

SAN LEANDRO UNIFIED SCHOOL DISTRICT
SAN LEANDRO, CALIFORNIA
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REGULAR MEETING OF THE BOARD OF EDUCATION - MINUTES

October 19, 2004

The Board of Education of the San Leandro Unified School District met in regular session on October 19, 2004, in the San Leandro City Council Chambers, 835 East 14th Street, San Leandro, California.

The meeting was called to order at 6:04 p.m. by President Linda Perry.

BOARD MEMBERS PRESENT

Mr. Louis Heystek
Mr. Ken Pon
Mr. T. W. "Rick" Richards
Ms. Kimberly Wilson (arrived at 6:14 pm)
Mrs. Pauline Cutter, Clerk
Mr. Gary Thompson, Vice President
Ms. Linda Perry, President

DISTRICT STAFF PRESENT

Christine Lim, Superintendent
Leon Glaster, Assistant Superintendent
Michael Martinez, Assistant Superintendent
Henrietta Sakamaki, Assistant Superintendent
Linda Pollard, Administrative Assistant

PUBLIC COMMENTS REGARDING CLOSED SESSION AGENDA

There were no public comments concerning items on the closed session agenda.

CLOSED SESSION

At 6:05 p.m., the Board went into closed session for Student Expulsions, Public Employee Discipline/Dismissal/Release; Conference with Labor Negotiator; Conference with Legal Counsel – Anticipated Litigation – Significant exposure to litigation – 1 case; and Public Employee Appointment - Title: Counselor/Interim Vice-Principal at John Muir Middle School pursuant to Education Code Sections 35146, 48918(c), Government Code Sections 54957, 54957.6, 54956.9, 54956.9(b). The closed session was adjourned at 7:10 p.m.

The Board returned to open session at 7:15 p.m. with the Pledge of Allegiance to the Flag led by San Leandro High School student representative Sharon Ma. President Perry said the Board had been in closed session and on a motion made by Mrs. Cutter and seconded by Mr. Heystek, the Board approved the appointment of Denise Farrell as Counselor/Interim Vice-Principal at John Muir Middle School by a 7-0 vote.

APPROVAL OF AGENDA

On a motion made by Mr. Heystek and seconded by Mr. Thompson, the Board approved the agenda for the regular meeting of October 19, 2004 by a 7-0 vote.

REPORTS Student Representative Report – San Leandro High School student representative, Sharon Ma, updated the Board on student activities including the college faire; ACT test; Staff Development on Oct. 25, no school for students; Link Crew Scary Movie night in the school gym; assembly with motivational speaker Russ Peaks; Spirit Week rehearsals; Homecoming on Nov. 12 and everyone is invited; ASSU Talent Show; Red Ribbon Week, Oct. 23-31; class ring orders; home football against Castro Valley, Oct. 29; girls' tennis, volleyball, golf; and cross county.

Ms. Perry said that, as always, she is looking forward to Spirit Week.

PRESENTATIONS

- * San Leandro High School Principal Amy Furtado, and Lincoln Continuation High School Principal, Kit Oase, shared information about their respective schools Western Accreditation of Schools and College (WASC) timeline describing the process and planned activities to complete this year's self-studies.

Mr. Oase said that in preparation for the WASC visiting team in the spring of 2006, the high schools have begun the WASC process with a Self-Study which focuses on vision, leadership and culture of the school; curricular paths; powerful teachers and learning; support for student personal and academic growth; and assessment and accountability. The purpose of the accreditation focuses on: (1) learning as an ongoing school improvement process; (2) assists a school in an in-depth look at what currently exists and what needs to be improved in relation to student learning and the school's program; and (3) validates the work of the school as it serves the community.

The last accreditation was in 1999 where San Leandro High and Lincoln received a 6-year accreditation from the visiting committee.

Critical areas for follow-up for Lincoln included identifying the needs of students who are deficient in reading and math skills; increasing students' awareness about post high school experiences in school or the work world; attaining and using updated technology to improve student learning; identifying school-wide needs/areas for improvement that will enhance the cultural diversity of our student body; and ways to positively promote the image of Lincoln High School in the community and surrounding businesses.

Mr. Oase said today Lincoln has a very caring and qualified staff; a small positive campus; common time which provides collaborative planning; and utilization of a number of community resources such as Girls, Inc. and Davis Street Community Counseling. Changes in student population; standards-based instructional program; reduced funding and staffing; applying technology to student learning; and discipline related concerns are challenges that Lincoln faces.

Beginning with the "end in mind", Ms. Furtado said expected outcomes of the WASC visit include: involving all stakeholders in the process; clarification of learning results and academic standards; gathering of data and analysis; assessment of school curriculum, culture, assessment, leadership, and vision; and development of a school action plan.

She highlighted some of the recommendations (some which have been addressed and some that are being redefined) from the 1999 visit including creating teacher collaboration; increasing staff and student access to technology; developing more programs to help students who are struggling academically; improving facilities, and fostering a sense of community for students, parents, and staff.

Ms. Furtado said that innovative small programs; co-curricular activities; progress with facilities; and increased elected offerings for students are some of the strengths at San Leandro High School. However, potential "critical areas" included communications, School to Career pathways for Vocational Educational students; facilities; and standards-based instruction: spiraled curriculum and common assessments.

Ms. Perry thanked Mr. Oase for a very thorough report and was looking forward to further updates.

