

FACT FINDING PROCEEDINGS PURSUANT TO  
CALIFORNIA GOVERNMENT CODE SECTION 3548.2 AND 3548.3

FF-608

In the Matter of Dispute Between:

OAKLAND UNIFIED SCHOOL DISTRICT  
RANDOLPH E. WARD, STATE ADMINISTRATOR,

PERB No. SF-IM-2573-E

District,

**REPORT AND RECOMMENDATIONS**

-and-

**OF**

OAKLAND EDUCATION ASSOCIATION,  
CTA/NEA,

**THE FACT FINDING PANEL**

Association. Date of Issuance: January 23, 2006

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**FACT FINDING PANEL:**

**Impartial Chairman:**

Claude D. Ames, Arbitrator/Fact Finder  
3776 Shafter Avenue  
Oakland, CA 94509

**District Member:**

Ron Bennett, President, CEO  
School Services of California, Inc.  
1121 "L" Street, Suite 1060  
Sacramento, CA 95814

**Association Member:**

Theodore Bynum, Jr., Chapter Services Consultant  
California Teachers Association  
4751 Central Way  
Fairfield, CA 94553

**APPEARANCES:**

**For the District**

John Gray, School Services of California, Inc.  
Roy A. Combs, General Counsel

**For the Association**

Marty Kahn, Advocate  
Ben Visnick, President  
Trish Gorman, Vice President  
Bill Balderson, Executive Board Member

## I.

### INTRODUCTION

The Oakland Unified School District ("District") consists of 58 elementary schools, 19 middle schools, 14 small or traditional high schools, 11 alternative school sites, 5 special education program sites, 4 adult education programs sites, and 20 charter schools. During the 2004-2005 school year, the District served approximately 44,000 K-12 students and, based on CBEDS enrollment data, 43.4% of the total population is African-American, 32.2% is Hispanic, 15.4% is Asian, with the remaining 9% of students representing Caucasian and other ethnic groups. The stated mission of the District is "to create a world class public school system to serve its students in an environment where every student and adult feels safe, valued, and challenged to meet high expectations." Although the District faces multiple challenges, including declining enrollment and stabilization of its most recent financial crisis, the District did make recognizable gains in the 2004-2005 STAR test at every grade level in English, Language Arts and Mathematics.

The District's overall operational structure is somewhat of an anomaly, in that it is not led by a Superintendent or administered by a traditional Board of Education, but by a State Administrator (Randolph E. Ward), appointed to operate the District in 2002 by State Superintendent of Public Instruction, Jack O'Connell. The State Administrator was appointed after the District became financially insolvent in 2002 and was granted a combination loan and line of credit of \$100 million as a bail-out by the State Legislature.

The State Administrator has both legal control and authority over the District's day-to-day management operations and its fiscal affairs with an annual budget of more than \$450 million. But for the State Administrator's appointment, these powers are normally vested in the Oakland Board of Education and carried out by the Superintendent. The State Administrator's legal authority also extends to final approval or rejection over all negotiated contract agreements with employee bargaining representatives,

including the Oakland Education Association ("Association"), exclusive bargaining representative for the approximately 3,195 teachers.

## II.

### **BACKGROUND AND HISTORY OF DISPUTE**

The current collective bargaining agreement (Agreement) between the District and the Association expired on June 30, 2004. Bargaining on a successor agreement began in March 2004 and continued unsuccessfully into August 2004. However, the terms and conditions proscribed by the Agreement remained the terms and conditions of employment for both parties, pending resolution. PERB declared an impasse on August 12, 2004 and appointed Mr. Paul D. Roose, of the State Mediation and Conciliation Service, as a mediator to assist the parties. Mediation began on August 31, 2004 and continued through March 2005. It consisted of 34 sessions in excess of 300 hours of meetings and, according to Mediator Roose, "one of the longest and most difficult mediations" of his career. After a 19-hour session on March 25, 2005, the parties reached a Tentative Agreement (TA). It took another two weeks for the parties to write up the confirming language which was completed on April 9, 2005. The Association was unable to obtain ratification of the TA when its membership voted overwhelmingly (84% of the 1,600 members) by secret ballot on April 27, 2005, to reject the TA. On May 3, 2005, Mediator Roose found that the parties were not able to obtain a mutually agreed upon settlement and, in accordance with California Government Code Section 3541.1 of the Educational Employment Relations Act (EERA), certified the parties to Fact Finding.

The Fact Finding Panel was appointed by PERB on June 2, 2005 and the Panel members conferred within ten (10) days of appointment as required, made inquiries and took steps it deemed appropriate. CLAUDE D. AMES was appointed Impartial Chairman of the Fact Finding Panel; RON BENNETT was appointed by the District, and THEODORE BYNUM, JR. was appointed by the Association. Hearing dates

were set for early August 2005, but had to be delayed in order to obtain requested financial and other relevant data requested by the Association from the District, so that its case could be prepared - as required by law. Both parties, at the Chairman's request, waived their statutory time limits set forth in California Government Code Sections 3548.2 and 3548.3 for the hearing and completion of the Fact Finding process.

