West Contra Costa Unified School District
Office of the Superintendent

Friday Memo
October 25, 2019

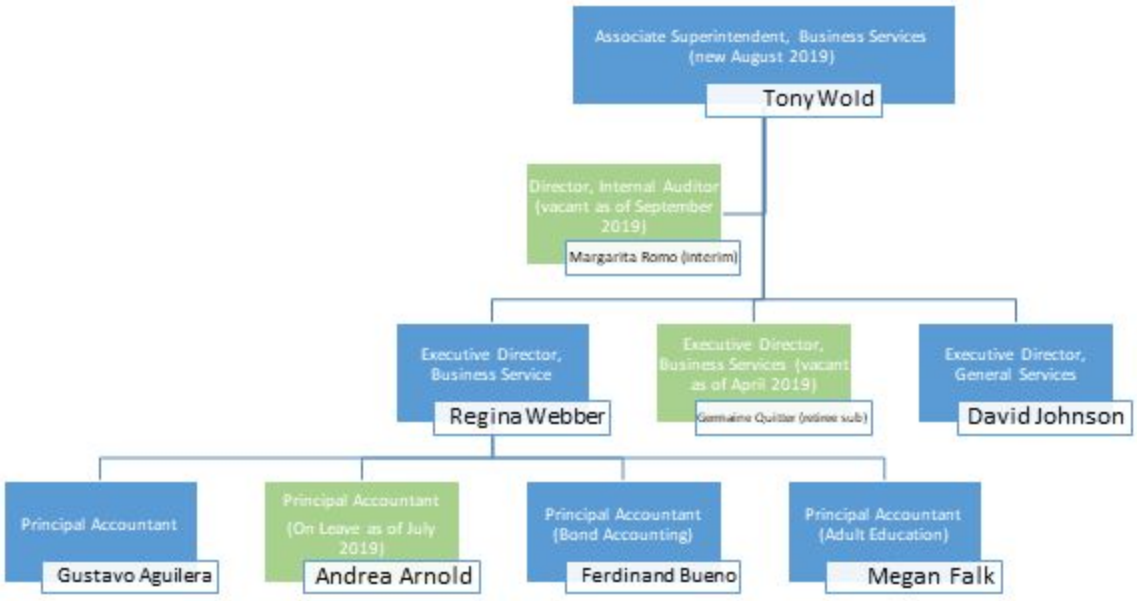
Upcoming Events – Matthew Duffy
October 29: Agenda Setting, Superintendent's Office, 4:30 PM
October 31: Minimum Day K-8 Schools
November 1: Elementary Conference Day, No Elementary School
November 1 & 2: PromiseNet Conference, UC Berkeley Campus
November 4: Special Education CAC, Pupil Services, 7:00 PM
November 6: End of 1st Trimester
November 6: Board of Education, DeJean, 6:30 PM
November 7: CBOC Meeting, FOC, 6:15 PM
November 11: Veterans Day Holiday, Schools and Offices Closed
November 12: Agenda Setting, Superintendent's Office, 4:30 PM
November 12: DLCAP Meeting, Kennedy Library, 6:30 PM
November 14: Governance Committee, Alvarado, 6:00 PM
November 14: Safety Committee Meeting, Alvarado, 6:00 PM

Upcoming Agenda Items November 6 - Matthew Duffy
Data / Roadmap Update
Bond Measure/Parcel Tax Survey Results

Unfunded State Facility Funds - Tony Wold
Recently several school districts successfully sued the State Allocation Board (SAB) regarding the process of funding school districts for State matching funds for construction projects. The resulting lawsuit will require the SAB to fund those plaintiff districts. As you can see from the attached letter we have over $4 million in eligibility on this list as well. The legal team, led by Terry Tao are aggressively pursuing the expansion of this settlement to include all districts that were on the unfunded list, including West Contra Costa Unified School District. We will be supporting this work with the hope to obtain additional funding to support our school facilities needs. We plan to return the letter with our acceptance to be part of this process on Monday of next week and wanted to make sure that the Board was aware of the efforts that are occurring on behalf of the District. We will keep the Board informed on the progress of this process as we obtain more information.

Budget Update – Tony Wold
There have been multiple questions about the timeline for our budget reductions and the distribution of information. We have consistently outlined the timeline that we would be presenting information in stages to ensure that all stakeholders could process the information and ask questions prior to moving on to the next element of the budget. For some stakeholders this can lead to frustration and concern, but we must remember that the timeline for completing this work is June of 2020 – not immediately. **Every presentation to the Board is being completed as quickly as the information within it can be validated and there is currently not the ability to expedite this process to meet the goal of providing transparent information to all stakeholders.**

Part of the challenge that West Contra Costa Unified has faced is the implementation of reduction measures and the reconciliation of the budget and actual expenses to the political conversations. This work is done by the staff in multiple district departments. In addition, the current configuration of duties have several positions limited in focus to specific funds leaving the District's operational budget analysis being done by only 2 management positions. Currently, due to attrition, and the current candidate pool, the Business Services department is operating with several operational gaps as seen from the organization chart below:



With the operational gaps there have been delays in validating information that is presented to the Board and our stakeholders. In addition, the daily work of completing reconciliations and analysis of the budget must be balanced with the desire to have data presented. The timelines for our budget reduction process and analysis as outlined in multiple presentations, and have validated with the County Office of Education, are based upon best practices and are meant to ensure that all stakeholders have accurate information to review.

Quality teachers create a syllabus for term, but the daily detailed lesson plans are not published until the day of the lesson. This is similar to the budget process and has been the practice that has been used for many years in multiple school districts. We have outlined the timelines for our major discussions and analysis of the information. Each phase starts with a high-level outline to the Board of Education with the context of the issue, and then a deeper level analysis of the information occurs with the various stakeholder groups to provide input and feedback that the Cabinet will compile and bring back to the Board for action at subsequent meetings. This accordion process ensures that "the story" is complete and that there is sufficient time to analyze each aspect of the budget. While some groups would like to have everything in one place, the complexity of the total budget requires

thoughtful analysis and discussion each step of the way. This methodology ensures that not only is the information transparent, but that the decisions that are recommended are thoughtful and the consequences of those decisions are quantified.

The current timeline of budget presentations and actions is as follows:

- Presentation of Non-Salary Budget information – October 23, 2019
  - Detail of all contracts will be reviewed by various stakeholders and posted for public review on the website the week of October 28th
- Presentation of Administrative Staffing information – November 20, 2019
  - Detail review will begin by various stakeholders the week of December 9th
- Presentation of First Interim Budget – December 11, 2019
  - Identification of first round of possible reductions for non-salary from various stakeholders will be presented at the time of this meeting
- Presentation of Staffing information – January 2020
  - Conversations regarding staffing levels require negotiations and some of this discussion will be limited to closed session with formal recommendations moving to open session as we move into the Spring of 2020
  - Additional updates and meetings will be identified after First Interim regarding this process
- Board adoption of 2020 – 2021 budget reductions – June 24, 2020

Media Articles of Interest - Marcus Walton
The following news articles may be of interest. Copies are attached.

East Bay district struggles with role of tutors in student learning -
https://edsource.org/2019/how-essential-are-staff-tutors-in-california-schools/618664

One step closer to what no one wants: dueling tax plans in November 2020 -
https://edsource.org/2019/one-step-closer-to-what-no-one-wants-dueling-tax-plans-in-november-2020/618967

Kennedy Football: It's About Getting To Friday -
https://www.sfgate.com/preps/article/Kennedy-Football-It-s-About-Getting-To-Friday-14557651.php

Cal Prep members advocate for charter renewal -
https://richmondconfidential.org/2019/10/18/cal-prep-members-advocate-for-charter-renewal/

Richmond to Transition to District-Based Elections - https://www.nbcbayarea.com/news/local/Richmond-to-Transition-to-District-Based-Elections-563684881.html

TAO | ROSSINI
APC
921 N. Harbor Blvd, Suite 408
La Habra, CA 90631
(714) 761-3007
ttt@taorossini.com
October 22, 2019

To: School District on 2012 Unfunded List Denied CCI Adjustments 2012-2017

Re: CASH v SAB

Dear Sir or Madame:

This letter is a follow-up to telephone calls that were made to many of the school districts on the attached list. As some of you may have heard, on November 2, 2018, the Coalition for Adequate School Housing ("CASH") and six school districts filed an action against the State Allocation Board ("SAB") for failing to include 5 years of Construction Cost Index Adjustments ("CCI") in the apportionments made to school districts waiting on a 2012 unfunded list. CASH participated in a representative capacity on behalf of all affected school districts. This letter is written to you because you are one of the Pre-November 2012 unfunded list Districts to let you know that there is a developing issue that could lead to your district receiving some additional funding. A copy of the list is attached.

On September 16, 2019, the Court issued a decision that the SAB abused its discretion in failing to provide 5 years of CCI adjustments to school districts on the pre-November 2012 SAB unfunded list. The Court ordered CASH and the school district parties to file a proposed judgment and proposed writ of mandate. Because CASH sued on behalf of all the school districts, we included all school districts when we submitted the proposed judgment and proposed writ. On September 28, 2019, the SAB filed an objection to our proposed judgment and writ requesting exclusion of all school districts that were not named parties to the lawsuit. These districts were subject to the same abuse of discretion by SAB and should receive the CCI increases. (A copy of the SAB's objections is attached). Although the SAB lost, its position is that it is only willing to provide the shorted CCI adjustments to the 6 school districts that sued. This position is unfair and inequitable. On October 11, 2019, we filed a formal request that the Court issue an order to the SAB that includes all affected school districts.

We believe it imperative that you seek assistance from your local legislative representatives. Communicate directly with them requesting that they support your interest before the SAB in direct communications and requesting their attendance at critical upcoming SAB meetings. Your request is simple: Equitable treatment.

