

**16.09 Approve Minutes of June 18, 2009, Regular Board Meeting**

Meeting: 08/20/2009 ESUHS D REGULAR BOARD MEETING - 4:00 P.M.  
Category: 16. Consent Calendar Items - ATTACHMENT A  
Agenda Type: Action (Consent)  
Public Access: Yes

Agenda Item Content



## EAST SIDE UNION HIGH SCHOOL DISTRICT

**TO:** Board of Trustees  
**FROM:** Dan Moser, Acting Superintendent  
**SUBJECT:** Approve Minutes of June 18, 2009, Regular Board Meeting

Attached are the minutes of the June 18, 2009, Regular Board meeting for review and approval by the Board of Trustees.

**FISCAL IMPACT:** None

**FUNDING SOURCE:** None

**RECOMMENDATION:** It is recommended that the Board of Trustees approve the June 18, 2009, Board meeting minutes as presented.

Additional Executive Content

Our adopted rules of Parliamentary Procedure, Robert's Rules, provide for a consent agenda listing several items for approval of the Board by a single motion. Most of the items listed under the consent agenda have gone through Board subcommittee review and recommendation. Documentation concerning these items has been provided to all Board members and the public in advance to assure an extensive and thorough review. Items may be removed from the consent agenda at the request of any board member.

Created on 08/10/2009 at 09:08 AM by Mary Guillen. Last update on 08/18/2009 by Mary Guillen.

*Approved*  
*M. Guillen*  
*8-20-2009*

**EAST SIDE UNION HIGH SCHOOL DISTRICT  
Minutes of the Regular Meeting of the Board of Trustees  
Meeting Held at the Education Center  
June 18, 2009**

**1. CALL TO ORDER/ROLL CALL**

The Special Meeting of the Board of Trustees was called to order at 4:06 p.m. by President Martinez-Roach. Vice President Herrera, Clerk Biehl and Member Nguyen were present. Member Garcia arrived at 4:20 p.m.

**CALL TO ORDER**

**2. CLOSED SESSION**

**2.01 EXPULSIONS**

***Student A:***

***The Board on a vote of 4/0 approved the expulsion of Student A. Member Garcia was absent.***

***Student B:***

***The Board on a vote of 4/0 approved the expulsion of Student B. Member Garcia was absent.***

**CLOSED SESSION**

**2.02 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/  
RELEASE (Government Code Section 54957)**

**2.03 CONFERENCE WITH LABOR NEGOTIATORS  
(Government Code Section 54957.6)**

***Agency Designated Representatives:***

***Bob Nuñez, Superintendent***

***Jerry Kurr, Associate Superintendent of Administration  
and Business Services***

***Dan Moser, Associate Superintendent of Instructional  
Services and Human Relations***

***Cathy Giammona, Director of Human Resources***

***Vida Branner-Siders, Director of Compensation and  
Classified Employee Relations***

***Employee Organizations:***

***American Federation of Teachers (AFT)***

***California School Employees Association (CSEA)***

***East Side Teachers Association (ESTA)***

**2.04 CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED  
LITIGATION**

***Significant exposure to litigation pursuant to subdivision (b)  
of Section 54956.9 of the Government Code:***

***One (1) potential case***

**2.05 CONFERENCE WITH REAL PROPERTY  
NEGOTIATORS**

*Property: ESUHSD Educational Center,  
or portion thereof  
830 N. Capitol Avenue  
San Jose, CA 95133*

*District Negotiators: Bob Nuñez, Superintendent  
Jerry Kurr, Associate Superintendent  
Administration and Business Services  
Rogelio Ruiz, Legal Counsel  
Real Estate Representatives:  
Sam Swan, Bob Hunt and Andre Hunt*

*Negotiating Parties: ESUHSD and Party To Be Determined*

**2.06 PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
(Government Code Section 54957)**

**2.07 PUBLIC EMPLOYMENT/PUBLIC EMPLOYEE  
APPOINTMENT (Government Code Section 54957)**

**3. PLEDGE OF ALLEGIANCE**

**PLEDGE OF ALLEGIANCE**

**4. WELCOME AND EXPLANATION TO AUDIENCE**

*President Martinez-Roach extended a welcome to everyone,  
explained the format of the meeting and noted that all Board  
Meetings are recorded.*

**WELCOME AND  
EXPLANATION**

**5. CONSIDERATION OF PROPOSED AMENDMENTS TO  
AGENDA**

**CONSIDERATION OF  
AMENDMENTS**

*None*

**6. BOARD SPECIAL RECOGNITION(S)**

**SPECIAL RECOGNITION(S)**

*None*

**7. STUDENT BOARD LIAISONS**

**STUDENT BOARD  
LIAISONS**

*None*

**8. PUBLIC MEMBERS WHO WISH TO ADDRESS THE  
BOARD OF TRUSTEES**

**ORAL COMMUNICATIONS**

- Omar Gutierrez – Handling of Layoffs
- Lynne Bramlett – Evergreen Valley HS Administrative Changes
- Glenda Pino – Unnecessary Spending

9. **INSTRUCTIONAL SERVICES – OPERATIONAL ITEMS/  
BOARD DISCUSSION AND/OR ACTION**

**INSTRUCTIONAL SVCS -  
OPERATIONAL ITEMS/  
BOARD DISCUSSION  
AND/OR ACTION**

9.01 **Approve the 2009-2010 Single School Plan for Student Achievement – Dan Moser, Associate Superintendent of Instructional Services and Human Relations**

