

**EAST SIDE UNION HIGH SCHOOL DISTRICT**  
**Minutes of the Regular Meeting of the Board of Trustees**  
**Meeting Held at Education Center**  
**March 10, 2005**

- 1) The Regular Meeting of the Board of Trustees was called to order at 4:05 p.m. by President Herrera. Vice President Shirakawa, Clerk Martinez-Roach and Member Mann were present. Member Nguyen arrived at 4:10 p.m.

*CALL TO ORDER*

2) **PLEDGE OF ALLEGIANCE**

*PLEDGE OF ALLEGIANCE*

3) **WELCOME AND EXPLANATION TO AUDIENCE**

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

*WELCOME AND  
EXPLANATION*

4) **BOARD SPECIAL RECOGNITION(S)**

*BOARD SPECIAL  
RECOGNITIONS*

- 4.1 Eunice Esquivel – Bay Coast Region President for California School Nurse Organization  
4.2 Aurora Quevedo, Ed.D. – CABA Legacy Award

5) **CONSIDERATION OF PROPOSED AMENDMENTS TO THE AGENDA**

*CONSIDERATION OF  
AMENDMENTS*

*Motion to approve by Member Mann, second by Vice President Shirakawa.  
Vote: 5/0*

**APPROVAL OF PROPOSED AMENDMENTS TO THE AGENDA**

*APPROVAL OF  
AMENDMENTS*

6) **PUBLIC MEMBERS WHO WISH TO ADDRESS THE BOARD OF TRUSTEES**

*ORAL COMMUNICATIONS*

- Julio Pardo – Budget Task Force/Jose Valdes Program
- Chandana Batchu – Evergreen Valley High School Yearbook Class
- Cari Vaeth – Adult Education Week: March 7 - 11
- John Moore – “Thank You”
- Vi Tran –Administrative Changes & Layoffs
- Melissa Tang –5 Period Day
- Kathy Ngo – Proposed Budget Cuts
- Diane Tran – Proposed Budget Cuts/Medical Magnet Program
- Nick Leon – Curriculum Changes
- Toan Vo – Teacher Layoffs and Budget Cuts
- Ruben Dominguez – Parcel Tax

- Harry Salgado – Jose Valdes Program
- Annette Gonzales – Program Cuts/Teacher Layoffs
- Najib Azuar – Proposed Budget Cuts
- Alicia Lara & Antonio Swancy – Proposed Budget Cuts
- David Castro – CSEA Workforce
- Osvaldo Ricardez – Proposed Budget Cuts
- Thuan Hoang Nguyen – Jose Valdes Program/Medical Magnet Program
- Joanne Chau – Teacher/Program Cuts/Jose Valdes Program
- Audrey Ragsac – 5 Period Day/Teacher & Counselor Cuts
- June Helfrich – Budget Cuts
- Amy Helfrich – Budget Cuts
- Andrew Hill High School Students – Impact of Budget Cuts on Teachers
- Ruben Dominguez – Budget Task Force Update
- Abraham Huerta – Budget Task Force
- Alicia Lara & Antonio Swancy – Budget Cuts for Next Year
- Nick Leon – Land Sale
- John Moore – Quimby Property
- Don McKell – Quimby Land Sale
- Don McKell – Certificated Layoffs
- Nick Leon – Certificated Layoffs
- Don McKell – Audit Report 2003-2004
- Kathy Chavez Napoli – Coto Loan

7) **STUDENT ACHIEVEMENT/BOARD DISCUSSION AND/OR ACTION**

Student Representatives from Oak Grove, Mt. Pleasant and Overfelt High Schools were in attendance.

