

Agenda Item

11.13 Approve Minutes of November 20, 2008 Regular Board Meeting

Meeting: 12/11/2008 ESUHSD SPECIAL BOARD MEETING - 4:00 P.M.
Category: 11. 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: Bob Nuñez, Superintendent
SUBJECT: Approve Minutes of November 20, 2008 Regular Board Meeting

Attached are the minutes of the November 20, 2008, 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 November 20, 2008, 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 Today at 09:26 AM by Betty Banderas. Last update on 12/08/2008 by Betty Banderas.

East Side Union High School District

APPROVED

Board of Trustees

12-11-08 *Bob Nuñez*

**EAST SIDE UNION HIGH SCHOOL DISTRICT
Minutes of the Regular Meeting of the Board of Trustees
Meeting Held at Education Center
November 20, 2008**

1. CALL TO ORDER/ROLL CALL

The Regular Meeting of the Board of Trustees was called to order at 4:08 p.m. by President Nguyen. Vice President Garcia, Clerk Shirakawa, Member Biehl and Member Herrera were present.

CALL TO ORDER

2. CLOSED SESSION

2.01 EXPULSIONS – STUDENT A-B

Student A

The Board on a vote of 5/0 approved the expulsion of Student A as modified.

Student B

The Board on a vote of 5/0 approved the expulsion of Student B.

CLOSED SESSION

2.02 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(Government Code §Section 54957)

The Board on a vote of 5/0 approved the dismissal charges of one (1) teacher.

**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

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 and claim for damages of Dalia Gutierrez and claim for damages of John Gutierrez.

Claim for damages of Dalia Gutierrez
 The Board on a vote of 5/0 rejected the claim of Dalia Gutierrez.

Claim for damages of John Gutierrez
 The Board on a vote of 5/0 rejected the claim of John Gutierrez.

2.05 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property:	A portion (approximately eight acres) of Assessor's Parcel Number 484-17-031.
District Negotiators:	Bob Nuñez, Superintendent Jerry Kurr, Associate Superintendent of Administration and Business Services Rogelio Ruiz, Legal Counsel
Negotiating Parties:	ESUHSD and Alum Rock Union Elementary School District
Under Negotiation:	Property Exchange Terms

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

- *Superintendent*

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

3. PLEDGE OF ALLEGIANCE

4. WELCOME AND EXPLANATION TO AUDIENCE

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

5. CONSIDERATION OF PROPOSED AMENDMENTS TO AGENDA

None

6. BOARD SPECIAL RECOGNITION(S)

6.01 Henry Gage

7. STUDENT BOARD LIAISONS

7.01 Stuti Joshipura, ASB President – Independence High School
 Van Nguyen, ASB President – Silver Creek High School

PLEDGE OF ALLEGIANCE

WELCOME AND EXPLANATION

CONSIDERATION OF AMENDMENTS

SPECIAL RECOGNITION(S)

STUDENT BOARD LIAISONS

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

ORAL COMMUNICATIONS

- *Property Exchange*
- *Glennis Cameron, Conference with Real Property Negotiators regarding IAC*
- *Celina Ni – Adult Education*
- *Neil Silverman – IAC Transfer to Alum Rock*
- *Valli Sharpe-Geisler – IAC Transfer*
- *Robert J. Tomaszewski – Adult Education*
- *Margaret Tomaszewski – Adult Education*
- *Joyce Alvarado – Present Petition*
- *Herb Lee – Cuts*
- *Mary Ann Bernal – Child Development Program*
- *Lirio Cisneros – Child Development Program*
- *Leeann Aiassa – Child Development Program*
- *Jennifer Aybayani – Child Development Program*
- *Mariana Mata – Child Development Program*
- *Marcita Collins – Child Development Program*
- *Stephanie Gonzalez – Child Development Program*
- *Brittany Alarcon – Child Development Program*
- *Victoria Bautista – Child Development Program*
- *Mayra Aguilar – Child Development Program*
- *Ivet Ayala – Child Development Program*
- *Zaideth Neri – Child Development Program*
- *Diane Gonzalez – Child Development Program*
- *Crystal Saucedo – Child Development Program*
- *Mary Jacobs – Child Development Program*
- *Jerri Calderon – Child Development Program*
- *Rosie Ruiz – Child Development Program (gave minutes to Jerri Calderon)*
- *Sheri Griffith – Child Development Program (gave minutes to Jerri Calderon)*
- *Brandi-Bickham – Child Development Program (gave minutes to Jerri Calderon)*
- *Ida Potter – Child Development Program (gave minutes to Jerri Calderon)*
- *Amber Stevenson – Child Development Program*
- *Linda Granada – Child Development Program*
- *Nick Leon – Child Development Rotary*
- *Jennifer Ludwig – Cuts to the Family Learning Center/Child Care Programs*
- *Crystal Talitonu – Child Development – Next Domestic*
- *Wynona Denise Morris – Child Development Program*
- *Yesenia Arroyo*
- *Kathleen Jackson – Counseling Needs and Other Suggestions*
- *Eric Maestas – Counseling Needs and Other Suggestions (gave minutes to Kathleen Jackson)*
- *Vivian Gamez – Counseling Needs and Other Suggestions (gave minutes to Kathleen Jackson)*
- *Amy Tse – Counseling Needs and Other Suggestions (gave minutes to Kathleen Jackson)*
- *Heidi Boyd – Counseling Needs and Other Suggestions (gave minutes to Kathleen Jackson)*

