

**EAST SIDE UNION HIGH SCHOOL DISTRICT
Minutes of the Regular Meeting of the Board of Trustees
Meeting Held at Education Center
November 4, 2004**

The Regular Meeting of the Board of Trustees was called to order at 4:05 p.m. by President Ramirez.

Vice President Shirakawa,, Clerk Mann and Member Martinez-Roach were present. Member Herrera arrived at 4:27 p.m.

The Board adjourned to Closed Session to hear Update On Existing Litigation, Potential Litigation (Education Section 54856.9), Update on ESTA Grievance, Personnel Assignments-Performance Audit, Public Employee Employment/Appointments/Contracts/Release/Suspension/Dismissal/Termination of Certificated Employees, Suspension/Dismissal/Termination of Classified Employees, Employee Negotiations - ESTA, CSEA, Confidential, Administration, Superintendent's Report on Anticipated Litigation/Business Contract. With respect to item 12.4 of the Closed Session agenda, there are two potential cases for discussion and/or action pursuant to Government Code section 54956.9(c).

1) **BOARD RECONVENED FROM CLOSED SESSION**

Called to order at 6:00 p.m. All members were present.

2) **PLEDGE OF ALLEGIANCE**

3) **WELCOME AND EXPLANATION TO AUDIENCE**

President Ramirez extended a welcome to the audience, explained the format of the meeting, and noted that all Board Meetings are recorded.

4) **SPECIAL RECOGNITIONS**

4.1 Junior League of San Jose

- Leah Schnoor
- Heather Boyd
- Juli Hall
- Victoria Brouse

4.2 Mt. Pleasant Cardinal Tribune Newspaper

- Paula Ridley
- Derrick Oliver
- Chelsea Leong
- Carlotta Montes
- My Nguyen
- Stephanic Vallejo
- Alex Terrasas

