

**EAST SIDE UNION HIGH SCHOOL DISTRICT
Minutes of the Special Meeting of the Board of Trustees
Meeting Held at Education Center
July 31, 2009**

1. CALL TO ORDER/ROLL CALL

The Special Meeting of the Board of Trustees was called to order at 5:33 p.m. by President Martinez-Roach. Vice President Herrera, Clerk Biehl, Member Nguyen and Member Garcia were present.

CALL TO ORDER

2. CLOSED SESSION

CLOSED SESSION

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

Agency Designated Representatives:
*Jerry Kurr, Associate Superintendent of Administration
and Business Services*
Dan Moser, Acting Superintendent
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)

**2.02 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

**2.03 CONFERENCE WITH LEGAL COUNSEL - EXISTING
LITIGATION (Government Code Section 54956.9)**

*Kinetics Mechanical Service, Inc., a California corporation,
Plaintiff, vs. East Side Union High School District; and
Does 1 through 50, inclusive, Defendants*

*Santa Clara County Superior Court Case
No. 1-09-CV-141312*

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

Position: Acting Superintendent

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

None

CONSIDERATION OF AMENDMENTS

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

- *Wendy Stegeman*
- *Brian Uhler*
- *Rosalind Taylor*

ORAL COMMUNICATIONS

7. OPERATIONAL ITEMS/BOARD DISCUSSION AND/OR ACTION

OPERATIONAL ITEMS/ BOARD DISCUSSION AND/OR ACTION

7.01 Appointment of Acting Superintendent – Patricia Martinez-Roach, Board President

Motion to nominate of Dan Moser as Acting Superintendent made by Board President Martinez-Roach. Move/motion for approval by Member Garcia, second by Member Nguyen.

Vote: 5/0

7.02 Resolution #2009/2010-01 Designating Authorized Signers for District Orders and Warrants – Patricia Martinez-Roach, Board President

Motion to adopt Resolution #2009/2010-01 designating authorized signers for District orders and warrants made by Clerk Biehl, second by Member Nguyen.

Vote: 5/0

7.03 Update on Sports Fundraising – Patricia Martinez-Roach, Board President

Update to the Board provided by Associate Superintendent Alan Garofalo.

Total in the accounts, including a \$5,000 donation to the Foundation specifically earmarked for sports, totals \$11,533.

On August 20, the Save our Sports Committee will be making a donation to the District, specifically for athletics, in the amount of \$115,000 earned by fundraising. This is a grand total of \$126,500+.

On September 26, 2009, the Save our Sports Committee will be having a “duck race” at California’s Great America

Amusement Park. For every \$35 ticket sold for entrance, at \$20 donation will be made to East Side for athletics.

August 14, 2009, is the first day of sports practice for students and the first day the District will begin collecting donations for athletics participation.

Speakers:

- *Patricia Carrillo*
- *Ike White*

Update only; no action taken

7.04 Approval of Retainer Agreement for Special Counsel Legal Services for 2009-2010 with The Law Offices of Margaret A. Chidester – Patricia Martinez-Roach, Board President

Patricia Martinez-Roach, Board President

I requested that this item be placed on the agenda in consultation with Mr. Ruiz. This firm has been on retainer previously. I am not even sure if it has expired or not, but because of the services and expertise we have been providing, we have been requiring lately, and I believe this is a pretty standard procedure. It is my intent to bring back to the Board starting the August meeting all the law firms that we do have to see if retainers have expired or how many law firms we have working for the district so that we can make decisions on how many attorneys we want to work for us. There is an agreement that was amended; it was revised and I hope you have the correct one. I wanted to ask Mr. Ruiz to comment in his participation with us.

Rogelio Ruiz, Legal Counsel

I was asked to review the agreement. It is a fairly standard retainer agreement for legal services.

Patricia Martinez-Roach, Board President

Thank you.

Lan Nguyen, Board Member

I have a question Madame President. I was told that we have a list of attorneys that we work with, but I never seen it.

Patricia Martinez-Roach, Board President

Yes, that is exactly the reason why they are going to be here next August 20.

Lan Nguyen, Board Member

Which also brings me to the current issues that we have because we have here with us a contract that was entered into agreement, I think, July 1 of this year. I think, with this particular item, the Board has to approve this contract for the agreement that was entered into July 1 of this year. I think with this particular item, I think, the Board has to approve this contract for the agreement that was entered into July 1. Just

for the language itself, I am wondering if the language should ask the Board to retroactively approve this contract, but I also have a concern about the process – about how we came to select this particular firm.