- Joanna Shea – Education Budget Cuts
- Allan Robert – Budget Cuts
- Jane Voss – Budget Cuts (gave minutes to Allan Roberts)
- Kim Schaupp – Budget
- Lori Thomas – Budget
- Cris Kuch – Budget Cuts/No Librarians
- Jerry Dyer – Board Response to Proposed Budget Cuts
- Kuntal Chowdhary – Bring Back Our Libraries
- Marisa Hanson – Opposing Budget Cuts
- Don Dawson – Public Comment
- Louis Morrone – We need answers and we need our funding, even if we need to go to Sacramento ourselves.
- Gary Hubbs – Making a Difference
- Gemma Landeza – Budget Cuts
- Kauser M. and Michael Ho – Budget Cuts
- Mehdi Panahi – Budget Cuts Create further Injustice
- Jenna Ingelfinger – Student Rights
- Adla Nicholson – ESUHSD Dress Code and Incident at EVHS on 11/05/2008
- Cindy Bega – Endorse/Support Eddie Garcia
- John Moore - Pending Board Vacancy
- Rosa Campos – Provisional Appointment to Governing Board
- Ruben Dominguez – Pending Board Vacancy
- Dan Juchau – Board Vacancy
- Marisa Hanson and Cindy Bega – Appointment
- Patricia Roach – Pending Board Vacancy Process/Appointment
- David Quintero – Pending Board Vacancy
- Javier Gonzalez – Board Vacancy
- Barbara Boone – Pending Board Vacancy
- Xavier Campos – Board Vacancy
- Andres Quintero – Board Vacancy/Reappointment
- Dan Juchau – Measure E Funding
- Sandra Rasmussen – Fields and Facilities
- John Moore – MOU
- Nick Leon – Genesis High School
- Della Smith – Genesis High School
- Javier Gonzalez – Appointment for District

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

- 9.01 Hold Public Hearing at Approximately 7:00 p.m. regarding Valenzuela/CAHSEE Williams Quarterly Report – Dan Moser, Associate Superintendent of Instruction and Human Relations**

Public hearing regarding Valenzuela/CAHSEE Williams Quarterly Report held.

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

9.02 Accept Valenzuela/CAHSEE Williams Quarterly Report – Dan Moser, Associate Superintendent of Instruction and Human Relations

Motion to accept the Valenzuela/CAHSEE Williams Quarterly Report made by Member Biehl, second by Member Herrera.

Vote: 5/0

9.03 Pending Board Vacancy: Process for Appointment and Provisional Appointment to the Governing Board – Bob Nuñez, Superintendent

Clerk Shirakawa

Since this is my last meeting here on the Board, I kind of feel some responsibility, I am the cause of what is going to happen here on the Board not only on this item, but in the near future. I first want to apologize and thank the District which is my home. Back in 2002, January 2003, when I came back home, most of you probably know my history in the District that I am a child of a teacher that started here in 1969. As a child of a teacher our whole social life centered around the high school, not only did I become a student here, as an employee here I worked many years here in this District, as a parent, two of my daughters graduated, I have a son and another son that will be coming up here shortly to the District and plan on my grandsons coming very soon to the District. It is very emotional for me number one not to be fulfilling my obligation, but I feel like I am coming into one fire from a larger fire. Jerry Dyer talked about what we are facing here in the State and others. I have spent the last couple of years, and I will make sense in a minute, I just want to give you a little context of my comments. I spent the last few weeks preparing to cut \$329 million at least from the County budget and preparing how I would work with my fellow Supervisors, how am I going to fight when I feel the most vulnerable in our community a lot of the families you saw earlier I am going to be representing with all of you here in the audience how am I going to approach that. How am I going to fight the attack and the impact of those families that you see and all of our families because we certainly have a lot of need in our community? How am I going to do it? How am I going to fight and plead with the Legislature and the Governor not to cut the education budget, but cut what I consider is a double pop all those programs for the vulnerable in our community that are going to be cut shortly. It's intimidating; it's not going to be any fun. I say that to everyone because we are facing not just in this District but our community as a whole, we are truly facing a crisis. In the context of this item here, we are facing what I consider the most devastating cuts we've had to face over the last few years. I think it's real. I think their intent on saying what they are going to do. I think we should focus on all of our time on that and the other issues that are important to our District and to our community. I