8) **OPERATIONAL ITEMS/BOARD DISCUSSION AND/OR ACTION**

- 8.1 Hold Public Hearing – 6:15 p.m. – On Resolution #2004/2005-29 – For a Finding of Insufficient Materials

*Motion to approve by Member Mann, second by Vice President Shirakawa. Vote: 5/0*

- 8.2 Approve 2004-2005 Second Interim Financial Report

*The Board filed its first negative interim report with the Santa Clara County Office of Education on December 15, 2004. The next report is March 15 when the District must file with the County.*

*Superintendent Zendejas indicated that if Proposition 98 were to be released by the Governor then the assumptions for this year and perhaps next year could change.*

**STUDENT ACHIEVEMENT**

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

*Chief Financial Officer Mahrt explained that if the District does not come with a plan, the County will come up with a plan for the District. If we do not make the cuts or they don't make the cuts, the District will be turned over to the State.*

*Motion to approve by Clerk Martinez-Roach, second by Member Mann. Vote: 4/0 Member Nguyen out of the room.*

8.3 Budget Task Force Update

*President Herrera indicated that the budget task force is exploring scenarios in an open community forum. The Budget task Force meetings are open. A person can participate in every aspect. There are over 40 members sitting at the table.*

*Future scheduled meeting are:  
March 15 in the Education Center Lounge  
April 5 at Evergreen Valley High School  
April 11 at Evergreen Valley High School  
April 19 at the Education Center  
April 25 at the Education Center  
May 3 at the Education Center*

*Questions regarding the Budget Task Force should be provided to Joel Herrera. He is the Project Manager for this project.*

8.4 Report on Status of Quimby Land Sale Proceeds

*Legal Counsel indicated that in or around 1969, the District acquired approximately 55 acres on Quimby Road. The land was originally acquired for \$700,000 with a loan from the State, which was repaid by the District in full. The repayment was with general fund monies. In the early to mid 1970's the property was exchanged for a larger parcel, approximately 61 acres across the street. The exchange took place with a residential real estate developer. As a result of the exchange, the District acquired an additional six or more acres through that exchange for no additional money paid out of the District. Evergreen Valley High School was built on approximately 48 acres of that land. After the subdivision to allow for the high school, it left a residual of approximately 13 acres. In the 2002 timeframe the Governing Board for the District determined that property to be surplus and authorized the property to be sold.*

*The property was sold in 2003 for \$12.1 million. The reason it was mentioned that the property was determined as surplus property is because it has a legal significance under the Education Code. Specifically, the Education Code states that funds derived from the sale of surplus property shall be used for essentially for capital outlay purposes and not for general fund purposes, except and unless the Board makes certain determination regarding capital needs over the next five years. It cannot do that without the prior consent of the State Allocation Board in Sacramento. Once the transaction closed escrow, approximately \$3.1 million was spent for general fund purposes without the prior approval or consent of the State Allocation Board. Under the Education Code it states that if a District sells surplus property then the funds derived from that sale have to be used for capital outlay. The Education Code doesn't make any exception for the source of funds. Earlier this week the Board received a letter from former ESUHSD Superintendent Frank Fiscalini. Mr. Fiscalini was the Superintendent of the District at the time the District acquired the Quimby Land and also at the time the District exchange the original parcel for the larger 61 acre parcel. Mr. Fiscalini's letter brings to this issue his explanation as to the intent of the District in acquiring the property in the 1960's and the intent in exchanging the property in the mid 1970's for the larger 61 acre parcel. Mr. Fiscalini states that the larger parcel with the excess land, when the District acquired the lands they knew at the time they would never need all 55 or 61 acres for a high school, but that nevertheless the District purchased a parcel as an investment vehicle. So that at some point in time in the future if, and when, the high school was built, any excess residual land could be sold off and the District could reap the benefits of its investment. Mr. Fiscalini also makes the same statement with regard to the District's intent in exchanging the property for the larger parcel in the mid 1970's. The Education Code, on its face does not make any exception or take into account the intent of the District in acquiring the property in the first instance. At the present time, knowing that the Board of Trustees declared the property to be surplus in or around 2002, then the use of proceeds from the sale of those 13 acres is restricted by Education Code section 17462. From a legal standpoint, the issues that need to be explored as a result of Mr. Fiscalini's letter is whether or not the District's archives support Mr. Fiscalini's recollection of the intent of the District in acquiring the property in the first instance assuming that the District's*