*Motion to approve the 2009-2010 Single School Plan for student Achievement made by Clerk Biehl, second by Vice President Herrera.*

**Vote: 5/0**

9.02 **Approve the Appointment of Representatives to the South East Special Education Local Planning Areas Community Advisory Council Meetings – Dan Moser, Associate Superintendent of Instructional Services and Human Relations**

*Motion to approve the appointment of ESUHSD representatives Dianne Lemke and Janice Richason to the South East Special Education Local Planning Areas Community Advisory Council Meetings made by Member Garcia, second by Clerk Biehl.*

**Vote: 5/0**

9.03 **Approval of Consolidated Program Application Part I for 2009-2010 – Dan Moser Associate Superintendent of Instruction and Human Relations**

*Motion to approve the Consolidated Program Application Part I for 2009-2010 made by Vice President Herrera, second by Clerk Biehl.*

**Vote: 5/0**

10. **SUPERINTENDENT – OPERATIONAL ITEMS/  
BOARD DISCUSSION AND/OR ACTION**

**SUPERINTENDENT -  
OPERATIONAL ITEMS/  
BOARD DISCUSSION  
AND/OR ACTION**

10.01 **Hold Public Hearing at Approximately 6:45 p.m. Regarding the Consideration of an Energy Conservation Project – Jerry Kurr, Associate Superintendent of Administration and Business Services, Alan Garofalo, Associate Superintendent of Student Services and Facilities and Rogelio Ruiz, Legal Counsel**

*Public speakers:*

- Marisa Hanson
- John T. Moore

**Public hearing held**

**10.02 Approve Expenditure from Capitol Fund for Qualified Future Measure G Project – Bob Nuñez, Superintendent**

*Public speaker:*

- John T. Moore

*Motion to approve expenditure from Capitol fund for qualified future Measure G project made by Clerk Biehl, second by Member Garcia.*

**Vote: 5/0**

**10.03 East Side Education Foundation Update – Bob Nuñez, Superintendent**

*Public speaker:*

- John T. Moore

*Superintendent Nuñez provided the Board the following update on the East Side Educational Foundation:*

*The current East Side Education Foundation Board of Directors are Lorraine Guerin, Eddie Garcia and Bob Nuñez. The Foundation has two new members on the Board of Directors: Kathy Camin and Marty Martz.*

*The Foundation, to-date, has been actively looking for and recruiting members, researched and interviewed potential funders, contacted key constituents on behalf of East Side, interviewed accountants, opened a bank account, developed a Foundation logo, contacted at least ten entities which are individuals or other Foundations for grants upwards as much as \$300,000 with Foundations, \$100,000 with individual grants and individuals that are being discussed for donations up to \$150,000 each.*

*The total cost of the program to-date is:*

- California Leadership Services \$78,999
- Garcia, Calderon and Ruiz \$5,752
- U.S. Treasury \$750

*Grand total: \$85,502*

*At the last meeting by the Foundation Board, it was discussed that it would be appropriate to make a request of the Foundation to repay the seed money that was used to start the Foundation. To-date, that amount is the \$85,502.*

*Board Member Garcia indicated that, as a duly elected Board Liaison by the ESUHSD Board of Trustees prior to President Martinez-Roach's election to the Board, he participated on the Foundation in order that the 501c3 could be established for the Foundation bank account and tax IDs. The intent, according to Counsel, is that once there is proper number of members on the Board, he would resign from the Foundation because the ESUHSD Board should not have*

*authority over a private entity such as the Foundation. He has every intention not to make any decisions on behalf of the Foundation that have to do with any revenues or expenditures.*

**10.04 Waiver Authorizing Use of Capitol Funds for Operational Purposes; Discussion Only – Patricia Martinez-Roach, Board President**

*Board President Martinez-Roach read into the record the following statement:*

*“The District maintains restricted funds for capital (facilities) purposes. State law restricts the use of such funds for capital purposes only. The Education Code allows a school district to seek temporary waivers of Education Code restrictions/provisions by the State Board of Education, provided the district shall first hold a public hearing on the proposed waiver and the district and the proposed waiver satisfy certain other conditions.*

*Pursuant to this agenda item, the Board will discuss whether to seek a waiver to allow the expenditure of capitol funds for operations purposes and, if so, the scheduling of a public hearing to invite public comment on the matter.”*

*Board President Martinez-Roach indicated that she approached Assemblymember Joe Coto regarding the introduction of a bill, but there are many districts looking into a waiver.*

*Legal Counsel Ruiz indicated that these waiver requests are very rare and if the Board were to authorize the waiver application to be submitted to the State, the waiver would have to go to the State Board of Education for approval. Approval by the State Board of Education could be conditioned upon certain things, including, for example, repayment of the funds back into the capitol account within a certain period.*

*Associate Superintendent Garofalo indicated that approximately three years ago the District did attempt to do something similar. Our Assemblymember was requested to sponsor AB952, which would allow the use of capitol facilities funds for operational purposes. The bill made it 50% through the assembly. The District's chances may be fairly decent if championed in the right fashion. One of the pieces of the bill that all members of the Assembly and Senate who were even for the bill were adamant about was the fact that the District would have to sign a waiver if it ever passed that would prohibit the District from receiving any Office of Public School Construction funds for a minimum of five years. Since the year 2000, the Facilities Department has applied and collected over \$80 million in funds for a building program. The \$22 million in the account is part of*

