

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

**MINUTES OF A SPECIAL MEETING OF THE BOARD OF TRUSTEES
of the Alum Rock Union School District
Held on Tuesday, July 18, 2017, 6:00 p.m. at the Alum Rock Union School
District Office Board Room, 2930 Gay Avenue, San Jose, CA 95127
Meeting #02-17/18**

1. OPEN SESSION

1.01 Call to Order / Roll Call

President Khanh Tran welcomed everyone in the audience. President Khanh Tran called the Board Meeting to order at 6:01 p.m. followed by Roll Call.

Board Members Present:

Khanh Tran	President
Andrés Quintero	Vice-President
Dolores Marquez-Frausto	Clerk
Esau Ruiz Herrera	Member
Karen Martinez	Member (<i>arrived late at 6:18 p.m.</i>)

Administrative and Support Staff Members Present:

Dr. Hilaria Bauer	Superintendent
Rene Sanchez	Assistant Superintendent, Instructional Services
Kolvira Chheng	Assistant Superintendent, Business Services
Marie Sanchez	Sr. Executive Assistant, Superintendent's Office
Angel Rodriguez	Executive Assistant/Communications Support

1. OPEN SESSION *(continued)*

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

President Khanh Tran announced the items that would be discussed in Closed Session.

1.03 The Board Will Adjourn in Closed Session at Approximately 6:00 p.m.

The Board recessed to Closed Session at 6:03 p.m. President Khanh Tran announced that the Board would reconvene to Open Session at approximately 6:15 p.m.

3. RECONVENE TO OPEN SESSION

3.01 Call to Order / Pledge of Allegiance

The Board reconvened to Open Session at 6:33 p.m. President Khanh Tran welcomed everyone back to the meeting.

3.02 Report of Action Taken in Closed Session

Superintendent Hilaria Bauer reported the following:

By a vote of 5 to 0, the Board took action to accept and approve the Stipulated Student Expulsion for Case No. 16-17-006.

There was no other action taken at this time.

4. PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD

4.01 Requests to Address the Board

Per Legal Counsel, public comments can be made after the Board has dialogue with ***Agenda Items 5.01 Approval of Contract for Legal Services with Fagen Friedman and Fulfroost Law Firm from June 26, 2017 through July 13, 2017 to assist with the District's response to the FCMAT Extraordinary Audit Report and 5.02 Approval of Contract for Legal Services with Fagen Friedman and Fulfroost Law Firm from July 19, 2017 through July 30, 2017*** to assist with the District's response to the FCMAT Extraordinary Audit Report as appropriate.

5. SUPERINTENDENT / BOARD BUSINESS

5.01 Approval of Contract for Legal Services with Fagen Friedman and Fulfrost Law Firm from June 26, 2017 through July 13, 2017 to assist with the District's Response to the June 9, 2017 FCMAT Extraordinary Audit Report

MOTION #02-01 by Clerk Dolores Marquez-Frausto to accept and approve the Contract for Legal Services with Fagen Friedman Fulfrost Law Firm from June 26, 2017 through July 13, 2017, for services already rendered. MOTION #02-01 was seconded by Member Esau Ruiz Herrera.

The Board had dialogue on this agenda item. Vice-President Andrés Quintero reported that he would not be supporting this motion. He stated that he felt that the District did not need a new legal firm to assist with the District's response to the FCMAT Extraordinary Audit Report. He felt very confident that our own legal counsel, Rehon and Roberts, could handle the response since they already had had this kind of experience at another school district.

Member Karen Martinez also was in agreement with Vice-President Andrés Quintero – she would also not be supporting the motion on the floor. She felt that there was no need to hire an outside law firm when we already have a competent attorney.

Member Esau Ruiz Herrera stated that he felt it was best to hire an outside legal firm that would be a neutral firm with a fresh set of eyes. He stated that July 28 is the District's deadline to respond to the Santa Clara Office of Education.

