  
20 constrained financially. It further argues that it has a deep structural deficit and that any  
21 increases in labor costs will lead to cuts elsewhere. OEA counters that OUSD has a budget  
22 credibility problem. OEA points to surpluses in OUSD's actual financials. OEA believes that  
23 OUSD constantly overestimates expenses, which creates an appearance of a budget crisis only to  
24 lead invariably to actual surpluses.  
25

26         OUSD also argues that it is limited in how it spends money because the law requires it to  
27 use supplemental and concentration grants on the students who generate the additional revenue,  
28



1 implying that it cannot use the funds for across-the-board labor costs. OEA counters with a June  
2 10, 2015 California Department of Education letter stating the following: “For example, a district  
3 may be able to document in its LCAP<sup>4</sup> that its salaries result in difficulties in recruiting, hiring,  
4 or retaining staff which adversely affects the quality of the district’s educational program,  
5 particularly for unduplicated pupils, and that the salary increase will address these adverse  
6 impacts.”

8 OUSD argues that, on a per student basis, it spends more on certificated non-management  
9 salaries and benefits than many other comparable districts. OEA responds that certificated  
10 bargaining unit salaries as a percentage of total budget spend are lower in Oakland Unified than  
11 any other Alameda County school district, and that teachers’ salaries are the lowest in Alameda  
12 County with the disparity in salaries only worsening with time. In other words, Oakland Unified  
13 teachers with increasing tenure fall farther behind their peers in other districts. This has a  
14 particularly pronounced impact on the retirement formulas for long-tenured Oakland Unified  
15 teachers. The data does not look any better when comparing Oakland Unified to other urban  
16 districts in California. OUSD acknowledges that its non-supervisory certificated salaries are  
17 low, although it also emphasizes its generous health care package. OUSD recognizes the need to  
18 improve salaries to tackle its recruitment and retention problem.

21 OUSD’s unduplicated pupil population in 2016-17 was 77.61%. It loses approximately  
22 18.7% of teachers on a yearly basis. This is well above the state average. Also, the retention  
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28 <sup>4</sup> LCAP stands for Local Control Accountability Formula. Each District must implement an LCAP with participation and input from the community.



1 rate is even worse at some high-needs schools, with West Oakland Middle School retaining only  
2 9.1% of its teachers over a nine-year period.

3 With this complicated picture in place, I now turn to my recommendations on the  
4 outstanding issues.  
5

#### 6 Article I—Agreement

##### 7 a. Term of the Agreement:

8 Issue: Both parties have proposed a three-year term for the contract, running from July 1,  
9 2017 to June 30, 2020. The District has also suggested that it might be able to provide more  
10 guaranteed salary increases if the parties close out the 2017-18 school year and have the term of  
11 the agreement run from July 1, 2018 to June 30, 2021.  
12

13 Recommendation: I will recommend a contract term of July 1, 2017 to June 30, 2020. I  
14 do so because both parties have officially proposed a three-year term. However, I encourage the  
15 parties to explore the possibility of a July 1, 2018 to June 30, 2021 term should that enable the  
16 parties to reach resolution on the compensation article by allowing for more guaranteed salary  
17 increases.  
18

#### 19 Article 3—Definitions

20 Issue: OEA seeks to define what work should fall under the Daily Hourly Rate. It  
21 proposes adding the following language to the definition article: "This [hourly] rate shall apply  
22 to additional work including but not limited to mentoring emergency credentialed teachers, extra  
23 duty, extended day, prep substitution and all other activities for additional compensation  
24 referenced throughout this agreement." OEA also proposes defining the actual rate by tying it to  
25 the salary schedule with the following formula: taking column 4, step 6 and dividing it by 6.  
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28

1 Recommendation: The parties have been bargaining an adjustment to the actual daily  
2 rate in Article 10—Hours of Work. I will provide my recommendation on the appropriate daily  
3 rate in that section and therefore do not recommend adopting the portion of OEA’s proposed  
4 definition that ties the daily rate to a step and column rate.  
5

6 OEA, however, persuasively argues that administrators have applied different types of  
7 rates, including per diem rates, to work that falls within its proposed definition of the type of  
8 work to which the daily rate should apply. The District provided no strong counter to why the  
9 work identified in the proposed definition should be paid using a different rate. I recommend  
10 adopting OEA’s language regarding the type of work to which the hourly rate should apply.  
11

#### 12 Article 6—Association Rights

13 Issue: The outstanding issue<sup>5</sup> is OEA’s proposal to add the following language: “Elected  
14 Site Representatives duties shall be counted for three (3) hours of professional activities and  
15 duties per month as per Article 10.2.8.” Article 10.2.8 provides that unit members “shall  
16 participate in professional activities and perform professional duties beyond their regular work  
17 day as assigned by the appropriate administrator to a maximum of five hours per calendar month  
18 for the work year.” During the factfinding hearing, it became evident that there was confusion  
19 over the intent of the proposal.  
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21 At the hearing, OEA made clear it was not asking site representatives to be excused from  
22 professional development or parent-teacher interactions. The District seemed open to the idea of  
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27 <sup>5</sup> There were also issues involving OEA email access and new employee orientation. However, OUSD’s February  
28 12, 2018 proposal appears to give OEA the email access it is seeking (I note that there is recent PERB caselaw on  
union email access), and the parties have apparently agreed on new employee orientation language consistent with  
legislation mandating such access.

