ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

BOARD OF TRUSTEES

Special Board Meeting
December 9, 2020

Wednesday, December 9, 2020
SPECIAL BOARD MEETING/COMMUNITY FORUM AND NOTICE OF VACANCY, BOARD OF TRUSTEES.

Type: AGENDA - SPECIAL BOARD MEETING/COMMUNITY FORUM AND NOTICE OF VACANCY, BOARD OF TRUSTEES.
Time: 6:00 PM
Code: SPECIAL #11-20/21
PURSUANT TO GOVERNOR GAVIN NEWSOM'S EXECUTIVE ORDERS NOS. N-29-20 AND N-33-20, AND IN ORDER TO NOT PREVENT, HINDER, OR DELAY APPROPRIATE ACTIONS TO PREVENT AND MITIGATE THE EFFECTS OF THE COVID-19 PANDEMIC, THE December 9, 2020, SPECIAL BOARD MEETING WILL BE CONDUCTED EXCLUSIVELY VIA CONFERENCE TELEPHONE AND THROUGH "ZOOM" VIDEO CONFERENCING.
THE DISTRICT OFFICE AND BOARD ROOM WILL NOT BE OPEN AND AVAILABLE FOR THE PUBLIC TO ATTEND AND PARTICIPATE IN THE BOARD MEETING AT THE DISTRICT OFFICE. MEMBERS OF THE PUBLIC MAY PARTICIPATE AND COMMENT IN OPEN SESSION THROUGH THE FOLLOWING MEANS:
1. Zoom - Live Board Meeting and use "Raise Hand" function to request opportunity to make a comment.
2. THE ZOOM MEETING CAN BE ACCESSED AS FOLLOWS:
Join Zoom Meeting https://zoom.us/j/82193792383
One tap mobile
+4086380968, Meeting ID: 82193792383# US (San Jose)
+16699006833, Meeting ID:82193792383# US (San Jose)
Zoom Spanish Interpretation available- Zoom Instructions link www.arusd.org/zoomesp. If you call in you will not be able to access this function.
THE MEETING MAY ALSO BE VIEWED THROUGH LIVE STREAM AS FOLLOWS:
1. Live stream Youtube English Channel "AlumRock TV"
2. Live stream - Youtube Spanish Channel
https://youtube.com/channel/UChrGPK9SDiMrejGVglvgTVg
In compliance with the Americans with Disabilities Act and Executive Order N-29-20, If you need Special Assistance, Disability-Related modifications or accommodations, including auxiliary aids or services, in order to participate in the SPECIAL BOARD MEETING/COMMUNITY FORUM AND NOTICE OF VACANCY, BOARD OF TRUSTEES, please contact the office of the District Superintendent at (408) 928-6822 or by email at maribel.carrillo@arusd.org immediately and the district will make reasonable arrangements to ensure accommodation and electronic accessibility to this meeting.

1. OPEN SESSION - CALL TO ORDER AND ROLL CALL

1.01 CALL TO ORDER / ROLL CALL -- BOARD PRESIDENT ERNESTO BEJARANO.

2. PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD

2.01 REQUESTS TO ADDRESS THE BOARD provides members of the public an opportunity to speak to the Board about any matter under the jurisdiction of the Board and not otherwise on the agenda. Those who wish to address specific agenda items will have an opportunity to do so when that agenda item is introduced and presented during this meeting. Individuals wishing to speak are requested to submit a comment or request for comment as specified above. There is a two-minute time limit for each speaker. The Board will automatically refer to staff any formal written requests that are brought before them at this time. Written matters may be placed on a future meeting.

3. SUPERINTENDENT / BOARD BUSINESS--BOARD DISCUSSION AND/OR ACTION (The Board may take action on any item in this section, unless it is designated for information only.)

3.01 Discussion/Action to Waive Second Reading Requirement of Board Bylaw 9310 and to Approve Amendments to Board Bylaw 9223 Upon First Reading.

3.02 Discussion/Action Re: Board Vacancy and Filling of Board Vacancy, including: Selection of Method for Filling Board Vacancy. Provisional Appointment or Special Election.

3.03 Receive Public Statements of Interested Applicants – for Provisional Appointment- Interested applicants will be given 5 minutes each to provide an introductory statement to the Board and the community.