don't believe these are ordinary times. I think they call for extraordinary measures. In context of replacing me on the Board, we certainly are going to need Board Members who have proven track record or experience and so normally we would probably go through the process like I recommended the last time as the President. Under normal circumstances, we would probably follow that. In this case, I don't think we have the advantage; we are actually at a disadvantage to wait months and months and months for an unknown quality. My preference would be to appoint Mr. Garcia; however I think we ought to put ourselves in a little different position and that is in order to sunshine the best sunshine we could possible do to this District is to one, we are going to set aside and I am going to make a motion in a minute Mr. President, so that we could have some input from the community for discussion. One is to set aside our policy which, if you remember, I was not very happy with or for because I thought it kind of diluted and did not give us the flexibility as a Board when we had situations like we are in tonight, but did appreciate Member Biehl's work on that Bylaw and I think the rest of the Board voted for it as I did, but in this case I think we are in every right to set aside in this time we are in as I described earlier and these circumstances we are able to set that aside, I think that we ought to at the next regular meeting which I believe is our annual organizational meeting, when we will have our other Board Member who won the election on Board. I think that night the first night of business would be to interview the two people who ran for office this last election, interview them for a number of reasons. One, is first they were willing to put themselves on the line in front of the community. They have been vetted out in the community, not only in their personal contacts, phone calls, mail, ballot statements. All those things candidates do to get in front of the voters; I think they have qualified themselves. That is not any disrespect to anyone who did not run, but certainly everyone in the community had the opportunity to run for this election to put themselves in front of the voters. In these times and in this moment, I think that is the right way we ought to proceed as a Board to do that and put those two candidates in front of the Board so we can do it quickly. The item after that item I anticipate is choosing the Officers of the Board and you can get to the Board for its regular business and get to the items and the issues you've heard here tonight and others we are going to need to tackle. I don't think our community, our Board, our school District, at this time can get in the middle of which could be a change in a process to replace a Board Member. Any other time, I would probably be on the other side of that, but I think we have two candidates who put themselves in front of this community and I think interviewing them, selecting them in a timely process at the next meeting as I said is a right way to go. In closing, before I make a motion, I just want to talk about Eddie a little bit. Obviously, and I am not ashamed to say I won't be a part of the selection, but I want to talk about my colleague,

Eddie, here who over the last two years has proven himself to be a great Board Member and I am very impressed by the broad-based support Eddie has been able to gain in this community. The reason why I say that is that hopefully it adds to my argument of Eddie being one of the two choices that this Board can make. Eddie has garnered the support of everyone from our congress people in the region, all of our assembly people, the Mayor of San Jose, most of the Councilmembers of San Jose, numerous school board members, Latino Democratic Forum, La Raza Roundtable, Asian American Democratic Forum, Democratic activists, the NAACP gave Mr. Garcia a grade A. I think Eddie you've proven yourself over the years what you've established in the community. My preference would be to appoint you, but I know we need a little bit more of a process than that. I won't be able to vote, again as I said. The final thing that I think is very important is 45,422 people, as of yesterday afternoon at 4:09 p.m., said Eddie Garcia and 19,067, I believe, said Tim Tom was on of their preferences for the school Board, it truly should be the guidelines the Board follows in selecting someone. I think a short selection process can be achieved quickly with those two candidates that night. Within that hour you ought to have Patricia up here with the rest of the Board and select your officers and continue with the business I said earlier. I am going to make a motion to set aside that policy and that the two candidates be interviewed at the annual organizational meeting as the first order of business and once you select someone, they be sworn-in and you continue with your annual organizational meeting. That would be a very strong recommendation from myself. I am sure that most of the community would agree and I will just remind you also that every member of this Board up until at least this minute has supported at least Eddie Garcia up to this point and understand he is the father of Academic Master Plan and a number of initiatives here we have up on the Board and Eddie that is all I am going to be able to say about you because I am not going to be able to select you, but I appreciate my service with you as well as the rest of the Board over the last couple of years and I think we've done a good job to bring stability to this District without the Governor's help we would probably be doing even better, but of course we have to deal with all those things that are mandated to us. I just want to tell you all thank you. I will wish you all luck. You are going to see me again. I've been asked to be the charge of a number of initiatives that you'll see me in the audience later on, which I want to apologize in advance for, that I've been asked to do by some of the residents. Just know that you know where my heart is, deep down I have always been a member of this family of the East Side Union High School District and look forward to working with you in the future.

President Nguyen

We have a motion. Do we have a second?

Member Biehl

No, we don't have a second.

President Nguyen

I will second the motion.

Member Biehl

I ask a question to Counsel first please. What is the Board policy relating to changing policy? Don't we have to have it ready twice? Isn't that our policy when we make changes to the policy, we go through a revision we go through two readings? Isn't that correct?

Legal Counsel Ruiz

An amendment to the policy requires two readings I believe. That policy for adoption of Board Bylaws can be waived by the Board. The Bylaws also allow for the Board to suspend any one of its policies/bylaws for a limited time for a specific purpose upon a majority vote of the Board.

Member Biehl

Which Board policy is that? Is it in the 9000 series?

Legal Counsel Ruiz

It's 9000 series.

Member Biehl

Do you have a copy of it?

Legal Counsel Ruiz

Yes, I do.

Clerk Shirakawa

I am not sure on the exact wording, but if I have to say suspend I will change to motion to say suspend, but I am definitely not trying to change any policy.

Member Biehl

I understand and I understand that if it could be suspended at this meeting today, it could be suspended at the first meeting in December as well. That is what I want to find out. If we have the flexibility to suspend policies whenever we want to then that could be done at any meeting and I want to get clarification.

Legal Counsel Ruiz

The Board Bylaw is 9310 and the section reads, "policies or bylaws may be suspended for a specific purpose and limited time by majority vote. Suspension of any policy or bylaw shall undergo the following considerations: 1) The policies and bylaws shall be reviewed on their own merits rather than the circumstances of the moment; and 2) the Governing Board shall decide whether the policy or bylaw still reflects the intent of the Board and the law. If so, the suspension will be denied and the policy or bylaw

reaffirmed in the minutes."