1 having some site representative work count towards extra duty time. Indeed, the contract  
2 currently reads: "In making additional duty assignments, the Site Administrator shall take into  
3 consideration the fact that a unit member has been elected or appointed as an Association  
4 Representative and will make every attempt to reduce extra duty responsibilities." Article 6.1.7.  
5 The District was hesitant to have three-fifths of such extra duty time be taken up by site  
6 representative duties.  
7

8       Recommendation: Because the contract already provides that administrators should make  
9 every attempt to reduce extra duty responsibilities from site representatives, I do not believe it is  
10 a radical departure from the status quo to have some site representative time count as extra duty  
11 time. However, I also agree with the District that having the majority of extra duty time be  
12 counted is an initial step too far. Consequently, I recommend that one and half hours of monthly  
13 site representative time count toward extra duty time. This should not displace professional  
14 development time or parent-teacher engagement time.  
15

#### 16 Article 10—Hours of Work

17       The parties focused their presentations on three outstanding issues<sup>6</sup> in the Hours of Work  
18 article: 1) the appropriate hourly rate; 2) the District proposal to remove language restricting the  
19 school day to the hours of 8:00 am to 3:45 pm; and 3) the District proposal to allow the 30-  
20 minute daily preparation period for elementary school teachers to happen at the beginning or end  
21 of the work day.  
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28 <sup>6</sup> There were other proposals in this Article but I recommend the status quo on those issues as the parties did not focus on them in their presentations.



1 a) The Appropriate Hourly Rate

2 Issue: The current contract language has varying hourly rates that apply to different  
3 types of assignments—with the current rates ranging from \$15.96 to \$37.69. However, the  
4 specific Extra Duty Hourly Rate is currently \$25.82. These rates have not changed since 2006.  
5 OEA proposes raising the Extra Duty Hourly Rate to \$50, making it the uniform rate for extra  
6 duty assignments, and ensuring future increases to the rate by linking it to the salary schedule.  
7 OUSD proposes raising the Extra Duty Hourly Rate to \$35 and making it the uniform rate for  
8 extra duty assignments.  
9

10 Recommendation: The parties agree that the Extra Duty Hourly Rate should increase.  
11 OUSD has made an offer that significantly improves the current Extra Duty Hourly Rate and that  
12 eliminates the disparity in rates for different activities. However, its offer of \$35 does undercut  
13 one current rate of \$37.69. It provided no compelling reason why it did so. I recommend using  
14 the \$37.69 rate as the new Extra Duty Hourly Rate so that no future work is paid at a lower level  
15 than the level at which it is currently paid. The \$37.69 rate also ensures that most extra duty  
16 work will be paid at a significantly higher level than is currently the case. Also, I recommend  
17 the adoption of language that provides the \$37.69 will be increased by the same percentage as  
18 future across-the-board salary increases. This language regarding increases to the rate should  
19 only apply after any across-the-board salary increases for this round of bargaining are  
20 implemented. Such language will ensure that the Extra Duty Hourly Rate does not remain  
21 unchanged for another thirteen years.  
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23 b) The District's Proposal to Remove the 8:00 am to 3:45 pm school day parameters

24 Issue: OUSD desires to create standardized bell times and calendars that would have  
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1 staggered start and end times, with start times as early as 7:45 am and end times as late as 4:30  
2 pm. In adopting these standardized, staggered times, the District can reduce its needed daily bus  
3 routes by twenty-five routes. OUSD contracts out its transportation services, and the reduction  
4 in routes will have a cost savings of approximately \$2.5 million. For reference, a one percent  
5 salary increase for OEA bargaining unit members costs approximately \$1.9 million. OUSD  
6 acknowledges that by adopting uniform, staggered schedules there will be less school site control  
7 over start times, and the earlier or later start times will impact families. OEA's main objection is  
8 that OUSD decided on this plan without input from the community or labor. OEA  
9 understandably does not want uniform schedules dictated to its membership or the community  
10 but is open to having a discussion on how best to implement a plan that will generate substantial  
11 savings.  
12

13  
14 Recommendation: I recommend that the current language remain in place for the 2019-  
15 2020 year but with a sunset provision making clear the language will not remain for 2020-2021.  
16 This will enable the parties to have a full academic year to discuss how best to implement the  
17 new schedules with input from the community and labor. Further, the \$2.5 million savings  
18 should be reinvested into the goal of improving recruitment and retention.  
19

20 c) Allowing a Daily Thirty-Minute Preparation Period for Elementary Teachers At  
21 Either The Beginning or End of The Work Day

22 Issue: This issue is directly tied to the previous one. If there is greater variance in the  
23 start and end time for elementary teachers, then it makes sense to have preparation time at either  
24 the beginning or end of the date.  
25

26 Recommendation: I recommend that the language remain status quo for the 2019-2020  
27 school year with the understanding that the new language will go into effect in 2020-2021 with  
28 the sunseting of the language regarding the school day parameters.



1 Article 12—Transfers and Assignments

2 Issue: The one outstanding issue under this Article is OEA's proposal that each school  
3 with an 80% or higher population of unduplicated pupils receive an addition full-time equivalent  
4 employee per 500 students. OUSD states that this proposal is too costly.  
5

6 Recommendation: I recommend the status quo. The reason is that I will be  
7 recommending improved caseload numbers, class size caps, and salary increases. I think  
8 spending in those areas makes more sense than adopting a proposal that does not clearly tie  
9 additional spending to class size reduction, caseload improvements or salary increases.  
10

11 Article 13 & 25—Evaluations And Peer Assistance and Review

12 Issue: The parties have spent four years piloting the Teacher Growth and Development  
13 System (TGDS) as a new evaluation system in the District. OUSD now proposes eliminating the  
14 California Standards for Teaching Profession (CSTP) evaluation system from the contract and  
15 replacing it with the TGDS. OEA does not object in theory to moving to the TGDS; however, as  
16 part of the pilot system, TGDS came with safeguards, such as the ability to have alternate  
17 evaluators. OUSD is eliminating those safeguards because the money to support those  
18 safeguards came from expiring grants.  
19

20 OEA wants to add language in Article 25 that limits the District's use of intermittent peer  
21 review reports to after the acceptance of the final peer review report. The District does not  
22 object to this addition but wants it to be part of an agreement with Article 13.  
23

24 Recommendation: There is agreement between the parties that, with the right support and  
25 financial investment, a move away from the CSTP and towards TGDS or a TGDS similar model  
26 makes sense. However, without a guarantee that the TGDS implementation will mirror the  
27 protocols of the pilot, I will not recommend changing the status quo. With that said, I  
28



1 recommend that the parties continue to work on language that incorporates changes that the  
2 Oakland community has embraced with regards to updating teacher evaluations. I also  
3 recommend that the parties accept the proposed change on the use of intermittent peer review as  
4 there does not appear to be a philosophical difference about this.  
5

