

Summit Public Schools California Board Meeting May 6, 2020 Open Session Transcript

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Diane: Great. I'm recording now. We have everyone here. Thank you, everyone. So nice to see you all.

So let's call the meeting to order at 11:04 a.m. And we'll just do a roll call vote since we're having a virtual meeting. So, Steve?

Steve: Hi. Here.

Diane: Blake?

Blake: Here.

Diane: Bob?

Bob: Here.

Diane: Diego?

Diego: Here.

Diane: And Andy?

Andy: Here.

Diane: Great. Let's approve our agenda. Do I have a motion for them?

Bob: So moved.

Diane: Thank you, Bob.

Diego: Seconded.

Diane: Thank you Diego for the second. And again we'll have to do a roll call because this is a virtual meeting. Steve?

Steve: Yes.

Diane: Blake?

Blake: Yes.

Diane: Bob?

Bob: Yes.

Diane: Diego?

Diego: Yes.

Diane: And Andy?

Andy: Yes.

Diane: Wonderful. Best I can tell we don't have any members of the public here currently, so we don't have any public comment at this point. So I will move us to Item number five, which is our sole item for today, which is a consideration of possible action to authorize Summit's participation in the Paycheck Protection Program -- the PPP program, and to accept a loan from that program. You have a resolution.

Let me just give a couple opening remarks. One, thank you to Joyce and her team, as always, for doing incredible work to not only research and apply, but then receive word of approval on Friday evening and then work throughout the weekend and Monday to really analyze the situation. And to Nnanna and Kate for their support on that. The team works, very hard to try to understand the changing landscape around this program, because it does seem to be an ever shifting and changing landscape as it's evolved since it was first presented.

That said, given all that they have done in terms of analysis and risk analysis, I am recommending with their support that the board approve this resolution and that we do engage in this program. I think the benefits far outweigh the risks at this point. And I'm confident that we will use this money in the way it's intended and our use will stand up to any future program or public scrutiny.

So, I will pause there. I will say, like many of you, I sit on other boards that are also considering this and so have had to consider this from both seats. So, I know it's not completely, as Bob called it no brainer, but I do think that it is the right decision. So let me pause there to see if there's questions or discussion, and then we'll see if we can call for a motion.

Andy: Can I just talk about the risks?

Diane: Sure.

Andy: I mean, I think the benefits are probably fairly obvious, but so, just what are the risks and how did you consider those?

Diane: Yeah. And, Nnanna, please jump in and I'll start with the sort of high level, as I understand them. You know, initially, when the program was first announced, I think the risks were not evident, really and really not there. They've come about as additional guidance has been issued based on specific organizations who have applied for and been granted the loan. And I guess folks have started to feel like those organizations shouldn't be qualifying and shouldn't be taking it. Then since then there has been kind of a public shaming campaign for some organizations. So that has all led to a set of additional new guidance that wasn't in place when it was first issued that I think presents the risk.

And specifically, I think the risk is around this notion of the assessment about whether or not you actually need this in order... You know, how dire is your situation? And Nnanna will be able to share the exact terminology that I think is sort of fuzzy, that I think this is the origin of the risk.

Nnanna, do you want to just build on that a little bit?

Nnanna: Yeah, I I say that's correct, because this program was announced in kind of a -- apply now, funds might run out. There was a rush of applicants without clear guidance on what are the metrics for your need. And if you look, you know, any governmental program tends to come out with clarifying guidance over X period of time. I just went to the Treasury page and their FAQ went from 10 to 30, to right now, I think there's 43 FAQs. And in the hope of providing clarifying language, they've actually extended the period to return the money if you've now determined, based on updated guidance that you don't need it from May 7th to May 14th.

So I think there is this acknowledgment that it has not been clear what metrics are being used to determine need and in combination with the public shaming of certain companies. So, really our approach has just been ensure that we have enough documentation to support are showing of need and to ensure that we are tracking guidance as it comes out and ensure that we comply with all the requirements in terms of keeping employees and only using the money for the purposes that are permitted.

So I say, yes, there's risk, but part of the risk is waiting on, the Small Business Administration to tell us what they actually mean when they come out with new guidelines.

