



STANDING UP FOR STUDENTS

MAY 5, 2020

The Need for Executive Action to Pause Permanent School Closures During the COVID-19 Pandemic

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Oakland Not For Sale

A MULTI-PART WHITEPAPER INCLUDING PIECES FROM

Dr. Art Reingold, UC Berkeley School of Public Health and
Dr. Brad Pollack, UC Davis School of Public Health
among a dozen public health academics
(*In a Letter Offering Public Health Guidance*)

Advancement Project California (*With Regard to Racial Equity
Analysis of Permanent School Closures*)

Dan Siegel, Esq (*With Regard To Legal Analysis of the
State's Authority And Parents' Constitutional Rights*)

EXECUTIVE SUMMARY

As the most unprecedented public health, economic, and educational crisis of the last century, COVID-19 is requiring disruptions in almost every aspect of our lives. For the students, parents and teachers of California's public education system, the level of disruption and trauma is immeasurable. To protect public health, Governor Newsom has rightly followed the guidance of scientists and other public health experts to call for a shelter in place order now that shuttered all public schools through the end of the 2019-2020 school year, and, if students are able to return to school in the fall, high levels of physical distancing in schools in fall 2020.

However, at least 16 schools in 6 school districts statewide are slated to be closed or merged, and dozens more schools in at least 10 school districts are slated to be co-located with charter schools, **all as of this month—May 2020.**¹ Permanent school closures, mergers and co-locations would decrease the amount of public school facilities available to the public school system and increase student density in available school facilities **at the very same moment that the Governor, based on public health guidance, has called for greater physical distancing in the fall.**² The schools slated to be closed, merged and co-located are almost all majority black and brown schools, further exposing communities of color to greater risk of exposure to the pandemic at a time when these communities are already experiencing higher rates of infection and mortality.



Furthermore, the level of trauma to students in schools about to be closed, merged, or co-located is unacceptably high: while most students statewide might be going into a new grade, they will be surrounded by peers and teachers they know, while students in schools being closed, merged, and co-located will never be able to see their peers and teachers again, and instead will be placed into an entirely new environment with hardly anyone they know. At an April 28, 2020 hearing of the California State Assembly Budget Subcommittee, CDE President Linda Darling Hammond stated, "We should start with the importance of relationships. Some experts have advised that students should return to the teachers they had this past year, who know them and their families, who understand their learning approaches and needs, and are best positioned to welcome them with understanding and compassion, to diagnose where they are in their lives and learning."³

This paper outlines the major arguments and evidence for an Executive Action pausing all planned school closures, mergers and co-locations in the State of California during the COVID-19 pandemic, including:

1. A letter from public health experts calling for a pause on all school closures, mergers and co-locations given the need for greater physical distancing in the fall;
2. A racial equity analysis conducted by the Advancement Project California showing that the planned school closures, mergers and co-locations are happening in

majority black and brown schools, and thus would put these communities, already over-impacted by COVID-19, at unjustly greater risk of spread of the virus;

3. A fiscal analysis from experts at Holy Names University School of Education demonstrating that school closures, mergers and co-locations would cost these districts millions of dollars at a time when the state and districts are facing severe budget shortfalls, and that a pause on these actions would actually save these districts money; and
4. A legal analysis demonstrating that the Governor has legal authority to enact an Executive Action pausing all school closures, mergers and co-locations during the pandemic, and a letter from civil rights attorney Dan Siegel

Beyond these arguments, there are many other legal and ethical reasons to pause planned school closures, mergers and co-locations statewide, including the following:

- ❖ Parents are not able to visit any potential new schools to determine where their children should go next year, **violating their Constitutional right to determine their children's education.**
- ❖ Local School Boards are not able to allow for meaningful public engagement, participation, or accountability, a necessary component of school closures/mergers/co-location processes.
- ❖ Students will not be able to return this academic year to schools that are planned to be closed in May, and will thus face the severe trauma of never reuniting with their classmates before being shuffled to a new school
- ❖ Teachers and classified staff have no opportunity to engage with closure/merger/co-location planning, no opportunity to clean out classrooms safely, and no real opportunity to make decisions about whether to accept changed teaching or other assignments

In addition to the permanent school closures and co-locations, School Districts should not proceed with other decision-making on other significant issues, such as budget and layoffs, at a time when the community is not in a position to fully participate. Taking such actions would be using a public health emergency for undemocratic purposes. This participation includes budget conversations. Parents, students, and community members have a legal right to participate in these conversations. Moreover, School districts must ensure any of these significant decisions regarding closures do not stop investigations that will help to ensure that students can return to a safe and welcoming environment.

This global pandemic has changed everyone's lives, and business as usual cannot continue. In an effort to flatten the curve, ordinances at the local as well as international



levels have implemented shelter in place regulations. Restaurants and bars have shuttered, laying off millions of American workers and leaving them completely destitute—many of whom are parents in our school districts. Millions of immigrant families cannot access benefits of any kind. In particular, low-income communities of color are suffering deeply. Even our state legislature and school districts themselves are not functioning at

their full capacity—certainly not in a way that allows for the kind of community engagement necessary to carry out these plans. As the very real possibility of a global recession becomes a pressing reality, **now is a time to take care of ourselves and our families, not proceed with planned permanent closures, mergers, and co-locations for which our School Districts have not fully developed plans, and cannot develop them without the full participation of teachers and classified staff, parents, and students. Our communities deserve better; we deserve democratic, meaningful, and substantive participation in decisions that drastically affect our lives.**

Many of us are familiar with the methods utilized around the country and the world by powerful elites during times of crisis and upheaval, taking advantage of our hardships and disorientation as an “opportunity” to push through deeply unpopular and undemocratic policies and proposals. We expect those who are in charge to refrain from making major decisions that will impact the future of our schools at a time when the public cannot fully participate, and we hope that District and State authorities will adopt the spirit of compassion and cooperation which so many other entities have chosen, including, for example, the vote by several local City Councils to halt evictions, and follow governmental state, county and federal public health policies to cease business as usual. **If evictions from homes can be stopped, surely evictions from schools can be paused as well.**

Herein we provide the unassailable evidence for an Executive Action to prohibit California School Districts from continuing with planned permanent closures, mergers and charter co-locations that would force parents to violate county, state, and federal public health orders in order to attempt to pursue their Constitutional right to determine their children’s education.

Letter from Public Health Officials Calling for a Pause of School Closures/Mergers/Co-locations to Ensure Physical Distancing

May 5, 2020

Dear Governor Newsom,

Thank you for your leadership in this difficult time, and for your outstanding actions to follow public health advice for the health and welfare of the people of the State of California. We write to encourage you to extend these actions with regard to school closures, mergers, and co-locations this fall.

On April 14, 2020, you issued a statement that California plans to use social distancing in schools to avoid a resurgence of COVID-19 when schools reopen for the 2020-21 school year. The CDC's "Guidance for Administrators of US K-12 Schools and Child Care Programs" advises to "increase the space between desks" and to "stagger arrival and/or dismissal times" in order to best implement social distancing in schools and decrease the volume and proximity of interactions. As quoted in Politico, educational experts Edgar Zazueta of the Association of California School Administrators and Keith Brown, president of the Oakland Education Association, agree that social distancing in schools will require as much facility space as possible to keep kids, teachers, and the larger community safe.