#### 6 Article 15—Class Size

7 Issue: OEA has an ambitious proposal to reduce class sizes. It proposes reducing class  
8 size caps at all schools by two students over a two-year period—with class sizes being reduced  
9 by one each year. OEA proposes doubling the reduction at schools with a population of 80% or  
10 higher of unduplicated pupils—meaning class sizes would be reduced by four over two years at  
11 these schools. OEA also proposes adding language requiring OUSD to pay overages when class  
12 size numbers exceed the caps. OEA points out that there is presently no monetary disincentive  
13 preventing OUSD from exceeding the contractual caps. OEA asks for a \$25 daily per-pupil  
14 overage for elementary classes and an \$8 per-pupil, per-period overage for secondary classes.  
15 OEA has other class size proposals but focused its presentation on these issues. OUSD proposes  
16 raising some special education caps, reducing PE class sizes and fine arts classes, and reducing  
17 4<sup>th</sup>/5<sup>th</sup> grade class size caps in elementary schools with populations of 97% or higher of  
18 unduplicated pupils.  
19  
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21 OEA argues that large class sizes along with low salaries are central reasons for the  
22 retention crisis. It also argues that lowering class sizes is one of the most effective ways to  
23 improve student achievement. OUSD responds that its class size averages are comparatively  
24 good. It has a district wide average of 24.27, a K-3 average of 23.36, a 4-6 average of 25.85, a 7-  
25 8 average of 24.27 and a 9-12 average of 24.02. This compares to a composite comparative  
26 group average of 26.42, a K-3 average of 23.25, a 4-6 average of 28.33, a 7-8 average of 28.70,  
27  
28

1 and a 9-12 average of 25.69. OUSD also asserts that its classroom teacher ratio of 16.66:1 is the  
2 second lowest on its list of comparable districts.

3 OUSD prices OEA's class size reduction proposal at \$36.2 million, \$18.2 million for  
4 added personnel and \$18 million to add enough additional space in the form of leased portable  
5 classrooms.

6  
7 Recommendation: I agree that lower class sizes will improve teacher retention and  
8 educational outcomes. The question is what is a feasible recommendation recognizing the need  
9 to enhance salaries in the District and that lowering class sizes can be an expensive proposition.  
10 In looking at the actual class size caps in the contract, they are much higher than the District  
11 averages: TK/K is 27; 1-3 is 30; 4-6 is 31; 7-12 is 32 for English, World Language, Mathematics,  
12 Social Science & Non-Lab Science with varying class sizes for other areas. This shows that  
13 averages can be deceiving and that caps are important. However, it also means that the District  
14 should be able to mitigate the cost of lowering caps if it can better balance its current classes. I  
15 am also cognizant of the fact that we are in February 2019 and across-the-board reductions  
16 starting in July 2019 will be a challenge. Consequently, I recommend an across-the-board class  
17 size reduction of one (1) to be fully implemented by July 2020, with 20% of schools having an  
18 implementation date of July 2019. The intent is for implementation to happen first at the  
19 highest-needs schools. I also recommend that the parties form a joint class size reduction  
20 taskforce. This taskforce will be charged with looking at ways to fund further class size  
21 reductions to be implemented by July 2021.

22  
23 On the question of overages, I agree that a financial disincentive needs to be in place.  
24 However, given that this will be a new addition to the contract, I believe that smaller overages  
25  
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28



1 should be implemented at this time. I recommend a \$9 daily per-pupil overage for elementary  
2 classes and a \$2 per-pupil, per-period overage for secondary classes.

3 The District raised a good point regarding unintended consequences of class size  
4 reduction. There are certain classes and programs that are highly valued with long wait lists.  
5 Decreasing class sizes for these classes and programs can deny students the benefits of these  
6 programs. I encourage the parties to negotiate a way to identify these classes and programs and  
7 to negotiate a carve-out so that these valuable seats are not closed.  
8

9 The District provided no compelling reason for me to recommend changing the status  
10 quo on the special education numbers, although it did rightly point out that its special education  
11 numbers are lower than at most districts. I am recommending the status quo but acknowledge  
12 that raising these numbers slightly can have cost savings that can be applied elsewhere.  
13

#### 14 Article 17—Safety

15 Issue: The parties are essentially in agreement on this article. The parties affirm  
16 OUSD's status as a sanctuary district, emphasize the preference of restorative justice over  
17 punitive practices, and wish to maintain a safety committee. The main issues of dispute are how  
18 explicit to be about OUSD's status as a sanctuary district and whether there should be a change  
19 in the composition of the safety committee.  
20

21 Recommendation: Instead of reciting the sanctuary district policy verbatim in the  
22 contract, the parties should explicitly reference the policy. This will maintain OUSD's ability to  
23 change the policy if it is forced to do so by outside forces. It will also provide OEA members the  
24 protection of knowing that they will not be disciplined for following the policy as long as the  
25 policy is in effect.  
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28



1 As for the safety committee composition, it is currently composed of one-half  
2 management appointees and one-half union appointees. OEA proposes making the composition  
3 one-third management, one-third union, and one-third community-based members. This makes  
4 sense as these issues impact the whole school community. OUSD provided no good rationale for  
5 rejecting this proposal. I recommend adopting OEA's proposal regarding the committee's  
6 composition.  
7

#### 8 Article 21—Specialized Caseloads

9 Issue: OEA proposes reducing caseloads for counselors, nurses, psychologists, speech  
10 therapists, and resource specialists. It also proposes increased support for “newcomers,” defined  
11 as students who have recently arrived to the United States. OUSD proposes a modest reduction  
12 in counselor caseloads.  
13

14 Recommendation: The contractual counselor ratios are currently set at 1:600 and are  
15 allowed to increase to 1:700 when there is a reduction in workforce. OEA proposes reducing  
16 these numbers to 1:250 and 1:300. OUSD acknowledges that its staffing can support reducing  
17 the contractual caseloads numbers. Consistent with this reality, I recommend reducing the  
18 contractual number to 1:500 with that number being allowed to increase to 1:550 when there is a  
19 reduction in workforce.  
20

21 The current caseload for nurses is 1:1350. OEA proposes reducing this to 1:750.  
22 However, even at the current contractual caseload numbers, there are twelve open positions. The  
23 parties acknowledge that it is very difficult to recruit nurses. It makes little sense to lower the  
24 caseload number if OUSD cannot hire nurses to reduce the numbers. Rather, the parties should  
25 focus on reducing the current vacancies. They can do this by agreeing to recruitment and  
26  
27  
28

1 retention bonuses. I recommend that the District offer a signing/retention bonus of \$5,000, and a  
2 further retention bonuses of \$2,500 to be paid after each two years of service.