Member Biehl

What is the law here? Do we need to have a resignation first before we take any action?

Legal Counsel Ruiz

Not for deciding on a procedure for filling a Board vacancy and, in fact, the last time we went through this Member Mann was still on the Board at the time the Board was deciding on the specific procedure for filling that vacancy. The vacancy cannot be filled; the Board cannot take action to fill the vacancy until the effective date of the resignation.

Clerk Shirakawa

Just to be clear, I will make sure that I will resign at the appropriate time to make sure there is no conflict.

Member Biehl

Once the policy is suspended, then I assume that at a subsequent meeting it could be reinstated?

Legal Counsel Ruiz

Per the Board Bylaw it says that for a specific purpose and a limited time by majority vote, so...

Member Biehl

I would assume a subsequent majority vote could reverse any decision the Board made. Isn't that correct?

Legal Counsel Ruiz

That's correct.

Member Biehl

Thank you.

Legal Counsel Ruiz

Mr. President, could I make one comment?

President Nguyen

Sure.

Legal Counsel Ruiz

Because this all presupposes that Mr. Garcia is interested in the reappointment to the Board for the vacancy and if he is, in fact, interested, then I would say that since the Board is going to be deciding on a process potentially tonight that he likely has a conflict from taking part in that decision and in the process. So, if I could ask a simple question of Mr. Garcia, if you are in fact interested in seeking appointment to the vacancy?

Vice President Garcia

Just for complete transparency, I was not passing notes in class, I asked him that question. I wanted to know what my role was because the fact is I am interested in filling the vacancy. My question to you in my little class note, Mr. Counsel, is "Is it appropriate for me to be sitting here while this discussion is happening?"

Legal Counsel Ruiz

I believe that there is a conflict that excludes you from taking part in any action. I am not sure there is any requirement under State law that would require you to remove yourself from the room, to recuse yourself, but my recommendation would be that you remove yourself from the dais.

Vice President Garcia

I feel very comfortable doing that.

Clerk Shirakawa

I am so serious on my concern of really not wasting one dime on an elongated political process; not spending one minute of staff time. I am willing to change my motion to add Barbara Boone if it makes Board Members feel more comfortable with the process because I don't think what is good for our community at this moment, at this time, to have a long process with unknown candidates out there and that kind of process you don't know what the outcome will be. I am so serious about it and Lan I want you to honor the second, I would like to add Barbara to that mix because other than Barbara, I don't who else out there in the competition changes it. I don't think I've anticipated or I don't think I am advocating to not have some kind of open and sunshine process. I think narrowing the process is in our rights. Suspending, in our circumstances, a bylaw is appropriate. I don't think it is out of line with what we are trying to accomplish here. Lan, I would like to add her to the motion to continue and make this process expedient. The reason why I brought up your name, Barbara, is 1) your concern; and 2) Board Members have expressed their concerns that they are in a tough spot because of Eddie, we work with Eddie and that they've been in contact with you and recruited you and work with you. I want to make sure that if we are going to truly sunshine that it has to be sunshined. If that's the case, then you all need to tell us and are we using that as an excuse to have some process or are we really trying to do what is right for the community. That is all I am after Barbara.

Member Biehl

I am not sure what you are alluding to there, but I expressed to Mr. Garcia earlier when it appeared there was going to be a vacancy and my assumption was that the two incumbents, both Lan and Eddie Garcia, were

going to be elected. I encouraged Barbara Boone as being the highest runner up at the last appointment process to consider applying. I did call her this morning and indicate to her that since the circumstances have changed and I shared this with Mr. Garcia earlier this evening that I felt that I needed to tell her that I needed to be neutral in the process and that all bets were off and that as far as I was concerned, we needed to follow the process and see where it leads us. There's only one element of this process here that says shall; everything else says may. It says that we shall advertise in the local media, solicit candidate applications and nominations. I think that we need to do that. If we only have a limited number of nominations, then I don't think it will be necessary for us to go through the whole advisory process. If we have a lot, then I think it will be a useful process to have the scope of the number of candidates narrowed for us, but we can determine that at our December 11 meeting. I just feel that Mr. Garcia is a fine candidate. He went through the process last time and he was selected. He has served as a fine Board Member and I think it is important that he or anyone that is selected to be appointed to this has the credibility behind them that doesn't start out with any type of a back room deal, any type of a shadowy way of doing things a special privilege, an unannounced change in policy that nobody has had the opportunity to review. I think it is very important for us, our Board, not to be in the paper with a lot of letters going back and forth with disappointing people that thought they would have the opportunity to apply and don't have the opportunity. I think we need to be open to anyone in our community who is willing to serve and out of that we may learn something from the comments that they make to us and we may also find additional people that might be willing to serve in other capacities within our District. I think there is nothing wrong with operating with policy. I think it is a simple policy and I think that Mr. Garcia would certainly do very well in that process. He did extremely well last time. I must say it is a mark of his integrity tonight to pass the note to our Counsel to ask if, in fact, this was a conflict of interest and I think that shows a mark of his integrity to do that. So, I am going to strongly suggest that we follow our policy and I think that is the best thing for us to do as a Board.

