



August 12, 2020

Hon. Tara M. Desautels
Presiding Judge
Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612

Geoffrey Sylvester, Foreperson
Alameda County Civil Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, CA 94612

Re: **Response of the Oakland Unified School District to 2019-20 Alameda County Grand Jury Report regarding Castlemont High School**

Dear Hon. Judge Desautels and Foreperson Sylvester:

Attached please find the Response to the 2019-20 Alameda County Grand Jury Report ("Report") regarding Castlemont High School ("Castlemont") from the Oakland Unified School District ("District"). The District would like to thank the Jurors for their work and their seriousness in studying the use of APEX at Castlemont as well as their clear concern for Oakland students. The District welcomes the constructive feedback the Report provides and the opportunity to respond.

Respectfully submitted,

Jody London
President, Board of Education

**RESPONSE OF THE OAKLAND UNIFIED SCHOOL DISTRICT TO 2019-20 ALAMEDA COUNTY
GRAND JURY REPORT REGARDING CASTLEMONT HIGH SCHOOL**

I. Introduction

The District received the first complaint regarding APEX in June 2019. In accordance with its protocols, the District timely launched an investigation. The District subsequently received a second complaint in July 2019. The focus of both complaints was the same so there was no need for a second investigation to be launched. The investigation concluded in Fall 2019.

With respect to the use of APEX, the District's investigation gathered course information for the specific students named in the complaints, including transcripts and various APEX-related data such as the time each student spent online on each APEX course in which the student was enrolled. While there was a range of time spent online on each APEX course, the investigation found that no student received a grade for a course on which they spent no or very little online time.¹ (As described below, however, it might be appropriate in certain situations for a student to spend very little time on a particular APEX course and properly receive a grade.)

The investigation concluded that the length of time a student spent on APEX—*by itself*—did not provide sufficient information to understand how a teacher utilized or how a student engaged with an APEX course. To better understand the APEX-related practices and procedures leading to variations in the amount of time students spent on APEX courses, staff at two other school sites were interviewed regarding APEX implementation. The investigation found that many teachers used a variety of blended-learning instructional models² with APEX because they felt it to be a stronger instructional model than a student completing all coursework on a computer. For instance, one teacher opted to download all the content for an APEX course and then taught the content as if it was a regular course; students would only log into APEX to complete the end-of-unit quizzes online. Other teachers provided significant offline, one-on-one instruction and support for students enrolled in APEX courses because many students often struggled to utilize the online content from an APEX course by themselves.

The District's investigation did not find sufficient evidence that any teacher assigned improper grades to a student for an APEX course. California law states that “[w]hen grades are given for any course of instruction taught in a school district, the grade given to each pupil shall be the

¹ In one particular instance, for example, the investigation looked into a screenshot included in one of the complaints, which showed that a student had logged into a particular course for three minutes in total. In reviewing this student's information, the investigation found that the student received no credit or grade for that APEX course.

² A blended learning instructional model refers to the practice of having students spend a portion of their instructional time online while the other portion may be a more traditional classroom setting, one-on-one instruction, or group work.

grade determined by the teacher of the course and the determination of the pupil's grade by the teacher, in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, shall be final." Additionally, OUSD teachers must follow Board Policy 5121, which states: "Grades should be based on impartial, consistent observation of the quality of the student's work and his/her mastery of course content and objectives. Students shall have the opportunity to demonstrate this mastery through a variety of methods such as classroom participation, homework, tests and portfolios."