Patricia Martinez-Roach, Board President

Actually, that's a very good question. This particular firm, and they are on the line by the way if you have any questions, because they are in southern California and wanted to save money, not bringing them over here. They have been on retainer and I still think they are on retainer as far as I know. Mr. Kurr, do you recall.

Jerry Kurr, Associate Superintendent of Administration and Business Services

I have to check the records; I am not sure.

Patricia Martinez-Roach, Board President

Okay. As the Board knows, I was called by the County Office of Education in July. July 1 I was called to set up a meeting with the County Superintendent regarding the matters that we all know about. I was in another country and I was not able to get a hold of anybody else and, so, remembering that this firm had done work for us in the past I called them. The next time...it wasn't that I entered into an agreement. It was a firm that was already working for the District. I believe the reason why it says July 1 is that, I am going to let Mrs. Chidester respond to that, is because that was the first day I had contact with the person.

Eddie Garcia, Board Member

I have a question, Madame President. I am a little confused then. If she is on retainer, why are we doing the contract?

Patricia Martinez-Roach, Board President

I actually have the same question.

Eddie Garcia, Board Member

Is she or is she not on retainer?

Patricia Martinez-Roach, Board President

Maggie are you on a retainer still or what is the status?

Maggie Chidester, Attorney

Good evening, Ms. Martinez-Roach and members of the Board. The reason for the new agreement is to allow my firm to hire an accounting expert in school accounting and business matters as a consultant because the County Superintendent's report set forth certain areas recommending additional investigation by an independent third party. Under our previous agreement, I did not have that ability and so I am requesting this authority. I've provided your General Counsel and the Board President with information concerning the consultant that I proposed to use who is recognized statewide for his integrity and his expertise in school accounting measures.

Lan Nguyen, Board Member

Do we have the previous agreement here because I think it would be good to make reference to and understand the previous agreement before we vote.

Patricia Martinez-Roach, Board President

Somebody would need to get that, the previous agreement. I think we should clarify first right now that the purpose is because there is an added clause into the agreement that refers to the expert investigator, I think that was the term.

Eddie Garcia, Board Member

I am getting more confused Madame President. I believe that our last action Tuesday was the FCMAT was going to do the investigation on the County Superintendent's report. I do not remember taking action on having a third party. We had a long discussion about that here, as a matter of fact, in open session and I believe the Board's understanding of the agenda item was a permanent long-term auditor who reported to the Board, not a third auditor or accountant who reported to counsel that we are not quite sure has a contract with this school district. I am not quite sure what we are doing here right now.

Patricia Martinez-Roach, Board President

Maybe you are a little bit confused here. Mary, do you have the action from the Board meet last Tuesday regarding this matter. Well, this is really not that complicated. The bottom line is that we had agreed to have a person do an investigation and FCMAT was also part of it. Is he...that was a given. I think that was also on the press release. Will you please stop your snickering. If you have to talk, go outside and talk.

Eddie Garcia, Board Member

May I ask a question Madame President?

Patricia Martinez-Roach, Board President

Just a minute, I think he had a question.

Eddie Garcia, Board Member

I'm sorry.

Patricia Martinez-Roach, Board President

Rogelio, is there an issue here with this contract because I don't want to put another firm here and making them look like something is going on here. The whole purpose of this was to get this investigation going so that we could move on with the business of this district. If some of you are having a fuzzy memory, then maybe, that's okay, but we are going to go and and...Mr. Biehl?

Frank Biehl, Board Clerk

Madame President with all due respect I've given this a lot of thought after our meeting on last Tuesday and it seems to me that it does not make sense to hire a second law firm in order to hire a third person. My experience with working with law

firms, and I have had plenty of experience unfortunately, is that two attorneys don't actually cost you twice as much, they cost you four times as much. I have read this contract. There is a very large indemnification clause in here that is a 30% per year interest charge if we are late beyond 60 days. We've already spent in excess, I think, of \$5,000 by having a second attorney on this. I can appreciate the fact that you felt this was the person you need to bring in immediately. Our current Counsel has handled investigations for us in the past. When necessary, he has contracted through his firm for separate counsel to come in and investigate things. It has been done successfully and has been done cost efficiently. I think we need to be very careful about spending thousands and thousands of dollars on Starbucks receipts. I, personally, cannot support a motion in order to retain another attorney on this matter. I think it would be better to work through our current Board Counsel and I think this will save money. It is the best action at this point in time.

Patricia Martinez-Roach, Board President

I think that is a very good point that you are making. It is actually an excellent point because, just for the record, our current...Mr. Rogelio, is not our general counsel and he is not our Board counsel; he is an attorney firm that works for the District. I think it is good that we just bring all the attorney firms that we have working with us so that we can decide how many firms we do want to retain. Mrs. Chidester, I apologize, it sounds like we are not going to have quorum here. So, I am just going to withdraw this. I don't think it's worth it. Why go through this if you don't...why put everybody through this.