3 OEA proposes reducing the psychologist caseload to 1:700. This will require hiring two  
4 to three additional psychologists and will place OUSD in line with the National Association of  
5 School Psychologists standards. OUSD proposes the status quo. Given the increasing  
6 importance of school psychologists, especially as schools move toward community-based  
7 models, this seems like a reasonable and modest investment. I recommend the following  
8 language: "OUSD shall open three more psychologist positions, and the parties shall work  
9 together to recruit qualified candidates. If the vacancies are filled, then the caseloads for  
10 psychologists shall be 1:700."

13 OEA proposes creating a caseload cap of 1:40 for Speech and Language Pathologist  
14 Specialists (SLPs). The Education Code dictates that there should be a 1:55 average for SLPs.  
15 OEA did not provide compelling reasons why the contractual cap should be 15 less than the  
16 state-mandated average. The District proposes incorporating the Education Code averages into  
17 the contract; however, as demonstrated in the caseload article, averages can be deceiving and do  
18 not always guarantee appropriate ratios per employee. I recommend using the state average of  
19 1:55 as a cap. The District is already legally required to be staffed at this level and potential  
20 additional costs can be offset by rebalancing caseloads. The District raised the concern that there  
21 is a shortage of SLPs and it currently has multiple vacancies. Nevertheless, it cannot avoid the  
22 state-mandated averages. I encourage the parties to discuss ways to incentivize the hiring of new  
23 SLPs, whether through hiring bonuses or hiring them at higher salary schedule steps.

26 OEA proposes that Resource Specialists have a 1:24 caseload maximum. The Education  
27 Code dictates a 1:28 ratio. OUSD is currently staffed at approximately a 1:26 ratio. I



1 recommend that the parties agree to a 1:27 ratio. This will show that the District is trying to  
2 improve on the state mandate and should not come at a considerable cost to the District  
3 considering its current staffing levels.  
4

5 OEA proposes adding support services for teachers who teach newcomers—that is, recent  
6 immigrants. The number of newcomers attending OUSD schools has increased dramatically in  
7 recent years, and OEA gave a compelling presentation on the challenges of teaching students  
8 from various countries and cultures who come to the classroom with various educational  
9 backgrounds. The newcomer proposal includes lowering class sizes, providing additional  
10 support services, and providing additional materials for these students. While I am extremely  
11 sympathetic to these demands, I do not have enough information to make an informed decision  
12 on the appropriate level and extent of additional staff and services needed for newcomers. I  
13 recommend that the parties create a taskforce to study the issue and provide recommendations  
14 for possible implementation in 2020-2021.  
15

#### 16 Article 24—Compensation 17

18 Issue: The parties agree that OUSD salaries for this unit are low. The main dispute is  
19 over how much the District can afford. The District is offering a 1% raise for 17-18 that would  
20 be effective June 30, 2018, a 1% raise that would be effective July 1, 2018, a 1.5% raise that  
21 would be effective January 1, 2020, and a 1.5% raise that would be effective June 30, 2020. This  
22 equals a 5% raise over three years but with the raises happening in the middle or later part of the  
23 academic years except for the July 1, 2018 raise of 1%. OEA is seeking a 3% raise in 2017-  
24 2018, a 4% raise in 2018-19, and a 5% raise in 2019-20, totaling 12% during the life of the  
25 contract.  
26  
27  
28



1        There are also proposals on increasing substitute pay with both parties recognizing the  
2 need to recruit and retain high quality substitutes. There is presently a three-tier system for  
3 substitutes, with short-term substitutes receiving \$139 a day, long-term substitutes (defined as  
4 assignments between 30-59 days) receiving \$163 a day, and extended substitutes (defined as  
5 assignments of 60 days and over) receiving \$179 a day. OEA proposes increasing the short-term  
6 substitute rate to \$187 and maintaining the three steps with the same percentage increases  
7 between the different rates. OUSD wants to simplify its system by moving to a two-rate system.  
8 It proposes a \$150 rate for days 1-89 and a \$187 rate for days 90 and above. If OUSD's proposal  
9 were adopted, a substitute would make more per day between days 1 to 29 but less per day  
10 between days 30 and 89 than is currently the case. OUSD also proposes extending the number  
11 of days a substitute must work in an assignment to have his/her higher rate carry over into the  
12 next year.

13        Recommendations: The EERA statutory criteria require a comparison to comparable  
14 districts, a look at total compensation and a study of the CPI. The parties used slightly different  
15 comparable districts in their analyses. OEA focused on other Alameda County districts and other  
16 urban districts. OUSD looked at other Alameda County districts and some districts in  
17 neighboring counties. The data basically reveals the same story. OUSD non-management, non-  
18 supervisory employees receive less salary than most of the other districts in the comparable  
19 groups. Further, the phenomenon gets worse with time. Even when total compensation is  
20 accounted for, OUSD non-management, non-supervisory employees fair poorly. There is no  
21 doubt that this contributes to the retention crisis in OUSD. For instance, OUSD employees at  
22 BA+30, step one receive the second lowest pay among the twenty comparable districts chosen by  
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24  
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28

1 the District, and are the fourth lowest when looking at total compensation. By the time they get  
2 to BA+60, step 10, they are the lowest paid and the third lowest in overall compensation.