In addition to examining the use of APEX, the District's investigation also examined the behavior and intentions of Castlemont staff and administrators with respect to students who were at risk of not graduating. The investigation determined that there were many Castlemont staff members, particularly the principal, who were focused on finding supports for students who were at risk of not graduating. (Indeed, OUSD expects its high school leaders to have systems in place to identify students who are at risk of not graduating and to get them back on track to graduate.) For instance, the investigation involved reviewing Castlemont's 12th grade team meeting notes for the 2018-19 school year and found that the team reviewed student progress toward graduation on multiple occasions for numerous students and identified action steps to support those students. Students who were identified as off-track in certain courses were typically recommended for credit recovery on APEX by the 12th grade team.³

Upon conclusion of its investigation, the District initiated an external evaluation of online credit recovery courses due to the variation in the use of APEX by students and teachers. The evaluation focused on whether OUSD needed to: (1) implement additional employee training regarding the use of online credit recovery programs; (2) revise OUSD guidelines and grading rubrics for online credit recovery programs; and/or (3) incorporate additional checks and balances prior to issuance of credits through an online credit recovery program. The District will review and implement the recommendations as appropriate.⁴

Subsequent to the investigation and in response to communication from the Grand Jury, the District provided all requested and subpoenaed documents and presented all requested and subpoenaed witnesses to testify. The District prepared additional summaries and information as requested by the Grand Jury in an attempt to clarify and explain the complexities of APEX to the Jurors. Unfortunately, the Report still contained certain factual inaccuracies.⁵ Additionally, there

³ One reason that APEX was frequently offered was that there had been challenges with ensuring consistency in how teachers provided students with interventions. Offering APEX was a way to ensure all students had equal access to credit recovery options.

⁴ If the evaluation uncovers the need to discipline employees and/or switch to another online credit recovery provider, the District will take the appropriate disciplinary steps in accordance with District policy and state law.

⁵ For instance, the Report inaccurately states that Castlemont's "graduation rate has been . . . increasing." Castlemont's graduation rate was 57% for 2018-19; the year before (2017-28) it was 71%. (See

were a number of factual assertions in the Report to which the District was not given a chance to respond in advance or provide the Grand Jury with information.

Finally, the District would like to note its disagreement with the Grand Jury's statement that "Legitimate completion of so many courses by students with a history of academic under-performance is simply not believable." OUSD and its employees believe in the capacity of every OUSD student, regardless of present circumstance or past behavior. In fact, while it may be difficult for students with a history of academic under-performance to recover credits and graduate, this has happened many times in OUSD through the resilience and perseverance of our amazing students and with the support of our educators. The District will not move away from its credit recovery approach; if a student takes a course and is not successful in it the first time, OUSD is committed to helping find a way for that student to take the course again and properly demonstrate mastery.

II. Oakland Unified School District Responses to the Grand Jury's Findings

Finding 20-1: *Oakland Unified School District's public comments regarding Castlemont High School's misuse of APEX and other grade recovery programs misled the public about the severe academic and ethical breakdowns that occurred at the school.*

District Response to Finding 20-1: *The District wholly disagrees with this finding.*

As the Report is not specific as to which "public comments" were misleading, it is not possible to provide a detailed response. As a general matter, however, the District takes the education of its students very seriously; and it takes the privacy rights of students and staff seriously as well. The Grand Jury even notes this reality in its report: "the [D]istrict was asked to comment on personnel issues and the very delicate issue of private student records."⁶

The District understands that the disclosure restrictions are often frustrating for the public and the District does its best to be transparent given the limitations due to those restrictions. At the same time, withholding information as required by state or federal law—while frustrating—is not the same as being misleading.

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www.caschooldashboard.org and search "Castlemont".) Thus, Castlemont's graduation rate actually went down during the timeframe in question.

⁶ In recognition of the limitations on publicly disclosing student-specific information, the District wrote a letter to the Grand Jury expressing the District's interest "in receiving all feedback and perspective the Grand Jury has to offer." Specifically, the letter suggested that "the Grand Jury could provide [student-specific findings] confidentially to the District, while still releasing all other portions of the [Grand Jury] report publicly." The Grand Jury has not taken the District up on this offer.