Clerk Shirakawa

You know, Frank, it troubles me because you sit up here and pontificate and in a paternalistic way throw words out like back room deal, Frank. You know no one up there this evening has advocated a kind of back room deal. No one. I thought I was pretty clear when I spoke earlier about that, but when you do things like that, you inject us and you expose us to as you said outside papers and letters, that somehow for whatever purposes I don't know, for you to do things like that and then you create doubt in peoples minds. I don't know how more sunshine you can get than expressing in front of many people out there, including

Barbara, is very uncomfortable to express the truth and how someone feels and what you believe in what is good for our community and then when you use words like back room deal, it is very disturbing. It's very disturbing.

Member Biehl

Well, sir, I am afraid that is going to be the way it is going to be perceived in the paper. That is going to be the way it is going to be perceived by other people in the community. I am just reflecting what is going to happen if we don't follow the published policy that we adopted a year ago.

Clerk Shirakawa

I don't operate in hazard for 16 years based on what the paper is going to say. I don't do it and hope you don't do it either. I don't think there is a wide cry from the community to do anything but what is best for the community. So, I put it on the table. It's up to the Board to decide. I'm not going to decide the next person who is going to replace Eddie. I am surely not going to decide that, but I think it is okay to put things on the table without having to inject and to expose ourselves to things like backroom deals. I don't think it is necessary. I really don't.

Member Herrera

I have not had any communications, directly or indirectly, with Barbara Boone or anybody else because I've been waiting and respecting the process. I have been approached by several people, including three Latinos in this community, who would, on their own merits, deserve consideration who expressed their interest and I said the only thing I could say there is a process. When it begins, you need to put your paperwork in. They are as respected as myself, George or Eddie or anyone else in this community. They are as experienced in handling organizational processes and budget matters that may arise. The experience, thank God, this community has talent. So, I will go to what I was initially going to say and that is I've been nothing but impressed by Eddie Garcia ever since he joined our Board and I am still very impressed by who he is as a human being, by the professionalism he brought to this Board, by the leadership that he took, by his collegiality and teamwork, both public and private sessions. Whoever is going to apply is going to have a high bar and my belief is, even if we follow the process, that Eddie Garcia is going to again, as he did last time, lead the pack or I would be surprised if he did not. It wasn't 48 hours ago that I had a personal conversation with Eddie Garcia and I said to him that I respected him and that it is going to be good for him, good for the District, good for the Board, if you follow the process and my understanding was that he fully agreed with that and was eager to engage the process. I think we can reconcile all of the various needs, namely, not to dally, delay, but to have a process that fully works out sooner rather than later to select a Board Member and that we could do it completely the way this policy is laid out and still have it be

expedited. I would even venture to say that the citizen group that would be appointed to offer recommendations put itself forward only one recommendation if they so chose and just not have the Board interview anybody if they chose, for example Eddie, because of his superior qualifications and experience. This does not need to be a long process, but we do run the danger, I believe, of losing trust, creating mistrust, and this is just way too fast if this is the way we are going to do it. People have been predicting for months that George Shirakawa was going to win this election. If there had been a different idea on how to approach the potential vacancy, we could have started this conversation months ago and revised it with some community input months ago, but it is problematic for me to be doing it at the eleventh/twelfth hour to call for a suspension and limit it in the way it is being proposed so I am not going to support the suspension of the policy and that is utter respect for Eddie Garcia, who I believe right now is the leading candidate in this process.

Clerk Shirakawa

Let me say real quick, I've been an elected official for 16 years, I only offered and was very serious when I offered, I only offered an alternative to a long process because I felt it was important for the community. I had no ulterior motive other than that, but hear back room deal and all these other things being used.

Member Herrera

I never said those things.

Clerk Shirakawa

I am not accusing you or anybody else on this Board. That's what you have to hear. No wonder there's not a lot of people applying for the Board; you can't show your true heart feelings for what you think is right for the community for whatever reasons to have to go through that. That's the only reason I have. What we've heard in the Latino community and other communities our whole life, "You've got to follow that rule. We made it for you. You've got to follow it." Of course I don't advocate that. I've been involved in deep policy, not only discussions and development implementation, there's two people in the back room from the City of San Jose, with this District. I understand what bylaws mean. They are not Ed Code, they are not Penal Code. They are bylaws; they are guidelines and I understand you always use best practices to follow your bylaws because it gives you a guide, but there are circumstances, as I tried to articulate earlier, where I felt that we ought to consider that. We ought to consider shortening the process, narrowing the scope and that all due in respect for whoever might want to be part of the process. That's all I tried to do. Obviously, it is going to die and the Board is going to decide what they are going to do in the future. I think you are making a mistake. I think the posturing and all those things, again, drive towards dividing our community. Any time you get in a

spot and bring up, well, it's not sunshined. You are going to have the community look at us as some shady back room deal; it's not the truth. We sat out here in front of everyone in this room and tried to come up with a process and all I've offered was a way to it is the best means I think, this time, in my judgment, is good for us. You'll find as you go through this process maybe you'll get it done quick, maybe you won't. You are going to spend money. You are going to spend time; you are going to spend staff time. At the same time you are going to face everything we are facing that we've talked about tonight. So, that's all I've tried to do. I'd like to vote on the motion now and move on with the business because there's no sense in beating a dead horse.

