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Memo

To Board of Education

From Jody London, Chair, Intergovernmental Relations Committee
Kyla Johnson-Trammel, Superintendent

Board Meeting Date April 7, 2020

Subject Legislative Priorities re COVID-19

Action Identify State and Federal legislative priorities regarding the COVID-19 pandemic.

Background Since mid-March our society, economy, and school system have been altered dramatically by the actions taken to combat the COVID-19 pandemic. On April 1, 2020, the Governor directed that all schools in California remain physically closed for student instruction through the end of the school year.

As described in the attached memo and articles (Attachments A and B) from our legislative advocates, School Services, the Governor has directed State agencies to prepare a “workload budget” that allows the State to continue to function at its current level without significant changes to existing programs or the creation of new programs. The Legislature will reconvene on April 13. The session will be focused almost entirely on response to COVID-19. Each member will be limited in the number of bills they can introduce, most likely 5, compared with dozens or hundreds in a typical session.

At the Federal level, a COVID-19 relief bill was passed in late March. There is talk of additional legislation. Attachment C provides a summary of the bill passed last month (CARES 3) and provides suggestions on priorities for a potential additional bill.

While the 2020 Legislative platform we adopted earlier this year remains in effect (attached), the new reality means there are new issues on which we may want to have influence.

Discussion Some of the questions on which we may want to provide guidance, in consultation with the Superintendent, include but are not limited to:

- What is the District's highest priority/ies for education funding in this new landscape (i.e., protecting the Local Control Funding Formula) in the event the Legislature faces decisions on what to protect
- Are there specific relief measures the District needs in these uncertain times to weather the crisis (i.e., deferring the 2020-21 employer rate contribution increases to PERS/STRS retirement programs for one year, any flexibilities for use of restricted funds, etc)
- Are there any specific needs around building out the District's infrastructure for distance learning to support teachers and students?

Fiscal Impact

There are a large number of fiscal impacts that have immediately occurred as a result of COVID-19, and a large number of unknown fiscal impacts as the State re-evaluates its current year and upcoming budgets. See Attachment D for a recent article that outlines the potential fiscal impacts of the pandemic on the State economy and schools.

Attachment

Budget Policy Memo from School Services
 Fiscal Report Articles from School Services
 Considerations For Federal Legislation Responding To COVID-19 Pandemic
 2020 Oakland Unified School District Principles and State Legislative Priorities
 San Francisco Chronicle: *Schools bracing for double whammy - Financial, academic setbacks could last for years*



March 31, 2020

MEMORANDUM

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To: Jody London, President, Oakland USD Board of Trustees
Members, Oakland USD Board of Trustees
Kyla Johnson-Trammel, Superintendent

From: Leilani Aguinaldo, Director, Governmental Relations
Patti F. Herrera, EdD, Associate Vice President
School Services of California Inc.

Subject: State Budget and Policy Update

The purpose of this memo is to provide the most recent information about the 2020–21 State Budget and the current state policy environment in the wake of the COVID-19 crisis. We share this information with the caveat that the situation in the state is continuing to evolve and can change rapidly as state lawmakers respond to the pandemic. Attached to this memo are several *Fiscal Report* articles we have produced over the last two weeks that provide information relevant to COVID-19 guidance and resources for school districts, as well as the state’s overall economic and fiscal condition and the implications for education funding.

State Budget and Education Funding

As noted in the attached article, the Department of Finance is positioning the state for a “workload budget” as the June 15 deadline approaches for the Legislature to adopt a State Budget. A workload budget simply allows the state to continue to function at its current level without significant changes to existing programs or the creation of new programs. The state has had to pivot to a workload budget as a result of the deferment of tax filing deadlines from April 15 to July 15, as well as an expectation that the pandemic will have a significant impact on state revenues. The absence of updated tax revenues—upon which the state relies to build and adopt its annual budget—makes it difficult, if not impossible, to develop an accurate budget.

The shelter-in-place directives for one-third of the U.S. population to slow the spread of COVID-19 have had crippling effects on the national and state economy. Over 3.3 million Americans have filed new unemployment claims, small businesses struggle to survive, and consumer spending has all but evaporated. The evidence of the economic effects is perhaps most apparent with the significant devaluation of the U.S. stock market, which has lost over one-quarter of its value since mid-February.

This means that economic factors for the fourth quarter of fiscal year 2019–20 will require significant adjustments, along with the first (and likely second) quarter of fiscal year 2020–21. **The condition of state revenues has a direct impact on education funding**; it is possible that **the state will be unable to afford the Local Control Funding Formula’s (LCFF) 2.29% cost-of-living-adjustment (COLA)** included in Governor Gavin Newsom’s January Budget proposal when it adopts the final workload budget in early summer, which could trigger a provision that allows the Department of Finance to reduce the LCFF COLA. Moreover, the Governor’s Budget released in January revised the Administration’s estimates of the Proposition 98 minimum guarantee to be as follows for fiscal years 2018–19 through 2020–21:

2018–19	2019–20	2020–21
\$78.448 billion	\$81.573 billion	\$84.048 billion
up \$302 million*	up \$517 million*	–

*Increase from June 2019 Enacted Budget estimates

Depending on the condition of state revenues, the 2019–20 minimum guarantee can be revised downward since COVID-19 has impacted revenues from the last quarter of the fiscal year. Likewise, the estimated growth in the 2020–21 minimum guarantee of \$84 billion can also be revised downward if the effects of the coronavirus are protracted. The Legislative Analyst’s Office (LAO) has estimated that every \$2.5 billion in lost state revenues equates to approximately \$1 billion less funding for K–14 education through Proposition 98.

Working within the definition of a workload budget makes any new investments in 2020-21 highly unlikely, with the exception of proposals to support the emergency response to COVID-19. Presumably this means that the many proposals included in the Governor’s Budget that were funded within the Proposition 98 minimum guarantee are shelved. Investments such as the educator recruitment and retention programs, Special Education Early Intervention Preschool Grant, Community School Grant, and Opportunity Grants require funds that likely will be unavailable. Anticipating a sharp decline in the minimum guarantee, the focus will be on preserving funds that districts rely on for their operating budget, namely through the LCFF.