Mr. Heystek thanked Ms. Furtado for the presentation and agreed that there had been a lot of progress. He did have a concern about the representative from the various groups at the high school and not wanting a "biased" look on how the school had improved. We need to show how the school has improved in all areas and for all students. He asked Ms. Furtado how the high school was going to insure that that would be achieved.

Ms. Furtado said that in order to get a wide spectrum of representatives, they decided to run focus groups where students and parents could come together for sessions around the critical areas and give their input.

Ms. Perry said that outreach is very important and appreciated how Ms. Furtado is addressing the issues.

- * Assistant Superintendent for Business Services, Leon Glaster thanked the Finance Committee for their guidance and leadership and his dedicated staff who worked very hard in their analyses and closeout of the 2003/04 financial reports, and reconciling the 2001/02 financial transactions so that the District would have a strong financial footing.

Mr. Glaster gave an overview of the 2003-04 Unaudited Actuals and the natural progression of the 2004-05 Preliminary Multi-Year Projections. He also distributed information for a three-year projection showing that the District would be able to meet their obligations for three years.

Mr. Glaster reviewed the General Fund unrestricted and restricted (categorical) funds. He explained that the ending fund balance does not include the 1% raise but would be included in the 2004/2005, although it relates back to 2003/04.

He said that the 2004-2005 Adoption Budget recalculations included budget decreases from adjustments to the beginning fund balance, position control, salary increase adjustment, potential in-house suspension, and a utility worker program; budget increases included a .9% deficit reduction (\$43 per ADA), equalization (based on SSC projections), and ADA adjustments. Mr. Glaster cautioned that included in the ending fund balance of \$760,795 was \$325,000 of site discretionary carryover and although this money is included in the carryover, it is dedicated to the school sites because that money was carried over based on various school site based programs. Mr. Glaster concluded that he would be back on January for the First Interim Report.

Mrs. Cutter said she liked seeing the conservative 90% increase in ADA. She added that she was happy that the District came so close to the 1% estimate retroactive raise. She said that it was very good planning and congratulated Mr. Glaster and his staff.

Mr. Heystek also expressed his appreciation to Mr. Glaster. One of the greatest outcomes from their meeting was the affirmation of "in house" calculations for the 2004/05 enrollment, methodology used with little or no cost to the district, and that the ending balances were right on. He thanked Mr. Glaster and staff for working very hard to insure the accuracy of the budget.

Ms. Perry commended the staff for their diligence at looking at all of the position control items and making sure they were coded correctly. She read a certification that she received from the Alameda County Office of Education regarding the tentative Public Disclosure of Proposed Salary Agreement for the Teamsters/Trades Union. *“Based on the Multi-Year Projection submitted with the 2004-05 Adoption Budget, our analysis indicates that the District will continue to be able to meet the 3% reserve requirement for 2004-05 and the subsequent two fiscal years without any further revenue enhancements and/or budget reductions.”* She said this was very good news.

Mr. Pon noticed that the 2003/04 Unaudited Actuals was compared to 2004/05 Budget. He asked why it was not compared to the 2003/04 budget, so we could see how the Unaudited Actuals compared to the same budget that was approved. Mr. Glaster explained that the form Mr. Pon was referring to was a state form but that he could go back to the 1st and 2nd Interim from 2003/04 and compare it to the 2003/04 Unaudited Actuals and give him that information.

Mr. Pon asked if there was a calculation in the report showing the amount of the 3% reserve and whether there is an adjustment for it. Mr. Glaster said that approximately \$75,000 more than what is required by the Ed. Code has been budgeted and that information had been shared with the Finance Committee. Mr. Pon said it would be helpful if the information presented at the Finance Committee could be shared with the rest of the Board for consistency.

In response to Mr. Pon’s question around the undesignated amount of \$35,000, Mr. Glaster explained that that was not the ending fund balance. Mr. Pon added that it doesn’t look like there’s any extra money for the future because most of the money is already designated.

Mr. Glaster said unfortunately when it is so close to the 3% reserve, and anything can happen, it’s his job to make sure that the District doesn’t go below that reserve.

PUBLIC TESTIMONY ON NON-AGENDA ITEMS

- Billy Campbell thanked Trustee Gary Thompson, as chair of the Finance Committee, for his leadership, and the sincere respect and dignity he demonstrates to the people attending those meetings.
- At her request and with consensus of the Board, Pamela Richards addressed the Board on her opposition to Resolution 04-46, Declaring

Vacancy on Board for Trustee Area 6, reminding the Board of a similar situation two years earlier.

PUBLIC HEARING

- On a motion made by Mr. Heystek and seconded by Mrs. Cutter, the Board opened the public hearing concerning the Teamsters Union Local No. 856/Alameda Building Trades Council initial proposal to the San Leandro Unified School District by a 7-0 vote.

There were no comments received from the audience.

On a motion made by Mr. Heystek and seconded by Mr. Thompson, the Board closed the public hearing by a 7-0 vote.

- On a motion made by Mr. Heystek and seconded by Mrs. Cutter, the Board opened the public hearing concerning the San Leandro Unified School District's initial proposal to the Teamsters Union Local No. 856/Alameda Building Trades Council by a 7-0 vote.

There were no comments received from the audience.

On a motion made by Mrs. Cutter and seconded by Mr. Thompson, the Board closed the public hearing by a 7-0 vote.