The Fact Finding hearings were held on August 29, 30, and 31, 2005 at the District's Office. The Panel met and conferred in an executive session on those days and thereafter on September 1, 2005. The hearings proceeded in an orderly manner and both parties were afforded a full opportunity for the presentation of evidence, submission of documents, oral testimony, examination of witnesses, and for rebuttal, on approximately 29 issues, and sub-issues, that are appearing in dispute. The Panel agreed to keep the record open after the final day of hearing to allow the parties an opportunity to supplement their positions with newly acquired financial and insurance benefit's data, which was of assistance and relevant to the fact finding process. During this interim period, the Panel held several discussions to determine and identify the main issues found necessary to resolve the dispute. The Chairman then approached and encouraged Panel Members from each party to make every effort and another attempt to seek common ground among the parties to settle their dispute. Panel members carefully reviewed and examined approximately twenty-nine (29) issues and sub-issues presented as disputed by the parties. Each issue was thoroughly discussed and, based upon the sheer number, prioritized in their importance.

Notwithstanding the Panel members' good faith efforts and many hours of work spent over a four-month period from August 31, 2005 to December 27, 2005, trying to assist the parties in resolving their dispute, the Panel members were unable to secure a mutually acceptable agreement and, hence, the writing of this Fact Finding Report. The Chairperson recognized and hereby acknowledges the professional and herculean efforts of these Panel Members which were exhibited throughout this Fact Finding process. It has been my honor to have served with these Panel members.

### III.

#### AUTHORITY AND RESPONSIBILITY OF THE PANEL

The authority and purview of the panel are outlined in California Government Code Section 3548.2 of the EERA:

"In arriving at their findings and recommendation, the fact Finders shall consider, weigh, and be guided by all the following criteria:

1. State and federal laws that are applicable to the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the public school employer.
4. Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The consumer price index for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment and all other benefits received.
7. Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations."

#### IV.

#### **ISSUES PRESENTED**

**The** parties presented the following disputed issues to the Fact Finding Panel:

Article 1 Term of Agreement

Article 3 Definitions

Article 10.1 Salary - Hours of Work (seven sections; and subsections)

Article 10.5 Elementary Preparation Time

Article 12.6 Voluntary Transfer

Article 12.7 Involuntary Transfer

Article 12.9 Transfer/Consolidation/School Closure

Article 12.10 Secondary Preparation

Article 12.11 Leaves

Article 15.2 Class Site

Article 21.2 Counselor Case Loads - Special Services (two sections; and subsections)

Article 22.11 Definitions

Article 22.14 Early Childhood Education (eight sections; and subsections)

Article 24.12 Health Benefits

Article 24.14 Affirmative Action

Article 24.27 Early Retirement

Article 24.91 National Board Certification

Article 26 Contract Waiver (two sections)

Article 27 School Language - New Proposal

Article 28 Site Governance - New Proposal

After an extensive review of the numerous disputed issues presented by the parties, the Panel identified one (1) procedural and four (4) core issues for discussion and recommendation, having determined that the four core issues are essential to resolving this dispute. The issues are as follows: Term of Agreement, Salary-Hours of Work, Health Benefits, Staff Preparation and Involuntary Transfer.

**PROCEDURAL ISSUE TERM OF AGREEMENT - Article 10**

**Position of the Association:**

The Association reaffirms the parties signed agreement on this issue which extends the provisions of the 2003-2004 contract until or unless a successor contract is approved and ratified by both. The 2004-2005 contract year, which is the subject of this dispute, is over, and the parties are well into completing the 2005-2006 school year. According to the Association, recommending a term only for the 2005-2006 year would offer only limited benefit to the parties, since they would have to begin a new round of bargaining within two months. The Association proposes a settlement that includes a rollover of the 2003-2004 contract to 2004-2005, closing it, and beginning a new three-year agreement starting July 1, 2005 and ending on June 20, 2008, with a salary reopener for the 2007-2008 school year.

**Position of the District:**

The District reaffirms the TA and maintains that the Agreement is closed through June 30, 2007. Since the parties' attempt to negotiate a multi-year contract was unsuccessful, the impasse process was completed only for fiscal year 2005-2006. According to the District, the Fact Finding Report must only deal with that single year.

**Discussion npfl Analysis:**

Under the TA previously rejected by the Association, the parties did agree on a multi-year term agreement beginning July 1, 2004 through June 30, 2007, with provisions allowing for presentation of

successor contract proposals by the Association (December 1, 2006), and a specific cut-off date for bargaining to begin between the parties "not later than January 15, 2007," or as mutually agreed. Given the Association's rejection of the TA, the District now seeks a one-year term of agreement for the 2004-2005 school year. The Association proposes to roll the 2003-2004 term into 2004-2005 and close it without changes, then start a new three-year contract term beginning July 1, 2005 (for 2005-2006) ending June 30, 2008 (for the 2007-2008 school year).

Notwithstanding the Association's rejection of the TA containing a three-year multi-bargaining agreement and the District's present desire to limit any future term of agreement to the single impasse year, such a position by the District would be of little benefit to either party. The expiration of the current impasse year would immediately require the parties to begin their bargaining again within two months, without an opportunity to adequately evaluate the implementation and progress of new and amended contract provisions, or make the necessary adjustments to the Agreement. The increased pressure of a self-imposed deadline and/or artificial time restraint is unnecessary. A single contract year does nothing to bridge the wide gulf of distrust now existing between the parties or encourage the parties to reevaluate and make these adjustments.

