

After legal ruling leaves some parcel taxes in jeopardy, clarity must come from Legislature

State law mandates that parcel taxes be levied equally on all property owners in a district, regardless of parcel size or number of living units. Some school districts have sought creative approaches to raise additional revenue from larger parcels, but a recent Court of Appeals ruling puts those approaches in jeopardy.

The state Supreme Court has declined to hear the appeal of a parcel tax case with statewide implications, leaving it up to the Legislature, if it chooses, to change the law that undid one district's parcel tax and left similar parcel taxes in other districts vulnerable. A bill that would do that failed to move this year but will resurface in 2014.

Proposition 13 banned new taxes based on a property's value, so parcel taxes, most of which impose a flat dollar amount per property, have become one of the few ways that districts can raise extra money. Only about one in eight districts – 124 over the past 30 years – have passed one, according to an [EdSource report](#). Because owners of cottages pay the same amount as owners of office buildings, about a dozen school districts have explored other approaches to spread the burden, like charging by the lot size or a building's square footage. Now, a state court has definitively ruled out some of the options and cast doubt on others.

The recent case, **Borikas v. Alameda Unified School District**, pertains to a parcel tax that Alameda Unified passed in 2008 in which it assessed owners of many commercial properties a different and higher parcel tax than homeowners and small businesses had to pay. A Superior Court judge ruled it was a legal tax, but last December, a three-judge panel of the First Circuit of the Court of Appeals [invalidated it](#).

Measure H, which was in effect for three years, charged \$120 per parcel for residential and small commercial properties, and 15 cents per square foot of commercial properties larger than 2,000 square feet, up to a cap of \$9,500 per year. Had it charged a flat dollar amount for all properties, as most district parcel taxes do, it would have been fine. But charging different classes of taxpayers varying rates ran afoul of a 1986 law that said parcel taxes must “apply uniformly to all taxpayers or all real property within the particular district” (**California Government Code 50079**).

Alameda Unified had argued that parcel taxes did have to be imposed uniformly but that this could be accomplished within rational classifications based on a parcel's size, configuration and use, such as whether a property was commercial or residential or whether it was a multi-unit apartment house or undeveloped land. Denying the ability to make these distinctions would be to create “manifest unfairness,” vastly overtaxing some parcels, like vacant land, and undertaxing others.

But the Appeals Court said the statute allows no wiggle room in defining “uniform.” The Legislature's intent was to strictly limit what school districts could do, and it wrote a law that “does not empower school districts to classify taxpayers and property, and impose different tax rates,” the judges wrote.

Other districts' parcel taxes at risk

Alameda Unified estimates it may have to reimburse property owners \$7.5 million for the three years that Measure H was in effect. And other school districts with parcel taxes like Alameda's may have to pay back their taxpayers as well.

David Brilliant, a Walnut Creek attorney who represented property owners in the Borikas case, also has sued to invalidate four parcel taxes that districts passed last November that would appear to raise the same issues. Among them:

- Five districts in Los Angeles County, including Centinela Valley Union High School District, jointly approved a parcel tax that charged 2 cents per square foot for residential properties and 7.5 cents per square foot for other classes of property.

- San Leandro Unified passed a measure taxing single-family, multi-family and business properties all at different rates.
- Davis, a university town with many apartments, voted to continue charging \$20 per unit in multi-unit housing and \$204 per single parcel.

Under state law, Brilliant had 60 days after an election to sue on behalf of taxpayers to overturn a decision. As a result, preexisting parcel taxes with multiple rates, such as San Francisco's, which charges single-family homes and apartment complexes differently, or Berkeley's, which charges residential and commercial properties differently, are safe until they need to be renewed.

In 2011, voters in Alameda replaced Measure H, the parcel tax struck down by the Borikas ruling, with another parcel tax, this time imposing a uniform 32 cents for each square foot of a building, up to a maximum of \$7,999 per parcel. That works out to, for example, \$800 per year for a 2,500-square-foot house. Brilliant challenged this, too, but withdrew the claim after a district court ruled the tax was valid. Nonetheless, some of the attorneys representing Alameda Unified in the Borikas case say that the Court of Appeal decision raises some doubt about whether a parcel tax tied to a property's or building's size also is legal. Even though there is a single rate, the result – different tax bills for different parcels – is not uniform.

“Our concern is that the decision could be read that way,” says Sue Ann Salmon Evans, an attorney with the Long Beach law firm Dannis Woliver Kelley, who cited the need for clarification of this point in requesting that the Supreme Court hear the appeal.

Jeffrey Kuhn, an attorney with the firm Lozano Smith, who wrote a friend of the court brief supporting Alameda Unified on behalf of the California School Boards Association, shared Evans' concern. “The question is open as to whether the statute, as interpreted by the 1st District Court of Appeal requires a uniform (flat) tax, or just a uniform rate, for the taxable parcels within the district,” he wrote in an email. “It's obviously safer for a district to adopt a flat tax, but if a uniform rate, such as xx cents per square foot, is allowed, then the district would be leaving money on the table by adopting the flat tax. I imagine it will take more litigation, or legislative action, to get clarity on the question.”

Will Legislature act?

Because the Court of Appeal based its decision on a statute, not a constitutional amendment, the Legislature can change the law by eliminating the requirement that school parcel taxes apply uniformly to all taxpayers and types of property. That's the gist of **Assembly Bill 59**, sponsored by first-term Assemblymember Rob Bonta, D-Oakland, an attorney who represents Alameda. The bill would give school districts more latitude to shape parcel taxes. The bill also would declare Alameda's tax to be valid, annulling the decision in Borikas.

