

BERKELEY PUBLIC SCHOOLS
Meeting Location: 1231 Addison Street, Berkeley CA 94702
Phone: (510) 644-8764

BOARD OF EDUCATION – SPECIAL MEETING AGENDA
Wednesday, July 29, 2015

BOARD OF EDUCATION

Judy Appel, President
Beatriz Leyva-Cutler, Vice President
Karen Hemphill, Director/Clerk
Josh Daniels, Director
Ty Alper, Director

STAFF

Donald E. Evans, Ed.D., Superintendent/Secretary
Javetta Cleveland, Deputy Superintendent
Pasquale Scuderi, Asst. Supt., Educational Services
Delia Ruiz, Asst. Supt., Human Resources
Lyzanna Chairez, Recorder

BOARD OF EDUCATION SPECIAL MEETING AGENDA

The Presiding Officer will call the meeting to order at 6:30 p.m. before the Board Recesses to Closed Session. The Special Meeting will convene at the end of Closed Session.

Closed Session

The Board may recess into Closed Session before or after the public meeting under the authority of the Brown Act (including but not limited to Government Code section 54954.5, 54956.8, 54956.9, 54957, 54957.6, as well as Education Code section 35146). Under Government Code section 54954.3, members of the public may address the board on an item on the Closed Session agenda, before Closed Session.

CLOSED SESSION PUBLIC TESTIMONY

Persons wishing to address the Board should fill out a green speaker card. **Cards turned in by 6:15 p.m. will be given priority.** Speakers will be randomly selected based on topic and position, with BUSD students generally given priority. Public Testimony is limited to **15 minutes with a 3-minute limit per speaker per topic** although the time allotted per speaker may be reduced to 2 minutes at the discretion of the President.

1. Liability Claim – No. PER1400876
Request for Settlement Authority

Approve Special Meeting Agenda of July 29, 2015

Report on Closed Session

OPEN SESSION PUBLIC TESTIMONY (1st opportunity)

Persons wishing to address the Board should fill out a green speaker card. **Cards turned in by 6:30 p.m. will be given priority.**

Speakers will be randomly selected based on topic and position, with BUSD students generally given priority. Public Testimony is limited to **30 minutes with a 3-minute limit per speaker per topic** although the time allotted per speaker may be reduced to 2 minutes at the discretion of the President.

ACTION ITEM

1	Approval of 45-Day Revise to the California State Budget	3
2	Authorization to Increase the Project Budget, Approve a Change Order for the Willard Modernization Project and Approval of Resolution 16-004	11

OPEN SESSION PUBLIC TESTIMONY (2nd opportunity)

Persons wishing to address the Board should fill out a green speaker card. **Cards turned in for the earlier open session public testimony will be given priority.** Speakers will be randomly selected based on topic and position, with BUSD students generally given priority. Public Testimony is limited to **15 minutes with a 3-minute limit per speaker per topic** although the time allotted per speaker may be reduced to 2 minutes at the discretion of the President.

Extended Board Member and Superintendent Comments. Board members and the Superintendent are given the opportunity to address any issue.

Adjournment

BERKELEY UNIFIED SCHOOL DISTRICT

TO: Donald Evans, Superintendent
FROM: Javetta Cleveland, Deputy Superintendent
DATE: July 29, 2015
SUBJECT: 45-Day Revise to the California State Budget

BACKGROUND INFORMATION

Education Code Section (EC) 42127(i)(4) specifies that no later than 45 days after the Governor signs the annual Budget Act, the District shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

On June 24, 2015, Governor Jerry Brown announced that he signed the 2015-16 State Budget. The relevant education State Budget bills are as follows:

- Assembly Bill (AB) 93 – the Legislature’s State Budget version
- Senate Bill (SB) 97 – Budget Bill Jr, and implements reductions to AB 93 per the negotiated deal
- AB 104 – Education Trailer Bill
- SB 78 – LCFF Trailer Bill

In the District’s Adopted Budget, staff incorporated revenue projections based on the Governor’s May revised budget. The enacted budget contained the following significant changes to the May revision:

- Reduction in gap funding in the Local Control Funding Formula (LCFF) from 53.08% to 51.52%
- Reduction in one-time discretionary funding from \$601 per ADA to \$530 per ADA
- Adult Education Block Grant Program to fund Adult Education Programs based on the maintenance of effort (cost) for 2013-14 and 2014-15. Funds will be distributed via a consortium, and require an approved Adult Education Plan. Funds apportioned for the program are required to be used only for programs specified in EC 84913a which includes programs for older adults
- Funding for Educator Effectiveness in the amount of \$1,450 per certificated staff as of the 2014-15 fiscal year

Staff has estimated the financial impact on the Unrestricted and Restricted General fund and has provided the following information for the Board's review.

BUDGET REVISIONS

- A. Unrestricted General Fund revenue decreased by \$131,652 due to revisions in gap percentages for 2014-15 and 2015-16
- B. Unrestricted one-time state revenues decreased by \$663,837 as a result of the reduction in discretionary funding per ADA.
- C. Adult Education will be funded by the State on an ongoing basis, and the general fund will no longer transfer \$2,723,819 to the Adult Education Program
- D. Educator Effectiveness Program estimated at \$954,100 was added, and is considered to be restricted funding. The state has stipulated that this funding be used for beginning teacher support, professional improvement and development aligned to content standards for teachers, and development and technical assistance for network management. There is an opportunity to move unrestricted expenditures such as beginning teacher support cost of \$278,000 and professional development budgeted in the unrestricted budget for Common Core implementation. However, the board has to adopt a plan prior to budget transfers.

The overall fiscal impact of the final budget is summarized on the attached tables.

MULTI-YEAR PROJECTIONS

As indicated in the components of ending fund balance, \$1,190,000 is committed for Common Core expenditures for 2016-17 and \$2,000,000 is committed for BSEP's CSR share of salary increases and program support for 2016-17.

Ongoing revenue for Adult Education and Educator Effectiveness Program will be reflected in the multi-year projections. Per the BFT contract, in the event the District receives at least an additional \$2 million in ongoing state funding for Adult Education, employees shall receive an on schedule compensation increase of 2% effective 2016-17. The multi-year projection at adoption already projects a 3% one-time bonus for all employees for 2016-17. The revised multi-year projection presentation will be presented with the closed books (unaudited actuals) at the September 9, 2015 board meeting.

POLICY/CODE

Education Code Sections 42127(2) and 42127 (i) (4)

FISCAL IMPACT

Unrestricted General Fund balance increased by \$1,928,330, and Restricted General Fund increased by \$954,100 as indicated in the attached tables.

STAFF RECOMMENDATION

Approve the 45 day revisions to the District's Budget.

**BERKELEY UNIFIED SCHOOL DISTRICT
GENERAL FUND 01 - UNRESTRICTED
FY 2015-16 45 DAY BUDGET REVISION**

	Fund 01 Unrestricted General Fund	Change in LCFF Gap Funding (A)	One Time Discretionary Funds (B)	Adult Education Grant (C)	Total Adjustments	Revised Fund 01 Unrestricted
REVENUES:						
Base LCFF Funding	\$ 76,839,270	\$ (107,656)			\$ (107,656)	\$ 76,731,614
Supplemental LCFF Funding	4,265,229	(51,694)			(51,694)	4,213,535
Total LCFF Revenue	81,104,499	(159,350)	-	-	(159,350)	80,945,149
Other State Revenues	7,210,532		(663,837)		(663,837)	6,546,695
Local Revenues	2,006,227				-	2,006,227
TOTAL REVENUES:	90,321,258	(159,350)	(663,837)	-	(823,187)	89,498,071
EXPENDITURES:						-
Certificated Salaries	45,240,235				-	45,240,235
Classified Salaries	12,709,930				-	12,709,930
Employee Benefits	16,750,901				-	16,750,901
Books and Supplies	2,416,254				-	2,416,254
Services & Operating Expenses	9,124,387				-	9,124,387
Capital Outlay	58,450				-	58,450
Direct Support/Indirect Cost	(3,043,076)				-	(3,043,076)
TOTAL EXPENDITURES	83,257,081	-	-	-	-	83,257,081