3 When it comes to CPI, OEA points to a report showing that CPI for the Bay Area was at  
4 4.5% for the 12 months ending December 2018. OUSD looks at state CPI numbers that ranged  
5 between 1.5% and 3.4% from 2013-2018. However, those CPI numbers increased every year  
6 and ended at 3.4% for 2017-18. In looking at the CPI for the Bay Area for the previous 5  
7 Decembers before December 2018, we see a 2.6% annual increase in December 2013, a 2.7%  
8 annual increase in December 2014, a 3.2% annual increase in December 2015, a 3.5% annual  
9 increase in December 2016, and a 2.9% annual increase in December 2017.

10 It is clear that OUSD's proposal of a 5% raise over three years will not keep pace with  
11 inflation. It is also clear that OUSD will have a very difficult time affording a 12% raise over  
12 three years, as it is in a structural deficit. If OUSD were financially healthier, I would  
13 recommend guaranteed yearly 3% raise for 17-18, 18-19, and 19-20 for a cumulative 9% raise  
14 over the life of the agreement. This would help OUSD wages in this unit become more  
15 competitive with other districts. However, I am cognizant that such a recommendation might  
16 place too much of a strain on the District's current finances. Therefore, I am recommending a 3%  
17 raise for 17-18, a 3% raise for 18-19 and an economic reopener for 19-20. Early indications  
18 from Governor Newsom's administration suggest possible increases in K-12 funding. Also, the  
19 reopener will give the parties time to work collaboratively on finding funding solutions (whether  
20 by reallocating current spending and/or by seeking additional revenues) for further raises.

21 OUSD did indicate during the hearing process that it might be able to offer more than a  
22 guaranteed 6% if the raises become effective later in time. There is, of course, a time value to  
23 money and OEA might not find such an outcome acceptable. But this recommendation is not



meant to foreclose discussions about other salary proposals that might work for the parties, including the possibility of having the contract's term run from July 1, 2018 to June 30, 2021.

On substitutes, I recommend accepting the District's proposal to reduce the three tiers to two tiers but in order to do so, the new lower tier must be at a rate higher than the previous second tier's rate. This will ensure that no substitutes are worse off under the new system. Therefore, I recommend a combined short and long-term rate of \$180 a day for all assignments up to sixty day and an extended rate of \$195 a day for assignments of sixty days or more. I make this recommendation because the parties have acknowledged the need and importance of recruiting and retaining substitute teachers. OUSD provided no compelling evidence to justify extending the number of days a substitute must work in an assignment to have his/her higher rate carry over into the next year. I recommend the status quo on this issue, i.e., the length of time needed to secure a carry-over rate should remain the same.

## CONCLUSION

I discussed the issues that the parties focused on at the hearing. I recommend that the status quo remain for any issues on which the parties did not orally present and on which I did not comment. I sincerely hope that these recommendations assist the parties in reaching a negotiated settlement.

Date: February 15, 2019

Najeeb N. Khoury, Arbitrator



1 **Concurring and Dissenting report of Panel Member Charles King**

2 **Case No: SF-IM-3192-E**

3 **February 14, 2019**

4 **Pursuant to California Government Code 3548.2**

5 As Panel Chair Khoury points out, this case is complicated by outside forces – namely an inadequate  
6 state support system, an unlevel playing field with charter schools, and the involvement of both the  
7 Alameda County Office of Education, and a state Trustee. I appreciate the Chair's experience and  
8 expertise and very much appreciate his commitment to assist the parties in reaching an agreement. I  
9 will detail exactly where I concur and dissent below, and I will also provide context for the difficulties the  
10 district faces that are not driven by outside forces but are of its own making.

11 I also note that the parties should also seek to affirm the value of newcomer students, particularly in a  
12 district that prides itself on being a Sanctuary District. These are students who with adequate support  
13 can strengthen the district with their diverse world views and experiences.

14 I have explored the district financial projections through its budgets and found them to be less than  
15 credible. I have also investigated the district's treatment of charter school expansion while  
16 simultaneously closing its own schools and found their behavior to be inconsistent with the best  
17 interests of the community and the students the district is charged with serving. I therefore concur in  
18 part and dissent in part as follows:

19  
20 1. Article 3 – Definitions

21 I concur with adopting OEA's language regarding the type of work to which the hourly rate  
22 should apply. [See below for articulation of the dollar amount of the hourly rate. I will concur in  
23 part and dissent in part. This will form a compromise, with OEA coming off of it's tying of the  
24 hourly rate to a specific cell on the salary schedule but increase the hourly rate by the  
25 percentage increases applied to the salary schedule in this agreement.]

26 2. Article 6 - Association Rights

27 I concur with the Chair's recommendation of Association release at 1.5 hours per month, with  
28 the proviso that these hours not to displace professional development training time.

29 3. Article 10 - Hours of Work

30 a. Hourly Rate

31 I concur in part and dissent in part. I concur with the Chair's recommendation that the  
32 hourly rate increased, but I recommend the hourly rate be set to the lowest hourly rate  
33 possible using Step 1 Column 1 of the certificated salary schedule. To understand how  
34 that is to be calculated we need to note that the OUSD currently uses a system to  
35 determine hourly rates that is based on the salary schedule: They take the daily rate and  
36 divide by six (6). If we do the math based on my recommendation for salary increases  
37 below, the hourly rate for 2018-19 would be \$44.27, and would increase automatically  
38 with out-year increases to the salary schedule. I see no rationale for waiting for the next  
39 round of negotiations to begin increasing that hourly rate along with the salary  
40 schedule, (and thus repeating the mistake of leaving the hourly rate behind.)

41 b. Shift Bell Schedules:

1 I concur in part with the Chair's proposal to leave the bell schedule at status quo for  
2 2019-20 with a sunset agreement and with a commitment from the parties to  
3 communicate with, and gather input from community members, but I add that the  
4 parties should commit to bargain in good faith, a new bell schedule, and the impacts  
5 and effects of any bell schedule changes. The parties should further commit that they  
6 will choose a bell schedule that does not put an onerous burden on parents and/or  
7 students, and thus drives more families to choose other educational options.