This office, on behalf of CASH, raised this matter with the SAB as a public comment on September 25, 2019. The agenda for the October 23, 2019 meeting is published and does not identify a closed session item. We will monitor the SAB actions and communicate again with you. The SAB must address the court's direction within a specified 60 day period to obey the law and fund the CCI adjustments denied to the six districts in the litigation. After the court issues its final order and judgment, our expectation is that the SAB will place an open session item on the agenda for either the December or January meeting. to address the court's order .

If this effort to obtain full funding for all school districts is unsuccessful with the SAB, it may be necessary to file a second action on behalf of the remaining school districts. For right now, let's stay optimistic and if we are unsuccessful, I'll follow-up with additional correspondence on this issue.

Voluntary Contribution

Since CASH and 6 school districts brought this action and you are one of the many districts that are beneficiaries, we would like to request a voluntary contribution of 1% of any funds collected. This voluntary contribution will help defray some of the costs incurred bringing this action. We will follow-up with correspondence from CASH addressing this voluntary contribution at a later date. Please initial in the below noted location and return this letter via e-mail to ttt@taorossini.com or fax to (714) 446-8742 to acknowledge your position. If you need Board authority, but are in agreement, please note so we can track your participation.

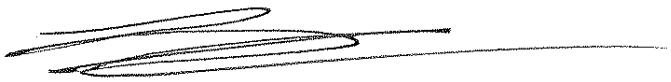
Conclusion

We are optimistic of the direction the SAB will take when this action is taken before the full Board, so we look forward to a positive end result that will result in your district receiving the anticipated CCI adjustment. In the meantime, please do anything that you think will bring this matter to the attention of the SAB Board members so they understand how critical the CCI is to your particular situation and why the failure to provide a CCI adjustment resulted in hardships to your district.

Thank you in advance for your interest and assistance in this important matter for your District.

Thank you.

Sincerely



Terry Tao, AIA, Esq.
Tao Rossini, a Professional Corporation
Cc: Tom Duffy, CASH

I acknowledge receipt of this letter and would like to participate in efforts to obtain CCI adjustments for our District. I will recommend to the Board participation at 1% in the efforts to secure the CCI adjustment if the efforts short of litigation are successful.

_____ Date:_____

No.	District	Type	Amount	Amount/District
1	Alhambra USD	MOD	$670,985.00	
2	Alhambra USD	MOD	$421,128.00	$1,092,113.00
3	Anaheim City School District	MOD	$4,997,913.00	$4,997,913.00
4	Anderson Valley USD	MOD	$138,911.00	
5	Anderson Valley USD	MOD	$615,885.00	$754,796.00
6	Bakersfield City Elementary	NEW	$15,473,429.00	
7	Bakersfield City Elementary	NEW	$10,048,623.00	$25,522,052.00
8	Baldwin Park USD	MOD	$402,829.00	$402,829.00
9	Belmont-Redwood Shores School District	MOD	$1,393,431.00	
10	Belmont-Redwood Shores School District	MOD	$635,720.00	$2,029,151.00
11	Brea Olinda USD	MOD	$1,392,017.00	$1,392,017.00
12	Burlingame Elementary	MOD	$1,548,512.00	$1,548,512.00
13	Cajon Valley Union School District	MOD	$861,779.00	
14	Cajon Valley Union School District	MOD	$2,131,010.00	$2,992,789.00
15	Calistoga Joint Unified School District	MOD	$442,693.00	$442,693.00
16	Carlsbad USD	MOD	$2,306,842.00	$2,306,842.00
17	Centinela Valley Union HSD	MOD	$1,452,253.00	
18	Centinela Valley Union HSD	MOD	$3,193,909.00	
19	Centinela Valley Union HSD	NEW	$16,505,991.00	
20	Centinela Valley Union HSD	MOD	$7,210,103.00	$28,362,256.00
21	Central USD	MOD	$1,502,290.00	
22	Central USD	MOD	$0.00	$1,502,290.00
23	Chico USD	MOD	$3,439,355.00	$3,439,355.00
24	Culver City USD	MOD	$2,127,431.00	
25	Culver City USD	MOD	$5,053,092.00	$7,180,523.00
26	Cypress School District	MOD	$1,955,840.00	$1,955,840.00
27	Dunham Elementary	MOD	$0.00	$0.00
28	East Side Union HSD	MOD	$4,219,003.00	$4,219,003.00
29	Eureka City USD	MOD	$364,590.00	$364,590.00
30	Franklin McKinney Elementary	MOD	$511,489.00	$511,489.00
31	Fresno USD	MOD	$4,488,621.00	
32	Fresno USD	MOD	$3,550,501.00	
33	Fresno USD	MOD	$1,720,850.00	

Exhibit A

No.	District	Type	Amount	Amount/District
34	Fresno USD	MOD	$1,961,579.00	
35	Fresno USD	MOD	$5,531,483.00	
36	Fresno USD	NEW	$15,685,743.00	
37	Fresno USD	NEW	$1,018,414.00	
38	Fresno USD	NEW	$546,654.00	$34,503,845.00
39	Gilroy USD	MOD	$725,354.00	$725,354.00
40	Grossmont Union HSD	MOD	$1,943,275.00	$1,943,275.00
41	Lake Elementary	MOD	$953,024.00	$953,024.00
42	Lake Tahoe USD	MOD	$1,349,545.00	$1,349,545.00
43	Lammersville Joint USD	NEW	$10,815,703.00	$10,815,703.00
44	Larkspur-CorteMadera School District	MOD	$716,504.00	
45	Larkspur-CorteMadera School District	MOD	$1,067,285.00	$1,783,789.00
46	Los Angeles USD	MOD	$7,311,673.00	
47	Los Angeles USD	MOD	$913,941.00	
48	Los Angeles USD	MOD	$372,000.00	
49	Los Angeles USD	MOD	$1,872,505.00	
50	Los Angeles USD	MOD	$1,451,872.00	
51	Los Angeles USD	MOD	$835,808.00	
52	Los Angeles USD	MOD	$1,457,897.00	
53	Los Angeles USD	MOD	$4,990,641.00	
54	Los Angeles USD	MOD	$2,708,281.00	
55	Los Angeles USD	MOD	$1,017,899.00	
56	Los Angeles USD	MOD	$2,223,370.00	
57	Los Angeles USD	MOD	$1,643,967.00	
58	Los Angeles USD	MOD	$2,206,184.00	
59	Los Angeles USD	MOD	$4,479,450.00	
60	Los Angeles USD	MOD	$746,327.00	
61	Los Angeles USD	MOD	$1,157,123.00	
62	Los Angeles USD	MOD	$1,138,224.00	
63	Los Angeles USD	MOD	$1,032,271.00	
64	Los Angeles USD	MOD	$550,676.00	
65	Los Angeles USD	MOD	$437,796.00	
66	Los Angeles USD	MOD	$4,360,668.00	

Exhibit A

No.	District	Type	Amount	Amount/District
67	Los Angeles USD	MOD	$658,522.00	$43,567,095.00
68	Manzanita Elementary SD	MOD	$228,252.00	$228,252.00
69	Martinez USD	MOD	$2,304,026.00	$2,304,026.00
70	Mendocino COE	MOD	$184,346.00	$184,346.00
71	Newport Mesa USD	MOD	$773,900.00	
72	Newport Mesa USD	NEW	$6,708,658.00	
73	Newport Mesa USD	MOD	$640,660.00	
74	Newport Mesa USD	NEW	$2,303,604.00	
75	Newport Mesa USD	NEW	$2,312,050.00	
76	Newport Mesa USD	NEW	$6,217,866.00	
77	Newport Mesa USD	MOD	$2,012,214.00	$20,968,952.00
78	Oakland USD	MOD	$261,354.00	$261,354.00
79	Orland Joint USD	MOD	$1,853,085.00	$1,853,085.00
80	Palo Alto USD	NEW	$4,166,578.00	
81	Palo Alto USD	NEW	$1,485,437.00	
82	Palo Alto USD	MOD	$635,554.00	
83	Palo Alto USD	MOD	$720,787.00	$7,008,356.00
84	Palos Verdes Peninula USD	NEW	$999,139.00	
85	Palos Verdes Peninula USD	MOD	$1,856,645.00	$2,855,784.00
86	Pittsburgh USD	MOD	$3,272,108.00	$3,272,108.00
87	Placentia-Yorba Linda USD	MOD	$1,758,421.00	$1,758,421.00
88	Redondo Beach USD	MOD	$586,806.00	
89	Redondo Beach USD	MOD	$911,821.00	
90	Redondo Beach USD	MOD	$393,067.00	
91	Redondo Beach USD	MOD	$490,014.00	$2,381,708.00
92	Rincon Valley Union School District	MOD	$1,478,771.00	$1,478,771.00
93	San Diego USD	MOD	$2,237,882.00	$2,237,882.00
94	San Juan USD	MOD	$454,883.00	$454,883.00
95	San Marcos USD	NEW	$3,457,114.00	
96	San Marcos USD	NEW	$30,383,533.00	
97	San Marcos USD	MOD	$2,963,424.00	$36,804,071.00
98	San Ramon Valley USD	NEW	$612,224.00	
99	San Ramon Valley USD	MOD	$505,811.00	