Brilliant acknowledged that the Legislature can change the law moving forward. But it cannot retroactively undo a court's finding, Brilliant said, and he'd sue immediately if it tried. (Evans, who also represents another of the districts that Brilliant is suing, said that as long as lawsuits are active, a change in the statute would not be retroactive.)

AB 59 failed to move through the Legislature this session, but will be taken up next year. It's opposed by the Howard Jarvis Taxpayers Association and business groups that view giving school districts the ability to tax commercial and residential property owners differently as another effort to sidestep Proposition 13. Also next year, legislators will take up Senate Constitutional Amendment 3, sponsored by Sen. Mark Leno, D-San Francisco. It would lower the threshold for passing a parcel tax from a two-thirds majority to a 55 percent majority.

EdSource June 27th, 2013

*By **John Fensterwald***

<http://edsources.org/2013/after-legal-ruling-leaves-some-parcel-taxes-in-jeopardy-clarity-must-come-from-legislature/33981#.U0STm17F9Wk>

BSEP Awareness Mini-Brainstorm

What associations or attributes describe our schools and students because of BSEP?

Berkeley students are _____.

Every child should be _____.

Berkeley schools are _____.

Every school should be _____.

BSEP helps our students go/do/become _____.

What image or images come to mind when you think of BSEP?

BERKELEY UNIFIED SCHOOL DISTRICT

CLASS SIZE REDUCTION FTE PLANNING DOCUMENT

FY 2014-15 Proposal with Raises in Average Calculation v 2014-04-08 w/o Math

GRADE LEVEL	STAFFING	GENERAL	Meas. A	Meas. A	Meas. A
	ENROLLMENT	FUND *	CSR	Necessary	CSR
	BY GRADE	CLASS SIZE	FTE	FTE	FTE
	STUDENTS	FTE			
ELEMENTARY SCHOOL					
TK and Kindergarten	788	23.18	16.22	0.60	
Grade 1	755	22.21	15.54		
- Release Time		0.89	0.62		
Grade 2	741	21.79	15.26		
- Release Time		0.87	0.61		
Grade 3	730	21.47	15.03		
- Release Time		0.86	0.60		
1-3 Adjustments				-1.35	
		34 .1	26 .1		
Grade 4	664	19.53	6.01		
- Release Time **		3.91	1.20		
Grade 5	712	20.94	6.44		
- Release Time **		4.19	1.29		
4-5 Adjustments				2.50	
K-5 TOTAL		139.84	78.82	1.74	80.56
		34 .1	18 .1		
Grade K-5 Special Day Class	13	0.38	0.34	0.00	0.34
Release time Special Day Class		0.08	0.07		0.07
MIDDLE SCHOOL					
		36 .1	28 .1		
Grade 6	730	20.28	5.79		
- Release Time		4.06	1.16		
Grade 6 Necessary Adjustments				1.12	
		36 .1	28 .1		
Grade 7	703	23.43	6.70		
Grade 8	640	21.33	6.10		
Grade 7-8 Adjustments				0.64	
6-8 TOTAL		69.10	19.75	1.75	21.50
		34 .1	18 .1		
Grade 6-8 Special Day Class	6	0.21	0.19		0.19
Release time Special Day Class		0.04	0.04		0.04
HIGH SCHOOL ***					
		36 .1	28 .1		
Grade 9	683	22.77	6.51		
Grade 10	703	23.44	6.70		
Grade 11	704	23.47	6.71		
Grade 12	630	21.02	6.00		25.92
		36 .1	18 .1		
Grade 9-12 Special Day Class	55	1.83	1.84		1.84
B-Tech	150	5.00	5.00		5.00
Grade 9-12 Adjustments				0.19	0.19
TOTAL 9-12		97.53	32.76	0.19	32.95
TOTALS					
Elementary School	4,403	129.50	74.84	1.74	80.97
- Release Time		10.80	4.39	0.00	
Middle School	2,079	65.25	18.78	1.75	21.73
- Release Time		4.10	1.20	0.00	
High School	2,926	97.53	32.76	0.19	32.95
	9,408	307.18	131.97	3.69	135.66

BERKELEY UNIFIED SCHOOL DISTRICT
CLASS SIZE REDUCTION FTE PLANNING DOCUMENT
FY 2014-15 Proposal with Raises in Average Calculation v 2014-04-08 w/o Math

BSEP/MEAS A PROJECTED EXPENSE FOR CSR

FTE Ave Compensation	92,200	\$12,167,600	\$339,800	\$12,507,400
Sub Ave Compensation	\$1,760	\$232,300	\$6,500	\$238,800
Direct Support	<u>\$2,870</u>	<u>\$378,800</u>	<u>\$10,600</u>	<u>\$389,400</u>
Preliminary Measure A Transfer	<u>96,830</u>	<u>\$12,778,700</u>	<u>\$356,900</u>	<u>\$13,135,600</u>

- * State K-3 CSR Revenue \$2.7 million (projected)
- ** Two fifths of General Fund release time is for music paid from the BSEP Measure A VAPA Budget
- *** Based on Average Enrollment

	<u>FTE</u>	<u>2013-14 Budget</u>
FTE based on CSR Formula	131.97	\$12,778,700
Necessary FTE to achieve class size ratios	<u>3.69</u>	<u>356,900</u>
Transfer from BSEP to GF for CSR	<u>135.66</u>	<u>\$13,135,600</u>
Discretionary		
Expanded Course Offerings - BHS and Middle Schools (including Subs and Direct Support)	8.00	774,640
Middle School Counseling Services	4.80	458,800
Program Support	<u>10.60</u>	<u>996,300</u>
Total Discretionary	<u>23.40</u>	<u>\$2,229,740</u>
Total projected BSEP/Measure A expense	<u>159.06</u>	<u>\$ 15,365,340</u>
Indirect Costs @ 7.22%		<u>\$ 1,109,378</u>
TOTAL EXPENDITURE BUDGET		<u>\$ 16,474,718</u>