3.04 Process and Procedures for Selection of Applicant to fill Board Vacancy.

3.05 Receive Community Input Re: Desirable Applicant Characteristics for Consideration in the Selection Process.

3.06 Board Development of Values that will Guide Board Work in the Selection Process.

4. ADJOURNMENT

4.01 President adjourns the meeting.

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

3.01

Office of Superintendent of Schools

ITEM REQUIRING ATTENTION – BOARD OF EDUCATION

To the Board of Trustees:

Subject: Below for your consideration is a draft Board cover memo for this item. I have also attached the draft redline amended BB 9223.

Discussion/Action to Waive Second Reading Requirement of Board Bylaw 9310 and to Approve Amendments to Board Bylaw 9223 Upon First Reading

Board Bylaw 9223 contains a discrepancy that the Board is asked to consider and address. In the section "Provisional Appointments", BB 9223 provides: "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***." (Emphasis added). Majority vote selection is also specified in other portions of BB 9223 and the previous Board vacancy was filled by majority vote selection. The last sentence in current BB 9223, however, currently provides as follows: "9. If there is not a unanimous vote after this process, the board will in effect recommend a special election to elect the new Trustee."

Legal Counsel recommends that the Board consider and, if appropriate, address the current inconsistency in BB 9223. Attached for Board consideration is a proposed amended BB 9223 to address the inconsistency.

Board Bylaw 9310 provides, "The Superintendent or designee shall develop and present a draft policy for a first reading at a public Board meeting. At its second reading, the Board may take action on the proposed policy. ***The Board may waive the second reading*** or may require an additional reading if necessary." (Emphasis added) If the Board desires to amend BB 9223, then it is recommended that the Board first take an action pursuant to BB 9310 to waive the second reading requirement for any amendments to BB 9223, in which case any such approved amendment will take effect immediately upon Board approval.

Approve

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

Approve

3.07

Agenda Placement

Hilaria Bauer, Ph.D., Superintendent

DISPOSITION BY BOARD OF TRUSTEES

Motion by: Seconded by:

Approved: Not Approved: Tabled:

Filling Vacancies

Events Causing a Vacancy

A vacancy on the Board of Trustees may occur for any of the following events:

1. The death of an incumbent (Government Code 1770)

2. The adjudication pursuant to a quo warranto proceeding declaring that an incumbent is physically or mentally incapacitated due to disease, illness, or accident and that there is reasonable cause to believe that the incumbent will not be able to perform the duties of his/her office for the remainder of his/her term (Government Code 1770)

3. A Board member's resignation (Government Code 1770)

A vacancy resulting from resignation occurs when the written resignation is filed with the County Superintendent of Schools having jurisdiction over the district, except where a deferred effective date is specified in the resignation so filed, in which case the resignation shall become operative on that date. A Board member may not defer the effective date of his/her resignation for more than 60 days after he/she files the resignation with the County Superintendent. Upon being filed with the County Superintendent, a written resignation, whether specifying a deferred effective date or otherwise, shall be irrevocable. (Education Code 5090, 5091)

4. A Board member's removal from office, including by recall (Elections Code 11384; Government Code 1770)

5. A Board member's ceasing to be a resident of the district (Government Code 1770)

6. A Board member's absence from the state for more than 60 days, except in the following situations: (Government Code 1064, 1770)

a. Upon district business with the approval of the Board

b. With the consent of the Board for an additional period not to exceed a total absence of 90 days

In the case of illness or other urgent necessity, and upon a proper showing thereof, the time limited for absence from the state may be extended by the Board.

c. For federal military deployment, not to exceed an absence of a total of six months, as a member of the armed forces of the United States or the California National Guard

If the absence of the Board member for this purpose exceeds six months, the Board may approve an additional six-month absence upon a showing that there is a reasonable expectation that the member will return within the second six-month period, and the Board may appoint an interim member to serve in his/her absence. If two or more members of the Board are absent by reason of these circumstances, and those absences result in the inability to establish a quorum at a regular meeting, the Board may immediately appoint one or more interim members as necessary to enable the Board to conduct business and discharge its responsibilities. The term of an interim member appointed in these circumstances shall not extend beyond the return of the absent Board member or beyond the next regularly scheduled election for that office, whichever occurs first.