*the \$80 million. He is only mentioning this because the question of "What is the impact?" came up and what could be some of the bumps in the road. If the waiver were to go forward, there will be that piece attached to it and we would probably be ineligible for dollars coming down the pike. One of those dollars alone is a \$10 million check.*

***Discussion item only; no action taken***

**10.05 Review, Consideration and Adoption of Resolution #2008/2009-37 Authorizing Reduction or Elimination in Certificated Workforce - Bob Nuñez, Superintendent**

*Public speakers:*

- *Rosalind Taylor*
- *Marisa Hanson*
- *Joe Albers*
- *Wendy Stegeman*
- *Ken Reeser*
- *Valerie Arbizu*
- *Melissa Marfia*
- *Adriana Rangel*
- *William Rasmussen*
- *Debi Kerrick*
- *Marla Bressani*
- *Tessa Cavazos*
- *Julio Pardo*
- *Ralph Giannini*
- *Susan Caton*
- *John Blair*

***Item carried to June 25, 2009, Board meeting.***

**10.06 Review, Consideration and Adoption of Resolution #2008/2009-39 Authorizing Decrease in Number of Certificated Administrative Employees - Bob Nuñez, Superintendent**

***Item carried to June 25, 2009, Board meeting.***

**10.07 MACSA Academic Calmecac Charter School: Hold Public Hearing at Approximately 7:30 p.m. to Determine whether Evidence Exists to Revoke MACSA Academic Calmecac Charter - Bob Nuñez, Superintendent**

Board President Martinez-Roach read into the record the first paragraph of item 10.07, MACSA Academic Calmecac Charter School: Hold Public Hearing at Approximately 7:30 p.m. to determine whether Evidence Exists to Revoke MACSA Academic Calmecac Charter:

*"Pursuant to its charter petition to the District, MACSA's Academia Calmecac Charter School retained the option for its Board to elect to participate in the State Teachers Retirement System and/or the*

*Public Employees Retirement System for its employees. The Charter Board elected to participate in both STRS and PERS for its employees. MACSA and the Charter have now acknowledged that the Charter has failed to deposit employee contributions and failed to make matching employer contributions to both STRS and PERS for over a year.”*

Public speakers:

- Maria Elena de la Garza
- Michael Lopez
- Sandra Madrigal
- Michal Mendoza
- Ramon Martinez
- Blanca Fajardo
- Jessica Marquez
- Abel Gonzalez
- Diana Rodriguez
- Pedro Martinez
- Rodrigo Castellanos
- Laura De Jesus
- Daniel De Jesus
- Veronica Gonzalez
- Eduardo Gonzalez

Part of the information considered by the Board of Trustees, is not only the testimony provided by the public speakers today, but also the information provided to the Board, which include the following:

- Spreadsheet titled Calmecac PERS/STRS provided by MACSA to the ESUHSD administration (Attachment A);
- Letter dated January 20, 2009, from Jerry Kurr to Olivia Soza-Mendiola (Attachment B)
- Letter dated February 25, 2009, from Bob Nuñez to Olivia Soza-Mendiola (Attachment C)
- Letter dated June 15, 2009, from Bob Nuñez to Olivia Soza-Mendiola (Attachment D)
- Letter provided June 18, 2009, from Maria Elena de la Garza to the Board of Trustees as part of her testimony today (Attachment E)
- Letter dated June 18, 2009, from Strangis Properties to Mike Lopez (Attachment F)
- MACSA Academic Calmecac 2008-2009 Graduate Information (Attachment G)



Motion by Vice President Herrera and second by Board President Martinez-Roach that the Board finds evidence for revoking the MACSA Academic Calmecac Charter and that at a future meeting the item be placed on the agenda for discussion and action for possible revocation by the Board of Trustees.

*Vote: 4/0; Clerk Biehl recused himself due to a conflict of interest/out of room*

**11. STUDENT SERVICES – OPERATIONAL ITEMS/  
BOARD DISCUSSION AND/OR ACTION**

- 11.01 Accept Donations, Grants and Awards – Alan Garofalo, Associate Superintendent of Student Services and Facilities and Jerry Kurr, Associate Superintendent of Administration and Business Services**

*Motion to accept donations, grants and awards made by Member Garcia, second by Clerk Biehl.*

*Vote: 4/0, Vice President Herrera out of room*

**12. HUMAN RESOURCES – OPERATIONAL ITEMS/  
BOARD DISCUSSION AND/OR ACTION**

- 12.01 Receive California School Employees Association (CSEA) Initial Bargaining Proposals – Jerry Kurr, Associate Superintendent of Administration and Business Services and Vida Branner-Siders, Director of Compensation and Classified Employee Relations**

*Public speaker:*

- *Cindy Bega*

*Item received*

**13. BUSINESS SERVICES – OPERATIONAL ITEMS/  
BOARD DISCUSSION AND/OR ACTION**

- 13.01 Hold Public Hearing at Approximately 7:00 p.m. Regarding the Proposed Budget - Jerry Kurr, Associate Superintendent of Administration and Business Services**

