

**APPROVED MINUTES  
ALUM ROCK ELEMENTARY SCHOOL DISTRICT  
2930 Gay Avenue  
San Jose, CA 95127**

**MINUTES OF A REGULAR MEETING OF THE BOARD OF TRUSTEES  
of the Alum Rock Union School District  
Held on Thursday, November 9, 2017, 5:30 p.m. at the Alum Rock Union School  
District Office Board Room, 2930 Gay Avenue, San Jose, CA 95127  
Meeting #09-17/18**

**1. OPEN SESSION**

**1.01 Call to Order / Roll Call**

President Esau Herrera welcomed everyone in the audience. President Esau Herrera called the Board Meeting to order at 5:31 p.m. followed by Roll Call.

**Board Members Present:**

Esau Ruiz Herrera	President
Andrés Quintero	Vice-President
Dolores Marquez-Frausto	Clerk
Khanh Tran	Member
Karen Martinez	Member

**Administrative and Support Staff Members Present:**

Dr. Hilaria Bauer	Superintendent
Rene Sanchez	Assistant Superintendent, Instructional Services
Kolvira Chheng	Assistant Superintendent, Business Services
Jess Serna	Interim Assistant Superintendent, Human Resources
Angel Rodriguez	Executive Assistant/Communications Support
April Ramirez	Executive Assistant, Human Resources
Patricia Tovar	Executive Assistant, Business Services

**Support Staff Absent:**

Marie C. Sanchez	Sr. Executive Assistant, Superintendent's Office
------------------	--

**1. OPEN SESSION** *(continued)*

**1.02 Announcement and Public Comment Regarding Items to be Discussed in Closed Session**

President Esau Ruiz Herrera announced the items that would be discussed in Closed Session.

President Esau Ruiz Herrera asked if there were any public comments regarding the items to be discussed in closed session.

There were no public comments at this time.

**1.03 The Board Will Adjourn to Closed Session**

The Board recessed to Closed Session at 5:32 p.m. President Esau Ruiz Herrera announced the Board would reconvene in approximately one hour.

**3. RECONVENE TO OPEN SESSION**

**3.01 Call to Order / Pledge of Allegiance**

The Board reconvened to Open Session at 6:50 p.m. President Esau Ruiz Herrera welcomed everyone in the audience and asked the Veterans present to stand so they could be recognized and applauded for their service to our country.

**3.02 Report of Action Taken in Closed Session**

*Superintendent Hilaria Bauer reported that under Agenda Item 2.03, the Board took action to appoint Ms. Jacqueline Guevara as Executive Assistant in the Superintendent's Office, effective November 13, 2017. The vote carried with 3 in favor; 2 in opposition; no absent; and no abstention.*

*The Board took action to appoint Ms. Annya Artigas as Coordinator of Student Services, effective as soon as someone is found to replace her. The vote carried with a vote of 5 in favor; no opposition; no absent; and no abstention.*

*Luis Saenz, Legal Counsel, reported that under Agenda Item 2.01, Conference with Legal Counsel—Anticipated Litigation, the Board took action by a vote of 3 in favor; 2 in opposition (President Esau Ruiz Herrera and Clerk Dolores Marquez-Frausto); no absent; and no abstention, to waive the District Attorney Client Privilege related to the document of the Santa Clara County District Attorney's Office pursuant to the matter of search warrant 51590.*

### **3. RECONVENE TO OPEN SESSION** *(continued)*

#### **3.02 Report of Action Taken in Closed Session**

*Luis Saenz reported that in addition, regarding the same Closed Session item, and the same potential case, by a vote of 3 in favor, 2 in opposition (President Esau Ruiz Herrera and Clerk Dolores Marquez-Frausto), no absent; and no abstention, the Board took action to waive the District Attorney Client Privilege regarding the report dated May 26, 2017, prepared by Legal Counsel, Rogelio Ruiz, to the Board Officers regarding CTG and the Mathson school repairs.*

Luis Saenz, Legal Counsel, stated that he advised the Board against waiving their privilege in this matter.

#### **3.03 Discussion and/or Modifications to the Agenda**

Member Karen Martinez requested that *Agenda Items 8.02 be moved before 6.01; 7.07, 7.08, and 7.10 be moved prior to 7.01; 7.09 be moved prior to 6.01.* These agenda items include the following:

**6.01** *Update on the Bond/Facilities*

**7.01** *Program Management Agreement for Measure I. Terminate Contract between ARUSD and Del Terra Real Estate Services from Program Management of the ARUSD Bond Program*

**7.07** *FCMAT Update*

**7.08** *Approve Contract for e-Discovery Consultant Services to Assist in Response to Securities and Exchange Commission (SEC) Subpoena*

**7.09** *Board Policy First Reading BP9323 Board Bylaws Amendment*

**7.10** *Update on Conditional Approval Letter from Santa Clara County Office of Education (SCCOE)*

**8.02** *Staff will provide a summary of After School Programs and Services*

There were no objections by the Board regarding the amendments to the agenda. President Esau Ruiz Herrera deems agenda amended as indicated.

### **4. PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD**

#### **4.01 Public Members who wish to Address the Board**

President Esau Ruiz Herrera stated that public comments would be limited to three minutes per speaker.

- 1) Ray Mueller – COC Chair, spoke about the ‘disrespect’ the board shows to the committee. He stated that he was not able to attend the special board meeting that was set up at 7:30 p.m. on a Friday night and when people chose to be there, the Board did not let them speak. He asked that the discussion of the Citizen’s Oversight

#### 4. PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD *(continued)*

##### 4.01 Public Members who wish to Address the Board

Committee Meeting times be added to the next agenda. He also asked that the Board hold their closed session the night before.