SB 117—California COVID-19 Emergency Relief Bill for Education

One of the state’s most immediate responses to COVID-19 was the passage of Senate Bill (SB) 117 ([Chapter 3/2020](#)), which holds state apportionments and funding harmless for school districts affected by forced school closures as a result of the coronavirus. The bill also contained an emergency \$100 million appropriation to help districts procure personal protective equipment and cleaning supplies to maintain or resume classroom-based instruction. The allowable uses of these funds has since been expanded to include costs related to providing school meals and materials for distance learning. The funds will be distributed on an ADA basis and are included in the Proposition 98 minimum guarantee.

Federal COVID-19 Emergency Relief for Education

Congress passed and President Donald Trump signed a \$2 trillion COVID-19 emergency relief bill. The package includes over \$13 billion for K–12 districts in the bill’s Education Stabilization

Fund, which will be allocated to districts based on their Title I allocations and could be used to help districts transition to distance learning. The bill also provides state governors \$3 billion to use at their discretion to help education agencies with the intent that funds be for education agencies “to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.”

Additionally, the bill also provides:

- \$15.5 billion for the Supplemental Nutrition Assistance Program
- \$8.8 billion for child nutrition programs
- \$3.5 billion for child development programs
- \$750 million for Head Start programs

Finally, the federal bill provides a mechanism for states to file waivers from several accountability requirements under the Every Student Succeeds Act, including waivers from student testing and increasing caps on federal carryover requirements. The California Department of Education and the State Board of Education are drafting California’s waiver request.

We will keep you apprised of additional developments as they arise.

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\$2.2 Trillion Federal Stimulus Package for COVID-19 Signed Into Law

By Leilani Aguinaldo and Kyle Hyland
March 27, 2020

A federal stimulus package, which seeks to provide some relief during the COVID-19 pandemic was adopted by the federal government this week. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is a \$2.2 trillion package that provides billions of dollars to struggling industries, boosts unemployment insurance, and provides cash payments directly to Americans. The stimulus package also earmarks approximately \$31 billion for K–12 and higher education assistance and over \$4 billion for childcare and early education programs.

Some of the biggest items for K–12 education and early education include the following:

- \$13.5 billion in the Education Stabilization Fund, which will be distributed to states based on their state-level Title I allocation. States will pass through 90% of the funds to school districts and charter schools using the Title I formula. Funds can be used for coronavirus-response activities such as purchasing educational technology to support online learning, sanitation supplies, or mental health services, as well as additional activities authorized by federal elementary and secondary education laws (e.g., Elementary and Secondary Education Act [ESEA], Individuals with Disabilities Education Act [IDEA], Carl D. Perkins Career and Technical Education Act, or McKinney-Vento Homeless Assistance Act). Districts that receive money from this fund “shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.”
- \$3 billion for governors to spend on K–12 or higher education in regions that have been hit hardest by the coronavirus. Governors in each state will receive a share of this funding to allocate at their discretion for emergency grants to support the ability of local educational agencies to continue to provide educational services to their students and to support on-going district operations.
- \$8.8 billion for child nutrition programs to help ensure students receive meals while schools are closed.
- \$3.5 billion for Child Care & Development Block Grants, which provide childcare subsidies to low-income families and can be used to augment state and local systems.
- \$750 million for Head Start early education programs.

- \$100 million in Project School Emergency Response to Violence grants to help clean and disinfect schools, and provide support for mental health services and distance learning.
- \$5 million for health departments to provide guidance on cleaning and disinfecting schools and daycare facilities.

To ensure that states are using funding earmarked in the Education Stabilization Fund to supplement and not supplant state funding, states have to agree that funding provided in fiscal years 2021 and 2022 is at least the same as the average spent on education over the prior three fiscal years. However, the CARES Act gives U.S. Secretary of Education Betsy DeVos new authority to waive certain ESEA provisions, including this requirement to maintain a state's funding level.

The CARES Act also allows states to apply for waivers to freeze in place the schools identified as needing additional assistance under the Every Student Succeeds Act (ESSA). Under this waiver, schools identified for comprehensive support and improvement, targeted support and improvement, or additional targeted support in the 2019–20 school year would maintain that designation in the 2020–21 school year and continue to receive supports and interventions.

States also may seek to waive several other funding mandates under ESSA, including increasing the amount of carryover of Title I funds from the current year to the next.

Within 30 days of the stimulus package becoming law, Secretary DeVos is required to report to Congress on any additional waivers that may be necessary from the IDEA, ESSA, the Rehabilitation Act, and the Carl D. Perkins Career and Technical Education Act, in order to provide schools with “limited flexibility.”

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By the Way . . .

By Kyle Hyland
March 26, 2020

DOL Issues Model Notice and FAQs for the Families First Coronavirus Response Act. On March 18, 2020, President Donald Trump signed the Families First Coronavirus Response Act, which requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19 (see “[Emergency Family and Medical Leave Act Revisions and Emergency Paid Sick Leave—Updated](#),” and “*By the Way . . . DOL Issues Resources for HR 6201 Paid Leave Provisions*,” in the current *Fiscal Report*).

The legislation also requires the U.S. Department of Labor (DOL) to issue a model notice for employers to provide to their employees so that they are aware of their rights under this new law. On March 25, 2020, the DOL released the model notice that employers are required to provide to their employees, which can be found [here](#). The DOL also produced a frequently asked questions (FAQs) list as a resource for employers, which can be found [here](#).

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What’s in Store for the LCFF COLA, Proposition 98 Minimum Guarantee in the Wake of COVID-19?

