



# *Alum Rock Union Elementary School District*

The District and Its Board Must Improve Governance  
and Operations to Effectively Serve the Community

*May 2019*

**REPORT 2018-131**





**CALIFORNIA STATE AUDITOR**

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May 23, 2019  
*2018-131*

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report pertaining to the Alum Rock Union Elementary School District (district) and its operational and financial practices, governance, and public transparency. This report concludes that the district and its board of trustees (board) must improve their governance and operations to effectively serve the community.

Specifically, the board did not use a structured process to choose the most qualified firm when soliciting and awarding certain contracts related to construction projects, despite state law and district policy requiring it to do so. We also question the district's decision to hire a contractor to oversee its own work managing the construction of school improvement projects rather than seeking another firm to perform such oversight for quality control purposes. Moreover, the district neither has procedures for monitoring its contractors to ensure that they have fulfilled the terms of their contracts, nor provides the board with sufficient information about its payments to contractors. The district is also unaware of whether some of the individuals with whom it contracts have conflicts of interest because the district lacks procedures to identify those individuals who should disclose their financial interests.

The board's actions at its meetings have also raised concerns about its transparency and accountability to the community. In two instances, board members did not properly recuse themselves from voting on certain decisions as state law requires, and in another instance, the board violated state law by not having a sufficient number of board members present within the district when voting on several decisions. In yet another instance, the board could not demonstrate to the public that the law firm it selected to serve as the district's general counsel was the appropriate choice because it did not adhere to district policy requiring a comparative evaluation of proposals. Furthermore, the board has not yet taken action to implement many of the recommendations made by the Fiscal Crisis and Management Assistance Team in its June 2017 audit of the district. Finally, although the board is not subject to a state law requiring biennial ethics training, we believe that—given the concerns we identified—it would be prudent for board members to receive such training.

Respectfully submitted,

A handwritten signature in black ink that reads 'Elaine M. Howle'. The signature is written in a cursive, flowing style.

ELAINE M. HOWLE, CPA  
California State Auditor

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## SUMMARY

The Alum Rock Union Elementary School District (district) in the city of San José has been the subject of scrutiny since 2016 for its governance, financial operations, and contracting practices. Our audit identified concerns in all of these areas. We found that the board of trustees (board) and district staff have violated state law and district policy in their operational and financial practices. The board and district committed these violations despite the fact that two other monitoring entities have issued recommendations to improve the district's policies and practices in areas where we also found problems, and the Santa Clara County Office of Education has increased its oversight of the district. In particular, we noted weaknesses related to the district's construction project oversight, financial interest disclosures, and public transparency. This report draws the following conclusions:

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### **The District's Operational and Financial Practices Did Not Always Comply With State Law or Align With Best Practices**

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Several of the district's financial and contracting practices have placed it at risk of not obtaining goods and services from the most qualified firms at fair and reasonable prices. These practices have also limited the transparency of its operations. For example, the board did not use a structured process to choose the most qualified firms when soliciting and awarding certain contracts related to construction projects, although state law and district policy require it to do so. We also question the district's decision to hire the same contractor both to manage the construction of school improvement projects and to oversee that management, a decision that profoundly compromised quality control. Moreover, the district does not have a process for systematically monitoring its contractors to ensure that they have fulfilled the terms of their contracts before it pays them, nor does the district provide the board sufficient information about its payments to contractors. Finally, the district does not know whether some of its contracted personnel who filled key roles in the district had conflicts of interest because it does not require them to disclose their financial interests, even though these individuals served in roles similar to those of district employees who must disclose their interests.

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### **Poor Governance Has Led to Violations of State Law and Diminished the Board's Transparency**

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During the past several years, board members did not consistently attend board meetings, limiting the effectiveness of the board's governance. The district also violated state law by paying those

board members for meetings they did not attend. Further, from fiscal years 2013–14 through 2017–18, the board did not consistently adhere to other aspects of state law, thereby affecting both its transparency to the public and the effectiveness of its governance. For example, one board member did not properly recuse himself from a vote involving the hiring of his son, while another recused herself from a vote when she had a potential conflict of interest but did not properly explain the nature of that conflict. In addition, the district did not ensure that it posted board meeting agendas in compliance with state laws, potentially limiting public involvement.

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**Page 27****The Board's Operational Practices Did Not Always Comply With District Policy and Other Requirements**

The board could not demonstrate to the public that its selection of a law firm to serve as its general counsel was the most appropriate choice for the district. Although district policy requires a comparative evaluation of proposals when contracting for legal services, the board did not perform such an evaluation in its 2018 selection of this law firm. The board also failed to provide the district's superintendent with timely performance evaluations, and it still had not taken action as of March 2019 to implement several recommendations a state-established monitoring entity made in 2017 to improve district governance and operations. Finally, the board is not subject to a state law requiring biennial ethics training for government officials.

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We also reviewed the district's adherence to legal requirements regarding disclosure of its bond issuance costs, its processes for entering into contracts for emergency repair services, and the possibility that key staff were subject to retaliation from the board. In each area, we found that the district could improve its processes, as we present in the Other Areas We Reviewed section of this report.



## Summary of Recommendations

### *Legislature*

To ensure that school district boards are knowledgeable about the ethical principles and laws that public officials must follow, the Legislature should amend state law to require members of school district boards to receive ethics training once every two years.

### *Board*

To ensure that it selects the most qualified firms to perform certain contracted construction projects, the board should follow state law and its own policies in such selections.

To ensure compliance with state law, the board should request training in and adhere to applicable state requirements pertaining to governance and transparency by August 2019.

To assess whether the superintendent's performance aligns with the board's expectations, the board should provide timely annual performance evaluations to the superintendent.

To comply with district policy, the board should work with district staff to evaluate proposals when it next contracts for legal services.

### *District*

To ensure that its contractors fulfill their requirements to perform contractually agreed-upon work, the district should develop contract monitoring procedures by November 2019 and train its staff to follow these procedures.

To identify its contracted personnel's potential conflicts of interest, the district should develop and implement a process by November 2019 to assess whether these individuals should be subject to the district's policy requirements regarding the disclosure of financial interests.

To increase board member accountability at future board meetings, the district should adhere to state law by reducing payments to board members when they fail to attend these meetings.

To reinforce the ethical principles, laws, and policies that the board must follow, the district should provide its board members with training in ethics at least once every two years.

**Agency Comments**

The district agreed with our recommendations and stated the actions that it and the board will take to address them.

# INTRODUCTION

## Background

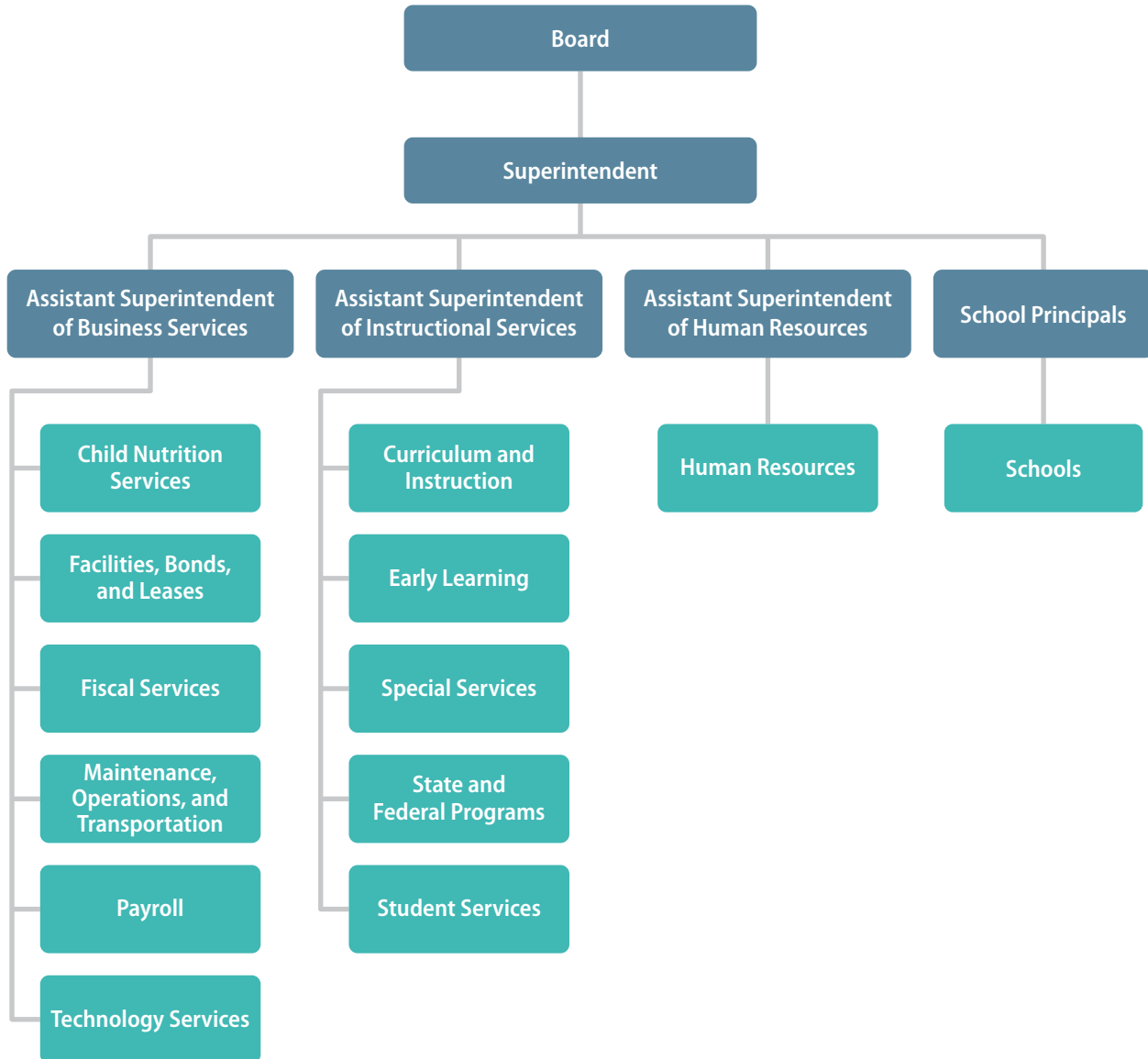
The Alum Rock Union Elementary School District (district) was established in 1930 in the eastern portion of the city of San José. For the 2018–19 academic year, it has served 9,700 students in 25 elementary, middle, and K–8 schools. The district is governed by a board of trustees (board), which consists of five members whom residents within the district’s boundaries elect. From December 2014 through November 2018, the same five members served on the board. In November 2018, after this audit started, two new board members were elected; they began serving their terms in December 2018. Following the resignation of a third board member in December 2018, the board appointed another individual in February 2019 as her replacement.

District policy assigns the board responsibility for establishing the strategic direction of the district, for ensuring educational and fiscal accountability to the community, and for providing support to the district’s superintendent and other staff as they carry out the board’s directives. The board is also responsible for hiring the superintendent, who is the only district employee who directly reports to the board. The current superintendent, who assumed her position in July 2014, oversees the day-to-day operations of the district’s 1,100 employees, including faculty, administrators, and support staff. Figure 1 shows the district’s organizational chart. The superintendent is also responsible for making policy recommendations to the board; establishing and maintaining positive community, staff, and board relations; and performing other duties as the board assigns.

## The Board’s Open Meeting Requirements

District policy directs the board to hold regular monthly meetings to conduct district business. The State requires these meetings to comply with the Ralph M. Brown Act (Brown Act), the State’s open meeting law, which the Legislature enacted to ensure that public agencies openly disclose and discuss their activities and deliberations. For example, the Brown Act requires the district to post an agenda for each regular meeting on its website and at locations freely accessible to members of the public at least 72 hours beforehand. In addition to regular meetings, the board may call special meetings. However, under the Brown Act, the district must distribute and publicly post the notice for each special meeting at least 24 hours in advance. The business that the board considers at special meetings and, with some exceptions, at regular meetings must be limited to those items it specifies in its posted agendas or notices.

**Figure 1**  
The District's Organizational Chart



Source: District.

### Issuance and Oversight of the District's Bond Funds

At its meetings, the board may authorize the issuance of bonds and approve payment for projects using bond funds. From fiscal years 2013–14 through 2017–18, the district had two active primary bonds: Measure J, which voters approved in 2012 for \$125 million, and Measure I, which voters approved in 2016 for \$140 million. As of June 2018, the district had issued

\$53.5 million of Measure J bonds but had not yet issued Measure I bonds. State law requires that these bond funds be used only for the construction, rehabilitation, or replacement of school facilities.

During these same fiscal years, the board approved more than 50 construction projects to be paid for with bond funds, such as restroom refurbishments and roof repairs. In order to execute these projects, the board approved contracts for construction management and for program management with the same company: Del Terra Real Estate Services, Inc. (Del Terra). However, as we discuss in subsequent sections of this report, the board voted to terminate its program management contracts with Del Terra in May 2018 and its construction management contracts with Del Terra in December 2018. Both roles were vacant as of early May 2019, and the assistant superintendent of business services stated that the district has not used bond funds to begin any new construction projects since terminating its contracts with Del Terra.

State law additionally requires the establishment of an independent citizens' bond oversight committee (bond committee) to provide oversight and additional accountability for how a school district spends its bond funds. As the text box shows, state law and district policy specify that the bond committee must consist of at least seven volunteers representing a variety of stakeholders within the community. The bond committee meets quarterly to review financial information and the status of bond projects, as well as to ensure that the district does not spend bond funds on projects that do not align with the voter-approved purpose of the bonds. The bond committee is also responsible for preparing an annual report to the board regarding the results of its oversight activities.

### Scrutiny Over District Governance and Operations

The Santa Clara County Office of Education (county office) has fiscal oversight of the school districts within Santa Clara County. The county office is responsible for providing management assistance, in addition to support and intervention, to ensure that its school districts are fiscally viable. It also takes specific actions if a school district is at risk of being unable to meet its financial obligations. In October 2016, the county office requested that the Fiscal Crisis and Management Assistance Team (FCMAT) conduct a review—referred to as an *extraordinary audit*—of the district. The Legislature authorized the creation of FCMAT with the passage of Assembly Bill 1200 (Chapter 1213, Statutes of 1991) to assist

#### Bond Committee Membership

The bond committee consists of at least seven members and must include the following types of members:

- One member active in a business organization who represents the business community in the district.
- One member of a senior citizens' organization.
- One member of a taxpayers' organization.
- One parent or guardian who has a child enrolled in the school district.
- One parent or guardian who has a child enrolled in the school district and who is active in a parent-teacher association.
- Two members of the community at large.

Source: State law and district policy.

local educational agencies in meeting their financial obligations. A county office of education can request the assistance of FCMAT in conducting extraordinary audits of school districts and other local educational agencies in its purview.

### FCMAT's Scope of Work

- Evaluate the district's policies, procedures, and internal controls for purchasing, contractual commitments, and contractor payments.
- Review sample selections of the district's contractor payments and supporting documentation and verify compliance with established policies, procedures, and applicable laws.

Source: Audit agreement between FCMAT and the county office.