CALL TO ORDER

***ADJOURNED TO
CLOSED SESSION***

***RECONVENED FROM
CLOSED SESSION***

PLEDGE OF ALLEGIANCE

***WELCOME AND
EXPLANATION***

SPECIAL RECOGNITIONS

<p>4.3 Mt. Pleasant Cardinal Quill •Joe Lovato •William Cavada •Prishil Patel •Rachelle Laroza</p> <p>4.4 Mark Gross – Recipient of National Semiconductor Award</p>			
<p>5) <u>CONSIDERATION OF PROPOSED AMENDMENTS TO THE AGENDA</u></p> <p><u>APPROVAL OF PROPOSED AMENDMENTS TO THE AGENDA</u> Motion by Clerk Mann, second by Member Herrera to approve agenda as amended. Vote: 5/0</p>	<p><i>CONSIDERATION OF AMENDMENTS</i></p> <p><i>APPROVAL OF AMENDMENTS</i></p>		
<p>6) <u>PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD OF TRUSTEES</u></p> <table border="0"> <tr> <td> <ul style="list-style-type: none"> •Ruben Dominguez - Recognition for Juanita Ramirez •Ruben Dominguez – Resolution 2004/2005-18 (8.2) •Ed Wong – Resolution 2004/2005-18 (8.2) •John T. Moore – Resolution 2004/2005-18 (8.2) •Dennis Umphress – Resolution 2004/2005-18 (8.2) •Dennis Umphress – Purchase Orders (9.1) •John T. Moore – Former Superintendent’s Housing Loan (9.19) •Kathy Chavez Napoli - Former Superintendent’s Housing Loan (9.19) </td> <td> <ul style="list-style-type: none"> •Lou Kvitek – Land Acquisition •Dennis Umphress – Public Members •Janice Mallard •Chris Evans – Results of Measure K •Julio Pardo – Rescheduling of Jose Valdes Presentation •Ed Wong – Thank you & Congratulations •Tere Barbella – Budget Suggestions •Dennis Umphress – Budget Transfers (9.2) •Dennis Umphress - Contracts (9.7) •Ruben Dominguez - Former Superintendent’s Housing Loan (9.19) •Dennis Umphress - Former Superintendent’s Housing Loan (9.19) </td> </tr> </table>	<ul style="list-style-type: none"> •Ruben Dominguez - Recognition for Juanita Ramirez •Ruben Dominguez – Resolution 2004/2005-18 (8.2) •Ed Wong – Resolution 2004/2005-18 (8.2) •John T. Moore – Resolution 2004/2005-18 (8.2) •Dennis Umphress – Resolution 2004/2005-18 (8.2) •Dennis Umphress – Purchase Orders (9.1) •John T. Moore – Former Superintendent’s Housing Loan (9.19) •Kathy Chavez Napoli - Former Superintendent’s Housing Loan (9.19) 	<ul style="list-style-type: none"> •Lou Kvitek – Land Acquisition •Dennis Umphress – Public Members •Janice Mallard •Chris Evans – Results of Measure K •Julio Pardo – Rescheduling of Jose Valdes Presentation •Ed Wong – Thank you & Congratulations •Tere Barbella – Budget Suggestions •Dennis Umphress – Budget Transfers (9.2) •Dennis Umphress - Contracts (9.7) •Ruben Dominguez - Former Superintendent’s Housing Loan (9.19) •Dennis Umphress - Former Superintendent’s Housing Loan (9.19) 	<p><i>ORAL COMMUNICATIONS</i></p>
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<p>7) <u>STUDENT ACHIEVEMENT/BOARD DISCUSSION AND/OR ACTION</u> There were no student representatives present.</p>	<p><i>STUDENT ACHIEVEMENT</i></p>		
<p>8) <u>OPERATIONAL ITEMS/BOARD DISCUSSION AND/OR ACTION</u></p> <p>8.1 Approve Variable Term Waiver Requests for Certificated Employees <i>Motion to approve by Clerk Mann, second by Member Martinez-Roach. Vote: 5/0</i></p> <p>8.2 Adopt Resolution 2004/2005-18 to Borrow Funds from Measure G Bond Fund <i>Presentation made by Chief Financial Officer Jack Mahrt.</i></p>	<p><i>OPERATIONAL ITEMS/ BOARD DISCUSSION AND/OR ACTION</i></p>		

In an effort to find additional income, the District is reviewing all expenses, as well as all funds. The loan will give the District additional cash, flow-wise additional funds to last through the end of this school year and into next school year. The District is working with the Santa Clara County Office of Education, FCMAT, as well as a number of other groups, to make sure the District has a sufficient cash flow to cover for this year. The District will not be doing anything to the bond fund. It is being paid back at an interest rate paid by the County Treasurer's Office. The loan will not be taken unless the District absolutely has to from the bond fund. If the money is borrowed, it will need to be paid back in 2005-2006.

Member Martinez-Roach asked if this was legal.

Chief Financial Officer Jack Mahrt indicated that it is legal to borrow funds from this fund.

Member Martinez-Roach asked if this will go through the Oversight Committee.

Chief Financial Officer stated that, "Yes, it will go through the Oversight Committee." He also indicated that no building programs and projects will be affected by the borrowing of these funds.

Member Martinez-Roach asked what type of liability would this place the District in.

Legal Counsel Rogelio Ruiz indicated that, per the Education Code, this type of borrowing is permitted. It empowers the Superintendent and the District to request the transfer not to exceed \$5,000,000. It will still go through the Bond Oversight Committee and return back to the District in the future.

Member Martinez-Roach asked if the Governing Board has the authority to indicate that they do want to borrow the money, but use it only if they really need to.

Chief Financial Officer Jack Mahrt indicated that the District would borrow the money only if they really need to.

Superintendent Zendejas indicated that the District will be facing some challenges this year. The District will be making a \$1,000,000 cut at the District Office to support some of the challenges the District is facing.

Member Martinez-Roach requested that it go on record that her intention is not to say, "Use the money," but it be for emergency purposes only and the Board be notified that the District may need to borrow the money.

Vice President Shirakawa stated that this will be a temporary loan that will be repaid in full within one year with proper interest and it will not affect any projects.