Diane: There's two compelling pieces for me here, Andy. One is, that it can always be a loan, so, worst case scenario, we could choose to pay it back and then not run afoul of the program, and so that feels comforting to me.

But the other piece is just this definition of need as centered on economic uncertainty. And that the one thing that's certain is that our economic future is very uncertain as schools in California. I literally just got off a call with Linda Darling Hammond, who's the president of the California State Board of Education and she is working directly with the governor and the state superintendent right now and said that she thinks there still could be 5 to 10% cuts in funding for this school year potentially, which none of us are expecting. And they're still looking at potentially 20% cuts in revenue for next year.

And so, looking at what everything that's come out of this program, there is no way for us to in any way, shape or form, not meet the definition of facing uncertain economic futures and the need for this money in order to keep us able to function and afloat. So those are the things that give me comfort at the high level.

Andy: Okay, so if I just play that back to you. The situation that you have right now is not that you've lost revenue, but that there's potential in the future for significant loss of revenue?

Diane: Not, I think, yes, I would even go further and say it's not just potential. There will be loss of revenue. It's just how significant it will be and how fast it will be.

Blake: A couple of comments and some of these are anecdotal, some of them are, as Nnanna suggested the guidance, number 43, actually by extending the deadline, they said, we're going to give you clarifying guidance on their further definition of necessity. So there's the scenario where we take the loan and we reconvene a board once the additional guidance is then further published around a more narrow definition of necessity. And then we determine whether we keep the loan or choose to repay it.

And then Diane, as you mentioned there is the potential to bifurcate whether we elect for forgiveness of the loan, or simply just it's a 1% interest loan. But in all cases, this is in my estimation, is boiling up to be one really big PR battle. So let me put a finer point on the PR piece of it.

It appears that the back of the envelope definition of necessity is not anticipatory need, but current need. And current need is then being measured against current liquidity. So if your balance sheet has a lot of cash today that would speak to less need. And so if there is a risk that we run, it is the cash balances that sit on our balance sheet today, with the benefit of hindsight, somebody coming in and saying you didn't need it.

So, as much as we can paper analysis and run scenarios around anticipatory need, I don't know that that is going to be a safe harbor in the final analysis of, well, you had a lot of money when you took it, and it's not clear to me that you truly needed it. Okay, number one.

Number two. It appears that any loan in excess of \$2 million is likely to be audited, so there is a much, much greater likelihood of scrutiny of us as an organization on the need of the loan and then the use of proceeds of the loan. I'm not worried about use of proceeds. The vast majority of our expenditures are rent, mortgage and payroll costs, exactly what this was this program was meant to buttress.

The one process recommendation that I've heard from many folks, which I wholeheartedly agree with is creating a segregated account of the loan proceeds and making transfers with appropriate memos for PPP forgiveness amounts so you can marry up an audit trail, so it doesn't go into a co-mingled fund balance, where all of a sudden you make an expenditure for, an off site, and somebody looks at that co-mingled expenditure and says, well, wait a second, that wasn't that wasn't what this program was for. Granted, it's taken out of context. But the issue is this is a PR matter that we and any other organization are going to be subjected to.

I can't really opine on the charter school versus not charter school war being waged in California and then the union stuff, and if our taking of PPP loan is advantageous or disadvantageous to our positions in each of those, if we can be made to be bad actors for taking such a loan. But I do think since PR is 90% of the issue, that is a pretty significant consideration as I see it.

And one last point, it doesn't affect us, but the IRS also came out with revised guidance on these loans, saying that the actual deductibility of the expenses you offset with the forgiveness are no longer deductible for tax purposes. So said differently, any company or entity that's profitable or a for profit entity, they're going to get hit by the IRS for these expenses being not deductible for tax purposes.

So the long winded way of saying these rules are evolving every day. It's the court of public opinion that seems to continue to prevail in this environment, and so we need to be extraordinarily cautious.

The last piece that I would mention is because necessity is such the buzzword within all of the guidance, that our board resolution should have a provision for a determination of necessity. Right now, it's currently silent on that matter, and so that if anyone were to dig in, they could look at our board materials and say, oh yeah we dig deeper and we found board materials that demonstrated necessity. But I think, and subject to Nnanna and Kate's guidance, I think there's a case to

be made that if we do go down the path of this loan that we explicitly put in the board resolution, the board made a determination of necessity need.