Middle School Counseling Services:			
Willard	1.2 FTE	1.2	114,700
Longfellow	1.2 FTE	1.2	114,700
King	2.4 FTE	2.4	229,400
Total Counselors		<u>4.8</u>	<u>458,800</u>

Program Support			
Literacy Coaches	3.3 FTE	3.3	323,100
Willard (M.S. Math)		0	-
Longfellow (M.S. Math)		0	-
King (M.S. Math)		0	-
3/4/5 Combos	1.8 FTE	1.8	166,000
Rtl2 teachers K-5	2.75 FTE	2.75	253,600
Rtl2 teachers 6-8	2.75 FTE	2.75	253,600
Total Program Support		<u>10.6</u>	<u>996,300</u>

BSEP CSR Multi Year Projections
Based on CSR Recommendations for FY 2014-15

With TT 2014-15 WITH raises in average No Math V2014-04-08

2.0% one bonus and 1.5% salary increase for FY 2013-14 and 2.0% ongoing FY 2014-15	Unaudited Actuals FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
COLA - Revenues Only (A)	0.0165	0.01565	0.0086	0.022	0.024
Step Increase for teachers	0.0100	0.0100	0.0100	0.0100	0.0100
Indirect Cost	0.0639	0.0673	0.0722	0.0722	0.0722
Revenue					
Revenue Allocation	\$ 15,489,704	\$ 15,734,186	\$ 16,023,555	\$ 16,023,555	\$ 16,376,073
Prior Year Revenue		\$ 133,537			
COLA				\$ 352,518.21	\$ 393,025.76
Total Revenue	\$ 15,489,704	\$ 15,867,723	\$ 16,023,555	\$ 16,376,073	\$ 16,769,099
Expenditures					
Staffing Enrollment		9309	9408	9408	9408
Transfer to General Fund for Classroom Teachers:					
- Classroom Teachers	11,729,105	11,711,600	12,507,400	12,632,474	12,758,799
2.0% one bonus and 1.5% salary increase for FY 2013-14 and 2.0% ongoing FY 2014-15		409,900			
- Illness Substitutes	231,080	225,800	238,800	241,188	243,600
- Direct Support	376,324	381,100	389,400	393,294	397,227
Expanded Course Offerings (8.0 FTE)	841,361	751,760	774,640	782,386	790,210
Certificated Counselors (4.8 FTE)	479,201	444,000	458,800	463,388	468,022
Program Support (21.9, 21.50 & 10.6 FTE)	1,291,368	1,914,200	996,300	1,006,263	1,016,326
Reduction in RTI (5.5 FTE)		(485,100)			
2.0% one bonus and 1.5% salary increase for FY 2013-14 and 2.0% ongoing FY 2014-15		99,800			
Indirect Costs @ 6.39%, 6.73% & 7.22%	955,205	1,040,617	1,109,378	1,120,471	1,131,676
Total Expenditure Budget	\$ 15,903,644	\$ 16,493,677	\$ 16,474,718	\$ 16,639,465	\$ 16,805,859
Net Change to Fund Balance	\$ (413,941)	\$ (625,954)	\$ (451,163)	\$ (263,392)	\$ (36,760)
Projected Beginning Fund Balance	\$ 1,315,750	\$ 901,809	\$ 275,855	\$ (175,308)	\$ (438,699)
Projected Ending Fund Balance	\$ 901,809	\$ 275,855	\$ (175,308)	\$ (438,699)	\$ (475,459)
CSR share of 3% Reserve	\$ 477,109	\$ 494,810	\$ 494,242	\$ 499,184	\$ 504,176
Total Ending Fund Balance	\$ 1,378,919	\$ 770,665	\$ 318,934	\$ 60,485	\$ 28,716

A) Cost of Living Adjustments (COLAs) are included in revenue projections. COLAs for fiscal year 2014-15 through 2016-17 are projected and may not materialize.

BERKELEY UNIFIED SCHOOL DISTRICT

TO: BSEP Planning & Oversight Committee
FROM: Neil Smith, Assistant Superintendent for Educational Services
DATE: April 8, 2014
SUBJECT: Recommendation for Allocation of BSEP Class Size Reduction Funds in FY 2014-15

Class Size Reduction Staffing in the 2014-15 School Year

This recommendation is based on the following assumptions:

- Staffing enrollment of K-12 students is projected at 9,408.
- Total average compensation (includes salary and employer paid fringe benefits) of classroom teachers is projected at \$92,200, an increase of \$6,100 per FTE over the prior year projection.
- BSEP revenue for the CSR fund in FY 2014-2015 is projected at \$16,023,555 with a net allocation, after 7.22% indirect costs, of **\$14,944,558**.
- General Fund revenue is projected based on the Governor's budget of January 2014.

The average class sizes are being maintained with teacher/student staffing ratios of:

- 20:1 for the K-3 grades,
- 26:1 for 4th & 5th grades,
- 28:1 for grades 6 thru 12.

The class size reduction is achieved with General Fund monies being used to establish a ratio of 34:1 for the K-5 grades and 36:1 in grades 6-12, and BSEP CSR funds used to reduce the pupil-teacher ratios to the lower class sizes.