The Chairman therefore concludes, after a careful review of evidence presented, that a three-year multi-bargaining agreement, although desirable, is not obtainable under the parties' current stated impasse. However, a two-year multi-bargaining agreement is an appropriate settlement, effective from July 1, 2005 through June 30, 2007, with a salary reopener in June 2006. A two-year agreement would offer bargaining stability for the District, while allowing a cooling off period for both parties to mutually exchange ideas and encourage cooperation in an environment based on mutual trust and respect - thus, allowing the parties an opportunity to refocus on the main purpose of their mission: "to create a world class public school system

to serve its students in an environment where every student feels safe, valued and challenged to meet high expectations."

**Recommendations:**

It is the Chairman's recommendation that the parties therefore agree to a two-year term of agreement, effective July 1, 2005 through June 30, 2007, which extends beyond the single year impasse period. The Chairman fully recognizes that the impasse period in dispute is only for 2004-2005 and may even lack authority beyond this period, but the evidence strongly supports such an agreement as in the best interest of both parties, their students and the Oakland community.

**ISSUE I. SALARY - HOURS OF WORK - Article 10.1**

**Position of the Association:**

The Association seeks a 2% across-the-board salary increase fully retroactive to July 1, 2005, for the 2005-2006 school year. A similar 2% salary increase for the 2006-2007 school year, reflecting a buy-back of three (3) staff development days for all unit members. For 2005-2006, three mandatory staff development days would be added to the work year of K-12 teachers and adult education unit members, increasing their work years from 180 to 183 days; increasing the work year for psychologists from 190 to 193 days, and ECE unit members from 205 to 208 days. Similarly, for 2006-2007, three (3) additional planning days would be added, increasing work years from 183 days to 186 days for K-12 teachers and adult education unit members from 193 to 196 days, and psychologists and counselors from 208 days to 211 days, including ECE unit members. The Association maintains that even with the proposed salary increase, they still remain among the poorest paid in comparable California large urban school districts and in the Bay Area, ranking at or near the bottom in every salary schedule for certificated teachers.

## Position of the District

The District's position is as originally agreed in the parties' TA that three (3) staff development days should be added to the work year and that the Unit Members' salary schedule should be increased "based upon the dollars available in the block grant under AB 825 (Parcel Tax-Measure E)." This would result in an ongoing across-the-board salary increase to Unit Members of approximately 1.3% to 1.5%, beginning in 2005-2006. The District asserts that it cannot afford a 2% salary increase or more, citing its inability to pay as the basis for not being financially able to pay the salary increase requested by the Association.

In support of its inability to pay argument, the District cites 13 reasons for not doing so; including (i) \$100 million loan from State due to fiscal insolvency; (ii) loan continues to be largest in State; (iii) termination of Superintendent; (iv) continuing chronic deficit spending; (v) negative unrestricted general fund balance; (vi) AB 2765; (vii) significant budget program reductions; (viii) need for further budget and reductions to remain solvent; (ix) projections indicate yearly reductions needed to meet State financial criteria; (x) past salary increase limits future ability to pay; (xi) chronic declining enrollment; (xii) Wall Street reduced bond rating to BBB; and (xiii) the interest and public welfare would be severely damaged by program and budget reduction necessary to comply with Association's salary request.

## Discussion and Analysis:

### a. Comparability

Although both the District and Association produced similar financial data and documents in support of their comparative analysis of certificated salaries (step and column), benefits and working conditions of teachers in Alameda (Piedmont, Livermore, Emeryville, Berkeley) and Contra Costa (Antioch Martinez, Pittsburg and West Contra Costa) Counties, and California large urban districts: (Compton, Fontana, Fresno, Pomona, Sacramento) with 30,000-74,000 ADA and high minority enrollments, neither party agreed with the other's analysis and reached far different conclusions on issues of comparability.

The Association presented comparisons from 23 Bay Area districts and large urban districts of certificated salary, benefits and working conditions, indicating that Oakland bargaining members compare poorly with these other districts in average salary, step and column and retirement at age 60 after 25 years of service. Moreover, comparisons show that Oakland is not competitive in attracting and retaining quality teachers (\$37,090 - Step 1) or substitutes (\$111.05 daily rate) due in large part to low pay.