8 c. Daily Prep change to either beginning or end of day:

9 I concur in part and dissent in part. I agree with the Chair's recommendation to leave  
10 prep time at status quo for 2019-20 and to include this topic in the negotiations of the  
11 impacts and effects of the bell schedule changes. However, I don't recommend a sunset  
12 of the current prep language, (as is recommended for the bell schedule) but rather a re-  
13 opener to correspond with the bell schedule negotiations. If the parties agree to  
14 shifting bell schedules, and also agree that the new bell schedule necessitates shifting  
15 prep times, then they will easily reach agreement. If the parties do not come to any  
16 such agreement, then the current prep schedule should remain in force.

17 4. Article 12 – Transfers and Reassignments

18 I concur with leaving this as status quo- focusing increasing services to schools in need through  
19 Article 15 – Class Size, and Article 21 – Specialized Caseloads.

20 5. Article 13 & 25 – Evaluation and Peer Assistance and Review

21 I concur with the Chair's recommendation that the parties work to implement the new TGDS  
22 evaluation system with the same protocols and support that were in place during the pilot  
23 period. The success of any evaluation system is dependent on the support it is given.

24 I also concur with the Chair's recommendation on Article 25 – Peer Assistance and Review.

25 6. Article 15 – Class Size

26 I concur in part and dissent in part. I dissent on not attaching an additional reduction to the  
27 final year of the agreement. The task force proposed by the Chair can still be formed to work on  
28 any challenges that this reduction schedule presents. Attaching an additional reduction in the  
29 3<sup>rd</sup> year of the agreement gives the district time to re-orient its budget appropriately, and it  
30 gives the parties ample opportunity to eliminate any unintended consequences (i.e. negotiating  
31 a benchmark for classes and/or programs that are in high demand and therefore not subject to  
32 reductions that would force students out of those programs). I therefore concur with a class  
33 size reduction of 1 applying to the top 20% of schools of need in July of 2019, and an across the  
34 board reduction of 1 in July of 2020, but I also propose that the parties agree to begin the 2021-  
35 22 school year with a further reduction of 1 for those top 20% of schools in need.

36 Regarding overage pay, I dissent with the Chair's recommendation. The status quo is that there  
37 is no contract language regarding overage pay – meaning that overages are simply not allowed  
38 in the current contract. When overages occur, they are in violation of the contract. The parties  
39 regularly deal with those violations by reaching agreement within the grievance process,  
40 resulting in extra compensation for the effected unit members. For OEA to agree to overages  
41 that are less punitive than the settlements they are currently getting would create a reverse  
42 incentive for the district. In other words, the district would be more inclined to over fill  
43 classrooms than under the current system. I therefore recommend the parties agree to one of



two options: 1) OEA's proposal of \$25 daily per-pupil, per-day for elementary teachers and \$8 per-pupil, per-period for secondary teachers, or 2) status quo.

7. Article 17 – Safety

I concur with the Chair's recommendation to note the School Board policy on OUSD being a sanctuary district without reciting it, thus allowing the Board to make changes as required by law. Though one would think that this could be accomplished through Article 19 Savings Provision, since that language is limited to court decisions and does not specifically reference changes in law, the Chair's recommendation is the clearest way of providing protection for OEA members. For the sake of transparency, I recommend including the Board policy language in an appendix, with whatever notes are necessary to allow Board flexibility based on changes in law. I also concur with the Chair's recommendation to adopt OEA's proposal to expand the safety committee to include community members.

8. Article 21 – Specialized Caseloads

Given the districts burgeoning newcomer student population and the unique needs that they bring, I must concur in part dissent in part as follows:

- a. Counselor – I concur with the Chair's recommendation; 1:500 to 1:550 if reductions in force take place.
- b. Nurses – I dissent with the Chair's recommendation. Both compensation and caseload make it difficult to recruit and retain nurses in Oakland. I recommend that both issues be addressed in this agreement. The union's ratio proposal will certainly make filling positions more challenging – there will be more positions to fill, but it will also make filling positions easier, because prospective candidates will be assured of a reasonable work-load. I therefore recommend the union's position of a 1:700 ratio. Regarding bonuses to attract nurses, I concur with the Chair's recommendation to include a signing bonus \$5,000 in the agreement, but I dissent with the notion of providing retention bonuses. In the STRS environment bonuses are particularly troublesome as they do not provide added security for retirement. In the long term, it would not be helpful for nurses to see a bi-annual temporary source of income that would not be credited toward their retirement. I therefore recommend that the parties negotiate a salary scheme for nurses that aligns their salaries to those of the Psychologists. It should be noted that Psychologists have expanded work hours and work days. My recommendation would be for the parties to calculate the nurses' salary proportional to the hours and days of work. With both higher salaries and lower caseloads, the challenge of recruiting and retaining nurses can be addressed effectively. I would also encourage the parties to work out a reasonable timeline for implementation of the nurse to student ratio.
- c. Psychologists – I concur with the Chair's recommendation for an increase of three (3) positions
- d. SLPs – I concur with the Chair's recommendation to use 55 as the district's caseload cap.
- e. RSP – I dissent with the Chair's recommendation. Being as the district is already staffed at 26:1, I recommend codifying 26:1 as the district's caseload cap. The parties should be encouraged to negotiate overage language that allows the district time to adjust caseloads as students come and go.



- f. Newcomers – I am hopeful that the class size and caseload provisions above will begin to address the added support needed for newcomer students, but more targeted support is also necessary. I therefore concur with the Chair’s recommendation that the parties form a task force to study the needs of newcomers and make recommendations to the School Board and/or the bargaining parties as appropriate, but I further recommend that the parties agree to add one (1) extra FTE for schools that have over 75 newcomers, for the purpose of developing and executing programs of support.