REPORTS

- 1) Correspondence – None
- 2) Superintendent's Report – Superintendent Chris Lim reiterated Ms. Perry's announcement regarding the positive certification received from the Alameda County Office of Education, and thanked Mr. Glaster for the hard work done by the Business Department. She said that the second Staff Development is scheduled for October 25, and reminded the community that there would be no school for students; the elementary staff would be involved in Part II of the District's standards-based report card where each principal would be leading a grade-level team, going over the elements of the report card, how it meets the standards, and clarify from each team on what is "good enough". Ms. Lim reported that the first quarterly meeting with Cabinet and the San Leandro High School Administration was wonderful. She said Cabinet will continue to meet quarterly with the high school team, mapping out what their needs are so that we can make sure it is a flagship and well prepared for the WASC visit in 2006. Today, Leon & she met with Maggie Sharpe, editor of the S.L. Times regarding the headlines indicating that overruns at the middle schools were impacting what we weren't able to do at the three elementary schools. In response, Leon put together a fact sheet clarifying some of the outdated

misinformation and numbers that were used that will be published in all school newsletters. Ms. Lim said that Ms. Sharpe would be meeting with them again and that the District would be putting together an additional fact sheet to be distributed as quickly as possible because of the misinformation on how the money was spent on the bond.

3) Board Committee Reports

- City/District Liaison – Mr. Pon reported that there was a Special Meeting on October 14 at City Hall in which they discussed two items both related to the Bancroft Middle School Joint Use Project: (1) the project itself and Option D, and (2) the Memorandum of Understanding (MOU) for verbiage. It was agreed that Option D would be the option of choice. The City Council said it was not the option that they preferred; they wanted a more structured project with fixed back stops and more lanes on the track. As a result, the City would be backing off from issuing permits for the after school activities. The MOU will indicate that the school district will issue the permits and have control of the field however the City would be permitted to use the field from time to time as needed. Approval of the MOU is on tonight's agenda.
- Facilities/Technology – Ms. Cutter said they met on October 15 and discussed the following items: (1) Options for District Owned Portables at Jefferson, (2) Jefferson Elementary Schedule Update; (3) Jefferson Murals - the site has had estimates and is now looking for funding; (4) Madison Elementary Improvement Project; (5) Adult School Project at Muir Update; (6) Traffic Mitigation for Muir and Wilson; (7) Student Drop off at SLHS; (8) Update on Airport Noise Settlement; (9) Windows at Wilson; and (10) misinformation regarding the middle school overruns article and providing a newsletter with the correct information.

Mr. Glaster added he has been meeting with the Port of Oakland Noise Abatement Dept. The District's four "Tier I schools" are Muir, Wilson, Monroe and Garfield and they have been approved for approximately \$4 million funding plus approximately \$750,000 more from the 1998 CPI. He said he District is requesting that the funds go into escrow accounts in the same manner as the City of San Leandro. He said that at the next Board meeting on Nov. 16, the Board will be asked to ratify the 1998 contract. Construction of the windows at those sites will begin the first day school is out in June and is scheduled to be completed before school starts in the fall so it will not impact the schools.

- Finance – Mr. Thompson said the committee met on October 12 and (1)

Previewed Unaudited Actuals and Multi-year Projections and discussed how to make it “user friendly,” and (2) the Port of Oakland Noise Settlement which previously reported on by Mr. Glaster.

- Policy – Ms. Wilson reported that the committee met on October 11 and discussed four items which are being brought to the Board tonight for action: BP 3513.3, Tobacco Free Schools; BP 9250, Remunerations, Reimbursement, Other Benefits; new policies BP 5131.62, Tobacco, which is in reference to tobacco use prevention education for students; and BP 6182, Opportunity School/Class/Program. Revisions of AR 3513.3, Tobacco Free Schools and new ARs, 5131.62, Tobacco, and 6182, Opportunity School/Class/Program for the Board to receive for information. Future policies for Board consideration will concern training and staff development for the Board. The next meeting is November 8 at 6:00 pm.
- Superintendent’s Evaluation Ad-Hoc – Mr. Heystek reported Mr. Richards and him met on October 12 (Ms. Wilson was ill) and continued their discussion on the Superintendent’s evaluation form format so that it is closely aligned to her goals. Mr. Richards shared a form that is used at his work and Mr. Heystek introduced another model from a county school board in the state of Virginia. The committee would like to bring these samples to the next Board meeting to discuss the merits of each of these forms. Mr. Heystek added that each of the models include mix of a quantitative rating and narrative comment, so that the Board can “weigh in” with overall impressions of the superintendent’s performance in terms of the factual document.

Mr. Thompson said that if the committee brings recommendations to the Board, he would like to see only one or two options.

Mr. Heystek said that there were only two recommendations, which would provide the Board some options with two distinct features.

Mr. Perry said that this would be a conference item on the November 16 Board meeting agenda.

4) Board Representatives’ Reports

- Eden Area Regional Occupational Program – Mr. Richards said that there was no report because the meeting was cancelled; the next meeting will be November.
- Mid-Alameda County Special Education Local Plan Area – Ms. Perry reported that the committee met on Sept. 23 and discussed the preliminary budget. She also said that traditionally MACSELPA has

paid for one (1) highest paid resources specialist in each district and two (2) for Hayward (which is way out of line) so they are looking at a maximum cap for each of those positions. The next meeting will be in mid November.