- 2) Maimona Afzal Berta, Special Education teacher at Fischer – stated that on Monday, September 11 of this school year, she arrived to school to find her classroom targeted with hateful words of terrorism because of the scarf, the hijab, she chooses to wear as part of her religious belief. She stated that there have been 15 incidents this school year and that she is being targeted. She commented that she also has a right to be safe here. She asked that these instances be addressed in a reasonable manner. She stated that nobody should be put through what she has had to endure. She stated that the community will be ‘carefully watching’ to see how the Board responds to hate.
- 3) Sandra Kunze, teacher, Hubbard Media Arts Academy - stated that Hubbard is currently one of the largest schools in the Alum Rock School District. She commented that the school is currently transitioning to a TK through 8th grade school and she was advocating for the help needed for their students. She commented that the school currently has 614 students and 27 classes. She stated that the school needs an 8 hour office assistant. She commented that they have a part time assistant principal, a 4 hours health aide and a part time librarian. She also commented that they have not seen the librarian in 11 weeks because she is doing work at the district office. She stated that they need more help.
- 4) Female speaker (*no name given*) - stated she was concerned with the way the Board has been treating the parents within the last few months. She commented that they want to contribute but feel that the Board is discriminating against them and that is the reason why they seek the support from SOMOS Mayfair and the public advocates. She commented that as parents, they want to remain informed and they understand that they have rights under the Brown Act. She stated that parents have a right to a short description of every item in the board agenda 72 hours before translated in their language and stated the description is needed so parents can decide how to participate in the meetings. She also commented that parents have the right to give public comments, the right to all the documentation and interpretation in the meetings based on state and federal laws. She commented that if the district doesn’t provide simultaneous interpretation that would mean the parents that are giving a testimony in another language would have a right to have double the time. She also stated that parents have a right to public comment. She stated that in the recent meeting she felt members of the Board and the representatives violated these rights by not allowing the public to speak about items on the agenda.
- 5) Jacqueline Franco – continued the letter from the previous speaker. She stated they are also concerned with the Board calling the police during meetings and that it causes fear and discourages parents from participating in the meetings. She asked the audience to stand if they were in agreement with the letter.

4. **PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD** *(continued)*

**4.01 Public Members who wish to Address the Board**

- 6) Martha Ramirez, parent volunteer at Linda Vista, stated she listened to all the parents talk about the disrespect by the Board. She stated that some of the principals have managed to take the Roberts rules and bend them. She commented that respect is one of the most important things that must be pushed and if we want to receive respect, we must give it in return. She stated that one of her questions was about one of the parent volunteers getting fingerprinted. She commented that she asked if the District would disclose the information to ICE. She stated that the District discloses the information to the federal government but cannot guarantee that the federal government does not release that information to ICE. She stated that the District asks parents to get fingerprinted but cannot guarantee their safety.
- 7) Flor DeLeon, community member, stated 'we are here for our kids and our schools' and 'we are going to be here because we care about our own schools'. She commented that she still hears about other schools complaining about not getting basic needs and said that it is time for the Board to start listening to their suggestions. She commented that she wanted to point out on ***Agenda Item 7.02 Program Management Agreement for Measure J, Terminate Contract between ARUSD and Del Terra from Program Management of ARUSD Bond Program*** and wanted the Board to focus on what is most important in our school. She stated that we need more restorative justice programs at our schools. She also stated that parent university should have classes to educate people on being racist because we are all the same.
- 8) Berta Razo, community member, stated she would be speaking in Spanish because she was representing other parents who spoke Spanish. She stated that she believes that the more she attended the board meetings, she has come to understand that we as a community have the obligation to question the Board and hold them accountable for their actions. She commented that one board member has been here for years. She commented that she is not seeing a positive contribution. She stated that they are tired of seeing so much manipulation and so much fighting amongst the Board. She commented that they want the Board to work collaboratively and the Board shouldn't waste their time trying to blame the staff at Alum Rock because many times they work 24 hours a day. She commented that, as a country, we are going through rough times and that the only thing that will change Alum Rock is a positive attitude. She stated that they are unhappy and don't appreciate the Board's intentions of trying to fire personnel. She commented that they don't want the school district to be shaken up with so many scandals and want more transparency and better performance. She stated that Del Terra needs to leave Alum Rock. She commented that there hasn't been transparency. She stated that she doesn't approve any further construction in our schools until they clarify any kind of fraud. She commented that according to the investigation, they have been taking money away from our students. She asked the Board to please value our community and that's the only interest we should have to have a healthy environment for our children.

4. **PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD** *(continued)*

**4.01 Public Members who wish to Address the Board**

- 9) Alma Pajardo, community member, stated it bothers her a lot when she comes to the meetings and the Board has her waiting for a long time. She commented that many of them work the night shift and they have to leave their kids. She also commented that she believes the Board should have their meetings before or after they speak with the public.
- 10) Speaker *(no name given)* stated they think we have gone backward instead of going forward. Commented that there are several papers out there and only a portion of them are translated. They commented that the Board talks a lot about parent engagement and asked that Roberts Rule of Order be reinstated because we need them. They asked the Board not to 'fall back any more' but to 'keep going forward'.

5. **COMMENTS AND COMMUNICATION**

**5.01 Teamsters**

There were no representatives from Teamsters at this time.

**5.02 California School Employee's Association (CSEA)**

There were no representatives from CSEA at this time.

**5.03 Alum Rock Administrator's Association (ARAA)**

Dr. Sandra Sarmiento, ARAA President, reported the last week was a very busy week with parent teacher conferences. She commented that it's always a nice way to connect with the parents and communities. She stated that she was reminded by one of our parents about one of the parent universities and wanted to thank the parents and the community for coming to the event.

Jackie Montejano, Sheppard principal, shared that her school has been working hard on reclassifying a lot of her EL's (English Learners) and that Sheppard is in the first year of new tech.

**5.04 Alum Rock Educator's Association (AREA)**

Jocelyn Merz, AREA President, stated she would like to personally thank the Board for the opportunity they have provided to participate in the Harvard Negotiators course. She commented that there was a team of four AREA members along with Superintendent Hilaria Bauer; Assistant Superintendent of Human Resources, Jess Serna; Assistant Superintendent of Business Services, Kolvira Chheng; and the Director Human Resources, Carlos Moran.

## **5. COMMENTS AND COMMUNICATION *(continued)***

### **5.04 Alum Rock Educator's Association (AREA)**

Jocelyn Merz commented that staff were particularly grateful to share this experience and she left there feeling confident. She gave thanks again to the Board for their support.

Interim Assistant Superintendent Jess Serna stood at the podium with Jocelyn Merz, AREA President, and gave her special thanks and commented that it was truly a very positive experience.