*archive records do report that. The second issue would be can the Education Code support an interpretation that would allow for something called investment property and not surplus property. The third question raised is whether or not the Board in 2002 hadn't know those fact, hadn't known that analysis, would have avoided declaring the property surplus and, therefore, subject to the Restrictions of the Education Code and whether or not instead it would have chosen to treat the property and proceeds as a investment. The remaining legal issue would be, even if that was the case can this current Board rescind the prior action of the 2002 Board and now declare that property to be non-surplus and, therefore, free-up the monies for general fund purposes. Since the District is in a negative interim report state at this time, and given the Santa Clara County Office of Education's oversight responsibilities of the District, before any such action took place, it would be prudent, that the County Office of Education be given an offer of proof, be given the explanation and theory under those funds can be used. The District is pursuing a special legislation to the California legislation that would allow the District to use those funds for general fund purposes.*

*Member Mann went on record to say that he will not be supporting any financials risks. He will support special legislation.*

*Cathy Grovenburg, Assistant Superintendent of the Santa Clara County Office of Education, stated that the County will support the Education Code. Under AB1200 it is their responsibility to ensure that the District is complying with Education Code. The information that they would need to see in order to support the transaction is the documentation, which validates the fact that either the land was purchased with general funds or whatever Legal Counsel requires and that it was not surplus property. Also needed is documentation on the four points listed by the District's Legal Counsel. She will still need to speak with her Superintendent and Legal Counsel.*

*Motion to approve by Vice President Shirakawa, second by Member Nguyen to direct Legal Counsel to continue his legal research on the possibilities of the Quimby Land. Vote: 5/0*

- 8.5 Board Resolution #2004/2005-30 Funding Resolution  
*Motion to approve by Member Mann, second by Clerk Martinez-Roach. Vote: 5/0*
- 8.6 Amend Energy Education, Inc. Contract  
*Motion to approve by Clerk Martinez-Roach, second by Member Mann. Vote: 5/0*
- 8.7 Approve Variable Term Waiver Requests for Certificated Employees  
*Motion to approve by Clerk Martinez-Roach, second by Member Mann. Vote: 5/0*
- 8.8 Receive and Consider Initial Proposal for Successor Contract from the East Side Teachers Association/CTA/NEA to the East Side Union High School District regarding Collective Bargaining Agreement Negotiations  
*Motion to approve by Clerk Martinez-Roach, second by Member Mann. Vote: 5/0*
- 8.9 Consideration and Public Notice of the District's Initial Proposal for Successor Contract to East Side Teachers Association/CTA/NEA regarding Collective Bargaining Agreement  
*Motion to approve by Member Mann, second by Clerk Martinez-Roach. Vote: 5/0*
- 8.10 Proposal for CCOC Partnership  
*No action taken.*

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

**ATTACHMENT A**

*Items: (9.4) and (9.19) were pulled for discussion/approval.  
Items (9.14) and (9.21) were pulled from the agenda.  
Motion to approve by Member Mann, second by Vice President Shirakawa to approve the remainder of the Consent Items as amended. Vote: 5/0*

(Agenda items in parentheses)

- Purchase Orders Dated March 10, 2005 (9.1)
- Budget Transfers Dated March 10, 2005 (9.2)
- Approve Classified Personnel Actions Dated March 10, 2005 (9.3)
- Student Aide Personnel Actions Dated March 10, 2005 (9.5)
- Acceptance of Gifts/Donations (9.6)
- Approve Contracts for Professional Services (9.7)

- Award of Bids (9.8)
- Approve Memorandums of Understanding (9.9)
- Approve School Field Trips (9.10)
- Adopt Resolution #2004/2005-31 An Itemized List of Surplus/Obsolete Equipment for Sale and/or Disposal per Education Code Sections 17545 and 17546 (9.11)
- Approve Notice of Completion for Swimming Pool Renovations at Oak Grove High School (9.15)
- 2004-2005 Title I Targeted Assistance Mid-Year Report (9.16)
- 2004-2005 Single School Plan Mid-Year Report (9.17)
- Annual Local Education Agency Plan (LEAP) Progress Report (9.18)
- Adopt First Amended Resolution #2004/2005-33 to Reduce Classified Management Workforce (9.20)

*√Motion to approve item (9.4) by Vice President Shirakawa, second by Member Nguyen.*

*Vote: 4/0, 1 Abstention from Clerk Martinez-Roach*

*√Motion to approve item (9.19) by Member Mann, second by Vice President Shirakawa.*