*Public hearing held*

**STUDENT SERVICES -  
OPERATIONAL ITEMS/  
BOARD DISCUSSION  
AND/OR ACTION**

**HUMAN RESOURCES -  
OPERATIONAL ITEMS/  
BOARD DISCUSSION  
AND/OR ACTION**

**BUSINESS SERVICES -  
OPERATIONAL ITEMS/  
BOARD DISCUSSION  
AND/OR ACTION**

**13.02 Approve Purchase Orders Presented on June 18, 2009 -  
Jerry Kurr, Associate Superintendent of Administration  
and Business Services**

*Motion to approve purchase orders presented on June 18,  
2009, made by Clerk Biehl, second by Vice President  
Herrera.*

**Vote 5/0**

**13.03 Approve Budget Adjustments - Jerry Kurr, Associate  
Superintendent of Administration and Business  
Services**

*Motion to approve the budget adjustments made by Vice  
President Herrera, second by Clerk Biehl.*

**Vote: 5/0**

**13.04 Approve Fund Number Change:  
From: Fund 19 General Reserve  
To: Fund 17 General Reserve Fund  
- Jerry Kurr, Associate Superintendent of  
Administration and Business Services**

*Motion to approve the fund number change from Fund 19,  
General Reserve, to Fund 17, General Reserve made by  
Vice President Herrera, second by Member Garcia.*

**Vote 5/0**

**13.05 Approve Contracts for Professional Services  
(Attachment B) - Jerry Kurr, Associate Superintendent  
of Administration and Business Services**

*Motion to approve as amended:*

*Approve all contracts, except item B2 on page 3,  
Facilities Management Planning and Operations, Inc.  
(FMPO), which will be carried to the June 25, 2009,  
Board meeting for consideration by the Board of  
Trustees.*

*Motion made by Clerk Biehl, second by Vice President  
Herrera.*

**Vote 5/0**

**13.06 Approve Memoranda of Understanding (Attachment C) - Jerry Kurr, Associate Superintendent of Administration and Business Services**

*Motion to approve memoranda of understanding made by Vice President Herrera, second by Member Nguyen.*

**Vote: 5/0**

**14. FACILITIES – OPERATIONAL ITEMS/ BOARD DISCUSSION AND/OR ACTION**

**14.01 Scope and Funding Adjustments to Measure E Projects for Independence, Mt. Pleasant, Santa Teresa and Evergreen Valley High Schools, the Project Assignment for the District-Wide Technology Allocation, and the Modernization of the Calero Site – Alan Garofalo, Associate Superintendent of Student Services and Facilities**

*Public speaker:*

- Omar Gutierrez

**Motion #1**

*Motion by Clerk Biehl, second by Vice President Herrera to approve the scope and funding adjustments to Measure E projects for Independence, Mt. Pleasant (5a MP option addendum), Santa Teresa and Evergreen Valley High Schools. The modernization of the Calero site will be carried to a future meeting.*

**Vote: 5/0**

**Motion #2**

*Motion by Member Garcia, second by Member Nguyen to approve the project assignment for the district-wide technology allocation.*

**Vote: 4/1; President Martinez-Roach voting No**

**15. ADULT EDUCATION – OPERATIONAL ITEMS/ BOARD DISCUSSION AND/OR ACTION**

**None**

**FACILITIES -  
OPERATIONAL ITEMS/  
BOARD DISCUSSION  
AND/OR ACTION**

**ADULT EDUCATION -  
OPERATIONAL ITEMS/  
BOARD DISCUSSION  
AND/OR ACTION**

**16. ATTACHMENT A – CONSENT CALENDAR ITEMS**

**ATTACHMENT A**

*Items 16.02, 16.06 and 16.08 were pulled. Motion to approve the remainder of the consent calendar made by Vice President Herrera, second by Member Garcia.*

**Vote: 5/0.**

16.01 *Ratify/Approve Classified Personnel Actions Presented June 18, 2009*

16.03 *Ratify/Approve Student Aide Personnel Actions Presented June 18, 2009*

16.04 *Approve School Field Trips*

16.05 *Award of Bids*

16.07 *Approve Minutes of May 12, 2009, Special Board Meeting*

- 16.02 *Ratify/Approve Certificated Personnel Actions Presented June 18, 2009*

*Public speaker:*

- *Adriana Rangel*

**Motion #1**

*Motion to ratify/approve the certificated personnel actions presented June 18, 2009, except the personnel action of Carol Blackerby.*

**Vote: 5/0**

**Motion #2**

*Motion to ratify/approve the certificated personnel action presented June 18, 2009, regarding the employment/appointment of Carol Blackerby as Interim Principal at Oak Grove High School, effective July 1, 2009.*

**Vote: 4/1; President Patricia Martinez-Roach voting No**

- 16.06 *Approve Superintendent or Designee to Authorize Summer Projects*

***Item carried to June 25, 2009, Board Meeting.***

- 16.08 Approve Minutes of May 21, 2009, Special Board Meeting

*Motion to approve the minutes of the May 21, 2009, Special Board Meeting, with the following correction to item 10.07:*

**Authorization to Issue Notice of Remedy to  
MACSA Academia Calmecac Charter School – Dan  
Moser, Associate Superintendent of Instruction and  
Human Relations**

*Motion for authorization to issue Notice of Remedy to  
MACSA Academia Calmecac Charter School made by  
Member Nguyen, second by President Martinez-Roach.*