J. Manuel Herrera, Board Vice President
Madame President.

Patricia Martinez-Roach, Board President
Yes, Mr. Herrera

J. Manuel Herrera, Board Vice President

I am actually happy to see the direction that we are starting to go in. I was arguing forcefully the other day that if we want to resolve the current issues and get the information and the investigation that we need, I've said it publicly and I've said it in executive session, working with them through the County Office to expedite the FCMAT team to come in and do this work in which the County would pay 75% of the cost was the way to go. I did not understand why it seemed that the direction emerging last Tuesday was to retain another firm. I am not agreeing with the idea that the kind of investigation that we are needing right now could or should be done by the law firm represented by our District Counsel, Rogelio Ruiz. In these matters there does need to be more than an arm's length removal, no interconnected relationships of third party that has ongoing relationships with anybody, which is the FCMAT team. They come in completely and neutral and begin to inquire and investigate and bring back a report. That still is my preference. I wasn't going to be supporting this motion. I was really startled and gratified, frankly, that it has

now seemed to move away from that.

Lan Nguyen, Board Member

I think the Board should develop some sort of procedure or policy for us of when do we need outside counsel and based on what type of criteria and so on so the Board understands more on what situation to bring in outside counsel and for what circumstances. These are the things that we look at, otherwise, this may happen again.

Patricia Martinez-Roach, Board President

That is absolutely correct. We have too many loose ends. We are spending over \$700,000 just on one firm last year and I think we need to look at it as a Board and decide on how many firms and how much they get paid. I withdraw this motion and I am sorry, I did not anticipate this. I thought it was going to move forward with the investigation, but I think that we need to wait now until our next Board meeting in November.

Frank Biehl, Board Clerk

Madame President.

Patricia Martinez-Roach, Board President

I am going to hang up Maggie.

Margaret Chidester, Attorney

Very good. Good evening ladies and gentlemen.

Frank Biehl, Board Clerk

I think that we may need to have a short special session next week to resolve this issue. I am asking the Board if think that is necessary or, in fact, did we take action in Closed Session that authorized our current Counsel to move forward?

Patricia Martinez-Roach, Board President

Mr. Biehl, we need to discuss this at the end of the meeting if we are going to have another meeting, but right now let's just move on with the agenda.

Frank Biehl, Board Clerk

I thought the item was the counsel. Wasn't that the item that was here?

Patricia Martinez-Roach, Board President

With specific legal counsel, Mrs. Chidester.

Eddie Garcia, Board Member

I have a bigger question Madame President. In looking at this proposed contract, it says that services have been rendered since July 1 and it's July 31. If this person has a contract, or not, because I still don't know, what are we obligated to pay? How did this happen that we engaged someone that we may have to pay without a contract?

Patricia Martinez-Roach, Board President

There is a contract. She has been on a retainer.

Eddie Garcia, Board Member

Do we have a contract Mr. Kurr?

Jerry Kurr, Associate Superintendent

Actually, I think between the three of us, Mr. Garofalo, Mr. Moser and myself, we know the counsels that we use. We use Mr. Ruiz's firm for general business and personnel stuff. We use Miller, Brown and Dannis for construction issues. For Special Ed, we use a different firm. Those are three things. Now, we may have some payments to firms because our auditors have us send letters so that they can get a response.

Patricia Martinez-Roach, Board President

Mr. Nunez mentioned to me that this particular firm he had used their services. So, I am not exactly sure, but he was the one that told me it was on a retainer.

Jerry Kurr, Associate Superintendent

I don't think we have a current signed retainer.

Eddie Garcia, Board Member

I guess we will have to discuss this later. I am just concerned about payment. If we owe this firm money, then I would like to know how much and under what obligation are we to do that since, clearly, this firm was not authorized to do the work.

Lan Nguyen, Board Member

What I suggest is that I think it belongs to Mr. Kurr's office is to bring back to us the list of the approved attorney firms that we have. I am curious about the process that it went through in order to be in that list. Did it go through an RFQ process? In the term of the agreement, does it expire every three years or five years? I would be interested to find out.

Patricia Martinez-Roach, Board President

We can do that on the next agenda.