According to the BSEP measure, average class sizes in the K-3 grades shall be reduced to 20:1 as long as State Class Size Reduction funds are provided for that purpose at a level not less than currently funded by the State. Under the new Local Control Funding Formula, funding for the K-3 Class Size Reduction Program has changed; the CSR target is now 1:24, with funding allocated to that purpose at \$1.9 million for BUSD, rather than the \$2.6 million previously awarded for the 20:1 ratio. However, the difference of \$700,000 is provided to the District in its base funding, and may be used to continue class size reduction at a lower than 1:24 level. For this year, the funding will be used for that purpose.

The staffing formula used for secondary schools in FY 2014-15 is that defined in the BSEP Measure, section 6.B: student enrollment x 6 class periods per day/per student, divided by 5 teaching periods, divided by average class size

objective of 28:1.

This calculation results in a total of **442.84** Full Time Equivalent (FTE) classroom teachers projected to be necessary to staff the K-12 classrooms at the ratios listed above, of which BSEP would fund **135.66** FTE teachers (including the associated preparation time for BSEP funded teachers), an increase of **4.13 FTE** over the previous year's plan.

To meet these targeted class size reduction goals, the expense to the BSEP Class Size Reduction fund in 2014-15 is projected to be **\$13,135,600**, an increase of \$1,209,700 over the 2013-14. This figure includes the FTE compensation, substitute compensation, as well as "direct support," which is operational and other costs associated with opening and maintaining additional classrooms. The attached "Teacher Template" details this recommendation. (Attachment A)

It should be noted that enrollment projections are reviewed both prior to presentation of the budget to the Board for adoption in June, and again in early September after the actual enrollment has stabilized. The actual expense for the BSEP transfer to the General Fund for classroom teachers is calculated at the close of the Fiscal Year.

Discretionary Expenditures: Expanded Course Offerings, Counseling Services and Program Support

After the class size goals are achieved, the BSEP Measure stipulates that BSEP CSR funds may be used for "expanded course offerings (ECO)," counseling services at each of the District's middle schools, and "program support."

An important consideration in proposing expenditure of the BSEP CSR fund for these discretionary purposes is the need to maintain an appropriate reserve in the CSR fund, with the reserve for personnel variance an important consideration, given the cost of funding positions.

The increased cost of the teacher transfer and the need to maintain appropriate reserves means that amount of funding remaining for discretionary expenditures is smaller than in previous years. For 2014-15, it is recommended to continue the expenditures for expanded course offerings and middle school counseling, in keeping with the priorities of the BSEP measure and the needs of students. The expanded course offerings offer a wide variety of options for students, from AP augmentation classes, which give access to AP coursework for students who might not otherwise have such access, to science labs, yearbook and music classes. Middle school counseling provides social-emotional and academic support to our students at a crucial point in their development.

In the area of Program Support, it is recommended to continue funding 3.3 FTE for elementary literacy coaches and 1.8 FTE teachers for 3/4 and 4/5 combination classes at the TWI schools. However, in order to maintain the CSR resource through the life of the measure, it is necessary to make some reductions to program support funding. In the past, BSEP funding has reduced class sizes in Math 7, algebra and geometry, but this will be discontinued for 2014-15, a necessary savings of 5.4 FTE for the CSR fund.

The BSEP-funded RtI2 program continues to function as a comprehensive way of tailoring education to meet all students' needs, using data to make decisions about student learning. In the prior academic year, the cost of 5.5 FTE of the 11 FTE originally proposed for BSEP funding were shifted to the General Fund for Special Education. For 2014-15, it is proposed to maintain the split of funding 5.5 FTE through BSEP and 5.5 FTE through the General Fund.

Following is the summarized recommendation for the expenditure of BSEP CSR funds for Counseling Services, ECO classes and Program Support in FY 2014-15.

Counseling Services at each Middle School

- **4.8 FTE counselors** at the middle schools, that is, 1.2 FTE at Longfellow, 1.2 FTE at Willard, and 2.4 at King. This is the same allocation as in FY 2013-14.

Projected expense: \$458,800

Expanded Course Offerings (ECO)

- **6.4 FTE classroom teachers** for ECO classes at Berkeley High School
- **1.6 FTE classroom teachers** for ECO classes at the Middle Schools

Projected expense: \$774,640

Program Support

The recommendation is to fund **10.6 FTE** Program Support teachers in the next school year as follows:

- **3.3 FTE elementary school Literacy Coaches/Teachers;** (.3 FTE for each elementary school).
- **1.8 FTE elementary school teachers** for a .5 FTE allocation (plus .10 FTE prep time for each teacher) to each of three schools: Cragmont, LeConte and Rosa Parks to provide grade-specific time for students in 3/4 or 4/5 combination classes.
- **2.75 FTE RTI² teachers** for the 11 elementary schools (.25 FTE at each elementary school).
- **2.75 FTE RTI² teachers** for the three middle schools (.75 FTE for Longfellow, .75 FTE for Willard, and 1.25 FTE at King)

Projected expense: \$996,300

In summary, the recommendation for the expenditure of the BSEP Class Size Reduction monies in FY 2014-15 is:

Transfer from BSEP to General Funds for CSR: \$13,135,600

Discretionary: \$2,229,740

Indirect Costs: 1,109,378

Total Projected BSEP/Measure A Expense: \$16,474,718

Split-Roll Parcel Taxes Unlawful: *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135

Vol. 2013, No. 18.1 - October 7, 2013

In July, the California Supreme Court denied review of *Borikas v. Alameda Unified School District* (2013) 214 Cal.App.4th 135, thereby rendering the earlier court of appeal decision final. *Borikas* involved a parcel tax that imposed different tax rates on different classifications of parcels. Two lower courts found school districts had the authority to structure parcel taxes in this way. The appellate court disagreed, finding the tax did not meet the “uniformity” requirement for school district parcel taxes and that the district could only levy a single rate of tax on all parcels. The court left unanswered several key questions, including whether a tax imposed at a uniform rate per-square-foot would violate the uniformity requirement. DWK represented Alameda Unified School District in its attempt to seek review of the decision by the California Supreme Court, an effort joined by numerous industry organizations, including CSBA, CASH, CTA, the California Library Association and the California Special Districts Association.