By Patti F. Herrera, EdD and John Gray
March 26, 2020

In any given year, it is no easy task to estimate California’s minimum guarantee of funding for K–12 and community college districts. This is largely because California’s tax system is extremely progressive, leaving the state’s General Fund and its overall fiscal health relying heavily on the personal income of the state’s top income earners. While this has been the case for quite some time, it became more pronounced with the passage of Proposition 30 (2012) and Proposition 55 (2016), which imposed even higher taxes on California’s wealthiest residents. Personal income tax (PIT) is the most volatile of the “Big Three” taxes—raising over two-thirds of General Fund revenue. The state’s reliance on PIT makes it even more difficult to estimate the Proposition 98 minimum guarantee when earnings among California’s highest earning residents are as volatile as they have been since COVID-19 unleashed its fury.

Since the novel coronavirus began crippling the state in early March, stock markets in the United States and across the globe lost at least a quarter of their value. This sobering news, along with reports of spikes in new unemployment claims and massive reductions in consumer spending, have some economists predicting that U.S. gross domestic product will shrink by nearly one-third in the second quarter of 2020. They warn that the recent uptick on Wall Street—which reflected the collective sigh of relief that Washington D.C. would be setting aside partisan politics for the sake of the nation to pass a \$2 trillion relief package—has occurred during economic hard times like the Great Depression and recently the Great Recession, signaling that the market likely has not yet bottomed out.

While PIT is a strong determinant of the state’s General Fund, we acknowledge that it is not the only determinant. Other economic health indicators are also important in forecasting the state’s fiscal future. That said, we at School Services of California Inc. felt that it was time to acknowledge the reality of the coming days and months ahead of us.

We have noted that the Director of the Department of Finance (DOF) is positioning the state to adopt a workload budget (see [“DOF Planning for Workload Budget for 2020–21,”](#) in the current *Fiscal Report*). We can certainly understand that the current crisis and the economic uncertainty it yields warrants this maneuver, and the notable shift in state planning had us thinking, “should districts be planning likewise?” Our answer is simply, “Yes.”

Our sentiment is informed not only by the dizzying news we are all accosted with each day, but also by more nuanced information related to education finance in particular. The Legislative Analyst’s Office (LAO) estimates that for every \$2.5 billion in lost state revenue, the Proposition 98 minimum guarantee will decline by \$1 billion. Losses from capital gains income alone could cause the state to lose billions of dollars in anticipated revenue, as suggested by the LAO in its recent *Fiscal Perspectives* report. Consequently, it is certainly within the realm of possibility that last year’s Budget Act provision authorizing the DOF to “autofit” the Local Control Funding Formula (LCFF) cost-of-living adjustment (COLA) to fit within K–12’s portion of the minimum guarantee could be triggered, forcing districts to revise their budgets for next year and beyond. This comes on the heels that the 2.29% COLA for the LCFF anticipated in Governor Gavin Newsom’s January Budget was nearly three-quarters of a percent shy of the 2019 enacted State Budget estimates. The budget implications are clear and, for some, even grim.

As for the Proposition 98 minimum guarantee for the current and budget years, we went back in time to see what the state has done when estimates are higher than reality. A 2017 LAO report, *A Historical Review of Proposition 98*, notes that in eleven of the twelve occasions that the state over-estimated the guarantee, it took several measures to ensure that the state did not “over-appropriate” the constitutionally-required level of funding for K–14 education. These measures included deferring program payments into the following fiscal year, not forward funding programs, and postponing or cutting planned programs. One-time categorical investments that have been approved by the lawmakers but have not yet been allocated by administering agencies, or proposed one-time investments using Proposition 98 settle-up funds, could be low-hanging fruit for the Legislature and the Newsom Administration in today’s fiscal environment.

As we have mentioned with increasing emphasis, these are rapidly changing times cloaked in uncertainty. Times like these call for prudence and strategic planning.

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DOF Planning for Workload Budget in 2020–21

By Leilani Aguinaldo
March 24, 2020

On March 24, 2020, the Department of Finance (DOF) issued a [memo](#) to all state agencies and departments that Governor Gavin Newsom’s proposed budget for 2020–21 will now be prepared within the context of a workload budget. This drastic change for 2020–21 comes as the state responds to COVID-19, which continues to spread and impact nearly all sectors of California’s economy. The DOF is anticipating an immediate impact on revenues in the 2019–20 fiscal year and beyond.

Government Code Section 13308.05 defines a workload budget as “the budget year cost of currently authorized services, adjusted for changes in enrollment, caseload, or population, or all of these changes,” as well as other considerations including statutory cost-of-living adjustments, chaptered legislation, and costs resulting from constitutional requirements.

The DOF states that “agencies and departments should have no expectation of full funding for either new or existing proposals and adjustments. The only exception to this new evaluation criteria will be proposals or adjustments necessary to support the emergency response to COVID-19.”

The DOF memo seeks to set expectations for the 2020–21 State Budget and makes clear that any proposals for new investments are being reevaluated “within the context of a workload budget, based on the merits of each proposal, and ultimately subject to the availability of funding.”

While a sweeping change from the State Budget proposed in January, this should not be a significant surprise as the DOF incorporates the negative impact of the coronavirus pandemic on California’s economy in its work to prepare the State Budget for 2020–21.

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Managing Human Resources in a Crisis Environment

By Leilani Aguinaldo
March 24, 2020

In light of our ever-changing work environment, human resources is challenged now more than ever to provide support to employees, while managing operational responsibilities in response to changing rules and procedures. The COVID-19 outbreak and its impact on us, our employees, everyone's families, and our communities is stressful to all at varying levels. The fear and anxiety that comes with not knowing what tomorrow might bring can be overwhelming and cause strong emotions which require a thoughtful response from employers. In order to manage our current challenges, and prepare for the road ahead, it is critical that communication systems that engage employees are implemented. As everyone navigates these uncharted waters, human resources should continue to respond by reviewing policies and procedures to ensure they provide the information employees need in order to stay informed.

In compliance with [Executive Order N-26-20](#), local educational agencies (LEAs), along with many employers in California, initiated a telecommuting work environment. Working remotely and/or sheltering in place can cause people to feel isolated and disengaged, as communications using technology are more difficult and stilted. In addition, many employees are not experienced in working outside of their work environment and may need additional support to work effectively from home. The implementation of a telecommuting policy, which requires employee acknowledgement of receipt, helps provide guidance while creating a sense of accountability while working remotely. A sample telecommuting policy can be accessed [here](#).