Finding 20-2: *Oakland Unified School District’s weak internal policies, inadequate training, and lack of oversight enabled some Castlemont High School teachers of onsite make-up courses and credit recovery tutorials to run roughshod over academic integrity and best practices.*

Finding 20-3: *Oakland Unified School District’s policies on administration of APEX Learning online credit recovery courses were inadequate to ensure consistent and appropriate application of APEX and allowed abuse by a small number of teachers and counselors at Castlemont High School.*

Finding 20-4: *APEX teachers received little or no training in the proper use and administration of APEX courses and of the grading of students in those courses.*

District Response to Findings 20-2, 20-3, and 20-4: *The District partially disagrees with each of these findings.*

As noted previously, the District has initiated an external evaluation of online credit recovery courses within OUSD due to the variation in the use of APEX by students and teachers. The evaluation is focused on whether OUSD needed to:

- implement additional employee training regarding the use of online credit recovery programs;
- revise its guidelines and grading rubrics for online credit recovery programs; and/or
- incorporate additional checks and balances prior to issuance of credits through an online credit recovery program.

The District will review and implement the recommendations as appropriate.

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Finding 20-5: *Extraordinarily high truancy rates at Castlemont High School and insufficient administrator intervention made it impossible for habitually truant students to receive the required educational experience.*

District Response to Finding 20-5: *The District partially disagrees with this finding.*

Students who are chronically absent⁷ are, by definition, those who have been absent for at least 10 percent of the school year (equivalent to 18 school days). The District agrees and is aware that Castlemont has struggled to find ways to improve attendance and to decrease the number of students who are chronically absent. The reasons for such absenteeism are multi-faceted and complex and cannot fairly be placed solely on a school’s administration, although clearly the school’s administration plays a key role.

⁷ While the Finding uses the phrase “habitually truant,” the usual phrase used in the context of school districts is “chronically absent.”

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Finding 20-6: *Some long-standing OUSD students arrive at Castlemont High School unprepared for high school level work due to being repeatedly promoted in earlier grades without meeting the district's requirements for promotion.*

District Response to Finding 20-6: *The District partially disagrees with this finding.*

The District agrees that too many ninth grade students are not prepared for grade level work upon entering OUSD high schools. The Grand Jury did not provide evidence to the District regarding this Finding (nor was the District given an opportunity to provide evidence in response), including evidence of specific students “being repeatedly promoted in earlier grades without meeting the [D]istrict’s requirements for promotion.” The District would welcome any additional information that the Grand Jury is willing and able to share.⁸

As a general matter, it is worth noting that there is ample research that keeping students from promoting to the next grade does not necessarily improve their outcomes.⁹ The District has worked hard to develop rigorous academic as well as social-emotional supports for students so that whether to retain a student is not a question.¹⁰ This includes a resource-rich teacher portal as well as robust professional development opportunities that include a focus on working with struggling students. At the same time, there is more work to be done, including in the area of ensuring that students are academically prepared for the next grade or for life after high school.

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III. Oakland Unified School District Responses to the Grand Jury’s Recommendations

Recommendation 20-1: *The Oakland Unified School District must develop and enforce appropriate policies and practices for onsite make-up courses to correct the failures noted in this report. Specifically:*

- *Onsite teacher-designed make-up courses must be included in course lists and available to all failing students.*
- *Credit must only be given for make-up classes in the same subject as the failed course.*
- *Credit toward a required number of subject units cannot be given for the same semester course taken twice.*
- *Course curricula and assignments must be administratively reviewed.*

⁸ See note 6.

⁹ See, e.g., <https://www.readingrockets.org/article/beyond-social-promotion-and-retention-five-strategies-help-students-succeed>.

¹⁰ See, e.g., <https://www.ousd.org/CommunitySchools>.

- *Aeries records must include attendance data and progress through the recovery course as in regular courses.*
- *Credit cannot be awarded for failed courses based on subsequent courses that were passed.*

District Response to Recommendation 20-1: *The District has implemented some of these Recommendations, will be implementing some of these Recommendations, and will not be implementing some of these Recommendations.*

In response to: “Onsite teacher-designed make-up courses must be included in course lists and available to all failing students.” This is the District’s general practice.