In the interests of public health, California school districts should immediately halt all plans to close, merge, or co-locate schools in 2020-21 to avoid increased density at school sites and thwart the future spread of COVID-19 when schools reopen. We also note the intensive additional stress that school closures, mergers, and co-locations pose for children and families already under high stress. COVID-19 is already disproportionately affecting communities of color—the same communities that are most impacted by mergers, closures, and co-locations. The schools that children of color attend must be made as safe as possible so as to not further endanger communities most at risk from COVID-19.

We encourage you to issue an executive order requiring school districts across the state to pause all closures, mergers, and co-locations in 2020-21 to maximize facilities so that schools can successfully practice social distancing this fall and once again serve as safe places for kids, families, and the community when they reopen.

Sincerely,
Public Health Experts

Dr. Art Reingold, *Division Head of Epidemiology and Biostatistics, UC Berkley School of Public Health*

Dr. Brad Pollock, M.P.H., Ph.D., *Professor and Chairman, Arline Miller Rolkin Chair in Public Health Sciences, Department of Public Health Sciences, Associate Dean of Public Health Sciences, School of Medicine, University of California, Davis*

Dr. Jeffrey D. Klausner, MD, MPH, *Professor of Medicine and Public Health, UCLA David Geffen School of Medicine and Fielding School of Public Health*

Dr. Rhea Boyd MD, MPH, *The American Academy of Pediatrics, Chapter 1*

Dr. Rachel Berkowitz, DrPH, MPH, *Health Equity & Implementation Science Postdoctoral Research Fellow, University of California, Berkeley*

Dr. Linda Rudolph, MD, *Center for Climate Change and Health*

Liz Kroboth, MPH, *Transitions Clinic Network, University of California, San Francisco*

Rupal Sanghvi, MPH, *Health x Design*

Dr. Madeleine Kane, MD, *University of California San Francisco/University of California Berkeley Joint Medical Program*

Miranda Worthen, MPH, *San Jose State University, Human Rights Institute and Department of Public Health and Recreation*

Dr. William Armaline, PhD, *Associate Professor, Sociology and Int. Social Sciences, Director, San Jose State University Human Rights Collaborative*

**Support from teachers, parents, and community members
seeking to reduce risk of exposure:**

Hilda Rodriguez-Guzman *ACCE*

Nailah Franklin *BACR after school program*

Jamie Cairns *Benicia Unified School District*

Cindy Hukill *Brookfield Elementary School*

Camille Martin *Brookfield Elementary School*

Corrin Haskell *Brookfield Elementary School*

Felisha West *Brookfield Village/Columbia Garden
Homeowner Association with Soprani Park*

Belinda M. Sanders *Bella Vista Elementary School*

Jonathan *Central Unified School District*

Claire Woods *Individual*

Peggy Beasley *Concerned Parent*

Aquita Stevenson *Cox Academy Charter School*

Christina Salvin *Gavilan College*

Oscar Campos *Henry J Kaiser Jr. Elementary School*

Stuart Strickland *Hewlett Packard Enterprise*

Brad Hirn *Housing Rights Committee of San Francisco*

Jenna Flamenco *Hayward Unified School District*

Gwynne Gilson *Indivisible ReSisters*

Akemi Hamai *King Middle School*

Michael Solorio *La Familia de Stanford*

Danika Weden *Lafayette School District*

Bette Korber *Los Alamos National Laboratory*

Erika M. Guerrero *Manzanita Community School*

Patricia Rathwell *Individual*

Oscar Campos *Individual*

Tina Andres *Individual*

Sanjev de Silva *Individual*

Andrew Seko *Individual*

Jace Perry *Individual*

Sarah Tapon *Individual*

Corey Monteith *Individual*

Rachel Amsterdam *Oakland Education Association*

Kelsey Johnson *Oakland Education Association*

Sarah Willner *Oakland Education Association*

Danielle Gerena *Oakland Education Association*

Craig Gordon *Oakland Education Association*

Shula Bien *Oakland Education Association*

Chaz Garcia *Oakland Education Association*

Yael Friedman *Oakland Education Association*

Alejandro Estrada *Oakland Education Association/
Oakland Unified School District*

Cheri Johansen *Oakland for a Progressive Future*

Tontra Love *Oakland Teacher*

Quinn Ranahan *Oakland Teacher*

Misato O. Araki *Oakland Unified School District*

Amanda Hardwick *Oakland Unified School District*

Pamela Long *Oakland Unified School District*

Rachel Devadatta *Oakland Unified School District*

Elizabeth Woodward *Oakland Unified School
District*

Micaela Morse *Oakland Education Association*

Tan Doan *Oakland Education Association*

Olivia Udovic *Oakland Education Association*

Rachel Tabar *Oakland Education Association*

Katherine Blackburn *Oakland Education Association*

Natasha Saleski *Oakland Education Association*

Amy Haruyama *Oakland Education Association*

Timothy Douglas *Oakland Education Association*

Denise Case *Oakland Education Association*

Amelia Bailey *Oakland Education Association*

Naomi Katz *Oakland Education Association*

Carrie Anderson *Oakland Education Association*

Sara Shepich *Oakland Education Association*

Brigid Brown *Oakland Education Association*

Micaela Morse *Oakland Education Association*

Diosa E Diaz *Oakland Unified School District*

Julianne Schenone *Oakland Unified School District*

Christina Lonergan *Oakland Unified School District*

Susan Keen *Oakland Unified School District*

Carolina Equihua-Cerda *Oakland Unified School
District*

Cristina Ramos *Oakland Unified School District*

Perla Zuniga *Oakland Unified School District*

Anderson de Andrade *Oakland Unified School
District*

Yesenia Montoya *Parent*

Robert J Brem *Peralta Colleges*

Kathleen be Evans *Retired teacher, Oakland
Unified School District*

Jodi Murphy *Retired teacher*

Lynda Rosenthal *Retired teacher, Oakland Unified
School District WCCSD*

Gabrielle Dolphin *Retired with grandkids*

Miko Tolliver *Rock Star Guitar Academy*

Brook Pessin-Whedbee *Rosa Parks Elementary*

Sarah Goudy *Rudsdale Newcomer High School*

Colleen Kim *San Francisco Unified School District*

Roselinn Lee *Santa Ana Unified School District*

Benjamin Vazquez *Santa Ana Unified School District*

Joey Badua *Individual*

Aly Hall *Individual*

Lisa Scheffer *Individual*

Xochitl Hernandez-Hill *Individual*

Kyle Smith *San Francisco Unified School District*

Mohammad Mustafa Popal *Skyline College*

Evan Colom Johnson *Stay at home parent*

Victoria Robles *The Walt Disney Company*

Mira Mickiewicz *Trackers Earth*

Michael Rosenthal *Vallejo Unified School District*

Michael Bakal *Voces y Manos*

Pausing School Closures/Mergers/Co-locations is Necessary to Avoid Further Racial Inequities Already Exacerbated by COVID-19

In order to make an assessment of all the schools and districts impacted by planned permanent closures, mergers and co-locations at the end of May 2020, we first examined a list of school districts in the top thirty most populous counties using the California Department of Education's online school directory. While we know that close to 100 schools in at least a dozen districts statewide are slated to be co-located with charter schools after this month, May 2020, co-locations are harder to track, and so for the purposes of this analysis we have focused on publicly available data on planned school closures and mergers in those thirty most populous counties. In particular, we conducted a general analysis of news in those counties during the 2019-2020 school year in order to discover which districts were reporting planned school closures and mergers. Since they are the schools planned to be permanently closed and merged in the 30 most populous counties in California, Table 1 is a sample of planned permanent school closures and mergers statewide. The list was verified through school board meeting videos and minutes via each respective district's online database. Data regarding the Free and Reduced School Lunch percentages was collected through the California Department of Education's School Profile database.