***Vote: 4/0; Clerk Biehl out of room recused himself due  
to a conflict of interest***

17. WRITTEN REPORTS/RECOMMENDATIONS

WRITTEN REPORTS

None

18. BOARD OF TRUSTEES/SUPERINTENDENT  
COMMUNICATIONS/COMMENTS

BOARD/SUPERINTENDENT  
COMMENTS

18.01 Board of Trustees

▪ **Frank Biehl, Member**

*It was an excellent meeting tonight. We had a lot of tough issues. I appreciate all the good discussions that came from the Members of the Board. I appreciate everyone's effort tonight.*

*MetroED:*

*MetroED is struggling with the same issues. We will be meeting again on Wednesday of next week. They have presented a balanced budget for next year and it does include a series of cuts, but they will continue to survive just like us.*

• **Eddie Garcia, Member**

*The graduations were great!*

• **Patricia Martinez- Roach, President**

*What a wonderful experience to go through all the graduations.*

*I wanted to point out to the Board that I did receive from the Grand Jury a recommendation regarding our asset management. We will have it on the next agenda for formal acceptance and we will need to respond within 90 days.*

18.02 Superintendent

Bob Nuñez, Superintendent  
*No items to report.*

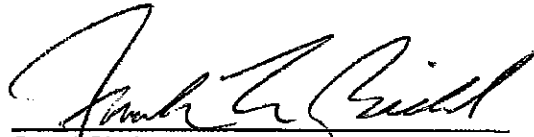
19. REPORT CLOSED SESSION ACTION(S)

*See section 2.0*

20. ADJOURNMENT

*Motion to adjourn the meeting at 11:55 p.m. made by Member Nguyen, second by Member Garcia.*

*Respectfully submitted,*

  
Board Clerk

**REPORT CLOSED  
SESSION ACTION(S)**

**ADJOURNMENT**

PERS			
Month	Employee Contribution	Employer Contribution	Total
Apr 2007	763.92	1,086.05	1,849.97
May 2007	854.67	1,215.10	2,069.77
Jun 2007	988.19	1,404.92	2,393.11
Jul 2007	778.09	1,106.23	1,884.32
Aug 2007	1,094.27	1,555.72	2,649.99
Sep 2007	1,052.22	1,495.97	2,548.19
Oct 2007	1,064.62	1,513.59	2,578.21
Nov 2007	996.64	1,416.94	2,413.58
Dec 2007	1,038.64	1,476.65	2,515.29
Jan 2008	832.59	1,183.68	2,016.27
Feb 2008	785.53	1,116.77	1,902.30
Mar 2008	675.00	959.64	1,634.64
Apr 2008	923.54	1,313.01	2,236.55
May 2008	1,141.51	1,622.90	2,764.41
Jun 2008	1,152.77	1,638.90	2,791.67
Jul 2008	1,042.52	1,404.13	2,446.65
Aug 2008	1,056.92	1,423.55	2,480.47
Sep 2008	1,049.72	1,413.85	2,463.57
Oct 2008	806.11	1,085.72	1,891.83
Nov 2008	731.74	985.55	1,717.29
Dec 2008	651.64	877.67	1,529.31
<b>Totals</b>	<b>19,480.85</b>	<b>27,296.54</b>	<b>46,777.39</b>

STRS		
Employee Contribution	Employer Contribution	Total
3,899.89	4,021.78	7,921.67
4,024.38	4,150.16	8,174.54
3,981.31	4,105.75	8,087.06
3,419.90	3,526.76	6,946.66
3,979.53	4,103.89	8,083.42
4,224.47	4,356.50	8,580.97
4,818.60	4,969.20	9,787.80
4,972.88	5,128.30	10,101.18
4,783.32	4,932.80	9,716.12
4,807.49	4,957.72	9,765.21
4,886.58	5,039.28	9,925.86
4,905.77	5,059.06	9,964.83
5,441.48	5,611.52	11,053.00
5,197.70	5,360.12	10,557.82
4,848.72	5,000.24	9,848.96
4,778.96	4,928.28	9,707.24
4,319.58	4,454.56	8,774.14
4,809.28	4,959.58	9,768.86
4,707.64	4,854.76	9,562.40
4,296.64	4,430.91	8,727.55
4,097.69	4,225.74	8,323.43
<b>95,201.81</b>	<b>98,176.91</b>	<b>193,378.72</b>

Total PERS/STRS
9,771.64
10,244.31
10,480.17
8,830.98
10,733.41
11,129.16
12,366.01
12,514.76
12,231.41
11,781.48
11,828.16
11,599.47
13,289.55
13,322.23
12,640.63
12,153.89
11,254.61
12,232.43
11,454.23
10,444.84
9,852.74
<b>240,156.11</b>



# East Side Union High School District

830 North Capitol Avenue • San José, California 95133-1316 • 408-347-5000

*Academic, personal and social success for each and every student.*

*Bob Nuñez, Superintendent*

## Attachment B

January 20, 2009

Olivia Soza-Mendiola  
Chief Executive Officer  
MACSA Academia Calmecac  
130 N. Jackson Street  
San Jose, CA 95116

Re: Fiscal Oversight

Dear Ms. Mendiola:

As the chartering agency for MACSA's Acedemia Calmecac charter school, East Side Union High School District (the "District") is vested with the obligation to monitor the fiscal condition of the Charter School. For some time we have been requesting confirmation from you that the Charter School has been properly maintaining and reporting its employees' State Teachers Retirement System (STRS) contributions. The last record we have that the Charter School is withholding employee's contributions and paying the employers share of the obligation under the charter of the agency is a report and accompanying contributions for the month of March 2007 received in February 2008. We have not been provided the necessary information or contributions, for the subsequent months, which has caused us to become concerned about the financial management and fiscal stability of the Charter School's operations. At a minimum the charter school agency should be holding in trust the employee's withheld contributions.