CONSENT ITEMS

General Services

1.1-C Approval of Board Minutes – October 5, 2004

Human Resources

2.1-C Acceptance of Personnel Report

Educational Services

3.1-C Acceptation of Donations

3.2-C Third Indicator of Alternative Schools Accountability Model for Lincoln Continuation High School

Business, Operations and Facilities

4.1-C Ratification of Payroll

4.2-C Approval of Bill Warrants

4.3-C Intra-District Transfers

4.4-C Resolution #04-45 to Declare Certain Equipment Surplus and/or Obsolete

On a motion made by Mr. Richards and seconded by Mrs. Cutter, the Board approved the consent items by a 7-0 vote.

ACTION ITEMS

Human Resources

2.1-A California School Employees' Association (CSEA) Initial Proposal
On a motion made by Mr. Pon and seconded by Mrs. Cutter, the Board acknowledged receipt of the California School Employees' Association (CSEA) initial proposal to the San Leandro Unified School District by a 7-0 vote.

2.2-A Settlement Agreement with Teamsters Union Local No. 856/Alameda Building Trades Council

PUBLIC COMMENT

- Billy Campbell thanked Mr. Glaster for his insight regarding the settlement with the Teamsters.

On a motion made by Ms. Wilson and seconded Mr. Richards, the Board approved the settlement agreement with Teamsters Union Local No. 856/Alameda Building Trades Council for the 2003/2004 school year by a 7-0 vote.

2.3-A Utility II Position for San Leandro High School

PUBLIC COMMENT

- Billy Campbell thanked Mr. Glaster and Mr. Martinez for their cooperation and coming to him to discuss the Utility II position. He added that it is a sign of good management when you can have the union agent and the managers come together and discuss ways to solve problems.

On a motion made by Mrs. Cutter and seconded Ms. Wilson, the Board approved Cabinet's recommendation to hire a 1.0 FTE Utility II position for San Leandro High School by a 6-1 vote with Mr. Heystek abstaining.

Educational Services

3.1-A Recommendation from Administrative Panel's for Expulsion

On a motion made by Mr. Thompson and seconded by Mrs. Cutter, the Board approved the Administrative Panel's recommendation for expulsion for student E02-04/05 to include that the Administrative Panel was held on October 7, 2004 with the parents in attendance by a 7-0 vote.

3.2-A School Assistance and Intervention Team (SAIT) Timeline and Contract

Mr. Thompson said that in reviewing the background documentation for this item there was no reference to parent involvement or input and added if we don't engage the parents some students will be at further risk.

Ms. Sakamaki said the principal at Washington had already had several meetings with the community and informed them of the process. She said that unlike the last process Washington went through, most of the work would be done between the District's school leadership team and the state provider.

Ms. Perry requested the Superintendent provide the Board with updates on parent and community involvement

On a motion made by Mr. Heystek and seconded by Mrs. Cutter, the Board approved the timeline and contract for Napa/Solano County as School Assistance Intervention Team (SAIT) provider to work with Washington Elementary School by 7-0 vote.

Business, Operations and Facilities

4.1-A 2003/004 Financial Unaudited Actuals

On a motion made by Mr. Thompson and seconded by Ms. Wilson, the Board approved the 2003/2004 Unaudited Actuals as presented by a 7-0 vote.

4.2-A Bancroft Playing Joint Use Field Memorandum of Understanding (MOU)

PUBLIC COMMENT

- Billy Campbell thanked Ms. Cutter, the Board, and District for their leadership and guidance in helping to come to a mutual agreement in this matter.

Mr. Heystek said that it was his understanding that the operational questions about bathrooms, lighting, location, and heights of lights which are not addressed in the MOU, but were so critically important to the neighborhood, would be discussed once the grant was awarded.

Mrs. Cutter added that if there were District costs regarding the bathrooms, we needed to be sure that the District was compensated.

Ms. Perry said that those issues were still on the table and it was her understanding that both the City Council and the District needed to approve the tentative MOU as part of the grant process by the November 5 deadline. She stated that there is no guarantee that we would be receiving grant funding but we were moving forward with Option D and designating the District as the lead agency which is reflected in the MOU.

On a motion made by Mr. Pon and seconded by Mrs. Cutter, the Board approved the Bancroft Playing Joint Use Field Memorandum of Understanding (MOU) by a 7-0 vote.

4.3-A Change Order #7 – Jefferson Elementary School Increment II

On a motion made by Mr. Pon and seconded by Ms. Wilson, the Board approved change Order #7 for Fedcon General Contractors, Inc. for Jefferson Elementary School Increment II – Bid Package #03-01 by a 7-0 vote.

4.4-A Notice of Completion for San Leandro High School Modernization

On a motion made by Mr. Pon and seconded by Mr. Thompson, the Board accepted the Notice of Completion for the San Leandro High School Modernization: Health & Safety Retrofit Project #03-03 – DSA #01-102841 by a 7-0 vote.

CONFERENCE ITEMS

Educational Services

1.1-CF BP 3513.3, Tobacco Free Schools

The Board discussed and considered approving the revised Board Policy 3513.3 on Tobacco-Free Schools as presented.

On a motion made by Mr. Heystek and seconded by Mr. Richards, the Board approved the revised Board Policy 3513.3 on Tobacco-Free Schools as presented by a 7-0 vote.

1.2-CF BP 5131.62, Tobacco

The Board discussed and considered approving the new Board Policy 5131.62, Tobacco as presented.

On a motion made by Mr. Pon and seconded by Ms. Wilson, the Board approved the new Board Policy 5131.62, Tobacco as presented by a 7-0 vote.

1.3-CF BP 6182, Opportunity School/Class/Program

The Board discussed and considered approving the new Board Policy 6182, Opportunity School/Class/Program as presented.