The District does not deny these comparisons and has acknowledged having on average an annual teacher turnover rate of 30% each school year. According to the District, exit interviews with teachers to determine the reasons for their early termination of employment, reported general frustration attributed to working conditions in Oakland (urban environment), low pay and greater opportunities for professional growth and promotions in other school districts. Although these conditions and reported reasons for losing approximately one-third of its teachers each school year still remain, the District maintains that its financial situation is still grave and cites a combination of factors for its inability to pay only a 1.3% to 1.5% salary increase. Included among the District's stated factors are prior chronic deficit spending and increased salaries previously paid teachers (2002-2003), which the District cites as exceeding State COLA and CPI.

b. Ability to Pay

In accordance with applicable California state law, any analysis of salary disputes between the parties necessarily requires the Fact Finder to consider in addition to comparison of wages, hours and conditions of employment, the public school employer's financial ability, i.e., the ability to pay. The District contends, *inter alia*, that it lacks the financial ability to pay the Association's increase salary request, and that interest of the public and its welfare would be severely damaged by necessary budget and program reductions that would be required in order to fund the increase. Thus, ability to pay does become a primary factor. But merely asserting an inability to pay as the District has, citing its outstanding loan obligation of \$ 100 million (repayable more than 20 years) to the State and potential damage to the public interest and program

reductions if a 2% or additional .5 or 1% salary increase is paid, may initially appear penny wise in the short term, but pound foolish in effect, where verifiable financial data indicates that the District's financial ability is and continues to improve enough to pay at least 2% as originally requested, and/or, even the 1% modest salary increase.

The Fact Finder now, after a careful review and analysis of the evidence presented on this issue and other criteria listed for consideration, has come to the conclusions listed below, and makes the following findings of fact:

1. As to an appropriate salary increase, the Association has presented persuasive, credible and verifiable evidence that the District does have an improved financial ability, notwithstanding its position to the contrary, to fund the Associations original requested 2% with an estimated cost of \$3,24 46,722, or even possibly an additional 1% across the board salary increase added to its original offer of 1.3% to 1.5%, or 2.3% to 2.5% (actual salary), retroactive to July 1, 2005. The added cost of a 1.0% salary increase to its offer for the OEA unit is \$1,623,361, or \$3,733,730 at 2.3% and \$4,058,402 at 2.5%. Whichever salary increase that the parties eventually agree upon can be funded without significant financial impairment to the District, or adversely affecting the State Administrator's legislative mandate under AB 2756 to keep the District solvent.

2. The District has received, and will continue to receive, increases in its revenues that are greater than the 2% (\$3,246,722) cost in salary as originally requested or a 1% (\$1,623,631) additional salary increase in its wage offer to Association members. OEA members in 2003, took a 4% salary reduction and gave back three (3) work days to the District with an approximate savings to it of \$7 million. The Association has, pursuant to SB 39 (Pedata) Section 4(a)(3), *"accepted its fair share of the burden of the fiscal recovery of the Oakland Unified School District. "*

3. In 2004-2005, the District received a funding increase in the Revenue Limit per ADA (\$172.54)

equivalent to 3.68% or \$7,483,577 in new money. And, an increase in 2005-2006 ADA revenue (\$270.31) of 5.55% or \$11,337,342. Although the District does have a declining ADA, increased ADA revenue funding in 2004-2005 and 2005-2006, coupled with additional unrestricted funding for Class Size reduction of approximately \$16 million and Parcel Tax Revenues (Measure E), are supplemental sources of new money (although not dollar for dollar), to fund the Associations original 2% salary request, and possibly a 1.0% (\$1,623,361) overall additional increase to the District's original salary offer. Moreover, in a comparative review of 15 urban Bay Area school districts, Oakland ranked second in total dollars it receives per ADA, but fourth from the bottom in dollars spent (34.97%) for its total outgo on teachers' salaries.

4. Notwithstanding the District's stated position of an inability to pay the 2% original salary request or make any additional increases to its 1.3% or 1.5% salary offer, much of the District's financial data presented at the fact finding hearing was often incomplete, inaccurate and unverifiable; reflective more of its ongoing internal accounting problems within the District, rather than any attempt to understate its actual financial position.

5. The District estimated that there would be a negative \$2,674,561 in its Total Ending Balance for 2004-2005 (OUSD Fiscal Report), when in fact the Final Unaudited Actuals for 2004-2005 indicate a Total Ending Balance of \$21,702,659.12 making a \$24,772,220.12 positive balance increase in the District's General Fund. Further, the unrestricted portion increased from a negative \$5,362,871 (District estimate) to an additional \$5,557,611.91, reflecting a \$10,920,482.91 positive increase, not included or counted in the District's 2004-2005 Fiscal Report. The District's estimated ending balance for Adult Education of a negative \$3,510,929 actually increased to \$2,850,031.35, for a positive increased balance of \$6,360,960.35.

6. In comparing the 2003-2004 State Audit completed by the State Controller's Office and released to the District in October 2005 (but not to the public until after the fact finding hearing), with the Unaudited 2004-2005 financials obtained from the Alameda County Office of Education, it shows direct increases in

revenue to the District in 2004-2005 over 2003-2004. See Chart below:

Other Revenue Sources	2003-2004 Audit	2004-2005 Unaudited Actuals	Increased Funding (Dollars)	Increased Funding (Percentage)
Federal Revenue	\$59,549,470	\$63,419,337	\$3,869,867	6.5%
Other State Revenue	\$94,741,014	\$98,114,543	\$3,373,529	3.56%
Other Local	\$17,565,660	\$27,916,014	\$10,350,354	5.89%
Ending Balance	\$9,147,190	\$21,702,659	\$12,555,469	137.26%

**Recommendations:**

The District's revenue limit funding over the two-year span totals \$18,820,919, without considering other funding from state, federal and local income sources. Although the District has received well deserved and published attention regarding the \$24 million received from public corporations in 2005-2006, which are earmarked for specific purposes (restricted funds), they nevertheless add greatly to the District's current revenues and flexibility to offset other funds which may be used to support the District's educational cost.