Due to the necessity of rapid implementation of school closures, many LEA employees were sent home with no real sense of how they would be compensated during this time, or in some cases, if their employment would continue. This was not the fault of the employer, as there was an absence of direction regarding employee management at the time. However, now that we have settled into our "new normal", information regarding pay status for employees who are telecommuting and not ill—and leave laws pertaining to employees who are ill, or are caring for a family member who is ill—have been provided. More information regarding details involving employee leave and compensation during school closures can be found in the articles: "[Ask SSC . . . How Do We Document Employee Absences During School Closures?](#)"; "[Emergency Family and Medical Leave Act Revisions and Emergency Paid Sick Leave—Updated](#)"; and "[Guest Article: COVID-19 Employee Leaves Chart](#)," in the current *Fiscal Report*. Communication with employees regarding compensation and their leave entitlements is key in establishing a sense of ease in economic impacts to employees and their families during a school closure.

Employee Schedules and Working Environment

In addition to a change in work environment and leave laws, the current crisis can cause a number of changes in the way employees work. We have provided the following informational matrix to illustrate how particular changes can impact details regarding employment for both classified and certificated employees. These factors require review and a possible change in policy, and in addition, may require engagement with legal partners.

Schedule/Work Environment	Classified Employees	Certificated Employees
Work Day/Work Year	Changes in work school year and impacts to work calendar (this varies for nine-, ten-, eleven-, or twelve-month employees) Planned vacations and time off	Extension of school year and impact to work calendar Preparation time Breaks and nonwork days Summer school and extended school year considerations
Employee Leaves	Changes in law due to emergency legislation (Family and Medical Leave Act of 1993 and emergency paid leave) Managing employees absent from work due to school closure (not illness related)	
Safety and Security	Employer’s responsibility to provide a safe work site	
Compensation and Benefits	Compensation for employees absent from duty during emergency and school closure Determination of essential employees who are required to work during a school closure	
Training and Resources	Employer-provided resources for employees to work remotely and communicate with staff and students during closure Remote teaching requirements—instructional and curriculum training Communication regarding access to the Employer Assistance Program (if applicable) Teacher collaboration remotely	

Schedule/Work Environment	Classified Employees	Certificated Employees
Other Considerations	Address other employment conditions such as probationary periods, evaluation timelines, and other operational considerations impacted by school closure	

Employees respond to an environment of change and challenge in a variety of ways. Providing consistent communication in multiple formats gives context for employees and a road map for how the challenges on the horizon may be addressed.

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The College Board Announces Online Courses and At-Home Exam Options for AP Students

By Kyle Hyland, Leilani Aguinaldo, and Patti F. Herrera, EdD
March 24, 2020

The College Board, the non-profit organization that develops and administers the Advanced Placement (AP) program, has announced that beginning this Wednesday, March 25, 2020, they will be providing live and on-demand AP review courses to students for free. Additionally, they are developing a new at-home testing option so that AP students can still take their exams and receive college credit.

In light of the recent federal, state, and local health directives that are attempting to flatten the COVID-19 curve, the vast majority of schools in the United States have been forced to close, making it impossible to administer AP exams to students in the traditional setting. To gauge whether AP students wanted to take exams this year, the College Board surveyed over 18,000 students enrolled in AP courses and found that 91% of students still wanted the opportunity to earn the college credit they have been working towards this school year.

On Wednesday, students will be able to virtually attend free AP review courses that will be delivered live by AP teachers from across the country. According to the College Board, these courses will be optional, mobile-friendly, and will be made available on-demand so that students can access them at any time. The courses can be accessed via the [AP YouTube channel](#) and the daily course schedule can be found [here](#).

The College Board is currently developing secure 45-minute online free-response exams for each course, which will focus on the content most schools were able to complete by early March. Students will have the opportunity to take these exams on their computer, tablet, or smart phone and will also have the option to hand write their responses and submit them via photo. The College Board said that they are also working on solutions to help students who do not have access to the Internet or one of these devices.

The College Board confirms that universities that accept AP exams for college credit support these modified exams and are committed to ensuring that students who earn college credit based on their scores receive that credit.

You can find more information about the on-line courses and at-home AP exams [here](#).

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Serving Students with Disabilities and Students on Section 504 Plans Amid A National and State Health Crisis

By Debbie Fry
March 24, 2020

Among the myriad challenges faced by local educational agencies (LEAs) is the congruence of federal and state laws for providing a free and appropriate public education (FAPE) to students with disabilities (SWDs). There have been various versions of guidance from both the United States Department of Education (ED) and the California Department of Education (CDE) as the COVID-19 crisis evolves. What we know now is that there is not currently a waiver of federal requirements under the Individuals with Disabilities Education Act (IDEA). The CDE encourages LEAs to “do their best in adhering to IDEA requirements, including federally mandated timelines, to the maximum extent possible.” The CDE is currently working with the ED to determine if waivers or flexibilities may be offered under the federal law. Additionally, LEAs may not have considered the Section 504 requirements for accommodation. Students who are on a Section 504 Plan (504 plan) are also entitled to the same considerations.

If an LEA closes school and does not offer any alternative educational setting for all its students (such as distance learning), then there is not an obligation to provide the SWDs or students on a 504 plan alternative settings; however, when school resumes, the LEA must resume making every effort to provide services in accordance to the Individualized Education Program (IEP), or 504 plan. If a student does not receive services due to a closure, the IEP team (or 504 plan team) must determine whether, and to what extent, services may be needed, consistent with applicable requirements and including how to make up for any lost skills during the closure.