### **5.05 Superintendent**

Superintendent Hilaria Bauer stated she just wanted to give thanks to all the veterans for the contributions they have made. She said she wanted to share a story of when they were in our house of worship and heard the news of the shootings. She commented that it made her think of the important things in life and how we need to honor each other. She stated that it has been a week for a lot of reflection. She thanked the Board for making a tremendous effort.

Superintendent Hilaria Bauer stated that she knows there are many different opinions. She commented that she hears the need for translation and that she is going to work on translating the board agenda into Spanish and Vietnamese. She also thanked Lisa Carrell, a teacher at Ocala, who received an award last night. She also commented that when the Fischer teacher spoke about her 'hate' experience, we don't want any of our teachers to go through this experience.

### **5.06 Board of Trustees**

Vice-President Andrés Quintero reported that last week, he had the opportunity to drop by and see Google at Dorsa. He commented that it was great to see them and that the mayor was there. He stated that we really appreciate Google. He spoke to the parent in Spanish. He stated to the parents that they were there to look at the policies. He commented that he appreciates the criticism and gave thanks to the parents for coming out.

Member Khanh Tran commented to the Superintendent that he hopes that the hate-related messages will be a priority. He stated that for anyone who missed it, when the Board got out of Closed Session, the majority of the Board had waived the attorney client privilege. He also commented that the recent newspapers said the District has some accounting woes. He stated that he doesn't blame the Superintendent and that he doesn't want to know about the accounting woes through the newspapers. He also commented that the District is moving in the right direction. He thanked the county for approving the budget and commented that hopefully the County will be stepping in. He also asked that the next Board Meeting be moved to December 7<sup>th</sup>.

## **5. COMMENTS AND COMMUNICATION** *(continued)*

### **5.06 Board of Trustees**

Member Karen Martinez stated she is the proud daughter of a Vietnam veteran and that her father suffers from PTSD severely. She commented that it saddens her tremendously and it is appalling to know that this can happen in our community when we ourselves and herself, as a woman of color, has been discriminated against. She commented that she personally wanted to apologize for the ignorance of whoever made that comment. She commented that she does believe that racism is taught and that it is corrected with education. She stated that we need to start having these conversations early and that she is ashamed that this happened in our district. She commented that she is hoping we can develop a policy where it doesn't happen again and that she is committed to put it on the following agenda so we can work to resolve this ignorance. She also commented that with regards to board meetings, she has said that they should work to have two board meetings. She also stated that before she was elected in her current seat, she was just a parent and she spent so many meetings on the opposite side of the seat. She commented that she had her kids with her so she understands, but she hopes that people don't just come for the issues. She asked that the audience does not stop coming and stated that their voice does matter and she feels privileged enough to serve them in her seat.

Clerk Dolores Marquez-Frausto stated she is saddened by what the teacher said. She commented that she would personally like to tell her that this one board member would like to look into putting a policy in place. She stated that as leaders they are supposed to be preventing those things from happening. She commented that she is looking forward to the VAPA show and hopes that everyone will be able to attend on December 12 from 6:00-7:30 p.m. at Mexican Heritage Plaza Theater.

President Esau Ruiz Herrera commented that it was heartbreaking to hear one of our teachers talk about what happened. He stated that he expects that administration will have a swift response. He stated that if it was a youngster, it should be turned into a teachable moment and if he was an adult, it will not be tolerated in Alum Rock. He stated that he would stand with the teacher in opposition because if they stand together, then their message will get out. He reported that he recently attended a ceremony at the Fairmont Hotel where an Ocala STEAM Academy teacher was recognized and he commented that the community was proud of that teacher. He gave special thanks to Ms. Leathers for her strong leadership at Ocala. He commented that as a personal rule, he does not like special board meetings. He stated that any time there is a special board meeting, it is only because of time constraints and only when it's necessary. He also commented that there was some suggestion that the December meeting be moved and stated that if there was interest from the Board, they needed to comment! There was some dialogue from Board Members about the possibility of changing the December 14 board meeting to December 7.

President Esau Ruiz Herrera stated he was hearing that there was some support of calling a meeting on December 7<sup>th</sup>; however, he reported that they would have to treat this meeting as a special board meeting for technical reasons in the law and not have it as regular board meeting.



**7. SUPERINTENDENT/BOARD BUSINESS** *(continued)*

**7.09 Board Policy 1<sup>st</sup> Reading BP9323 Board Bylaws Amendment. The Board will consider amending the current bylaw to reinstate Robert's Rules of Order as the procedure for the board meetings.**

President Esau Ruiz Herrera reported that, currently, the board meetings do not have Roberts Rule of Order and that the proposal is to reinstate as the procedure for the board meetings.

Member Karen Martinez stated she thought it would be helpful to educate our public on the pros and cons.

President Esau Ruiz Herrera stated there are parents and members of the public that ask for a response, expect a response, and then get frustrated because they don't receive a response. He stated that it's not that the Board Members do not want to respond, but there are rules that prohibit a member of the board to engage in conversation, so the Board will refer it to the Superintendent's Office. He commented that Robert's Rules of Order are a universally recognized rules of order and are designed to give predictability to the running of meetings.

**MOTION #09-01 by Vice-President Andrés Quintero to accept and adopt Board Policy, 1<sup>st</sup> Reading, BP 9323 Board Bylaws Amendment as submitted. MOTION #09-01 was seconded by President Esau Ruiz Herrera.**

**Public Comments:**

- 1) Ray Mucller, community member, stated he is hoping that one of the Board members was around when it was removed and could comment on why it was removed.
- 2) Speaker *(no name given)*, community member, stated that Robert's Rules of Order has been around for over 100 years to help the interaction of boards such as the District's.

**Board Comments:**

Member Khanh Tran asked if there was evidence that Robert's Rules of Order was removed.

Board President Esau Ruiz Herrera replied 'yes'.

Member Khanh Tran asked Board President Esau Ruiz Herrera if he personally verified this.

President Esau Ruiz Herrera stated that an item was referred to Robert's Rules of Order and Legal Counsel stated that Robert's Rules of Order did not apply.