*Vote: 5/0*

*√Items 9.14 and 9.21 were pulled from the Consent Calendar.*

10) **WRITTEN REPORTS**

- 10.1 Update on Harvey Rose Audit Recommendations
- 10.2 Report on Board Travel
- 10.3 Receive Audit Report -- Year Ending June 30, 2004
- 10.4 Annual Restroom Report
- 10.5 Status of Former Superintendent's Loan
- 10.6 Report on Field Trips -- Patricia Martinez-Roach
- 10.7 FCMAT Audit Report
- 10.8 Americans with Disabilities Plan

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

11.1 **Board of Trustees**

**Clerk Martinez-Roach**

The Seville Group made a presentation to the Student Relations Board. Child Nutrition Services is invited to make a presentation to

***WRITTEN REPORTS***

***BOARD/  
SUPERINTENDENT'S  
COMMUNICATIONS/  
COMMENTS***

the Student Relations Board at their next meeting.

Member Nguyen

Requested that the Board put on the agenda for a future meeting that the Board revisit their mission and objectives.

11.2 Superintendent

Sciencepalooza is scheduled for Saturday, 12. Everyone is invited to attend.

12) CLOSED SESSION

12.1 Expulsions – A-J

Student A: Expulsion for one academic year.

*Vote: 5/0*

Student B: Expulsion for one academic year.

*Vote: 5/0*

Student C: Expulsion for one academic year.

*Vote: 5/0*

Student D: Expulsion for one academic year.

*Vote: 5/0*

Student E: Expulsion for one academic year.

*Vote: 5/0*

Student F: Expulsion for one academic year.

*Vote: 5/0*

Student G: Expulsion for one academic year.

*Vote: 5/0*

12.2 Public Employee Discipline/Dismissal/Release (Government Code §Section 54957)

Motion by Member Mann, second by

*Motion by Member Mann, seconded by Vice President Shirakawa to adopt Resolution No. #2004/2005-34 determining that 1 Administrator on Special Assignment, 1 Assistant to the Principal, 22 Associate Principals and 4 Villa Principals may be released from their position for the 2005/2006 school year and further directed the Superintendent or her designee to notice all affected certificated administrators in accordance with the Education Code.*

*Vote: 5/0*

*Motion by Member Nguyen, seconded by Vice President Shirakawa to adopt Resolution No. #2004/2005-35 to non-reelect 165.275 full time equivalent probationary certificated employees for the 2005/2006 school year and further directed the Superintendent or her designee to provide appropriate Education Code notices to all such affected employees.*

*Vote: 4/0, 1 Abstention by Member Mann*

*Motion by Member Mann, seconded by Clerk Martinez-Roach to*

**CLOSED SESSION**



*adopt Resolution No. #2004/2005-36 to non-reelect 45.4 full time equivalent temporary certificated employees for the 2005/2006 school year and further directed the Superintendent or her designee to provide appropriate Education Code notices to all such affected employees.*

*Vote: 5/0*

- 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 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Subdivision (a) of Government Code Section 54956.9(b)

Office of Civil Rights Complaint Investigation and Proposed Resolution Agreement, Docket No. 09-03-1281

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant Exposure to litigation pursuant to Government Code Section 54956.9(b)

Statement threatening litigation (One potential case)

- 12.5 Public Employee Performance Evaluation (Government Code §Section 54957)

- 12.6 Public Employment/Transfer (Government Code §Section 54957)

- *Interim Associate Principal (1)*

*Appointment of Kirsten King*

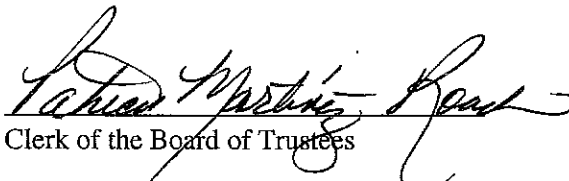
*Vote: 5/0*

**ADJOURNMENT**

On motion that was seconded by a member of the Board, the meeting was adjourned by Board President Herrera at 10:24 p.m.

**ADJOURNMENT**

Respectfully submitted,

  
Clerk of the Board of Trustees

**APPROVED**  
Board of Trustees

*4-14-05 meg*