TABLE 1

Schools Slated for Permanent Closure/Merger in 30 Most Populous CA Counties for 2020, With Percentage of Students Receiving Free and Reduced School Lunches (FRSL)

Source: Analysis of news, School District Board meetings and notes in 30 most populous CA counties conducted by Oakland Not For Sale, May 2020

| SCHOOL | DISTRICT | COUNTY | FRSL |
|----------------------------------|----------------------------|-------------|--------|
| Franklin Elementary | Pasadena Unified | Los Angeles | 82.40% |
| Jefferson Elementary | Pasadena Unified | Los Angeles | 82.20% |
| Roosevelt Elementary | Pasadena Unified | Los Angeles | 77.20% |
| Woodrow Wilson Middle School | Pasadena Unified | Los Angeles | 69.60% |
| Laurelwood Elementary | Evergreen Elementary | Santa Clara | 19.90% |
| Dove Hill Elementary | Evergreen Elementary | Santa Clara | 58.30% |
| Brentwood Academy | Ravenswood City Elementary | San Mateo | 80.80% |
| Willow Oaks Elementary | Ravenswood City Elementary | San Mateo | 77.60% |
| Short Elementary | San Rafael City Elementary | Marin | 61.20% |
| Garrison Elementary | Oceanside Unified | San Diego | 84.90% |
| San Luis Rey Elementary | Oceanside Unified | San Diego | 77.40% |
| Kaiser Elementary | Oakland Unified | Alameda | 31.00% |
| Oakland SOL Dual Language Middle | Oakland Unified | Alameda | 78.00% |
| Frick Middle | Oakland Unified | Alameda | 93.10% |
| Sankofa Academy | Oakland Unified | Alameda | 81.00% |
| Brookfield Elementary | Oakland Unified | Alameda | 89.20% |

Initial analysis demonstrates that 11 of the 16 schools slated for closure and merger serve more than 75% low-income families requiring free and reduced school lunches. By comparison, statewide, 59% of California students qualify for Free and Reduced School Lunch.⁴ Clearly lower-income families, who are already at greater risk of facing unemployment and exposure to COVID-19, would be disproportionately impacted by school closures and mergers that would put them at greater risk of infection.

Further analysis by the Advancement Project California demonstrates that almost all of these districts are majority of color; 5 out of 6 of these districts serve a student population that is 70% or more of color. Families of color, who are already at greater risk of facing unemployment and exposure to COVID-19, would be disproportionately impacted by school closures and mergers that would put them at greater risk of infection.

TABLE 2

Enrollment by District, 2019-20

All race estimates in this table other than Latino exclude Latinos

www.cde.ca.gov/ds/sd/sd/filesenr.asp

Source: Advancement Project California calculations of California Department of Education

| COUNTY | DISTRICT | ENROLLMENT | LATINX (%) | BLACK (%) | OTHER |
|-------------|----------------------------|------------|------------|-----------|-------|
| Alameda | Oakland Unified | 49,588 | 47.1 | 22.4 | 30.5 |
| Los Angeles | Pasadena Unified | 17,427 | 58 | 11.5 | 30.5 |
| Marin | San Rafael City Elementary | 4,588 | 69.9 | 0.7 | 29.4 |
| San Diego | Oceanside Unified | 19,371 | 56.4 | 4.2 | 39.4 |
| San Mateo | Ravenswood City Elementary | 3,269 | 83.6 | 5.5 | 10.9 |
| Santa Clara | Evergreen Elementary | 10,426 | 24.5 | 1.3 | 74.2 |

Furthermore, within these six districts, the schools slated to be closed or merged have a much higher proportion of black and Latinx students than other schools that are not slated to be closed or merged in those same districts. Schools in Oakland that are slated to be closed or merged have 12.4% more black students than other schools in Oakland Unified School District, and schools in Pasadena, San Rafael, Oceanside, and Evergreen Elementary School Districts that are slated to be closed or merged are all 12.8-22.5% more Latinx than other schools that are not slated to be closed or merged in those same districts.

TABLE 3

Average Difference in Enrollment, Closed or Merged Schools and their Districts, 2019-20

All race estimates in this table other than Latino exclude Latinos

www.cde.ca.gov/ds/sd/sd/filesenr.asp

Source: Advancement Project California calculations of California Department of Education

| DISTRICT | LATINO (%) | BLACK (%) |
|----------------------------|------------|-----------|
| Oakland Unified | -2.9 | 12.4 |
| Pasadena Unified | 22.5 | -0.2 |
| San Rafael City Elementary | 21 | 2.3 |
| Oceanside Unified | 19.1 | 0.4 |
| Ravenswood City Elementary | -1.3 | 0 |
| Evergreen Elementary | 12.8 | 2 |
| | 9.8 | 4.3 |



The fact that planned permanent school closures and mergers are disproportionately impacting black and brown districts and black and brown schools in those districts compounds already existing disproportionate impacts of COVID-19 on black and brown communities. As the *Los Angeles Times* reported based on figures from the California Department of Health, COVID-19 is far deadlier in California’s black and brown communities.⁵ Black Californian’s ages 18-49 represent 6% of the total population but 15% of the deaths in this age group. Latinos ages 18-49 represent 43% of the population but

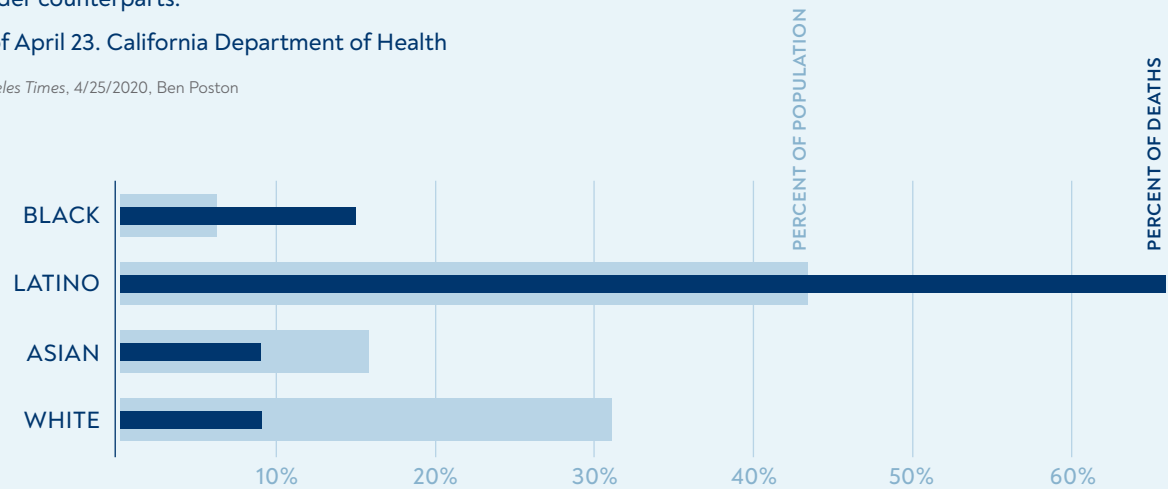
nearly 65% of the deaths. The pronounced and lethal impact of COVID-19 on communities of color reinforce the necessity to stop these school closures already primarily affecting black and brown students.