Exhibit A

No.	District	Type	Amount	Amount/District
100	San Ramon Valley USD	MOD	$1,588,327.00	$2,706,362.00
101	Santa Ana USD	MOD	$3,220,891.00	$3,220,891.00
102	Santee Elementary	MOD	$259,210.00	
103	Santee Elementary	MOD	$2,256,120.00	$2,515,330.00
104	Savanna SD	MOD	$2,869,227.00	$2,869,227.00
105	Sequoia Union HSD	NEW	$1,478,179.00	$1,478,179.00
106	Sierra Sands USD	MOD	$5,042,273.00	$5,042,273.00
107	Simi Valley USD	MOD	$2,993,640.00	
108	Simi Valley USD	MOD	$1,872,262.00	$4,865,902.00
109	Solana Beach School District	NEW	$11,562,358.00	$11,562,358.00
110	Solvang Elementary	MOD	$3,549,252.00	$3,549,252.00
111	Stockton USD	MOD	$700,708.00	
112	Stockton USD	MOD	$136,160.00	$836,868.00
113	Strathmore Union Elementary	MOD	$0.00	$0.00
114	Temecula Valley USD	NEW	$1,563,291.00	$1,563,291.00
115	Tustin USD	NEW	$5,897,948.00	$5,897,948.00
116	Val Verde USD	NEW	$21,621,701.00	$21,621,701.00
117	Ventura COE	MOD	$1,092,097.00	$1,092,097.00
118	Victor Valley Union HSD	NEW	$3,242,878.00	
119	Victor Valley Union HSD	NEW	$0.00	$3,242,878.00
120	Washington USD	MOD	$5,906,065.00	$5,906,065.00
121	West Contra Costa USD	MOD	$1,101,173.00	
122	West Contra Costa USD	MOD	$2,071,166.00	
123	West Contra Costa USD	MOD	$946,931.00	$4,119,270.00
124	Whittier Union HSD	MOD	$3,178,351.00	$3,178,351.00
125	Windsor USD	NEW	$141,044.00	$141,044.00
			$356,119,969.00	$356,119,969.00
			$47,453,559.66	

Exhibit A

XAVIER BECERRA
Attorney General of California
ANTHONY R. HAKL
Supervising Deputy Attorney General
JEFFREY A. RICH
Deputy Attorney General
State Bar No. 108589
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6043
Fax: (916) 324-8835
E-mail: Jeffrey.Rich@doj.ca.gov
Attorneys for Respondent State Allocation Board

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

COALITION FOR ADEQUATE SCHOOL HOUSING, a nonprofit trade organization; CYPRESS SCHOOL DISTRICT, a California public school district; SAVANNA SCHOOL DISTRICT, a California public school district, Petitioners and Plaintiffs, **v.** **STATE ALLOCATION BOARD, a California State agency; DEPARTMENT OF FINANCE, a California State agency; GOVERNOR JERRY BROWN and DOES 1-100, inclusive,** Respondents and Defendants. AND CONSOLIDATED ACTIONS.	Lead Case 30-2018-01029962-CU-WM-CJC Consolidated Cases: 30-2018-01037085 30-2019-01048039 30-2019-01061638 30-2019-01061780 [Assigned for all purposes to Hon. Melissa R. McCormick] **STATE ALLOCATION BOARD'S OBJECTIONS TO PETITIONERS' PROPOSED JUDGMENT AND PROPOSED WRIT OF MANDATE** Date: September 12, 2019 Time: 1:30 p.m. Dept: C13 Judge: Hon. Melissa R. McCormick Trial Date: September 12, 2019 Action Filed: November 7, 2018

Pursuant to California Rules of Court, rules 3.1312(a) and 3.1590(j), respondents State Allocation Board and Office of Public School Construction (collectively, Board) submit the following objections to petitioners' Proposed Judgment and Proposed Peremptory Writ of Mandate, served on September 26, 2019.

OBJECTIONS TO PROPOSED JUDGMENT

1. Page 2, lines 13-14: "for the projects on the Unfunded Approvals Receiving Priority Funding Apportionments list . . . ."

The Board objects to this language because it is overly broad and ambiguous and not consistent with the Court's September 16, 2019 Statement of Decision and the petitions in these consolidated actions. (See Statement of Decision at p. 2, lns. 1-8 [referring to "Petitioner Districts' construction and modernization applications"]; *id.* at p. 2, lns. 22-25 ["Petitioners contend that the SAB improperly failed to include the intervening construction costs index adjustments in the apportionments for the Petitioner Districts, resulting in underfunding the *Petitioner Districts' projects* by approximately $9,400,000. *Id.* ¶ 24" (italics added)]; Petitioners' Opening Brief at p. 15 [table listing the "Projects" that are the subjects of the consolidated petitions].) Accordingly, the language objected to above should be modified so that it is clear that the Proposed Judgment refers to, and concerns only, the specific projects that are related to the school district petitioners and their petitions in these consolidated actions.

The Board proposes that the following modifications be made to the Proposed Judgment, paragraph 1(a) (deletion shown by strike-through and additions shown in bold):

a. That the apportionments made by Respondent State Allocation Board and Office of Public School Construction on September 6, 2017, and March 21, 2018, for ~~the~~ **school district petitioners Savanna School District's, Cypress School District's, Central Unified School District's, Bakersfield City School District's, Val Verde Unified School District's, and Santa Ana Unified School District's** projects **(collectively, School District Petitioners' Projects)** on the Unfunded Approvals Receiving Priority Funding Apportionments list, are set aside, vacated, and declared invalid as an abuse of discretion by the State Allocation Board.

2. Page 2, line 18: "the apportionments for the projects on the September 6, 2017, and March 21, 2018, ..."

The Board objects to this language for the same reasons as set forth above (page 1, lines 8-18) and proposes that the following modifications be made to the Proposed Judgment, paragraph 1(b) (deletion shown by strike-through and additions shown in bold):

b. That the State Allocation Board make new determinations of the amounts of the apportionments for the **School District** Petitioners' ~~p~~**P**rojects on the September 6, 2017, and March 21, 2018, Unfunded Approvals Receiving Priority Funding Apportionments list, by using the 2017 and 2018 new construction and/or modernization per pupil grant levels, respectively, that are consistent with the Court's Statement of Decision.

OBJECTIONS TO PROPOSED PEREMPTORY WRIT OF MANDATE

1. Page 2, lines 7-8: "for the projects on the Unfunded Approvals Receiving Priority Funding Apportionments list . . . ."

The Board objects to this language for the same reasons as set forth above (page 1, lines 8-18) and proposes that the following modifications be made to the Proposed Peremptory Writ of Mandate, paragraph 1 (deletion shown by strike-through and additions shown in bold):

1. Set aside and vacate the apportionments made by Respondents State Allocation Board and Office of Public School Construction on September 6, 2017, and March 21, 2018, for ~~the~~ **school district petitioners Savanna School District's, Cypress School District's, Central Unified School District's, Bakersfield City School District's, Val Verde Unified School District's, and Santa Ana Unified School District's** projects **(collectively, School District Petitioners' Projects)** on the Unfunded Approvals Receiving Priority Funding Apportionments list.

2. Page 2, line 7: "the apportionments for the projects on the September 6, 2017, and March 21, 2018, ..."

The Board objects to this language for the same reasons as set forth above (page 1, lines 8-18) and proposes that the following modifications be made to the Proposed Peremptory Writ of Mandate, paragraph 2 (deletion shown by strike-through and additions shown in bold):

2. That Respondents State Allocation Board and Office of Public School Construction make new determinations of the amounts of the apportionments for the **School District Petitioners'** ~~p~~**P**rojects on the September 6, 2017, and March 21, 2018, Unfunded Approvals Receiving Priority Funding Apportionments list, by using the 2017 and 2018 new construction and/or modernization per pupil grant levels, respectively, that are consistent with the Court's Statement of Decision.

Dated: September 27, 2019

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
ANTHONY R. HAKL
Supervising Deputy Attorney General

JEFFREY A. RICH
Deputy Attorney General
Attorneys for Respondent
State Allocation Board

SA2018103365
14150526.docx

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
SEP 16 2019
DAVID H. YAMASAKI, Clerk of the Court
BY: A. Bavard, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

COALITION FOR ADEQUATE SCHOOL HOUSING; CYPRESS SCHOOL DISTRICT; SAVANNA SCHOOL DISTRICT,

Petitioners,

v.

CALIFORNIA STATE ALLOCATION BOARD, et al.,

Respondents.

Lead Case No. 30-2018-01029962

Consolidated Cases:

30-2018-01037085
30-2019-01048039
30-2019-01061638
30-2019-01061780

Judge Melissa R. McCormick

Department C13

STATEMENT OF DECISION

Petitioners Coalition for Adequate School Housing (CASH), Savanna School District, Cypress School District, Central Unified School District, Bakersfield City School District, Val Verde Unified School District, and Santa Ana Unified School District move in these five consolidated cases for issuance of a peremptory writ of mandate directing Respondents California State Allocation Board (SAB) and Office of Public School Construction (OPSC) to include intervening construction costs index adjustments in 2017 apportionments for the Petitioner Districts' construction and modernization applications that had been placed after approval but before apportionment on an "Unfunded List." The court has reviewed and considered the petitions, the answers, the parties' briefs, and the other materials submitted. The court also held a hearing on September 12, 2019. For the reasons set forth in this Statement of Decision, the petition for writ of mandate is granted.

A. Factual Background

Petitioners allege that from May to October 2012, the OPSC processed and approved 129 new construction and modernization applications totaling $367,670,764.00. *E.g.*, CASH Petition ¶ 17. In that same period, the Petitioner Districts submitted construction plans approved by the Division of State Architect to the OPSC seeking funding for projects in their respective districts. *Id.* ¶¶ 18, 19. The OPSC approved the projects and placed them on an "Unfunded List" on October 24, 2012. *Id.* Between 2013 and 2017, the SAB approved construction costs index adjustments to the per-pupil grant amounts set forth in Education Code §§ 17072.10(a) and 17074.10(a). After the voters approved Proposition 51 on November 6, 2016, the SAB approved apportionments for 125 of the applications on the "Unfunded List." CASH Petition ¶ 23. Petitioners contend that the SAB improperly failed to include the intervening construction costs index adjustments in the apportionments for the Petitioner Districts, resulting in underfunding the Petitioner Districts' projects by approximately $9,400,000. *Id.* ¶ 24. The SAB funded the projects at the per-pupil grant amounts as of the date the OPSC placed the Petitioner Districts' projects on the Unfunded List.