7. A Board member's ceasing to discharge the duties of his/her office for the period of three consecutive months, except when prevented by illness or when absent from the state with the permission required by law (Government Code 1770)

8. A Board member's conviction of a felony or any offense involving a violation of his/her official duties or conviction of a designated crime resulting in a forfeiture of office (Government Code 1770, 3000-3003)

9. A Board member's refusal or neglect to file his/her required oath within the time prescribed (Government Code 1770)

(cf. 9224 - Oath or Affirmation)

10. The decision of a competent tribunal declaring void a Board member's election or appointment (Government Code 1770)

11. A Board member's commitment to a hospital or sanitarium as a drug addict, dipsomaniac, inebriate, or stimulant addict by a court of competent jurisdiction, in which case the office shall not be deemed vacant until the order of commitment has become final (Government Code 1770)

12. A "failure to elect" in which no candidate or an insufficient number of candidates have filed to run for a Board seat(s) (Education Code 5090, 5326, 5328)

Timelines for Filling a Vacancy

When a vacancy occurs, the Board shall take the following action, as appropriate:

1. When a vacancy occurs within four months of the end of a Board member's term, the Board shall take no action. (Education Code 5093)

2. 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, unless a special election is mandated as described in item #3 below. (Education Code 5091, 5093)

3. When a vacancy occurs from six months to 130 days before a regularly scheduled Board election at which the position is not scheduled to be filled, a special election to fill the position shall be consolidated with the regular election. The person so elected shall take office at the first regularly scheduled Board meeting following the certification of the election and shall serve only until the end of the term of the position which he/she was elected to fill. (Education Code 5093)

Eligibility

In order to be appointed or elected to fill a vacancy on the Board, a person must meet the eligibility requirements specified in Education Code 35107.

(cf. 9220 - Governing Board Elections)

Provisional Appointments

When authorized by law to make a provisional appointment to fill a vacancy on the Board, 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.

(cf. 9130 - Board Committees)

(cf. 9323.2 - Actions by the Board)

Within 10 days after the appointment is made, the Board shall post notices of the actual vacancy, or the filing of a deferred resignation, and the provisional appointment. The notice shall be published in the local newspaper pursuant to Government Code 6061 and posted in at least three public places within the district. (Education Code 5092)

The notice shall contain: (Education Code 5092)

1. The date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation

2. The full name of the appointee

3. The date of appointment

4. A statement notifying the voters that unless a petition calling for a special election pursuant to Education Code 5091 is filed in the office of the County Superintendent within 30 days of the provisional appointment, it shall become an effective appointment

The person appointed shall hold office until the next regularly scheduled election for district Board members and shall be afforded all the powers and duties of a Board member upon appointment. (Education Code 5091)

Appointment Due to Failure to Elect

When a vacancy occurs because no candidate or an insufficient number of candidates have been nominated (i.e., a failure to elect) and a district election will not be held, the Board shall appoint a qualified person to the office. This appointment shall be made at a meeting prior to the day fixed for the election and the appointee shall be seated at the organizational meeting as if elected at the district election. (Education Code 5328)

(cf. 9100 - Organization)

When an appointment is being made because of a failure to elect, the district shall publish a notice once in a newspaper of general circulation published in the district, or if no such newspaper exists, in a newspaper having general circulation within the district. This notice shall state that the Board intends to make an appointment and shall inform persons of the procedure available for applying for the appointment. (Education Code 5328.5)

The procedure for selecting and interviewing candidates shall be the same as the procedures for "Provisional Appointments," as specified above.

The Board President shall establish the time limits and schedule to interview candidates. The Board President shall establish the questions that will be utilized during the candidate interviews. The Board shall utilize a Forced Ranking system to score the responses of each candidate. The candidate shall be determined by the aggregate score of all Board member scoring.

Special Meeting One Week Before Appointment

1. Community will be provided an opportunity to provide public comment to express what applicant characteristics would be important to them in the selection process

2. Qualifying applicants will present themselves to the board and the community and will be given up to 10 minutes each to provide an introductory statement to the Board and the community

3. Board will develop VALUES that current Board Members determine are vital to be a high functioning team member of the governing body. These values are intended to be the foundation of their assessment of applicants

4. Board members shall introduce two questions each that will be included in the applicant interviews (one for the first round, one for the second round, if necessary)

Special Meeting to Interview and Select Appointee

1. Opportunity for public comment to hear any community feedback on applicants' introductory statements and qualifications

2. Names shall be drawn at random for order of interview question response

3. Applicants wait in separate room during public comment and interview responses of individual applicants

4. Applicants shall have a sum total of 10 minutes to respond to all questions

Scoring

1. Board shall use a forced ranking system to order individual applicants after each applicant provides their interview responses.