Closing and merging schools in these neighborhoods will create higher density schools in the fall in black and brown communities **that are already at higher risk of contracting and dying from the virus** and would demonstrate irresponsible disregard of structural and racial inequities plaguing these school districts and communities and our state.

FIGURE 1
 “Disparities Found in COVID-19 Deaths” from *Los Angeles Times*, April 2020
 In California, black and Latino patients ages 18 to 49 are dying of COVID-19 more often relative to their share of the population than other racial groups and their older counterparts.

Figures as of April 23. California Department of Health

Source: *Los Angeles Times*, 4/25/2020, Ben Poston



Pausing School Closures/Mergers/Co-locations Will Save Money During a Budget Deficit

One of the major arguments that some school districts have used to argue for proceeding with planned school closures, mergers, and co-locations in the face of the pandemic is that such actions are necessary for districts to save costs and meet their budgets. However, these districts have not provided any evidence that closing, merging, or co-locating schools would actually save the district funds. On the contrary, overwhelming evidence exists that closing, merging and co-locating schools would **cost school districts millions at a time of tremendous state budget shortfall**, and that pausing planned school closures, mergers, and co-locations could actually save school districts and the state millions of dollars. This section describes evidence from districts outside of California and then evidence from California districts themselves that school closures do not save money and in many cases cost districts millions, and finally provides a sample budget accounting for the true cost of a planned school closure in Oakland, California.

A. Evidence from Outside California

First, evidence from districts outside of California demonstrates that school closures, mergers and co-locations cost districts millions of dollars:

- ❖ A 2012 audit of 23 school closures in Washington, DC indicated that the school closures cost the City \$40 million.⁶
- ❖ The most extensive national study of the issue, completed by the National Education Policy Council, found that closing schools does not save money and does not improve academic performance.⁷ The study showed that there are hidden costs to closures, including securing vacant facilities, clearing out and maintaining supplies like computers from the closed school, and the large investment is needed to help students transfer to new schools and upgrades to facilities taking in new students.
- ❖ In Chicago, the cost of a moving contract for items in closed schools was estimated at \$14 million. It ended up costing \$30 million.⁸
- ❖ A study published by the OECD (Organization of Economic Cooperation and Development) concluded that “The financial costs of closing schools are often underestimated, starting with a miscalculation of one-time expenditures for moving students, staff and supplies.”⁹
- ❖ Districts tout “underutilization” of schools in order to close them. School closures, mergers and co-locations cause more students, teachers and staff to be forced into overcrowded conditions, as detailed in a 2014 report by the Chicago Teachers Union.¹⁰ Quite often ‘underutilization’ accounting ends up turning space dedicated for art and music with the proper equipment into all-purpose rooms. In numerous instances, these calculations of ‘underutilization’ have even turned custodian closets into classrooms for reading help or other special

services needed for students. These overcrowded conditions have long-term, unaccounted financial implications as well as students with special needs do not receive the attention and education they need, causing later financial strain on public systems.

B. Evidence from California School Districts

These national studies and examples have borne out to be true in California as well. Some California school districts argue that closing public schools is necessary to save money; however, in many cases these same districts' own financial analyses show there are minimal financial savings at best and substantial costs at worst when public schools are closed. Ventura County found that it lost \$1 million in lessened enrollment due to school closures in 2008. While the District promised savings due to school closures, in fact the opposite was true. "After the closures, however, about 300 of the 7,020 students in the K-8 district left to join a new charter school opened by parents and teachers from one of the shuttered schools. Parents at one of the Conejo Valley campuses at the top of the closure list are talking about doing the same kind of thing... the district could lose more than \$1 million this coming school year because of the enrollment drop."¹¹

Oakland Unified School District stated in its own 'Fact Finding' report released in February 2019, "Potential savings from attempted school closures are offset by implementation costs and a loss of enrollment primarily to charter schools."¹² The OECD report described above cited San Diego State University academics in concluding that the cost of California school closures are grossly underestimated.¹³ Oakland Unified School District shuttered a school suddenly at the end of 2019 and their own forecast showed the cost savings were negligible when compared to what they would lose to student attrition.¹⁴

In fact, the closing of any individual school in California is unlikely to save any money, especially during COVID-19 due to the following considerations:

1. As described above, numerous national and local studies have shown that there are hidden costs to closures, including securing vacant facilities, clearing out and maintaining supplies like computers from the closed school, and the fact that a large investment is needed to help students transfer to new schools and upgrades to facilities taking in new students. In Oakland, a closure of a fully enrolled elementary school is already costing what the District claimed it would save by ordering portables to hold the students they are moving to another school (further details below).
2. When schools close, enrollment declines as students leave for private or charter schools, furthering the cycle of loss of revenue for public schools. It is estimated that charter schools cost Oakland \$57.3 million every year.¹⁵ Fifteen out of 18 schools closed in Oakland in 2018-2019 were turned over to charter schools, showing that the schools closed were in fact needed and vital to those neighborhoods. Oakland Unified School District closed Roots Middle School in 2019, and the District's own analysis of savings projected barely outweighed the projected loss from student attrition.¹⁶ Furthermore, 60 of the students who suffered the Roots Middle School closure are now experiencing the closure of the school to which they were relocated, SOL. Again, those students now face an uncertain future due to school closures and now COVID-19.
3. As described in Part II, the schools and districts targeted for closures in California are disproportionately of color. The Urban Institute that although black students make up 31% of the population in urban areas, 61% of students affected by closures in urban areas are black and from low-income families.¹⁷ The report documented how school closings

disproportionately impact low-income, black and Brown families in many ways. First, they are least likely to have available transportation; low-income black and brown children are walking to the school that is closing. Second, the families may be receiving other free services from the school, including health clinics, sports fields, Friday farmers markets, parent groups, and more. These disproportionate impacts have unaccounted financial implications for the state in terms of the use of other public services by low-income communities as a result of the loss of a public school facility.