Diane: So, I'm going to let Nnanna think about that for a second before we turn to him. I just want to say on your very first point Blake around the balance sheet and sort of the reserve that people are carrying and that, being the primary criteria for determining some of this. It's in addition to access to other capital. So where companies have gotten in trouble is not only do they have a large, reserve or resources, but they also have extensive other access to capital, and that is a distinguishing difference for us, where we do not. We don't have the same access that school districts do, and we certainly don't have access to capital in a way that most companies do. So that definitely factored in to our recommendation. I would just add that piece.

Nnanna, do you have any thoughts about Blake's thought around why we did or did not include such a provision of necessity in the resolution?

Nnanna: I mean, I'd say it's definitely a fair point for the board to make a finding and termination about some actual necessity based on any material that had been provided to the board. On the flip side, there is essentially the certification with respect to necessity and access to capital that was in the application to the SBA.

So, I'd say you could essentially kind of double down and say the board is making that same determination that has been made in the application, so the board shares that commitment. But I say, as as it stands, Summit has made that determination in terms of the good faith certification.

Blake: The other thing, Nnanna, that I heard that you might want to think about is from another company, who's actually going to give the money back, said, had we known that these rules were going to be changed along the way, not only would we not have taken the loan, because we're now giving it back, but we would have made materially different staffing decision. We wouldn't have kept all these people on payroll in anticipation of getting this loan. And now all of a sudden, we're the bad actor. So to get to this uncertain environment and anticipatory need you might want to put a provision in there that says, in the absence of receiving this PPP alone, we may need to take corrective actions in order to anticipate a future need based on the economic uncertain environment that we're in.

Diane: Blake, I'm really thinking about what you're putting forth. I'm watching the time. I'm also watching the calendar because we do have until tomorrow if we want to accept this. And I personally feel a little uncomfortable editing the resolution kind of on the fly in the board meeting, just because we try to be really careful about a resolution.

So I'm wondering, thoughts on the capturing of this conversation and sort of the board's commitment around some of the conversation we're having and the advice around for example, the segregated account and whatnot. And if we can do that side by side with the existing resolution and if there would be momentum for that, or if we really think that we need to edit the resolution.

Blake: My recommendation would be just given where we are is we commit to have another board meeting before May 14, that specifically focuses on necessity need, anticipatory need based on more precise guidance that's supposed to come out from the Treasury Department, and we can put forth the resolution at that juncture once we know more. Like there's a lot of unknowns, right? I mean, it's not clear how they're going to define...

Diane: Right, I just want to make sure...

Blake: -- necessity over the next week.

Diane: -- I think if we do not pass a resolution today, we do not have access.

Blake: No, what I'm saying is pass this resolution...

Diane: Okay.

Blake: -- but commit as a board to have another meeting next week once we know where the Treasury is coming out with more specific guidance on necessity and need. And then at that juncture we can pass yet another resolution, where the board has had time to sort of consider the new definitions, consider how we might fit within those definitions and have a resolution that is specific to the point of necessity and need.

Male: How about if we leave it up to Diane and Nnanna and the team, to just keep watching the FAQs carefully, but with the understanding that if something comes up that reflects your concerns, we'll call the board meeting rather than committing to a meeting right now.

Blake: No, I wholeheartedly, I can't get behind that because the guidance is unbelievably clear that the board will be the final arbiter of this. And they're threatening criminal liability for any.... Criminal, not civil. Criminal liability for anyone who breaches these rules. This is weighty, weighty stuff.

Male: Incidentally, is the board requirement for all of these loans, because I've got another organization where they got the loan and parked the money. And, you know, the CEO just let us know afterwards.

Blake: My understanding is a board finding's required, but Nnanna, you can weigh in there.

Nnanna: I mean that the best practices that I have seen are for aboard to make decision embedded within the authorization to approve participation in the program is basically acknowledging staff recommendations about need and necessity. I do agree that in establishing the program, the SBA did create essentially an enforcement mechanism, saying, they have the right to audit, they have authority to appoint an inspector general to oversee the program.