On a motion made by Mr. Thompson and seconded by Mrs. Cutter, the Board approved the new Board Policy 6182, Opportunity School/Class/Program as presented by a 7-0 vote.

Business, Operations, and Facilities

2.1-CF Increase Hours of the Nutrition Assistant I Position

The Board discussed and considered approving the increase of .5 hours to the Nutrition Assistant I position at San Leandro High School/Lincoln High School.

On a motion made Mrs. Cutter and seconded by Mr. Heystek, the Board approved the increase of .5 hours to the Nutrition Assistant I position at San Leandro High School/Lincoln High School, with the cost to be absorbed by the Cafeteria Fund, by a 7-0 vote.

General Services

3.1-CF BB 9250 - Remuneration, Reimbursement, Other Benefits

The Board discussed and considered approving the revised BB 9250, Remuneration, Reimbursement, and Other Benefits as presented.

The discussion included clarification of what “within two regular Board meetings” meant, indicating a more concrete time for clarification and whether the committee had looked at other district’s policies before revising the policy.

The committee said that they had looked at a couple of policies submitted as well as seeking legal counsel regarding the definition of what constitutes a regular meeting (something governed by the Brown Act). Mrs. Cutter that they had decided it would be prudent to follow the advice of legal counsel.

Mr. Richards said that other districts have similar policies, but are not required to fill out a form. The Board members are allowed

three absences before any action is taken. He asked if the committee had considered this process before reevaluating the policy.

Ms. Wilson said her only concern was whether or not districts were following the Ed. Code regarding what constitutes a “regular board meeting.” She said the committee could go back and do some more research, if the Board wished.

Mr. Pon felt that requiring submission of form for each absence makes Board members responsible and not the administrator. He added that a member can always submit the form ahead of time if he/she knows that they are going to be out for a meeting, as long it is within the time frame.

Mrs. Cutter said that they were trying to follow the Ed. Code which states that you need to be present at a meeting in order to be paid for a meeting.

In response to the questions raised by Trustees Pon and Heystek, Ms. Wilson explained that this issue was raised when two board members recently had circumstances beyond their control where they were unaware that they were going to be out. The committee was tempting to create some flexibility for all trustees to at least allow them “two regular Board meetings” to be reimbursed for a missed meeting rather than the current 14 day time period. She said that the committee could certainly add additional language to make it clearer.

It was the consensus of the Board to revise within “two regular board meetings” to within “30 days” to submit a form.

On a motion made by Mr. Heystek and seconded by Ms. Wilson, the Board approved to strike “two regular board meetings” and insert within “thirty (30) calendar days) thus reading “*A Board member who is absent from a meeting may be paid for the absence by submitting the appropriate District form E 9250 to the Superintendent’s Administrative Assistant within **thirty (30) calendar days** requesting that a resolution be placed on the Board agenda to declare that the reason for the absence falls within the intent of Education Code 35120* by a 6-1 vote with Mr. Richards voting no.

3.2-CF

Resolution #04-26 Declaring Vacancy on Board for Trustee Area 6

The Board discussed and considered adopting Resolution #04-46, Declaring Vacancy on Board for Trustee Area 6.

Ms. Perry announced that Board would hear public comment first followed by a presentation by an attorney.

PUBLIC COMMENT

The following people addressed the Board in opposition to the Resolution #04-26 Declaring Vacancy on Board of Trustee Area 6:

- John Franke compared this issue to the same situation a couple of years ago. He said there was no attorney involved then so it looks like there is a double standard. He wanted to know what the cost of the attorney fees to the District was for this service.
- Barry Luboviski shared his comments on behalf of the Building and Construction Trades Council of Alameda County, where he is Secretary/Treasurer and the Central Labor Council. He urged the Trustees to consider giving Trustee Wilson the necessary time to meet the procedural requirements that he believes is her intent, to move back into the District.
- Ray Davis felt that it was unwise to declare a vacancy at this time. He encouraged the Board to develop a solution that would address all parties involved so that the District could “retain a valuable member of our community in our community.”
- Esther Holcomb, a former Board member, who raised this issue with her letter to the editor, said that this has been a continuing and important issue. She referred to two times where the District had previously faced this issue, once in 1984 and again in 1991. She said that District 6 needs representation and this shouldn't be allowed to continue without some kind of public notice that action is being taken. She urged the Board to make available some kind of assistance to help Trustee Wilson find residency in Area 6. If she is unable or unwilling to fulfill that requirement then the Board needs to adopt a Resolution.

- Dr. Paul Dancy said that the District has a Board member who is seeking the American Dream – to have a fulfilled career, a full spiritual life, giving back to the community and home ownership. He said there are rules and regulations that we have to abide by, but some of the rules are outdated. He added that Ms. Wilson has forfeited her personal time to serve on the Board, “you shouldn’t have to forfeit your seat to support a community that you’ve already served.”
- Kenneth Ivory addressed the Board and agreed with Dr. Paul Dancy that if a member in the past was granted the privilege to move out of the District and return, then the same privilege should be given to Trustee Wilson.
- Shiyama Clunie, chair of the African-American Business Council, addressed the Board on behalf of Trustee Wilson. She felt that Ms. Wilson was led astray by her colleagues; she was not given the opportunity to seek legal representation; to follow due process; and to look for housing in her District. She added that tonight’s proceeding sets a poor example of when diversity of opinion is not embraced it is blatantly unfair, undemocratic and un-American.
- Darlene Evans thought she might reside in District 6 and knows of a one-bedroom available for rent.