4. School closures, mergers and co-locations in California that have been voted upon by California school districts based on the ‘underutilization’ of space calculations described above will result in fewer facilities that will cost the state millions when additional space is needed for greater physical distancing during COVID-19 in fall 2020.¹⁸ Robert Hull, President of the National Association of State Boards of Education, has called for additional portables to be built on existing school sites to provide for more space for physical distancing in fall 2020 . The Associated Press cited Tony Wold, Associate Superintendent of West Contra Costa Unified School District, as questioning how the state would help districts actually implement physical distancing. “We can’t just build new schools overnight. Even if the state gives us more money, where will the teachers come from?” said Wold, listing the ways schools are not built for social distancing. In his district near San Francisco, schools already stagger lunchtimes and put 8 to 10 kids at each table. Gym classes can have upwards of 50 students, and there are no empty, unused classrooms.”¹⁹

C. Sample Budget Accounting for Closure of a Public School in Oakland, CA

As just one example of how pausing school closures, mergers and co-locations during the COVID-19 pandemic would not cost CA School Districts or the State of California any additional funds *and actually would save the state costs during a period of extreme state budget shortfall*, we outline here the calculation of costs and savings from closing and merging one California public school.

In September 2019 the Oakland Unified School District voted to close Henry J. Kaiser, Jr. Elementary School. As described in Part II of this report, Kaiser Elementary serves a student population that is 60% students of color, and is slated to be merged with another school, Sankofa Elementary, that is nearly 80% students of color.²⁰ Sankofa’s facilities were already not enough

TABLE 4

Current Estimated Costs of Closing Kaiser Elementary School, Oakland CA

Source: Oakland Unified School District School Board Meeting 9/11/19, item S-1 #19-1827 Blue Print for Quality Schools - Cohort 2 Schools -Kaiser Elementary and Sankofa Elementary Programs

| | |
|---|--------------------|
| Programmatic Expenses | \$110,000 |
| Blue Print changes | \$165,000 |
| Estimated additional costs | \$800,000 |
| Installation of 3 new portable classrooms at Sankofa Elementary | \$357,172 |
| Cost of student attrition | \$643,720 |
| TOTAL | \$2,075,872 |



to accommodate students from both elementary schools, prompting the District to declare that it would construct portable classrooms on the Sankofa Elementary School property. The Oakland Unified School Board's estimations of costs to close Kaiser are described below.

This school closure and merger will result in no savings and \$2 million in costs to the District in the 2020-2021 school year, since no teachers or staff are being laid off, only relocated, and since no other private or charter school is using the Kaiser Elementary School property in the 2020-2021 school year. As can be seen above, the cost of the closure and merger already greatly exceeded any savings; with COVID-19 and the need for greater physical distancing, the loss of the Kaiser school facility will cost the District even more money as it searches for additional space to spread out students. The District's own flyer to parents describing their proposal

for closure on January 24, 2019, indicated that there would be no short-term savings from the closure, only costs/investment, and that long-term savings would accrue from being able to consider Kaiser a 'surplus property.' The District and the state will need 'surplus property' to ensure physical distancing in the fall.

Kasier is just one of three schools in Oakland Unified School District planned to be closed and merged in May 2020. The District also put forward cost estimates for the planning process involved in closing and merging these schools. Much of this planning process has been slowed or halted due to COVID-19, and further pause on these plans, given the uncertainty of schooling in fall 2020, could save the District several hundred thousand dollars.

TABLE 5

**Planned programmatic costs for just the design year for closing/merging
3 schools in Oakland Unified School District**

Source: Oakland Unified School District School Board Meeting 9/11/19, item S-1 #19-1827 Blue Print for Quality Schools - Cohort 2 Schools

| ACTIVITY TYPE | ITEM | ITEM DETAIL | COST |
|----------------------------|--------------------------|---|------------------|
| School/Design Team Support | Conference/Training | National Equity Project (NEP) | \$23,000 |
| School/Design Team Support | Lodging | Two Days of retreat | \$15,000 |
| School/Design Team Support | Food | Two days | \$2,700 |
| School/Design Team Support | Travel | Mileage | \$4,500 |
| School/Design Team Support | Room Rentals | Two Days | \$2,400 |
| Assessment Planning | Coaches | Leadership Coaches | \$12,000 |
| School/Design Team Support | Site Budgets Programming | Subs, stipends, study trips, food, childcare, transportation, other | \$140,000 |
| School/Design Team Support | Training | Food | \$2,100 |
| School/Design Team Support | Training | Food | \$1,050 |
| School/Design Team Support | PD/Training | Registration and travel | \$60,000 |
| School/Design Team Support | Training | Food | \$2,100 |
| School/Design Team Support | Training | Food | \$2,100 |
| Coaching | Coaches | TBD | \$48,000 |
| TOTAL | | | \$314,950 |

Pausing School Closures/Mergers/Co-locations is Legally Allowable Through Statewide Executive Action

In this section we both outline the Governor’s legal authority to enact an Executive Action to pause all planned permanent school closures, mergers and co-locations and then provide a letter from civil rights attorney Dan Siegel to the Oakland Unified School District outlining the abrogation of parents’ constitutional rights to control their children’s education that occurs when school closures, mergers and co-locations occur during a pandemic shelter-in-place order.

A. The Governor’s Legal Authority to Pause School Closures, Mergers and Co-Locations

Here we examine the Governor’s legal authority during the current state of emergency to issue an executive order to temporarily stop all permanent school closures, mergers, or co-locations. The purpose of such an order would be to preserve all available public school facilities to better enable students, teachers, and other school faculty to continue social distancing when California’s schools reopen.

This analysis starts with the relevant factual background. In short, in March 2020, Governor Newsom declared a state of emergency because of the public health threat caused by COVID-19. He has since issued a number of executive orders to facilitate social distancing, including related to public schools. Public health experts, education leaders, and executive officers—including Governor Newsom and State Superintendent of Public Instruction Tony Thurmond—have all stated that, when they reopen for the 2020-2021 academic year, schools will need to take steps to facilitate continued social distancing. But despite that, some school districts across the state are pressing forward with plans to permanently close, merge, or co-locate public school sites—all of which will increase the population density on school sites, making social distancing even more difficult.

This analysis next turns to the Governor’s legal authority to issue an executive order pausing all permanent school closures, mergers, or co-locations.²¹ The legal discussion’s first section addresses the broad powers conferred on the Governor during a state of emergency by the Emergency Services Act. It concludes that an order pausing school closures would fall well within the Governor’s sweeping authority during a state of emergency—indeed, it would be less restrictive than several of the executive orders already issued to address the COVID-19 pandemic.

In discussing the possibility of this executive order, certain executive officers and members of the Legislature have asked whether Proposition 39, passed by voters in 2000, would present a legal bar to the order. The second section of the legal discussion responds to that question, and it concludes that Prop 39 *does not* bar an executive order to temporarily stop all permanent school closures, mergers, and co-locations on public school sites. Prop 39 requires public school districts to allocate available public facilities to charter schools. The proposed executive order would, for the most part, avoid conflict with Prop 39. And to the extent the order would conflict



with Prop 39, the Emergency Service Act expressly permits the Governor to suspend any statutory or regulatory provisions that conflict with an executive order during a state of emergency.

Accordingly, this analysis concludes that, during this state of emergency, the Governor has the legal authority to issue an executive order to temporarily stop all planned closures, mergers, or co-locations of public school sites.

