

The Honorable Tony Thurmond
State Superintendent of Public Instruction
1430 N Street
Sacramento, CA 95814
Submitted via email

November 13, 2021

Dear Superintendent Thurmond:

On behalf of the Oakland Unified School District (“District” or “OUSD”), this letter is submitted to you pursuant to Education Code section 42127.6, subdivision (b). As permitted by that subdivision, the District is appealing (i) the basis of the determination by Alameda County Superintendent L.K. Monroe that OUSD is not a going concern and (ii) each of the proposed actions that Superintendent Monroe seeks to initiate on the basis of such a determination. As described herein, the lack of going concern determination is not necessary as the District is on track to addressing its long-term fiscal challenges. Additionally, the proposed actions that Superintendent Monroe seeks to initiate—particularly the threat of withholding compensation for the OUSD Board of Education (“Board”) and OUSD Superintendent Dr. Kyla Johnson-Trammell—are not connected to the concerns raised by Superintendent Monroe and are not supported by the current financial and operational reality in OUSD.

Background

On November 8, 2021, the District received approval of its 2021-22 Adopted Budget from Superintendent Monroe. This determination was based on her analysis of the information submitted by OUSD, and her assessment of recent actions by the Board. Those actions include:

- The decision by the Board to reduce \$6 million in ongoing expenditures starting in 2022-23.
- In addition to \$6 million in reductions, the declaration by the Board—“in the strongest terms possible”—of its intent to make further expenditure reductions or ongoing budget-balancing solutions necessary to address the District’s long-term fiscal health.
- The agreement by the Board to adopt its 2022-23 budget (covering 2022-23 through 2024-25) such that all positions funded with just one-time funds in one fiscal year not carry over to the following fiscal year unless (i) new one-time funds are identified or (ii) the positions shift to being funded with ongoing revenue and the budget includes offsetting reductions elsewhere in the budget.

However, as part of the same letter in which she approved the District’s 2021-22 Adopted Budget, Superintendent Monroe determined that the District is a “Lack of Going Concern” pursuant to Education Code section 42127.6, subdivision (a). That statute states, in relevant part:

If at any time during the fiscal year the county superintendent of schools determines that a school district may be unable to meet its financial obligations for the current or two subsequent fiscal years or if a school district has a qualified or negative certification . . . , the county superintendent of schools shall provide a written notice of going concern determination to the governing board of the school district and the Superintendent and

the basis for the determination. The notification shall include the assumptions used in making the determination and shall be available to the public.

In her letter, Superintendent Monroe cited the following areas of concern as the basis for the Lack of Going Concern determination:

- Decline in Enrollment. The District has experienced declining enrollment for the past five years.
- Lack of FTE Reduction Due to Enrollment Declines. The District's multi year projection ("MYP") in its 2021-22 Adopted Budget does not show any reductions in FTE despite the decline in enrollment.
- Unrecorded Health Benefits Liability. The District's 2021-22 Adopted Budget does not record or include any financial liability connected with its health benefits.
- Forgoing AB 1840 Funds. The District's decision not to consolidate schools in 2021-22 likely means that it will not receive its \$10 million conditional allocation under AB 1840.¹
- Structural Deficit. The District's MYP without one-time COVID resources show a deficit in the unrestricted general fund of -\$3.5 million for 2022-23 and -\$0.16 million for 2023-24 and a deficit in the combined restricted funds of -\$6.8 million for 2022-23 and -\$14.6 million for 2023-24.
- Multi Year Projection. The District's MYP includes ongoing multiyear reductions whereas the analysis done by the Alameda County Office of Education does not.
- Use of One-Time Funding. The District is spending millions of dollars of one-time funds (the vast majority of which are COVID relief funds) in 2021-22, 2022-23, and 2023-24 and will need to eliminate those expenditures in the out years.
- Board Actions. In the past, the Board has not always enacted the necessary budget solutions and, when it has, those solutions have not always been implemented with fidelity.

Under Education Code section 42127.6, the county superintendent is required to specify at least one of seven listed actions and delineate any other actions that the county superintendent believes are necessary to ensure that the school district meets its financial obligations. The seven listed actions are:

- (A) Assign a fiscal expert, paid for by the county superintendent, to advise the school district on its financial problems.
- (B) Conduct a study of the financial and budgetary conditions of the school district that includes, but is not limited to, a review of internal controls. If, in the course of this review, the county superintendent determines that the county superintendent's office requires analytical assistance or expertise that is not available through the school district, the county superintendent may

¹ Under Assembly Bill No. 1840 ("AB 1840"), the District was to receive three one-time annual allocations of unrestricted funds once the District satisfied certain conditions each fiscal year. The conditions for a particular fiscal year were to be included in the State's Annual Budget Act. For its 2021-22 allocation, one of the conditions was "[a]ffirmative action by the governing board to continue planning for, and timely implementation of, a school and facility closure and consolidation plan that supports the sale or lease of surplus property."

employ, on a short-term basis, with the approval of the Superintendent, staff, including certified public accountants, to provide the assistance and expertise. The school district shall pay 75 percent and the county office of education shall pay 25 percent of these staff costs.

- (C) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as the county superintendent requires.
- (D) Require the district to encumber all contracts and other obligations, to prepare appropriate cashflow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables.
- (E) Direct the school district to submit a proposal for addressing the fiscal conditions that resulted in the determination that the school district may not be able to meet its financial obligations.
- (F) Withhold compensation of the members of the governing board of the school district and the school district superintendent for failure to provide requested financial information.
- (G) Assign the County Office Fiscal Crisis and Management Assistance Team (“FCMAT”) to review teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district, to provide the school district with recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers, and to perform any or all of the duties prescribed in subparagraphs (A) to (C), inclusive, or to further review the causes that led to a finding of moderate or high risk of intervention pursuant to subdivision (a) and recommend corrective action. If a review team is assigned to a school district, the school district shall follow the recommendations of the team, unless the school district shows good cause for failure to do so. FCMAT may not recommend an action that would abrogate a contract that governs employment.