Member Khanh Tran asked that the Superintendent go back and verify that it was removed.

**7. SUPERINTENDENT/BOARD BUSINESS** *(continued)*

**7.09 Board Policy 1<sup>st</sup> Reading BP9323 Board Bylaws Amendment. The Board will consider amending the current bylaw to reinstate Robert's Rules of Order as the procedure for the board meetings.**

Vice-President Andrés Quintero stated he understood Ray Mueller's concern. He commented that he thinks it's good to have something in place because someone will claim Roberts Rules of Order when it's convenient then other times ignore it.

***MOTION #09-01 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

Member Khanh Tran again asked that the Superintendent find out that Robert's Rules of Order was indeed removed.

**6. BOND/FACILITIES**

**6.01 Presentation and/or Update on the Bond/Facilities**

Luis Rojas, CEO, Del Terra, presented a two-page report and stated that from last month until now, not a lot had happened because they were in a dormant stage due to funding. He stated that the contract has not been signed for the Fischer project and that the District is in possession of the contract. He commented that on November 6, the District was informed that the project was being postponed until further notice. He stated that the Fischer project was presented at the October 12<sup>th</sup> board meeting. He presented options based on site being on fault line and stated that for now, the project is ready to be submitted to DSA. Luis Rojas reported that there are four fault lines and some intersect.

Luis Rojas commented on the bond documentation follow-up and the presumption of lack of documentation. He stated that they wanted to clarify for the record what does exist and has existed. He stated that there is a filing system, systems that have been used over and over again and have been audited and tested. He reported that the District has had a turnover of Chief Business Officials (CBO's) for a number of years. He stated that their company keeps electronic copies of documents and some of the documents should be held by the owner.

Luis Rojas commented that documentation has been given to the District and presents a matrix that he states shows all the projects they have managed in the past 5 years. He commented that there are document receipts showing the documents were given to the District, submittal logs, change orders, warranties and guarantees. He commented that this matrix is for every single project that they have done.

## **6. BOND/FACILITIES *(continued)***

### **6.01 Presentation and/or Update on the Bond/Facilities**

Luis Rojas reported they have transmittals since 2014 showing they have submitted documents and comments that Kolvira Chheng stated that he did not receive documents. He stated that these are all in the files with the District and said some documents were signed by Dr. Hilaria Bauer, some were signed by Linda Latasa, and some were signed by Maria Martinez. He commented that Dan Flores, Louie Moran, and Dana Taylor had also received documents. Luis Rojas stated that this is now a public record for anyone to view, including the District Attorney.

Member Karen Martinez asked if they are able to have a special board meeting to dive into it because she wanted to have an open dialogue. She stated that she wanted to get the information when they bring it to the Board, in public and not in another realm. She stated that it has been a challenge to decipher what is real and what isn't. She stated she believes they need time to dive into this.

President Esau Ruiz Herrera stated that he doesn't mean to minimize because he has some of the same questions and commented that they may need to have a special board meeting. He stated that they also need to be mindful that once they take that approach, they need to focus on what the community has asked them.

Member Karen Martinez stated she wanted to have a very transparent conversation so she can make the right decisions based on the information she has.

Member Khanh Tran stated that there is a Del Terra investigation. He commented the District had documentation with signatures from District staff. He stated that he doesn't see any fraud that points to Del Terra. He commented that the District's books are off and asked that if previous administration and the current can't have their books in order, how can they find the Del Terra documentation? He stated he would like to call for a forensic to make sure there isn't any wrong doing. He stated that he thinks the county will do a good job in auditing and that he thinks FCMAT dropped the ball.

Member Karen Martinez commented to Assistant Superintendent of Business Services, Kolvira Chheng, that she is grateful and thankful that he comes in every day.

Superintendent Hilaria Bauer commented that she wanted to remind the Board they have been bringing the FCMAT update to them on a monthly basis, but there is no way they can bring everything because 5 hours it is never enough time. She respectfully asked the Board to allow them to continue the process professionally.

Luis Rojas allowed the Del Terra attorney to speak about the allegations.

Del Terra attorney discussed some of the items outlined in the FCMAT report.

## **6. BOND/FACILITIES *(continued)***

### **6.01 Presentation and/or Update on the Bond/Facilities**

Member Karen Martinez stated it was a lot of information to take in and reiterates the need to dedicate a special board meeting to discuss all this.

Member Khanh Tran stated that he disagrees with Trustee Martinez because they are televised and it's not fair to them and Del Terra. He stated he doesn't want to pull this into a special meeting into a box somewhere that nobody knows anything about.

Clerk Dolores Marquez-Frausto stated that she also concurs and would like the report to be finished and stated that she thinks they need to just continue.

President Esau Ruiz Herrera commented that they are trying to get to the end of it.

Luis Rojas commented on an article that came out by the San Jose Mercury News related to the CTG about the 'secret deal'. He stated that the article came out on a memo from the District's attorney, Rogelio Ruiz. He commented that he showed Mr. Ruiz the article and the specific quotes in the article. He stated that the deal was fully known by everyone in that room. He commented that they talked about it because the project had to be rebid. He commented that it goes back to credibility and that his company, that he built with his family, is being tarnished based on allegations. He commented that he will fight this to clear their name. He stated that everyone knew the District has had seven CBO's which he stated was unusual. He commented that he is more than willing to talk to the Board and to the community to answer any questions.

Member Khanh Tran commented that he didn't want the District to be sued by Del Terra. He stated that he is all about fairness and has said that if there is any evidence of fraud from Del Terra that he will be the first one to cancel their contract but stated that he has not seen this. He commented that everything is based on the rule of law and the facts and that he will not act until he sees facts.

Del Terra Attorney stated that their focus in the last several minutes was trying to correct the record. He commented that the issues that may have existed in the past are in the past and that Del Terra looks forward to continuing the relationship with the District. He stated that we shouldn't lose our focus in terms of what is going on, but that they have no choice but to defend themselves because they've been hearing all sorts of allegations.

Public comments:

- 1) Female speaker (no name given) stated they took a long time to defend themselves and that if they have a chance to defend themselves they should have brought all the things that was asked of them to provide. She commented that members of the board have received contributions from Del Terra. She stated that the District should terminate the contract with Del Terra and hire someone else.

