

ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT
2930 Gay Avenue
San José, CA 95127

Office of Superintendent of Schools

ITEM REQUIRING ATTENTION – BOARD OF EDUCATION

To the Board of Trustees:

Subject: Discussion/Action Re: Filling of Board Vacancy

On December 3, 2020, the Santa Clara County Registrar of Voters certified Corina Herrera-Loera and Scott Pham as elected to the District's Governing Board based on the November 3, 2020, general election vote count.

On December 4, 2020, Superintendent Hilaria Bauer received the following communication from Mr. Pham:

“Dear Dr. Bauer:

I have received your email notifying me of the official certification of election from the County Registrar of Voters.

Because I consider the job of being a school trustee to be a very important one, I will decline to assume the position of ARUSD governing board member due to a number of reasons.

Thank you so much.”

Pursuant to state law and Board Bylaws, any person elected to the Governing Board must take and subscribe the oath of office under the California Constitution before entering into the duties of office. It is the District's understanding that Mr. Pham has not as of this date taken the oath of office. State law and Board Bylaw 9223 provide that a vacancy on the Board occurs upon a “Board member's refusal or neglect to file his/her required oath within the time prescribed.”

On December 8, 2020, Superintendent Bauer informed Mr. Pham that the District understands and interprets his December 4 communication to mean that he will not be taking the required Oath of Office for governing board member of the District, which will result in a vacancy on the Board, and that therefore the District will immediately begin the process of filling the vacancy in accordance with the Education Code and Board Bylaws.

Board Bylaw 9223 states in pertinent part: “When a vacancy occurs longer than four months before the end of a Board member's term, the Board shall, within 60 days of the date of the vacancy or the filing of the member's deferred resignation, either order an election or make a provisional appointment”

The Board is asked to consider and take action on whether it will declare a Board vacancy in light of Mr. Pham's communication and, if so, whether it will fill the vacancy by ordering a special election or through the provisional appointment process.

The qualifications to serve on the Board are set forth in Board Bylaw 9220, as follows:

“Any person is eligible to be a member of the Governing Board, without further qualifications, if he/she is 18 years of age or older, a citizen of California, a resident of the school district, a registered voter and not legally disqualified from holding civil office. Any person who has been convicted of a felony involving the giving, accepting, or offering of a bribe, embezzlement or theft of public funds, extortion, perjury, or conspiracy to commit any such crime, under California law or the law of another state, the United States of America, or another country, is not eligible to be a candidate for office or elected as a Board member except when he/she has been granted a pardon in accordance with law. (Education Code 35107; Elections Code 20)”

If the Board desires to fill the vacancy by provisional appointment, the provisional appointment process is specified in Board Bylaw 9223. The provisional appointment process in Board Bylaw 9223 includes, among other things:

- The Board shall advertise in the local media to solicit candidate applications or nominations.
- A committee consisting of less than a quorum of the Board shall ensure that applicants are eligible for Board membership and announce the names of the eligible candidates.
- The Board shall interview the candidates at a public meeting, accept oral or written public input, and select the provisional appointee by a majority vote.
- The Board will hold a special meeting one week before appointment for the following purposes:
 - (1) Receive community and public comment to express what applicant characteristics would be important to them in the selection process
 - (2) To allow interested applicants to present themselves to the board and the community and provide an introductory statement to the Board and the community
 - (3) For the Board to develop VALUES that current Board Members determine are vital to be a high functioning team member of the governing body
 - (4) To allow Board members to introduce two questions each that will be included in the applicant interviews (one for the first round, one for the second round, if necessary)

If the Board decides to proceed with the provisional appointment process, then it is recommended that the Board:

- (1) Develop values that current Board Members determine are vital to be a high functioning team member of the governing body
- (2) Set a deadline for the submittal of statements of interest and applications by qualified candidates for provisional appointment to the Board
- (3) Appoint a committee (consisting of less than a quorum of the Board) to ensure that applicants are eligible for Board membership
- (4) Set a special meeting no sooner than Wednesday, December 16, 2020, to conduct interviews of qualified candidates and to make the provisional appointment to the Board.

Included for the Board's consideration are the Values and Interview Questions utilized by the Board at the February 6, 2019, provisional appointment meeting.

Submitted by: Hilaria Bauer Title: Superintendent

To the Board of Trustees: Meeting: December 09, 2020
SPECIAL BOARD MEETING/COMMUNITY
FORUM AND NOTICE OF VACANCY,
BOARD OF TRUSTEES

Discussion/Action

Agenda Placement Hilaria Bauer, Ph.D., Superintendent

DISPOSITION BY BOARD OF TRUSTEES

Motion by: _____ Seconded by: _____

Approved: _____ Not Approved: _____ Tabled: _____