(Motion #1 failed)

Superintendent Nuñez

As I see the process now, it would be to follow the process that's in the Board Policies, which calls for us to solicit candidates, applications and nominations to put that into newspapers and the other media and to develop a timeline and first see how many persons do actually apply. What I had copied were just materials that we used last time. This is the one that we used back in 2006. I do want to understand and correct me now as I go through this that we have 60 days from the date George's resignation to either fill the position by appointment or the County Superintendent calls the election.

Legal Counsel Ruiz

That's correct from the effective date of the resignation.

Superintendent Nuñez

The cost of an election we determined is what, Alan?

Associate Superintendent Garofalo

Between \$1.5 and onwards on to \$2 million.

Superintendent Nuñez

If we were to go to an election.

President Nguyen

It does not sound like we are going to go to an election.

Member Herrera

Mr. President, one of the elements here is that I do take very seriously the huge pressures that the organizations are going to run into the next 30-60 days as mid year budget cuts have to be discussed. It seems that at this point they are going to have to be implemented. One of the guiding principles is that we need to create a tighter timeline, even if it takes more hours for any one of us to be involved in carrying it forward in a shorter timeframe. The law says we can't go beyond 60 days, but it doesn't say we can choose to do it in 30 days.

President Nguyen

Someone mentioned a four weeks process earlier.

Member Biehl

I don't think it has to take that long.

President Nguyen

If we could do three weeks.

Legal Counsel Ruiz

Since the Board Bylaw requires you to advertise in the local media to solicit candidates or nominations, one of the issues is how quickly the local media can get the advertisement to print. In working with the staff, we figured out that the Mercury News takes five business days advance notice to publish something. We worked with some of the smaller newspapers, so just in terms in setting a timeline, if the Board wants the advertisement to go in the Mercury News then it is probably going to stretch it out just a bit.

Member Herrera

I believe that the word advertise is not restricted to paid media. We can get this notice out in a news story in 24 hours. We can get it through other media and we can also do a mailing to all stakeholders. This could be out by Monday everywhere, even if the advertisement is not going to come out for another three days after that, a paid advertisement.

Legal Counsel Ruiz

That is correct. I only mentioned that because two years ago we did advertise in the Mercury News.

Member Herrera

I would like to suggest because of the deliberateness that needs to be part of this design, especially for a faster tracked process and the lateness of the hour, I'd be willing to have a special session of the Board as soon as we can, tomorrow even, to engage in the discussion, make some decisions. In the meantime, staff can support us by laying out a recommended, a fast track approach, and we can just discuss it, have the community here, we can adopt it and move it forward or Monday.

Member Biehl

We were talking earlier about a special closed session on Tuesday the 25th. Could we extend that to a short open session afterwards and finish the rest of this business at that time? Would that work and I would assume by that time that Board Member Shirakawa would have had his resignation letter prepared and submitted with a date and that would allow us to take action.

Clerk Shirakawa

Whenever you want me to resign Frank that's the day I'll resign.

Member Biehl

I think it's important to continue with your leadership right up until the 5th of January when you are sworn in as a Supervisor. We don't want to have a vacancy here and I think we can accomplish that. I don't have a problem with meeting, a special meeting, on Tuesday. We were going to come here at 5:00 p.m. for a closed session. Maybe at 6:00 p.m. we could meet briefly for an hour with some more information; the hour is late now and just finish this up. I feel very comfortable with the questions that were asked the last time. I feel very comfortable with the structure of the committee that was formed the last time. I think it is a matter of just formulating the timeline. I think you could set a meeting the first week of January and by January 8th I think you could have the new person on line.

Member Herrera

I'd like to shoot for the last week of December.

Member Biehl

We could do that too. I don't see any reason why it could not be done the last week of December providing that our newly elected Board Member was available that week to participate.

President Nguyen

I am looking at the calendar right now. Next week would be the 25th, November 25 is the next Special Board Meeting. If we could complete the process in three weeks, it would be completed by December...

Member Biehl

Thursday, the 18th.

Superintendent Nuñez

If I may, if the Board is agreeable to coming back on November 25th, which is next Tuesday, I think we can lay out a process for consideration that would allow us to have everything completed by the next regularly scheduled meeting in December. What Mary and I can do is take a look at the kinds and types of methods we can use to advertise, I do agree that, even though I take the Mercury News, it isn't the only place I go to get my information. So, it does not have to be the only place for the driving force with regard to the timeline. If we are agreeable to coming back on the 25th we can work our way through the process to make sure we have brought back everything, new dates, new timelines for your consideration.

Member Herrera

That would be a 6:00 p.m. public meeting?

Superintendent Nuñez
If that is the time...

Member Herrera
I think so because even if we had not completed executive session from 5 to 6, we would go back after the public meeting to finish executive session.

Member Biehl
One question Counsel, do we need a resignation before we can advertise or can we advertise a potential vacancy before we get such a letter?

Legal Counsel Ruiz
You can advertise before you even get the letter.

Member Biehl
Excellent. Thank you. Based on that, could we begin the advertising process tomorrow?

Legal Counsel Ruiz
Yes.

Member Biehl
Okay.

Member Herrera
Press release.

Member Biehl
Could I suggest then that in the form of a motion we begin and the staff be directed to begin advertising the process for the vacancy that is going to occur as early as tomorrow. On the 25th, a Special Board Meeting at 6:00 p.m., we will finish our discussion on the details on the rest of the timeline. That's a motion.