1. Factual Background

a. Governor Newsom Has Issued a Series of Executive Orders Responding to the Ongoing State of Emergency in California

On March 4, 2020, Governor Newsom proclaimed a State of Emergency in the State of California as a result of the threat posed by COVID-19, “in accordance with the authority vested in [him] by the State Constitution and statutes, including the California Emergency Services Act.” Proclamation of a State of Emergency (Mar. 4, 2020), *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

In the time since proclaiming a state emergency, Governor Newsom has also issued a series of executive orders mandating social distancing and addressing issues related to public schools. For example, the Governor issued the following executive orders:

- ❖ Providing that any school district that temporarily closes schools in response to the COVID-19 crisis will “continue to receive state funding” during the period of closure, and, *inter alia*, suspending Education Code § 41422. Executive Order N-26-20 (Mar. 13, 2020), *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.13.20-EO-N-26-20-Schools.pdf> (last visited May 2, 2020).
- ❖ Waiving the requirements under Education Code §§ 60640 and 60641(a) for all students to take standardized academic tests for the 2019-2020 school year. Executive Order N-30-20 (Mar. 18, 2020), *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.18-N-30-20-Schools.pdf> (last visited May 2, 2020).
- ❖ Requiring all California residents to stay at home and shelter-in-place, except to engage in essential activities. Executive Order N-33-20 (Mar. 19, 2020), *available at* <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf> (last visited May 2, 2020).
- ❖ Directing the Secretary of the California Department of Corrections and Rehabilitation (CDCR), *inter alia*, “to suspend intake into Division of Juvenile Justice (DJJ) facilities for 30 days,” and, waiving or suspending “any statutory or other provisions [that] require DJJ to accept new juveniles into its facilities.” Executive Order N-36-20 (Mar. 24, 2020), *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.24.20-EO-N-36-20.pdf> (last visited May 2, 2020).
- ❖ Shortening the timelines for releasing certain juvenile detainees from DJJ facilities and accelerating the time for certain “discharge consideration hearings before the Board of Juvenile Hearings (BJH).” Executive Order N-49-20 (April 14, 2020), *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.14.20-N-49-20-EO.pdf> (last visited May 2, 2020).

- ❖ Extending statutory deadlines, set under the Education Code, for school districts to approve a Local Control and Accountability Plan (LCAP). Executive Order N-56-20 (Apr. 22, 2020), *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/04/EO-N-56-20-text.pdf> (last visited May 2, 2020).

In each of those executive orders, the Governor cited to authority provided to him under statutory sections from the Emergency Services Act, Government Code §§ 8550 – 8669.7.

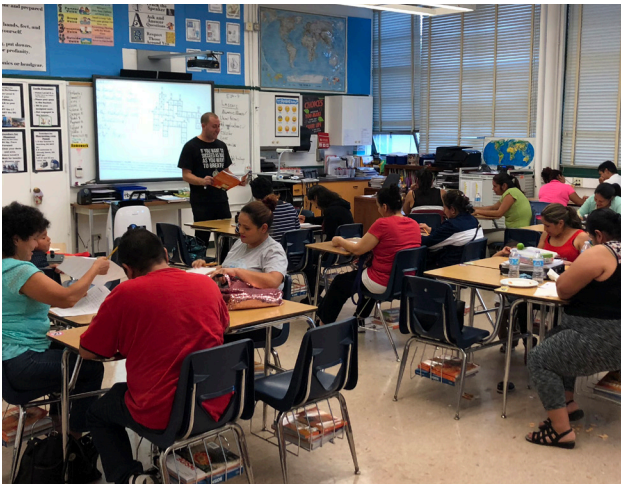
b. Some California School Districts Plan to Increase Students Enrolled at Individual Campuses by Permanently Closing Other School Sites, Despite the Anticipated Need for Social Distancing at Schools When They Reopen

Several school districts in California are proceeding with plans to permanently close public school sites or to “merge” or “co-locate” student populations from multiple schools onto one site.²² Such actions will *increase* the population density—of students, teachers, and other faculty—at school sites. But increasing population density runs against the advice of public health experts and others.

Public health experts, education leaders, and executive officers—including the Governor and the State Superintendent of Public Instruction—have expressed the need to continue social distancing when schools reopen for the 2020-2021 academic year. The CDC has recommended that schools “[i]mplement multiple social distancing strategies,” including “increase[ing] the physical space between students and limit[ing] interactions in large group settings by, among other things, increasing the space between desks, avoiding mixing students in common areas, and canceling or modifying “classes where students are likely to be in very close contact.” Centers for Disease Control and Prevention, *Interim Guidance for Administrators of US K-12 Schools and Child Care Programs* (as modified on Mar. 11, 2020), *available at* <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html> (last visited May 2, 2020). Similarly, educational leaders such as Edgar Zazueta of the Association of California School Administrators and Keith Brown, President of the Oakland



Education Association, have stated that social distancing will require as much facility space as can be made available. See Mackenzie Mays, *California Prepares for Socially Distant Schools in the Fall*, POLITICO (Apr. 14, 2020), <https://www.politico.com/states/california/story/2020/04/14/california-prepares-for-socially-distant-schools-in-the-fall-1275930> (last visited May 2, 2020). And Governor Newsom has indicated that schools will need to enable social distancing through various measures, possibly including staggering class and meal schedules and restricting students from congregating during recess or class. See Jill Tucker & Alejandro Serrano, *Gov. Newsom: California Schools Will Return After Coronavirus Shutdowns, but Things May Look Much Different*, S.F. CHRONICLE (Apr. 15, 2020), *available at* <https://www.sfchronicle.com/education/article/Gov-Newsom-Schools-will-return-after-15200722.php> (last visited May 2, 2020). More recently, when Governor Newsom suggested that California’s schools may reopen in July, State Superintendent of Public Instruction Tony Thurmond noted that “[s]ocial distancing in schools may require smaller class sizes, but schools are going to need additional resources to make it happen—including the possibility of hiring more teachers.” Alexei Koseff, *California May Start Next School*



Year in July if Coronavirus is Under Control, S.F. CHRONICLE (Apr. 28, 2020), available at <https://www.sfchronicle.com/politics/article/California-schools-could-reopen-this-summer-to-15232057.php> (last visited May 2, 2020). Fewer students per class, more teachers, and social distancing all require more school facilities with lower population densities.

2. Discussion

a. Under the Emergency Services Act, the Governor has the Legal Authority to Issue an Executive Order Temporarily Stopping All Planned Permanent Closures, Mergers, or Co-Locations of Public Schools

The Emergency Services Act, Government Code §§ 8550–8669.7, “endows the Governor with the power to declare a state of emergency ‘in conditions of... extreme peril to life, property, and the resources of the state’ so as to ‘mitigate the effects of [the emergency]’ in order to protect the health and safety and preserve the lives and property of the people of the state.” *Cal. Corr. Peace Officers Assn. v. Schwarzenegger*, 163 Cal. App. 4th 802, 811 (2008) [hereinafter “CCPOA”] (quoting Gov’t Code § 8550 (alterations in original)). The Act “makes clear that in situations of ‘extreme peril’ to the public welfare the State may exercise its sovereign authority to the fullest extent possible consistent with individual rights and liberties.” *Macias v. State of California*, 10 Cal. 4th 844, 854 (1994).