Motion to approve by Member Martinez-Roach, second by Clerk Mann. Vote: 5/0

- 8.3 Presentation by Santa Clara County Office of Education
Presentation made by Cathy Grovenberg, Assistant Superintendent of Business Services at Santa Clara County Office of Education.
Superintendent Zendejas indicated that the County Office was invited as a partner to discuss the difficulties and challenges the District is facing with its finances. This was not a crisis, but is a crisis now because of the nature of audits received by FCMAT. FCMAT has notified the District that they are in a challenge. The County Office and the District are working in partnership to make sure that a plan is put together and to not take the District to a worse case scenario. Cathy Grovenberg is here to make a presentation on AB1200.
Cathy Grovenberg indicated that AB1200 is legislation that was introduced approximately 15 years ago. The intent is to ensure that District's maintain fiscally solvent and are able to not only meet this year's financial obligations, but also the next two subsequent fiscal years' obligations. AB1200 was put into place and put the responsibilities under the direction of the County Office of Education. AB139 gives the County Office of Education responsibility for taking a look at any situation where they County is lead to believe or if there are any allegations that any fraud, misappropriation of funds or other illegal activities have occurred. The County will either do the review themselves or contract with someone to do it. The second responsibility in the month of July is the school district's budget approval. The County is three options for budget approval: 1) to approve the budget; 2) to conditionally approve the budget for a brief period of time; or 3) to disapprove the budget. If there is a conditional approval or disapproval of the budget, there are 14 steps that are involved in order to get the district to have budget that is acceptable to not only the County, but also the State Superintendent of Public Instruction. As each level escalates, more people are involved and there is scrutiny in the process. The County Office of Education is also responsible for reviewing expenditures and determining if a payment is a legal expense. The County has oversight responsibility to do random checking in addition to the auditors that come every year to make sure that expenses are legal and that they are being made appropriately and properly. There is a responsibility of reviewing the annual financial reports. Financial reports, monthly reports and attendance reports for each school are looked at to verify that everything is reported properly and then a report is submitted to the State. Reviewing of independent audits are performed on an annual basis. The County has a responsibility in determining that auditors are following all the standards and criteria that are set forth in the audit guide. They also have responsibility for making sure that any audit findings/exceptions that the recommendations/actions that the district has determined it will take is taken on those actions and making sure there is follow-through on those actions. The most

critical area to this District and most important area for the County Office and school districts in the County is the review of interim reports. There are two reports submitted to the County Office of Education and per Education Code are required by the districts: The first interim report covers information and data for the period ending October 31; and, 2) The second interim report covers information and data for the period ending January 31. Within 45 days after the end of those periods, schools district must submit the interim reports to the County Office of Education. Along with that the District makes a certification and determination as to whether they are of a positive qualification, a qualified or a negative. The County Office reviews the reports and also confirms and concurs with those certifications. Any certificates of participation or TRANS (Tax Revenue Anticipation Notes) cannot be issued without the approval of the County Office of Education. Bonds that may be issued will result in a lower bond rating and higher interest rate. Bargaining agreements must be submitted to the County Superintendent at least ten days prior to the adoption by the Board. This will allow the County Office an opportunity to review and to comment on any bargaining agreements. When a district is in a qualified or a negative certification, the County Office of Education has a responsibility to provide expertise and monitoring in order to help the district to move to become in a fiscal solvent state. The County Office and County Superintendent will assign a fiscal advisor to assist the district. If the fiscal advisor makes recommendations, the Board and the district acts on those recommendations. If the Board and district are not able to come to agreement, then the fiscal advisor will become the agent who makes those recommendations and who carries them through. The County Office will also conduct a study of the district's financial and budgetary conditions. The County Office will also require from the District a submission of fund and cash balance projections through the period of June 30 for the first year and subsequent fiscal years. Also required will be the encumbrance of all contracts and other obligations, which requires prior approval, so that the County Office may be apprised and require that they all be encumbered. This will allow the County to see a final picture at the end of the year. A submission of a proposal is necessary that address the source of the fiscal problem and addresses the issues, as well as the solutions that are going to be put forth in order to address those. The County Office can also require that a different accounting procedure be done and can also assign FCMAT to review the hiring practices, the teacher retention rate, the percentage of highly qualified teachers and extents of misassignments. The district is required to follow the recommendations of FCMAT. If the County Office is not able to get through provided information, the compensation of both the Board and Superintendent will be withheld.