In this instance, the county office asked FCMAT to determine whether fraud, misappropriation of funds, or other illegal activities may have occurred at the district based on allegations that Del Terra had fraudulently invoiced the district for construction and program management services, including for projects that had not yet started. FCMAT published its extraordinary audit report on Alum Rock in June 2017 and determined that sufficient evidence existed in the areas it reviewed, which we list in the text box, to demonstrate that fraud, misappropriation of funds, or other illegal activities may have occurred. Appendix B presents the 52 recommendations FCMAT made

to the district, which included ways that the district could correct deficiencies in its internal controls, construction management contracts, and program management contracts.

In addition to the recommendations it made directly to the district, FCMAT also recommended that the county office meet with the district to discuss rescinding the district's fiscal independence status. The state superintendent of public instruction may authorize a school district's fiscal independence from its county office of education, meaning that the school district can issue payments for its own expenditures and operate its own financial accounting system, rather than being dependent on the county office to provide these services on its behalf. Alum Rock had been fiscally independent from the county office since fiscal year 1992–93. However, the state superintendent of public instruction revoked the district's fiscal independence effective July 1, 2017, because of the county office's recommendation to do so based on the FCMAT report and other concerns.

Further, because of the concerns FCMAT raised in its audit report and of the county office's concerns with the district's financial assumptions in its fiscal year 2017–18 budget, the county office only conditionally approved the district's fiscal year 2017–18 budget in September 2017. This budget projected that the district's general fund revenue would be about \$10.2 million less than its general fund expenditures. As a result, the county office informed the district of its concern that the district was depleting its financial resources. Although it fully approved the district's budget in November 2017, the county office told the district that it would appoint a fiscal expert to oversee the district's implementation of FCMAT's recommendations

and to manage the district's efforts in addressing its financial issues. Specifically, the county office stated that the fiscal expert would help the district to clarify its budget assumptions, prepare its monthly cash reconciliations, and prepare its other financial documents. In January 2018, rather than appointing one person to this role, the county office designated a group of three fiscal experts to support the district in strengthening its financial and operational processes.

In spite of these appointments, the county office determined in March 2018 that the district was continuing to display signs of fiscal distress because its cash and debt service issues remained unresolved and because the district had requested an additional extension for filing its annual financial report, which was originally due in December 2017. In accordance with state law, the county office implemented *stay-and-rescind authority*—the power to halt any action that the county office determines to be inconsistent with the ability of a school district to meet its financial obligations for the current or subsequent fiscal year. In April 2018, the county office appointed a fiscal advisor—a different individual from the three fiscal experts—who had the authority to halt district actions on behalf of the county office. During the fiscal advisor's tenure from April through December 2018, the county office used this authority once, in April 2018, to prevent the district from selling bonds until it improved its financial and operational practices. The county office subsequently reaffirmed its stay-and-rescind authority in August 2018. The county office informed us in May 2019 that its stay-and-rescind authority was no longer in force because it had approved the district's budget and determined that the concerns FCMAT raised in its audit report about bond sales were resolved.

Additionally, the district was the subject of a June 2018 report by the Santa Clara County Civil Grand Jury (grand jury), which began its review after receiving a complaint from a district resident regarding the actions of the board and after becoming aware of the concerns of FCMAT and the county office. The grand jury reported that during its review, the Santa Clara County Office of the District Attorney and the U.S. Securities and Exchange Commission began separate investigations of the district, which are still ongoing as of May 2019. The grand jury made nine recommendations to the district related to board governance, competitive bidding, and program and construction management services. Because of these pervasive and ongoing concerns, the Joint Legislative Audit Committee (Audit Committee) approved an audit of the district to address the board's governance and the district's operations, including its contracting practices.

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## The District's Operational and Financial Practices Did Not Always Comply With State Law or Align With Best Practices

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### Key Points

- The district did not comply with state law and district policy when it contracted with architectural services and construction management firms without evaluating their qualifications to demonstrate that it had selected the most qualified firms at fair and reasonable prices. The district also contracted with the same firm for both program management and construction management services even though it meant that the firm would oversee its own work, which put quality control in question.
- The district has not followed best practices in monitoring its contractors and maintaining contract documentation. In particular, it has not established policies and procedures for ensuring that contractors adhere to the terms of their contracts before it pays for their services. The district also has not provided sufficient information to the board about its payments to contractors, limiting the board's ability to assess the reasonableness of those expenditures.
- The district did not require some of its contracted personnel to disclose their financial interests; thus, it cannot determine whether those individuals had conflicts of interest when performing services for the district.

### The District Did Not Comply with State Law or District Policy When It Solicited and Awarded Architectural Services and Construction Management Contracts

The district failed to establish and follow a structured process to select the most qualified contractor when awarding three contracts from 2014 through 2016 to architectural services and construction management firms. State law requires public entities, such as school districts, to select contractors for these types of services on the basis of the firms' demonstrated competence and professional qualifications at fair and reasonable prices. However, for the three architectural services and construction management services contracts we reviewed, the district selected firms it had previously contracted with rather than also evaluating the qualifications of other firms. As a result, it could not demonstrate that it had selected the most qualified firms at fair and reasonable prices. According to the district's records, it paid these contractors more than \$6.4 million from fiscal years 2013–14 through 2017–18. Further, the district awarded one of these contracts to Del Terra, despite the firm's past history of providing some deliverables late and not completing several district projects. A former assistant superintendent of business services expressed these concerns about Del Terra to the board before the district awarded it a contract in November 2016, but the board still approved the contract.

District policy directs the superintendent to recommend specific firms for architectural services and engineering services, which includes construction management, to the board based on the firms' demonstrated competence and professional qualifications. The board is then responsible for selecting the most qualified contractor whose prices are fair and reasonable, although the district's policy does not require the board to choose the lowest responsible bidder. However, in two instances, the district recommended firms—which the board then approved—without considering other firms' demonstrated competence and professional qualifications. In the first instance, a former assistant superintendent of business services advocated for awarding a construction management contract in May 2014 to Del Terra by asserting that Del Terra had proven expertise and experience as the district's program manager. However, without considering other firms, this rationale was not sufficient to justify that Del Terra was the most qualified contractor. Similarly, in the second instance, district staff contacted only one architectural firm in June 2016 to seek interest in developing drawings and specifications for upgrades to a building the district had recently acquired, even though it had three other firms in its pool of board-approved architects. When we asked the district's director of facilities, bonds, and leases (director of facilities) why the district did not contact any of the other firms, he said that a former assistant superintendent of business services had directed him to work only with that architect on the project.

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**The board did not ensure that it selected the most qualified firm at a fair and reasonable price.**

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In the third instance, district staff attempted to comply with state law and the district's requirement to use a structured process to select the most qualified firm at a fair and reasonable price, but the board did not follow the staff's recommendation. During a board meeting in October 2016, district staff recommended this process to select a firm to serve as the district's construction manager. However, at the following meeting in November 2016, the board disregarded the staff's recommendation and awarded the contract to Del Terra—the same firm it had contracted with in May 2014 for construction management services. By not following state law and its own policy, the board did not ensure that it selected the most qualified firm at a fair and reasonable price.

We also question the district's decision to contract with Del Terra—the contractor for two of the three contracts discussed here—for both program management and construction management services. The district first contracted with Del Terra for *program* management services in May 2013, with a five-year contract for up to \$2.4 million. The district subsequently contracted with Del Terra in May 2014 for *construction* management services, with a contract term extending to September 2015 for payments up to \$3.2 million. Because a key duty of the program manager is to oversee the construction manager, this contracting arrangement allowed Del Terra to oversee its own work. However, having different companies serve in these roles promotes a system of quality control, as one company—the program manager—will review the work of another company—the construction manager. Instead, by serving in both roles, Del Terra as the construction manager had no accountability for performing its duties, including coordinating the work of the district's program contractors and ensuring that construction at the project sites was completed within budget and according to specifications. As program manager, Del Terra was unlikely to require the necessary corrective actions if it determined that it was not adhering to its construction management responsibilities.

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**The district should not have contracted with the same contractor for both program management and construction management services.**

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Other oversight entities who examined the district's contracting practices expressed similar concerns about having the same contractor perform both program management and construction management services. Based on our interviews with the fiscal experts and the fiscal advisor that the county office appointed, as well as our reviews of the FCMAT report and the grand jury report, we found general consensus that the district should not have contracted with the same contractor for both program management and construction management services because having a contractor oversee its own work is not a best practice. When we asked board members why the district used Del Terra for both services, certain members expressed concern about this practice. However, others asserted that they understood the practice to be typical among smaller school districts or that they believed that efficiencies resulted from the dual role. Nevertheless, we believe that any advantages from having a single company in the program management and construction management roles are far outweighed by the risks we describe.

In addition to those concerns, the district's contracts with Del Terra included a fee structure that did not align with ensuring the fiscal responsibilities of construction and program managers. According to the district's contracts with Del Terra, construction and program managers serve as the district's advocates in minimizing construction costs and ensuring that construction adheres to schedule. However, Del Terra's contracts stipulated that the district would pay it 6 percent of overall construction costs for construction management services and 4 percent of the total value of the bond funds available for capital projects for program management services. The Construction Management Association of America discourages the practice of basing compensation on a percentage of construction costs because this form of payment is arbitrary and not related to the effort that may be required. Perhaps more importantly, because both contracts included a percentage-based payment structure, Del Terra had no financial incentive to seek cost savings in managing either the program or the individual construction projects because it benefitted from higher project costs.

According to the district's records, the district's payments to Del Terra totaled \$4.6 million from the beginning of fiscal year 2013–14 through November 2017. In December 2017, the county office stopped the district's payments to Del Terra because the county office was concerned about the legality of these contracts because of a potential conflict of interest.<sup>1</sup> The board voted to terminate the program management contracts with Del Terra in May 2018, and after a change in board members resulting from the November 2018 election, the board decided to terminate the construction management contracts with Del Terra in December 2018. The board did not publicly explain its rationale for terminating the construction management contracts; rather, it cited only legal concerns. However, even though the district terminated those contracts, it has not yet implemented a policy to prohibit future instances of contracting with the same contractor for both program management and construction management services.

### **The District's Poor Contracting Practices and Expenditure Reporting Have Hindered Its Ability to Adequately Monitor Its Contractors**

Based on our review of district contracts, the district's contracting practices have not always aligned with best practices, resulting in insufficient district oversight of its contractors. We identified several best practices for overseeing contractors, including establishing clear performance requirements, developing procedures for monitoring and evaluating contractor performance, ensuring that district staff

<sup>1</sup> The county office has the authority and responsibility to stop payments from fiscally dependent school districts to contractors if certain conditions are not met. It made such a determination in this instance. We discuss the state superintendent of public instruction's revocation of the district's fiscal independence in the Introduction.

maintain adequate records of their monitoring efforts, and defining roles and responsibilities for staff regarding the collection and retention of contract documentation. Although the district established clear performance requirements in the scopes of work for the contracts we reviewed, it did not develop procedures to consistently oversee its contractors' performance, document its monitoring efforts to gain assurance that its contractors had met their obligations to the district before it paid them, or define roles and responsibilities for staff regarding the collection and retention of contract documentation.

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**The district did not develop  
procedures to consistently oversee  
its contractors' performance.**

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We found that the district does not have formal procedures for monitoring and evaluating the performance of its contractors, which raises concerns about its ability to ensure that those contractors are adhering to their contract terms and provisions. Although the current assistant superintendent of business services acknowledged the value of formal monitoring procedures and informed us that he is working on developing them, he explained that the district's efforts have been delayed because of the external reviews discussed in the Introduction. He also attributed the lack of procedures to staff vacancies and turnover in the business services department. For example, he indicated that the district had vacancies in key staff positions during the past several years, which resulted in a loss of institutional knowledge and the need to train new staff. Further, the district has had several different individuals serve as the assistant superintendent of business services since 2013. Nevertheless, the high staff turnover emphasizes the need for creating procedures and documentation requirements to ensure that new staff can monitor contracts in a manner that is consistent with their more experienced peers.

Additionally, the district has not demonstrated that it has sufficiently monitored its contracts. We found that the district was unable to show that it monitored contractor performance for any of the 10 contracts we reviewed because it did not ensure that staff maintained documentation of their monitoring efforts, such as records of the work they performed to ensure that contractors fulfilled their requirements. For instance, the district did not maintain any documentation of its monitoring efforts over its program management contracts with Del Terra, so it is unclear how it concluded that Del Terra's performance met its expectations. In particular, we question the board's approval of a fee increase of

more than \$600,000 for one of these program management contracts, given its inability to justify the district's satisfaction with Del Terra's past performance.

Moreover, the district has not defined responsibilities for its staff to collect and retain contract documentation, leading to inefficiencies. The district's procurement manager acknowledged that the district's documentation of its contracts is scattered among six different locations. The district also does not have a formal policy for assigning specific staff with the responsibility for overseeing the retention of specific contract documents. In fact, the procurement manager conveyed to us that tracking specific contract files has been an ongoing challenge, indicating it occasionally takes considerable time to locate requested documents. She acknowledged that establishing procedures for document management and storage, including defining staff roles and responsibilities, would help district staff with saving and accessing important documents.

In addition to the weaknesses we found related to the district's contracting practices, we also noted that the district's financial system cannot distinguish among specific contract payment authorization documents, meaning that the district is not able to efficiently monitor contract adjustments or the total costs of a given contract over time. The FCMAT report also identified this issue and recommended that the district develop and implement a new financial system that would allow for numbering and identifying those documents to distinguish them from each other, but the district had not fully implemented that recommendation as of February 2019. Although the district is currently working with the Santa Clara County Office of Education (county office) to transition to a new financial system that can assign unique numbers to the documents, the county office will need to modify the system to activate that functionality.

Finally, we determined that the financial information the district provides the board does not include sufficient detail on expenditures. The board bases its oversight of certain district expenditures on the limited information it receives from district staff, which prevents it from assessing the reasonableness of that spending. According to district policy, the board has a responsibility to oversee the prudent use of district funds. Further, district policy requires that the board approve all warrants—payments that the district issues to its contractors and other entities—at its regular board meetings. However, from fiscal years 2013–14 through 2017–18, the expenditure information on warrant lists that district staff provided to the board did not contain sufficient detail on the payments the district made to external entities to allow the board to make informed decisions. Instead, the warrant lists contained only aggregate amounts of payments the district made from each of its funds, such as its general fund or its building fund, instead of summarizing the amounts it paid to each contractor and identifying the purpose of those payments.

The lack of specific information on the warrant lists makes it unlikely that the board has been able to use them to oversee the reasonableness of the district's expenditures. For example, in September 2017, the district paid a contractor more than \$1.7 million for construction work. However, the warrant list for September 2017 did not identify the contractor, the amount of the payment, or the purpose of the payment. The assistant superintendent of business services indicated that the district has presented warrant information to the board in this summarized format since before he began working for the district in October 2015, so he was not aware of the rationale for doing so. However, he agreed that it would be helpful to the board's oversight for it to receive information at the regular monthly board meetings on how much the district has paid to each contractor.

### The District Did Not Require Some Contracted Personnel to Disclose Their Financial Interests

The district did not require some individuals who performed services for the district through contracts to disclose their financial interests, even though these individuals, whom we refer to as *contracted personnel*, served in roles similar to those of district employees who must disclose their interests. In accordance with state law, the district adopted and implemented a conflict-of-interest code (code) identifying those employees who are responsible for making—or participating in making—decisions that may have a material effect on their own financial interests. Additionally, the district's code requires long-term contracted personnel who perform the same duties as certain employees to disclose their financial interests. When adopted by a school district's board and approved by the county board of supervisors, a code has the force and effect of law concerning those individuals who must disclose their financial interests.