In a state of emergency, the Act requires the state to take steps necessary to “protect and preserve health, safety, life, and property,” and it charges the Governor with coordinating emergency service functions throughout the state. *Macias*, 10 Cal. 4th at 854 (citing Gov’t Code §§ 8550, 8569). The Act thus “confers upon the Governor broad powers to deal with such emergencies.” CCPOA, 163 Cal. App. 4th at 811 (citing Gov’t Code § 8550). During a state of emergency, the Governor may, for example, “suspend any regulatory statute or the orders, rules, or regulations of any state agency if they would ‘prevent, hinder, or delay the mitigation of the effects of the emergency.’” *Id.* (quoting Gov’t Code § 8571). As necessary to carry out responsibilities related to the emergency, the Governor may also commandeer or use private property or personnel, Gov’t Code § 8572, or make expenditures from funds “legally available... to deal with actual or threatened conditions of a... state of emergency,” Gov’t Code § 8645.

Given the broad powers conferred on the Governor under the Emergency Services Act, during a state of emergency, the Governor can issue an executive order to temporarily stop all planned school closures, mergers, or co-locations to enable social distancing when children return to schools. Such an order would be similar to—and, in some cases, less restrictive than—executive orders previously issued during this COVID-19 emergency to ensure social distancing. *See, e.g.*, Executive Order N-33-20 (stay-at-home order for *all* California residents); Executive Order N-26-20 (suspending Education Code § 41422 so that school districts that temporarily close schools to enable students and families to shelter-in-place will continue to receive state funding during the period of closure); Executive Order N-30-20 (waiving requirements under the Education Code so that students do not have to take standardized tests, typically administered on school sites); Executive Order N-36-20 (suspending intake of youth detainees into juvenile detention facilities); Executive Order N-49-20 (accelerating the timelines for releasing certain juvenile detainees). An order temporarily stopping school closures would also be consistent with the guidance from public health officials, educational leaders, and executive officers—including

both the Governor and the State Superintendent—all of whom have recognized the need for social distancing measures that will require *more*, not less, classrooms and other school facilities.

And because such an order would prevent school districts from closing school sites that are currently open—that is, it would merely maintain the status quo—it is also less restrictive than executive orders prescribing actions that changed then-current circumstances, which have been previously upheld by the courts. In *CCPOA, supra*, for example, in 2006, then-governor Arnold Schwarzenegger declared a state of emergency for overcrowding in California prisons. 163 Cal. App. 4th at 808. To address that emergency, the Governor directed the “CDCR to negotiate contracts for the transfer and housing of inmates in facilities outside of the state.” *Id.* at 810. The California Correctional Peace Officers’ Association (CCPOA) challenged both the declaration of a state of emergency and the order requiring the CDCR to enter contracts to transfer detainees to facilities outside of California as beyond the Governor’s powers under the Emergency Services Act. *See id.* The Court of Appeal upheld the Governor’s order as valid under the broad powers conferred by the Emergency Services Act. *See id.* at 817, 820, 822, 824-25.

An executive order temporarily stopping school districts from closing, merging, or co-locating schools to enable social distancing when children, teachers, and other school faculty return to schools would fall well within the Governor’s authority under the Emergency Services Act.

b. Proposition 39 Would Not Preclude an Executive Order Temporarily Stopping Closures, Mergers, or Co-Locations of Public School Sites

In discussing the possibility of an executive order to pause all planned school closures, mergers, or co-locations, certain state executive officers and members of the Legislature asked whether Proposition 39, passed by California voters in 2000, would present a legal bar to such an order. It would not. Other than with regard to co-locations, the proposed executive order would not conflict with Prop 39. And even if a conflict did arise, the Governor’s powers under the Emergency Services Act would allow him to suspend portions of Prop 39 that conflicted with his executive order during a state of emergency.

As relevant here,²³ Prop 39 amended the Education Code to require public school districts to share facilities with charter schools. *Cal. Sch. Bds. Ass’n v. State Bd. of Educ.*, 191 Cal. App. 4th 530, 539 (2010). As a result, the Education Code requires public school districts to make facilities available sufficient for each charter school’s in-district students. *Id.* at 541 (quoting Ed. Code § 47614(b)); *see also* Cal. Code Regs. Tit. 5, §§ 11969.1–11969.11 (regulations enacted by the State Department of Education regarding facilities for charter schools). The statutory and regulatory scheme born out of Prop 39 set a process for charter schools to request space based on their projected needs, and for public school districts to assess those requests and allocate public facilities based on those projections. *See Cal. Sch. Bds. Ass’n*, 191 Cal. App. 4th at 540-42; *Env’tl. Charter High Sch. v. Centinela Valley Union High Sch. Dist.*, 122 Cal. App. 4th 139, 146-47 (2004).

An executive order proscribing, temporarily, the closures, mergers, and co-locations of public schools, for the most part, *would not* conflict with Prop 39’s requirements. Keeping open a public school slated for closure, or to be merged with another public school, would not immediately impact the facilities made available to a charter school, unless the school district had already



allocated the campus slated for closure for use by a charter school.²⁴

The executive order would only cross Prop 39 to the extent it would impact those campuses already slated for co-locations. But even there, the executive order would rest on firm legal footing. Again, during a state of emergency, the Emergency Services Act permits the governor to “suspend any regulatory statute or the orders, rules, or regulations of any state agency if they would ‘prevent, hinder, or delay the mitigation of the effects of the emergency.’” CCPOA, 163 Cal. App. 4th at 811 (quoting Gov’t Code § 8571). Indeed, several of the Governor’s executive orders already issued during the COVID-19 state of emergency have suspended statutes and regulations that might conflict with an executive order. *See, e.g.*, Executive Order N-26-20 (Mar. 13, 2020) (suspending Education Code § 41422 so that school districts temporarily closing schools can continue receiving state funding); Executive Order N-30-20 (Mar. 18, 2020) (waiving requirements for annual standardized testing under Education Code §§ 60640 and 60641(a); Executive Order N-36-20 (Mar. 24, 2020) (waiving or suspending “any statutory or other provisions [that] require DJJ to accept new juveniles into its facilities”); Executive Order N-49-20 (April 14, 2020) (shortening statutory timelines related to the release of certain juvenile detainees); Executive Order N-56-20 (Apr. 22, 2020) (modifying statutory deadlines for school districts to approve an LCAP).



So even if some portion of an executive order pausing all school closures, mergers, and co-locations during this state of emergency does conflict with Prop 13’s statutory and regulatory progeny, the Governor has the authority to suspend the provisions that conflict with his order. CCPOA, 163 Cal. App. 4th at 811; *see City of Morgan Hill v. Bay Area Air Quality Mgmt. Dist.*, 118 Cal. App. 4th 861, 877 (2004) (holding that, “to the extent [certain statutes and regulations] were inconsistent with the Governor’s Executive Order [during a state of emergency], those state regulations were effectively repealed [during the state of emergency] by that order.”). Prop 39 thus presents no legal bar to an executive order during a state of emergency.