When students are offered a distance learning or independent study option, equitable options must be made available to SWDs, and the requirements of the IEP must be met. That said, the ED emphasized in a [recent communication](#), “To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.” Meeting the IEP or Section 504 accommodations requirements can present challenges that were not considered in the initial transfer to online or distance learning environments and may include assistive technology devices not currently used by the student. If services cannot be provided to SWDs due to logistical reasons, an IEP or 504 plan meeting should be convened with parents and providers of services to determine what services will be provided and, upon the return to school, how to mitigate any loss of

educational progress. Under our current environment, the meeting will most likely be a virtual meeting, presenting challenges of its own to secure signatures and obtain quality input. Procedural safeguards for social distancing remain in place and have not been waived.

If an LEA remains open, but students at high risk of severe medical complications are excluded during the outbreak, the exclusion is considered a change in placement, generally for exclusions that are considered to be a long duration (more than ten consecutive school days). LEAs and IEP and/or Section 504 teams must convene to discuss a change in placement. Equitable access is required when alternative settings for education need to be utilized. Although this may not be an issue while school closures are in place, the return to school also may present issues with exclusions for health reasons.

If an SWD is placed in a nonpublic school that closes due to health concerns, the LEA's IEP or 504 team must make a determination for each child as to whether and to what extent services may be needed, as well as how to make up any skills lost.

LEAs can, and might consider, adding a distance learning plan to the IEP or 504 Plan in the event that special circumstances arise. The contingency plans allow the parents and providers an opportunity to determine the appropriate placement in special circumstances.

While there are severe challenges and compliance issues with both the IDEA and Section 504, the CDE has committed to "a reasonable approach to compliance monitoring that accounts for the exceptional circumstances facing the state." Timelines for complaint investigations have been extended by the length of any school site closure.

Like every individual experiencing this uncharted course, the CDE and the ED are working hard to ensure students are not suffering educationally amid this crisis. The CDE has convened a work group of special education practitioners and other experts to help brainstorm best practices. There is a lot of information available, and some of it leaves more questions than answers. Some of the answers may not come for years down the road as we learn from this experience. We appreciate you and all you do for our students. We will bring new information as it comes out. In the meantime, below are several links to articles and guidance that have been published to date.

- [Official Message from the State Director of Special Education—Mar 22, 2020](#)
- ED [Supplemental Fact Sheet](#) for LEAs serving children with disabilities
- [Further Guidance](#) on distance learning, including considerations for SWD-accessible distance technology, instructional phone calls, and other activities ([more information](#))
- Office of Administrative Hearings (OAH) [updated information](#) on special education due process hearings
- ED [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak](#)

- March 13, 2020, [CDE letter](#) regarding the COVID-19 pandemic
- CDE [COVID-19 response](#)
- ED guidance on [protecting student civil rights](#)
- [Center on Online Learning and Students with Disabilities](#)
- Common Sense Media list of [Best Special Education Apps and Websites](#)
- Council for Exceptional Children COVID-19 [Information for Special Educators Like You](#)
- Council of Administrators of Special Education [resources](#) for special education administrators
- [Supporting Students with IEPs During eLearning Days](#)
- Centers for Disease Control and Prevention [interim guidance](#) for administrators of K–12 schools and childcare programs

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LAO Issues Cautious Fiscal Outlook Amidst COVID-19 Outbreak

By John Gray and Patti F. Herrera, EdD
March 18, 2020

Legislative Analyst Gabriel Petek issued a new *Fiscal Perspective* today, March 18, 2020, to account for the economic and budget effects of the novel coronavirus (COVID-19) gripping the state, the nation, and the world. The *Perspective*, not unlike other accounts of the current crisis, highlights the sobering signals coming from Wall Street, but buffers it by acknowledging that California is better prepared to handle the rapidly evolving situation than it would have been even just a few years ago.

The Wall Street Effect on State Revenue

Let's start with the bad news. Petek notes that Governor Gavin Newsom's January State Budget projected that the state would benefit from \$30 billion in capital gains taxes across fiscal years 2019–20 and 2020–21, which assumed that stock prices would remain relatively flat before gradually increasing. Importantly, capital gains taxes are a significant source of state revenue as California's personal income tax structure is aggressively progressive, relying heavily on the state's highest income earners who tend to invest more heavily in the stock market than most. Over two-thirds of all state general fund revenue is derived from personal income taxes.

Although the market had been outperforming budget expectations before the stultifying effects of COVID-19 were felt, the recent and magnitudinous correction of the stock market—namely, the S&P 500 index—puts current market performance well below the Governor's projections. And while we cannot predict how the market will respond to the recent monetary policies put in place by the Federal Reserve—including cutting rates to near zero and reinstating the quantitative easing policies it reverted to during the Great Recession, along with an impending fiscal stimulus package from Washington DC—Petek notes that in the past a correction of this magnitude is not likely to recover quickly. He predicts that tax revenues from capital gains will be several billion dollars below the Governor's January estimates.

Forecast Calls for Rain, California Has an Umbrella

Now, the good news. It appears that the fiscal prudence of the Brown Administration era continued by the Newsom Administration is paying off. Many of you will recall that former Governor Jerry Brown inherited a dizzying \$27 billion state deficit when he assumed office in 2011. He committed his second tenure as governor to restoring California's fiscal health by tearing down its wall of

debt and aggressively saving for a rainy day. By the time he left office in 2018, the state had set aside roughly \$16 billion in reserves. In January, Governor Newsom proposed increasing the current reserve levels to nearly \$21 billion. While this will likely need to be adjusted given the current situation, California's robust savings account makes the state "better prepared to weather the public health crisis and unfolding economic downturn."

Of course, how much cushion the state's reserves provide in a recession depends on how long it takes for the economy to recover and ultimately the path of the COVID-19 virus. In light of the rapidly changing economic situation, the Legislative Analyst suggests that the Legislature may consider adopting a "workload budget" for the near term (to meet its June 15th constitutional deadline to pass a budget) to be able to assess the state's fiscal condition as more data becomes available.