Borikas’ impact was immediately evident in lawsuits filed against four parcel tax measures passed in November 2012 that authorized “split roll” taxes. While three of these cases are still pending, DWK prevailed in the lawsuit filed against a joint powers authority comprised of five school districts. (*Suarez v. Centinela Valley Union High Sch. Dist.*, L.A. Super. Ct., Case No. BC498402.) A superior court dismissed this challenge when DWK raised the challengers’ failure to comply with the procedural requirements to challenge parcel taxes.

The Point: Looking to the future, districts renewing existing taxes or exploring new taxes should work with counsel to examine the tax structure, rate, and other specifics of the proposed tax to ensure they comport with the *Borikas* case. This vigilance is also important as legislative changes may unwind the holding of *Borikas*. While parcel taxes remain an important tool for school districts, *Borikas* suggests these taxes may face additional scrutiny in the future.

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BSEP Music Program

Provide a musical foundation in an equitable, culturally responsive and respectful classroom environment that facilitates cooperation and perseverance

- All elementary school students at every school:
 - In 3rd grade once per week,
 - In 4th and 5th grade, twice per week
- In 4th and 5th grade there are three sections for every two classes:
 - Stringed instruments, woodwinds and world music,
 - All classes are taught by credentialed music teachers,
 - Two of the teachers funded through a “release time” teacher calculation, as a transfer from BSEP to the General Fund, Third teacher is funded as a direct charge to the BSEP fund.
- Middle School music is taught before or after school
 - 62% of the students at Longfellow, 38% of the students at King and 36% of the students at Willard take music.
 - Offerings include Band, Orchestra, Jazz Band, Chorus, Guitar, Jazz, Mariachi, Music Technology and Modern Music



BSEP Music Funding Challenges

- Enrollment and staffing cost increases:
 - 17% growth in 4th and 5th grade enrollment since 2010
 - 24% growth in middle school music classes since 2010
 - Increased FTE parallels growth; salaries and other costs also increasing
- BSEP revenues increase with COLA, not with ADA:
 - COLA is projected to increase by only 0.86%, or about \$17,000 to VAPA
 - Indirect charges are increasing from 6.73% to 7.22%
 - 2013-14 Deficit spending is currently \$183,121
 - Fund balance is \$89,136
 - Approximately \$205,000 gap for 2014-15.
 - Resource must remain viable for three more years, through 2016-17.



BSEP Music Funding Options

- Increase Elementary Class sizes (reduce 2.2 FTE \approx \$200,000)
 - Offer one section for each class of 26 students
- Increase MS class sizes and/or reduce choices (reduce .5 FTE \approx \$50,000)
 - Eliminates 6 classes
- Share cost of Teacher Transfer with General Fund (\$205,000)
- Shift funds among BSEP resources (\$205,000)
 - Would take \$180,000 from libraries and \$25,000 from Parent Outreach
- Increase costs to families (\$37,000)
 - Higher Loan fees (\$10 raised to \$25 would increase budget by \$27,000)
 - Charge Performance Admission Fees (\$5/family = \$10,000)
- Eliminate Arts Anchor (\$56,000)
 - Previously reduced from \$9,000 per site, now at \$7,000)

BSEP PLANNING & OVERSIGHT COMMITTEE MINUTES

March 11 2014

BUSD Offices –Technology Room 126
2020 Bonar Street, Berkeley, CA 94702

P&O Committee Members Present:

Sergio Duran, <i>Arts Magnet</i>	Ty Alper, <i>Longfellow (Sub)</i>
Tim Frederick, <i>Cragmont</i>	Elisabeth Hensley, <i>King (co-Chair)</i>
Boyd Power, <i>Emerson</i>	Bruce Simon, <i>King</i>
Shauna Rabinowitz, <i>Jefferson</i>	Dawn Paxson, <i>Emerson/Willard</i>
Danielle Perez, <i>John Muir</i>	Margaret Phillips, <i>Willard</i>
Chris Martin, <i>LeConte (co-Chair)</i>	Aaron Glimme, <i>Berkeley High</i>
Catherine Huchting, <i>Malcolm X</i>	Larry Gordon, <i>Berkeley High</i>
Lea Baechler-Brabo, <i>Oxford</i>	John Lavine, <i>Berkeley High</i>
Dan Smuts, <i>Rosa Parks (co-Rep)</i>	Catherine Lazio, <i>Berkeley High</i>
Keira Armstrong, <i>Washington</i>	Representative, <i>Independent Study</i>

P&O Committee Members Absent:

Moshe Cohen, <i>Pre-K</i>	Kim Sanders, <i>Longfellow</i>
Lily Howell, <i>Pre-K (Alt)</i>	Ellen Weis, <i>Longfellow</i>
Darryl Bartlow, <i>John Muir (Alt)</i>	Austin Lloyd, <i>BHS (Alt)</i>
Yusef Auletta, <i>LeConte (Alt)</i>	Orlando Williams, <i>BHS (Alt)</i>
Juliet Bashore, <i>Rosa Parks (co-Rep)</i>	Ramal Lamar, <i>B-Tech</i>
Patrick Hamill, <i>Thousand Oaks</i>	