Vice-President Andrés Quintero stated that he had spoken with the Santa Clara County Office of Education and they confirmed that the response does not need any legal action- why do we need to pay legal costs when the District can respond on our own?

President Khanh Tran reported that since the District has lost its fiscal independency, the FCMAT Audit has been damaging, has hurt us with the fund ratings, he would only be supporting the approval of legal services with Fagen Friedman Fulfrost (FFF) for the period from June 26, 2017 through July 13, 2017.

Clerk Dolores Marquez-Frausto stated that she felt we needed to finish what we started. The Fagen Friedman Fulfrost (FFF) law firm has already started the work and the District is not capable of doing this report. She commented that she will be supporting the new law firm. She also commented that the District also needs to respond to the Alum Rock Community with answers.

Attorney Luis Saenz reported that on June 8, 2017, the Board majority passed a motion to go outside and get an outside legal firm. Superintendent Hilaria Bauer assigned the task to Assistant Superintendent Kolvira Chheng and himself. Attorney Luis Saenz reported that on Tuesday and Wednesday, June 20 and 21, 2017, he spoke to attorneys from the following

5. SUPERINTENDENT / BOARD BUSINESS *(continued)*

5.01 Approval of Contract for Legal Services with Fagen Friedman and Fulfroost Law Firm from June 26, 2017 through July 13, 2017 to assist with the District's Response to the June 9, 2017 FCMAT Extraordinary Audit Report

law firms about their interest in being interviewed by a panel consisting of Member Esau Ruiz Herrera, Assistant Superintendent Kolvira Chheng, and himself regarding the selection of a law firm to assist the District in responding to FCMAT's June 9, 2017 Audit. The law firms were the following:

1. Lozano Smith
2. Best Best and Krieger
3. Burke Williams and Sorenson
4. Dannis Woliver and Kelley
5. Atkinson Andelson (AA)
6. Fagan Friedman and Fulfroost (FFF)

Attorney Luis Saenz reported that these are the very best large firms that represent California school districts. He reported that one firm was not sufficiently experienced in these types of matters and three were not interested. This left Attorneys David Soldani from AA and Mark Williams and Roy Combs from FFF. He reported that on June 22, 2017, the committee consisted of Member Esau Ruiz Herrera, Assistant Superintendent Kolvira Chheng, and himself. There were two interviews conducted, one with Attorney Soldani and the second with Attorneys Williams and Combs. The committee unanimously selected Williams and Combs from FFF. Attorney Saenz reported that FFF lowered their \$335-\$360/hr. fee to a maximum rate of \$290/hr. which was accepted by the committee.

Attorney Luis Saenz stated that the District needs to pay the FFF Law Firm for services already rendered and a new contract will need to be submitted by the legal firm for only the period from June 26, 2017 through July 13, 2017 along with an invoice. He also stated that the District still has the opportunity to set the record straight.

President Khanh Tran commented that he has 'lost faith' in the law firm FFF and will delegate this to Attorney Rogelio Ruiz.

Clerk Dolores Marquez-Frausto asked that why not use Rogelio Ruiz from Rehon & Roberts, who has lots of experience? We have a responsibility to the community. If we do not use the new law firm FFF, then we need to bring in Rogelio Ruiz.

Member Esau Ruiz Herrera stated that we now will need to rely on legal counsel to provide proper direction and recommendations and to provide this type of support in order to avoid these situations. We need to be accountable for our actions.

5. SUPERINTENDENT / BOARD BUSINESS *(continued)*

5.01 Approval of Contract for Legal Services with Fagen Friedman and Fulfroost Law Firm from June 26, 2017 through July 13, 2017 to assist with the District's Response to the June 9, 2017 FCMAT Extraordinary Audit Report

Member Karen Martinez stated that Rogelio Ruiz has lots of experience; however, we are not really given him enough time to take over this project and we do not need to set him up for failure. She stated she wanted to respond to FCMAT but also wants to move forward. We now need to rely on legal counsel to provide proper direction and recommendation and to provide this type of support in order to avoid the situations – we need to be accountable for our actions.