What It All Means for Proposition 98

As we have discussed in recent reports, the Proposition 98 minimum guarantee is directly tied to the performance of state general fund revenues. In Test 1 years like 2019–20 and 2020–21, the minimum guarantee is no less than roughly 38% of general fund revenue. Notably, the last two of the fiscal year's four quarters in 2019–20 are being significantly impacted by COVID-19, and we do not yet know if and how protracted the virus will be in the coming budget year. The uncertainty is exacerbated by the State Treasurer's recent [announcement](#) that the Franchise Tax Board approved extending critical tax filing dates for corporations, entities, and individual tax filers to June 15. Given the urgency of the crisis, this is the right thing to do; however, it does make it much more difficult for lawmakers and the Governor to accurately estimate state revenue to inform state budget negotiations.

While we do not know the full impact on Proposition 98, we know that the collective call from local educational leaders to boost the Local Control Funding Formula (LCFF) revenue above the statutory cost-of-living-adjustment (COLA) of 2.29% will require re-evaluation, depending on any downward revision to the minimum guarantee. The LCFF COLA is derived from the implicit price deflator on a third-quarter to third-quarter basis (prior April 1 to current March 30) from the prior year, so it is unlikely that the LCFF COLA will significantly change from January as a result of the current health crisis, which was just starting to be felt earlier this month. You may recall that the 2019–20 State Budget Act ([SB 76](#)) authorized the Director of the Department of Finance to reduce the LCFF COLA to fit within K–12's portion of the minimum guarantee in any fiscal year when it is insufficient to cover the statutory COLA. However, at this time, there appears to be sufficient cushion in the previously estimated growth in the minimum guarantee to prevent the triggering of this provision. In other words, there should be sufficient funding to cover the 2.29% LCFF COLA, but it may be that the COLA encumbers a greater share of the year-over-year growth in guarantee. We also have to acknowledge that events are moving quickly and estimates can rapidly change.

In closing, it goes without saying that these are unprecedented, rapidly changing times. We remain vigilant in our monitoring of events in order to report them quickly.

ATTACHMENT C
CONSIDERATIONS FOR FEDERAL LEGISLATION RESPONDING TO COVID-19
PANDEMIC

Director Jumoke Hinton Hodge is the OUSD Board representative to the Council of Great City Schools. Director Hinton Hodge has provided this update based on conversations with the Council of Great City Schools staff.

The Phase 3 CARES Act provides for:

Education Stabilization Funding supports a number of things not limited to this brief listing:

1. \$30.75 billion is appropriated for an Education Stabilization Fund.
2. \$13 billion for K-12 education.
3. \$3 billion for Governor discretionary use.
4. The \$13 billion K-12 allotment will be distributed to states based on their Title I allocation with 90% of the state allocation pass-through to school districts again based on their share of Title I allotments.
5. The K-12 funds can be used for any allowable purpose authorized under ESEA, IDEA, Perkins CTE, or McKinney-Vento homeless authorities.
6. Preparedness and response, needs of individual schools, sanitation supplies, planning for upcoming months, technology purchasing (hardware, software, connectivity), mental health services, summer and after school activities including online, and "other activities that are necessary to maintain the operation of and continuity of services and continuing to employ existing staff of the local educational agency".
7. The bill includes language that states and school districts receiving funds must continue to pay their employees and contractors "to the greatest extent practicable".
8. States are required to maintain state support for K-12 education for FY 2020 and FY2021 at the average of the preceding three fiscal years effort, although the Secretary of Education is authorized to waive that requirement. Also \$100 million has been appropriated for school security emergencies under Project SERV.

Phase 4 CARES Act Recommendations from the Council of Great City Schools

- 1.) **\$100 Billion for the Education Stabilization Fund** Twice the amount that was offered in the 2009 Stimulus package. And 3 times the amount offered in Phase 3.
- 2.) **\$25 Billion – Title 1 IDEA** This is a specific ask to likely fill any gaps with State funding that might occur.

- 3.) **Significant State School Construction:** This legislation was moving its way through but because of COVID19 it got sidelined. The Council believes that our Urban Districts now more than ever need to be doing the work to strengthen our Facilities.
- 4.) **Lift Tax Credit benefits prohibition** on School Districts receiving this option for Employee Retention. If we are successful in retaining our teachers we should be entitled to the Tax credits. Phase 3 of the Act prohibits school districts and governmental agencies from participating in this program.

We Believe . . .



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

That every student should learn in a positive and safe learning environment.

OUSD is committed to meeting the needs of Oakland’s diverse community. Our schools enhance the quality of life of our students and families by providing safe, healthy, and environmentally sustainable places for students to learn and thrive.

In the ability of every student to thrive in school and reach their full potential—and are committed to ensuring that they achieve college, career, and community success in the 21st century.

OUSD invests in our children’s education from cradle to career, delivering high-quality early learning and academic experiences to every student in safe, healthy and equitable schools designed to help them thrive in college, career, and community.

In celebrating the diversity of our students with respect to race, culture, heritage, exceptional needs, gender, and sexual orientation; committing to giving each child what they need; teaching them with high expectations; and supporting them to find joy and success in their education.

OUSD is committed to growing our own talented staff every with diverse educators dedicated to supporting and working in service of Oakland’s youth, and to guaranteeing rigorous instruction in every classroom every day.

In full service community schools that—in addition to providing high quality education—act as an integral part of the health and wellness of our neighborhoods, offering lifelong learning opportunities and support for our students and community members.

OUSD’s mission is to focus on high-academic achievement while serving the whole child, developing the social, emotional and physical health of students, families, and staff. In addition to this mission, OUSD strives to be a resource for positive and continuous growth, enabling adult students to become contributing workers, lifelong learners, global citizens, and full participants in the community.

That students are most successful when all of us—students, families, educators, and community members from all backgrounds and neighborhoods—can meaningfully and equitably participate in making shared decisions and improving conditions at the district level, school site, or in the community.

OUSD continuously works to eliminate barriers to access, learning, and achievement for all students, and strives to create a culture that holds ourselves and our partners accountable for high quality, equitable outcomes because all students deserve equal opportunities to thrive.

In the fair and transparent management of our resources in order to ensure the success of all current and future students, and are committed to seeking additional resources.

