



## **RESOLUTION 20-038**

### **RESOLUTION OF EMERGENCY OF THE BOARD OF TRUSTEES OF THE BERKELEY UNIFIED SCHOOL DISTRICT**

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

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 virus a world-wide Pandemic;

WHEREAS, on March 12, 2020, the Governor of California issued Executive Order N-25-20;

WHEREAS, as of March 12, 2020, there are 198 reported cases of COVID-19 in California, with 4 deaths; 7 reported cases in Alameda County, with four reported with the last 24 hours [two cases reported in the City of Berkeley]; and officials expect the number of cases to continue to increase;

WHEREAS, the District's Governing Board, Superintendent are committed to ensuring the health and safety of its students, staff and families;

WHEREAS, it is imperative to take proactive measure to prepare for and implement actions to respond to, and minimize, the potential spread of COVID-19 in the Berkeley Unified School District (BUSD) schools and the Berkeley community and State of California;

WHEREAS, it is imperative to have the tools to ensure the health and safety of students, staff, and families on our campuses;

WHEREAS, certain laws, regulations, and policies interfere with the District's ability to provide the immediate action required to address these critical health and safety concerns;

WHEREAS, the protection of the health and safety and preservation of the lives of students, staff and families, as well as property of the people of Berkeley, the County and the State from the effects of natural emergencies such as virulent infectious diseases like COVID-19, which may cause extreme peril to life, property, and resources is of paramount local and State importance requiring the responsible efforts of public and private agencies and individual citizens;



WHEREAS, all public employees required to serve as disaster service workers subject to such disaster service activities as may be assigned to them by their superiors or by law under Government Code 3100; and

WHEREAS, Section 1102 of the Public Contract Code defines "emergency" to mean a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services," and section 21060.3 of the Public Resources Code and California Environmental Quality Act Guidelines 14 CCR section 15269(c) defines "emergency" to mean "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geological movements, as well as such occurrences as riot, accident, or sabotage."

WHEREAS, under California Public Contract Code Section 20113, in an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, do the following: make a contract in writing or otherwise on behalf the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bid, notwithstanding section 20114;

WHEREAS, facts exist and are rapidly emerging that are preventing the District from maintaining its schools for at least 175 days in the year as required by law because of the COVID-19 epidemic, and because of the other extraordinary conditions associated with the spread and risk of COVID-19 in our community and State, including but not limited to the increasing inability to secure teachers to cover classes because more teachers and staff are taking preventative measures to stay home when exhibiting some symptoms associated with COVID-19 and the critical shortage of substitutes or other credentialed staff to cover classrooms, and the rapidly increasing number of teacher and staff illnesses; and

WHEREAS, these rapidly developing facts make the closure of District schools imminent and may make such school closures, or closure of all schools in the Berkeley Unified School District, necessary upon very limited notice in order to protect students and other staff, and



NOW, THEREFORE, BE IT THEREFORE RESOLVED that the Board of Trustees of the Berkeley Unified School District:

- (1) Determines that the circumstances described in the Resolution herein that constitute an emergency condition;
- (2) By unanimous vote pursuant to section 20113 of the Public Contract Code and subject to approval by the Alameda County Superintendent of Schools, authorizes the execution of contracts without advertising or inviting bids; and, notwithstanding section 20114, authorizes the flexibility of Maintenance and Operations, notwithstanding section 20114, to respond to the emergency conditions at District Sites; and
- (3) Delegates to the BUSD Superintendent or his designee, pursuant to Board Policy 2210 and further to its broad authority under Education Code section 35160, the authority to act on behalf of the Governing Board and the District in manners that are consistent with law and Board policies;
- (4) Authorizes the Superintendent and/or his designee to take any and all actions necessary to ensure the continuation of public education, and the health and safety of the students and staff at the District Sites, including, but not limited to: the relocation of students and staff, continued daily student transportation, provision of alternative educational program options, provision of leave of absence to employees with pay due to quarantine or recently returning from level 3 countries or sick from COVID-19 or illnesses with similar symptoms (cough, fever, shortness of breath) or cohabitants of any individuals without any impact to their benefit time pursuant to Education Code sections 44964 and 45199, directing staff to serve as disaster service workers pursuant to Government Code 3100, and/or make alterations, repairs or improvements to school property.
- (5) Grants leaves of absence in accordance with Education Code sections 44964 and 45199 to be administered by the Superintendent and/or his designee further to her authority over personnel matters;
- (6) Determines by unanimous vote and subject to approval by the Superintendent of the Alameda County, that an emergency condition exists because of COVID-19 and related extraordinary conditions, which permits the Superintendent and/or her designee to exercise the provisions of California Public Contract Code section 20113;



- (7) Authorizes the Superintendent to take or direct such actions that are or may be necessary pursuant to Education Code section 41422 to protect the District's interests;
- (8) Authorizes the Superintendent to determine, in consultation with the Board, the reopening of schools when the emergency conditions seek to exist and take such action to reopen schools; and
- (9) Authorizes the Superintendent to take such actions as necessary to immediately close one, some, or all District schools as may be necessary to protect students and staff health and safety, or to adjust or reduce the length of the school day without further approval, or to take such other action as may be necessary and prudent to protect the health and safety of District students and staff; or alternatively to dismiss some or all students from attendance and retain staff.
- (10) In the event the Superintendent becomes ill and is unable to perform the duties described above, the President of the Board of Education and the Superintendent's designee shall consult about the actions described in section (1)-(9) of this resolution.

PASSED AND ADOPTED at a meeting of the Board of Education of the Berkeley Unified School District held on the 13th day of March 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

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Judy Appel  
President, Board of Education  
Berkeley Unified School District

ATTEST: \_\_\_\_\_