In an e-mail dated December 17, 2008 from your staff, Ben Tan, to Karen Poon, Director of Fiscal Services, East Side Union High School District, it was stated that with your staff's knowledge Academia Calmecac Charter School would be paying the PERS and STRS balances from a capitalized leased project. This would indicate that the charter school does not have currently funds available to meet it financial obligations.

The California Education Code (§47607(a)(1)) provides the District with the authority to "inspect or observe any part of the charter school at any time" and the Charter School is required to promptly respond to all reasonable inquiries made by the District, including inquiries regarding its financial records. (Ed. Code §47604.3).

**BOARD OF TRUSTEES:** Frank Biehl, Eddie Garcia, J. Manuel Herrera, Patricia Martínez-Roach, Lan Nguyen  
It is the policy of the East Side Union High School District not to discriminate on the basis of sex, age, religion, race or national origin, sexual orientation, or handicapping condition in its educational programs and activities or in the recruitment and employment of personnel.

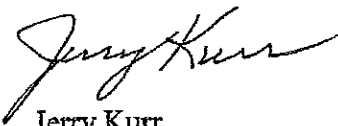


Ms. Soza-Mendiola  
January 20, 2009

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This is to inform you that the District hereby requests the opportunity to review on-site the Charter School's financial records including specifically, but not limited to, those financial records showing that the Charter School is properly maintaining and reporting its employees' STRS contributions. We would like to conduct our review on Wednesday, January 21, 2009, beginning at 4:30 p.m. at your offices. Please confirm that the necessary records will be made available for our review at that time. I look forward to discussing this matter with you as soon as possible. Of course, please do not hesitate to contact me if you have any questions regarding this matter. Thank you in advance for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Kurr".

Jerry Kurr  
Associate Superintendent  
Administration and Business Services

cc: Bob Nuñez, Superintendent



# East Side Union High School District

830 North Capitol Avenue • San José, California 95133-1316 • 408-347-5000

*Academic, personal and social success for each and every student.*

*Bob Nuñez, Superintendent*

February 25, 2009

## Attachment C

Olivia Soza-Mendiola  
Chief Executive Officer  
MACSA Academia Calmecac  
130 N. Jackson Street  
San Jose, CA 95116

Re: Academia Calmecac Charter School

Dear Olivia:

As you know, East Side Union High School District is the chartering authority for MACSA's Academia Calmecac charter school. As such, East Side oversees the operations of the charter school, including overseeing the charter school's financial affairs.

Pursuant to Element 11 of the Charter Petition, Academia Calmecac retained the option for its Board to elect to participate in the State Teachers Retirement System and/or the Public Employees Retirement System for its employees. We understand that, in fact, the Charter Board did elect to participate in both STRS and PERS for its employees. Both STRS and PERS (in relevant portions of the Education Code and the Government Code) obligate employers to withhold, collect and deposit employee contributions, and to make matching employer contributions, to STRS and PERS for the benefit of its employees. (See, e.g. Education Code section 47611.)

As we have discussed, Academia Calmecac has failed to withhold, collect and deposit such contributions and is now in significant arrears in required payments to STRS and PERS for the benefit of its charter school employees. In addition, governing law could result in substantial penalties to be paid by Academia Calmecac to both STRS and PERS. We recommended that Academia Calmecac contact STRS and PERS immediately to work out resolution of this matter acceptable to both STRS and PERS. We look forward to receiving an update from you on your discussions with STRS and PERS.

The Education Code requires East Side as the chartering authority to monitor the fiscal condition of each charter school under its authority, as well as compliance with the Education Code and other applicable laws. Element 14 and Education Code section 47607 specify the grounds on which the Academia Calmecac charter can be revoked, including fiscal mismanagement or violation of any provision of law. Pursuant to Education Code section 47607, this letter constitutes notice to Academia Calmecac of violation of Section 47607(c) for failure to

**BOARD OF TRUSTEES:** Frank Biehl, Eddie Garcia, J. Manuel Herrera, Patricia Martinez-Roach, Lan Nguyen  
It is the policy of the East Side Union High School District not to discriminate on the basis of sex, age, religion, race or national origin, sexual orientation, or handicapping condition in its educational programs and activities or in the recruitment and employment of personnel.