Therefore, it is the Chairman's recommendation that the District fund the Association' original 2% requested salary and/or make an additional 1.0% across the board salary increase to its original offer of 1.3% to 1.5%; (2.3% to 2.5%) to the Association, retroactive to July 1,2005. An additional 1.0% salary increase to its original offer for the OEA Unit will cost \$ 1,623,361, or \$3,733,730 at 2.3% and \$4,058,402 at 2.5%. An overall 2% or more movement in the District's salary offer to the Association is within the District's financial means and would have an enormous positive effect on teacher morale, and may even be viewed as a demonstration of the District's commitment (which it will be) to retain and attract quality teachers necessary to carry out its stated mission.

The Chairman further recommends that substitute teachers' (Regular, Adult Education and ECE) current daily rate of \$111.05 be increased \$7.00 to \$118.05, including a step structure for long term

substitutes. The increase is necessary and will significantly enhance the District's ability to compete, attract and retain quality substitutes whenever needed.

## **ISSUE II. HEALTH BENEFITS - Article 24.12**

### **Position of the District:**

The District proposes a recommendation of the parties previously agreed TA, which places a \$7,046 per year cap beginning in 2004-2005, and remaining for 2005-2006 and 2006-2007. Under the TA, a Medical Benefits Reserve Fund (Bank) would be created to cover plan differences, including Measure E funds (8.2% - 9.7%) for the 2005-2006 and 2006-2007 school year.

### **Position of the Association:**

The Association members rejected the TA and its agreed \$7,046 per year cap, opting instead for the current contract language in which the District pays 100% of health cost.

### **Discussion and Analysis:**

The main issue in dispute in this article is the District's proposal to implement a cap on its medical health care benefits in place of the current non-cap and 100% cost free medical plan under the existing contract language. Oakland is one of the very few districts in the Bay Area without a health benefit cap. The Fact Finder concurs with the District that containing the cost of employee health and benefits is a vital component of the District's Multi-year Recovery Plan. To this end, the Association has also begun to rethink its position and explore other options, including increased co-pays and agreeing to a recent dependent coverage audit, resulting in significant (at least \$2.3 million) savings to the District. But that is not enough, when annual medical costs are estimated to continue rising and will surely do so (whether Kaiser or Health Net), without a good faith cooperative effort by the District to cap its plan contributions

and/or, the Association members to contribute to the cost of its plan, thereby stabilizing costs and maintaining the competitive market forces.

a. Health Benefits/IRS 125 Plan

The IRS 125 health benefit plan is worthy of the parties' consideration and appears to address both the cap and contribution issues, while simultaneously offering pre-tax contribution benefits to Association members and allowing the District to reduce its cost and report, without any reduction for contribution, the OEA members full salaries to their STRS's retirement. It appears to be a "win, win" for both parties and will work as follows: Effective January 1, 2006, or retroactively thereto, the Association will abandon its previous position of a fully paid health care insurance program by the District, and require OEA members to make a contribution of 0.5% (.005) of their scheduled annual salary, up to a maximum of \$500 annually, towards payment of their health insurance premiums. This contribution would be paid through an IRS 125 Plan, to which the District would also contribute annually and reduce its cost. Additionally, the IRS 125 Plan would make co-pay changes that would provide additional savings to the District. During the first year, OEA unit members' annual salary contribution would provide savings to the District in excess of \$1 million. Of significant interest here is the fact that OEA member contributions will be locked to their annual salaries, which means that for every increase in salary and step in column or degree preparation movement on the teachers' salary schedule, the District would also receive a proportionate increase in savings, well above the \$1 million in member contributions. These contributions and savings to the District are in addition to savings derived from the cost of benefits due to an audit of dependents.

According to the District's Insurance Administrators, Keenan & Associates, the audit will save at a minimum, a sustainable \$2.3 million per year on District health care cost. Approximately \$1.6 million of this savings can be directly attributed to the OEA Unit. The combination of these contributions and CAP

savings are necessary and will to provide the District with foreseeable cost reductions in its medical benefits and provide a quality health care plan to its certificated employees.

**Recommendations:**

It is the Chairman's recommendation, after a careful review and analysis of the evidence presented, that the Association abandon its non-contribution position under the existing contract, and the parties adopt the IRS 125 Plan as described above. The Plan co-pay and contribution components benefit both parties as the best possible solution to reduce and control future health cost and maintain competitive market forces between the competing HMO's; Kaiser and Health Net Plans.

**ISSUE III. ELEMENTARY PREPARATION - Article 10.5**

**Position of the District:**

The District reaffirms the position previously agreed to by the parties in the TA, that school sites should be given the right to decide whether or not "covered" prep time is the most effective use of school site dollars. If school sites decide to spend money for "covered" prep time, they can utilize a variety of different funding sources, however, if the District requires "covered" prep time, it must be paid for with and out of general fund unrestricted dollars.