9. Article 24 – Compensation

I concur in part and dissent in part. The lack of a competitive salary schedule in Oakland is not a new phenomenon. The district has for decades over-spent on administrative costs. It is now engaged in providing sweetheart deals to charter schools at the expense of OEA members (those who actually deliver quality instruction to OUSD students). The Chair is being sensitive to the administration’s need to show financial viability in the 3<sup>rd</sup> year of their multi-year projections, and I understand that those projections can be challenging. However, locking in that 3<sup>rd</sup> year is vitally important as it has the effect of demanding that the School Board and the administration immediately re-prioritize those out-year budgets in order to meet the modest increases that OEA members demand. I am also sensitive to OEA’s frustrations that the district administration might be allowed an extra year to fix problems as a reward for not coming to an agreement for 18 months of negotiations. Therefore, my recommendations are as follows:

- a. Salary increases – concur in part and dissent in part:

- i. 2017-18 – 3% fully retro
- ii. 2018-19 – 3% fully retro
- iii. 2019-20 – 5% for the full year

Again, my rationale for including the 3<sup>rd</sup> year is that the district has historically promised that they would adjust their priorities in the future – that in the future they would shift spending to better reflect the Board’s promise of protecting and improving the teaching and learning environment, and more recently, better reflect the priorities of the district’s LCAP. But those promises have almost always been broken. I can recall doing a fact-finding here in Oakland almost 10 years ago, at the end of which the parties agreed that the district was spending too much on administrators and not enough on teachers. That problem has only gotten worse in the intervening years. I therefore recommend that this agreement lock the district into spending money where it is most effective (in the classroom) and thus force the district to re-prioritize its budget. An agreement now gives the district several weeks to build an appropriate budget prospectively in their next Multi-Year projection (2<sup>nd</sup> Interim Report, due March 15). The Oakland community cannot continue to wait for the OUSD School Board and administration to fulfill this promise.

- b. Substitute pay – I concur with the Chair’s recommendation of \$180 up through day 59 and \$195 for 60 days or more, and that any substitute who achieves the 60 days in one school year will have the higher rate carry over to the following school year.

Finally, on the issue of the impact of charter schools, I very much appreciate the Chair’s willingness to weigh in on the state-wide structural problem with charter school funding and the unlevel playing field that makes it more difficult for school districts to adequately serve their

1 students. But I must urgently point out that OUSD is unique in its abdication to charter  
2 expansion at the expense of its own schools. One example of this is the district's agreement to  
3 give the Lafayette site to KIPP Bridge Charter School nearly rent free for 40 years in exchange for  
4 KIPP building \$9.9 million worth of new buildings. This scheme, by the OUSD School Board's  
5 own design, will cost them over \$750 million dollars in state revenue over the term of the  
6 agreement. Under any circumstances this deal would raise eyebrows to anyone who cared  
7 about maintaining OUSD's budget. But in an environment in which OUSD is choosing to close  
8 neighborhood schools in order to reduce its capacity, to simultaneously give away \$9.9 million in  
9 rent and \$750 million in state revenue, all so that a competing charter school can increase its  
10 capacity is unfathomable. OUSD needs to stop outsourcing its academic program, keep its  
11 neighborhood schools open, and work with its employees to design ways to encourage the re-  
12 patronage of students and families who have chosen other educational options. If OUSD  
13 continues on its current path, it will continue to experience a death spiral in which students and  
14 families are under-served by a top heavy district and budget constraints, and therefore elect to  
15 leave for charter schools, thus further burdening the OUSD budget, thus leading to less service  
16 to students.



CONCURRENCE AND DISSENT OF EMPLOYER PANEL MEMBER

I fully agree with most of the main recommendations and factual findings of the Panel Chair. I write separately to emphasize certain facts and realities confronting the Oakland Unified School District and the Oakland Education Association (Union). The recommendations made here flow from those realities as reflected in the record of evidence presented in the factfinding hearing.

I hope the parties will recognize the common realities they both face. By reaching a common understanding, I encourage frank and candid discussions aimed at resolving the current labor dispute in a way that does not further harm or disrupt the educational environment for District students, families of those students, and the employees of the District.

Limitations of the Local Control Funding Formula

As the Panel Chair explains, and as both parties acknowledged in their presentations, California's "new" Local Control Funding Formula (LCFF) fundamentally changed the way local school districts receive revenue from the state. Beginning in 2013, urban school districts like Oakland that have higher concentrations of students with unique needs receive additional revenue in the form of supplemental and concentration grants under the LCFF funding formula. As a consequence, the LCFF formula has benefited Oakland and similar districts with higher concentrations of unduplicated pupils that generate those additional dollars.

However, we must remember that a central purpose of LCFF was to provide "full funding" to California school districts following the Great Recession that began in fiscal year 2008-2009. Yet the concept of full funding actually meant restoring funding to the pre-Great Recession funding levels in 2007-2008, and doing so over a period of eight years. The State was able to achieve this "full funding" after six years, instead of eight. Nevertheless, restoring school funding to 2007-2008 levels – in 2018 – is not truly "full funding."

The sobering reality is that even under LCFF, California's per pupil funding for K-12 students remains at virtually the very lowest in the nation. This fact exacerbates an already fragile fiscal situation in the District. Accordingly, the overall state funding the District receives falls far short of what is adequate to truly meet the educational needs of students and provide competitive compensation to teachers and other educators inside and outside of the classroom. This



1 inadequacy falls squarely at the doorstep of decision makers in the State Capital – but imposes real  
2 constraints on the resources actually available to the District.

3 Limitations Associated With the Legacy of State Receivership

4 Adding further complexities to the current labor dispute is the fact the District continues to  
5 operate under the legal authority of a State Appointed Trustee (Trustee). While the District's  
6 elected School Board has full governing authority, the Trustee has the power to "stay and rescind"  
7 certain actions of the Board, including any collective bargaining agreement the Trustee determines  
8 is detrimental to the District's fiscal stability.<sup>1</sup>

9 Therefore, it is important to emphasize that under these circumstances of scarce resources,  
10 the District has focused those resources on the classroom and direct classroom supports for  
11 students. Three facts are key indicators of that focus: (1) the evidence at the hearing established  
12 that for every dollar in per student State funding Oakland receives, it spends more on teacher  
13 compensation than most other Districts in the comparison group in Alameda County; (2) the  
14 evidence demonstrates that class sizes in Oakland are actually lower on average than almost every  
15 other school district in Alameda County, and there is no dispute between the parties that the cost  
16 of lowering class size throughout the District by even one student is significant<sup>2</sup>; and (3) the  
17 District spends proportionately more than surrounding districts for each student with special  
18 needs, and the total contribution from the District's general fund to support special education  
19 services is also higher than many other school districts in the County. These key facts along with  
20 others, reflect the District's commitment to spend more out of each per-student dollar received  
21 directly on teachers than other districts. As result, any assertions that the District is not adequately  
22 investing in teachers or students, or not using its funding appropriately, are simply not supported

23 \_\_\_\_\_  
24 <sup>1</sup> The Panel Chair also points out the financial consequences of that legacy, including the ongoing cost of repaying the State loan. This legacy is not an excuse for action – yet it is a reality both the Employer and Union face.

