

Summit Public Schools California Board Meeting

May 6, 2020 Open Session I Transcript

[Audio](#) length: 27 minutes 51 seconds

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Diane: Great. I'm recording. Now we have everyone here. Thank you everyone. So nice to see you all. And so let's call the meeting to order at 11:04 AM. And we'll just do a roll call vote since we're having a virtual meeting. So Steve?

Steven: Hi here.

Diane: Blake.

Blake: Here.

Diane: Bob.

Robert: Here

Diane: Diego.

Diego: Here.

Diane: And Andy.

Andy: Here.

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

Robert: So moved.

Diego: Second

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

Steven: Yes.

Diane: Blake.

Blake: Yes.

Diane: Bob.

Robert: Yes.

Diane: Diego.

Diego: Yup.

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 (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 approved 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 that's intended and that it will, are useful 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 those from both seats. And 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: So you said the benefits...I mean, I think the benefits are probably fairly obvious, but 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. And then since then there has been kind of a public shaming campaign for some organizations. And 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'd say that's correct. Because this program was announced in kind of a, 'apply now, funds my 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 FAQ's. And in the interest of, in the hope of providing clarifying language they've actually extended the period to return the money that 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 acknowledgement that it's not, it has not been clear what metrics are being used to determine need, and in combination with the public shaming of certain companies, but really our approach has just been to ensure that we have enough documentation to support our showing of need and to comply, 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'd say yes, there's risks, 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 a foul of the program. And so that feels comforting to me. But the other piece is just this definition of, it really...of need is 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 5-10% 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 I 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 played 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: And 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 in how fast it will be.

Blake: So a couple of...I'm sorry, Andy. I didn't mean to interrupt you.

Andy: That's good.

Blake: A couple of comments and some of these are anecdotal. Some of them are, as Nnanna suggested, the guidance the number 43 is actually, by extending the deadline they say, 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. Or, 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 alone.

But in all cases, this is in my estimation, is boiling out to be one really big PR battle. And 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.

And 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. 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, you know. The vast majority of our expenditures, our rent, mortgage, and payroll costs, exactly what this loan, the program is 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 commingled fund balance where all of a sudden you make an expenditure for, you know an offsite and somebody looks at that co-mingled expenditure and says, wait a second. That wasn't what this program was for. Now 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 pine on the charter school versus not charter school war being waged in California and then union stuff, and if our taking of a 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. It's a...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 getting, 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, you know, 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've 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 we, 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 or need.

Diane: So let's...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 capitals. So where companies have gotten in trouble is not only do they have a large, you know, 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. And so that definitely factored into 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 that's definitely a fair point for the board to make a finding and determination about Summit's actual necessity based on, you know, any materials that have 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 FBA. 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, you know, the board shares that commitment. But I'd say as it stands, Summit has made that determination in terms of a good faith certification.

Blake: The other thing, Nnanna, that I heard that you might want to think about is, from another company is, who's actually gonna give the money back said, you know, had we known that these rules were going to be changed along the way, not only would we not have taken a loan because we're not giving it back, but we would have made materially different staffing decisions. 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. And 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 loan, we may have had...may need to take corrective actions in order to anticipate, you know, 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 careful, 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 a resolution at that juncture once we know more. Like there's a lot of unknowns, right? I mean, it just, it's not clear how they're going to define...

Diane: Right I just want to make...

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 that 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.

Robert: How about if we leave it up to Diane and Nnanna and the team to just keep watching the FAQ's carefully 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 are threatening criminal liability for any...criminal not civil. Criminal liability for anyone who breaches these rules. This is weighty weighty stuff.

Robert: 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.

Diane: Yeah.

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

Nnanna: I mean the best practices that I've seen are for a board to make decision embedded within the authorization to approve participation in the program is basically acknowledging staff's recommendations about need and necessity. I do agree that in establishing the program, the FDA did create essentially an enforcement mechanism saying, you know, 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, you know, there is a risk. I don't know if there's a risk for non-profits as significant as some of the larger for-profit companies. But to your point about bringing up another resolution, you know, we can certainly present another resolution. We can amend the existing resolution at a subsequent meeting as guidance comes well, guidance will certainly come out from treasury. Like, I don't think anyone's, you know, 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 determinations that went into the decision. So yes, we have options available depending on how the board thinks is the most prudent course of action.

Robert: It was fun to see a perp walk for the owners of the LA Lakers.

Diego: I'm....

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

Diego: Yeah, 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's 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 the intent. 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 are 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's suggestion of them saying once there's 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 loans and sign the resolution that's been provided.

Robert: 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 close.

Andy: Diane can we...

Robert: And Blake's point about segregated accounts is really important.

Andy: Can we maybe have another motion that says 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, ten minute or two hour meetings whatever's 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 votes. Steve.

Steven: Aye.

Diane: Blake.

Blake: Aye.

Diane: Bob.

Robert: 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.

Diane: Exactly, yes.

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

Diego: Second.

Diane: Diego, second. We'll do discussion on that. Okay, roll call, Steve.

Steven: Aye.

Diane: Blake.

Blake: Aye

Diane: Bob.

Robert: 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? Alright, hearing nothing.

Andy: [inaudible 26:42]

Diane: I will call for a motion to adjourn.

Robert: So moved.

Diane: Bob has moved, a second?

Andy: Second.

Diane: Thank you, Andy. Okay, we're gonna roll call again. Steve.

Steven: Aye.

Diane: Blake.

Blake: Aye.

Diane: Bob.

Robert: Aye.

Diane: Diego.

Diego: Aye.

Diane: Andy.

Andy: Aye.

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

[All say thank you]