Red flags that cause the County Office concern are: 1) If the reserve

level falls below the standards and criteria level, which is typically 3% for most districts; 2) If there are going to be ongoing expenditures that are exceeding income on an ongoing basis. This happens to districts that have a high percentage of the budget appropriated to salaries. 3) If you ADA is lower than projections, there is declining enrollment or a district has charter schools that are becoming more frequent in the district and are pulling ADA away from the district. 4) If there is an audit finding that has material findings in it or there have been studies by the district that identifies that there are some difficulties or anything that needs to be done procedurally that need to be done with checks and balances and audits. 5) The compounding effect of multi-year salary agreements. 6) No cap on benefits. 7) Board, Superintendent, CBO (Chief Business Officer), Union employee relationships are strained. Next steps for the District and how to meet the challenges the District is facing: Interim reports are due December 15, meetings are being held with Administration, will be confirming certification of the Board and the District. At that time, the County will be looking at a very concrete and specific plan as to how the District can either increase revenues or reduce expenses. The plan will need the support of the Board and the community in order for it to happen. If reduction in staff is going to happen, the County will need to see when the layoff notices are going to be approved, such as Board approval. How are you going to go about doing it, when are you going to do it and when are the notices going to be issued? Programs need to be looked at. How are libraries staffed, what is the class size and/or what is the ratio, what do they do for lawn services, what do they do with IT services, what kind of transportation, who sits on the IEP review team, how many non-public school placements are there.

The County Office is working in partnership with the District in order to provide the District with ideas based on their experience in working with other districts.

Member Martinez-Roach indicated that she feels that the district meets all red flag criteria. She offered her support in providing any information that she may have to assist the district in any way so that they may come up with a positive certification.

Clerk Mann asked if the compounding effects of multi-year agreements includes the compounding effects of Golden Handshakes and retirement incentives. The response from the County was, "Yes." Clerk Mann stated that he felt that the Board was misled on the affect of multi-year Golden Handshakes and retirement incentives. The Board was assured by the former CFO and former administration that they were all cost neutral.

Superintendent Zendejas indicated that a plan was going to be submitted to the Board for approval and, thereafter, submitted to the County. The plan will indicate how the District intends to work between now and next June, what cuts are going to be made at this time.

Presentation by Jack Mahrt, Chief Financial Officer

The District has picked up revenue enhancements on the following: 1) supplemental hours (summer schools) for school year 2003/2004 - \$1.8 million; 2) mandated claims - \$100,000; 3) general reserve interest - \$92,000; 4) change in stores inventory - \$31,000. Total revenue enhancements equal \$2,000,000, which is added to the \$6.1 million.

Expenditure reductions are being worked on. The following are not tied to contracts and are being pulled out: 1) Classified 2.14% that is built into the budget; 2) Management amount of \$208,000 is being pulled out; 3) Education Center staff reductions of \$400,000; 4) Energy reductions in the amount of \$100,000 (this amount will increase); 5) Child Development encroachment reduction of \$232,000 (A plan has been developed and this encroachment will be eliminated in its entirety.); 6) Special Education encroachment reduction of \$400,000; 7) Jose Valdes Program encroachment of \$500,000 (approximately). An additional total of \$2,000,000 is being pulled out of the budget.

