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Board Cover Memorandum

To Board of Education

From Mike Hutchinson, Board Member

Meeting Date February 10, 2021

Subject Resolution No. 2021-0038 - Waiver of Certain Proposition 39 Obligations During the COVID-19 Pandemic

Ask of the Board Introduction of Resolution No. 2021-0038 - Waiver of Certain Proposition 39 Obligations During the COVID-19 Pandemic as a new legislation matter

Background The COVID-19 pandemic began in March 2020, with the declaration of a State of Emergency in California and the closure of all District schools to in-person instruction. Since that time, almost 3.5 million people in California have tested positive for COVID-19 and an estimated 50,000 people have died. Oakland itself has been hit particularly hard by COVID-19, with the COVID case rate in Oakland consistently running higher than the average rate across Alameda County.

The debate regarding the reopening of schools has been a challenging one and it is made even harder due to the presence of charter schools in Oakland and the District's obligations under Proposition 39, approved by California voters in 2000, and its implementing regulations ("Prop. 39"). Specifically, Prop. 39 requires the District to offer "reasonable equivalent" facilities to each eligible charter school that so requests them.

If school in OUSD were to reopen, the Centers for Disease Control, the California Department of Public Health, and the Alameda County Public Health Department have all recommended that there be sufficient physical space within a classroom such that each student is at least six feet from all other students in the classroom. However, if all students enrolled in the District were to return to school for the 2021-22 school year for regular, full-day instruction and adhere to social distancing requirements, the District would need to regularly utilize significantly more classrooms than it currently does. This would make it difficult, if not impossible, for the District to offer "reasonable equivalent" facilities to each eligible charter school that so requests them.

Discussion The Resolution directs the Superintendent or designee to seek, by whatever legal means available, a waiver or other appropriate action that would enable the

District to forgo its obligations under Prop. 39 to offer “reasonable equivalent” facilities to each eligible charter school that so requests them.

Fiscal Impact

The net fiscal impact of the Resolution is difficult to determine. If a waiver of the District’s Prop. 39 obligations is successful, it could impact the District’s financial in a number of different ways including (but not limited to) the following: decreasing the cost of adhering to social distancing requirements due to more available classrooms and other space on school sites; increasing the cost related to COVID-19 due to more students on campus; and reducing revenue from fewer Prop. 39 offers.

Attachment(s)

- Resolution No. 2021-0038 - Waiver of Certain Proposition 39 Obligations During the COVID-19 Pandemic

**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT**

Resolution No. 2021-0038

Waiver of Certain Proposition 39 Obligations During the COVID-19 Pandemic

WHEREAS, on March 4, 2020, the Governor of California declared a State of Emergency due to the outbreak and spread of the COVID-19 virus;

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 virus a worldwide pandemic;

WHEREAS, in California, almost 3.5 million people have tested positive for COVID-19 and an estimated 50,000 people have died;

WHEREAS, the COVID case rate in the City of Oakland has consistently been higher than the average rate across Alameda County;

WHEREAS, the Governor of California has issued numerous Executive Orders and the California Department of Education has issued guidance in response to the COVID-19 pandemic;

WHEREAS, the Health Officer of the County of Alameda, pursuant to California Health and Safety Code sections 101040, 101085, and 120175, has issued multiple Shelter-in-Place orders ("SIP orders") in response to the COVID-19 pandemic;

WHEREAS, the Oakland Unified School District has been closed to in-person instruction in March 13, 2020;

WHEREAS, under Proposition 39 and its implementing regulations ("Prop. 39"), the District is required to offer each eligible charter school "reasonable equivalent" facilities if the charter school so requests;

WHEREAS, the Centers for Disease Control, the California Department of Public Health, and the Alameda County Public Health Department have all recommended that any school that reopens should ensure sufficient physical space within a classroom such that each student is at least six feet from all other students in the classroom;

WHEREAS, if all students enrolled in the District were to return to school for the 2021-22 school year for regular, full-day instruction and adhere to social distancing requirements, the District would need to regularly utilize significantly more classrooms; and

WHEREAS, if the District were to need to regularly utilize significantly more classrooms for the 2021-22 school year, then it is likely that the District would not be able to offer each eligible charter school with “reasonable equivalent” facilities that requests them as required under Prop. 39.

NOW, THEREFORE, BE IT RESOLVED, the Board of Education (“Board”), in order to properly prepare for the likely need to adhere to social distancing requirements for the 2021-22 school year, seeks the ability to forgo its obligations under Prop. 39 in order to ensure the health and safety of its students, families, and staff; and

BE IT FURTHER RESOLVED, the Board hereby directs the Superintendent or designee to seek, by whatever legal means available, a waiver or other appropriate action that would enable the District to forgo its obligations under Prop. 39 to offer each eligible charter school “reasonable equivalent” facilities that requests them.

PASSED AND ADOPTED on _____, 2021, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSED:

ABSENT:

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on _____, 2021.

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OAKLAND UNIFIED SCHOOL DISTRICT

Shanthi Gonzales
President, Board of Education

Kyla Johnston-Trammell
Superintendent and Secretary, Board of Education