State law requires certain public officials and persons designated in an agency's conflict-of-interest code to file a statement of economic interests. The district's code also stipulates that certain individuals, such as contracted personnel who serve in a staff capacity and who make or participate in making governmental decisions in that capacity, meet the code's definition of a *consultant* and therefore must disclose their financial interests pursuant to the most extensive disclosure category in the code. That category requires full disclosure of specific interests as the text box shows. However, the code gives the superintendent discretion, through a written determination, to decide whether a particular

#### Disclosure Requirements for the District's Consultants

- Interests in real property within or near the district's boundaries.
- Investments in, business positions in, and income—including gifts, loans, and travel payments—from the following:
  - Sources that are engaged in buying or selling real property within the district.
  - Contractors or subcontractors that have engaged in work or services in the past two years of the type used by the district.
  - Sources that manufacture or sell supplies, books, machinery, or equipment of the type used by the district.

Source: District's code.



consultant needs to disclose only certain types of financial interests, based on the scope of the individual's duties. The code states that the district is to retain its written determination for public inspection and that the determination is to include a description of the individual's duties and a statement of the modified disclosure requirements based on that description.

The district has been inconsistent in requiring contracted personnel to submit a statement of economic interests form—known as a *Form 700*—that the Fair Political Practices Commission publishes. Similar to district staff, designated consultants must submit Forms 700 when they initially assume their positions and generally every year thereafter. However, the district has not required Forms 700 from some contracted personnel who have served in similar positions to district employees but who are not designated consultants. Specifically, both district employees and contracted personnel have filled some district positions, such as the assistant superintendent of business services, at different times, depending on turnover and the availability of candidates. However, the district did not require its contracted personnel to file Forms 700 or otherwise disclose their financial interests, even though it required its permanent employees who served in the same positions to do so.

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**By not requiring individuals to submit Forms 700, the district cannot determine whether they have potential conflicts of interest.**

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The district's code did not require these individuals to report their economic interests because they did not meet the legal definition of a consultant, either because of their limited tenure with the district or their limited scope of duties. Nevertheless, state law gives the district discretion to require such individuals to disclose their interests. However, the district informed us that it has not implemented a process to determine whether these individuals should file Forms 700. We believe that it is appropriate for the district to require contracted personnel serving in the role of assistant superintendent of business services, for example, to disclose their economic interests because they could have conflicts of interest that would allow them to personally benefit from their influence. By not requiring these individuals to submit Forms 700, the district cannot determine whether they have potential conflicts of interest.

Further, the district did not ensure that its current assistant superintendent of human resources disclosed his financial interests. The district's code requires the assistant superintendent of human



resources to disclose financial interests pursuant to the code's most extensive disclosure category. However, the district's filing officer confirmed that the district did not ensure that this individual disclosed his financial interests in 2017. The district's filing officer initially believed that this individual was a contractor, so she assumed that the board and superintendent had the discretion to determine whether he should file. However, the individual's employment contract clearly states that he is an employee of the district. The filing officer subsequently informed us in April 2019 that the superintendent and assistant superintendent of business services informed her that the individual should report his financial interests.

We also noted that the district did not require the chief executive officer and key employees of Del Terra to file Forms 700 during the period of Del Terra's contracts with the district. Given the significant responsibilities of program and construction managers—which we discuss previously—the district should have determined whether the code's definition of a consultant applied to Del Terra's chief executive officer and its key employees working at the district. However, even if the district determined that these individuals did not meet this legal definition, Del Terra was involved in decisions about how to spend the district's bond funds, such as providing recommendations to district staff about whether to enter into construction contracts. This level of involvement leads us to question whether the district should have required key Del Terra officials to disclose their economic interests.

The FCMAT report also identified concerns with the district's failure to ensure the disclosure of financial interests by its contracted personnel, and it recommended that the district develop a process for evaluating whether these individuals should be required to file Forms 700. The district had not implemented such a process as of April 2019, although the superintendent informed us that it had been contemplating doing so. The assistant superintendent of business services expected the district to address this issue after it selects a law firm to serve as its new general counsel.

## **Recommendations**

### ***Board***

To ensure that it selects the most qualified firms at fair and reasonable prices to perform its contracted architectural services and construction management services, the board should follow the requirements of state law and its own policies in such selections.

To preclude a situation where a contractor oversees its own work, the board should enact a policy by August 2019 to prohibit contracting with the same entity for construction management and program management services.

To strengthen its ability to oversee district expenditures, the board should require the district by August 2019 to prepare monthly summaries that report the total amounts it paid to each of its contractors, along with descriptions of the purpose of those payments, and to include the summaries with the monthly warrant lists it provides to the board.

### ***District***

To ensure proper oversight of construction costs, the district should stop using payment terms for construction management and program management services that base fees on a percentage of construction costs or bonds issued.

To ensure that its contractors fulfill their performance requirements, the district should take the following actions by November 2019:

- Develop contract monitoring procedures with defined staff roles and responsibilities, including retaining evidence of monitoring efforts. The district should also train its staff to follow these procedures.
- Develop procedures specifying a designated location for staff to retain contracts and related documentation and identifying those staff who are responsible for ensuring that these documents are stored appropriately. The district should also train staff to follow these procedures.
- Work with the county office to ensure that its new financial system includes unique identifiers for contract payment authorization documents.

To identify its contracted personnel's potential conflicts of interest, the district should do the following:

- Develop and implement a process by November 2019 to assess whether contracted personnel should be classified as consultants and are therefore subject to the district's code for disclosing financial interests.
- Immediately follow its conflict-of-interest code to ensure that all required individuals file Forms 700.

## Poor Governance Has Led to Violations of State Law and Diminished the Board's Transparency

### Key Points

- Board members have not consistently attended board meetings in recent years, raising concerns about the board's effectiveness in governing the district and potentially delaying decisions. Moreover, the district violated state law by paying stipends to board members for the meetings they missed.
- One board member violated state law by not recusing himself during a key board decision, while a second board member did not provide critical information when she recused herself from a board vote. The two board members' actions limited the board's transparency and accountability to the public.
- The district violated state law in some instances by not posting meeting agendas in a timely manner and by not providing sufficient detail to the public regarding its closed session agenda items, again limiting the transparency of its operations to the public and potentially limiting public involvement.

### Board Member Attendance Practices Have Raised Concerns About Governance

The inconsistent attendance of board members at monthly meetings during fiscal years 2015–16 through 2017–18 has caused concerns about the board's effectiveness in governing. Table 1 summarizes 38 instances when board members were absent either for an entire meeting or for more than half of a meeting's duration. For example, one board member either did not attend or attended less than half of a meeting's duration for six of the 22 meetings in fiscal year 2017–18. Three of the other four board members also had attendance problems: each of these three members either missed or attended less than half of a meeting's duration on multiple occasions in one of three fiscal years from 2015–16 through 2017–18.

Because board members make decisions that affect the strategic direction of the district, it is important that they attend meetings to provide their individual insights and input regarding the district's future. Further, even if the minimum number of board members required for a quorum—three of the five members—is present at a board meeting, the absence of the other board members can delay important decisions. For example, the board had to delay a vote during two consecutive monthly meetings in November and December 2016 to approve a contract to fix leaking roofs at two school sites because one of the three members present at both meetings had to recuse herself. This member had a conflict of interest because she was employed by a charter school organization that used one of the sites needing the repairs. Consequently, the board did not have a quorum in those instances and could not take action on the contract at either meeting. We question how effectively the board performed its governance functions when its members had such inconsistent attendance.

**Table 1**  
**Inconsistent Board Member Attendance May Have Limited the Effectiveness of the Board's Governance**

	ABSENCES (FISCAL YEAR)			TOTAL ABSENCES
	2015-16	2016-17	2017-18	
Total board meetings	19	17	22	
<b>Board Member 1</b>				
Absent for more than half of a meeting	0	0	0	6
Absent the entire meeting	4	1	1	
<i>Total absences</i>	4	1	1	
<i>Percentage of meetings missed</i>	21%	6%	5%	
<b>Board Member 2</b>				
Absent for more than half of a meeting	0	0	1	9
Absent the entire meeting	1	3	4	
<i>Total absences</i>	1	3	5	
<i>Percentage of meetings missed</i>	5%	18%	23%	
<b>Board Member 3</b>				
Absent for more than half of a meeting	0	0	1	9
Absent the entire meeting	3	4	1	
<i>Total absences</i>	3	4	2	
<i>Percentage of meetings missed</i>	16%	24%	9%	
<b>Board Member 4</b>				
Absent for more than half of a meeting	0	3	2	9
Absent the entire meeting	0	0	4	
<i>Total absences</i>	0	3	6	
<i>Percentage of meetings missed</i>	0%	18%	27%	
<b>Board Member 5</b>				
Absent for more than half of a meeting	0	1	0	5
Absent the entire meeting	1	1	2	
<i>Total absences</i>	1	2	2	
<i>Percentage of meetings missed</i>	5%	12%	9%	
<b>Total absences among the five members</b>				<b>38</b>

Source: Analysis of board meeting minutes from fiscal years 2015–16 through 2017–18.

Additionally, the district violated state law by paying full stipends to board members who did not meet attendance requirements. State law allows board members of school districts the size of Alum Rock to receive up to \$400 per month, with limited annual increases, as compensation for their service. Current district policy establishes the compensation for members at a monthly maximum of \$400 each.

However, state law also stipulates that board members who do not attend all meetings held during a month may only receive compensation equivalent to their attendance. For instance, a board member who attended one of two board meetings during a month would only be entitled to \$200—half of the monthly compensation. The district established an additional policy clarifying that to receive credit for attending a meeting, a board member must be present for at least half of the meeting's duration. However, because the district failed to enforce these requirements, it overpaid a total of \$9,733 to five board members who missed board meetings during fiscal years 2015–16 through 2017–18.

The assistant superintendent of business services acknowledged that the district can reduce the amount of a board member's stipend for not attending meetings but said that district staff have not done so because of past concerns about potential retaliation by board members. Given the changed composition of the board, he believes that the district is now more open to enforcing these requirements. He also stated that reducing stipends would help the district reinforce attendance expectations for board members. Full attendance of board members could improve public perceptions of its governance.

### **The Board Violated State Laws at Some Board Meetings**

The board's actions at some meetings may have raised concerns from the public about the transparency of its governance. Specifically, we identified two separate instances in which individual board members violated state law by either not recusing themselves from voting on actions during board meetings or by not following the appropriate requirement when recusing themselves. State law requires that a member of a school district's governing board abstain from voting on personnel matters that uniquely affect the member's relatives or that affect the member's financial interests. However, in one instance, a board member did not recuse himself from a board vote in October 2017 to approve a group of hires and promotions that included his son. In addition, another board member did not follow the appropriate disclosure requirement when recusing herself from a September 2017 board vote on a facility agreement between the district and another entity in which she had a potential conflicting interest.

Although the board member in the second instance did recuse herself from the board decision, which related to a charter school organization that employed her, neither she nor the board president acknowledged before her recusal that she had a financial interest with the organization. The Political Reform Act of 1974 requires that before recusing themselves from a decision in which they have

a financial interest, certain public officials, such as school board members who manage public investments, must publicly disclose that financial interest in sufficient detail so as to be understood by the public. Because neither the board member nor the board clearly stated the reason for her potential conflict of interest, the board did not properly disclose the information in a public forum as the law requires.

We also identified an instance when the board violated Brown Act quorum requirements that specify that if a meeting is conducted by teleconference, a quorum of board members must be present within the district's geographical boundaries. Of the 58 meetings that the board scheduled from fiscal years 2015–16 through 2017–18, a majority of the board—at least three of the five board members—was not present in three instances. Although the board acknowledged its lack of a quorum at two of these meetings and did not vote on any actions, it did not recognize its lack of quorum at the third meeting. At this May 2017 meeting, only two members were physically present within the district, while a third participated by teleconference from another country. Nonetheless, the board made several decisions, including authorizing district staff to issue up to \$35 million in bonds and approving eight contracts each valued at \$100,000 or more, including a contract valued at more than \$6 million. Because the third board member was outside of the district's boundaries, members of the public could have challenged these decisions. Although Brown Act violations do not specifically invalidate decisions on bond issuances, certain contracts, and other items, the board's failure to recognize its lack of a quorum raises concerns about its ability to ensure compliance with transparency and public stewardship requirements.

### **The District and Board Violated State Law Pertaining to Board Meeting Agendas, Notices, and Announcements**

The district also violated the Brown Act when its staff did not post meeting agendas to its website in a timely manner. The Brown Act requires that the district post the agendas for regular board meetings on the district's website and in a location that is freely accessible to members of the public at least 72 hours before the meeting. It places similar requirements on the district for the board's special meetings: the district must post in similar locations notices specifying the time, place, and the business to be transacted or discussed at least 24 hours before each special meeting. As Table 2 shows, when we reviewed 20 regular meetings from fiscal years 2013–14 through 2017–18, we found that the district posted 25 percent of the agendas on its website less than 72 hours before the meetings. In addition, when we reviewed 10 special meetings from fiscal years 2015–16 through 2017–18, we found that the district posted

30 percent of the meeting notices less than 24 hours before the meetings. It was an average of an hour late in posting the agendas for regular meetings and 2.5 hours late in posting the notices of special meetings. Although these delays may seem minor, their frequency may raise concerns among the public about the district's awareness of and adherence to state law.

In fact, when we inquired about the reasons for the late postings, the superintendent's assistants, who are responsible for posting the agendas, stated that they were unaware of the time requirements for posting agendas on the district's website. They also informed us that board members have sometimes wanted to add new items to the agenda on the day the agenda was required to be publicly distributed. For example, we found one revised agenda for a regular meeting in April 2017 that the district posted on its website about one hour after the deadline; on this agenda, the board changed the location of teleconference participation for one board member and added an item for discussion that a second board member submitted.

**Table 2**  
The District Posted Some Agendas Late Because Staff Were Unfamiliar With Posting Requirements

TYPE OF BOARD MEETING	AGENDAS REVIEWED	AGENDAS POSTED LATE	PERCENTAGE OF AGENDAS POSTED LATE
Regular board meetings	20	5	25%
Special board meetings	10	3	30%

Source: Analysis of a selection of the district's meeting agendas and website postings.

Note: We reviewed a selection of regular board meetings that occurred from fiscal years 2013–14 through 2017–18 and a selection of special board meetings that occurred from fiscal years 2015–16 through 2017–18.

We also identified several other Brown Act violations in which the board failed to properly announce in public meetings the agenda items related to real property transactions before it discussed them in closed session. Specifically, the Brown Act requires local public agencies to announce the identities of its negotiators, the real properties that the negotiations may concern, and the persons with whom its negotiators may negotiate. However, at five board meetings—three in fiscal year 2013–14, one in fiscal year 2014–15, and one in fiscal year 2016–17—the board failed to announce the people with whom its negotiators may negotiate before entering closed sessions. The district also failed to identify on the related

agendas all parties participating in the negotiations at these meetings—either its own negotiators or the negotiators for the other party—as indicated by the Brown Act. According to an opinion that California's Attorney General issued in 1990, the intent of the requirement to announce real estate negotiators is to provide members of the public with an opportunity to comment or take a position on a particular item. According to the superintendent, the district relies on advice from its general counsel to comply with Brown Act requirements for how to announce closed-session items at board meetings. Nevertheless, any form of a Brown Act violation—such as posting agendas late or not publicly identifying real estate negotiators—limits the transparency of the board's operations to the public and potentially limits public involvement.