**Position of the Association:**

Retain the 2003-2004 contract language requiring two staffed preparations which provide music, art, science, computer science and physical education at the school sites which are educational, sound and extremely beneficial to students. The Association rejects the District's position that the 100 minutes of common preparation time is sufficient, given the number of staff in schools and extremely limited instructional support equipment. According to the Association, "the current situation (no staffed or very

limited staffed prep) is discriminatory and creates an inequity among the "Hill" schools (more affluent) and the "flatland" schools (less affluent)."

#### Discussion and Analysis:

The current practice is for elementary teachers to receive two (uncovered) periods of 100 minutes common preparation time each week within the duty day. But the current contract language (which the District opposes) requires that the District "cover" one of the prep periods while the teacher has prep. The other prep period is "uncovered," meaning that it is given at the end of the day after students have been released early. The District believes that each school site should have the discretion to determine whether to cover staff preparation for music, art, science, computer science, physical education, or other subjects. Further, that it will incur additional cost in hiring teachers to cover the prep periods.

Notwithstanding the District's position, evidence presented at the fact finding hearing clearly supports this program as being both instructionally sound and extremely beneficial to students, especially those students needing a well-rounded curriculum. As to the hiring of additional teachers, the evidence indicates that the District, with a declining ADA, still employs at least one-half of its teachers (many unassigned) who could be assigned to covered prep at little or no expense. But of paramount concern in eliminating both covered prep periods, is the appearance and perception of District supported discriminatory coverage and endorsed inequity between affluent and less affluent school locations. Given the District's stated mission of quality education for each student, it can do no less than provide teachers with one (1) staffed (covered) prep period.

#### Recommendations:

It is the Chairman's recommendation, after a careful review and analysis of the evidence presented, that the District maintain at least one (1) staffed (covered) prep period, and allow the school sites to determine whether to use their school site dollars to cover the other prep period.

#### ISSUE IV. INVOLUNTARY TRANSFERS - Article 12.7

##### Position of the District:

The District believes that this issue has been resolved by OEA accepting its proposal of January 24, 2005, and agreeing to a streamlined process with reasons given for the transfer and discussions with the teacher and a vacancy list provided to OEA.

##### Position of the Association:

This practice provides no protection to members from punitive transfers and were often seen as a convention to get around state regulations regarding opening of schools. According to the Association, "schools closed" were really no closed, when the same school reopened later in the year, at the same site with inadequate staff, curriculum and instructional resources for students

##### Discussion and Analysis:

The Association recognizes the District's right to manage and transfer its work force as needed and to do so involuntarily, based upon changed circumstances including school closures. Both parties engaged in good faith discussions in January 2005 to address the District's need for flexibility and OEA unit members' need for adequate protection and further assurances that such involuntary transfers are for legitimate needs (closed schools), rather than to circumvent state regulations regarding opening of "new schools." This previously agreed issue may be resolved by having the parties revisit their prior agreement and adjust their definition of school "closure."

##### Recommendation:

It is the Chairman's recommendation, after a careful review and analysis of the evidence presented, that the parties revisit their prior language, including the definition of "school closure", to assure adequate protection for teachers and added assurances for those members who may find themselves subject to this Article.

## **V. REMAINING ISSUES**

The Panel is in agreement that all remaining disputed issues not formally addressed in this Report involving language construction and interpretation are non-economic in nature or not essential for its recommendation and completion of the Fact Finding Report.

### **Recommendations:**

It is the Chairman's recommendation, therefore, that all remaining issues and sub-issues in dispute: School Calendar, Voluntary Transfers, School Transfer/Closure, Adult Education Assignment, Class Size, Counselor Case Loan, Early Childhood Education, Early Retirement, National Board Certification, Contract Waiver, New Schools, Program Improvement, and Site Grievance Boards, be remanded to the parties for further discussions, negotiations, and resolution.

## **CONCLUSION**

The Panel's fact finding responsibility and duty in fulfilling its charge required an examination of evidence and facts, an objective financial analysis, and the making of independently derived and helpful recommendations to the parties. We have done so, and much more. The Panel has expended an enormous amount of time, effort and energy to prepare this report. The parties are strongly encouraged to accept the Panel's Report and Recommendations as a foundation for resolving this dispute.

DATED: January 20, 2005

Respectfully submitted,

Claude D. Ames, Chairman  
Fact Finding Panel

PANEL MEMBERS CONCURRENCE/DISSENT

District Panel Member Ron Bennett dissents to the Chairman's Report and hereby **attaches** his dissenting comments to the Report.

Dated: January\_\_\_\_, 2006

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RON BENNETT  
District Appointed Fact Finder

Association Panel Member Theodore R. Bynum, Jr., hereby concurs with the Chairman's **Report** and attaches his concurring comments to the Report.

Dated: January 20, 2006

THEODORE R. BYNUM, JR.  
Association Appointed Fact Finder

PANEL MEMBERS CONCURRENCE/DISSENT

District Panel Member Ron Bennett dissents to the Chairman's Report and hereby attaches his dissenting comments to the Report.