## **6. BOND/FACILITIES *(continued)***

### **6.01 Presentation and/or Update on the Bond/Facilities**

- 2) Ray Mueller, Chair of Citizen's Oversight Committee, stated that he was going to again request that Del Terra provide the original planned amount of the project, actual amount and amount of the change orders when they come to the meetings.
- 3) Female speaker (*no name given*), stated that agenda item 6.01 was supposed to present an update on the bond facilities and instead they got a bid on a project that hasn't happened. The speaker asked for details and stated that they expected to see what was going on.
- 4) Male Speaker (*no name given*) stated that as of 2017, the District still does not have what was requested by Del Terra. The speaker stated that it was unclear what percentage of the documents were actually produced.

Vice-President Andrés Quintero stated he appreciated the fact that the documents were coming up because the District pays a lot of money to the company to be able to keep those documents. He commented that people should be surprised at the fact that they are being produced now. He stated that he is glad that they are poking about because it was going to force things to be done right. He commented that the Board has received memos from staff that say they have been requesting documentation over the years.

Member Khanh Tran stated that a lot of people out there have been advocating over the past year about the fraud that was happening. He commented that the District should do audits and that 'the books are off'. He commented that the audience should not be unfair to Del Terra. He asked who would do the work if the District were to get rid of Del Terra. He asked for forensic all the way back to 2010 and stated that if anyone did wrong doing, they would have to 'own it'.

President Esau Ruiz Herrera commented that he would offer an opinion that Del Terra has been wrongly accused. He commented that the District still had air conditioning. He stated that a community center will be a situation where the kids and the kids' kids will be engaging in something that is positive. He commented that Del Terra has been doing things on time and under budget. He stated that he will be looking forward to an updated regular report on what it is being done.

### **6.02 Approve (9) New Portable Installations and New Parking Area for Hubbard Elementary School Final Change Order**

Assistant Superintendent Kolvira Chheng reported that staff was requesting approval of nine new portable installations and new parking for Hubbard Elementary School final change order.

**6. BOND/FACILITIES** *(continued)*

**6.01 Approve (9) New Portable Installations and New Parking Area for Hubbard Elementary School Final Change Order**

**MOTION #09-02 by Clerk Dolores Marquez-Frausto to accept and approve (9) New Portable Installations and New Parking Area for Hubbard Elementary School Final Change Order as presented. MOTION #09-02 was seconded by Member Karen Martinez.**

Member Khanh Tran stated that there were three portables that were there before. He recalls back in February or March there was a design put to DSA to overlap these portables. He asked if these 9 portables include the three or if they will be replacing the portables.

Assistant Superintendent Kolvira Chheng reported that the three portables that were put there before were only temporary portables.

Vice-President Andrés Quintero asked if the portables were the ones that were at Fischer and moved over to Hubbard. He also asked if they were refurbished.

President Esau Ruiz Herrera suggested that administration get that information to the Board offline.

***MOTION #09-02 carried with a vote of 4 in favor; no opposition; 1 temporary absent (Clerk Dolores Marquez-Frausto stepped out of the room); and no abstention.***

**6.03 Approve the HVAC Upgrades Project at Dorsa Elementary Final Change Order**

**MOTION #09-03 by Member Karen Martinez to approve the HVAC Upgrades Project at Dorsa Elementary Final Change Order as presented. MOTION #09-03 was seconded by Clerk Dolores Marquez-Frausto.**

***MOTION #09-03 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

**6.04 Approve HVAC Upgrades Projects at LUCHA Elementary School Final Change Order**

**MOTION #09-04 by Member Karen Martinez to approve the HVAC Upgrades Projects at LUCHA Elementary School Final Change Order as presented. MOTION #09-04 was seconded by Clerk Dolores Marquez-Frausto.**

**6. BOND/FACILITIES (continued)**

**6.04 Approve HVAC Upgrades Projects at LUCHA Elementary School Final Change Order**

Clerk Dolores Marquez-Frausto asked if this item was already added to the Bond budget.

Assistant Superintendent Kolvira Chheng confirmed all of the items are from the Bonds budget.

***MOTION #09-04 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

**6.05 Approve Restroom Access Upgrade Project at Mathson Middle School Final Change Order.**

**MOTION #09-05 by Clerk Dolores Marquez-Frausto to accept and approve Restroom Access Upgrade Project at Mathson Middle School Final Change Order as presented. MOTION #09-05 was seconded by Member Karen Martinez.**

***MOTION #09-05 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

**6.06 Approve DSA Project Inspector for (9) New Portables, New Parking Area and Shade Structure for O.S. Hubbard Elementary School Change Order No. 2**

**MOTION #09-06 by Member Karen Martinez to accept and approve DSA Project Inspector for (9) New Portables, New Parking Area and Shade Structure for O.S. Hubbard Elementary School Change Order No. 2. MOTION #09-06 was seconded by Clerk Dolores Marquez-Frausto.**

***MOTION #09-06 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

**6.07 Amend Measure I, Phase 1 Project List to include HVAC Projects at Ryan and Russo/McEntee Schools**

**MOTION #09-07 by Clerk Dolores Marquez-Frausto to approve to Amend Measure I, Phase 1 Project List to include HVAC Projects at Ryan and Russo/McEntee Schools as presented. MOTION #09-07 was seconded by Member Karen Martinez.**

***MOTION # 09-07 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

## **6. BOND/FACILITIES (continued)**

### **6.08 Postponement on Issuing the Notice of Proceed to Contractor for the New Fischer Multi-purpose Building Project**

Assistant Superintendent Kolvira Chheng reported that due to insufficient Bond funds, the District has not been able to issue a notice to proceed.

Clerk Dolores Marquez-Frausto asked how much money the District was going to end up losing. Assistant Superintendent Kolvira Chheng stated he did not have the exact figure and that he would get back to Clerk Dolores Marquez-Frausto.

Member Khanh Tran stated that last year the District approved the Bond refinance and it cost the District \$2 million. He stated that the false allegations messed up the District's bonds. He commented that he wanted to move forward and stated that the kids on the East Side deserve a gym.

