

Fresno Unified leaders reject hiring outside investigator on leaseback deal

By Mackenzie Mays
mmays@fresnobee.com

Fresno Unified School District leaders have denied bids by school board members to schedule a vote on hiring an independent investigator to examine [a controversial construction deal](#).

So trustees Brook Ashjian, Carol Mills and Luis Chavez are taking their campaign public. On Tuesday, The Bee [published a letter to the editor](#) from the three, who urged their fellow board members to consider an outside investigation. Ashjian, Mills and Chavez say it's time for an independent probe into a lease-leaseback deal the district had with Harris Construction to build Rutherford B. Gaston Middle School that was recently deemed illegal.

Although Superintendent Michael Hanson has proposed an internal investigation, the three board members are hoping an outside investigation will provide more transparency about the details of the case. But their requests to get the item onto the board's meeting agenda have been denied or ignored.

According to emails obtained by The Bee, School Board President Cal Johnson denied a request by Ashjian to have the matter put on the agenda at a special meeting last week.

When Ashjian asked why the request was denied, Johnson pointed to the Brown Act — legislation created to guarantee the public's right to participate in government meetings.

Johnson also pointed to Fresno Unified bylaws that say the superintendent and board president are in charge of preparing meeting agendas.

Johnson acknowledged that members of the board or public can request that items be placed on agendas, but he and the superintendent have the "ultimate authority" and "sole responsibility" of deciding what gets addressed.

Board Bylaw 9322 ... gives the Superintendent and Board President sole responsibility for determining whether an item is appropriate for placement on the agenda.

"After consulting with the superintendent, board leadership has determined that it would be premature to consider your request at this time," Johnson said in the email.

Johnson said the staff is in the process of reviewing the contracts in question. Before any related items can be placed on the agenda, the superintendent and his staff should have the opportunity to "thoroughly assess the impact of the Davis decision and the use of lease-leaseback in constructing district facilities," he wrote in the email.

Johnson and Hanson did not comment on whether the item would be added to next month's meeting. Amy Idsvoog, interim chief information officer for Fresno Unified, said Tuesday that the district is looking at ways to modify its contracts concerning lease-leaseback issues. "In the meantime, our Board of Education has asked the Supreme Court to provide further direction," she said. Idsvoog did not say if the item would be added to next month's agenda.

Peter Scheer, an attorney and director of the First Amendment Coalition based in San Rafael, said he has received many calls from frustrated government agencies, including school boards, expressing the concern that leaders manipulate the Brown Act to filter what is addressed in public meetings.

The power to assemble meeting agendas is typically in the hands of one or two leaders on a board, but historically, that has caused conflict and frustration, Scheer said.

“I’m sympathetic to any organization, any city council or school board, that puzzles over what is the process for deciding what goes on the agenda. To me, it’s just one of those things that they forgot about in the Brown Act,” he said “Obviously it would be ironic —perverse, frankly, for the act to be interpreted to invest all the power in one person. The point of the act is to facilitate democracy, but sometimes it’s exactly the opposite.”

The board members are concerned that an internal investigation would pose a conflict of interest. If the motion never makes it on the agenda and an independent investigator is not hired, then details about the case will remain unclear. At least one member of the public has also [stepped forward](#) asking for an outside investigation.

Ashjian said he’s not sure what the next step will be, but he’s determined to have the facts aired publicly.

“They want to investigate themselves when they were the ones that caused the problem,” he said. “I don’t know how we’re supposed to talk about this thing if they won’t allow it on the agenda, but people want transparency.”

The Fifth District Court of Appeal recently found that the district sidestepped the competitive bidding process to the benefit of Harris Construction and in violation of state law.

Lease-leaseback contracts are traditionally used to help poor or small school districts build schools by allowing them to lease the land where they plan to build to a contractor for a small amount, and then the contractor pays all the upfront costs. The district then “leases back” the building from the contractor and pays down the project costs over several years. But in this case, Fresno Unified had the money, which has led to allegations that the deal was made solely to ensure Harris Construction got the bid.

Fresno Unified has come under fire before for not allowing items to be added to the board agenda, despite pleas from board members and the public. In 2012, former board member Michelle Asadoorian went public about being silenced by board leadership. Asadoorian claimed various requests to address [a controversial residency issue](#) involving then president Tony Vang were repeatedly denied.

Mackenzie Mays: [559-441-6412](tel:559-441-6412), [@MackenzieMays](https://www.instagram.com/MackenzieMays)