3. Conclusion

In March 2020, Governor Newsom declared a state of emergency to address the public health threat caused by the COVID-19 pandemic. He has since issued a number of executive orders to, among other things, facilitate social distancing to prevent the spread of COVID-19. The Governor—like public health experts and education leaders—has stated that, when California schools reopen for the 2020-2021 school year, protecting public health will require policies, procedures, and facilities that enable continued social distancing when children, teachers, and school faculty return to school.

The Emergency Services Act confers broad authority on the Governor during a state of emergency, including to suspend any statute or regulation that conflicts with his executive orders. An executive order temporarily stopping all permanent school closures, mergers, or co-locations would have only a limited conflict with the statutory and regulatory schemes that grew from Prop 39. And even to the extent such a conflict exists, the Governor has the power to suspend the conflicting provisions. Accordingly, during the COVID-19 emergency, Governor Newsom has the legal authority to issue an executive order temporarily stopping all permanent school closures, mergers, or co-locations for the purpose of preserving all available public school facilities to facilitate continued social distancing when California’s schools reopen.

B. Protecting the Constitutional Right of Parents to Control Their Children's Education

Siegel, Yee,
Brunner
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ATTORNEYS AT LAW

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✦ SONYA Z. MEHTA
✦ EMILY ROSE JOHNS
✦ MICAH CLATTERBAUGH

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✦ ANNE
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WEILLS

March 31, 2020

Via Email

Dr. Kyla Johnson-Trammell, Superintendent
Jody London, President, and
Members of the Board of Education
Oakland Unified School District
1000 Broadway Street, Suite 300
Oakland, CA 94607

Dear Superintendent Johnson-Trammell,
President London, and Members of the
Board of Education:

I am writing on behalf of a broad coalition of OUSD parents, teachers and other staff, and members of the community to request that you pause all decisions to close or merge schools, co-locate charter schools with existing public schools, and enforce deadlines for parents to choose new schools for their children. This includes pausing ongoing efforts related to closing and merging the schools identified in OUSD's "Cohort 2," which the Board approved on September 11, 2019. As you know, the current coronavirus emergency makes it almost impossible for OUSD stakeholders to have meaningful input into these important decisions.

For almost a century the United States Supreme Court has held that parents have a constitutional right to make the decisions that govern their children's education. See, for example, *Prince v. Massachusetts* (1944) 321 U.S. 158, 166; *Pierce v. Society of Sisters* (1925) 268 U.S. 510, 534-35; *Meyer v. Nebraska* (1923) 262 U.S. 390, 399.

This rule makes perfect sense. Education plays an indispensable role in the modern world. Education is a major determinant of an individual's chances for economic and social success in our competitive society. Education has a unique influence on a child's development as a citizen and their participation in political and community life. See, *Serrano v. Priest* (1971) 5 Cal.3d 584, 605. It is the lifeline of both the individual and society.

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Continued on following page.

Dr. Kyla Johnson-Trammell, Superintendent
Jody London, President, and
Members of the Board of Education
March 31, 2020
Page 2

We know that it is unnecessary for us to share legal authority with you to win your agreement on these crucial points. But at this critical moment in the life of our community and of communities all over the nation and the world, it is vital that we affirm our shared understandings of the importance of public education and of parents' role in making decisions that impact their children's lives.

The current crisis has particular impacts on the lives of our children. It is difficult for many of them to comprehend the dangers that we all face. Young children in particular have difficulty comprehending why they cannot attend school, why they are confined to their homes with their parents, and why, for some of them, they may not have an opportunity to return to the only school they have known or see teachers and classmates again. This reality is even more difficult for children who do not have stable homes or any homes at all.

Decisions to close or merge schools, co-locate new schools with existing ones, and force parents to make decisions about new schools for their children - especially without the opportunity to visit those schools and experience what they look and feel like - will further disorient our children, their parents, and the entire community. We are in a crisis situation in which there is truly "no business as usual."

Given these circumstances, and buttressed by legal principles that discourage OUSD from making critical decisions about public education in Oakland without meaningful input from OUSD parents, we insist that the District declare a moratorium on school closures and mergers, co-location of existing and new schools, and compelled decisions about which schools children will attend when the current crisis comes to an end.

Thank you for your consideration.

Very truly yours,

DAN SIEGEL

Conclusion

The global pandemic of COVID-19 has caused every single person, business and public entity to adjust their plans in California. School Districts are no different. They owe students, parents, teachers and staff thorough explanations of how safe social distancing will be implemented in the fall of 2020 before any plans to permanently close and co-locate schools are implemented. Now is not the time to permanently close any school when the future of how our children will be educated is so uncertain. As described above, there is no data to show any meaningful monetary savings from closures. Meanwhile, the health risks and social-emotional costs of school closures will be deadly to our students and communities experiencing this trauma along with the uncertainty of COVID-19.

Governor Newsom has provided science-based, groundbreaking national leadership on a wide variety of issues with regard to resilience and recovery in a global pandemic. He can also now allow California to lead the nation in ensuring safe, cost-effective measures to allow students to return to school while the pandemic. An Executive Action to pause all school closures, mergers and co-locations would comply with public health guidance, stop the growing racial inequities exacerbating due to the pandemic, save California school districts and the state millions of dollars as they seek additional facilities for physical distancing in the fall, and protect parents' constitutional rights—all while complying with legal mandates.

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- 21 To be clear, the executive order contemplated in this memorandum would address *permanent* closures only—not the temporary closures of California schools currently in effect in accord with the ongoing orders for California residents to shelter-in-place at home.
- 22 As commonly used by school districts (and in this memorandum), “closing” schools means to close a public school campus and disperse its students, teachers, and other faculty, so that the closed school’s population is added to other school campuses. “Merging” schools refers to closing one public school campus and moving all or some of that school’s population to another public school campus, where the two school populations are combined. “Co-locating” schools means to deem portions of a campus where a public school operates as “surplus,” and to then offer that surplus space for use by a charter school. So, like mergers, co-locations result in the combination of two school populations on one school campus.
- 23 While not relevant to this memorandum, Prop 39 also amended portions of the California Constitution dealing with public finance. Before Prop 39, general bond measures put to voters by local governments required a two-thirds supermajority of voters to pass. Prop 39 amended the Constitution to “permit[] school districts, community college districts, and county office[s] of education to take on indebtedness and increase property taxes for capital projects with only a 55 percent majority if they also put into place the listed accountability measures.” JOSEPH R. GRODIN, DARIEN SHANSKE, ET AL., THE CALIFORNIA STATE CONSTITUTION (OXFORD COMMENTARIES ON THE STATE CONSTITUTIONS OF THE UNITED STATES), Part Two: Article XIII A [Tax Limitation], Section 1 Maximum ad valorem tax on real property—Apportionment of tax revenues (Oxford University Press, 2d ed. 2015) (discussing “Payments on ‘Bonded Indebtedness’”).
- 24 And while keeping public school sites open for the duration of the COVID-19 pandemic might impact what public school facilities may later be determined as surplus, and thus made available to charter schools, in some ways, that’s precisely the point: COVID-19 may require us to redefine the spatial needs for schools to avoid creating new public health crises. This executive order would preserve existing public school facilities and allow public health and education experts time to determine how best to use them in light of the public health concerns created by COVID-19.