## **Recommendations**

### ***Board***

To ensure compliance with the requirements of the Brown Act for quorums, the board should declare publicly at future board meetings whether a quorum of board members is present before it takes any action.

To ensure compliance with government transparency laws, the board should request training in and adhere to Brown Act requirements and other state law by August 2019. It should also ensure that the district's general counsel is sufficiently knowledgeable to properly advise the board about these requirements.

To ensure compliance with government transparency laws in future meetings, the board should ensure that it publicly identifies all parties involved in real estate negotiations prior to entering closed sessions.

### ***District***

To increase board member accountability at future meetings, the district should adhere to state law and its policies by reducing board member stipends when members fail to attend board meetings.

To ensure compliance with government transparency laws, the district should train staff by August 2019 on the timing requirements of the Brown Act pertaining to publicizing board meeting agendas.



## The Board's Operational Practices Did Not Always Comply With District Policy and Other Requirements

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### Key Points

- The board violated district policy through several of its actions at board meetings. Although some of those actions raise concerns about ethical behavior, the board is not currently subject to a state law that requires government officials to receive periodic ethics training.
- The board has not adhered to requirements in the superintendent's contract on the format and timely delivery of her annual performance evaluations. In particular, the board failed to provide two evaluations to the superintendent and provided two other evaluations late.
- Although the board agreed with nearly all of the recommendations in FCMAT's report on its audit of the district, it has not ensured that the district implemented many of these recommendations.
- The board has not provided adequate support to its bond oversight committee, limiting the effectiveness of that committee's review of the district's bond programs.

### The Board Violated District Policy Through Its Actions at Several Board Meetings

The board failed to consistently adhere to district policies during board meetings. The board conducts its business through board actions; in other words, the board votes or reaches consensus to take action on specific agenda items. We reviewed 50 actions the board took from fiscal years 2013–14 through 2017–18 and identified 11 that violated district policy, as we summarize in Table 3. In these cases, the board either failed to take actions that policy required or it took actions that directly violated policy. According to the district's policies, the board members are to govern responsibly and hold themselves to the highest standards of ethical conduct to maximize board effectiveness and ensure public confidence in the district's leadership. However, by failing to adhere to operational practices in district policy, the board has limited its transparency and effectiveness, as well as eroded the public's confidence in its leadership.

In early 2018, the board violated district policy when it failed to evaluate the proposals it received for general counsel services, which limited its ability to demonstrate that the law firm it selected was the best choice for the district's needs. District policy requires that staff issue a request for proposals when seeking most types of legal services. In addition, the board and the superintendent are required to jointly evaluate law firms for consideration based on various criteria, such as a firm's background, experience, and reputation in education law; its

experience advising or representing school districts in the State; and the appropriateness of its fees. However, the board and the superintendent failed to conduct such an evaluation before the board selected one of the six firms that had submitted proposals to serve as the district's general counsel.

**Table 3**  
**Certain Board Actions Violated District Policy**

MEETING DATE	BOARD ACTION
May 2014	The board extended a meeting's duration more times than the single instance allowed per meeting.
May 2015	The board failed to establish districtwide goals.
May 2016	The board extended a meeting's duration more times than the single instance allowed per meeting.
July 2016	The board approved a reimbursement to a board member for out-of-state travel for a conference not directly related to education or board governance.
August 2017	The board removed and appointed a new president at a meeting that was not designated as the annual meeting for electing the president.
October 2017	A board member voted to hire his son as a district employee.*
November 2017	The board removed and appointed a new president a second time at a meeting that was not designated as the annual meeting for electing the president.
January 2018	The board appointed an attorney from a law firm to serve as the district's general counsel without evaluating any proposals from other law firms.
February 2018	The board approved a legal services contract with the firm of its general counsel without evaluating any proposals from other law firms.
February 2018	The board failed to conduct a required annual self-evaluation.
April 2018	The board president unilaterally directed the district's general counsel to take a specific action without board approval.

Source: Analysis of district policy and board actions from fiscal years 2013–14 through 2017–18.

\* We discuss this action on page 23 because it violated both state law and district policy.

When the board directed staff to begin the search process in a September 2017 board meeting, the board president stated that the board would choose the general counsel and indicated that he was unaware of district policy governing the selection process. In a November 2017 board meeting, district staff requested that the board identify the evaluation criteria for the proposals, but the board did not provide that information. Ultimately, the superintendent communicated at a January 2018 board meeting that district staff had provided board members with six proposals to review but that district staff had not received any direction from the board about the process for selecting a firm. At the same meeting,

one board member commented that she was unclear about the process for making the selection and that she preferred a public interview of the firms at a board meeting to facilitate transparency. Another board member said that he had assumed there would be a selection process to follow and that it would be ideal for staff and board members to form a committee to evaluate the firms against specific criteria. Although multiple members of the public also commented that they were not aware of the process the board was using or that they believed the board should use specific evaluation criteria, the assistant superintendent of business services confirmed that the board did not conduct such an evaluation.

Instead, at the same meeting, the board approved the appointment of a specific attorney as the district's general counsel through a 3-2 vote without conducting any form of comparative evaluation with staff. It approved a contract with that attorney's firm a month later. By failing to adhere to the district's policy for selecting legal counsel, the board committed the district to a contract that it cannot demonstrate to the public was the best choice. If the board had teamed with district staff to conduct an evaluation as district policy requires, it could have presented a summary of the evaluation process at a public meeting and demonstrated the basis for its decision.

The board also failed to develop goals for the district in accordance with another district policy. This policy directs the board to establish a long-range vision for the district and adopt long-term goals that focus on the achievement and needs of district students. District policy further requires that these goals align with the district's vision, mission, philosophy, and priorities, and that they are limited in number so the district can achieve them within established time frames. Although the board most recently worked on developing district goals in 2015, it cancelled the meeting that it had scheduled in May 2015 to complete them, and it did not hold any meetings after 2015 for that purpose. The superintendent confirmed that the board did not subsequently establish goals for the district. She told us she intended to lead discussions about district goal setting in March 2019, after the newly elected board members received training in ethics and board responsibilities; however, in April 2019, the board subsequently postponed those discussions.

Moreover, neither the board president nor the superintendent were able to provide us with the board's vision. When we requested it, the superintendent and board president were only able to provide us with the board's goals from the 2005–06 academic year. Until the board establishes a vision and current goals, it cannot ensure that it provides sufficient direction to the superintendent and district staff about the district's priorities and the appropriate use of district resources to achieve those priorities for the benefit of students and the community.

The board has also failed to conduct annual evaluations of its own performance. District policy requires that the board evaluate itself each year to demonstrate accountability to the community and to ensure that district governance is effectively supporting student achievement and the attainment of the district's long-term vision and goals. This district policy further stipulates that the evaluation address any area of board responsibility, including finance, community relations, relationships among board members, board meeting operations, and communication skills, among others. Although the board publicly discussed in February 2018 the need to hold a meeting at which it could conduct a board evaluation, the superintendent informed us that the board has not conducted such an evaluation since at least 2014. Further, as we discuss previously, the board has not established a vision and goals against which it can evaluate its performance. By not conducting an evaluation for more than four years, the board has neglected to identify ways that it could improve the effectiveness of its governance, including aligning its performance with any goals it may have established for the district. The absence of this evaluation has also hindered the board from demonstrating its accountability to the community, given that the board must conduct any discussion of its evaluation at a public meeting.

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**The board has failed to conduct annual evaluations of its own performance.**

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The board also violated district policy and potentially misused district resources when it approved two travel reimbursements for board members. District policy acknowledges the need for board members to obtain training and allows them to attend conferences for board development in topics related to their board responsibilities. It also allows the district to reimburse board members for their travel expenses with advance authorization from the board. However, in July 2016, the board approved a travel reimbursement of \$1,900 for one of its members to attend an information security conference in Las Vegas even though the description of the conference did not align with board development. We also question the appropriateness of using district funds to pay for this conference, given that this individual's full-time profession appears to be in the information security and information technology industry. In another instance, we noted that the board approved a travel reimbursement of \$350 in February 2016 to cover a portion of a second board member's costs to attend a conference in Colorado related to energy and environmental policy. The topics of this conference also appeared to be unrelated to the topics referenced in district policy.

The superintendent informed us that board members may select conferences to attend and formally seek reimbursement of conference costs and travel expenses, which they did in these two cases. However, district staff are not involved in selecting or approving conferences that board members wish to attend. These two instances raise questions about the appropriate use of district resources because neither conference appeared related to board development, prudent governance, or district issues.

The board took other actions that may cast doubt about its stability and forthrightness. For example, it violated district policy by replacing its board president twice during the same calendar year—once in August 2017 and again in November 2017. The superintendent explained that one board member submitted agenda items to remove the board presidents in both instances but did not provide reasons for those items, yet the board proceeded with replacement of both presidents. District policy requires that the board elect a president only once a year, at its annual organizational meeting, which occurred in December 2016 and December 2017. By removing and appointing a president twice in the same year outside of the annual organizational meeting, the board may have raised concerns in the community about the stability and dedication of district leadership, as well as questions about its integrity in adhering to district policy. The current board president—who did not serve on the board in 2017—hypothesized that no one wanted to be in charge of the district at the time, so the presidency moved among multiple board members throughout that year.

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**The board violated district policy by replacing its board president twice during the same calendar year.**

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Finally, Table 3 shows several other minor violations of district policy. For example, district policy allows the board to extend the ending time of a meeting once per meeting, yet we identified two instances in which the board extended the ending times of meetings twice. Extending meetings multiple times beyond the parameters that district policy defines may erode public confidence in the board's ability to effectively govern, as it raises concerns about how the board can foster community participation in meetings that extend for several hours and go late into the evening. Additionally, the board president directed the general counsel to draft an appeal document without board approval, which district policy requires. Unilateral actions of this nature may further erode the public's confidence in the board's ability to govern effectively and may sow distrust among board members.

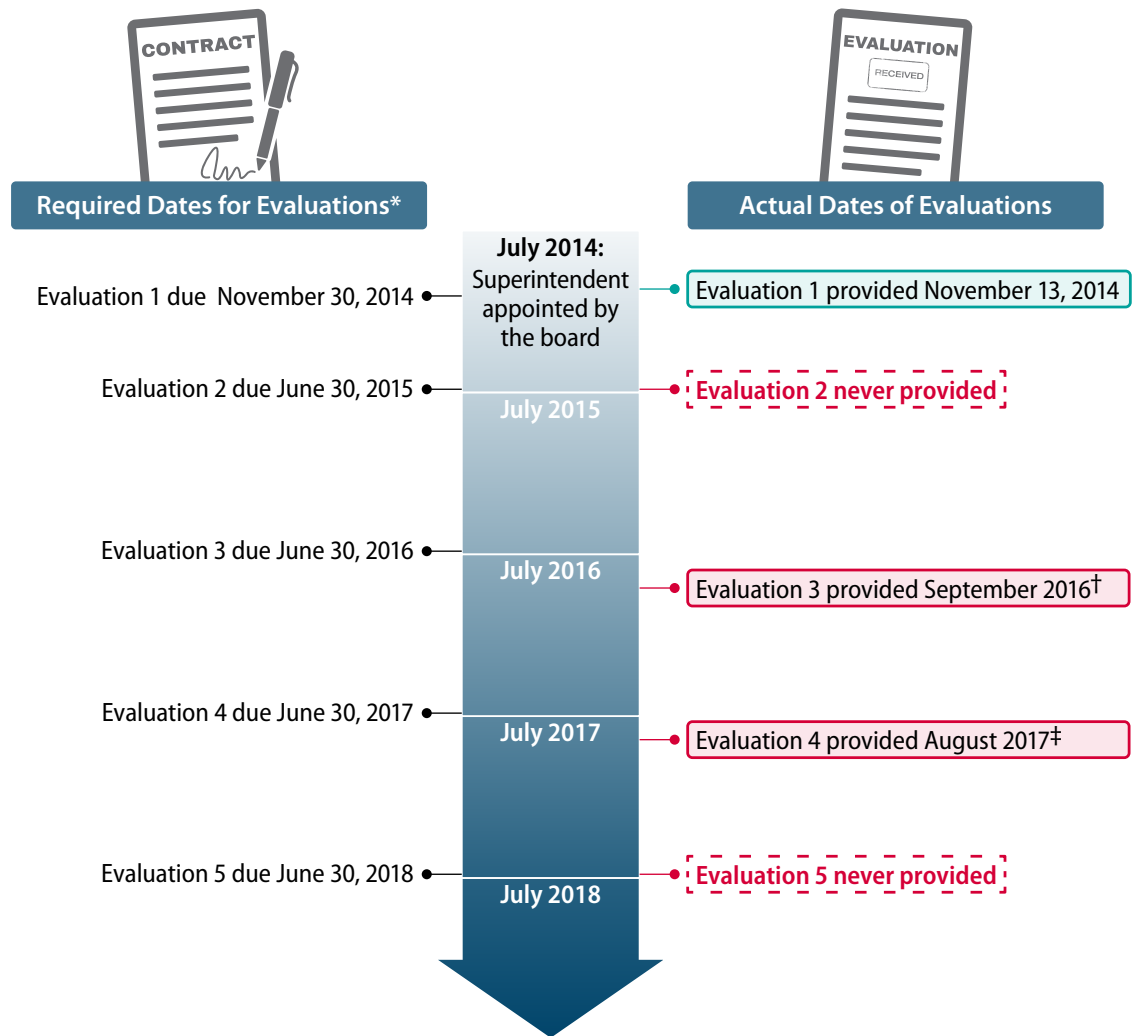
Ultimately, the policy violations we identified raise concerns about ethical behavior of the board members. After we began our audit, all members of the current board received ethics training in February 2019 on topics including government transparency, conflicts of interest, prohibitions against the use of public resources for personal or political purposes, and general ethical principles relating to public service. However, the district could find records supporting the completion of ethics training by board members in only one other instance, which was in February 2013—six years earlier. Several board members informed us that they had received ethics training at different times from external sources, but the district was unable to substantiate those claims or determine that the training covered topics applicable to the responsibilities of board members.

School districts, including Alum Rock, are currently not subject to a state law that requires local agency officials who receive compensation for their service to receive at least two hours of biennial training in general ethics principles and ethics laws relevant to their service. However, the California School Boards Association encourages school board members to review ethics training materials. Given the situations we note in this report when the board violated its policy or state law, it would seem prudent for the district to ensure that board members receive periodic ethics training in areas such as conflict-of-interest laws, government transparency laws, and procurement requirements for public contracts. Moreover, FCMAT has previously reported on other California school districts that have experienced similar concerns with their school boards, and FCMAT has recommended that those boards receive training in the kind of subjects that would be covered in an ethics training course compliant with state law.

### **The Board Has Failed to Evaluate the Superintendent According to the Terms of Her Contract**

The board has continuously not adhered to requirements in the superintendent's employment contract regarding evaluations of her performance. Although the superintendent's contract requires the board to conduct annual performance evaluations of her, the board did not complete these evaluations by June 30 of each year, the deadline in the contract. As Figure 2 shows, during the past four years, the board completed two annual evaluations after the deadline. It did not provide two other annual evaluations to the superintendent at all: one due by June 2015 and another due by June 2018, which the board still had not completed as of March 2019. The superintendent believes she did not receive the most recent evaluation because the board was focused on other matters, notably issues with Del Terra.