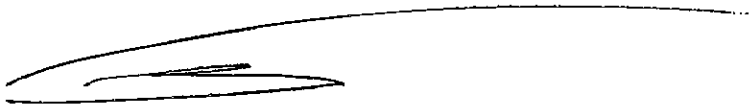
Ms. Soza-Mendiola  
February 25, 2009  
Re: Academia Calmecac Charter School

Page 2

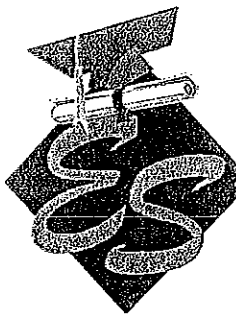
withhold, collect and deposit STRS and PERS contributions as required by law and a request that these violations be remedied promptly but in no event any later than March 31, 2009. Failure to remedy these violations or to otherwise reach an acceptable resolution or other agreement with STRS and PERS may result in the revocation of the Academia Calmecac charter in accordance with Education Code section 47607.

We understand that these are extremely challenging economic times for all schools, and East Side remains willing to assist Academia Calmecac in your discussions with STRS and PERS to find a resolution to this matter. Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Nuñez", is written over a horizontal line. The signature is fluid and cursive.

Bob Nuñez  
Superintendent



# East Side Union High School District

830 North Capitol Avenue • San José, California 95133-1316 • 408-347-5000

*Academic, personal and social success for each and every student*

*Bob Nuñez, Superintendent*

June 15, 2009

## Attachment D

Ms. Olivia Soza-Mendiola, CEO  
Mr. Juan Guel, Principal  
MACSA Academia Calmecac Charter School  
130 N. Jackson Street  
San Jose, CA 95116

**Re: Notice of Intent to Revoke Charter/Notice of Public Hearing on Evidence  
Supporting Revocation**

Dear Olivia and Juan:

East Side Union High School District ("District") is the chartering authority for MACSA's Academia Calmecac Charter School ("Charter"). As the chartering authority, the District is responsible for oversight of the Charter, including its fiscal affairs.

This letter is to provide you with formal notice of the District's Intent to Revoke the Charter pursuant to Education Code section 47607. This letter is also a notice that on June 18, 2009, at approximately 7:30 p.m., during the District's regular Board meeting, the District's Governing Board will hold a public hearing in accordance with Education Code section 47607(e) for the purpose of determining whether evidence exists to revoke your school's charter.

This Notice of Intent to Revoke is based on the Charter's fiscal mismanagement and violations of law as detailed below. *See*, Education Code section 47607.

### FACTS SUPPORTING THIS NOTICE AND REVOCATION

Pursuant to its Petition, the Charter retained the option for its Board to elect to participate in the State Teachers Retirement System and/or the Public Employees Retirement System for its employees. The Charter Board elected to participate in both STRS and PERS for its employees. MACSA and the Charter have acknowledged that the Charter has failed to deposit employee contributions and failed to make matching employer contributions to both STRS and PERS for over a year. Furthermore, the Charter has admitted that it has misappropriated and used employee contributions to STRS and PERS for operating expenses. These failures, actions and omissions are violations of law and the Petition and amount to fiscal mismanagement by the Charter.

The District has previously sent you letters dated January 20, 2009, and February 25, 2009, outlining the above fiscal transgressions. By its letter dated February 25, 2009, the District requested that

**BOARD OF TRUSTEES:** Frank Biehl, Eddie Garcia, J. Manuel Herrera, Patricia Martinez-Roach, Lan Nguyen  
it is the policy of the East Side Union High School District not to discriminate on the basis of sex, age, religion, race or national origin, sexual orientation, or handicapping condition in its educational programs and activities or in the recruitment and employment of personnel.

Ms. Olivia Soza-Mendiola

Mr. Juan Guel

June 15, 2009

Re: Notice of Intent to Revoke Charter/Notice of Public Hearing on Evidence Supporting Revocation

Page 2

the Charter's STRS and PERS violations be remedied promptly but in no event any later than March 31, 2009. As of this date, the STRS and PERS violations have not been remedied and the monies have not been restored to STRS, PERS or the Charter employees.

By letter dated April 20, 2009, the Santa Clara County Office of Education (SCCOE) informed the Charter that SCCOE and FCMAT would be conducting a financial review of the Charter's operations in light of the Charter's STRS and PERS violations.

The Charter's use of its employees' retirement contributions was illegal and was acknowledged as illegal by MACSA's Chief Financial Officer in the local press. Theft or misuse of monies from employee benefit plans could constitute a violation both federal and state laws.

#### PUBLIC HEARING

During Thursday's public hearing speakers will be asked to keep their comments focused on whether evidence exists supporting the above-stated grounds for revocation of the Charter. The Board will not be taking any action on revocation of the Charter at the time of the June 18 meeting. Accordingly, the public hearing on June 18 will be limited to evidence addressing directly the grounds for revocation, and not general testimony regarding the Charter, MACSA or their programs. Per Education Code Section 47607(e) the purpose of the hearing is narrowly focused on whether evidence exists to revoke the Charter. To date, we have not received any evidence that the violations identified by the District have been or are capable of being cured. Depending on the outcome of the June 18, 2009, hearing, the Board may decide to take action on the issue of revocation at its next meeting.

Please contact Dan Moser or me if you have any questions.