Visitors, School Board Directors, Union Reps, and Guests:

Donald Evans, *BUSD Superintendent*
Javetta Cleveland, *BUSD Deputy Superintendent*
Mark Coplan, *BUSD Public Information Officer*
Liz Karam, *Senior Budget Analyst - BSEP*
Suzanne McCulloch, *BUSD VAPA Program Supervisor*
Richard Boyden, *BHS Athletic Fund*
Georgette Cobbs, *Berkeley ATOD Task Force*
Karen Hughes, *Berkeley ATOD Task Force*
Cathy Campbell, *Berkeley Federation of Teachers*
Julie Sinai, *Board Member*

BSEP Staff:

Natasha Beery, *BSEP Director*
Valerie Tay, *BSEP Program Specialist*
Linda Race, *BSEP Staff Support*

1. Call to Order, Introductions & Site Reports

At 7:15 p.m. Co-chair Chris Martin called the meeting to order by welcoming attendees, and by asking P&O members to report on School Governance Council activity at their sites.

2. Establish the Quorum

The quorum was approved with 13 voting members initially present, with 19 total voting members present later in the meeting. [13 voting members are required for a quorum.]

3. Chairperson's Comments

Co-Chairs Chris Martin and Elisabeth Hensley

No comments were made.

4. BSEP Director's Comments

Natasha Beery, BSEP Director

Beery provided the following handouts:

- *Pilot Evaluation* Slide as presented to the School Board
- Davis Demographics & Planning: *BUSD SY 2013/14 Report District Wide Projections*
- *BSEP Measure Planning Timeline (To Board 3.12.14)*

Beery handed out Charity DaMarto's *Pilot Evaluation* Slide as presented to the School Board, and briefed the P&O Committee on DaMarto's report on the Office of Family Engagement and Equity. According to the slide, 10 students from each of the pilot school sites were selected to follow during both years of the pilot, with academic, behavioral and attendance outcomes as part of the data on the pilot program that will be reported in May. In addition to the student information, the report will include data on school-parent interaction, parent feedback from focus groups, survey data, and SGC/ELAC nomination and election data.

Beery handed out Davis Demographics & Planning: *BUSD SY 2013/14 Report District Wide Projections*, which shows enrollment projections through year 2020. This is from the January 2014 School Board packet. Beery noted that there was a 26-page document online (http://www.berkeleyschools.net/wp-content/uploads/2014/01/01-29-14_packet.pdf, beginning on page 81 of the January 29 Board Packet pdf). Beery stated that the projections for the next few years, beginning in year 2013, indicated growth of approximately 200 students per year, with increases more or less across the grades.

Beery announced that she would be attending the March 12, 2014 School Board meeting to update the Board on the BSEP 2016 Measure Planning Timeline. She handed out the latest timeline, *BSEP Measure Planning Timeline (To Board 3.12.14)* to the P&O members. Beery noted that the current version of the timeline includes getting an RFP out to consultants in August so as to bring one on board next year to begin the Stakeholder process. She will also be reminding the Board about the implications of the successful challenge to the split roll parcel tax in Alameda USD. In that case, commercial properties and residential properties were assessed differently (a "split roll"). Commercial properties were assessed on a per square foot basis, while residential properties were assessed at a flat per parcel rate. [This [article in EdSource](#) clarifies the legal challenges and issues.]

Assuming that for the next measure it may be necessary to assess both commercial and residential properties at the same rate, if the commercial rate (+/- \$0.42/sq. ft.) gets lowered to the residential rate (+/- \$0.27/sq. ft.), it would result in a loss of \$2.5M to BSEP. In order to have the same level of revenue to the District, it would be necessary to raise rates to \$0.31/sq. ft. If there were an increase of about \$2M to current revenues, it would mean about a \$0.33/sq. ft. (This tax is on sq. footage of improvements, i.e. the building, and would include a flat rate for empty lots.) There was a brief conversation about possible changes to the state law.

Beery mentioned that she was contacted by a *Berkeleyside* reporter about out-of-district kids being in the district. The reporter had questions about BSEP and how state funding works. Beery said she did not know when the piece would be published but wanted the P&O Committee to be aware that it could be. Coplan added that the article may clear up some myths about this topic.

5. Approval of Minutes 2.25.14

MOTION CARRIED (Smuts/Glimme): To approve the meeting minutes of the February 25, 2014 P&O Committee Meeting. The motion was approved with a showing of 14 hands, with no objections, and 2 abstentions.

6. Public Comment

Georgette Cobb and Karen Hughes of the Berkeley ATOD–Alcohol, Tobacco and Other Drugs Task Force spoke to the P&O Committee about the high rates of substance use by Berkeley youth and gave statistics from the California Healthy Kids Survey done in 2012 that indicated that students in the BUSD middle schools and high school have higher rates of drug and alcohol use than the national and state averages. They stressed the importance of having strong counseling support available to students. Cobbs and Hughes wanted to ask the P&O Committee to consider adding a dedicated FTE counselor at BHS and a shared FTE counselor for King and Longfellow in addition to the counseling being provided currently, which is at risk.