Public Comments:

1. Anthony Alberts – Parent and Educator that spoke on the cost amount of the legal expense to the District
2. Flor DeLeon – Parent and Community member that spoke about replacing the DelTerra contract and moving forward. There are lots of schools without air-conditioning and water fountains, and that have bad bathrooms.
3. Jeff Markham – A community member reported that the District has no legal requirement other than to respond to the Santa Clara County Office of Education Superintendent and acknowledge that the District received the FCMAT report.

MOTION #02-01 carried with a vote of 3 in favor; 2 in opposition (Member Karen Martinez and Vice-President Andrés Quintero); no absent; and no abstention.

5.02 Approval of Contract for Legal Services with Fagen Friedman & Fulfroost Law Firm from July 19, 2017 through July 30, 2017, to assist with the District's response to the June 9, 2017 FCMAT Extraordinary Audit Report

MOTION #02-02 by Vice-President Andrés Quintero to Decline the Contract for Legal Services with Fagen Friedman & Fulfroost Law Firm from July 19, 2017 through July 30, 2017 to assist with the District's response. MOTION #02-02 was seconded by Member Karen Martinez.

There was no vote taken on this motion.

1. Alison Cingolani – Parent of two students at Russo/McEntee Academy that spoke about the fact of the short-notice announcement from the Thursday to the Tuesday board meeting date -- this was not a positive, reassuring, and transparent move.

5. SUPERINTENDENT / BOARD BUSINESS *(continued)*

5.02 Approval of Contract for Legal Services with Fagen Friedman and Fulfroast Law Firm from June 26, 2017 through July 13, 2017 to assist with the District's Response to the June 9, 2017 FCMAT Extraordinary Audit Report

2. Ron Hanson – Community member that urged a NO VOTE on Agenda Item 5.02. He stated that the response should be on a plan on how the recommendation will be addressed. He commented that we should incorporate the FCMAT report recommendation from Superintendent Jon Gundry.
3. Flor DeLeon – Community member and parent that commented that we need to do the right thing and move forward – we have a life!

MOTION #02-03 by President Khanh Tran to not approve the Contract for Legal Services with Fagen Friedman & Fulfroast Law Firm from July 19, 2017 through July 30, 2017 to assist with the District's response. There was no second made to this motion.

MOTION #02-03 dies because there was no second made.

MOTION #02-04 by Member Esau Ruiz Herrera to postpone this agenda item indefinitely. MOTION #02-04 was seconded by Clerk Dolores Marquez-Frausto.

Board Comments: Esau Ruiz Herrera, Karen Martinez, and Khanh Tran.

MOTION #02-04 dies with a vote of 2 in favor (Clerk Dolores Marquez-Frausto and Member Esau Ruiz Herrera); 2 in opposition (Member Karen Martinez and Vice-President Andrés Quintero); no absent; and one abstention (President Khanh Tran)

6. SUPERINTENDENT / BOARD BUSINESS

6.01 Award of Bid Package and Contract for #B1617-BOND013 New Fischer Multi-Purpose Building Project

Superintendent Hilaria Bauer differed this agenda item to Assistant Superintendent Kolvira Chheng who spoke on this item. He reported that DL Falk Construction was the lowest bidder.

MOTION #02-05 by President Khanh Tran to accept the award of Bid Package and Contract for #B1617-BOND013 New Fischer Multi-Purpose Building Project as submitted. MOTION #02-05 was seconded by Member Esau Ruiz Herrera.

6. SUPERINTENDENT / BOARD BUSINESS *(continued)*

6.01 Award of Bid Package and Contract for #B1617-BOND013 New Fischer Multi-Purpose Building Project

Vice-President Andrés Quintero commented that he is concerned about DL Falk Construction Company.

Member Karen Martinez stated that she wants to consider tabling this item and putting it on hold until the schools are up to par. She has visited all the schools and wants to first focus on the basic needs. We need to focus on our academics.