In response to: “Credit must only be given for make-up classes in the same subject as the failed course.” While every effort is made to enable students to make up classes in the same subject as their failed course, a student may not have access to the exact course if that course is not offered during the right time of the day or during the summer academic recovery period. In those kinds of situations, the credit-recovery needs of the student are paramount and the site administrator needs to find a way to ensure that the student enrolls in the necessary credit-recovery courses for graduation and college eligibility.

In response to: “Credit toward a required number of subject units cannot be given for the same semester course taken twice.” A student who fails a course once should be given the opportunity to retake the course. If this happens, the course will show up both times on the transcript, but the student would only receive credit once (assuming the student passes the course the second time). For example, if a student takes Algebra 1 and fails it and then retakes it at a later date and passes it, Algebra 1 will show up twice on the student’s transcript, the first time with the original grade and the second time with the new grade. (Additionally, there will be a “repeat tag” added to the transcript next to the original course.) Both courses count towards credits attempted but only the course that the student passed counts towards credits completed. This ensures that the student's subject area credits are not overstated due to taking the exact same course more than once.

In response to: “Course curricula and assignments must be administratively reviewed.” It is the role of the District to select instructional materials and curricula. It is the role of the site to support and evaluate a teacher and the teacher’s use of and adherence to the selected instructional materials and curricula. It is the role of the teacher to determine what assignments to give to students and how to grade them. It would be nearly impossible for an administrator to review all course assignments; the District is not aware of any other school district that follows this practice.

In response to: “Aeries records must include attendance data and progress through the recovery course as in regular courses.” While attendance can and should be recorded in Aeries while the student is recovering credits in APEX, progress and mastery is more appropriately recorded within the APEX platform because students earn credit at

different rates and time, which often does not coincide with designated marking periods or semesters. Other considerations that impact a student's grade may be maintained by the teacher.

In response to: "Credit cannot be awarded for failed courses based on subsequent courses that were passed." The District disagrees with this statement. To wit, the University of California allows a student to be awarded credit for a failed World Language course based on a subsequent course that was passed. In accordance with this practice, OUSD allows its schools to validate a Level 1 World Language Course if a student successfully completes a Level 2 course in the same language.

Recommendation 20-2: *The Oakland Unified School District must implement specific controls to ensure all APEX learning complies with recommended APEX policy, procedures, and best practices. At a minimum:*

- *Limit the number of courses taken simultaneously.*
- *Require all quizzes and exams be proctored on campus.*
- *Confine APEX classes to one subject.*
- *Prohibit enrollment in the same traditional and APEX classes at the same time.*
- *Require a minimum number of online hours within a minimum number of weeks of instruction not restricted entirely to quizzes and exams.*
- *Ensure teachers do not coach students through pretests, quizzes and exams.*

District Response to Recommendation 20-2: *The District, in part, has implemented these subrecommendations and, in part, will not be implementing these subrecommendations.*

As to the second and sixth subrecommendations, the District does, as a general rule, require that all quizzes and exams be proctored on campus and without coaching by teachers; of course, under distance learning this is not possible.

The District disagrees with the first, third, and fourth subrecommendations. While some students only fail courses in one subject area throughout their high school career, others struggle in all content areas; and while some students struggle for only one semester, others struggle throughout their OUSD experience. It is critical that each student be given the best chance of graduating high school by May of their senior year. Given students' varying needs, this may mean being able to offer students credit recovery courses in different subjects or several credit recovery courses at a time.

The District also disagrees with the fifth subrecommendation. Requiring a minimum number of online hours or minimum number of weeks of instruction is nearly impossible in self-paced courses within APEX. While the District agrees that providing better guidelines to school sites regarding the use of APEX (including the appropriate lengths of student engagement for an APEX course), an absolute minimum would hurt students by curtailing the variety of ways that APEX is used by teachers and students to demonstrate mastery.