**BERKELEY UNIFIED SCHOOL DISTRICT
GENERAL FUND 01 - UNRESTRICTED
FY 2015-16 45 DAY BUDGET REVISION**

	Fund 01 Unrestricted General Fund	Change in LCFF Gap Funding (A)	One Time Discretionary Funds (B)	Adult Education Grant (C)	Total Adjustments	Revised Fund 01 Unrestricted
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	7,064,177	(159,350)	(663,837)	-	(823,187)	6,240,990
OTHER FINANCING SOURCES AND USES:						
Inter-fund Transfers Out						
Transfer to Adult Education Fund	(2,723,819)			2,723,819	2,723,819	-
Transfer to Child Development Fund	(35,000)				-	(35,000)
Transfer to Preschool Program	(276,000)				-	(276,000)
Transfer to Cafeteria Fund	(632,542)				-	(632,542)
Transfer to Self Insurance Fund	(243,496)				-	(243,496)
Total Transfers Out	(3,910,857)	-	-	2,723,819	2,723,819	(1,187,038)
Net Contributions	87,609	-	-	-	-	87,609
TOTAL OTHER FINANCING SOURCES /USES	(3,823,248)	-	-	2,723,819	2,723,819	(1,099,429)
NET INCREASE (DECREASE) IN FUND BALANCE	3,240,929	(159,350)	(663,837)	2,723,819	1,900,632	5,141,561
BEGINNING FUND BALANCE	5,302,727	27,698			27,698	5,330,425
ENDING FUND BALANCE	8,543,656	(131,652)	(663,837)	2,723,819	1,928,330	10,471,986

BERKELEY UNIFIED SCHOOL DISTRICT
GENERAL FUND 01 - UNRESTRICTED
FY 2015-16 45 DAY BUDGET REVISION

	Fund 01 Unrestricted General Fund	Change in LCFF Gap Funding (A)	One Time Discretionary Funds (B)	Adult Education Grant (C)	Total Adjustments	Revised Fund 01 Unrestricted
COMPONENTS OF ENDING FUND BALANCE						
Revolving Cash	100,000				-	100,000
Commitment for Common Core FY 2016-17	1,190,000				-	1,190,000
Commitment for BSEP Share of FY 2016-17 salary increases	2,000,000				-	2,000,000
Reserve for Economic Uncertainty	310,578				-	310,578
Undesignated Fund Balance	\$ 4,943,078	\$ (131,652)	\$ (663,837)	\$ 2,723,819	\$ 1,928,330	\$ 6,871,408

**BERKELEY UNIFIED SCHOOL DISTRICT
GENERAL FUND 01 - RESTRICTED
FY 2015-16 45 DAY BUDGET REVISION**

	Fund 01 Restricted General Fund	Educator Effectiveness (D)	Total Adjustments	Revised Fund 01 Unrestricted
REVENUES:				
Property tax transfer	\$ 416,860		-	\$ 416,860
Federal revenues	3,561,619		-	3,561,619
Other State Revenues	3,138,044	954,100	954,100	4,092,144
Local Revenues	8,134,626		-	8,134,626
TOTAL REVENUES:	15,251,149	954,100	954,100	16,205,249
EXPENDITURES:			-	-
Certificated Salaries	8,802,512		-	8,802,512
Classified Salaries	7,067,245		-	7,067,245
Employee Benefits	5,430,875		-	5,430,875
Books and Supplies	921,201		-	921,201
Services & Operating Expenses	6,552,715		-	6,552,715
Capital Outlay	186,360		-	186,360
Direct Support/Indirect Cost	442,230		-	442,230
TOTAL EXPENDITURES	29,403,138	-	-	29,403,138