OUSD is committed to providing the community and our families accessible and easy-to-understand information about our district, our schools, and our students to promote meaningful engagement about the delivery of high-quality education through the effective and efficient use of all resources.

Our 2020 Priorities



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

School Finance: OUSD supports fiscal policies that provide stable, adequate, and equitable funding that align to the costs of giving our students—regardless of their background—what they need to be successful in school and in the community. We support increasing the Local Control Funding Formula (LCFF) base grants to ensure that California is among the top ten in the nation in per-student spending. State and federal fiscal resources should recognize and accommodate regional cost differences and unique costs of serving vulnerable student groups who need additional instructional and non-instructional support to attain educational parity, such as homeless and refugee students. Furthermore, OUSD is committed to eliminating our \$34 million outstanding state loan so that limited resources are unilaterally focused on serving our students and community.

Newcomer Students: OUSD is particularly unique with the influx of newcomer students, many of whom are unaccompanied minors, who have arrived in our district in the last three years. By 2020-21, we anticipate that 1 in every 5 of our high school students will be a newcomer. In addition to the challenges of adjusting to an unfamiliar country, newcomer students are often homeless and highly transient. The state finance model should recognize that unlike more stable student populations, refugee and newcomer students enroll in districts throughout the school year and thus should be accounted for purposes of funding on an enrollment rather than attendance basis. Currently, migrant students with similar enrollment patterns are accounted for by enrollment and not by attendance.

Charter Schools: OUSD supports student-focused charter school policies along the full policy continuum that promote a shared responsibility to educate all of Oakland's youth, including our most vulnerable populations such as students with moderate/severe disabilities, English Learners, newcomers, homeless students, and foster youth. We believe that California should continue to evaluate charter school policies to ensure that charter schools beneficially augment educational programs offered in the district and in their communities in ways that reflect the needs and demographics of the district and community. Additionally, OUSD believes that the regulations governing Proposition 39 facilities requests need to recognize the unique facilities needs of specific student groups, such as English learners and students with disabilities, whose educational programs and services result in nontraditional facilities' needs. Current Proposition 39 regulations do not explicitly allow districts or charter schools to consider the facility space needs for students with disabilities when determining available capacity or facilities needs for charter school requests.

Early Education: OUSD supports policies that aim to achieve a coherent, high-quality pre-kindergarten system, with minimal application complexities and stable, meaningful funding. We know that high-quality early learning opportunities benefit our community's neediest children. OUSD believes that providing a quality preschool experience sets a positive start for the child's educational career. By investing in preschool children have short-term and long-term benefits, including improved academic and school readiness and higher graduation rates. We are committed to addressing the socio economic challenges of our families that limit equitable access to the benefits of preschool.

Special Education: OUSD supports educational and fiscal policies that, accompanied by adequate resources, serve students with disabilities in learning environments where they can thrive. We believe that students should be given the opportunity to learn among their peers in classrooms where they are supported by staff and resources designed to eradicate barriers to their academic success. We believe that the State must recognize and address the unique costs associated with educating and serving students with severe disabilities who require multiple services and therapies as determined by their Individualized Education Program.



Climate Resilience. California is confronting challenges associated with the changing climate: power shutoffs, wildfires, drought, and related disasters, in addition to the longstanding challenge of earthquakes. The State has worked to provide resources to cities and counties to ensure continuity of critical infrastructure; it must recognize schools as essential providers as well in these emergency situations. Schools need assistance to ensure their resilience and ability to continue serving their communities during these challenges. Schools are important partners for meeting California's climate goals. With appropriate resources, schools can invest in green infrastructure, shade structures, renewable energy, energy storage, electric vehicles, and related strategies. Another key issue to address is average daily attendance, because districts lose ADA when electricity is shut off. In Oakland, some schools have been closed again and again during public safety power shutoffs while others remain open.

Career Technical Education: We support the continued investment in the Career Technical Education (CTE) Incentive Grant Program that augments our local parcel tax and supports our effort to expand CTE opportunities for all students. Our local initiative shows great promise to increase graduation rates, which is a top priority for our district. We are actively engaged in the startup of the new K-12 Strong Workforce Program to coordinate with other K-14 CTE providers in our region to meet the needs of our students and our community. We support predictable, multiyear grants that allow us to flexibly invest in promising, high-quality local pathways without unnecessary state bureaucracy and requirements that inhibit our ability to expand CTE to all students.

Human Resources: OUSD supports policies that promote the recruitment and development of a diverse, talented workforce trained to meet the needs of California's increasingly diverse student body. Such policies should include investments along the full professional continuum, beginning with high-quality teacher preparation programs that provide in-the-classroom experience with master teachers, support for new teachers during the critically important first few years in the classroom, ongoing educator support to develop and refine skills in multicultural literacy as well as ethnic and language diversity, and tenure policies that promote continuous improvement in teaching practices. OUSD supports policies that create an accessible pathway into the teaching profession, including alternatives to high stakes licensure testing, and alleviate the hardship of high workforce attrition as well as the traditional hard-to-fill subject matters of science, mathematics, multilingual education, and special education. In addition, our community's high living costs make it difficult for promising young educators to afford teaching in the district; a high-cost community like Oakland warrants additional support to make the reward of teaching our students feasible. To this end, we support innovative policies to attract and retain talent in communities like Oakland, such as affordable housing options to enable our educators to live in the city where they teach.

Community Schools: OUSD believes that creating safe and supportive schools is essential to ensuring students' academic and social success. We have created health and wellness goals that support social, emotional, and physical health and employ a restorative justice model that works to lower our rate of suspension and expulsion and to foster positive school climate. We support legislation and resources that fund the district to address both the physical and mental health needs of our students and allows the district to respond to student misconduct in a constructive, locally determined manner.

Accountability: OUSD supports a multiple-measures accountability system that aligns with our continual improvement model catalyzed by the Local Control and Accountability Plan and the California School Dashboard. We believe a continuous improvement approach to accountability will propel our District and schools toward increased performance targets through careful analysis of student performance data that includes the use of a student growth model when evaluating annual standardized assessment results. Additionally, OUSD will create new efficient and effective systems to monitor the requirements that accompany state and federal grants and the other laws that attribute responsibility to public schools for oversight.