Sincerely,



Bob Nunez  
Superintendent

cc: *ESUHSD Board of Trustees*  
*Jerry Kurr, Associate Superintendent of Administration and Business Services*  
*Dan Moser, Associate Superintendent of Instruction and Human Relations*  
*Alan Garofalo, Associate Superintendent of Student Services and Facilities*  
*Dr. Charles Weis, Superintendent of Schools, Santa Clara County Office of Education*



Governing Board  
Superintendent Bob Nunez  
EAST SIDE UNION HIGH SCHOOL DISTRICT  
830 North Capitol Avenue  
San Jose, CA 95133

## **Attachment E**

Dear President Martinez-Roach, Members of the Governing Board, and Superintendent Nunez:

My name is Maria Elena De La Garza and I now serve as the Acting Chief Executive Officer of the Mexican American Community Services Agency ("MACSA"). As you know, our office operates the MACSA Academia Calmecac Charter School ("Charter School").

The Charter School is in receipt of the letter from the East Side Union High School District ("District") entitled Notice of Intent to Revoke Charter/Notice of Public Hearing on Evidence Supporting Revocation and dated June 15, 2009. Your letter provides formal notice that the District Governing Board ("Board") will hold a hearing pursuant to Education Code Section 47607(e) for purposes of determining whether evidence exists to revoke the Charter School's charter. The Notice is based on the Charter School's current debt of \$228,995.11<sup>1</sup> owed to the State Teachers Retirement System ("STRS") and the Public Employee Retirement System ("PERS").

The Charter School understands and acknowledges the concerns set forth in the District's Notice, and has recently accepted the resignation of its Chief Executive Officer and has eliminated the Chief Financial Officer's position. The Charter School is fully committed, on behalf of the students, staff, and community that it serves, to immediately addressing the District's concerns, and establishing procedures to ensure that a similar situation does not happen again.

As we speak, the Charter School is taking steps to repay the debt currently owed to STRS and PERS in the very near future. Specifically, the Charter School is in the process of selling a building owned by MACSA for the amount of \$1.8 million, the proceeds of which will first and foremost be used to pay down the entire debt currently owed to STRS and PERS. The building sale is currently in escrow, with a scheduled closing on September 7, 2009. MACSA would provide the District with a letter certifying the sale of the property, as well as written confirmation of its commitment to use the proceeds to pay down the debt. In addition, the Charter School is aggressively pursuing short-term cash flow financing from Wells Fargo Bank and Charter School Capital to provide an immediate resolution to this issue.

<sup>1</sup> Currently, MACSA will make the final payment for STRS and PERS to its El Portal Charter School Employees by June 29, 2009.

Given that the Charter School's current efforts are likely to resolve all of the concerns outlined in the District's Notice, the Charter School would respectfully request that the District agree to delay its final decision to revoke or decline to revoke the charter for an additional 30 days, or until August 18, 2009. As you know, the revocation provisions of Education Code Section 47607(e) do provide that "no later than 30 days after the public hearing, the chartering authority shall issue a final decision to revoke or decline to revoke the charter, unless the chartering authority and the charter school agree to extend the issuance of the decision by an additional 30 days."

The Charter School would like to emphasize that the extension of this timeline by mutual agreement of the parties would not have any financial impact on the District. Education Code Section 47604 specifically ensures that the District will not be liable for any debts or obligations of the Charter School if the District has complied with all oversight responsibilities required by law, which the District clearly has.

We are fully committed to serving our Academia Calmecac students as they pursue academic success going forward, and request that the District Board postpone action on its Notice for an additional 30 days, until August 18, 2009. Please do not hesitate to contact me should you have any questions, and I appreciate your consideration of this matter.

Sincerely,

  
Maria Elena de la Garza  
Acting Chief Executive Officer



**Strangis Properties**

# Attachment F

June 18, 2009

Mike Lopez  
MACSA  
130 N Jackson Ave  
San Jose, CA 95116

Re: 2254 Alum Rock Ave, San Jose, CA  
APN 481-22-072

Mike,

The following is a summary of the terms and conditions of the Purchase and Sale Agreement between MACSA and CORE Affordable Housing. I have also attached the preliminary title report, the PSA and the six addenda to the contract, the executed commission agreement between MACSA and Strangis Properties, an executed contingency removal, escrow instruction regarding the deposit, and a memorandum clarifying the current timeline to close escrow.

#### Summary

03/07/08	Purchase and Sale Agreement Executed Price of \$1,881,780
08/06/08	CORE removes all contingencies
04/30/09	Addenda extended \$25,000 deposit
05/29/09	CORE makes \$25,000 non-refundable deposit to MACSA
06/02/09	MACSA and CORE execute a memo to clarify extensions and close of escrow
09/07/09	Latest possible close of escrow without further negotiations

Please call me if you have any questions regarding this summary or the attached information.

Thank you,

Jerry Strangis





# Attachment G

## MACSA Academia Calmecac 2008-2009

Out of 34 graduates, 26 received acceptance letters to 4 year universities. This is 76% of our graduating class.

The following are the Universities our students will be attending:

- UC Merced
- California State Polytechnic University, Pomona
- Cal Poly
- San Francisco State University
- California State University, Fresno
- San Jose State University
- California State University, Los Angeles
- California State University, Chico
- Sonoma State University
- Sacramento State – California State University, Sacramento
- California State University, East Bay
- UNLV, University of Nevada Las Vegas

Majors:

- BA Business/International
- BS Biological Science/Molecular Biology
- Psychology
- Pre-Nursing
- BA Social Work
- BA Mechanical Engineering
- Pre Mechanical Engineering @ Howard R Hughes College of Engineering
- BS Physics
- Industrial Engineering
- BA Criminal Justice
- BA Political Science
- BA Spanish