

Attorney: Contracts violated law, policies**Alum Rock****ALUM ROCK SCHOOL DISTRICT****By Sharon Noguchi**snoguchi@bayareanewsgroup.com

SAN JOSE » The Alum Rock Union School district violated laws and its own policies in contracting to repair fire-damaged Mathson Middle School, according to the board's attorney.

After the Feb. 27, 2016 fire, the Alum Rock board declared an emergency and waived requirements for public bidding on repairs. But attorney Rogelio Ruiz noted, the board passed its resolution with just three votes, instead of the required four.

The district then contracted with Harbro Emergency Services and Restoration and later accepted 26 change-orders that together added \$1.6 million — substantially exceeding the typical limit on such orders. Ruiz noted that the staff also did not present any contracts to the board for ratification and that the main contract lacked provisions for prevailing wages, minimum insurance or indemnification, a ceiling on payments and retention of 5 percent, as is standard in construction contracts.

The two damaged classroom wings are now substantially repaired, and all rooms are expected to be open when school resumes Aug. 28. The cost of clean up and repairs came to \$2.8 million, Ruiz said, all covered by insurance.

At its meeting Thursday,

the school board did not act on the report commissioned by board members. But in an email Friday, board President Khanh Tran suggested he might consider a lawsuit, but did not specify against whom. He also said that the Santa Clara County District Attorney's office is investigating the contracts. The DA's office did not return calls for comment.

The contract "created the appearance of possible favoritism" toward contractors, Ruiz said.

"The fact that this was paid by insurance did not relieve the district of the obligation to comply with laws and policies," he added.

It's not clear how the district overlooked the laws. The head of business services at the time, Sandra Harrington, is no longer with the district. Asked Thursday night whether he was present when the board declared its emergency, board attorney Luis Saenz replied, "I don't recall."

The board majority's muted response to the investigation contrasts starkly with its combative stance toward a state audit of its bond construction program.

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— *Rogelio Ruiz, Alum Rock school board attorney*

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On the same night, the Alum Rock board made clear that it would not follow the state auditors' key recommendations to clean up management of the program.

It beat back an attempt to cut ties with its controversial construction manager and instead stood firmly by Del

Tran was joined by trustees Esau Herrera and Dolores Marquez in backing Del Terra. Trustee Karen Martinez was absent.

Quintero is calling for another audit, which would focus on Del Terra's finances and performance.

Jon Gundry, superintendent of the Santa Clara County Office of Education, said he wants to see how the board continues to respond to the audit by the state's Fiscal Crisis and Management Assistance Team, and whether

Terra Real Estate, which is in line to reap tens of millions of dollars for overseeing construction in the East San Jose district.

“I haven’t seen any factual evidence of any fraud,” Tran said. “If Del Terra was wrong I would be the first to penalize them.”

The scathing audit two months ago warned that the district’s relationship with its construction manager placed it at risk of fraud and misspending. The district attorney’s office also is investigating, and two credit agencies have signaled that they intend to downgrade the district’s rating because of issues raised in the audit.

On Thursday, trustee Andres Quintero failed to muster any support for dissolving its agreements with the Southern California-based Del Terra, which holds three contracts to oversee \$265 million in construction financed by bonds voters approved in 2012 and 2016.

“We’ve been involved in audit after audit as a result of the actions of this organization,” Quintero said. “If you’re paying somebody millions of dollars you should expect you’re not going to have any problems.”

He pointed out that Del Terra has refused to cooperate — with state auditors, other investigators and the district’s own staff and attorneys.

“We had to bring in our own attorney requesting all the documentation we were already supposed to have,” he said.

Del Terra CEO Luis Rojas has insisted in the past that his firm has, indeed, responded to requests for documents.

Del Terra cooperates with the district’s request for documents.

“The overriding issue,” he said, “is the district has surrendered great deal of its authority to the contractor, on how money is spent and who is hired.”

Angry parents, who strategized during a mid-meeting 1½-hour recess while the board retreated to a closed session, urged that the firm be dumped.

“Spending more money for lawyers to protect Del Terra is not a solution. Keeping Del Terra is not a solution,” parent Natalie Abal told the board. “I urge and hope you will terminate the contracts.”

The board also rebuffed other changes that parents and community members sought. It extended until Dec. 31 contracts with attorneys Ruiz and Saenz, despite the state audit recommending that the district get new legal counsel. The board also approved a threeyear contract with auditors who the district’s bond oversight committee complained have provided poor oversight. And it appeared reluctant to reshape the gatekeeper committee that prioritizes bond- construction projects.

For the attorneys, the board left open the door that it would rebid its legal services contract later. *Contact Sharon Noguchi at 408-271-3775.*