Clerk Dolores Marquez-Frausto stated that in one of the Bond meetings, they discussed the amount the District would be losing and that she recalled that it was about \$4 million. Assistant Superintendent Kolvira Chheng stated that the District had spent approximately \$800k. Clerk Dolores Marquez-Frausto stated that she knew it was a big number and commented that the committee members said the District needed to keep moving forward.

Assistant Superintendent Kolvira Chheng reported that as noted in the memo, the District does not have sufficient funds to complete the project.

Vice-President Andrés Quintero stated that from previous presentations given by project managers, he asked if the postponement is a complete loss. He commented that the District can still move forward once it gets its 'stuff together'. He stated that if Joseph George is not safe due to fault lines, then maybe the District needs to build a new school that can withstand an earthquake instead of building multi-purpose rooms.

#### **Public Comment:**

- 1) Ray Mueller, Chair, COC, stated that if this item didn't move forward, then it should free up some funds. He also stated that the District should have better security at its schools. He commented that in light of what is going on, he thought the District needed a different tact on security.
- 2) Male Speaker (*no name given*), stated they didn't understand how the Board can proceed with bonds when they are fiscally in a bad position. Speaker commented that the Board needs to wait until the audits are completed before they go out and try to spend money.



## **6. BOND/FACILITIES *(continued)***

### **6.08 Postponement on Issuing the Notice of Proceed to Contractor for the New Fischer Multi-purpose Building Project**

Member Khanh Tran stated that the kids need a gym and they will work it out.

President Esau Ruiz Herrera stated that just yesterday, the County Superintendent issued a letter regarding the budget being approved. He commented that this meant that the District had a better grip on its finances according to the County Superintendent. He stated that he was opposed to postponing a gym because it's more than just a building. He commented that by moving forward with the Fischer multi-purpose building, the District can move forward with its own events without having to worry about rental rates. He commented that it would be a place where District parents could have ESL classes, where students could have a homework facility. He stated that he would rather have administration tell the Board how to move forward and how they were going to do it.

Superintendent Hilaria Bauer commented that nobody wants the dream more than what she wants for the students. She stated that the District cannot do a lot if they do not have the money. She commented that they are not going to postpone forever, only for a couple of months. She commented that the District was working with a financial advisor and that the project was going to negatively affect the District's budget.

Assistant Superintendent Kolvira Chheng reported that the postponement was on the contractor.

Member Karen Martinez asked if the District could confirm that they could wait 10 days, and stated that the Board should be able to give direction to staff.

Clerk Dolores Marquez-Frausto stated that it would have been a good idea for District administration to have a financial advisor at the Board meeting. She commented that she has heard the committee say, every time they meet, that there is a postponement. She stated that she was going to support moving forward.

Member Khanh Tran stated that when the S&P downgraded the District, it was the District's fault. He stated that he was going to support the project moving forward. He stated he was not going to listen to the District, but instead, his silent majority.

Vice President Andrés Quintero asked if the financial advisor collected a fee. Assistant Superintendent Kolvira Chheng commented that the District financial advisors were consultants and they do charge a fee.

**6. BOND/FACILITIES** *(continued)*

**6.08 Postponement on Issuing the Notice of Proceed to Contractor for the New Fischer Multi-purpose Building Project**

Vice-President Andrés Quintero stated that he would feel more comfortable if they were paying them a flat fee.

President Esau Herrera stated that this was an action item but that the District was asking the board to support or validate after the fact.

President Esau Ruiz Herrera assists Member Khanh Tran with clarifying his motion.

**MOTION #09-08 by Khanh Tran to direct administration to recall the Notice of Postponement and move forward. MOTION #09-08 was seconded by Dolores Marquez-Frausto.**

*No vote was taken on MOTION #09-08.*

Vice-President Andrés Quintero commented that he'd like to express his opposition to the motion and pleaded with the Board to consider the recommendation.

Clerk Dolores Marquez-Frausto asked if her colleagues would accept a friendly amendment because she didn't know how they could recall a letter back.

**Public Comments:**

- 1) Ray Mueller, Chair, COC, stated that the Board was talking about moving forward on a project they do not have the money to even pay for.
- 2) Woman speaker (no name given), stated that she agreed with Ray. She commented that it was incredibly irresponsible to move forward with something that the District can't pay for.
- 3) Speaker (*no name given*), stated that for the future, it's a great idea; however, the District does not have the money at this time.
- 4) Female speaker (*no name given*), stated that this shows how irresponsible the Board was being for wanting to make a decision without talking to the people with expertise. She stated that the Board wasn't listening.
- 5) Speaker (*no name given*), stated there were new action items being taken and there was no interpretation because they ended at 10:00 p.m.

**MOTION #09-09 by Vice President Andrés Quintero to extend the board meeting until 11:30 p.m. MOTION was seconded by Member Khanh Tran.**

***MOTION #09-09 was carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

## 6. BOND/FACILITIES *(continued)*

### **6.08 Postponement on Issuing the Notice of Proceed to Contractor for the New Fischer Multi-purpose Building Project**

Clerk Dolores Marquez Frausto stated she was going to ask Mr. Rojas if he had in his possession what the balance was with the Bonds but he stepped out.

Assistant Superintendent Kolvira Chheng stated that at the moment, the District had approximately \$7 million left in the Bond program. He commented that the District had about \$1 million that hadn't been paid and that the approximate cost was \$12 million, so the District was going to be in deficit. He stated that if they continued, they would risk some of the other projects.

Clerk Dolores Marquez-Frausto stated that if the financial advisor was present, she would ask some questions. She directed additional questions to Luis Rojas regarding a shortfall of funding during construction.

Luis Rojas reported that not all money is spent up front but commented that the issue was in the likelihood of getting additional Bond funds, which is where a financial advisor comes in. He commented that \$5 million will go very quickly.

Member Khanh Tran commented that a week ago the District couldn't sell Bonds, but that now they could.

Member Khanh Tran stated the District has an approved budget, so they can sell bonds. He commented that if the District doesn't have the money, that there is nothing stopping them from selling bonds. He stated that he'd like to move forward on the project.

Member Karen Martinez stated the reason why she's not going to vote to approve this is because she's been at the school sites and wants to ensure the District has safety for the children.