B. Analysis

1. Applicable Law

A writ of mandate will lie to "compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station," Cal. Civ. Proc. Code § 1085, "where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." *Id.* § 1086; *see also Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 101 Cal.App.4th 1317, 1325-26. The writ will issue against a county, city or other public body or against a public officer. *County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653. Section 1085 permits judicial review of ministerial duties as well as quasi-legislative and legislative acts. *Id.* A trial court must determine whether an agency had a ministerial duty capable of direct enforcement or a quasi-legislative duty entitled to a considerable degree of deference. *Id.* This is a question of statutory interpretation, a question of law for the trial court. *Id.*

A ministerial duty is one which is required by statute. *Id.* A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his or her own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. *Id.* Discretion, on the other hand, is the power conferred on public functionaries to act officially according to the dictates of their own judgment. *Id.* at 653-54.

Normally, mandate will not lie to control a public agency's discretion, i.e., to force the exercise of discretion in a particular manner. *Id.* at 654. It will lie, however, to correct abuses of discretion. *Id.* In determining whether a public agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. *Id.* A court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure and give the notices the law requires. *Id.* In applying this extremely deferential test, a court must ensure that an agency has adequately considered all relevant factors, and has

demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute. *Id.*

2. Ministerial Duty

Petitioners first argue that Education Code §§ 17072.10 and 17074.10 require the SAB to include the intervening construction costs index adjustments in the 2017 apportionments and that by not doing so, the SAB failed to perform a ministerial duty. Respondents argue that sections 17072.10 and 17074.10 do not address whether the SAB's apportionments must include construction costs index adjustments between approval and apportionment and thus those sections do not impose a ministerial duty on the SAB to include the adjustments in its apportionments.

Education Code § 17070.35 states that the SAB has the "power[ ] and dut[y]" (i) to adopt rules and regulations for the administration of the Leroy F. Greene School Facilities Act of 1998 (the "Leroy F. Greene Act," codified at Education Code § 17070.10 *et seq.*), (ii) to establish and publish any procedures and policies in connection with the administration of the Leroy F. Greene Act that it deems necessary, (iii) to determine the eligibility of school districts to receive apportionments under the Leroy F. Greene Act and (iv) to "[a]pportion funds to eligible school districts under this chapter [the Leroy F. Greene Act]." Cal. Educ. Code § 17070.35(a).

Section 17072.10 states, in relevant part:

> (a) The board shall determine the maximum total new construction grant eligibility of an applicant by multiplying the number of unhoused pupils calculated pursuant to Article 3 (commencing with Section 17071.75) in each school district with an approved application for new construction, by the per-unhoused-pupil grant as follows:
>
> (1) Five thousand two hundred dollars ($5,200) for elementary school pupils.
>
> (2) Five thousand five hundred dollars ($5,500) for middle school pupils.
>
> (3) Seven thousand two hundred dollars ($7,200) for high school pupils.

(b) The board annually shall adjust the per-unhoused-pupil apportionment to reflect construction cost changes, as set forth in the statewide cost index for class B construction as determined by the board.

Cal. Educ. Code § 17072.10(a), (b). Section 17074.10 states, in relevant part:

(a) The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in school buildings that satisfy the requirements of Section 17073.15:

(1) Two thousand two hundred forty-six dollars ($2,246) for each elementary pupil.

(2) Two thousand three hundred seventy-six dollars ($2,376) for each middle school pupil.

(3) Three thousand one hundred ten dollars ($3,110) for each high school pupil.

(b) The board shall annually adjust the factors set forth in subdivision (a) according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the board.

Cal. Educ. Code § 17074.10(a), (b).

Whether statutory provisions impose a ministerial duty, for which mandamus will lie, or a mere obligation to perform a discretionary function is a question of statutory interpretation. *Weinstein v. County of Los Angeles* (2015) 237 Cal.App.4th 944, 965. The court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. *Id.* at 966. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. *Id.* If the terms of the statute are unambiguous, a court presumes the lawmakers meant what they said, and the plain meaning of the language governs. *Id.* If the statute is ambiguous, the court may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. *Id.*

Petitioners contend that subsection (b) of sections 17072.10 and 17074.10 creates a duty for the SAB to include intervening construction costs index adjustments in its apportionments. The court does not agree. Neither section 17072.10 nor section 17074.10 addresses apportionments made after a project has been placed on an Unfunded List. To the contrary, those sections require the SAB to adjust annually the per-pupil grant amounts set forth in subsection (a) of each statute. Neither section contains any further directive about how those adjusted amounts are to be used under particular circumstances or, more specifically, when the SAB makes apportionments for projects that have previously been placed on an Unfunded List. As a result, neither section 17072.10 nor section 17074.10 created a ministerial duty for the SAB to have included the intervening construction costs index adjustments in the 2017 apportionments for the Petitioner Districts' projects.

3. Promulgation of Section 1859.107

In accordance with Education Code § 17070.35(a)(1), the SAB adopted regulations to administer the Leroy F. Greene Act. Cal. Educ. Code § 17070.35(a)(1) (SAB shall "[a]dopt rules and regulations . . . for the administration of [the Leroy F. Greene Act]"). Section 1859.107 of the regulations states, in relevant part:

> A funding application, with the exception of funding applications identified in Subsection (a) below, that has received an approval pursuant to Section 1859.95, but has not received an apportionment, may receive an adjustment as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78 at the time the apportionment is made.

Cal. Code Regs. tit. 2, § 1859.107.

Petitioners argue that because sections 17072.10 and 17074.10 require the SAB to include intervening construction costs index adjustments in later apportionments, section 1859.107, which purports to give the SAB discretion to decide whether to include construction costs index adjustments in apportionments, is void. In essence, Petitioners argue that section 1859.107 exceeds the scope of the SAB's apportionment authority, which Petitioners contend sections 17072.10 and 17074.10 define. Respondents maintain the

SAB properly promulgated section 1859.107, which Respondents characterize as a quasi-legislative regulation, to address inclusion of intervening construction costs index adjustments in subsequent apportionments.

Government Code § 11342.2 provides the general standard of review for determining the validity of administrative regulations. *Morning Star Co. v. Board of Equalization* (2011) 201 Cal.App.4th 737, 744. Section 11342.2 states:

> Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Cal. Gov't Code § 11342.2.

Under the first prong of this standard, the court independently reviews the administrative regulation for consistency with controlling law. *Morning Star*, 201 Cal.App.4th at 745. The question is whether the regulation alters or amends the governing statute or case law, or enlarges or impairs its scope. *Id.* In short, the question is whether the regulation is within the scope of the authority conferred; if it is not, it is void. *Id.* This is a question particularly suited for the court as the final arbiter of the law, and does not invade the technical expertise of the agency. *Id.*

By contrast, the second prong of this standard, reasonable necessity, generally does implicate the agency's expertise; therefore, it receives a much more deferential standard of review. *Id.* The question is whether the agency's action was arbitrary, capricious, or without reasonable or rational basis. *Id.* A regulation which interprets a statute may be declared invalid if the agency's determination that the regulation is reasonably necessary to effectuate the statutory purpose is not supported by substantial evidence. *Id.* (citing Cal. Gov't Code § 11350(b)(1)).

Regulations, like any agency action, come to court with a presumption of validity. *Association of Cal. Ins. Cos. v. Jones* (2017) 2 Cal.5th 376, 389. The burden of proof is on

the party challenging the regulation. *Credit Ins. Gen. Agents Ass'n v. Payne* (1976) 16 Cal.3d 651, 657.

Section 1859.107 states that a funding application that has received an approval but has not yet received an apportionment "may" receive an adjustment "as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78" at the time the apportionment is made. Sections 1859.71.2(c) and 1859.78.4(b) address adjustments for projects that include certain fire safety equipment. Sections 1859.71 (new construction grants) and 1859.78 (modernization grants) provide that per-pupil grant amounts "will be adjusted annually" as set forth in sections 17072.10 (new construction grants) and 17074.10 (modernization grants). In other words, section 1859.107 states that a funding application that has received an approval but has not received an apportionment "may" receive an adjustment to account for the construction cost index adjustments to the per-pupil grant amounts that the SAB makes annually.

As discussed above, the court has concluded that sections 17072.10 and 17074.10 do not create a duty for the SAB to include intervening construction costs index adjustments in subsequent apportionments for projects on an Unfunded List. The court also concludes that section 1859.107 is consistent and not in conflict with sections 17072.10 and 17074.10. Sections 17072.10 and 17074.10 direct the SAB to make annual construction costs index adjustments to the per-pupil grant amounts set forth in those statutes. Section 1859.107 states that approved applications that have not received apportionments may receive adjustments to reflect revised per-pupil grant amounts. Because sections 17072.10 and section 17074.10 do not require the SAB to include intervening construction costs index adjustments in subsequent apportionments, section 1859.107, which gives the SAB the discretion to do so, does not conflict with those statutes.

The court also finds that section 1859.107 is reasonably necessary to effectuate the purpose of the Leroy F. Greene Act. Neither section 17072.10 nor section 17074.10 addresses the effect of intervening construction costs index adjustments on apportionments for projects on an Unfunded List. The court cannot conclude that the SAB's enactment of

section 1859.107 to address an issue unaddressed by sections 17072.10 and 17074.10 was arbitrary, capricious, or without reasonable or rational basis.

4. Interpretation of Section 1859.107

Petitioners alternatively argue that, even if section 1859.107 does not exceed the scope of the SAB's authority, section 1859.107 does not give the SAB discretion to omit construction costs index adjustments from later apportionments and that, because the SAB did so, the apportionments should be set aside. Petitioners essentially contend that section 1859.107 has nothing to do with apportionments for projects placed on an Unfunded List after approval. Petitioners also argue that Respondents have not in the past construed section 1859.107 to provide the SAB with discretion to exclude construction costs index adjustments from subsequent apportionments.