Richard Boyden, President of the Berkeley Athletic Fund, raises funds for athletics when there are budget shortfalls. He stated that he felt that although BUSD has a great reputation for athletics, the program was not meeting the needs of the kids in the program. Boyden stated that there are only three PE teachers at BHS for a population of 3200 students. There are only 500 students taking PE; half the school is on PE waivers and are not playing sports. There was a budget cut that eliminated 13 coaches, and they have not been replaced. He mentioned Fitness Gram statistics from fall of 2013 that showed that only 21% of BHS 9th graders were proficient in all five fitness measures, as compared to a state average of 36%. Boyden noted that there was no one in the District that coordinated physical education and athletics; the BAF had been talking to administrators about this issue and has received much feedback.

7. Subcommittee Report: Music/VAPA Subcommittee

Suzanne McCulloch, *BUSD VAPA Program Supervisor*

McCulloch stated that the Music/VAPA Subcommittee held meetings on February 4 and March 4, 2014. She noted that at both meetings there were many questions about the funding structure. For instance, there were questions about music offered during classroom teacher release time, as well as why music received more funding than the other arts, and how BSEP was structured. She thought it would be good to put out a FAQ sheet regarding Music/VAPA funding. She addressed the focus on music by explaining that music was included in the program because the District had cut all music funding in 1994, while the other arts were still somewhat supported in the schools. The Music program has grown at a rate of about 200 students/year for the last 3 or 4 years. Beery and McCulloch will be working on a report for the March 26th School Board meeting which will be made public at that time. She wanted to know if the P&O Committee had any more questions that she should include in the FAQs. Beery stated that they would be

giving a presentation to the Board to help them understand the trajectory of the fund, how the program has grown and how enrollment impacted the program.

McCulloch noted that people in the district formed the Berkeley Community Arts Team last year and, along with an outside consultant, did a survey of parents and staff members at school sites and of arts organizations in the city. They also did a mapping of where the arts are and are not taught in the schools. McCulloch went on to say that approximately 98% of the people that responded were in favor of arts education, and almost as many people supported the statement that the “arts are an essential part of the core curriculum at any school.” She stated that the arts help with parent engagement and student engagement, where students that were struggling in other subjects were much more successful in the arts and that was their “hook.” The information will be published, and some of it will be included in the presentation to the School Board. There was a brief discussion regarding facilities because the art and science rooms have virtually disappeared, and McCulloch stated that would be part of her report. Music is being taught in hallways and on stages during lunch and arts from a cart. Glimme added that the reason why the art and science classrooms were turned into regular classrooms was due to the tremendous growth in enrollment in a short period of time.

Hensley mentioned that one of the FAQs could include a response as to why there is not BSEP arts funding at the high school, and McCulloch said that the Measure was written for grades 4-8 and not specifically meant to leave out the high school. Lazio said that the people interested in programs at the high school could make a proposal to obtain site fund monies.

Beery and McCulloch announced that the Performing Arts Showcase was coming up on March 23, 2014 at BHS Community Theater 1-3:30pm. Over 500 students will be performing in chorus, bands, orchestras, and jazz bands. Beery added that there would be a new BSEP banner that will be unfurled at this event, as planned by the Communications Team. The BSEP Public Awareness Subcommittee will meet Tuesday, March 18, 2013.

8. Recommendation for BSEP Funds in FY 2014-14: Class Size Reduction (BSEP

Resource 0841)

Natasha Beery, BSEP Director

Beery provided the following handouts:

- *Recommendation for Allocation of BSEP Class Size Reduction Funds in FY 2014-15 from Neil Smith, Assistant Superintendent for Educational Services to the BSEP Planning & Oversight Committee, dated February 25, 2014*

Beery stated that at the last meeting Neil Smith, Superintendent of Educational Services, brought the proposal for CSR fund expenditures for next year and usually the recommendation are discussed again action taken at the next meeting after the presentation. However, in discussions with Superintendent Evans and Deputy Superintendent Cleveland about how to align BSEP decision-making process with LCFF/LCAP process, it has become clear that adjusting the timing of decisions would improve alignment. Cleveland recommended that the P&O not take action on the recommendation of the CSR allocation at tonight’s meeting to give the process enough time so that the other parts of various budgets being decided could be determined. One of the parts under consideration was the reduced middle school math class size, which may have an option of going to 24:1, which would be less costly than the 20:1. Cleveland said that another part that was being changed was moving RtI² into the Special Ed budget, which could result in some savings, about \$580K

on an annual basis. She was recommending slowing down the process to see what else could be moved out, monitoring the process, and weighing the balance of the options that could be beneficial.

The 20:1 CSR is definitely being funded for this year and for 2014-15. In general, the P&O Committee has stated its preference for maintaining 20:1 CSR. There was a discussion about funding and budget considerations and when to take action, approve a proposal, or revisit a decision. A statement could be made about what the P&O Committee would like to see considered. Martin stated that the process was complicated and the P&O Committee needed to be as patient as it could, while helping to support the decisions that are representative and supportive of the Measure. He thought an additional meeting would be needed to complete the process. There was a question regarding the sequencing of the budgets. CSR is the first due to its larger impact on staffing (increases/decreases). There was a general consensus that it was appropriate to wait to see what the options were, and where the shifts and cuts might be.

Martin asked for other comments but recommended moving on to the other agenda items. No action was taken on *Recommendation for Allocation of BSEP Class Size Reduction Funds in FY 2014-15 from Neil Smith, Assistant Superintendent for Educational Services to the BSEP Planning & Oversight Committee, dated February 25, 2014*. The P&O would plan to approve a plan for CSR Allocation on April 8, 2014.