Dated: January 20, 2006

RON BENNETT  
District Appointed Fact Finder

Association Panel Member Theodore Bynum, Jr., hereby concurs with the Chairman's **Report** and attaches his concurring comments to the Report.

Dated: January\_\_\_\_, 2006

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THEODORE BYNUM, JR.  
Association Appointed Fact Finder

FACT FINDING PROCEEDINGS UNDER  
CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the Matter of a Dispute

between

OAKLAND UNIFIED  
SCHOOL DISTRICT

DISSENTING OPINION,  
DISTRICT MEMBER OF  
THE FACT FINDING PANEL

and

PERB NO. SF-IM-2573-E

OAKLAND EDUCATION  
ASSOCIATION

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Fact finding Panel

Claude Dawson Ames, Panel Chair  
Ron Bennett, District-Appointed Panel Member

Ted Bynum, Association-Appointed Panel Member

Hearing

August 29, 2005

DISSENTING OPINION OF THE DISTRICT APPOINTED PANEL MEMBER

Although the issues involved in this case are complex and significant, and the panel members put forth super-human efforts in an attempt to reach either a settlement or a unanimous report, I cannot concur with the report in its entirety. I do applaud the creativity, diligence, and professionalism of the Association Panel Member and the perseverance of the Chair.

Concurrences:

I concur with the recommendations of the Chair regarding; Term of Agreement, Salary-Hours of Work, Involuntary Transfers, and the broad category of Remaining Issues.

Dissents:

I offer dissenting opinions regarding: Inability to Pay, Health Benefits and Elementary Preparation

Inability to Pay: The district argued that it did not have the ability to pay the totality of the union's settlement demand based upon its financial condition. The district argued 1) that

declining enrollment of more than 20% over the past 4 years had reduced funding far below the level of prior years, 2) that program reductions had already had an adverse impact on Oakland's children and that further personnel and program cuts would be devastating to the education of these students, 3) that the district's current financial condition makes it a ward of the state and that it has received a \$100 million emergency loan from the state in order to avoid bankruptcy, and 4) that the recovery plan approved by the state as a condition of the loan required continued budget reductions.

The district presented un-refuted evidence in support of each of these points. Oakland USD is one of only four districts to receive emergency loans in this decade and received the largest loan in the history of the state. Of more than 1,000 school districts in the state, only these four have been taken over by the state and are still under state supervision.

In the face of this evidence, the district is entitled to an unequivocal ruling that the district does have an inability to pay the union's demand. That conclusion is not clearly expressed in the report.

**Health Benefits:** The recommendation of the Chair shows progress toward employees contributing to the cost of their own health care, but in my opinion, the amount of the contribution recommended is too small. Under the Chair's recommendation, the average teacher would pay less than \$300 per year toward their health insurance. This is symbolic, but will not provide sufficient cost savings to the district. The age of the totally free health plan has passed, particularly when the cost of the health plan requires the cutting of programs for children.

The District proposed a cap on its contributions as is the case in many other districts. This request is reasonable, consistent and comparable with the practice of other public agencies. I recommend the District position, ie. a capped contribution, or another means of achieving cost containment be considered by the parties during post-fact finding negotiations.

**Elementary Preparation:** The dispute is not about how much paid time teachers are given during the school day to prepare; it is about how the district provides that release time. Under both the District and Association proposals, teachers would receive exactly the same amount of preparation time.

Under the Association proposal and the recommendations of the Chair, additional teachers would be hired using District unrestricted general fund dollars to cover classes. I recommend that instead of a contractual requirement to provide this coverage, that individual schools be allowed to determine how to cover these classes. Under the current site-based decision making model, teachers at a site have a significant voice in this decision. Even if they all choose to hire teachers to cover preparation periods, there is still an advantage. The sites would be able to use a variety of categorical funding to pay the cost. This would provide relief to the general fund and release funds for other high priority needs.

This recommendation would provide program flexibility to schools and would minimize the cost to the general fund. The parties should seriously consider this recommendation during post-fact finding negotiations.

Summary: Overall, I believe the report provides a useful basis for settlement except for the issues for which I offer dissenting opinions. I recommend the parties carefully consider the conclusions of the Chair as they seek to resolve their remaining differences.

Respectfully submitted,

Date: January 20, 2006

RON BENNETT  
District-Appointed Panel Member  
Oakland Unified School District

FACT FINDING PROCEEDINGS UNDER  
CALIFORNIA GOVERNMENT CODE SECTIONS 3548.2 AND 3548.3

In the Matter of a Dispute	)	
	)	
Between	)	
	)	
OAKLAND UNIFIED	)	CONCURRING OPINION,
SCHOOL DISTRICT	)	ASSOCIATION MEMBER OF
	)	THE FACT FINDING PANEL
And	)	
	)	
OAKLAND EDUCATION	)	PERB NO. SF-IM-2573-E
ASSOCIATION	)	
	)	

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Fact finding Panel

Claude Dawson Ames, Panel Chair  
Ron Bennett, District-Appointed Panel Member

Theodore R. Bynum, Jr., Association-Appointed Panel Member

Hearing

August 29, 2005 through August 31, 2005

CONCURRING OPINION OF THE ASSOCIATION APPOINTED PANEL  
MEMBER

The issues involved in this matter are crucial to the quality of education students of the Oakland Unified School District receive. Quality education in Oakland is a necessity, an expectation and an imperative that must be satisfied with zeal and purposeful action. This community, above many others has voted funding to ensure it. Anything else is unacceptable. Having highly qualified and well-compensated teachers are keys to maintaining an exceptional program. We ask that the parties use this report as one small step to secure this goal.