BERKELEY UNIFIED SCHOOL DISTRICT
GENERAL FUND 01 - UNRESTRICTED
FY 2015-16 45 DAY BUDGET REVIS ON

	Fund 01 Restricted General Fund	Educator Effectiveness (D)	Total Adjustments	Revised Fund 01 Unrestricted
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(14, 151,989)	954,100	954,100	(13,197,889)
TOTAL OTHER FINANCING SOURCES /USES	13,593,401	-	-	14,927,477
NET INCREASE (DECREASE) IN FUND BALANCE	(558,588)	954,100	954,100	1,729,588
BEGINNING FUND BALANCE	2,302,860			1,424,214
ENDING FUND BALANCE	\$ 1,744,272	954,100		\$ 3,153,802

BERKELEY UNIFIED SCHOOL DISTRICT

TO: Donald Evans, Ed.D., Superintendent
FROM: Timothy E. White, Executive Director of Facilities
DATE: July 29, 2015
SUBJECT: Authorization to Increase the Project Budget, Approve a Change Order for the Willard Modernization Project and Approval of Resolution 16-004

BACKGROUND INFORMATION

On May 20, 2015, the Board awarded a contract to Strawn Construction Inc. to remodel the existing multipurpose room including the kitchen area; remodel the Gymnasium Girls restroom; replace the boiler; paint the exterior; replace door hardware; new public address system; ventilation and electrical modifications; and site accessibility improvements. Alternates to the project included:

- Alternates 1 replaces the skylight
- Alternate 2 replaces the west and south elevations of the windows of the Building C only;
- Alternate 3 includes the replacement of windows on the east and north elevations of the Building C;
- Alternate 4 would replace the projector in the Multipurpose Room; and
- Alternates 5 and 6 replace roofs of Building G and Building D.

The Board awarded base bid and alternate 1, the replacement of the skylight for \$3,555,000.

During the demolition phase we discovered several unsafe and substandard construction conditions, primarily in the kitchen, cafeteria area and adjoining spaces. This is a brief summary of our project construction issues:

1. Existing substandard constructed structural framing support lumber was improperly installed. The exposed structural members have been 'notched and wedged' creating structural safety concerns. DSA is requiring that this be corrected. Substandard construction was discovered during the Gym Girls Restroom remodel and the Kitchen area remodel. The DSA and Structural Engineers have investigated and will be providing details and direction for repairs that will be performed under change orders. This will contribute to the delay at the Kitchen and will delay the completion of the Girls Restroom, possibly beyond the start of school. (est. \$60,000)
2. Extensive mold and dry rot found in the kitchen and adjacent areas. Although there was evidence of water intrusion to interior walls, causing damage invisible to the eye, concealed within wall spaces was not

considered or included in the project scope or budget. The mold was found and removed along south and east walls of Building B. This required removal of all sheetrock and plaster finishes in these areas. This led to the discovery of dry rot in the wall and ceiling framing. All of this was demolished under HAZMAT containment and as a Time & Material change order. New framing and new finishes will be required in this entire area, also as change order. This will delay completion of the Kitchen area. We are exploring how to provide a Temporary Kitchen for the start of school. (est. \$120,000)

3. Heavy water intrusion leak through the retaining wall.
4. Emergency replacement of leaky antiquated roofing on 'B' building kitchen and cafeteria. This will resolve the water intrusion that is causing the dry rot and mold in the Kitchen and Boiler Room areas. This is a substantial change order scope. (est. \$120,000) Although an extensive amount of building improvements are being done to the interior of the cafeteria, the existing damaged roof was not a part of the scope. -
5. Site ADA and Path of Travel - the site has wet soil subgrade that requires added work to stabilize. Also discovered conditions that are not meeting ADA and need to be corrected. (est. \$75,000)
6. Several change order conditions (est. \$100,000)
7. The delays in the project will result in contractor-overrun costs and acceleration to minimize delay. (est. \$75,000)

All estimates are very preliminary and subject to change.

In addition to prevent further delays we are requesting approval to increase the services for Baker Vilar Architects to \$430,000 (original approval on 3/26/14 for \$380,000) and Ninyo & Moore to \$33,000 (original approval 12/10/14 for \$19,100). These items can be contained in the project budget.