You know, basically, like any large federal program, they set up the enforcement to ensure that people comply. So, there is a risk. I don't know if there's a risk for nonprofits as significant as some of the larger for profit companies.

But to your point about bringing back another resolution, we can certainly present another resolution. We can amend the existing resolution at a subsequent meeting, as guidance will certainly come out from Treasury, like I don't think anyone's doubtful that Treasury's clarifying rules on a weekly or daily basis.

So there is an opportunity to amend the resolution or pass a supplemental resolution to address new guidance, give staff direction, with respect to use of proceeds and make the determination that went into the decision. So I think yes, we have options available, depending on how the board thinks it's most prudent course of action.

Diane: Great.

Male: It would have been fun to see a perp walk for the owners of the LA Lakers.

Diane: I'm just...

Diego: I'm...

Diane: Go ahead, Diego, maybe you're going to lead us. I'm watching time. So you might be leading us.

Diego. So I'm going to say one more comment and then make a motion to accept the resolution as it stands to approve. I think folks calling out that there is a PR risk in this it's real, like we should own that. That being said, I feel exceedingly comfortable that what we are doing is we are following the intent of the law. And that we live in a political climate here in California that has not been friendly to Charters, in a way that makes me feel even more comfortable that we're leaning into truly saying -- we are trying as best we can to take care of our people in our schools by having access to capital that will be needed to continue our operations.

And so great, I feel very comfortable with that while recognizing there is a PR need. So I love Blake suggestion of them saying once there is additional guidance, I would love Diane for you to call a next meeting to say, can we look at that guidance and decide at that point with the new guidance do we want to give the money back? Do we want to continue? Where are we in that?

So with that, I'd like to make a motion to accept the PPP loan and sign the resolution that's been provided.

Bob: Second.

Diane: Thank you, Diego for the motion and Bob for the second.

I'm happy to commit to organizing a follow on meeting, and obviously our team will watch this incredibly closely.

Male: [inaudible][crosstalk] accounts is really important.

Andy: Could we maybe have another motion that there's two motions, the first motion is to approve, and the second motion is that the board will have a meeting every two weeks until such time as that this is all stabilized and that you will... Something that says that the board is going to look at this regularly, blah, blah. So that we create a full paper trail that the board is literally every two weeks, we have a meeting, we look at it, five minute, 10 minute or two hour meetings. Whatever is required for us to keep on top of it.

Diane: That's great. Let's do the first one first and then we'll get that second one from you Andy.

Any discussion on the motion to adopt this resolution as presented?

Okay. Roll call vote. Steve?

Steve: Aye.

Diane: Blake?

Blake: Aye.

Diane: Bob.

Bob: Aye.

Diane: Diego?

Diego: Aye.

Diane: Andy?

Andy: Aye.

Diane: Okay. That motion carries unanimously.

Andy, would you make a second motion as I understood it, the motion is that the board meets on a two week cadence, to monitor and potentially take additional action on this resolution based on new and additional information analysis and guidance.

Andy: Exactly, yes.

Diane: Perfect. And so Andy's making that motion. Is there a second?

Diego: Second.

Diane: Diego's second. We'll do discussion on that.

Okay, roll call. Steve?

Steve: Aye.

Diane: Blake?

Blake: Aye.

Diane: Bob?

Bob: Aye.

Diane: Diego?

Diego: Aye.

Diane: And Andy?

Andy: Aye.

Diane: Okay. And that one carries unanimously as well.

It's 11.30, so I want to be mindful of time. Is there anything else we should do right now before we adjourn this meeting? All right. Hearing nothing. I will call for a motion to adjourn.

Bob: So moved.

Diane: Bob has moved. A second?

Andy: Second.

Diane: Thank you, Andy. Okay, we're going to roll call again. Steve?

Steve: Aye.

Diane: Blake?

Blake: Aye.

Diane: Bob?

Bob: Aye.

Diane: Diego?

Diego: Aye.

Diane: Andy?

Andy: Aye.

Diane: Carries unanimously. We're officially adjourned at 11:31 a.m. Thank you so much all of you.

Group: Thank you.