**Figure 2**  
The Board Has Failed to Provide the Superintendent With Timely Evaluations



Source: Analysis of the superintendent’s contract, evaluation documents received by the superintendent, and interviews with the superintendent.

\* The superintendent’s initial contract stipulated that her first evaluation was due November 30, 2014, five months after her appointment in July 2014. The contract stipulated that subsequent evaluations were due on June 30 of each succeeding year.

<sup>†</sup> Evaluation 3 is undated and the superintendent cannot recall when she received it. For purposes of determining whether the board completed its evaluation according to the terms of the superintendent’s contract, we used September 2016, the month the board approved the evaluation template form, as the earliest possible date that the superintendent could have received the evaluation.

<sup>‡</sup> Evaluation 4 is undated, but the superintendent acknowledged receiving it in August 2017.

Although the current board president joined the board in December 2018, she believes that the board completed a portion of the superintendent’s evaluation due in June 2018 but never finished it. She also said she was aware of the evaluation deadline in the superintendent’s contract, and she intends for the board to complete the superintendent’s next evaluation by its due date



of June 2019. Nevertheless, the board's failure to provide timely evaluations to the superintendent limits her ability to respond effectively to the board's feedback on her performance and impedes the board's ability to verify that she is overseeing the district's operations in a manner consistent with its expectations. Moreover, without timely evaluations, the public does not have sufficient assurance that the board is monitoring the superintendent's performance.

The superintendent's contract additionally requires that the board and the superintendent mutually agree on the format of her evaluations. Although the superintendent and the board president agreed on a format for the evaluation she was to receive in 2017, the board used a different format instead. Specifically, the superintendent and board president agreed that board members would provide narrative comments without numerical scores to the board president, who would consolidate those comments into a single document. However, our review of individual board members' comments and the consolidated document found that the final evaluation document included numerical scores and did not appear to reflect the positive narrative comments of one board member.

According to best practices for effective school board governance from the California School Boards Association, one of the most important accountability tools for a school board is the evaluation of its superintendent. The evaluation process allows the board to work with the superintendent to establish performance targets, monitor performance periodically, and identify ways to improve performance. In addition, the board's accountability to the public can be achieved through monitoring organizational performance and reporting the results to stakeholders. Therefore, it is critical that the superintendent's evaluations accurately reflect the input and perspectives of all board members to ensure that the board is able to oversee whether her performance aligns with its expectations.

Moreover, the district did not retain copies of those evaluations that the board did perform. Although the superintendent's contract specifies that copies of her evaluations are to be maintained in her personnel file, we determined that this file did not contain any such documents. Instead, the superintendent provided us with copies of her evaluations that she had personally retained. The interim assistant superintendent of human resources could not explain the absence of these evaluations in her personnel file but agreed that they should be retained.



## The Board Has Not Implemented Key FCMAT Recommendations

Although the board fully or partially agreed with nearly all of the 52 recommendations in the June 2017 FCMAT audit report, the district had fully implemented only nine of these recommendations as of March 2019. As the FCMAT report states, the recommendations are intended to promote sound financial practices and help create efficient organizational operations—elements that are consistent with FCMAT’s mission and function, as the text box describes. The board indicated in its July 2017 response to the audit that it was committed to addressing all of the recommendations. However, we identified 21 recommendations, as we summarize in Appendix B, that remain outstanding. For example, FCMAT recommended that the district develop a process to evaluate whether its consultants and independent contractors should be required to disclose their economic interests. As we discuss previously, the district has not yet taken such action. If it had done so, it would have had greater assurance that its contractors did not have conflicts of interest.

### FCMAT’s Mission and Function

- FCMAT helps the State’s local educational agencies fulfill their financial and management responsibilities by providing fiscal advice, management assistance, training, and other related school business services.
- FCMAT responds directly to requests from school districts and county offices of education that seek advice to improve management practices, business policies and procedures, or organizational structure.

Source: FCMAT’s website.

In addition, we identified 21 other recommendations pertaining to the district’s program and construction management contracts with Del Terra that are not currently applicable because the board terminated those contracts.<sup>2</sup> Even though the board terminated the two contracts in May and December 2018, respectively, we believe that the district should follow through with addressing many of these recommendations so that it can ensure that its subsequent program managers and construction managers adhere to the terms of their contracts. For example, the district should implement procedures to enforce the terms of its future contracts to ensure that its program managers and construction managers adhere to their scopes of work and produce required program and project reports. We believe that the district should use this opportunity to strengthen its management over these roles before selecting new firms to take over Del Terra’s responsibilities.

The district’s delay in implementing the FCMAT recommendations can be partially attributed to the board, which has not directed district staff to formally track and document implementation efforts. Although staff provided the board with limited updates on certain recommendations, such as their efforts to recover

<sup>2</sup> We also identified one unrelated recommendation that the district has not implemented because it is no longer applicable. That recommendation also appears in Appendix B.

missing construction management documents from a contractor, neither staff nor the board have systematically monitored the district's actions toward implementing the recommendations. According to the assistant superintendent of business services, the board did not direct staff to prioritize monitoring the district's implementation efforts, and staff did not believe they had the authority to implement most of the recommendations without board approval. Although the board will likely need to be directly involved with implementing certain recommendations, such as updating board policies to ensure that they reflect the latest statutory requirements, we believe that staff could have taken more initiative in implementing others. Further, we expected the board to have assumed responsibility for ensuring that staff tracked the implementation efforts because it committed in its formal response letter to addressing all recommendations.

When we asked each of the board members whether the board had required district staff to monitor the status of implementation efforts, none asserted that the board had done so. The new board president said she did not know why the previous board did not require staff to track the district's implementation status. If the board began tracking the status of outstanding recommendations, it could monitor the district's progress toward promptly resolving them. According to the new board president, the board intends to address the outstanding FCMAT recommendations, although she was unsure how long their implementation would take. By prioritizing the implementation of the remaining recommendations, the board can demonstrate to the community its ongoing commitment to improve its governance over district operations.

### **The Board and District Have Not Provided Adequate Support to the Citizens' Bond Oversight Committee**

By not consistently providing the district's citizens' bond oversight committee (bond committee) with timely support, the board has hindered the committee's ability to inform the public about the spending of bond funds and to ensure that bond funds are used only for allowable purposes. State law requires the board to provide the bond committee with technical and administrative assistance in furtherance of the committee's purpose and with sufficient resources to publicize its conclusions. Because the nature of this assistance involves the responsibilities of district staff, we would expect the board to hold the district accountable for responding to the bond committee's requests. However, the district's lack of responsiveness to many such requests leads us to conclude that the board did not do so.

We reviewed a selection of bond committee meeting minutes from fiscal years 2013–14 through 2017–18 and found that committee members frequently requested technical assistance and support from the district and its program manager, Del Terra. However, the district could not provide evidence that it provided specific assistance pertaining to eight of 12 requests we reviewed. For example, the bond committee asked district staff during a meeting in February 2018 to provide a bond expenditures report comparing projected and actual costs for the 2016–17 academic year. However, according to the bond committee’s chair at that time, neither Del Terra nor district staff provided the bond committee with the requested report. District policy does not require the district staff to maintain records of the assistance or support they provide to the bond committee. Further, the assistant superintendent of business services informed us that although he provided committee members with general technical support, he did not consistently maintain records describing the technical support the district provided in response to the committee’s requests. Consequently, the district cannot demonstrate that it provided adequate support to the bond committee.

.....

**The district could not provide evidence that it provided specific assistance to the bond committee pertaining to eight of 12 requests we reviewed.**

.....

State law requires the district to conduct annual independent performance and financial audits of its Measure J school bond funds to ensure that it uses those funds only for legitimate purposes. The law also authorizes the bond committee to review those audit reports as part of its oversight role and requires that the district provide copies of the reports to the bond committee by March 31 of the year following the fiscal year of the audit. Further, the bond committee is required to issue a report on the results of its oversight activities at least once a year, and this report may also include the committee’s response to the audits. Although the district provided the audit reports for fiscal years 2014–15 and 2015–16 to the bond committee within the required deadline, it did not meet the deadline for the fiscal year 2016–17 reports.

The district provided a draft version of those reports in time for the bond committee’s May 2018 meeting, but it had not submitted final versions to the bond committee as of April 2019 because the board never approved these audits. The bond committee noted in its 2017 annual report to the board that it was only able to provide

a provisional response to the audits and that its response could change if there are revisions to the audit reports, such as additional disclosures about the district's use of bond funds. The bond committee's note demonstrates that it needs to receive the final audit reports in a timely manner to ensure that it has sufficient information to conduct its oversight.

In addition, the district does not maintain sufficient records to determine whether the bond committee members meet the statutory requirements for membership composition. As we discuss in the Introduction, state law requires the bond committee to include representatives from different groups, including a member from a senior citizens' organization and a member of a taxpayers' organization. We reviewed a selection of applications from individuals who served on the committee from fiscal years 2013–14 through 2017–18 and found that the district did not maintain supporting evidence to demonstrate how it determined that particular individuals met the qualifications for representing those two groups. For example, an applicant in 2017 did not identify on his application that he was a member of a taxpayer organization, despite his being designated as the bond committee's taxpayer organization representative. The district was unable to provide us with evidence to support this designation. As a result, the district does not have assurance that the committee represents all the required constituencies.

## **Recommendations**

### ***Legislature***

To ensure that school district boards are knowledgeable about the ethical principles and laws that public officials must follow, the Legislature should amend state law to require members of school district boards who are compensated for their services to receive ethics training once every two years.

### ***Board***

To comply with district policy and improve transparency, the board should work with district staff to evaluate law firm proposals against criteria when it next contracts for a general counsel. Further, the board should publicly report the results of its evaluation.

To ensure that it provides a clear strategic direction for the district, the board should develop a vision and establish goals for the district by November 2019 and regularly monitor progress toward achieving these goals, as district policy requires.

To provide additional transparency and ensure that its performance is meeting the needs of the district, the board should conduct an annual self-evaluation by November 2019 and publicize the results.

To increase the board's accountability and ensure the prudent spending of district funds, the board should implement procedures by August 2019 requiring that its members document on their requests for reimbursement how their travel complies with district policy.

To improve organizational stability and increase transparency, the board should comply with district policy pertaining to other operational practices, including appointing a new board president only during its annual organizational meeting unless otherwise required to do so by policy, and limiting extensions of board meeting ending times to the single instance allowed per meeting.

To assess whether the superintendent's performance aligns with the board's expectations, the board should provide timely annual performance evaluations in an appropriate format. Further, the district's human resources department should maintain copies of these evaluations.

To demonstrate its commitment to improving its governance over the district's operations, the board should immediately direct district staff to track and prioritize the implementation of the remaining outstanding recommendations from the FCMAT audit report. The board should also direct staff to analyze the recommendations relating to its terminated contracts with Del Terra, identify those recommendations that will continue to be relevant after the appointment of a new construction manager and a new program manager, and implement policies to strengthen the district's monitoring of those contractors. The board should then monitor the status of the recommendations to ensure their implementation.

To ensure that the bond committee receives the assistance it requests from the district to perform its oversight duties, the board should create a policy by August 2019 requiring district staff to document the assistance they provide to the bond committee and to regularly report to the board on the nature and frequency of this assistance.

***District***

To reinforce the ethical principles, laws, and policies that the board must follow, the district should establish a policy by July 2019 to provide biennial training to board members on ethics, applicable government transparency, conflict-of-interest requirements, and district policies.

To ensure that the bond committee receives timely and accurate information from the annual audits of the district's bond funds, the district should immediately begin to monitor the progress of the audits and prioritize their completion within nine months after the end of each fiscal year.

To ensure that the bond committee includes representatives from all required constituencies, the district should verify and document representation of the committee members that the board appoints.

## OTHER AREAS WE REVIEWED

To address the audit objectives approved by the Audit Committee, we also reviewed the subject areas detailed in Table 4. The table indicates the results of our work in these areas and any associated recommendations that do not appear in the other sections of this report.

**Table 4**  
Other Areas Reviewed as Part of This Audit

Bond Issuance Costs
<p>The district violated state law and its own policy when it failed to publicly disclose cost information after issuing general obligation bonds to finance the improvement of its schools, thereby limiting transparency to the public. A general obligation bond is a voter-approved debt instrument the district can issue; it is payable from the proceeds of taxes levied on property within the district's boundaries. State law requires the board to present the district's actual cost for a sale of these bonds at its next scheduled public meeting following the sale—a requirement also stipulated in district policy. The district's actual costs for issuing bonds include the fees it pays to its bond disclosure counsel, its financial advisor and consultants, the bond underwriter's counsel, and the rating agency.</p> <p>For one of three general obligation bonds the district issued from fiscal years 2013–14 through 2017–18, the district's financial advisor appropriately presented at the required board meeting the actual costs of \$239,000 for the bond issuance of \$32.4 million. However, the board did not present information on actual costs at the meetings following the other two bond issuances, which totaled \$21.1 million. When we asked why the board did not disclose the actual cost information for those two bond issuances, the assistant superintendent of business services said he was unaware of the legal requirement to do so, even though district policy clearly states this requirement. Although he said that the district relied on its bond counsel and financial advisor to meet all bond-related requirements, we determined that this particular requirement was not explicitly stated in the district's contract with its financial advisor. He further noted that he works with the advisor when the district issues bonds, and he reviews the district's contract with the advisor to determine what information the advisor should provide to the district. However, even without knowledge of the relevant legal requirements, district staff should have been familiar with district policy and ensured that either the advisor or the board disclosed the cost information.</p> <p><b>Recommendation</b></p> <p><i>To fulfill requirements in state law and district policy for presenting actual cost information of bond sales, the district should ensure that the board provides this information after each future bond issuance. If the district intends to rely on its financial advisor to present this information, the district should modify its contract with the advisor to explicitly require the advisor to present this information.</i></p>

continued on next page ...

### Emergency Repair Contracts

The board approved a resolution giving district staff authority to enter into contracts to conduct emergency repairs after a fire at a district school site in February 2016. State law allows the board to delegate the responsibility of awarding emergency contracts to district staff, and at a special board meeting in March 2016, all five members of the board approved a resolution declaring emergency conditions at that school and authorizing the district to award a contract for repairs without requiring bids from multiple companies. District staff used this authority to enter into a contract with HARBRO of Northern California, Inc. (HARBRO), a company specializing in emergency services and property restoration. However, the district later acknowledged that the contract had terms that were potentially unfavorable to the district.

The district's director of maintenance awarded the contract of \$525,000 on behalf of the district to HARBRO, with whom he had been employed before he came to work at the district. Although he acknowledged the connection and the superintendent was aware of this contract, this situation still creates the appearance of possible favoritism toward the contractor. Further, when the district entered into the contract, the director of maintenance initially used the contractor's service agreement form as the formal contract document instead of the district's standard contract forms for repair and construction work. The district later signed a new agreement in May 2016 using the district's own forms.