J. Manuel Herrera, Board Vice President

Madame President what I am concerned about is that if we are not going to go down this path, and it appears that we are not, we need as a Board to ensure that something is expedited to bring in the investigative process that can help us resolve any issues with regards to the County Superintendent's report and regarding Superintendent Bob Nuñez. If we can resolve it in three weeks, four weeks, that would be wonderful, but that's not going to happen if we wait until August 20 to start talking about it again. My suggestion would be that the Board reach out proactively to the County Superintendent's Office and to FCMAT, all three of us working together, but we should be the ones moving to expedite this forthwith. If we have somebody picking this up as soon as possible, next week, that the County would know that and FCMAT would know that's what the Board desires and that's what we are seeking, an expedited investigation/ resolution of the issues at hand.

Patricia Martinez-Roach, Board President

Actually, I received a communication from the County today. I think I forwarded it,

J. Manuel Herrera, Vice President

I am not talking about the County's actions or responses. I am talking about our actions and without our being as explicit as we can be, it is going to go on the County's timetable or on somebody else's timetable.

Patricia Martinez-Roach, Board President

I thought it was the Board's action to move forward with this investigation, but it sounds like there's contractions out here. Do you have the action from the last meeting?

J. Manuel Herrera, Vice President

At our meeting on the 28th, we moved to cooperate with the County and with FCMAT. What I am saying tonight, even more aggressively, let's be clear tonight that we want to drive this so that it is expedited, so that it happens as quickly as possible and move it over to us rather than the County. We need to drive it. I don't know if it needs a motion because we already adopted a motion, but let it be clear to us and the public that through you, through the Acting Superintendent, in collaboration with the County, we are going to seek an expedited FCMAT team in here as soon as possible to get this resolved.

Patricia Martinez-Roach, Board President

Mr. Moser is going to contact them as soon as possible.

Frank Biehl, Board Clerk

Madame President I believe that Vice President Herrera is correct. The Board in open session did pass that motion. As I recall there was a motion passed in Closed Session that was reported out at the end of our meeting and I wonder if our Counsel recalls that motion and if he could let us know what was reported out from our Closed Session and what that authorized the Board to do, what action for the Board to take.

Rogelio Ruiz, Legal Counsel

I have my notes from the 28th and the Board action that was reported out was that motion by Member Biehl, second by Member Garcia, the Board by a vote of 4/0/1, Member Herrera abstaining, directed Legal Counsel to select and independent investigator to investigate potential issues of employee discipline in connection with the report and review issued by the County Superintendent's Office. That was the action that was taken. There will need to be some resolution by the Board on who will be the third party investigating arm of that.

J. Manuel Herrera, Board Vice President

Would not FCMAT be that?

Rogelio Ruiz, Legal Counsel

My recollection was that the discussion as divided as

between personnel related issues and operational issues.

Eddie Garcia, Board Member

That's absolutely correct. The operational side, from my memory, was FCMAT. We talked about it here. There was a personnel issue we spoke about in Closed Session.

Frank Biehl, Board Clerk

I think, unless there's another Board action, we need to hold by the motion we've already passed and that authorized our Counsel to move forward as directed by us at Closed Session. If there's a sense that this Board needs to meet again for another Closed Session to revisit this issue, that's fine. I am happy to do that, but, otherwise, I think we need to stand by what we said.

Patricia Martinez-Roach, Board President

Actually, I think that's an important issue because that is the reason why this contract amendment had this third party investigator and it was in consultation with our District Counsel that he review it. It was important because I am obviously not an expert and I was going to bring it here. I think we should have a Closed Session after this meeting. There's a couple of things that I need to discuss that relate with this matter.

Frank Biehl, Board Clerk

We cannot have Closed Session on non-agendized items.

Patricia Martinez-Roach, Board President

That's true. It is not on the agenda.

Frank Biehl, Board Clerk

We can call another Closed Session.

Patricia Martinez-Roach, Board President

It was supposed to be on the agenda, but it's not. All right, the understanding is Acting Superintendent you have your charge.

Lan Nguyen, Board Member

Madame President I don't think we have come to an agreement yet. I think that based on our Counsel, Mr. Ruiz, that we do need to look at hiring a third party investigator to look into the matter. Now, the question is who is going to go outside to look for the third party independent investigator. Is that going to be with Mr. Ruiz or staff or who is going to do that?

Patricia Martinez-Roach, Board President

I was trying to get this firm to do that, but it sounds like now the Board wants to go in a different direction.

Eddie Garcia, Board Member

I think that action is very clear. Legal Counsel, in my understanding, Mr. Ruiz is Legal Counsel.

Patricia Martinez-Roach, Board President

Then let's just move on with it. It's already been discussed.

Frank Biehl, Board Clerk

I think we should follow the procedures that we followed in the past, to follow our motion we approved at our last session and that would, basically, authorize Mr. Ruiz to go out and locate the appropriate people to do whatever investigation he deems is appropriate.