Vice-President Andrés Quintero urged the Board to hold off.

President Esau Ruiz Herrera stated that he doesn't want to wait either, but thinks they have to. He commented that he wanted to hear administration provide information, so they can see how to address safety, A/C, and HVAC issues and still build the dream. He asked that administration come back and see how we can make that happen.

**MOTION #09-10 by Member Khanh Tran to Table Postponement on Issuing the Notice of Proceed to Contractor for the New Fischer Multi-purpose Building Project. MOTION #09-10 was seconded by Member Dolores Marquez-Frausto.**

***MOTION #09-10 carried with a vote of 3 in favor; 2 in opposition (Vice-President Andrés Quintero and Member Karen Martinez); no absent; and no abstentions.***

**6. BOND/FACILITIES** *(continued)*

**6.08 Postponement on Issuing the Notice of Proceed to Contractor for the New Fischer Multi-purpose Building Project**

President Esau Herrera stated that they will probably want to have the financial advisors in attendance.

**6.09 Approve DSA Project Inspector for HVAC Upgrades at Dorsa School and LUCHA Elementary School Change Order No. 1**

**MOTION # 09-11 by Clerk Dolores Marquez-Frausto to accept and approve DSA Project Inspector for HVAC Upgrades at Dorsa Elementary School and LUCHA Elementary School Change Order No. 1. MOTION #09-11 was seconded by Member Karen Martinez.**

*MOTION #09-11 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.*

**8. INSTRUCTIONAL SERVICES**

**8.03 Staff will provide an update of the progress on Local Performance Indicators related to LCAP**

Assistant Superintendent Rene Sanchez introduced Sandra Garcia, Director of State & Federal Programs. Sandra Garcia showed a PowerPoint presentation regarding the progress on Local Performance Indicators related to LCAP.

**7. SUPERINTENDENT/BOARD BUSINESS**

**7.07 FCMAT Update.**

Assistant Superintendent Kolvira Chheng, read a prepared memo regarding the FCMAT Report.

**7.08 Approve Contract for e-Discovery Consultant Services to Assist in Response to Securities and Exchange Commission (SEC) Subpoena**

Superintendent Hilaria Bauer stated that they are not ready to present this item. Member Khanh Tran stated that the District should engage the County and pay them instead of e-Discovery Consultant Services.

No action was taken.

**7. SUPERINTENDENT/BOARD BUSINESS (continued)**

**7.10 Update on Conditional Approval Letter from Santa Clara County Office of Education (SCCOE)**

Superintendent Hilaria Bauer stated that she had sent a copy of the letter to the Board Members electronically. She recommended that the Board accept the letter and the recommendations made in the letter.

President Esau Ruiz Herrera asked administration to provide a summary for the public.

Assistant Superintendent of Business Kolvira Chheng stated that the County office (SCCOE) notified the District that it will approve the budget. He summarized the letter from the Santa Clara County Office of Education (SCCOE). He stated that the County would be assigning a fiscal advisor effective January 2018.

**MOTION #09-12 by Member Karen Martinez to accept and adopt the letter from the Santa Clara County Office of Education (SCCOE) and all the recommendations. Motion # 09-12 was seconded by Vice-President Andrés Quintero.**

Clerk Dolores Marquez-Frausto stated that there was a concern about the \$7 million and asked if the District was going to challenge or accept it. Superintendent Hilaria Bauer answered that that was not part of the recommendation.

Vice-President Andrés Quintero inquired about the authority the fiscal advisor would have over the District. He asked what role they would play and if they will focus on solely what was in the letter or go beyond.

Assistant Superintendent Kolvira Chheng stated that the role of the fiscal expert was still vague at this time and he would be getting clarification from the Santa Clara County Office of Education (SCCOE).

***MOTION #09-12 carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

**7.01 Program Management Agreement for Measure I. Terminate Contract Between Alum Rock Union Elementary School District (ARUSD) and Del Terra Real Estate Services, Inc., dba Del Terra Group from Program Management of the ARUSD Bond Program**

Member Karen Martinez stated the reason she submitted this item was because with the FCMAT report, her thought was that maybe the District's rating would go up. She stated that she would like to get some information from staff as to what that would look like. Vice-President Andrés Quintero stated there is language that states the District can terminate for cause and he felt it was the right thing to do.

## 7. SUPERINTENDENT/BOARD BUSINESS (continued)

### 7.01 Program Management Agreement for Measure I. Terminate Contract Between Alum Rock Union Elementary School District (ARUSD) and Del Terra Real Estate Services, Inc., dba Del Terra Group from Program Management of the ARUSD Bond Program

Member Khanh Tran asked that he be shown the evidence of fraud and that he would vote for it. He commented that with the information they saw today, it was definitely political!

Clerk Dolores Marquez-Frausto stated that she would not be supporting this item or the motion. She commented that what she saw during the evening, was something she hadn't seen before. She commented that the company has been a good partner to the District and very supportive to the community. She stated that she is not seeing evidence of anything and that it was all allegations.

Public Comments:

- 1) Ray Mueller, Chair, COC, stated that the District needed to separate the two topics.
- 2) Speaker (*no name given*), stated that a lot of people do feel that it is best to have the two positions separate and that there is so much negativity in the news.

Member Karen Martinez stated her reasoning was so that the District would be able to sell future bonds and continue the work. He asked if the District could have another set of eyes to continue the transparency. She commented that there was no political motivation for her.

President Esau Ruiz Herrera stated that he believed the motion was misdirected. He stated that he was still mindful there were classrooms that needed air conditioning and classrooms that needed to be addressed. He commented that the real question was if it was a wise decision and stated that he thought it was not. He stated that he was not going to be supporting the motion. He commented that the Board was going to be counting on the monthly and weekly reports from the Superintendent.

Member Khanh Tran stated he agreed that construction and program management should be separate but that the District had a contract.

Vice-President Andrés Quintero stated the decision can be based on best practices. He commented that East Side Union High School District keeps it separate. He stated that the separation of program management and contract management is a good idea and commented that it is best practice.