According to a legal memorandum that the district's general counsel prepared during the period of the contract, the contractor's service agreement form did not include several provisions that board policy requires, and it also contained nonstandard terms that were potentially unfavorable to the district. We found that the agreement lacked a nondiscrimination clause, a conflict-of-interest clause, and a not-to-exceed maximum contract amount, leaving the district without assurance that the contractor would comply with district policy or that the district's obligation would be limited to a specific amount. The assistant superintendent of business services acknowledged that this contracting arrangement was problematic, and he said that if a concern had arisen before it entered the new agreement using the standard form, the district would have had to seek legal assistance to resolve that concern.

We also determined that the district lacks policies or procedures addressing contracting requirements under emergency conditions. According to the director of maintenance, he used HARBRO's service agreement form because he was not aware of the appropriate form to use for emergency repair services and had initially anticipated that the nature of those services would not result in a large project. He said that the assistant superintendent of business services at that time subsequently asked him to use the district's standard form after realizing that HARBRO would not complete its services as quickly as expected. Although the superintendent indicated that she relied on that former assistant superintendent to ensure that the district complied with legal and policy requirements, the superintendent is ultimately responsible for ensuring that her staff comply with those requirements.

#### **Recommendation**

*To ensure that district staff have appropriate guidance when awarding contracts under emergency conditions, the district should create and implement by November 2019 policies and procedures describing the protocol for awarding emergency contracts, including the use of the district's standard contracting forms. The district should also train staff to follow these policies and procedures.*



**Retaliation**

The Audit Committee directed us to determine, to the extent possible, whether the board or individual board members interfered with, directed others to interfere with, or took any action intended to retaliate against employees who provided information to aid in investigations or who exercised their rights under applicable whistleblower laws. To address this objective, we interviewed key staff and board members, reviewed the personnel files of 12 current and former district staff members who have or had frequent contact with the board, and reviewed the state's civil jury instructions for whistleblower retaliation. Within the personnel files, we did not identify any documentation of any adverse employment actions, such as a demotion or termination of employment, that could constitute retaliation for whistleblower activities or aiding an investigation.

However, we did note that the Superior Court of Santa Clara County issued a civil restraining order against a board member in 2018 after finding that he had threatened the superintendent with violence during a closed session in August 2018 involving a discussion of the district's contracts with Del Terra. This individual is no longer a member of the board as of December 2018. Courts have ruled that harassment of this type may be an adverse employment action for which an employee may file a claim for whistleblower retaliation. Further, before this closed session, the superintendent had informed the board in 2016 of various potential violations of law and district policy associated with Del Terra's contracts. Based on these court rulings, the timing of events, and the related facts and circumstances, we believe that a judge or jury could reasonably find that the board member's threats were motivated, at least in part, by whistleblower activities related to the Del Terra contract. However, without a full hearing and testimony under oath, it is not possible for us to determine whether all the elements of a retaliation claim would have been satisfied.

Finally, other district employees informed us that they had felt uncomfortable or insulted by individual board members' actions. Such behavior by board members is contrary to the district's policy on its governance standards, which require board members to establish a positive organizational culture, operate openly with trust and integrity, govern in a dignified and professional manner, and treat everyone with civility and respect.

**Recommendation**

*To reinforce the governance standards that district policy requires board members to adhere to, the board should develop a code of conduct for board members to follow and adopt it at a public meeting by July 2019. The board should review and update this code of conduct each year as needed to reaffirm its commitment to the district's governance standards.*

We conducted this audit under the authority vested in the California State Auditor by Government Code 8543 et seq. and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
California State Auditor

Date: May 23, 2019

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## APPENDIX A

### Scope and Methodology

The Audit Committee directed the California State Auditor to examine the district's compliance with laws and policies related to its governance, operations, and contracting practices. Specifically, the Audit Committee directed us to review whether board actions adhered to applicable laws and regulations and whether the district's contracting practices adhered to applicable laws, regulations, and best practices. Table A lists the objectives that the Audit Committee approved and the methods we used to address them.

**Table A**  
**Audit Objectives and the Methods Used to Address Them**

AUDIT OBJECTIVE	METHOD
<p>1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.</p>	<p>Reviewed relevant laws and regulations applicable to the district's governance, operations, and contracting practices.</p>
<p>2 Review the board's actions over the past five years and, for a selection of ten actions each year, perform the following:</p> <p>a. Determine whether the board adhered to applicable laws and regulations, including, but not limited, to the Political Reform Act.</p> <p>b. Determine whether those actions had or could have any negative impact on the financial stability of the district.</p> <p>c. Determine whether those actions had or could have any negative impact on the district's administrative and programmatic stability or its ability to provide required student educational services.</p>	<ul style="list-style-type: none"> <li>• Judgmentally selected 50 board actions from fiscal years 2013–14 through 2017–18. Based on our review of the actions and issues related to board governance, we selected more actions for review from fiscal years 2016–17 and 2017–18 than from the other three fiscal years.</li> <li>• Determined if each of the 50 selected board actions complied with relevant district policy, Political Reform Act requirements, and other relevant state laws.</li> <li>• Interviewed district staff and financial advisors regarding the impact of the board's actions on the district's financial and operational stability and on services it provides to students.</li> <li>• Analyzed whether board actions negatively affected the district's administrative and programmatic stability or its ability to provide required student educational services. We found no significant negative impact in these areas.</li> </ul>
<p>3 Determine whether any member of the board has undertaken efforts to interfere in the operations of the district, misappropriate funds, or issue contracts and contract payments in violation of applicable laws.</p>	<ul style="list-style-type: none"> <li>• Interviewed district staff and reviewed the district's processes for approving and issuing payments.</li> <li>• Assessed a selection of 20 payments from fiscal years 2013–14 through 2017–18 to determine if the district followed its processes, obtained appropriate approvals, and maintained evidence that it was appropriate to issue payment.</li> <li>• Conducted additional work related to the board's issuance of contracts as a part of Objective 7.</li> <li>• Our review found no evidence that any board member undertook efforts to interfere with the operations of the district by misappropriating funds or issuing payments in violation of applicable laws.</li> </ul>
<p>4 For a selection of employment decisions relating to the superintendent and any other district staff reporting directly to the board, determine whether the board's actions, if any, were consistent with and adhered to applicable employment laws.</p>	<ul style="list-style-type: none"> <li>• Reviewed a selection of eight employment decisions related to the superintendent and other management staff to determine if the board's actions complied with applicable state law. We found that the board's actions adhered to applicable employment laws.</li> <li>• Reviewed the requirements of the superintendent's contract related to performance evaluations and assessed the board's compliance with these requirements.</li> <li>• Interviewed the superintendent and the board president to obtain their perspectives.</li> </ul>

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AUDIT OBJECTIVE	METHOD
<p>5 Assess the board's compliance with the Brown Act with regard to providing notice and conducting regular open meetings and closed-session meetings.</p>	<p>Interviewed district staff and reviewed a selection of 20 regular board meetings from fiscal years 2013–14 through 2017–18 for compliance with Brown Act requirements for posting agendas, describing closed-session items, and disclosing in open session the actions taken in closed session.</p>
<p>6 For a selection of financially related actions taken by the board during the last five years, determine whether the conduct of board members, including but not limited to their dealings with municipal finance firms—such as underwriters, financial advisors, bond counsel, or construction contractors—adhered to applicable ethics and bond laws.</p>	<ul style="list-style-type: none"> <li>• Reviewed seven financially related actions as part of the work we describe for Objective 2, where we reviewed 50 board actions.</li> <li>• Judgmentally selected and reviewed an additional three financially related actions to determine whether the conduct of board members adhered to applicable ethics and bond laws. In total, we reviewed 53 board actions.</li> </ul>
<p>7 For a selection of construction, legal services, and bond program management services contracts, determine whether the solicitation, awarding, and monitoring of the contracts complied with applicable laws, regulations, and best practices relating to conflicts of interest and municipal contracting practices.</p>	<ul style="list-style-type: none"> <li>• Judgmentally selected 10 construction, legal services, and bond program management services contracts to determine whether the solicitation, awarding, and monitoring of the contracts complied with applicable laws, regulations, and best practices.</li> <li>• Reviewed Form 700 filings from 2013 through 2017 for all board members and selected district staff to determine whether any of these individuals had conflicts of interest. We identified no disqualifying financial interests for any of these individuals.</li> <li>• Interviewed the superintendent and other district staff to obtain their perspectives.</li> </ul>
<p>8 Determine whether the board disseminated accurate information to taxpayers regarding the approval of bonds, the sale of bonds, the use of bond funds, or the issuance, sale, or use of Certificates of Participation.</p>	<ul style="list-style-type: none"> <li>• Reviewed all six bond issuances which the district made from fiscal years 2013–14 through 2017–18 to determine whether the board disseminated accurate information to taxpayers.</li> <li>• Reviewed the district's audited financial statements and confirmed with district staff that the district did not issue Certificates of Participation—financing instruments that allow investors to purchase shares of lease revenue from a program—from fiscal years 2013–14 through 2017–18. The district most recently issued these certificates in 2010, which is outside of our audit period.</li> </ul>
<p>9 Determine whether the board followed applicable laws, regulations, and policies in making appointments to or otherwise overseeing the implementation and operation of the bond committee.</p>	<ul style="list-style-type: none"> <li>• Reviewed the board's appointments to the bond committee from fiscal years 2013–14 through 2017–18 to determine whether the board followed applicable laws, regulations, and policies.</li> <li>• Reviewed a selection of board minutes and all annual reports from fiscal years 2013–14 through 2017–18 to determine whether the board provided adequate technical support and resources to the bond committee per state law.</li> <li>• Interviewed the bond committee's former chair to obtain perspective on the sufficiency of the board's assistance to the bond committee.</li> </ul>
<p>10 To the extent possible, determine whether the board, individual board members, or board staff interfered with, directed others to interfere with, or took any action intended to retaliate against employees who exercised their rights under applicable whistleblower laws or provided information to aid any investigation or review, including any investigations conducted by the U.S. Securities and Exchange Commission or the Santa Clara County District Attorney.</p>	<ul style="list-style-type: none"> <li>• Interviewed all five board members and obtained their perspectives regarding their communications with district staff, their knowledge of any whistleblower complaints made by staff, and staff cooperation with various investigations and reviews of the district from the county and other entities.</li> <li>• Interviewed key district employees to obtain their perspective as to whether they believed they were retaliated against by board members.</li> <li>• Reviewed the personnel files for 12 current and former staff members with frequent interactions with the board to determine if any personnel actions appeared retaliatory.</li> </ul>
<p>11 Determine whether, during the past three years, the board disagreed with any findings or recommendations of FCMAT, the county office, or the 2017–18 Santa Clara County Civil Grand Jury report and whether this disagreement may have undermined the ability of the district to meet the needs of its students.</p>	<ul style="list-style-type: none"> <li>• Reviewed the board's responses to the FCMAT audit report, civil grand jury report, and county office budget letters to determine whether the board disagreed with any findings or recommendations from these reports.</li> <li>• Assessed the district's progress in implementing recommendations from the FCMAT audit report.</li> <li>• Interviewed staff from the county office as well as the fiscal expert team and fiscal advisor appointed by that office to determine whether board disagreement with any of these findings or recommendations may have undermined the district's ability to meet the needs of its students.</li> </ul>

AUDIT OBJECTIVE	METHOD
<p>12 Review and assess any other issues that are significant to the audit.</p>	<ul style="list-style-type: none"> <li>• For a selection of 10 special board meetings from fiscal years 2015–16 through 2017–18, assessed the district’s compliance with Brown Act requirements for providing notice for special board meetings and limiting business discussed at special board meetings to the items noticed on the agenda.</li> <li>• For each board meeting the district conducted from fiscal years 2015–16 through 2017–18, determined if the board achieved a quorum and, if it did not, whether the board inappropriately took any actions.</li> <li>• Obtained payment records for each board member from fiscal years 2015–16 through 2017–18 and assessed whether the district had appropriately adjusted the board members’ pay based on absences from board meetings.</li> </ul>

Source: Analysis of the Audit Committee’s audit request number 2018-131 and information and documentation identified in the table column titled Method.

### Assessment of Data Reliability

In performing this audit, we obtained electronic data relating to certain contract documents from the district’s financial system, eFinance Plus by SunGard. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of any computer-processed information we use to support our findings, conclusions, or recommendations. We found that the district does not maintain a centralized document repository for the hard copies supporting these contract documents; instead, it stores these documents in one of six possible locations, including offsite with one of its contractors. To evaluate these data, we performed data-set verification procedures and interviewed key staff knowledgeable about the data. Because of the fragmented document storage system described above, we were unable to perform completeness testing of these data, so they are of undetermined reliability for our audit purposes. Nevertheless, we did perform limited accuracy testing to gain some assurance of the accuracy of these data and found no inaccuracies.

We also obtained a list of board meetings from the district’s website for fiscal years 2013–14 through 2017–18. We found that the district does not maintain a complete inventory of board meetings separate from the website that we could use to verify the completeness of this list, precluding us from performing accuracy or completeness testing on this list. Although these limitations may affect the precision of the numbers and information we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

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## APPENDIX B

### Implementation Status of FCMAT's Recommendations

Table B identifies the recommendations that FCMAT presented to the district in an extraordinary audit report that it issued in June 2017. For each recommendation, we reviewed the district's actions and assessed the extent to which it implemented the recommendation. The district's actions subsequent to the report, such as terminating its contracts with Del Terra, caused several recommendations to not be applicable at this time. However, as we previously discuss, the district will still need to follow through with addressing these recommendations so that it can ensure that its future program managers and construction managers adhere to the terms of their contracts.