Ms. Perry summarized the circumstances that transpired:

- In June 2004 Trustee Kimberly Wilson informed the Board that she was moving to a residence outside Trustee Area 6, the area where she was elected to represent and that her move was temporary and she intended to purchase a home in her election area;
- In September the Board learned that she was still living outside of her Trustee Area 6 and had no specific time frame or location to move back into her election area;
- As a result the Superintendent sought the assistance of legal counsel to advise the Board on the legal requirements relating to residency within one’s elected trustee area and to conduct a factual investigation relating to this particular situation.

Ms. Perry introduced, Marion McWilliams of Ruiz & Sperow, LLP who explained both the legal requirements and her factual investigation.

Ms. McWilliams briefly summarized the legal residency requirements, described the fact finding investigation and the conversation she had with Ms. Wilson last week.

Ms. McWilliams said the statutes relating to holding public office are set in the Government Code and Ed. Code defining that the legal place of residence is based on two related factors, (1) Physical place of abode of some permanency, and (2) is an intension to remain. In order to change our legal residence you have to take steps to change it and have intent to change. In school board elections that have trustee area elections such as San Leandro Unified, the trustee must remain a resident of the election area not just the District as a whole, and if the trustee no longer is a resident by operation of law, the position is deemed vacated.

Ms. McWilliams said that based on those legal requirements she did a factual investigation consisting of a telephone conversation with Trustee Wilson on October 13, 2004. Ms. McWilliams thanked Ms. Wilson for speaking with her and for her professionalism and candor and said Ms. Wilson was very diplomatic and accommodated her on very short notice to answer her questions.

Ms. McWilliams said that based on her initial legal explanation of residency:

- Ms. Wilson believed that she had established legal residence at her new residence outside of the trustee area.
- She voluntarily moved out of Trustee Area 6 around June 6, 2004;
- She advised the Board on or around June 1 that she would be moving outside her election area;
- She used her new address on Estabrook St. for essentially all purposes: mail, telephone service, and voters' registration;
- She said it was her intention to purchase a home within Trustee Area 6, but Ms. McWilliams felt it was still in the preliminary stages;
- Ms. Wilson indicated that one of the reasons for the move was to save money for a home purchase and that the move itself and a family emergency caused her to have a financial setback;
- August 2004 she reestablished contact with her real estate agent to give him her new address information as she continued to work with professionals related to the financial aspect of purchasing a home;
- Ms. Wilson said that she had viewed one home in her election area but it was not in her personal taste;
- She also advised Ms. McWilliams that the broker she was working was specifically looking in her trustee area;
- Ms. Wilson had not made any offers on any homes in Trustee Area 6; thus there is not particular location or specific time frame within Ms. McWilliams felt that she intended to execute a home purchase within Trustee Area 6;
- At the time of their conversation last week, Ms. Wilson indicated she had not decided whether she would move back into her election area in a rental property as opposed to waiting to find the right home to purchase. Ms. Wilson noted that such a move would create a further financial setback for her;
- The interview concluded with Ms. Wilson stating that she is still considering her options relating to her trustee position and her residency outside the area.

Mr. Heystek said that he was saddened by the political nature of the

discourse. He said that he was subject to tremendous scrutiny four years ago when he was faced with the situation of the death of his homeowner and he had to vacate his home. Mr. Heystek said that he never changed his voter registration, where he received his mail or calls, or signed a lease. Comments raised this evening that he lived outside his area for more than a year, filled out numerous change of address cards, and that the Superintendent kept it a secret were false and he knew those allegations would be used against him in support of the trustee that is facing a similar situation.

Mr. Heystek said he saw very few similarities between the situations. Looking back on the accounts that appeared in the newspapers during those very trying Board meetings, he said he faxed letters to the editor to the San Leandro Times and The Daily Review explaining his situation, and there was an attorney involved. He felt that he had been very frank and forthright about his situation. The Board room was packed with people complaining about his situation. He only wished that they were as polite to him as they were tonight for Ms. Wilson. Mr. Heystek said that he is also troubled by double standards and read an email that he received from Trustee Richards:

"I (Mr. Heystek) have a email from Mr. Richards dated 16th of November in 2000 during election season as well, actually after the election season but this came up at that time, where I was threatened to move back into geographical boundaries of my district immediately or to submit my letter of resignation from the San Leandro Board of Education effective immediately and it continues that, "I hope you are aware that what you are doing by not residing within geographical boundaries of the district with which you are elected to office to represent is illegal. You are currently violating not only San Leandro school board bylaws 9223(a) but Education Code 5090 and Government Code 1770 and you could also be violating Election Code by showing a mailing address as your primary residence address. I will not be a part or condone this type of illegal activity."

Mr. Heystek continued that he was threatened that his case would be taken to the Grand Jury, to the state Attorney General and he feels statements made within the Resolution #04-46 reflect a truthful situation. He says there are double standards here because this case is not being represented truthfully. He appreciates the letter writer's intent to raise this issue as there was no public discussion. He supports Resolution #04-46.

Mrs. Cutter said it is an unfortunate reality that our community had voted that each area had to be represented, something that cannot be changed. She is disappointed about all the rumors (not facts) that are going around and accusing people of something without researching the facts is wrong. We should not be held hostage by

public comment when they are not based on facts, or to say that someone is being voted out because of difference of opinion which would be a crime and is not the case here. Mrs. Cutter said that our bylaws state that you have to be resident a of the trustee area that you represent and that's what we are basing this on. The Board's job is to protect the District, not to grant favors, or go after someone in a "witch hunt". She wanted to know legally what would happen if this was turned over to the Attorney General, and what the Board's options were.