Items increasing the budget, but were not part of the budget when it was adopted in June are: 1) Certificated salary increase of an additional 1.74% to reach the 4.15%. 2) The change in the unaudited vs. the adopted budget - \$1.3 million of additional expenses came in on the months of July and August that were not planned for. Such as additional special education dollars that came in from non-public schools. This year, the District will be working with the non-public schools to have estimates in earlier to have the costs paid or encumbered by June 30. 3) Increased contribution to restricted funds that were overexpended in the amount of \$243,000. 4) Books and supplies for the sites. 5) Additional Child Nutrition encroachment of \$260,000. 6) Additional Transportation encroachment of \$400,000. 7) This year is budgeted at 30:1 and now have 28:1 due to a grievance, which is an additional \$2,000,000 for 24.8 certificated FTEs that are back out in the classroom. 8) Deferred maintenance transfer from developer fees- \$4,000,000. This is a figure that has been worked out with FCMAT. 9) VTA/Quimby transfers to general fund. It is illegal to transfer sale of property funds into the general fund. It is an Education Code provision that does not allow such transfers. The District has put \$4.3 million in the general fund from sale of property. Items 10, 11, 12, 13 and 14 total \$300,000, but were not budgeted for. This is a total of \$15,308,000 of increased expenses/changes in the budget for 2004/2005.

Member Martinez asked if items 4, 5, 6 and 7 were negative and are because it was not planned for. Chief Financial Officer Jack Mahrt stated, "Yes."

Member Herrera indicated that the District had a legal opinion to go ahead and do the transfer. Chief Financial Officer Jack Mahrt

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- stated that there is a 1988 legal opinion that has been superceded by Education Code.*
- The District is approximately \$10,000,000 out of balance.*
- Member Martinez-Roach asked if the encroachment recovery efforts with Sodexo has been built in. Chief Financial Officer Jack Mahrt indicated that District is working with Sodexo on this. Member Martinez-Roach also asked if the Pepsi contract has been looked into. Chief Financial Officer Jack Mahrt indicated that this would also be looked into. Member Martinez-Roach suggested that the District look into a recycling program as a way to recover income. Chief Financial Officer Jack Mart will discuss a recycling program with the Chief Operations Officer.*
- Member Herrera asked if the District would be coming back with formal recommendations. Chief Financial Officer Jack Mahrt indicated that the target date to present formal recommendations will be at the December Board Meeting.*
- 8.4 Board Discussion on Budget Process
- Presentation by Board Member Manuel Herrera**
- The purpose is for the District to have a Board-driven process that ensures that it is transparent accessible and accountable to the community. The four primary elements of the process that need to be met are: public vetting of the numbers, presentations by stakeholders, exploring scenarios and forwarding recommendations to the Board. This will not be a committee, but a more open/accessible task force. This is open to anyone who is interested in participating. It will be anchored by key stakeholders who are invited and encouraged to participate. This proposal will not supplant the administrative role. The administration will still formulate its budget recommendations and present them to the Board at the June budget hearings. In the months preceding June, a parallel process of a Board-Community dialogue will generate its own recommendations for the Board when they formally adopt the budget in June.*
- Vetting the numbers is important because it becomes the basis for every other element of discussion in the process. The goal is to have general confidence that the numbers are accurate, reliable and credible, including the nature of the challenges that need to be met.*
- Presentations by stakeholders is important so that everyone can come to a general understanding of the different areas in the District that are providing services.*
- Exploring scenarios assumes that the budget numbers have been vetted and that the stakeholders have had an opportunity to be heard.*
- Forwarding recommendations to the Board: The task force would, by a consensus process, submit a recommendation to the Board at the June Board Meeting.*
- Member Herrera indicated that he would like to be one of the Board members serving on the Task Force Committee.*

Clerk Mann indicated that he supports Member Herrera's outline. Clerk Mann recommended that the Baldrige tenants be applied as a framework and process control and FCMAT be a partner in the process along the way. At the end of the day, that FCMAT provide an independent budget analysis prior to adoption. If FCMAT is unable to be a partner along the way, Clerk Mann would like to see them provide a budget analysis.

Chief Financial Officer Jack Mahrt stated that public forums meetings are currently being held to discuss the budget.

***Motion by Member Herrera that the framework presented be adopted, to appoint Member Herrera and Clerk Mann as the Board Representatives to the task force process, second by Clerk Mann
Vote: 4/0, 1 Abstention by Member Martinez-Roach***

9) **ATTACHMENT A/CONSENT CALENDAR APPROVAL OF AGENDA**

ATTACHMENT A

Items: (9.1), (9.2), (9.7), (9.13) and (9.19) were pulled for discussion/approval.