**Table B**  
Summary of Implementation Status of FCMAT Recommendations as of March 2019

NUMBER	DESCRIPTION	IMPLEMENTATION STATUS
1	The district should follow industry best practices by using a request for qualifications or request for proposal (RFQ/RFP) process for procuring program management and construction management services.	Not implemented
2	The district should consider completing a more detailed annual performance audit using a new audit firm selected by an RFQ/RFP process.	Not implemented
3	The district should regularly review and update board policies and administrative regulations to ensure that they remain relevant and reflect the latest statutory requirements and district objectives.	Not implemented
4	The district should establish regular training on the identification and prevention of fraudulent activity for all staff.	Not implemented
5	The district should ensure that any changes to the terms and conditions of contracts, purchase orders, or other documents approving payments are completed in writing with the appropriate notifications to staff and departments.	Not implemented
6	The district should hold an orientation meeting between incoming and outgoing business positions, including but not limited to the assistant superintendent and director of facilities positions, to ensure continuity in the transition.	Not implemented
7	The district has inconsistent accounts payable practices and record-keeping, particularly among transactions requiring formal bidding. Therefore, the district should retain the appropriate records as required by law.	Not implemented
8	The district should develop a process to evaluate consultants or independent contractors and whether they should be required to file Forms 700. The district should obtain Forms 700 from designated consultants or independent contractors within 30 days of their hire date or contract termination and on an annual basis, as applicable.	Not implemented
9	The district should ensure that all new employees, consultants, and elected or appointed board members who are in the designated classifications that require them to complete Forms 700, submit the form within 30 days of taking or leaving office or employment, and on an annual basis as applicable.	Not implemented
10	The district should review existing board policies pertaining to Business and Noninstructional Operations, Facilities, and Board Bylaws for existing references to debt or bonds that might be removed in light of adoption of a single comprehensive policy.	Not implemented
11	The district should develop a process and set of procedures for California Uniform Public Construction Cost Accounting Act (CUPCCAA) compliance and management of the program by staff, implemented by Del Terra, if appropriate. This should include updated status sheets and a discussion between staff and Del Terra on CUPCCAA compliance for current and future years.	Not implemented

Total FCMAT recommendations not implemented:

11

NUMBER	DESCRIPTION	IMPLEMENTATION STATUS
12	The district should require Del Terra to immediately turn over all project files and documents to the district in an organized fashion. As per the program management contract, Del Terra should also assist the district in organizing the filing system and plan room.	Partially implemented
13	The district should require all documents and records regarding Del Terra's performance on the CUPCCAA process to be turned over to the district.	Partially implemented
14	The district should develop and implement a new system for numbering and identifying contracts versus purchase orders.	Partially implemented
15	The district should train all accounting, business, and purchasing staff and management on this new multiyear tracking system, with training manuals at all desks.	Partially implemented
16	The district should require Del Terra to forward all documents and plans to the district upon completion of all projects, including past projects.	Partially implemented
17	The district should establish a culture of trust in the district. The tone at the top is essential to fostering a culture of ethical behavior. Governing board members and administrators should demonstrate a high moral and ethical example by gaining a thorough understanding of established policies and operational procedures and adhering strictly to them. The duties and responsibilities of staff members in each department should be segregated, as well as those of supporting employees who are responsible for enforcing established policies.	Partially implemented
18	The district should ensure that employees are aware of board policies and that policies remain accessible for public and staff reference.	Partially implemented
19	The district should consider terminating the construction management services contract with Del Terra and selecting an outside firm that is not associated with the program manager to provide adequate program accountability.	Partially implemented
20	The district should make renewed efforts to obtain full bond committee membership with a minimum of seven people and all required categories filled. Even without full membership, quarterly committee meetings should be held.	Partially implemented
21	The district should ensure that its elected officials, administration, and designated employees complete ethics training regarding the roles and responsibilities of public officials in relation to conflicts of interest and the Political Reform Act.	Partially implemented
<b>Total FCMAT recommendations partially implemented:</b>		<b>10</b>
22	The district should require Del Terra to provide a dated status spreadsheet of all projects from the beginning of the Division of the State Architect (of the California Department of General Services) closeout services that includes the following information: <ul style="list-style-type: none"> <li>• The original projects that need to be certified (not all district projects ever completed, which causes confusion).</li> <li>• The status of each project and whether the Del Terra Group obtained the certification and date of certification.</li> <li>• An indication of the project certification work in progress and any significant issues.</li> <li>• A bottom-line total of projects still uncertified.</li> </ul>	Fully implemented
23	The district should hold quarterly bond committee meetings and include detailed financial and schedule information.	Fully implemented
24	The district should have the bond committee present an annual report to the board at a regular meeting, with presentations by the committee officers, rather than the program manager.	Fully implemented
25	The district should select a new multiyear tracking system—for service contracts, purchase orders, and fees—from an outside vendor using an RFQ/RFP selection process. Del Terra should not manage this system.	Fully implemented
26	The district should require that all invoices submitted for payment include the project reference or name and job code prior to making payments.	Fully implemented
27	The district should ensure that all purchase orders or contracts are approved in advance of any work that is performed.	Fully implemented
28	The district should complete the project closeout process for the San Antonio Elementary School project with the Office of Public School Construction to ensure that the first three years of debt service payments on the certificates of participation can be made with the state aid received as a reimbursement for this project.	Fully implemented*
29	The district should develop a long-term strategy to budget for debt service payments on the certificates of participation after state aid for the San Antonio Elementary School project is exhausted.	Fully implemented*



NUMBER	DESCRIPTION	IMPLEMENTATION STATUS
30	The district should adopt a comprehensive written debt management policy and administrative regulation that conforms to the requirements of both Senate Bill 1029 and the Government Finance Officers Association's published best practices.	Fully implemented
<b>Total FCMAT recommendations fully implemented:</b>		<b>9</b>
31	The district should request and review all information regarding compliance with the California Environmental Quality Act and develop a process for retroactive and proactive compliance.	Not currently applicable <sup>†</sup>
32	The district should hire legal counsel to review the three board-approved contracts for the program management and construction management services to provide district administration and staff with recommended changes and corrections in the contracts for future possible renegotiation and/or new contracts. Legal counsel should be familiar with providing school districts with strong and defensible language that provides legal protection and adequate enforcement of requirements for the vendor.	Not currently applicable <sup>†</sup>
33	The district should renegotiate all Del Terra contracts to include the following: <ul style="list-style-type: none"> <li>• A list of projects subject to the contract.</li> <li>• A not-to-exceed amount of the contracts from both Measures J and I.</li> <li>• A change to the fee structure to an hourly basis for actual work performed, with adequate documentation, including timesheets, to accompany each monthly invoice.</li> <li>• A requirement for all changes regarding fee structure, payments, fee extensions, and increases to be in written format and board-approved before the work is performed and the fees paid.</li> </ul>	Not currently applicable <sup>†</sup>
34	The district should require Del Terra to comply with all contract provisions and immediately provide all deliverables to the district, including a dated status sheet of all projects from the beginning of the Division of the State Architect closeout services.	Not currently applicable <sup>†</sup>
35	If a new contract is requested by Del Terra, the district should require Division of the State Architect closeout services to be procured using an RFQ/RFP selection process and exclude Del Terra from consideration because of lack of performance.	Not currently applicable <sup>†</sup>
36	The district should require any new program management and construction management contracts to include a not-to-exceed maximum amount and an hourly basis for actual work performed rather than a lump-sum monthly payment.	Not currently applicable <sup>†</sup>
37	In its renegotiation of the program management contracts, the district should include new language (in this contract and the subsequent Measure I contract from 2016), that requires Del Terra to provide full copies of all project and program files to the district for all past and current projects, and to assist in setting up an adequate filing system, including training for district staff. This should occur in real time for all current projects.	Not currently applicable <sup>†</sup>
38	The district should enforce all aspects of the program management and construction management contracts' scope of work, including all program and project reports using standard templates for budget and expenditure reports, reporting all program funds, encumbered, expended, and remaining balance. On real-time project budget and expenditure reports, information should include original budget, revised budget, encumbrance, expenditure, and available balance for each line item of typical construction categories.	Not currently applicable <sup>†</sup>
39	The district should enforce or require contract language for any future program management and construction management contracts to provide program and project budget and expenditure reports deliverables to be submitted monthly.	Not currently applicable <sup>†</sup>
40	The district should enforce any future program management and construction management contract language that requires submittal and explanation of monthly schedule reports: "Project schedules for each project including an update of actual performance against the approved baseline schedule."	Not currently applicable <sup>†</sup>
41	The district should enforce the contract language requiring Del Terra to "develop and maintain with district staff an overall bond program financial management system in the area of accounting." This should be a project tracking accounting system appropriate to multiyear, multifund projects.	Not currently applicable <sup>†</sup>
42	The district should enforce contract language stating that Del Terra assists with bond committee meetings. This should include submittal and discussion at every meeting of all program-level and project-specific budget and expenditure reports, including an explanation of exception sheets showing the changes since the last meeting.	Not currently applicable <sup>†</sup>
43	The district should require Del Terra to provide a retroactive list (back to 2013) as well as a current list of all key personnel and all personnel in program management and construction management contracts. If some personnel perform work in both areas, this should include the percentage of time spent in each. The contract should also include the definition of "key personnel."	Not currently applicable <sup>†</sup>

NUMBER	DESCRIPTION	IMPLEMENTATION STATUS
44	The district should recalculate construction management fees for the four current projects using the hourly basis structure according to the contract. This will require timesheets and adequate backup documentation from Del Terra to verify the work performed and hours to be billed.	Not currently applicable <sup>†</sup>
45	For its construction management contract, the district should reconcile the fees paid to the fees that should have been paid and require correct invoicing.	Not currently applicable <sup>†</sup>
46	The district should hire a new legal counsel to review the construction management contracts and recommend changes and corrections, including getting rid of confusing and inconsistent terms and definitions and changing the 6 percent lump sum percentage fee to an hourly fee for actual hours worked with adequate backup with all invoices.	Not currently applicable <sup>†</sup>
47	The district should renegotiate the November 2016 Measure J program management and construction contracts to include the approved scope of work that is in the new Measure I contract.	Not currently applicable <sup>†</sup>
48	The district should include a not-to-exceed maximum fee in a renegotiated construction management contract.	Not currently applicable <sup>†</sup>
49	The district should include a list of projects in its Measure J and Measure I contracts for program and construction management services.	Not currently applicable <sup>†</sup>
50	The district should require Del Terra to submit monthly schedule reports according to its contract.	Not currently applicable <sup>†</sup>
51	The district should, before any payment of contractors from bond funds, secure all bid documents or contracts that were prepared by the Del Terra Group and ensure that the proper bid documents are on file at the district.	Not currently applicable <sup>†</sup>
52	The district should exercise its authority to question designated employees and members of the board regarding outside activities or financial interests included in Government Code sections 1090 and 1126.	No longer applicable <sup>‡</sup>
<b>Total FCMAT recommendations not currently or no longer applicable:</b>		<b>22</b>

Source: FCMAT's extraordinary audit report of the district, the district's response to the FCMAT report, interviews with district staff, and analysis of the district's implementation of FCMAT's recommendations.

Note: We made minor edits to the descriptions of the recommendations for style and clarity.

\* The board agreed with all of the recommendations in its formal response to the audit, except for numbers 28 and 29. Nevertheless, the district fully implemented those two recommendations.

<sup>†</sup> These recommendations are not currently applicable because they relate to program and construction management contracts that the board has already terminated. However, as our report text indicates, district staff should analyze these recommendations, determine which have ongoing relevance, and implement policies to strengthen the district's management over these areas in any future contracts.

<sup>‡</sup> This recommendation is no longer applicable because none of the board members or designated employees we examined declared in their Form 700 filings any disqualifying financial interests in an entity under contract with the district.



# ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

2930 Gay Avenue, San José, CA 95127 · Phone: 408-928-6800 · Fax: 408-928-6416 · [www.arusd.org](http://www.arusd.org)

May 3, 2019

Sent Via Email

Ms. Elaine Howle\*  
State Auditor  
Office of the State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Re: Draft Auditor Report/District Response

Dear Ms. Howle:

The District Governance Team which consists of the Board of Trustees and the Superintendent have reviewed your draft report which we have taken very seriously. Attached are our comments and response to the recommendations and findings contained in your draft.

If you have any questions, please contact me.

Sincerely,

ALUM ROCK UNION SCHOOL DISTRICT

A handwritten signature in black ink, appearing to read "H. Bauer", is written over a horizontal line.

Hilaria Bauer, Ph.D.  
Superintendent

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Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President · Ernesto Bejarano, Vice-President  
Dolores Márquez-Frausto, Clerk · Andrés Quintero, Member · Corina Herrera-Loera, Member

\* California State Auditor's comments begin on page 63.



# ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

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## DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

The Alum Rock Union District (District) would like to thank the State Auditors for their detailed and comprehensive analysis of the District and their recommendation for improvements. The District takes the analysis seriously and fully intends to take actions to put in place systems, trainings and practices designed to prevent the types of problems that this Report has found.

- ① It is important to note at the outset that the period covered by the State Audit Report was through December, 2018. Since that time, the District has had a significant and substantial change of trustees on its Governing Board. These individuals who give their time and energy to serve on the Governing Board of the Alum Rock Union School District take their fiduciary responsibilities seriously. Some of the recommendations of the State Auditors have already been implemented as will be detailed below. The governance team of the District, consisting of the Governing Board and the Superintendent, are committed to working together to implement recommendations as stated below.
- ② Preliminarily, the District demonstrated to the Auditors through documentation that contrary to the Staff efforts and recommendations, the previous Board entered into the contracts with Leal & Trejo (as general counsel for the District) and Del Terra Real Estate Services, Inc. (for construction management services and program management services). Due to reports commissioned by Staff and created by Staff (Terri Ryland and June Rofo), the concerns regarding the contracts between the District and Del Terra were surfaced. A copy of the Ryland Report is attached as Attachment 1. When Mr. Rofo continued to express concerns about the District's contract with Del Terra, his employment contract with the District was not renewed.

This Response is intended to address the District's position on the Recommendations contained in the Draft Audit Report. The District was given a short time to review the Draft Report and

- ④ Respond. The District reserves the right to submit a supplemental response after the issuance of the Final Audit Report.
- ⑤ 1. **Auditor's general recommendations (pages 5 and 6) are:**
  - **District Board:**
    - i. Follow state law and its own policies to ensure that it selects the most qualified providers of construction services.
    - ii. Request training in and adhere to state requirements regarding governance and transparency by August 2019.
    - iii. Assess whether the Superintendent's performance aligns with the Board's expectations, the Board should provide timely annual performance evaluations to the Superintendent.
    - iv. Work with District staff to evaluate proposals when it contracts for legal services.

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President · Ernesto Bejarano, Vice-President  
Dolores Márquez-Frausto, Clerk · Andrés Quintero, Member · Corina Herrera-Loera, Member

## Re: DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

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- **District:**

- v. Develop contract monitoring procedures by November 2019 to ensure that its contractors fulfill their obligations.
- vi. Develop and implement a process by November 2019 to assess whether contracted personnel should be subject to the District's policy requirements regarding the disclosure of financial interests.
- vii. Reduce payments to Board members who fail to attend meetings in accordance with the law.
- viii. Provide Board members with ethics training at least once every two years.

**1a. District's Response:**

The District notes that on page 3 of the Draft Audit Report, the auditors states "the district does not know whether some of its contracted personnel who filled key roles in the district, such as the assistant superintendent of business services, had a conflict of interest because the district does not have a process for identifying those individuals who should disclose their financial interests in compliance with its conflict-of-interest policy." The contracted position was that of the Associate Superintendent for Human Resources and not the Assistant Superintendent of business services. The Audit Report was in error on this point. When the District realized that the individual in the contracted position had not filed a conflict of interest disclosure form, it promptly provided one to the individual who completed and filed it. The District does in fact have designated positions in its conflict of interest code that are required to annually disclose their financial interests. The District will develop a process to assure that those responsible for assuring compliance with the District's Board Bylaws and Conflict of Interest Code are knowledgeable about the requirements of District policies and state law. ⑥

- i. The Board fully intends to follow statutory requirements and its policies regarding the selection of the most qualified providers of services, including but not limited to, construction services.
- ii. The Board fully supports biannual training in ethics for school Board members as well as well as biennial training on the roles and responsibilities of school Board members including but not limited to the need for transparency in their service to the community. ⑦
- iii. The Board and Superintendent will establish goals for the Superintendent and conduct an annual performance review of the Superintendent's progress towards those goals in a timely manner. The Board will develop goals for the year and then jointly develop goals for the Superintendent that align with the Board's goals.
- iv. The Board and Superintendent are currently working together to evaluate proposals for legal services and will be conducting interviews of potential legal counsel at a Board meeting scheduled on May 6, 2019. The Board will consider the adoption of policies that will guide our future actions in both filling vacancies on the Board as well as selecting competent legal counsel for the District.
- v. The District's Business Services Division will develop a contract monitoring procedures to ensure that contractors are fulfilling their obligations to the District.