Member Esau Ruiz Herrera agreed with staying with the lowest bidder. He shared his reasons for moving forward with the Fisher Multi-Purpose Building Project. He commented that the District is already working on the basic needs projects at the school sites. We need to look at the 'bigger picture'.

Clerk Dolores Marquez-Frausto stated that she dittoed what Member Esau Ruiz Herrera commented on. We have an obligation to the voters and we need to finish the Fischer Project.

President Khanh Tran commented he wants to move forward with both Multi-Purpose Building Projects as planned.

Vice-President Andrés Quintero commented that DL Falk Construction has been pre-qualified just like CTG and look what happened there. He also commented that this agenda item should have been agendized for a regular board meeting and not a special meeting so that more of the community could have participated.

The Board had more dialogue on this agenda item.

Public Comments:

1. Randy Masters – First time Community Member that commented that she does not have trust in the Board – think about the priorities. Del Terra is a 'red flag' – we need to pull away.
2. Esperanza Gonzales – Student that has been bullied through 4th grade.
3. Diltza Gonzales – Parent that commented to the Board to reject the contractors for the Multi-Purpose Building Projects and fix the bathrooms. She also commented that her child has yet to be re-classified as an English Learner.
4. Antonio Martinez – Mathson student that stated to teach more about the culture- don't use \$9M on the Multi-Purpose Building Project, stop wasting time with these contractors that don't fix the broken bathrooms.
5. Female student (no name given) – She commented that she wished she had learned her history better. She also asked the Board to stop wasting time with these contractors – they are only taking away money from the students.

6. SUPERINTENDENT / BOARD BUSINESS *(continued)*

6.01 Award of Bid Package and Contract for #B1617-BOND013 New Fischer Multi-Purpose Building Project

Public Comments (continued):

6. Victor Vasquez – Parent that commented to make the board meetings more transparent. The schools need to first have the basic needs taken care of. Focus more on the students and their education.
7. Ms. Tanner – George teacher that commented that all the speakers had great comments. She stated that George Multi-Purpose Building Project should NOT be postponed over Fischer Multi-Purpose Building Project. It is only fair to postpone both projects rather than one over the other
8. Peter Tinkleberg – Teacher that felt we should postpone both projects until we have addressed the basic needs – the parents are not being listened to.
9. Alison Cingolani – Parent that commented to perform the necessities first; felt we needed to first do an assessment.
10. Maria Barcelenas – Parent with 3 students that stated she is opposed to the two centers; first need to take care of the basic needs, we need to make the necessary needed changes.
11. Maria Martinez – San Antonio and Mathson parent that stated that this contract is not right with Del Terra. She also commented that her daughter has yet to be re-classified as an English Learner.
12. Flor DeLeon – Parent that asked the Board to start prioritizing the needs and to spend the money more wisely.
13. Jocelyn Merz – AREA President that spoke on a personal level. Asked the Board to fix the basic needs first (air conditioning, heating, bathrooms, water fountains) because we are hurting the education of the students. Asked to postpone the two centers, fix the basic needs first, then move forward with the centers.
14. Ernesto (no last name given) – Sheppard parent that commented he was disappointed when both centers were approved – asked the Board to look at the real issue – they need to be more transparent.

Additional Board Comments:

Vice-President Andrés Quintero asked his colleagues to wait for the facility assessment, and then vote on how to proceed.

Member Esau Ruiz Herrera – The facility assessment will take a long time.

Clerk Dolores Marquez-Frausto – She commented she agreed the facility assessment would take a long time and that would hold the building projects back.

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

6.01 Award of Bid Package and Contract for #B1617-BOND013 New Fischer Multi-Purpose Building Project

MOTION #02-06 carried with a vote of 3 in favor; 2 in opposition (Vice-President Andrés Quintero and Member Karen Martinez); no absent; and no abstention.

7. **ADJOURNMENT**

7.01 President Adjourns the Meeting

President Khanh Tran adjourned the meeting at 9:15 p.m.

Respectfully submitted,



Dolores Marquez-Frausto
Board Clerk

HB/mcs