Member Karen Martinez stated that she did not want to spend more time on this item. She stated that she would rather vote. She commented that she wanted to have another meeting so the Board could have dialogue and stated that she was proposing a special board meeting so they could discuss this item.

**7. SUPERINTENDENT/BOARD BUSINESS (continued)**

**7.01 Program Management Agreement for Measure I. Terminate Contract Between Alum Rock Union Elementary School District (ARUSD) and Del Terra Real Estate Services, Inc., dba Del Terra Group from Program Management of the ARUSD Bond Program**

**MOTION #09-13 by Vice-President Andrés Quintero to Terminate the Contract Between Alum Rock Union Elementary School District (ARUSD) and Del Terra Real Estate Services, Inc., dba Del Terra Group from Program Management of the ARUSD Bond Program. Motion #09-13 was seconded by Member Karen Martinez.**

***MOTION #09-13 dies with a vote of 2 in favor; 3 in opposition (Clerk Dolores Marquez-Frausto, Member Khanh Tran, and President Esau Ruiz Herrera); no absent; and no abstention.***

**7.02 Program Management Agreement for Measure J. Terminate Contract Between Alum Rock Union Elementary School District (ARUSD) and Del Terra Real Estate Services, Inc., dba Del Terra Group from Program Management of the ARUSD Bond Program**

**MOTION #09-14 by Vice-President Andrés Quintero to terminate the contract Between Alum Rock Union Elementary School District (ARUSD) and Del Terra Real Estate Services, Inc., dba Del Terra Group from Program Management of the ARUSD Bond Program. MOTION # 09-14 was seconded by Member Karen Martinez.**

***MOTION #09-14 dies with a vote of 2 in favor; 3 in opposition (Clerk Dolores Marquez-Frausto, Member Khanh Tran, and President Esau Ruiz Herrera); no absent; and no abstention.***

**7.05 Staff will provide update on Legal Services Contracts**

Assistant Superintendent Kolvira Chheng stated that the District issued the RFP to CSBA and firms directly and they are anticipating proposals on November 22. He asked the Board what should be the District's evaluation criteria and asked the Board how many firms they would want to see.

Member Khanh Tran commented that the District needs an attorney in December and reported that he would not be voting for the two attorneys the District currently has.

Vice-President Andrés Quintero stated that he understood that it was very fluid when they went through process, but from what he understood, there would not be one Board member funneling through the proposals.

President Esau Ruiz Herrera stated that whatever came in would not be retained by one individual, but would be distributed to everybody.

**7. SUPERINTENDENT/BOARD BUSINESS (continued)**

**7.05 Staff will provide update on Legal Services Contracts**

Superintendent Hilaria Bauer stated that if the District moved the board meeting to December 7, then it would be a very short turnaround. She commented that it was only about 2 weeks.

President Esau Ruiz Herrera stated the challenge is to be in a position to make a decision at the December meeting. He suggested that the Board receive everything, review it and make their decision publicly. He commented that they may not make a decision there and they may have to do a January or a special meeting.

**10. CONSENT CALENDAR**

President Esau Ruiz Herrera amended the Consent Calendar by removing *Agenda Item 10.08 Approval of Easement Agreement between ARUSD (Grantor) and the City of San Jose (Grantee) to allow Grantee permission to install an underground public sanitary sewer line and related underground sanitary sewer activities which includes construction maintenance, operation, repair and replacement at the Horace Cureton School.*

**MOTION #09-15 by Vice-President Andrés Quintero to adopt the consent calendar as amended. Motion # 09-15 was seconded by Member Karen Martinez.**

***MOTION #09-15 was carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

**MOTION #09-16 by Vice-President Andrés Quintero to approve the following Agenda Items as presented:**

- 8.04 Adopt the Second Reading of Amended Administrative Regulation 5145.3(a)**
- 8.05 Adopt the Second Reading of Amended Board Policy 5145.3(a) Nondiscrimination/Harassment-Students**
- 8.06 Adopt the Second Reading of New Board Policy 5146(a) Married/Pregnant/Parenting Students**

Speaker (*no name given*) stated that they would like to see some board policies on nondiscrimination for all, not just students.

***MOTION #09-16 was carried with a vote of 5 in favor; no opposition; no absent; and no abstention.***

President Esau Herrera stated that items that have not been discussed will be brought back to a future meeting.



**1. OPEN SESSION** *(continued)*

**1.03 Adjournment to Closed Session**

The Board reconvened back to Closed Session at 11:31 p.m.

**3. RECONVENE TO OPEN SESSION**

The Board reconvened back to Open Session at 12:11 a.m.

**3.02 Report of Action Taken in Closed Session**

Luis Saenz, Legal Counsel, reported that under *Agenda Item 2.02, Conference with Legal Counsel—Existing Litigation, by a vote of 3 in favor; 2 in opposition (President Esau Ruiz Herrera and Clerk Dolores Marquez-Frausto); no absent; and no abstention, the Board took action to waive the District Attorney Client Privilege related to report. He stated that as the Board's Legal Counsel, he advised against it.*

President Esau Ruiz Herrera reported that under *Agenda Item 2.01, Conference with Legal Counsel—Anticipated Litigation, by a vote of 3 in favor, 2 in opposition (President Esau Ruiz Herrera and Clerk Dolores Marquez-Frausto), no absent; and no abstention, the Board took action to waive the District's attorney client privilege regarding the legal memorandum dated 11/8/17 in connection with Del Terra Construction Company (then Luis Saenz, Legal Counsel speaks) written by Attorney Rogelio Ruiz regarding Analysis of Conflict of Interest issues relating to Program Management and Construction Management Services.*

Luis Saenz, the Board's Legal Counsel stated that he advised against it.

President Esau Ruiz Herrera stated that the rest was editorial commentary.

**11. FUTURE BOARD AGENDA REQUESTS**

**11.01 Requests from Board of Trustees and/or from the Public**

There were no agenda items at this time.

## 12. ADJOURNMENT

### 12.01 President Adjourns the Meeting

President Esau Ruiz Herrera adjourned the meeting at 12:12 a.m.

Respectfully submitted,



---

Esau Ruiz Herrera (*Board Clerk Dolores Marquez-Frausto was not available to sign*)  
Board President

HB/mcs