The plain language of section 1859.107 confers discretion on the SAB to decide whether intervening construction costs index adjustments are included in later apportionments for projects on an Unfunded List. As discussed above, section 1859.107 states that a funding application that has received an approval but has not yet received an apportionment "may" receive an adjustment "as allowed under Sections 1859.71, 1859.71.2(c), 1859.78.4(b) or 1859.78" at the time the apportionment is made. "The use of the word 'may' denotes a discretionary choice." *Tucker v. Pacific Bell Mobile Servs.* (2010) 186 Cal.App.4th 1548, 1561. "[T]he word 'may' . . . does not mean 'must' or 'shall.'" *Sierra Club v. San Joaquin Local Agency Formation Comm'n* (1999) 21 Cal.4th 489, 499. Petitioners argue that "may" in section 1859.107 means that an application "is still entitled to obtain a [construction costs index] adjustment" pursuant to sections 1859.71 or 1859.78. Petitioners' Brief at 27:6-8. The "usual and ordinary meaning," *Weinstein*, 237 Cal.App.4th at 966, of "may" does not support Petitioners' interpretation. Nor can, as Petitioners contend, the title of section 1859.107, "Amending and Withdrawal of Applications," alter the plain meaning of the regulation. *See, e.g., DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 602 ("Title or chapter headings are unofficial and do not alter the explicit scope, meaning, or intent of a statute.").

Petitioners cite a November 8, 1999 "Mass Mailer," Vail Decl. Ex. A, and a February 22, 2012 SAB meeting transcript, RFJN Ex. 38 (at 136-282), as support for their argument that the SAB has not historically interpreted section 1859.107 to confer discretion whether to include intervening construction costs index adjustments in subsequent apportionments. As discussed above, the plain meaning of language in a statute governs, *Weinstein*, 237 Cal.App.4th at 966, and the plain language of section 1859.107 confers discretion on the SAB. Neither of the documents Petitioners cite can alter the plain language of section 1859.107. Moreover, the November 8, 1999 document does not cite or quote section 1859.107, and the court therefore cannot determine what version, if any, of section 1859.107 this document allegedly addresses.

5. Application of Section 1859.107

Petitioners last argue that, even if the SAB had discretion pursuant to section 1859.107 to omit intervening construction costs index adjustments from the 2017 apportionments, the SAB abused its discretion because its decision to omit the adjustments was arbitrary, capricious, and/or entirely lacking in evidentiary support. Respondents did not in their brief address Petitioners' argument that the SAB abused its discretion when it omitted the intervening adjustments from the 2017 apportionments. At the hearing, Respondents asserted that where a regulation properly confers discretion on an agency, a court cannot review the agency's discretionary acts, i.e., that where an agency has discretion, its discretionary acts are unreviewable. The court does not agree.

While mandate will not lie to force the exercise of discretion in a particular manner, it does lie to correct abuses of discretion. *County of Los Angeles*, 214 Cal.App.4th at 654. In determining whether a public agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. *Id.* A court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support. *Id.* In applying this extremely deferential test, a court must ensure that an agency has

adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute. *Id.*

Petitioners have presented evidence that for other applications the SAB has included intervening construction costs index adjustments in later apportionments and evidence that the SAB has, at least sometimes, required such adjustments to be included in later apportionments. *See, e.g.*, Silavs Decl. ¶ 11 & Ex. G; Johnson Decl. ¶ 13 & Ex. E; RFJN (Set Two) Ex. 3 (at 165-168) (03/24/10 SAB Executive Officer Rpt.); RFJN (Set Two) Ex. 38 (at 253-256 (119:23-121:10)) (02/22/12 SAB meeting transcript). Had Respondents offered any explanation for the SAB's decision regarding the 2017 apportionments or cited to any evidence relevant to the decision, Petitioners' showing might not suffice to demonstrate an abuse of discretion, particularly applying the required "extremely deferential test." *County of Los Angeles*, 214 Cal.App.4th at 654. Respondents, however, made no showing regarding their exercise of discretion to exclude the intervening adjustments from the 2017 apportionments. Indeed, Respondents' position at the hearing was that they need not do so because the court cannot review the SAB's discretionary acts. As discussed above, the court does not agree. Because Respondents elected to stand on the argument that the SAB's discretionary decision to omit the adjustments from the 2017 apportionments is unreviewable, the court has no basis on which to conclude that the SAB "adequately considered all relevant factors, and . . . demonstrated a rational connection between those factors, the choice made, and the purpose of the enabling statute," *id.*, or to conclude that the decision had evidentiary support. *See id.* ("A court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support . . . ."). Accordingly, the court finds that Petitioners have demonstrated that the SAB abused its discretion in omitting the intervening construction costs index adjustments from the 2017 apportionments.

6. Open Meeting Act

Petitioners also argue that Respondents did not comply with the Bagley-Keene Open Meeting Act by allegedly failing to provide appropriate notice of the SAB's intention not to

include the construction costs index adjustments in Petitioners' apportionments. Respondents argued in opposition that Government Code § 11130.3 bars this argument as untimely. Petitioners did not address this argument in their reply or at the hearing and thus appear to concede its merit.

7. Evidentiary Objections

Evidence outside the record is generally inadmissible in a traditional mandate action challenging a quasi-legislative administrative decision on the ground that the agency has not proceeded in a manner required by law. *California Public Records Research, Inc. v. County of Stanislaus* (2016) 246 Cal.App.4th 1432, 1445. A court hearing a mandate proceeding may, however, consider all relevant evidence, including facts that did not exist until after the petition for writ of mandate was filed. *Negro v. Superior Ct.* (2014) 230 Cal.App.4th 879, 895.

Respondents objected to certain declarations and exhibits on relevance grounds. Respondents' Evidentiary Objections Nos. 1 through 5 are overruled. Respondents' Evidentiary Objections Nos. 6, 7 and 8 are sustained.

8. Request for Judicial Notice

Petitioners' Request for Judicial Notice (Set One) of Exhibits 1 through 11 is denied. It is not necessary to seek judicial notice of documents in the court file for this case. Petitioners' Request for Judicial Notice (Set One) of Exhibits 12, 13 and 14 is granted. Petitioners' Request for Judicial Notice (Set Two) of Exhibits 1 through 38 is granted.

C. Conclusion

For the foregoing reasons, Petitioners Coalition for Adequate School Housing, Savanna School District, Cypress School District, Central Unified School District, Bakersfield City School District, Val Verde Unified School District, and Santa Ana Unified

School District's petition for writ of mandate is granted. Petitioners shall submit a proposed judgment and a proposed writ by September 26, 2019.

Clerk to give notice.

Dated: September 16, 2019

Melissa R. McCormick
Judge of the Superior Court

EdSource
HIGHLIGHTING STRATEGIES FOR STUDENT SUCCESS

East Bay district struggles with role of tutors in student learning

California sets no requirements for tutors' education or training.

OCTOBER 21, 2019 | THERESA HARRINGTON

THERESA HARRINGTON / EDSOURCE

To help struggling students succeed, one Bay Area school district created tutor positions more than a decade ago.

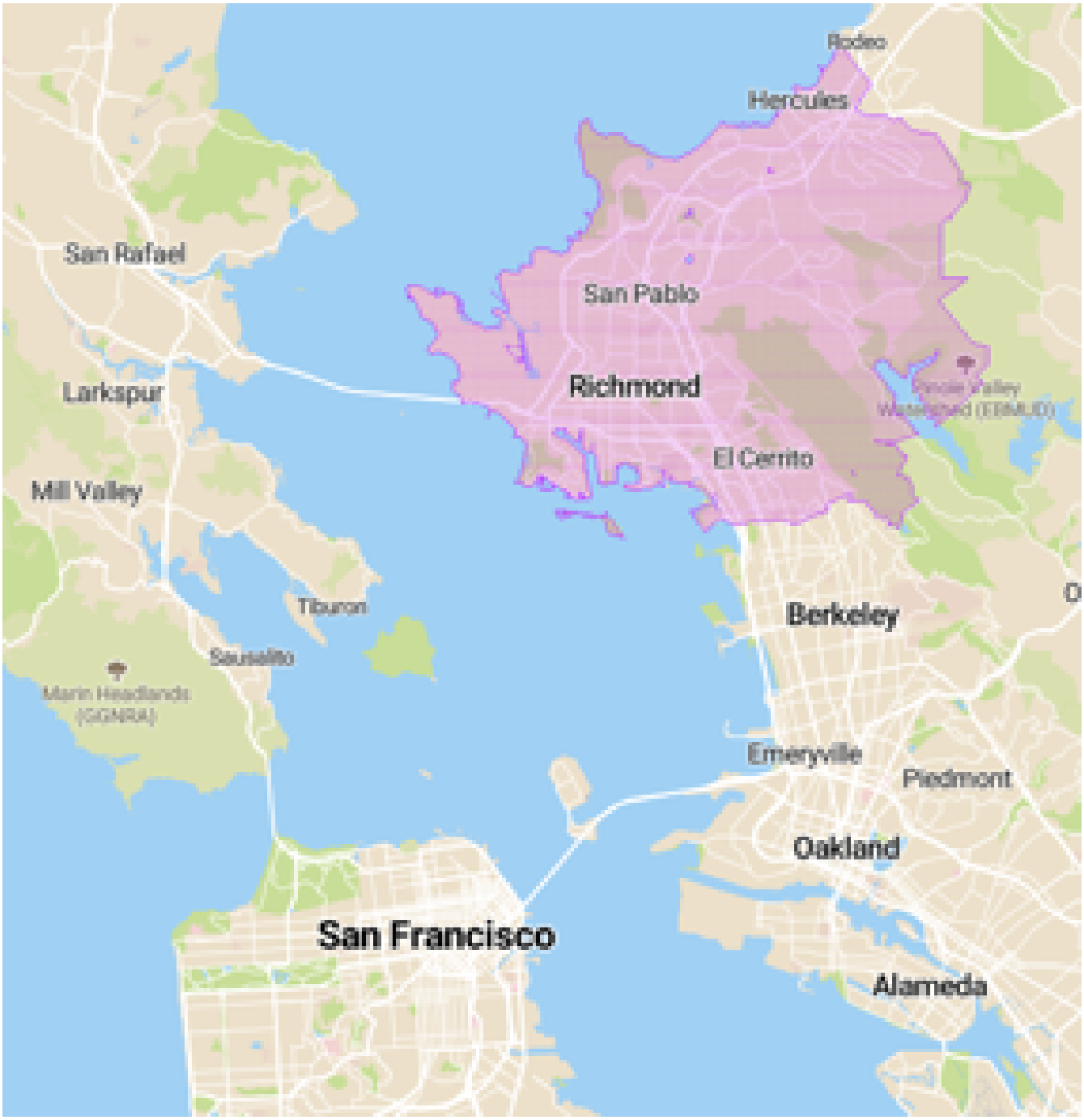
Calling them 'graduate tutors,' West Contra Costa Unified placed them in schools where more than 60 percent of students were low-income, English learners or foster youth. Tutors must have bachelor's degrees. With the freedom to create their own curriculum materials, they work with students one-on-one or in groups in any subject the student needs help in during the school day and after school, both inside and outside classrooms. Students are assigned to work with tutors based on recommendations from teachers, tutors and parents.