Motion to approve by Member Herrera, second by Clerk Mann to approve the remainder of the Consent Items as amended.

Vote 5/0

(Agenda items in parentheses)

- Approve Classified Personnel Actions Dated November 4, 2004 (9.3)
- Approve Certificated Personnel Actions Dated November 4, 2004 (9.4)
- Approve Minutes of Board Meeting Dated October 7, 2004 (9.5)
- Acceptance of Gifts/Donations (9.6)
- Award of Bids - NONE (9.8)
- Approve Memorandums of Understanding (9.9)
- Approve School Field Trips (9.10)
- Adopt Resolution #2004/2005-16 An Itemized List of Surplus/Obsolete Equipment for Sale and/or Disposal per Education Code Sections 17545 and 17546 (9.11)
- Proposed Safety Drills for 2004-2005 (9.12)
- Expulsion Hearing Committee Panel Personnel for 2004-2005 School Year (9.14)
- Approve Annual Application and Local Plan for Carl D. Perkins Vocational and Applied Technology Act Funding for 2004-2005 (9.15)
- Approved Revised English Language Learners Master Plan (9.16)
- Adopt Resolution #2004/2005-17 – A Resolution in Support of Voluntary, Quality Preschool for All Four Year Olds in California (9.17)

- Approve Request for a CDS Code for Adult Transitional Student in Special Education (9.18)
- Authorize Superintendent to Begin/Discuss and Plan to Certificated Retirees by January 3, 2005
Recommend an Immediate Hiring Freeze of All Non-Emergency Positions (9.20)

√ *Motion to approve item (9.1) by Clerk Mann, second by Member Herrera Vote: 5/0*

√ *Motion to approve item (9.2) by Clerk Mann, second by Member Herrera Vote: 5/0*

√ *Motion to approve item (9.7) by Clerk Mann, second by Member Herrera. Vote: 5/0*

√ *Motion to approve item (9.13) by Member Martinez-Roach, second by Member Herrera. Vote: 5/0*

√ *Motion to approve item (9.19) by Member Martinez-Roach to conduct appropriate investigation with Counsel, second by Clerk Mann. Vote: 5/0*

10) **WRITTEN REPORTS (NONE)**

WRITTEN REPORTS

11) **BOARD OF TRUSTEES/SUPERINTENDENT'S COMMENTS**

**BOARD/
SUPERINTENDENT'S
COMMENTS**

11.1 Member Herrera

Member Martinez-Roach

Clerk Mann

Vice President Shirakawa

President Ramirez

11.2 Superintendent Zendejas

12) **CLOSED SESSION**

CLOSED SESSION

12.1 **Expulsions – A-C**

Student A: Expulsion for one academic year.

Vote: 4/0 Member Herrera absent

Student B: Expulsion for one academic year.

Vote: 5/0

Student C: Suspended expulsion

Vote: 5/0

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- 12.2 Public Employee Discipline/Dismissal/Release (Government Code §Section 54957)
 - 12.3 Conference with Labor Negotiators (Government Code §Section 54957.6)
Agency Designated Representatives:
 Superintendent Esperanza Zendejas, Ed.D.
 Chief Human Resources Officer Bob Nuñez
Employee Organizations:
 East Side Teachers Association (ESTA)
 California School Employees Association (CSEA)
 American Federation of Teachers (AFT)
 - 12.4 Anticipated Litigation (Government Code §Section 54956.9)
Conference with Legal Counsel – ANTICIPATED LITIGATION,
Significant exposure to litigation pursuant to subdivision (b) of
§Section 54569.9 statement threatening litigation. (2 potential cases)
 - 12.5 Public Employee Performance Evaluation (Government Code §Section 54957)
 - 12.6 Public Employment/Transfer (Government Code §Section 54957)

ADJOURNMENT

On motion by Clerk Mann, second by Member Herrera the meeting was adjourned at 9:45 p.m.

ADJOURNMENT

Respectfully submitted,

Clerk of the Board of Trustees