POLICY/CODE

California Public Contract Code 20110- 20118.

FISCAL IMPACT

\$225,000 project budget increase.

STAFF RECOMMENDATION

Approve the requested budget increase, approve resolution authorizing a change order and approve authority for contract increases with consultants.

RESOLUTION NO. 16-004

**BOARD OF EDUCATION OF THE
BERKELEY UNIFIED SCHOOL DISTRICT
AUTHORIZING CHANGE ORDER**

WHEREAS, on or about June 12, 2015 the Berkeley Unified School District (“District”), after formal public bidding, entered into a contract with Strawn Construction Inc. for furnishing of all labor, materials, mechanical workmanship, transportation, equipment and services necessary to renovate the Willard Modernization Project located at 2425 Stuart St. in Berkeley, California (“Project”);

WHEREAS, the original contract amount was \$3,555,000;

WHEREAS, this Project was originally designed in 2014, and there have been an unusual number of added elements by the Division of State Architect (DSA), hidden conditions, and additional improvements to the building in the time period planned;

WHEREAS, the project had a relatively high percentage of costs from hidden conditions because there were so many separate areas impacted during the construction;

WHEREAS, there were improvement that were sensible to do as a part of this project while the areas were exposed;

WHEREAS, the District and Contractor have held initial negotiations on the proposed additional change orders to date for the project and those changes will likely exceed the 10% threshold;

WHEREAS, District staff believes that the final negotiated Change Order price to perform the work will be reasonable;

WHEREAS, District staff believes that rebidding the project while the job was underway and awarding it to an entity other than the Contractor would have created massive disruption and a potential claim with the Contractor on completing his base scope of work;

WHEREAS, District staff believes that a new contractor performing the Work would have caused waste and delay, which would be at the expense of the District;

WHEREAS, District staff believes that bringing in new contractors to perform any of this work would have created coordination and interference problems with the Contractor;

WHEREAS, District staff believes that if the District were to have bid any of this Work to another Contractor, the prices of those bids would be more than the price of Contractor’s Change Order because Contractor is already mobilized on the Project and Contractor’s costs to perform the project and would remain lower than other contractors’ who may bid on the Work;

WHEREAS, Public Contract Code section 20111 states that a school district is required to competitively bid any public works project with a contract value over \$15,000;

WHEREAS, Public Contract Code section 20118.4 states that a school district may, “authorize the contractor to proceed with performance of the change or alteration [to a contract] without the formality of securing bids, if the cost so agreed upon does not exceed the greater of: (a) The amount specified in Section 20111 ...; or (b) Ten percent of the original contract price”;

WHEREAS, notwithstanding Public Contract Code sections 20111 or 20118.4, California courts allow a narrow exception to the public bidding law in circumstances in which it would be futile, undesirable or impractical and would cause additional delay and additional cost (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.);

WHEREAS, California law provides that, “Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply.” (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694.);

WHEREAS, bidding any portion of the added Work will not affect the final result to the District except to further increase the cost of the Project; and

WHEREAS, bidding the increased scope of the Work would not have produced an advantage to the District;

NOW THEREFORE, the Board of Education of the Berkeley Unified School District hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true.
2. For the reasons stated above, public bidding of the increased scope of Work would not have produced an advantage to the District, and would produce a net burden and distinct disadvantages to the District.
3. Based on the foregoing, it would be incongruous, futile, and unavailing to publicly bid the increased scope of Work.
4. That the District’s Board hereby approves the already negotiated Change Orders to accept the increased cost of the Project and to resolve several outstanding disputes concerning added Work without further advertising for or inviting of bids, and authorizes the Superintendent and designees to take all steps and perform all actions necessary to execute and implement that Change Order.

PASSED AND ADOPTED by the Board of Education of the Berkeley Unified School District, City of Berkeley, County of Alameda, State of California, this 29th day of July, 2015, by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

ATTEST:

Clerk of the Board of Education of the
Berkeley Unified School District