In recent months, gauging whether tutors are a necessary part of a school district's teaching team and assessing how to quantify their effectiveness have surfaced in the district that serves Richmond and surrounding communities. There are also questions about what education and training tutors should have.

There appears to be a statewide demand for tutors. The school district employment website EdJoin lists about 606 vacancies with pay ranging from about $12 to $30 an hour.

Tutors became more prominent statewide from 2002 and 2015, when the federal No Child Left Behind law required some districts to offer struggling students outside tutoring assistance. Some districts statewide employ their own tutors, but credentials for the position vary. Unlike West Contra Costa Unified, many California districts do not require bachelor's degrees to be a tutor, and many hire high school or college students to work as a part-time tutor. California does not require school districts to employ tutors and sets no requirements for their education or training.

West Contra Costa Unified



West Contra Costa Unified assigned its tutors to certain schools where students needed them the most, based on high percentages who were low-income or English learners. Most campuses also were among the lowest-scoring district schools on the state's Smarter Balanced tests in English language arts and math.

That all changed last spring, when the district ran into budget troubles. Facing cuts, the district tried to save about $4.1 million by eliminating all 60 of its tutor positions. That triggered an outcry from the tutors, who are represented by the Teamsters Union Local 856, and from many students, parents and teachers.

The district subsequently agreed to restore 25 of the jobs, but at reduced hours, under pressure from the union. Some schools used their own funds to keep a few others.

Critics of the cuts claim that tutors have significantly helped students, despite the fact that the district does not yet have a process to measure the impact tutors are having.

In West Contra Costa, the job, which pays $26 to $32 per hour, requires a bachelor's degree in any subject, but no teaching experience or credentials. At least nine semester units in the subject area to be tutored are preferred, along with some experience working with students.

Public Advocates, a nonprofit law firm and advocacy organization, has worked with parents on the district's annual Local Control and Accountability Plan, or LCAP, which details how expenditures are expected to help low-income students, English learners and foster youth. Rigel Massaro, an attorney for the firm, said individual tutors appeared to be making a difference at some schools, but it was hard for the district to prove that all of the tutors were equally effective or that a bachelor's degree ensured they could work well with students.

"It varies by person," she said. "But we do hear routinely from parents that they want tutoring so students who are behind can get extra help."

She said the district needs to figure out how to show in its accountability plan that the tutors are helping it meet its goals for vulnerable students.

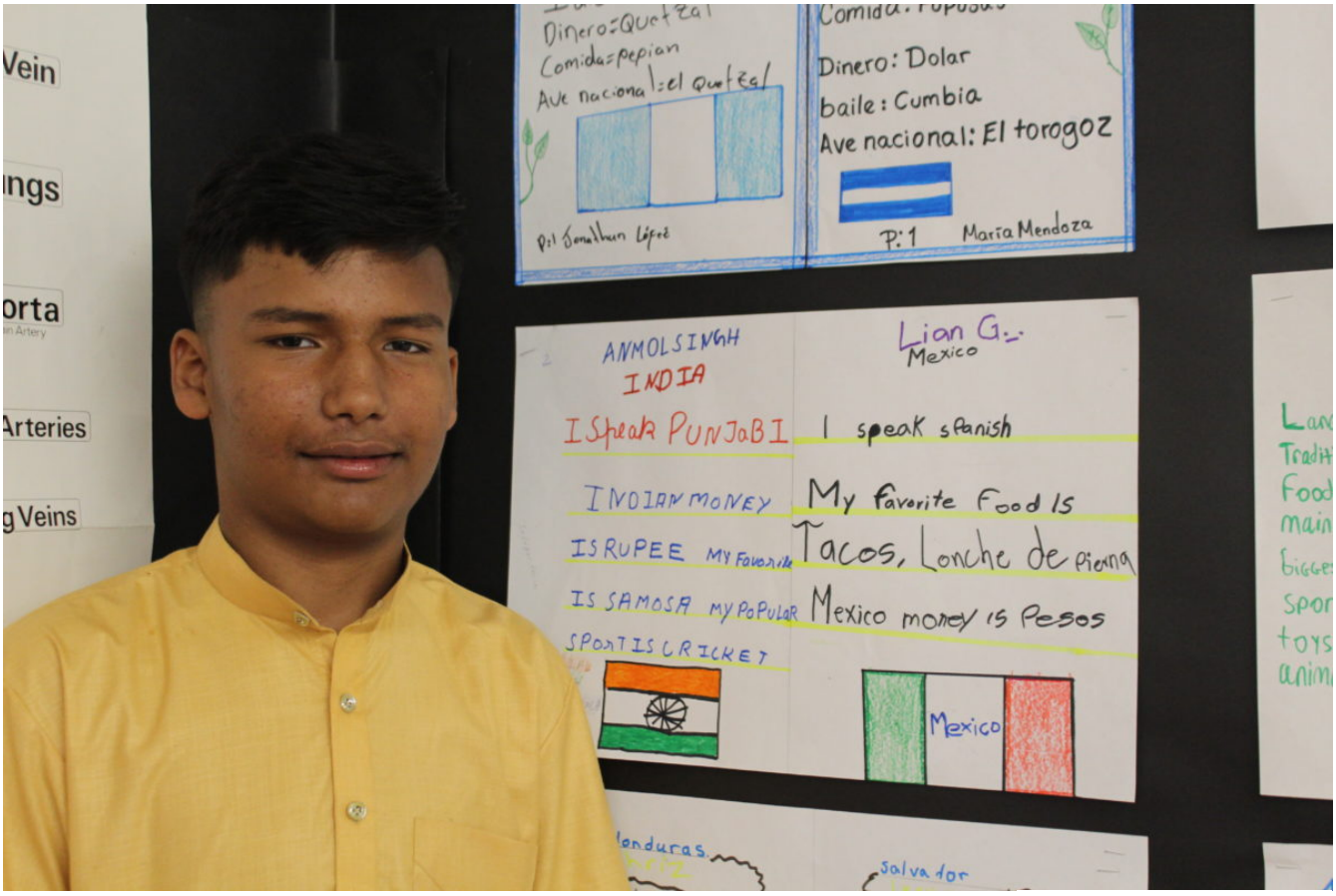
Academic performance by district students overall falls far below state averages, with just 35 percent testing at grade level or above in English language arts on state 2019 Smarter Balanced tests and only 24 percent meeting those goals in math. Statewide, 51 percent of students met English language arts standards and 40 percent met the math standards.

Board member Valerie Cuevas said the district must figure out how tutors can "now become an integral part of our adopted curriculum and how they're going to support our students'

success within it."

Anmol Singh, an 8th-grader who immigrated from India two years ago, said that Wilson Ordoñez, who tutors newcomer immigrants at Helms Middle School in San Pablo, helps students understand their assignments and to learn from each other, while practicing speaking English.

"He helps us with homework and helps us to solve problems in math," Singh said.



THERESA HARRINGTON / EDSOURCE

Helms Middle School Internationals Academy 8th-grader Anmol Singh, who immigrated from India two years ago, stands in front of an assignment for his social studies class on Sept. 27, 2019.

The district is working with schools and the Teamsters to come up with a way to measure what impact the tutors are having on their students' academic progress.

Teacher Jeremiah Romm, who has worked with Ordoñez for several years, said he has seen the difference Ordoñez's tutoring has made for the newcomer immigrant English learner students he tutors. Ordoñez helps them understand their assignments, encourages them to present answers in front of other students and communicates with their parents about how they can

assist their children. In his after-school program, Ordoñez reviews subjects taught in class, focusing on academic English vocabulary.

“It’s not just for classwork,” Romm said, “but he also builds an emotional support for a lot of the students.”

THERESA HARRINGTON / EDSOURCE

Bilingual tutor Wilson Ordoñez works with an immigrant student in the Internationals Academy at Helms Middle School in West Contra Costa Unified on Aug. 23, 2019.

But, district officials say it’s hard to be sure whether academic growth can be attributed to tutors, or to a variety of factors at schools.

Priya Sembi, who heads up the new Internationals Academy at Helms Middle School, said the data can’t define the role of tutors, although students say they look up to Ordonez and value his support. “At the end of the day, when you look at data,” Sembi said, “you can never really pinpoint the reasons for students’ success.”

With more than half of the tutor jobs now gone, some parents, tutors and community members worry that the cuts will leave some students without the help they need.

"I'm concerned that some students may suffer," said Scottie Smith, a community activist and student advocate who urged the school board to retain the tutors. "Looking at the data for the district, in terms of the low performance of our students, the district needs every kind of in-school intervention to support teachers and give students smaller group settings as possible."

THERESA HARRINGTON / EDSOURCE

West Contra Costa Unified student advocate Scottie Smith, left, stands with tutor Marsha Williamson outside the March 20, 2019 school board meeting to protest cuts to tutor positions.