25 <sup>2</sup> As the Chair notes, the dispute is around the exact cost of reducing class sizes by just one student. The Union  
26 acknowledged the cost to reduce by even one student district-wide approaches \$5 million dollars per year. The  
27 District contends the Union drastically underestimates the cost to reduce class sizes by just one student district-wide,  
28 in part because the Union does not include necessary facility costs - in the form of additional classrooms - needed to  
reduce class sizes across the district. The District estimates the cost of the Union's class-size proposals in each  
category (which includes a two-student reduction district-wide), when added together, exceeds \$36 million – not an  
unrealistic amount given the number of staff that would likely need to be hired and the additional classroom space that  
would need to be added. Whatever the actual costs – both sides agree they are substantial and would be ongoing.



1 by the fact-finding record.

2 It is based upon this additional background that I concur with the most of the main  
3 recommendations and factual findings of the Panel Chair, as explained below:

4 Article 1: Agreement

5 Concur.

6 Article 3: Definitions

7 Concur.

8 Article 6: Association Rights

9 Concur.

10 Article 10: Hours of Work

11 Concur as to a) and b). I dissent to the recommendation on c) and recommend the parties  
12 continue to bargain c) this item.

13 Article 12: Assignment and Transfer

14 Concur.

15 Article 13 & 25: Evaluation (13) & Peer Assistance and Review (25)

16 Because the parties have already utilized the new Teacher Growth and Development  
17 System (TGDS) as a pilot district-wide, and the benefits of the new TGDS evaluation standards  
18 were mutually recognized as an improvement over the outdated California Standards for the  
19 Teaching Profession (CSTP), I recommend the parties adopt and incorporate the TGDS system as  
20 a replacement to the CSTPs while maintaining the current contract language for the timing,  
21 sequence and contract safeguards in the evaluation process. This will provide teachers with the  
22 meaningful professional feedback they desire that supports improved practices in the classroom.

23 Article 15 & 21: Class Size (15) & Specialized Caseloads (21)

24 The evidence presented at the hearing established that the District already has lower  
25 average class sizes and caseloads compared to almost every other districts in the County and in  
26 most comparable districts with similar student demographics. There was also no evidence  
27 presented that the specialized case-loads in the District are above average compared to any of the  
28 other Districts in Alameda County.



1 It is noteworthy that in a recent survey of District teachers, which was referenced in the  
2 hearing, and which the Union noted had an almost 70% response rate from teachers, class size was  
3 not mentioned by teachers as one of the leading factors affecting teacher retention. The top two  
4 factors were salary and housing affordability in the bay area. Indeed, class size was not identified  
5 in any of the six categories identified in the Union's presentation. (Tab 6.)

6 Importantly, both parties also recognized in the hearing the significant expense of reducing  
7 class sizes by even one student district-wide. That cost was identified as many millions of dollars  
8 *per year* for even a one per-pupil across-the-board reduction in class-size. While there is little  
9 question that class sizes are important in the education of students, the evidence in the hearing  
10 demonstrated that Oakland's class sizes are already low compared to surrounding districts in  
11 Alameda County. As a result, I dissent with the Panel's recommendation on this issue and  
12 recommend the parties maintain the status quo on the current contract language related to both  
13 class size and specialized caseloads. While both of those issues are certainly important, there is no  
14 compelling evidence to change the status quo at this time.

15 Article 17: Safety

16 Concur.

17 Article 24: Compensation:

18 The District did not dispute that its teacher salaries are among the lowest – although not  
19 the lowest – in Alameda County at almost every year of service. On the other hand, Oakland  
20 provides one of the best health benefit packages to its teachers compared to most other District's in  
21 Alameda County. Yet even recognizing the value of these benefits, Oakland's total compensation  
22 for teachers lags behind most districts in Alameda County and behind most of the comparable  
23 districts in the area.

24 Accordingly, I concur with the recommendation of the Panel Chair of a compensation  
25 increase of 3% in each of the first two years of a three-year agreement and contract reopener in the  
26 third year to bargain any further increase. Yet, the books on the 2017-2018 year, which led to this  
27 fact-finding, have closed. Therefore, I dissent with the recommendation that this increase begin in  
28 FY 2017-2018. If the parties both agreed with the Panel Chair, they would resume bargaining





## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles,  
State of California. I am over the age of 18 years. The name and address of my  
Residence or business is P.O. Box 67, Montrose, CA 91021

On Februrary 15, 2019, I served the Factfinding Report  
(Date) (Description of document(s))  
in Case No. SF-IM-3192-E  
(Description of document(s) continued) (PERB Case No.)

on the parties listed below by (check the applicable method(s)):

- ☐ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☐ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).
- ☒ electronic service (e-mail) - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) to the electronic service address(es) listed below on the date indicated. *(May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)*

*(Include here the name, address, e-mail address and/or fax number of the Respondent and/or any other parties served.)*

Charles King, cking@cta.org

Jenine Lindsey, jenine.lindsey@ousd.com

Dennis Nelson, bargainingteam@gmail.com

John Gray, JohnG@sscal.com

Roy Combs, rcombs@f3law.com

Wendi Ross, wross@perb.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 15, 2019, at  
La Crescenta CA  
(City) (State)

Najeeb Khoury

(Type or print name)

(Signature)