Recommendation 20-3: *Teachers of APEX courses must be credentialed in the subject of the course and must be trained in APEX Learning’s published best practices for teaching the classes, in using pretests for customizing course curricula, in making graded assignments, and in grading quizzes, exams and classes using progress and proficiency scores produced by the APEX program. The exercise of teacher discretion in assigning grades for APEX courses must be strictly regulated by school site administrators.*

District Response to Recommendation 20-3: *The District has implemented some of these Recommendations and will not be implementing some of these Recommendations.*

The District’s investigation concluded that in every instance where a student mentioned in the complaints earned credit from an APEX course, the teacher of that APEX teachers course was properly credentialed to teach the course.

As previously noted, the District initiated an external evaluation of online credit recovery courses within OUSD due to the variation in the use of APEX by students and teachers. The evaluation is focused on whether OUSD needed to:

- implement additional employee training regarding the use of online credit recovery programs;
- revise its guidelines and grading rubrics for online credit recovery programs; and/or
- incorporate an additional checks and balances prior to issuance of credits through an online credit recovery program.

The District will review and implement the recommendations as appropriate. Even without this evaluation, however, the District has instituted additional trainings for teachers on the use of APEX.

In determining grades for a course, whether it is online or a traditional course, California law states that “[w]hen grades are given for any course of instruction taught in a school district, the grade given to each pupil shall be the grade determined by the teacher of the course and the determination of the pupil’s grade by the teacher, in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, shall be final.” When assigning a grade in OUSD, a teacher must follow Board Policy 5121: “Grades should be based on impartial, consistent observation of the quality of the student's work and his/her mastery of course content and objectives. Students shall have the opportunity to demonstrate this mastery through a variety of methods such as classroom participation, homework, tests and portfolios.”

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Recommendation 20-4: *Castlemont High School administrators must put in place and rigorously enforce robust procedures to track and control excessive student absences, consistent with the Oakland Unified School District’s standards and the California Education Code. When local efforts fail to ameliorate truancy, cases should be referred to the Alameda County Truancy Court.*

Graduation of students with chronic absenteeism resulting in failures in required courses must be prohibited, until those courses are properly passed.

District Response to Recommendation 20-4: *The District has implemented this Recommendation.*

The District has extensive, pre-existing resources to support students who are chronically absent. Many of these resources are available at <https://www.ousd.org/Page/534>, including the Toolkit referenced therein.¹¹ While the District does refer cases to the Alameda County Truancy Court,¹² it does so only as a last resort. As a general matter, the District does not believe that involving the court system—as opposed to providing the student and the student’s family with support and resources—is an effective method of addressing student absenteeism.

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Recommendation 20-5: *District-wide procedures must be developed and implemented to consistently enforce OUSD’s existing Pupil Promotion and Retention Policy that prevents students from being promoted into grades for which they are insufficiently prepared.*

District Response to Recommendation 20-5: *The District has, in part, implemented this Recommendation, will be, in part, implementing this Recommendation, and will not be, in part, implementing this Recommendation.*

While grade retention does happen in some occasions (with student and parent/guardian consent, if appropriate based on credit needs and age), it is worth noting again that there is ample research that keeping students from promoting does not necessarily improve their outcomes. The District has worked hard to develop rigorous academic as well as social-emotional supports for students so that whether to retain a student is not a question. This includes a resource-rich teacher portal as well as robust professional development opportunities that include a focus on working with struggling students. At the same time, there is more work to be done, including in the area of ensuring that students are academically prepared for the next grade or for life after high school.

¹¹ See also the OUSD Attendance Policy & Procedures Manual at https://drive.google.com/file/d/1DXWZ2QWiowIzdGJ00HlzOcf-Z_Nx2kP/view.

¹² The Alameda County Truancy Court does not typically accept referrals for students over 16 years old.