In West Contra Costa, many of the tutors are bilingual and some have also earned master's degrees. The tutors assess students and help them build the skills to complete their classwork and homework. They often develop their own activities and tests and communicate with parents and teachers about how best to support students at school and at home, according to the union, which has represented most of the district's non-teaching staff, including tutors, since 2017.

The new union agreement requires the district to train tutors four times per year. "The idea is to ensure there's some training and some consistency in usage," said district spokesman Marcus Walton. "But at the same time, we're trying to give schools autonomy."

At Helms Middle School, the after-school program used a state grant to allow Ordoñez to work eight hours with some 40 students who are English learners and need his help in English, math, history and science after school.

Ordoñez determines who is most in need of tutoring based on their level of English fluency, in addition to how well they are progressing in classes.

At a recent internationals academy grand opening at the school, Ordoñez received more cheers from students than any other staff member and parents hugged him in gratitude for his work with their children.

THERESA HARRINGTON / EDSOURCE

Bilingual tutor Wilson Ordoñez receives a warm welcome from students, parents and San Pablo and West Contra Costa Unified officials during the grand opening of the Internationals Academy at Helms Middle School on Sept. 27, 2019.

Tatiana Mejia, an 8th-grader at Helms, said Ordoñez is helping her to learn English during class and after school, as she works on English, math, science and history lessons.

“He explains it in Spanish and English and he helps us with pronunciation,” she said.

At Wilson Elementary, Principal Claudia Velez said the tutor is included in efforts to work with students in small groups four days a week. She credits that strategy with the improvement in English language arts standards on the Smarter Balanced test from 26 percent in 2017-18 to 30 percent in 2018-19.

“That is a collaborative effort and the grad tutor is included in that,” Velez said.

Carlos Castallejo, a bilingual tutor who lost his job at Verde Elementary when the school district cut one of its two tutor positions, said he is concerned about the students at his former school, especially English learners, since the remaining tutor is not bilingual.

According to the union contract, layoffs are by seniority, but schools can elect to keep a bilingual tutor.

To save some tutor positions, the school district came up with about $1.5 million by reducing outside consultant contract costs and using funds designated for low-income schools and low-performing schools.

But the controversy is not over.

The district is facing a deficit of up to $49 million, which will require more cuts in 2020-21.

Superintendent Matthew Duffy could not rule out the possibility that there could be another round of tutor cuts. He said the district must "look at everything" including the tutors to come up with proposed cuts that are "most fair and most appropriate."

"We know there are many things we want to support," he said. "But, it's going to become more difficult."

Editor's Note: As a special project, EdSource is tracking developments in the Oakland Unified and West Contra Costa Unified School Districts as a way to illustrate some of the challenges facing other urban districts in California. West Contra Costa Unified includes Richmond, El Cerrito and several other East Bay communities.

Comments

Comments Policy

We welcome your comments. All comments are moderated for civility, relevance and other considerations. Click here for EdSource's Comments Policy.

Penelope Heilman

1 hour ago

Class size is a paramount issue if we're not going to pay them what a professional educator deserves. At least make it possible for better success. Would you expect a doctor, dentist, attorney or even a horse

trainer to deal with 15 or 20 clients at one time?

MikeO

22 hours ago

Given the district's need to cut $49 million (!!!) from an unrestricted budget of about $230 million, I can't imagine that the graduate tutor program, as important as it is, is going to survive. Seems most likely that *everything* other than the absolute basics is going to get slashed.

EdSource
HIGHLIGHTING STRATEGIES FOR STUDENT SUCCESS

One step closer to what no one wants: dueling tax plans in November 2020

Competing plans: $11 billion 'split-roll' challenge, $15 billion tax for schools

OCTOBER 23, 2019 | JOHN FENSTERWALD

CREDIT: MICHAEL GORDON / SHUTTERSTOCK.COM

The California School Boards Association and its partners last week took the next step toward putting a $15 billion tax initiative for K-12 schools and community colleges on the ballot, setting up the possibility that two competing tax measures will go before voters in November 2020.

Neither measure's backers favor that prospect, but neither side is showing any sign of backing down. Both sides see next year's presidential election, with a large turnout expected in a Democratic state, as an opportunity for higher taxes. The behind-the-scenes maneuvering over

the next several months, with what some hope will be mediation by Gov. Gavin Newsom, will determine what will go before voters.

The school boards association, together with the Association of California School Administrators and the Community College League of California, filed papers last week with the California Attorney General for its initiative and expects to begin gathering signatures in a few weeks. Called Full and Fair Funding, the initiative would increase taxes on individuals and corporations earning more than $1 million. It would produce enough money for K-12 and community colleges to raise California's per-student funding to the national average, according to the sponsors. Its calculations are based on a state ranking system that incorporates California's high living costs.

The sponsors moved ahead without the support of an organization critical to the initiative's success: the 310,000-member California Teachers Association, although they did announce a consolation prize. Joe Nunez, the longtime CTA executive director who was ousted from his job earlier this year, and former CTA Associate Executive Director Scott Day, who directed the union's political campaigns, have agreed to come work for Full and Fair Funding.

Nunez and Day could face a big problem, however, in trying to make inroads with their former employer. The CTA is already a major donor for the other tax proposal, whose backers have been organizing for more than a year and have locked in key supporters.

The Schools and Communities First initiative would be the first serious ballot challenge in 40 years to Proposition 13. The "split-roll" measure would leave Prop. 13's limits on tax increases for homeowners intact while changing the rules for business and commercial properties. Those properties would be revaluated every three years, raising their assessed value more rapidly, thus producing more tax revenue.

Roughly 40 percent of the projected $11 billion annual tax revenue would go to schools and community colleges, with the rest divided among counties and cities. While the estimated $4.5 billion for K-14 would be less than a third of what the Full and Fair Funding would provide schools, the support for the split-roll tax is broad and deep, with endorsements from dozens of housing, social justice and community groups, public employee unions and local government officials. Besides the CTA, the California State PTA, the California Federation of Teachers, United Teachers Los Angeles and some school district boards also have joined the coalition.

“We think we have a stronger measure because we developed a whole community approach to funding,” said Helen Hutchison, acting director of the California League of Women Voters and a member of the executive committee of the Schools and Communities First coalition. While schools would be the biggest beneficiary, they will not thrive without more funding for housing, health care and jobs, she said. “The teachers I have talked to acknowledge that.”

Last week, in announcing the appointment of Nunez’s successor, the CTA gave no hint of its view of the Full and Fair Funding plan. But in a statement, Joe Boyd, the new executive director, reaffirmed unwavering support for the split-roll tax.

“California educators are engaged and ready to lead the way in closing corporate tax loopholes and funding public schools with our Schools and Communities First initiative. I’m excited to lead that charge,” said Boyd, who previously served as executive director of the smaller of the state’s two teachers unions, the California Federation of Teachers.

Troy Flint, senior communications director for the school boards association, said that the decision to move ahead “was not based on the condition of CTA support” but he was circumspect about what happens next. “Our hope is all education advocates would support Full and Fair Funding; there are 6.2 million reasons to do so,” he said referring to the number of public school students in the state. “However, there is significant interest in this measure from a variety of education advocates, not just the usual suspects.”

The CTA’s State Council, its governing body with nearly 800 delegates, meets this weekend, but the Full and Fair initiative may not come up, said spokeswoman Claudia Briggs. The final agenda won’t be set until close to the meeting, she said.

Will the past be prologue?

In November 2012, state voters also faced two tax initiatives on the ballot and passed one: Proposition 30, a temporary tax to raise about $6 billion annually for the General Fund by increasing income taxes on high earners and increasing the sales tax. With Brown threatening a massive cut in K-12 funding if it failed, voters passed Prop. 30 by 55 to 45 percent. The other initiative, Proposition 38, a $10 billion personal tax increase that would have funded early childhood education and K-12, lost badly with 29 percent voting for it. Los Angeles philanthropist Molly Munger underwrote Prop. 38.

Most observers agree that running two tax initiatives on the same ballot is a bad idea — particularly in this case, since the business community is vowing a vigorous campaign against the split-roll measure, if not both initiatives.

"It's quite possible neither might pass if both are on the same ballot," said Kevin Gordon, president of Capitol Advisors Group, an education consulting firm. "It's always easier to vote no, particularly if voters find multiple tax proposals confusing."

Flint acknowledged that internal polling showed that support for both tax initiatives would decline if they were on the same ballot, although he wouldn't say by how much. But he said that, depending on the wording, more than 60 percent of those polled said they would favor Full and Fair Funding. And there is room to grow support, he said, since more than half of respondents incorrectly believe that California is already among the highest funded states.

Two polls this year, by the Public Policy Institute of California and the nonprofit PACE and USC, found support for a split-roll initiative in the mid-50-percent range — not a comfortable margin heading into an election. Schools and Communities First is counting on a massive door-to-door voter education drive to win.

Last year, Schools and Communities First qualified its initiative for the ballot, but recently revised the wording, putting it back to square one. It and Full and Fair Funding must collect about a million signatures to qualify — an effort that may cost each about $5 million and take months.

With both sides poised to spend a lot of money, now is the time to turn to Newsom to cut a deal for a single initiative, Gordon said. "Instead of the parties duking it out, what might Newsom back and then help raise money to pass it?" he asked.

It would take a two-thirds majority in the Legislature to place an alternative tax proposal on the November ballot. Ted Lempert, president of the children's research and advocacy organization Children Now, said he hoped that would happen. "Clearly, two measures are not helpful. This is an opportunity for the governor and the Legislature to put a unified measure on the ballot." And, he added, to include money specifically for early childhood education as well.

Newsom's office did not respond to a request for comment.

Comments

Comments Policy

We welcome your comments. All comments are moderated for civility, relevance and other considerations. Click here for EdSource's Comments Policy.