Ms. McWilliams explained that the laws and legal requirements for holding public office are established by the California legislature. Assuming that other favors were made, the Board does not have the legal authority to change the law or grant special favors. The Attorney General is one avenue of testing whether a public official is properly holding office. The reason for the law is not to benefit one public official or another, but to make sure that the citizens who elected the representative are represented. She said the Attorney General looks at whether there are issues of facts or law to determine if the public official is properly in office; and whether it is in the public interest to pursue the matter in litigation. She added that the downside to the District would be legal costs incurred; the District would bear the cost if the Attorney General decided there was reason to proceed and that is why some Boards in this situation address the matter by doing a factual investigation and then adopting a Resolution to determine whether they feel the office is vacated, legal and factual requirements have been met, and then giving public notice by that mechanism saying by matter of the position seemed vacant and then moving forward to filling the position by vacancy. Ms. McWilliams added that another alternative would be to request the resignation of the Board member.

Mrs. Cutter asked what that timeline would be if we decided to request this of the Attorney General, and what would happened if the trustee moved back into her trustee area during that time.

Ms. McWilliams said that to her knowledge, based on prior cases, if the public official has moved back into the elected area, the Attorney General may not proceed, deeming it a moot point or not in the best interest of the public to pursue it. If the Board decided to proceed with the Attorney General, a petition would be filed, including the complaint and reasons why, and the Attorney General's staff would then begin an investigation that in her estimation would take at least 30 days.

In response to the fact finding investigation, Ms. Wilson clarified some of the inaccurate statements in the Resolution #04-46:

- Statement #1 - “In June 2004, Ms. Wilson voluntarily moved out of Trustee Area 6” is not completely true because “voluntarily” means that you looked and search outside your District to purposely move which was not the case in her situation;
- Statement #11 - “Ms. Wilson has not searched for or obtained alternative rental property within Trustee Area 6” – Ms. Wilson said that she doesn’t remember being asked that question; is the statement one that needed to be in the Resolution based on our conversation, so she didn’t know where that statement came from because if she just moved 3 ½ months ago why would she be looking to move back as of October 5th when she was made aware of this for the first time, and her discussion with Ms. McWilliams was October 13;
- Statement #12 - “Ms Wilson has no specific time frame within which she intends to return to Trustee Area 6”, is not completely true because on June 1st she shared this information with the full Board.

Ms. Wilson addressed the circumstances leading up to the Resolution:

- On May 24, 2004 she shared her situation with the Superintendent and Board president and requested that the District seek legal counsel. She said she found it very interesting that legal counsel was not sought until after the letter to editor from former Board member Esther Holcomb was published.
- On May 25 she received a fax from the Superintendent referring to a summation of Mr. Heystek’s situation to see if it was similar to hers;
- On Oct. 5 this matter was discussed in closed session, and she was informed that she would be receiving a phone call within the week of Oct. 5 from the attorney. She did not receive a call until Oct. 13.
- On Oct. 14 the attorney shared the Resolution and its’ intent with her. Ms. Wilson said that she was not expecting this Resolution because on October 5 it was shared with the Board that the Resolution was going support the decision made by the Board on June 1.

Ms Wilson stated that (1) the fact that the Board was aware twenty-six days, prior to her move, that she might have to relocate out of the District and nothing was shared with public from that June 1st closed session; and (2) due process were two concerns that she had. She said she was contacted by the District’s attorney on October 13 and after the conclusion of that meeting on October 14 was given only 24 hours to relocate and retain an attorney so that she could have proper legal representation to support her case. She added that as of today, she was still looking for representation. Ms. Wilson said that she has been very forthright with the community members about her relocation. It is unfortunate that the statement, “in September they discovered that I was still out of the area” was made by Ms. Perry earlier. It is not possible for them to “discover” that I was out of the area when I was receiving correspondence from the District Office.

Ms. Wilson asked why now (the November election is only two weeks away), why was this not brought to my attention 30-days after June

26th, why is there not due process, why is this being pushed tonight, and why is there a “red flag” when I have been out of the elected area for 3 ½ months? She doesn’t know if this is political or personal. She also noted that she would never refute the fact that she is living outside her trustee boundaries. She added that this Board realizes there has not been due process and by adopting this Resolution tonight and removing her from office may cost not only her and the community but possible individuals’ political future.

Ms. Wilson asked the Board to consider removing this item from the agenda, tabling it until she had an opportunity to have her to look at it, have her attorney review the circumstances, and look at other options.

Mr. Thompson said this was a very challenging discussion for him for many reasons. He reminded us that he has opted not to continue his involvement with the school board for personal reasons, and one of the hallmarks for him has been the diversity of the Board where it means a lot to have gender, racial, and ethnic diversity because it reflects the District’s student population as well as our community. He said that he is a “rule” person, but he also represents the community. Timing is important. He added that when you make a critical decision that has ramifications far greater than these people present, you have to do the right thing. He is very challenged but he cannot support this Resolution at this time; he would rather opt to look at other options or give Ms. Wilson more time. He stressed that he doesn’t think it is in the best interest of this District, the individuals running for office, our community, or the children. He truly believes that we can reach resolution by not taking this particular stance.