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Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President · Ernesto Bejarano, Vice-President  
Dolores Márquez-Frausto, Clerk · Andrés Quintero, Member · Corina Herrera-Loera, Member



## Re: DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

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- ⑧ vi. The District has improved its Conflict of Interest Disclosure process and will be closely monitoring compliance. It has required contracted personnel to comply with its Conflict of Interest Disclosure requirements. The District will develop written procedures to outline the process in its entirety.
- ⑨ vii. The Board has adopted Board Bylaw 9250 which is consistent with the requirements of Education Code section 35120 regarding the compensation of Board Members and the requirement that they attend a meeting as condition of receiving compensation for the meeting. Board Bylaw 9250 is attached as Attachment 2. By August 2019, the Board will in addition adopt a Code of Conduct for Board Members and will review and consider whether BB 9250 should be strengthened.
- ③ viii. The Board will establish a policy review committee to undertake a review of all its policies to make sure they are current and determine the need for policies covering new areas.

## 2. Auditor's Recommendations (pages 25-27) regarding the District's Operational and Financial Practices.

- **District Board:**

- i. Follow the requirements of state law and Board policies to select the most qualified firm at a fair and reasonable price to perform its contracted architectural services and construction management services;
- ii. Enact a policy by August 2019 to prohibit contracting with the same entity for construction management and program management services;
- iii. Require staff by August 2019 to prepare monthly summaries that report the total amounts it paid to each of its contractors along with descriptions of the purpose of those payments and include the summaries with the monthly warrant lists provided to the Board.

- **District:**

- iv. Stop using payment terms for construction management and program management services that base fees on a percentage of construction costs or bonds issued.
- v. Develop contract monitoring procedures with defined staff roles and responsibilities, and retain evidence of monitoring efforts. The District should also train its staff to follow these procedures by November, 2019.
- vi. Develop procedures specifying a designated location for staff to retain contracts and related documentation, and identify those staff who are responsible for ensuring that these documents are stored appropriately. The District should also train staff to follow these procedures by November 2019.
- vii. Work with the county office to ensure that its new financial system includes unique identifiers for contract payment authorization documents by November 2019.

## Re: DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

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- viii. Develop and implement a process by November 2019 to assess whether contracted personnel should be classified as *consultants*, who are subject to the District's code for disclosing financial interests.
- ix. Immediately follow its conflict-of-interest code to ensure that all required individuals file form 700.

**2a. District Response to Auditor's Recommendations (pages 25-27):**

- i. The Board fully intends to follow statutory requirements and its policies regarding the selection of the most qualified providers of services, including but not limited to, architectural and construction management services.
- ii. The Board will establish a policy review committee to undertake a review of all its policies to make sure they are current and determine the need for policies covering new areas including prohibiting the same entity from providing both construction management and program management services.
- iii. By July 2019, staff will prepare monthly summaries that report the total amounts the District is paying to each of its contractors and vendors.
- iv. The District does not currently have any ongoing construction projects. In the event that the District undertakes a construction project in the future, it will not enter into a contract for construction management services or program management services that are based upon a percentage of construction costs or bonds issued.
- iii. The District does not currently have any ongoing construction projects. In the event that the District undertakes a construction project in the future, it will assure that staff members have clearly defined roles and responsibilities for monitoring the projects and that they document their monitoring efforts. The District will develop a monitoring system for each future construction project that is project specific.
- iv. Once the Santa Clara County Office of Education computerize document storage system is operational, the District will use that system.
- v. The District is in the process of migrating onto the County Office of Educations financial and payroll systems. We will be working with the County Office to set up unique identifiers for contract payment authorization documents.
- vi. The application of the District's conflict of interest code (COIC) to "consultants" is determined by our COIC and state law. We will continue to ensure that it is properly enforced.
- vii. The District is following its COIC and has required all designated employees to file a Form 700. ⑩

**3. Auditor's Recommendations (pages 33 and 34) regarding Governance and Transparency:**

- **District Board:**

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Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President · Ernesto Bejarano, Vice-President  
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Re: DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

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- i. The Board should declare publicly whether a quorum of Board members is present before it takes any action.
- ii. The Board should request training in and adhere to Brown Act requirements and other state law by August 2019. It should also ensure that the District's general counsel is sufficiently knowledgeable to properly advise the Board about these requirements.
- iii. The Board should ensure that it publicly identifies all parties involved in real estate negotiations prior to entering closed sessions.

• **District:**

- iv. The District should adhere to state law and its policies by reducing Board member stipends when members fail to attend Board meetings.
- v. The District should train staff by August 2019 on the timing requirements of the Brown Act pertaining to publicizing Board meeting agendas.

**3a. District Response to Auditor's Recommendations (pages 33 and 34):**

- i. The Board takes a roll call of its members present at the beginning of each meeting and verbally states that a quorum is present. The Board understands that at least three members must be present to constitute a quorum for the Board to take action. The Board is also aware that Board members may participate telephonically at Board meetings provided that (1) the agenda is posted at each location of a Board member participating in the meeting at least 72 hours in advance of regular meetings and 24 hours in advance of special meetings, (2) there are a majority of Board members within the boundaries of the District, (3) the location of each Board member who is participating telephonically is open to the public, (4) the agenda indicates that a member will be participating telephonically and that location is stated on the agenda, and (5) the vote must be taken by roll call.
- ii. The current Board has received training on the Brown Act on February 28, 2019. The Board will repeat that training biennially.
- iii. The Board fully intends to comply with all aspects of the Brown Act.
- iv. By August 2019, the Board will consider the adoption of a code of conduct. As mentioned above the Board has a Board Bylaw (BB 9250) that complies with the requirements of Education Code section 35120 regarding compensation for Board Members. The Board will assure compliance with its policies and will consider modifications that may be necessary in the future.
- v. The District will instruct all personnel with responsibilities related to the Brown Act on its requirements. The District will establish protocols for Brown Act compliance to assure that as personnel changes occur new employees are aware of legal requirements.

**4. Auditor's Recommendations (pages 48-50) regarding the District's Operational Practices Complying with District Policy and Other Requirements.**

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President · Ernesto Bejarano, Vice-President  
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## Re: DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

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- **District Board:**

- i. The Board should work with District staff to evaluate law firm proposals against criteria when it next contracts for general counsel. Further, the Board should publicly report the results of its evaluation.
- ii. The Board should develop a vision and establish goals for the District by November 2019 and regularly monitor progress toward achieving these goals, as District policy requires.
- iii. The Board should conduct an annual self-evaluation by November 2019 and publicize the results.
- iv. The Board should implement procedures by August 2019 requiring that its members document on their requests for reimbursement how their travel complies with District policies.
- v. The Board should comply with District policy pertaining to other operational practices, including appointing a new Board president only during its annual organizational meeting unless otherwise required to do so by policy, and limiting the extensions of Board meeting ending times to the single instance allowed per meeting.
- vi. The Board should provide timely annual performance evaluations of the Superintendent in an appropriate format. The District's human resources department should maintain copies of these evaluations.
- vii. The Board should immediately direct District staff to track and prioritize the implementation of the remaining outstanding recommendations from the FCMAT audit report. The Board should also direct staff to analyze the recommendations relating to its terminated contracts with Del Terra, identify those recommendations that will continue to be relevant after the appointment of a new construction manager and a new program manager, and implement policies to strengthen the District's monitoring of those contractors. The Board should then monitor the status of those recommendations to ensure their implementation.
- viii. To ensure the bond committee receives the assistance it requests from the District to perform its oversight duties, the Board should create a policy by August 2019 requiring District staff to document the assistance they provide to the bond committee and to regularly report to the Board on the nature and frequency of this assistance.

- **District:**

- ix. The District should establish a policy by July 2019 to provide biennial training to Board members on ethics, applicable government transparency, conflict of interest requirements and District policies.
- viii. The District should immediately begin to monitor the progress of the audits and prioritize their completion within nine months after the end of each fiscal year.
- ix. The District should verify and document representation of the bond oversight committee members that the Board appoints.

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Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President · Ernesto Bejarano, Vice-President  
Dolores Márquez-Frausto, Clerk · Andrés Quintero, Member · Corina Herrera-Loera, Member

## Re: DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

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**4a. District Response to Auditor's Recommendations (pages 48 - 50):**

- i. The Board and District Staff are currently working together to evaluate law firm proposals for general legal counsel against specific criteria. The Board and District Staff will be publicly interviewing candidate law firms for service as its general counsel. The Board and Staff have established criteria for evaluating the candidates including requiring specific experience in representing public school Districts. The Board will consider the adoption of a policy establishing a procedure to assure that the District is selecting competent legal counsel to serve the District.
- ii. By November 2019, the Board will establish goals for the District and will at least annually evaluate progress towards those goals.
- iii. As stated above, since December 2018, the District has a new Board which will publicly conduct an annual self-evaluation in November 2019.
- iv. By August 2019, the Board will establish procedures regarding members being required to document their request for reimbursement and how the expense including travel complies with District policy.
- v. The Board appointed a new Board president at its organizational meeting in December 2018, as is consistent with its policies. The Board has adopted Board Bylaw 9323 which provides that its meeting shall be adjourned at 10:30 p.m. with the possibility of a single extension by a majority vote of the Board. A copy of BB 9323 is attached as Attachment 3.
- vi. The Board will provide timely annual evaluations of the Superintendent as previously stated and will assure that the process is consistent with the Superintendent's contract as well as policy.
- vii. The Board and Staff have implemented applicable recommendations made by FCMAT. See the chart attached as Attachment 4.
- viii. By August 2019, the Board will assure that the District's bond oversight committee has the required support that it needs to properly conduct its responsibilities and the Board will require periodic reports on the support provided to the committee.

- **District:**

- ix. As stated above, the District will provide biennial training to Board members on ethics, the Brown Act, conflict of interest requirements as well as relevant District policies. The recommendation calls for biennial training, not biannual
- x. The District will establish a systematic process to monitor the progress of the recommendations of this audit as well as future audits and prioritize the completion within nine months after the end of the fiscal year.
- xi. The District will review the composition of its bond oversight committee to assure that the representation on the committee complies with legal requirements.

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Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President • Ernesto Bejarano, Vice-President  
Dolores Márquez-Frausto, Clerk • Andrés Quintero, Member • Corina Herrera-Loera, Member

Re: DISTRICT RESPONSE TO DRAFT STATE AUDIT REPORT

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May 3, 2019

**5. Auditor's Recommendations (page 54) Regarding Other Areas reviewed as Part of the Audit.** ⑬

- i. The District should create and implement by November 2019 policies and procedures describing the protocol for awarding emergency contracts, including the use of the District's standard contracting forms.
- ii. The District should train staff to follow these policies.

**5a. District's Response to Auditor's Recommendations (page 54)**

- i. The District will review with staff the legal requirements for awarding emergency contracts and will with the guidance of legal counsel review and revise the District's standard contracting form to assure that the District is protected.


**6. Auditor's Recommendations (page 56) regarding Board Intimidation and Retaliation Against District Employees.**

- i. The Board should develop a code of conduct for Board members to follow and adopt it at a public meeting by July 2019.
- ii. The Board should review and update this code of conduct each year as needed to reaffirm its commitment to the District's governance standards.

**6a. District's Response to Auditor's Recommendations (page 56)**

- i. As stated above, the Board will consider the adoption of a code of conduct for Board members by July 2019.
- ii. The Board will review the adopted code of conduct for Board members as may be needed in the future.

**ADOPTED BY THE BOARD OF TRUSTEES OF THE ALUM ROCK UNION SCHOOL DISTRICT AT A SPECIAL MEETING HELD ON MAY 2, 2019.**

  
\_\_\_\_\_  
Linda Chavez,  
President, Board of Trustees

Hilaria Bauer, Ph.D., Superintendent

Board of Trustees: Linda Chavez, President · Ernesto Bejarano, Vice-President  
Dolores Márquez-Frausto, Clerk · Andrés Quintero, Member · Corina Herrera-Loera, Member

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## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

To provide clarity and perspective, we are commenting on the district's response to our audit. The numbers below correspond to the numbers we have placed in the margin of the district's response.

To clarify, our audit encompassed the period from fiscal years 2013–14 through 2017–18, as stated in the Scope and Methodology on pages 45-47. Although our report includes some references to dates after this period, they refer to subsequent events resulting from the district and board activity pertaining to our audit period.

The district's statement that its previous board entered into the contracts with Del Terra contrary to district staff's efforts and recommendations is not entirely accurate. As we describe on page 12, a former assistant superintendent of business services advocated for awarding a construction management contract in May 2014 to Del Terra based on that firm's experience and expertise as the district's program manager. The board subsequently entered into that contract based on that recommendation.

The district provided four attachments with its audit response that are not included in our report. These attachments are available for review by contacting our office.

As with all auditees, and in compliance with generally accepted government auditing standards, we briefed the district throughout the audit about our conclusions and recommendations, including at a formal exit conference in which district staff were able to review text of the conclusions and recommendations. Further, as with all auditees, we provided the district with five business days to review and comment on the draft report. The district will have subsequent opportunities to inform us of its status in addressing our recommendations when providing us its 60-day, six-month, and one-year responses to the audit recommendations.

While preparing our draft audit report for publication, page numbers shifted. Therefore, the page numbers that the district refers to in its response do not correspond to the page numbers in our final report.

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- ⑥ The district has misread our report's summary, which serves as a synopsis of the findings we include throughout the report. The current assistant superintendent of business services is a district employee and not one of the district's contracted personnel. The individuals we refer to were former assistant superintendents of business services. At different times, the position of assistant superintendent of business services has been filled by either district employees or contracted personnel, as we discuss on page 18. We have made a minor wording change to the report summary to ensure that our point is clear.
- ⑦ As noted on page 40, our recommendation calls for the district to establish a policy to provide biennial training to board members, which is defined as every two years.
- ⑧ Contrary to the district's statement that it has required contracted personnel to comply with its conflict-of-interest disclosure requirements, it has not always done so. As we describe on page 18, the district has not required Forms 700 from some contracted personnel who have served in similar positions to district employees, such as the assistant superintendent of business services.
- ⑨ The board bylaw that the district cites is the same one that we used in our review of board member compensation and that the board adopted in July 2013. Therefore, as we recommend on page 26, the district needs to enforce this bylaw by reducing board member stipends when members fail to attend board meetings.
- ⑩ Although the district asserts that it has required all designated employees to file a Form 700, it did not ensure that its assistant superintendent of human resources disclosed his financial interests in 2017, as we report on pages 18 and 19. We look forward to receiving the district's 60-day response to the audit recommendations to learn about the steps it has taken to implement our recommendation to ensure that its employees properly disclose their financial interests.
- ⑪ The board bylaw that the district cites is the same one that we used in our review of board actions and that the board adopted in July 2013. Therefore, as we recommend on page 39, the board should limit the extension of board meeting ending times to the single instance allowed per meeting.
- ⑫ The district refers to a chart that identifies the implementation status of each recommendation from the FCMAT audit report. The district did not provide us with this chart until it submitted its response to the audit. Although the chart contains information similar to the details we present in Appendix B, the district's chart appears to include an updated status for some recommendations.

We look forward to reviewing the district's 60-day response to determine the progress it has made to track and prioritize the implementation of the remaining outstanding recommendations.

The district did not provide a response to our recommendation on page 41 pertaining to the presentation of bond issuance costs. We look forward to reviewing the district's 60-day response to the audit recommendations to assess the district's progress in implementing this recommendation.

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