Rick Pratt
10 mins ago

Another nice article, John. As constitutional amendments, both measures require 997,139 valid signatures to qualify for the ballot. Which means something over 1 million need to be collected. That would stretch the resources of CSBA, ACSA, and the Community College League, who have neither the money nor the volunteer base of the coalition behind the Schools and Communities First initiative. Ironically, polling suggests that if only one measure makes it to the ... Read More

This article, ***Kennedy Football: It's About Getting To Friday****, was first published on* ***SportStarsMag.com****.*

Richmond's Kennedy Football Program Has Built And Fostered Sustained Success Behind A Culture Of Survival And Resilience •

Just a few moments after an emotionally charged loss to rival El Cerrito dealt his team its first defeat of the 2019 season, Kennedy football coach Greg Marshall brought his team together. He delivered his final message of the day in simple terms.

"I'm not giving up on you."

Marshall knows one loss won't define a group for which the joys and pains of wins and losses mean something a little different. The game result might offer a snapshot, but it totally can't explain a story that goes a whole lot deeper than points can quantify.

At 4300 Cutting Blvd., the football field sits on the western portion of Kennedy's campus. Players know the reputation their school has. The newspaper clippings, dwindling as they may be, tell a tale of a tough neighborhood. It's where low-income youth confront the possibility of violence on the streets and hardship at home.

Marshall is a product of Richmond, so he's heard it all.

IMAGE 1 OF 7

Kennedy Football, Richmond

GET CONNECTED:

*Follow **SportStars** on **Twitter** & **Instagram** | Like us on **Facebook** | **Subscribe!***

Greg Marshall grew up in Richmond and understands the day-to-day and week-to-week challenges that many of his players face. (Berry Evans III photos)

Now in his late 20s, the De Anza High product has played a major role in Kennedy's football renaissance. After a spell on the junior varsity level and then as varsity assistant coach, he took over the varsity team in 2018. He kept the success rolling by leading the Eagles to an 8-3 record and a North Coast Section Division IV playoff berth.

The record alone couldn't provide the whole picture.

"Our athletic director, Carl Sumler, lets you know when you're hired at Kennedy you're not just a coach," Marshall said. "You have to be a psychic, you have to be a parent, you have to go above and beyond just to get to Friday. What you see on Friday, you don't know what we have to go through Monday through Thursday just to get here."

Leadership from Marshall and his coaching staff has provided stability. But make no mistake, the Eagles have both the talent and experience to call on when needed. A 14-player senior class comprises over half of Kennedy's 27-man roster and lends a steady hand when times get tough.

Do-everything athlete Camron Young plays a variety of roles for the Eagles, at times filling in at quarterback, and the upperclassmen play a major role in setting a tone they've helped establish as the culture of Kennedy football.

"I wouldn't trade our senior class for anything. I love this class," senior Trey Baker said. Baker transferred from El Cerrito to Kennedy for his final high school season. "We're trying to get better and be better leaders, both on and off the field."

From left to right, Jermaine Terry, Trey Baker and Sateki Lavuto are among the key leaders on the Eagles roster.

College coaches have started to make Kennedy a stop on the recruiting trail again. These days most are paying a visit to see highly touted junior Jermaine Terry II. At 6-foot-4 and 235 pounds, the tight end/defensive end prospect holds scholarship offers from schools like Alabama, Penn State, LSU, Florida, and most of the Pac-12.

Though it would certainly fit, the mantle of big man on campus doesn't do much for Terry. The bigger picture carries far more significance, and he speaks eloquently about the higher purpose that success on the gridiron can have for Kennedy as a whole.

"This team is important to everybody. It's really the backbone of the school," Terry said. "Football at Kennedy brings everybody together from different cultural backgrounds and different places. Everybody loves football and we all try to come together for one common goal — to win."

Terry's praise for Marshall goes well beyond wins and losses. Calling him a "big brother" figure, Terry credits Kennedy's head man for his ability to teach about life beyond football. He also speaks in glowing terms about the Eagles seniors, praising both their leadership and their talent.

With offers from Alabama, Penn State and others, junior TE/DE Jermaine Terry II is arguably Kennedy's biggest recruit in decades.

Of course, the reality of the situation doesn't change just because the team is successful. That the Eagles trudged back to their bus after playing El Cerrito under mid-day sunshine on a Saturday seemed the perfect example of what it sometimes takes to ensure safe conditions to compete in.

A shooting outside the De Anza-Pinole Valley game two weeks earlier caused the West Contra Costa Unified School District to alter its start times. With the traditional rivalry between Kennedy and El Cerrito sure to draw a big crowd, the district made the decision to start their game at 11 a.m. on a Saturday. After all the changes, the game went off without a hitch.

For many communities, those types of tough decisions aren't part of the equation. But in a city like Richmond, football often serves a much deeper purpose than just gathering on Friday night.

"This is the reality, and I think some people really don't understand this. To these inner-city kids, football is all they have," Marshall said. "So, when you fail at it, it hits you 10 times harder.

“Also, living in the inner city, you don’t have the most money. They say football is the poor man’s sport. Basketball is year-round, baseball is year-round. Football doesn’t cost a lot. So I think that’s why it’s so important to some of these guys. It’s something they can do at an affordable price.”

Jermaine Terry II runs a pass route during a mid-October practice in Richmond.

One setback doesn’t change the goal for the Eagles. In the newly defined division structure being used for the first time in 2019 by the NCS, Kennedy still ranks as one of the favorites in Division 6.

A section title would be the school’s first in football since 1988. Then, perhaps with the help of the often-complicated California Interscholastic Federation calculus that determines what division teams play in, the Eagles may be set up for a chance at an even loftier prize.

Even if Kennedy makes it that far, no state trophy could ever tell the whole story.

“In the past couple years, we’ve tried to change the culture and everything around the team,” Terry said. “Everybody sees Kennedy as a place that’s negative and it’s really not.

“There are a lot of great people at Kennedy who want to see us succeed. Right now, we’re trying to work our butts off to change the culture and, like you can see, we’re doing that.” , , , , ,

The post **Kennedy Football: It’s About Getting To Friday** appeared first on **SportStars Magazine**.

Cal Prep members advocate for charter renewal

Davíd Rodríguez on October 18, 2019

Faculty, students, and parents from Aspire Richmond California College Preparatory Academy (Cal Prep) urged the Board of Education to renew the school's charter at this week's meeting of the West Contra Costa Unified School District (WCCUSD) at Lovonya DeJean Middle School.

Cal Prep is a public charter and early college secondary school in Richmond. During a public forum at Wednesday night's meeting, Cal Prep supporters testified that the charter renewal would allow Cal Prep to continue with its mission statement of preparing their students for college.

As reported, WCCUSD previously voted to pass a board resolution that called for the board to encourage the state to enact a moratorium on new charter schools. At the meeting, board member Mister Phillips expressed general concerns about how charter schools may undermine district schools.

"There is a myth that charter schools … are much better, are greater than district schools," Phillips said. "You don't have to be afraid to send your children to district schools," he added. Concerns have focused on a need for greater oversight, and fear that charter schools could drain students and funding that flows from average daily attendance levels from district schools.

Emphasizing that his concerns were not directed towards Cal Prep, Phillips argued that the district need to do a better job explaining the shortcomings of charter schools. “I think there is a fuller story, and unless the district begins to tell that fuller story, our community is going to continue to be misled about the quality of some of our schools,” he said. Cal Prep’s principal could not be reached for follow-up comment by Richmond Confidential Thursday.

Delia Rojas, a parent of a sophomore at Cal Prep, said that her daughter, Natalia Turincio, attended charter schools since kindergarten. Rojas said that the charter renewal is essential because she wants her daughter to graduate from a charter school.

“I would like [the board] to grant the charter renewal so she could graduate in the same system that she started in,” Rojas said.

Amid discussion of Cal Prep’s math performance levels compared to district schools, Natalia Turincio stated that Cal Prep is preparing her for college and does not regret attending charter schools.

“Maybe we are the same [performance level],” said Turincio, “but you can’t really compare how students feel about being in a charter school.”

The charter renewal vote is expected at the next board meeting.

CHARTER SCHOOLS | EDUCATION | SCHOOL BOARD | SCHOOL DISTRICT | COMMUNITY

Richmond to Transition to District-Based Elections

By Bay City News

Published Oct 23, 2019 at 12:25 AM

File image.

Half of Richmond's at-large City Council may have to step down in the next election as the city changes to district-based elections in an effort to avoid costly civil rights litigation with Walnut Creek attorney Scott Rafferty.

Tuesday night's City Council meeting started off with a number of landlords criticizing two councilmen who in September proposed an ordinance giving tenants an opportunity to purchase their buildings before the property can be sold to a third party.

The ordinance did not appear on the meeting's agenda, but a series of property owners and their supporters decried the proposed policy as socialism during the initial public comment period. People in the audience chanted "vote them out," seemingly unaware that before the end of the night the council would take action rendering such a campaign moot.

As a result of litigation with Rafferty, cities all over California that used to elect council members on an at-large basis, meaning those officials could live anywhere in the city, have been forced to switch to district-based elections in which elected officials can only run for open seats for the district in which they reside.

TRENDING STORIES

1 VIDEO MAP: Impact of Possible Weekend PG&E Power Shutoffs

2 VIDEO Infant Found Dead at Recycling Facility in San Jose: Police

3 VIDEO Sonoma County Wildfire Destroys Nearly 2 Dozen Homes

4 VIDEO PG&E Cut Power to Area After Kincade Fire Started

5 VIDEO PG&E Warns of More Possible Outages This Weekend in Bay Area

WEATHER FORECAST

WEATHER ALERTS View all

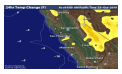
San Jose, CA Change

69° Scattered Clouds

Feels Like 69 °

Radar

Forecast

 Maps

NEWSLETTERS

Receive the latest local updates in your inbox

Email Sign up

Privacy policy | More Newsletters