The District's Panel Member's dedication and commitment in his attempts to resolve this dispute are laudable and should be recognized. The Chair has been diligent, persuasive and presents a fair, reasoned and affordable resolution. He should be commended for his forthrightness and skill in crafting these recommendations.

## Concurrences:

I concur with the recommendations of the Chair regarding Term of the Agreement, Salary-Hours at the recommended increase of 2.5% retroactive to July 1, 2005, Ability to Pay, Health Benefits, Involuntary Transfers, and the categories of Remaining Issues.

## Discussion:

### **Salary**

1. The salary recommendation, if implemented to its maximum of 2.5%, which I recommend would require a limited amount of funds. Also, the public needs to know that such an increase would continue to leave Oakland teachers among the lowest paid in the Bay Area and in urban districts statewide. Additionally, one half of one percent of this increase would be returned to the district as payment, by unit members toward the cost of medical benefits. The maximum amount any teacher would receive would be a 2% increase in salary.
2. In the 2004-2005 school year, the Oakland USD failed to meet the Minimum Expense for Classroom Expenditures benchmark required by the state of California. This measure, as provided for in Education Code, Section 41374 requires that unified school districts provide a minimum percentage of 55% towards classroom compensation. Oakland's percentage was only 53.13%. This deficiency shows that Oakland was \$6,572,838.90 short in its requirement for expenditures for the classroom. The primary reason for this shortfall in classroom effort is the paucity of the amounts spent on teachers' salaries and benefits. The community of Oakland must require that this minimum percentage be met.
3. The District admits that 30% of its teaching staff leaves every year, nearly 1,000 teaching staff. As senior and experienced staff leave the District, it can no longer attract and retain credentialed and experienced teachers, as other school districts in the county or the state that provide higher salaries and better teaching and learning conditions. Our children cannot receive stable, consistent or coordinated instructional and curricular services with this great a turnover. Neither can the community accept it.
4. The recommendation provides for a necessary, yet minimal improvement in substitute teacher compensation of \$7.00 a day and provides a structured increase for substitutes to work for the

District over a number of years. Currently, the District's uncompetitive compensation creates a critical shortage of credentialed and qualified substitutes, who are recruited by other districts because of their higher compensation, working conditions and human resources procedures that actively demonstrate a desire to have them return to their district.

5. Finally, teachers contributed to Oakland's financial dilemma by voluntarily agreeing to a 4% pay reduction in 2003 and a severe reduction in their ranks. They have not had a raise since this time, while other districts have been steadily increasing salaries and benefit levels.

### **Health Benefits**

1. The health benefit recommendation provides for a 1/2% contribution of salaries be paid to the District as a unit member's contribution toward payment of medical insurance premiums. In addition, the recommendation includes co-pay increases. The combination of these two changes provides the district in excess of \$1,000,000 from unit members toward the payment of their premiums.
2. This method provides a secure, predictable, increasing savings to the District each year as salaries rise and maintains the competitive market environment between the two carriers, preventing adverse selection and minimizing plan cost increases.

### **Staffed Preparation Time**

1. The recommendation on staffed preparation time is vital and allows students in all schools to receive specialty instruction from teachers expert in science, art, music, physical education, computer technology and other courses, as site professionals determine.
2. The Bay area average for preparation time (most of it staffed) in school districts is 137 minutes a week. Oakland's allotted minutes for an unstaffed preparation period are 100 minutes a week. Further, with limited resources, space, equipment and materials, the current circumstance does not allow for essential preparation time for teachers.
3. Lastly, the current situation of some schools having staffed preparation periods, with specialty teachers provides a discriminatory and inequitable educational program — with more affluent school communities providing the specialty teachers and

Concurring Opinion - Association Panel Member, Ted Bynum

those less affluent being unable to do so. The District has the resources to provide these services to all students.

**Involuntary Transfer Language for School Change/Redesign**

1. Equitable transfer provisions are not present in the current agreement, resulting in large numbers of teachers being unassigned and, due to hasty and unplanned school reconfigurations, result in poorly designed curricula, insufficient equipment and materials at sites, placement of too few staff with credentials to provide the programs offered and an ineffective program for students. Although the Association proposed language that would provide the District the needed flexibility to move staff and provide the staff the time to plan for new programs and the basic right of knowing their teaching assignment before their classes begin, I accept the recommendation to defer these proposals until the parties can revisit and discuss them.

**Conclusion**

The parties have tried to resolve these and many other issues over the last two years, without success. These recommendations provide a true and equitable solution and should be accepted.

Respectfully submitted,

**/S/ Theodore R. Bynum, Jr.**

2006

THEODORE R. BYNUM, JR.

Oakland Education Association CTA/NEA

Date: January 20.