Motion #1
Motion to temporarily suspend Board ByLaw 9223 and interview Eddie Garcia, Tim Tom and Barbara Boone at the Annual Organizational meeting of the Board made by Clerk Shirakawa, second by President Nguyen.
Vote: 2/2 Motion Failed
Member Biehl and Member Herrera voting No.
Member Garcia excused himself from dais due to conflict of interest.

Motion #2

Motion to begin advertising the process for the vacant seat on the ESUHSD Board of Trustees to occur as early as tomorrow, November 21, 2008, and that on November 25th at 6:00 p.m. a Special Board Meeting be held to finish discussions on the details on the rest of the timeline made by Member Biehl, second by Member Herrera.

Vote: 5/0

- 9.04 Academic Master Plan Standardization; Cost Estimate for Standardization; Process for Integration of Measure E Bond Projects with Academic Master Plan – Bob Nuñez, Superintendent, Linda Gubman, Consultant, Carol Blackerby, Consultant, Eric Hall, Eric Hall & Associates and Lance Jackson, SGI**

Item carried to December Board meeting.

- 9.05 Recommendation regarding MOU to Explore the Joint Use of Sports Fields between ESUHSD and the City of San Jose – Jerry Kurr, Associate Superintendent of Administration and Business Services**

Motion to approve the recommendation regarding MOU to explore the joint use of sports fields between ESUHSD and the City of San Jose made by Member Herrera, second by President Nguyen.

Vote: 5/0

- 9.06 Approval of Ground Lease Agreement for New City Library at Independence High School – Jerry Kurr, Associate Superintendent of Administration and Business Services**

Item carried to December Board meeting.

- 9.07 Measure G and Measure E Citizens' Bond Oversight Committee Report – John Moore, Chairperson of Measure G and Measure E Citizens' Bond Oversight Committee**

Item carried to December Board meeting.

- 9.08 Genesis High School – Dan Moser, Associate Superintendent of Instruction and Human Relations**

Motion to approve the transfer of 42 Genesis High School students to Apollo High School made by Member Biehl, second by Member Herrera.

Vote: 5/0

9.09 Election of Representatives to County Committee on School District Organization – Bob Nuñez, Superintendent

Motion to submit candidate Andres Quintero for the ballot of District 2 seat and candidate Pam Parker for the ballot of At-Large seat to the 2008 County Committee on School District Organization made by Member Biehl, second by Vice President Garcia.

Vote: 5/0

9.10 Approve the Change in Governance Structure of MACSA Academia Calmecac Charter School - Dan Moser, Associate Superintendent of Instruction and Human Relations

Motion to approve the change in governance structure of MACSA Academic Calmecac Charter School made by Clerk Shirakawa, second by Member Herrera.

Vote: 4/0, Member Biehl abstained from vote

9.11 Adopt Resolution #2008/2009-12 Approving Authorized Signatures - Jerry Kurr, Associate Superintendent of Administration and Business Services

Motion to adopt Resolution #2008/2009-12 to approve authorized signatures made by Member Biehl, second by Vice President Garcia.

Vote: 4/0, Vice President Garcia not present for vote

9.12 Adopt Resolution #2008/2009-13 Approval Local Agreement for Child Development Services – Dan Moser, Associate Superintendent of Instruction and Human Relations

Motion to adopt Resolution #2008/2009-13 to approve local agreement for child care development services made by Member Biehl, second by Member Herrera.

Vote: 4/0, Vice President Garcia not present for vote

9.13 Approve Contract with Santa Clara County Office of Education to Continue Children's Head Start Services - Dan Moser, Associate Superintendent of Instruction and Human Relations

Motion to approve the contract with the Santa Clara County Office of Education to continue Children's Head Start services made by Member Herrera, second by Clerk Shirakawa.

Vote: 4/0, Vice President Garcia not present for vote

**9.14 Approve General Waiver Request – CAHSEE
Apportionment - Dan Moser, Associate Superintendent
of Instruction and Human Relations**

*Motion to approve the General Waiver Request, CAHSEE
Apportionment, made by Member Herrera, second by
Member Biehl.*

Vote: 4/0, Vice President Garcia not present for vote

**9.15 Approve Provisional Internship Permit Requests for
Certificated Employees - Dan Moser, Associate
Superintendent of Instruction and Human Relations -
ATTACHMENT E**

*Motion to approve the provisional internship permit
requests for certificated employees made by Member
Herrera, second by Member Biehl.*

Vote: 4/0, Vice President Garcia not present for vote

**9.16 Contracts for Professional Services - Jerry Kurr,
Associate Superintendent of Administration and
Business Services - ATTACHMENT B**

*Motion to approve the contracts for professional services
made by Member Herrera, second by Vice President
Shirakawa.*

Vote: 5/0

**9.17 Memoranda of Understanding - Jerry Kurr, Associate
Superintendent of Administration and Business
Services - ATTACHMENT C**

*Motion to approve the memoranda of understanding made
by Member Herrera, second by Member Biehl.*

Vote: 5/0

10. ATTACHMENT A – CONSENT CALENDAR ITEMS

*Motion to approve the entire consent calendar made by Member
Herrera, second by Vice President Garcia.*

Vote: 5/0

(Agenda items in parenthesis)