CORONAVIRUS PANDEMIC

Schools bracing for double whammy

Financial, academic setbacks could last for years

By Jill Tucker



Photos by Brian Feulner / Special to The Chronicle

Nalani Sanchez, 12, looks through her schoolbooks at her home in Half Moon Bay.

With schools across California expected to remain closed until the fall, district officials this week started looking toward an ominous future, one filled with fiscal calamity and academic losses from the fallout of the coronavirus crisis.

It could take years for

districts to recover, they said.

Without a significant increase in state or federal funding, schools across the state could face emergency layoffs and severe budget cuts next year, said Bill Clark, Contra Costa County Office of Education deputy superintendent.

Forget summer school or an extended academic year to help kids catch back up.

“The schools would be eager to do that and willing to do that,” Clark said. “It’s just not going to be fiscally possible.”



Her sister, Kaiulani, 14, takes an online Spanish class; the freshman has a 4.0 grade-point average and does not want a pass-fail report card.

Many districts were already stretched financially, preparing to cut budgets to make it through the next fiscal year. Closing schools has only increased current spending on technology, meal distribution, cleaning and other needs.

The state budget — funded by income, sales and corporate taxes — is likely to suffer significantly from revenue losses caused by the shelter-in-place orders. Rather than the 2% cost-of-living increase proposed in the governor’s budget, or about \$496 more per student, schools could see no increase, officials said.

Under one recessionary scenario, the state could lose \$50 billion in revenue over two years, out of an annual budget of \$900 billion.

Many districts could resort to emergency layoffs in August or other ways to cut staff, officials said.

“Many districts throughout the state are talking about an early retirement incentive,” said Lynn Mackey, Contra Costa County superintendent.

More money is going out than expected now because of expenditures related to the closure and less is expected to come in next year — a double whammy, education officials said.

The \$100 million provided by the state to help schools with distance learning during the closure is a welcome sign, but ultimately equals \$16 per student in the state’s schools, Mackey said.

Still, the immediate focus is on the needs of students and teachers so that teaching and learning can continue in some form through the end of the school year even if classrooms remain closed, she said.

“I think all the educators in our state and our counties have done a miraculous job getting in to place what’s in place so far,” she said.

What happens after the state gets through the next couple of months, however, is still a big question mark for schools.

District officials are waiting on guidance about grading — or what to put on student report cards so that students aren’t penalized academically because of the closure. The state is expected to provide additional guidance in the coming days, although universities and colleges are already easing admission standards to accommodate the absence of letter grades on transcripts.

The closure has wreaked havoc on the system, said state Superintendent of Public Instruction Tony Thurmond.

“We’re not allowing that to punish students beyond their control,” he said.

In a letter to county officials Tuesday, Thurmond acknowledged that schools will be unable to reopen this year, given the safety concerns and ongoing social distancing that comes with the coronavirus response.

District officials said there are many questions, like the status of summer school or rescheduling graduation and prom, that they still can’t answer.

“The only thing official at this time is that summer school registration has been postponed until further notice,” said Brian Kilgore, spokesman for Fremont Unified. “We believe there will be credit recovery available to students in some form and are waiting to receive guidelines from the state.”

Kai Sanchez, 14, would like greater clarity on grading. The Half Moon Bay High School freshman has a 4.0 grade-point average and is worried about a pass-fail report card.

“I just think it’s wrong for the students that don’t try and don’t do their homework to get the same grade as me,” she said. “I put time and effort in the things I do.”

Her mom, April Joy Sanchez, worries for the juniors who are applying to college, who don’t know if all colleges will waive the SAT and ACT test requirement like University of California schools did Wednesday.

The lack of information is confusing and frustrating, especially when everyone is cooped up all day long, Sanchez said.

“There’s nowhere to escape,” the mom said.

For districts and teachers across the state, the unknowns stretch even further. They won’t know for some time what the academic impact will be from the closures. Low-income students, English learners and students with special needs are likely to be disproportionately affected.

What if students miss critical math concepts needed for the next course in the fall? Will teachers have to backtrack for weeks or months before moving forward, while facing larger class sizes because of layoffs?

Currently, many students still don’t have computers or online access to participate in digital instruction, and it’s unclear how many of the state’s 6.2 million students will never log on or fail to continue learning during the closure.

Money will be scarce to help them get back on track, officials said.

It’s also likely that many students in special education programs will require what is called compensatory services for what they didn’t get during the closure, like occupational therapy or personalized academic instruction. Providing those additional catch-up services next year could add significantly to districts’ already strapped budgets.

The financial challenges facing districts are “certainly on our radar,” Thurmond said.

The state is already monitoring where districts have financial challenges and brainstorming ways to support them, he added, including additional funding for school meals provided during the closure.

But Thurmond said his message to families and educators is to focus on the present because “school is not over.”

“Students might not be able to return to campus, but this year is not over,” he said. “I think people are trying to get through the basics of day-to-day right now.”

Half Moon Bay High School senior Raven Fortin is trying to make it through each of those days, but she’s also focused on a future that is not what she thought it would be.

“It’s so disappointing,” she said of not being able to wear a cap and gown and walk across a stage as planned. “We’ve been working toward that for four years.”

She doesn't know if her diploma will just show up in the mailbox or if maybe there will be a ceremony in the summer.

But so far, it feels like she's being forced to skip a big chapter in her life.

"It's a huge letdown that we won't be able to say goodbye to each other," she said of her classmates. "It seems every day this whole thing gets exponentially more intense."

That said, the 17-yearold, who plans to study public health at Oregon State University in the fall, said she's living through what will be a different set of memories.

"We're all living through history," she said. "We'll look back on it and go, 'Yeah, I was there.' "

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ONLINE EXTRA

Get answers to your questions concerning the extended school closures and other coronavirus related topics: www.sfchronicle.com