Mr. Richards thanked Mr. Thompson and agreed with his comments. He said there are concerns that Ms. Wilson has raised with the current Resolution as it stands, and a desire for an extension of time. He does not see the urgency of this item being processed and passed this evening. In addition it was his understanding after the October meeting, that there was going to be some fact finding and it would be brought back to the Board for discussion, not a Resolution. He did not know how this Resolution was developed without the full Board discussing it before it was placed on the agenda. Mr. Richards moved and Mr. Thompson seconded that the approval of Resolution #04-46 be tabled until the next regular Board meeting, November 16.

Mr. Richards clarified for Mrs. Cutter that the Resolution would be brought back at the November 16 meeting, so the Board would have a better understanding of situation, and allow Ms. Wilson to seek

legal counsel. He added that there were a lot of people in this community who are trying to help Kimberly Wilson. We need to give her at least a 30-day time period; then bring the issue back in November for an update and discussion, not to adopt a resolution.

Ms. Perry said it was her personal desire to move slowly and resolve some of the disputed fact-finding information, explore that, and give some direction. She said she agreed with Ms. Wilson on the issues of due process.

Ms. Perry asked if it was in the Board's purview to continue to allow Ms Wilson to pursue options to move back into her district.

Ms. McWilliams thought that it was in the Board's purview but explained that based on her legal and factual analysis it, appeared to her that the residency requirements were not currently being met by Ms. Wilson. Because Ms. Wilson raised some questions regarding the facts, there may be some areas to address those discrepancies, but because it is a legal requirement and it is by operation of the law that the position is vacated, Ms. McWilliams didn't think the Board could overturn or reverse that law in its actions or decisions however, the process itself could give the Board some flexibility because if it chooses to proceed in a quo warranto manner, then the Board could determine it would be deemed "moot" by the Attorney General and not be in the best interest to pursue the matter. Ms. McWilliams said she felt that the process could not officially "cure" a defect of a vacancy but it could build in flexibility by deciding whether to go with a quo warranto or getting additional facts based on Ms. Wilson's statement that the Resolution contained inaccurate facts.

Ms. Perry said she did not think it was the desire of the Board to rush to judgment. She confirmed that it was the Board's desire to receive more fact finding information, and to look at options, and legal risks to the District by taking action or not.

Ms. McWilliams said that issues raised by Ms Wilson regarding anticipated litigation or specific legal risks should be addressed in closed session, but factual findings, analysis of the facts and the law are public information.

In response to Mr. Thompson's concern, Ms. McWilliams said and Ms. Wilson concurred that that a month (30-days) would be sufficient time to comeback to the Board with additional information and allowing Ms. Wilson time to review this matter with her attorney.

Mr. Pon asked Ms. Wilson if she would be able to respond to the inaccuracy of Statements #1, #11, & #12 of the Resolution. Ms. Wilson said that she would be able to respond with her attorney present.

Ms. Perry recapped Mr. Richards' motion to table Resolution #04-46 until the next meeting, to bring back additional facts and information, and to allow Ms. Wilson time to look at other options and obtain her due process and legal representation.

On a motion by Mr. Richards and seconded by Mr. Thompson, the Board approved to table Resolution #04-46 to the November 16, 2004 Board meeting by a 6-1 vote. Mr. Heystek voting no.

INFORMATION ITEMS

Educational Services

3.1-I AR 3513.3, Tobacco Free Schools

The Board received for information the revised AR 3513.3, Tobacco Free Schools, as presented.

3.2-I AR 5131.62, Tobacco

The Board received and reviewed for information the new AR 5131.62, Tobacco, as presented.

3.3-I AR 6182, Opportunity School/Class/Program

The Board received and reviewed for information the new AR 6182, Opportunity School/Class/Program, as presented.

Business, Operations and Facilities

4.1-I Miscellaneous Receipts

Miscellaneous receipts in the amount of \$294,723.59 have been deposited in the Treasury of Alameda County.

ADDITIONAL SUGGESTIONS AND COMMENTS FROM BOARD MEMBERS

Ms. Wilson thanked Mr. Thompson.

Mr. Richards reported that he was able to attend Madison's festival on Saturday. It was wonderful to see all the kids in their costumes and it was a great turnout. The cake and costume judging was very difficult but it was a lot of fun. He even had his picture taken with Clifford the dog.

Ms. Perry said that in addition to Madison she also attended Washington's festival. Roosevelt's festival is this weekend. She noted that this is our time to support our schools and their programs. At Ms. Perry's request, it was the consensus of the Board to honor Dale Lew, Alameda County Teacher of Year, and "Iron Man" Jack Nelson at the next Board meeting for all the contributions they have made to our District.

ANNOUNCEMENT

Future Board of Education Meetings

- Regular Meeting – November 16, 2004
- Regular Meeting – November 30, 2004
- Regular Meeting – December 7, 2004
- Regular Meeting – December 14, 2004
- Regular Meeting – January 11, 2005
- Regular Meeting – January 25, 2005
- Regular Meeting – February 1, 2005
- Regular Meeting – February 16, 2005
- Regular Meeting – March 1, 2005
- Regular Meeting – March 15, 2005
- Regular Meeting – April 5, 2005
- Regular Meeting – April 19, 2005
- Regular Meeting – May 3, 2005
- Regular Meeting – May 17, 2005
- Regular Meeting – June 7, 2005
- Regular Meeting – June 21, 2005

ADJOURNMENT

On a motion made by Mr. Thompson and seconded by Mr. Richards, the Board adjourned the meeting at 10:22 p.m. by a 7-0 vote.

Respectfully submitted,

Pauline Cutter, Clerk