9. LCAP: State Priorities and District Goals, Focus on Student Engagement and Student Achievement

Donald Evans, BUSD Superintendent and Javetta Cleveland, BUSD Deputy Superintendent
Evans provided the following handout:

- *LCAP Priorities* (narrative for items with attached costs 3-7-14)

Donald Evans, BUSD Superintendent, stated that many groups were working on Student Engagement and Student Achievement priorities. There was a meeting with the EAC, which is prioritizing this now, and the PAC will be prioritizing through Survey Monkey.

Student Achievement will focus on how to improve the academic achievement for targeted populations by grade level: Pre-K, K-5, Middle School, High School, and K-12 in general. Evans briefed the participants with a few examples of programs for targeted students such as reading programs, RtI², tutoring, the Bridge program, TWI Coordination, Counseling, etc.

For Student Engagement, Evans noted that some of the programs could include mentoring, family liaison/truancy programs, more professional development for teachers and classified staff, more support for McKinney-Vento students, etc.

Evans reminded the Committee members that the targeted populations include ELL, Foster Youth, and Free & Reduced Lunch, as well as other populations, such as African American and Latino students.

Evans explained “fidelity” to a program with an example of using a reading program that requires students to complete several rotations of reading/reading aloud. When they are not able to work with the program the way it was meant to be structured, it takes away from their learning. Evans noted that he had some data for programs such as Build and Bridge. However, most of the data he has is anecdotal, not quantitative. He is still trying to get the information that he needs for some programs.

The members of the Committee were asked to place dots on the listings under Student Engagement and Student Achievement. After the exercise, Evans passed out *LCAP*

Priorities (narrative for items with attached costs 3-7-14) that laid out the some of the programs that aligned with District goals and listed them along with costs to implement them. Evans stated that the programs could be paid for from different funds: Base Grant, BSEP or other sources. Beery noted that the total for all the programs listed was about \$9M, and the Supplemental LCFF funding is at \$2.4M.

Evans explained that Number 8, Intervention Coordinator and Support at BHS, would be a program that would coordinate “advisors” (college students or other mentors) to provide support to the highest-risk students. This would be in place of an “at-risk counselor.” Paxson mentioned that she would appreciate seeing more about extending the school calendar and how some of these programs might be better included if there was more time. Evans noted that there had been discussions on extending the day without extending the workday for teachers, by having some coaches come in later, for example at 10am, and stay until 6pm, where they could provide for extended day/afterschool. Evans, in response to funding an afterschool bus, said that there had been this discussion about funding a bus for those kids who can’t stay. Harm stated that IS was not mentioned anywhere in the programs, that IS was seeing more and more at-risk students, and monies definitely need to come to IS. IS students are a small group of 100-125 and are students that wrap into the at-risk situation. Evans noted that IS support has not come up and stated that he would look into that for them.

Evans was asked how many people voted on the Student Engagement and Student Achievement Priorities, and he estimated several hundred.

10. Site Discretionary Funds Allocation

Natasha Beery, BSEP Director

Beery provided the following handout:

- *BSEP Resource 0852, Site Discretionary Funds 2014-15 Allocation*

Beery handed out *BSEP Resource 0852, Site Discretionary Funds 2014-15 Allocation* and stated that School Discretionary allocations were \$233/student last year and the year before and has dropped to \$230/student for 2014-15. However, a few years ago, it was only \$170/student. She explained that for next year the COLA is .086% and without a substantial fund balance we need to be very careful about this resource. The way the allocations are done currently is to look at current enrollment, not projecting what the number of students will be next year. Some funds were set aside to account for sites like Jefferson, where it is known there will be some additional classrooms left next year. Also noted that TK is part of the Kindergarten count.

There is a special calculation for B-Tech and Independent Study, where they are given a fixed amount. Their enrollment can go up and down, but they still have essential needs. BHS is getting less per student because enrollment is down slightly.

In response to questions about alignment of site plans with LCAP, Beery stated that part of the LCAP process was that the SGCs were to contribute their input to the process. Beery added that the way the sites might work in this process would be to have a decision tree based on possible changes coming from the district. Beery will be sharing a “map” of the LCAP process with the Cabinet, and it looks like the LCAP consultation pieces will be done by the end of March, and the first draft of the LCAP will be done around April 14th. The site plans will have to be later than that.

Beery reminded the committee that the LCAP is a 3-year plan that allows for updates and revisions.

11. BSEP Audit for 2012-13

Liz Karam, Senior Budget Analyst - BSEP

Karam provided the following handouts:

- *BUSD Measure A of 2006 “Berkeley Schools Excellence Program” Financial Statements, June 30, 2013*
- *BUSD Measure A of 2006 “Berkeley Schools Excellence Program” Performance Audit, June 30, 2013*

Karam presented the audit process. She stated that the Financial Audit was an independent auditors report from an unbiased point of view, and it was a “clean audit” and conformed to the Measure. She noted that page 5 of the Financial Audit listed the “Summary of Significant Accounting Policies” and that the money is held in a pool by the Alameda County Treasury. The Balance Sheets are a snapshot of the District’s books on June 30, 2013. The history is shown in the Statement of Revenues, Expenditures and Changes in Fund Balance (page 6) and shown by resource.

The Performance Audit opinion is on page 1 and basically states that the money was spent in compliance with the Measure. Karam explained that the Methodology shown on page 5 were tests of how the funds were spent.

12. Adjournment

In response to questions about how to ensure that LCAP and SGC decision-making is aligned, Martin and Beery confirmed that the information received at the P&O meeting could be taken back to the SGCs, discussed between the SGCs and the School Principals, and any concerns could be written as a letter to Superintendent Evans with a cc: to Smith, Cleveland, and the Board.

The meeting was adjourned by acclamation at 9:15 p.m.

Minutes submitted by Linda Race, BSEP Staff Support