2. After the final applicant has provided their interview response, a numeric value shall be assigned by each Board Member to each individual applicant, with their top choice receiving the largest number (ex. If there are 5 applicants, a Board Member's top choice will receive 5 points, and their lowest choice will receive 1 point)

3. Publicly record each Board Member's score for each candidate, and then tally the scores of all applicants. ONCE BOARD MEMBERS HAVE SUBMITTED THEIR SCORES, THERE SHALL BE NO CHANGES MADE

4. If there are 5 applicants or less, the applicant with the highest point value shall be recommended for appointment by Board action.

5. If there are 6 applicants or more, the top 3 shall move forward to the second round and the process will be repeated using the interview questions for the second round. The top vote getter in this second round shall be recommended for appointment by Board action.

6. IN THE EVENT OF A TIE in the first round where there are 6 candidates or more, the top 2 vote getters shall move forward to round 2, and those applicants who are tied for the 3rd highest vote tallies shall ALL move forward to the second round.

7. IN THE EVENT OF A TIE in the first round where there are 5 candidates or less, ONLY THOSE APPLICANTS who are tied for the highest votes shall be considered. ~~.~~ Ties for second or third place shall not be of consequence.

8. APPLICANTS TIED FOR FIRST PLACE in the first round when there are 5 applicants or less, or APPLICANTS TIED FOR FIRST PLACE in the second round when there are 6 applicants or more shall be the subjects of a public discussion among Board Members who will refer to the predefined values to assess which of the applicants tied for first place will be the most appropriate appointee.

9. The Board shall select the provisional appointee by a majority vote. ~~If there is not a unanimous vote after this process, the board will in effect recommend a special election to elect the new Trustee.~~

Legal Reference:

EDUCATION CODE
5000-5033 Elections
5090-5095 Vacancies
5200-5208 Districts governed by boards of education
5300-5304 Elections
5320-5329 Order and call of election
5340-5345 Consolidation of elections
5360-5363 Election notice
5420-5426 Cost of elections
5440-5442 Miscellaneous provisions, elections
35107 Eligibility of board members
35178 Resignation with deferred effective date

ELECTIONS CODE
10600-10604 School district elections
11381-11386 Candidates for recall

GOVERNMENT CODE
1064 Absence from state
1770 Vacancies: definition
3000-3003 Forfeiture of office
3060-3075 Removal other than by impeachment
6061 One time notice
54950-54963 The Ralph M. Brown Act

PENAL CODE
88 Bribery, forfeiture from office

UNITED STATES CODE, TITLE 18
704 Military medals or decorations

ATTORNEY GENERAL OPINIONS
58 Ops.Cal.Atty.Gen. 888 (1975)

Management Resources:

CSBA PUBLICATIONS
Filling a Board Vacancy, rev. December 2010

WEB SITES
CSBA: http://www.csba.org

California State Attorney General's Office, Quo Warranto Applications:
http://ag.ca.gov/opinions/quo_warranto.php

Bylaw ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

adopted: July 2, 2013 San Jose, California

revised: October 10, 2019; December , 2020

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

#3.02

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

3.02

Agenda Placement

Hilaria Bauer, Ph.D., Superintendent

DISPOSITION BY BOARD OF TRUSTEES

Motion by: Seconded by:

Approved: Not Approved: Tabled:

INTERVIEW QUESTIONS FOR CANDIDATES
FEBRUARY 6, 2019

1. Do you currently work and/or will you take a job with a Charter School?

2. Will you support the sale or long-term leases to anyone?

3. How will you utilize your experience working with children, families, and community and inform the Strategic Plan for the District?

4. When things have not gone your way, in the past, how do you work with colleagues to face challenges and solve problems? What strategies and techniques have you utilized for a positive and productive outcome?

5. What makes a good Trustee or a bad Trustee?

6. Why should we select you as the new Trustee above all the others?

7. How can policymakers affect change in the achievement gap at the elementary K-8 level?

8. Describe your understanding of accountability for the school board vs. the district's leadership.

VALUES
FEBRUARY 6, 2019

1. Each applicant will be student/family-focused and bring a parent experience in school and district roles with a level-headed look.

2. Look at their work, on the Board, with a bigger picture focus.

3. Time Commitment. Trustee to attend various trainings and participate in Board Retreats with experience that they can share. Work to unify this Board and become as a team that works together. Time commitment to the job!

4. Be honest, respectful, and supporting each other as a Board – remember that we are all working for the betterment of the students' education – the students come first! Learning on a daily basis but especially learning from our mistakes. Having the mindset to work as a team.

5. Does the individual put Alum Rock first with the students, parents, teachers, and the taxpayers? Are they first here for the community and not for themselves?