Item withdrawn by Board President Martinez-Roach.

7.05 Discussion/Action regarding the Appointment of Board Members to an Ad Hoc Committee – Patricia Martinez-Roach, Board President

Patricia Martinez-Roach, Board President

I believe strongly that Board Members should not be involved in an audit committee during this very difficult time, but if that is the Board's wish, so be it.

Frank Biehl, Board Clerk

Madame President may I may a comment on this?

Patricia Martinez-Roach, Board President

We've already discussed this quite a bit. Are you ready to make a motion?

Frank Biehl, Board Clerk

I think it's warranted maybe a minute to comment on it. It's a pretty important issue. I don't think we should rush through it. First of all, I would like to distribute to the Board and Counsel some information that I think is very useful in terms of setting up a public sector audit committee, such as a school Board. It provides a lot of foundation on the work we need to do. The motion that was made at our last meeting was to set up immediately an ad hoc Board committee of two members whose initial task would be to gather the best practice information and prepare recommendations to the Board for the establishment of a standing Board audit committee. The ad hoc committee should be instructed to research and recommend all issues related to the formation and operation of a standing audit committee and I present a memo to you that includes some of the items that I think should be investigated, but my point is that this ad hoc committee would not be the permanent committee. Madame President you are correct in that a majority of members of an audit committee should not be comprised of the Board. There needs to be a majority of members on the audit committee that are not members of the Board, but I do think it is the appropriate responsibility of the Board. Particularly, if we are going to have an internal auditor that is going to report to the Board. This two-member committee would be to do the initial research on the best practices that have occurred at other school districts and other public bodies and come back with recommendations, hopefully, no later than September 17 meeting as to how we move forward. That is sort of my

recommendation at this point. At this point, I would ask that the Board select and appoint two Board members to comprise this ad hoc committee.

Patricia Martinez-Roach, Board President
First, we have to vote on the committee itself.

Eddie Garcia, Board Member
We did that last Tuesday.

Patricia Martinez-Roach, Board President
Did we?

Eddie Garcia, Board Member
Yes. I nominate Mr. Biehl as a member.

J. Manuel Herrera, Vice President
Second. Why don't you put both nominations as a motion?

Eddie Garcia, Board Member
Okay, I don't nominate myself.

Patricia Martinez-Roach, Board President
Is this committee going to be governed by the Brown Act? An ad hoc committee never is. It should be a regular committee. This is not a Brown Act governing committee that is going to...

Frank Biehl, Board Clerk
Madame President it is not required to have the Brown Act notification, however, if I am selected to serve on this committee, it would be my intent to notice the meetings so that if members of the public wish to attend they could.

Patricia Martinez-Roach, Board President
Okay, any more discussion? I am not going to support this because I don't think Board Members should be involved in the audit. I just really have some strong feelings about that.

J. Manuel Herrera, Vice President
Before you oppose it, I just want to try to clarify something again. The investigation and our audit on the immediate issues regarding the County Superintendent's report and our Superintendent, I agree with you, our Board should not be involved with that process in terms of directing it or determining it in any way; I agree with that, but that's not what this is about. This is about a structural...

Patricia Martinez-Roach, Board President
I know what it is.

J. Manuel Herrera, Vice President
...in our system that beyond this issue so as to preclude these types of things from ever happening again, driven by Board leadership and community participation, we would have more oversight check and balance in our system. The ad hoc committee is to lay it out further before we even

decide which way we are going is to do some research and bring back some recommendations. That's all we are voting on tonight is an ad hoc committee to bring back recommendations. We are not establishing an audit committee for all time. That may be the recommendation brought it with community people giving their input, but tonight all we are saying is we should examine this and come back with a recommendation. It has nothing to do with the County investigation; nothing whatsoever to do with it.

Patricia Martinez-Roach, Board President
Any more discussion?

Frank Biehl, Board Clerk
My conversation with Chuck Weis said this is exactly what we needed to do. It is exactly what we need to do.

Patricia Martinez-Roach, Board President
You guys need to follow rules.

Motion to nominate Board Clerk Frank Biehl and Board Vice President J. Manuel Herrera to serve as members of the Ad Hoc Committee made by Member Garcia, second by Member Nguyen.

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


8. REPORT CLOSED SESSION ACTION(S)

None

9. ADJOURNMENT

Motion by President Martinez-Roach, second by Member Garcia to adjourn the Board meeting at 8:12 p.m.

Respectfully submitted,


Board Clerk

**REPORT CLOSED
SESSION ACTION(S)**

ADJOURNMENT