- Ratify and Approve Classified Personnel Actions Presented November 20, 2008 (10.01)
- Ratify and Approve Certificated Personnel Actions Presented November 20, 2008 (10.02)
- Ratify and Approve Student Aide Personnel Actions Presented November 20, 2008 (10.03)
- Purchase Orders Presented November 20, 2008 (10.04)
- Award of Bids (10.05)
- Approve School Field Trips (10.06)
- Approve Notice of Completion for Andrew Hill High School

ATTACHMENT A

Phase III Additions and Modernizations (Concord Iron Works) Structural Steel (10.07)

- *Approve Notice of Completion for Andrew Hill High School Phase III Additions and Modernizations (Cupertino Electric, Inc.) Electrical (10.08)*
- *Approve Notice of Completion for Andrew Hill High School Phase III Additions and Modernizations (D & R Paquette Drywall) Metal Framing and Drywall (10.09)*
- *Approve Notice of Completion for Andrew Hill High School Phase III Additions and Modernizations (Joseph J. Albanese, Inc.) Grading & Paving (10.10)*
- *Approve Notice of Completion for Andrew Hill High School Phase III Additions and Modernizations (Joseph J. Albanese, Inc.) Site Work, Utilities and Demo (10.11)*
- *Approve Notice of Completion for Santa Teresa High School HVAC Roofing Replacement (Foothill Air Conditioning & Heating, Inc.) (10.12)*
- *Approve Change Order #1 for Independence High School HVAC Roofing Modernization (Kinetics Mechanical Service, Inc) (10.13)*
- *Approve Minutes of September 18, 2008, Regular Board Meeting (9.14)*

11. WRITTEN REPORTS/RECOMMENDATIONS

11.01 Compliance with 10/08/2004 Stipulated Arbitrator's Award

Report received.

11.02 Budget Adjustments

Report received.

11.03 Educational Technology Plan

Report received.

Member Biehl

Just wanted to make a note in the Technology Plan on the issue of equity of computers between the schools and the administration will be looking at that. They will be revising that in the future and bringing it back to us at some future date.

11.04 Status Report on Energy Education, Inc.

Report received.

12. BOARD OF TRUSTEES/SUPERINTENDENT COMMUNICATIONS/COMMENTS

12.01 Board of Trustees

▪ Eddie Garcia, Vice President

This is technically my last Board meeting on the term that I

WRITTEN REPORTS

BOARD/SUPERINTENDENT COMMENTS

filled in December 2006. I am going to say thank you to the staff here. Mary is outstanding. Everybody is outstanding, the Principals and the teachers. Just keep on doing what you are doing. You've got to keep moving forward. Everyone, thank you for all the support I got tonight. It felt pretty good.

- Frank Biehl, Member
Mr. Garcia, you have been an exemplary Board Member and I doubt this will be your last evening with us. Thank you for your years of services.

I have nothing to report on MetroED.

Mr. Shirakawa and I sometimes see things a little differently. He's a let's get it done guy and get everything out of the way and do it. I'm one that's a little bit more structured. In general, I think we see eye-to-eye on terms of the concerns of our students in the District. I have enjoyed working with him. Believe it or not, I will miss you George.

- J. Manuel Herrera, Member
George, I am going to miss you. I know you are going to be an extraordinary Supervisor.

Member Garcia, I think that the odds are very significant. We are going to be seeing you again here and that remains to be seen.

This is the last month that Mr. Nguyen will be President. He has grown month-by-month. Tonight I really saw him step into the role of President and I have nothing but affection and respect for you President Nguyen.

- Lan Nguyen, President
I look forward to the opportunity to work with Vice President Garcia in the near future. This will not be a finale for me. We look forward for the opportunity to see you in the process and able to appoint you again. You have been the best that we have had in a very long time. For the two years you have been on the Board, you have been very effective.

12.02 Superintendent

Bob Nuñez, Superintendent
I am not going to say goodbye to anybody because they all forgot that next Tuesday we are back here at 5:00 p.m. So, they are all coming back.

I do want to say that I am appreciative of all the teachers and staff that came today. They are right, I think that we

do have some very tough decisions to make and very quickly. At the same time, I think we need to make a change. I do believe this District can lead that change. I don't think that at this point we need to continue to cut, because I don't think there is...any place you cut there is somebody and something is going to go. In as much as it hurts me to say it, I do believe it is time to find new funds, new ways to generate revenue at the State level because you can't keep cutting and thinking you are going to have a quality education or program after that.

I am looking forward to working with ESTA, CSEA, CSBA because I think we need a common voice. We are waiting to see what everyone else is going to do. Maybe it is time that we do take some chances and risks this time and I'm even willing to go and visit some of those Republic State Legislators and tell them maybe they do have it wrong.

13. REPORT CLOSED SESSION ACTION(S)

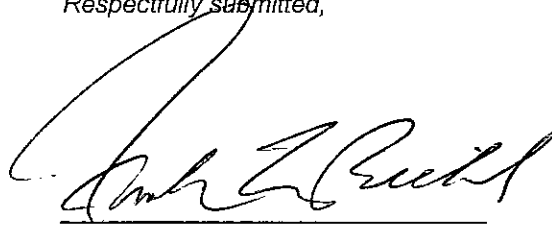
**REPORT CLOSED
SESSION ACTION(S)**

14. ADJOURNMENT

ADJOURNMENT

Meeting adjourned at 11:20 p.m. by President Nguyen.

Respectfully submitted,



Board Clerk