In her letter, Superintendent Monroe proposed to undertake Actions B, F, and G, with a technical expert team (presumably under Action B²) primarily focusing on supporting the District with (i) budget development, monitoring, and oversight, (ii) governance, and (iii) district leadership and oversight. If the team is not given timely and appropriate access to the requested and necessary information and materials, Superintendent Monroe asserts that she is required to withhold compensation for the Board and Superintendent Johnson-Trammell under Action F.

Appeal

OUSD is appealing (i) the basis of the determination by Superintendent Monroe that OUSD is not a going concern and (ii) each of the proposed actions that Superintendent Monroe seeks to initiate on the basis of such a determination.

1. *Appealing the basis of the determination that OUSD is not a going concern.*

² Action B does not explicitly mention a “technical expert team” but it appears to be the best fit for the basis for assigning such a team.

Superintendent Monroe lists eight concerns that form the basis for her Lack of Going Concern determination. As detailed below, none of these concerns is sufficient to justify such a determination, at least not at this time. Each concern is addressed in turn.

- Decline in Enrollment. OUSD, like many large districts, has been experiencing a downward trend in its enrollment. (COVID has exacerbated this trend, although OUSD has actually fared better than many districts.³) However, enrollment decline—by itself—cannot serve as the basis for any Lack of Going Concern determination as it only speaks (indirectly) to the revenue of a district and says nothing in regards to a district’s expenditures.
- Lack of FTE Reduction Due to Enrollment Declines. It is true that the District’s MYP from its 2021-22 Adopted Budget do not show any reductions in FTE despite the decline in enrollment (and corresponding decline in ADA).⁴ However, the Board has declared—“in the strongest terms possible”—its intent to make the necessary expenditure reductions or ongoing budget-balancing solutions by January 2022. Indeed, on November 3, 2021, the Board approved \$6 million in reductions when it only needed to approve \$2 million; it did so because it understood that there is a need to make greater ongoing reductions than just \$2 million.⁵ (Superintendent Monroe’s letter explicitly acknowledges these actions as a basis for approving the District’s budget but does not mention them in the context of this concern.) Any Lack of Going Concern determination on this basis must wait until at least January 2022 to see whether the Board followed through on its declaration and made the necessary expenditure reductions or ongoing budget-balancing solutions.
- Unrecorded Health Benefits Liability. It is true that the District’s budget does not record or include any financial liability connected with its health benefits. However, this is a one-time liability and is not so significant in size as to jeopardize the financial health of the District. A Lack of Going Concern determination cannot be on this basis.
- Forgoing AB 1840 Funds. In deciding not to consolidate schools in 2021-22, the Board is aware that it will likely not receive its \$10 million conditional allocation under AB 1840. However, as the \$10 million was never incorporated into the District’s budget, there is no impact on the District’s budget if the District does not receive the allocation. (This practice is consistent with the District’s approach

³ OUSD’s enrollment has declined by less than 3% (2020-21 compared with 2021-22) whereas the comparative decline in other large districts has been greater. For instance, LAUSD and SFUSD both had declines of almost 6% (see www.latimes.com/california/story/2021-09-28/lausd-enrollment-drops-by-30000-students-amid-covid-19 and <https://www.ktvu.com/news/san-francisco-school-enrollment-down-by-3500-students>).

⁴ It is worth noting (as the letter did not) that the “Total Salaries and Benefits” amount only slightly increases from 2020-21 to 2023-24 and the “Total Salaries Only” amount actually decreases over that span. Additionally, the scales on the graph are somewhat misleading. While the range for the “Total Salaries and Benefits” and “Total Salaries Only” is from \$0 to \$600 million, the range for “Enrollment (Actual)” is from 33,000 (rather than 0) to 37,500. This has the effect of overstating the relative change in enrollment as compared with the change in “Total Salaries and Benefits” and “Total Salaries Only”.

⁵ As explained later in this letter, the Board was faced with a choice: consolidate schools or approve ongoing reductions equivalent to the ongoing savings as if the schools had been consolidated. This ongoing amount was estimated to be \$2 million. However, rather than just make \$2 million in ongoing reductions, the Board opted to make \$6 million in ongoing reductions because it understood that there is a need to make greater ongoing reductions and the opportunity to reduce \$6 million was a necessary step in that direction.

in the 2020-21 fiscal year in which that year's AB 1840 allocation was not added to the District's budget until the end of the year when it was clear the conditions had been met.) A Lack of Going Concern determination cannot be on this basis.

- Structural Deficit. Superintendent Monroe accurately describes the District's MYP. However, the projected deficit in the unrestricted general fund is quite small at -\$3.5 million, which is equivalent to less than 1% of all unrestricted general fund expenditures; and it is projected to be even smaller for 2023-24. While the projected deficits in the out years for all restricted funds are much larger, most of those funds are one-time COVID relief funds. As noted above, the Board agreed that all positions funded with one-time funds in one fiscal year will not carry over to the following fiscal year unless (i) new one-time funds are identified or (ii) the positions shift to being funded with ongoing revenue and the budget includes offsetting reductions elsewhere in the budget. Any Lack of Going Concern determination on this basis must wait until after June 2022 to see whether the Board followed through on its agreement in the MYP of its Adopted 2022-23 Budget.
- Multi Year Projection. While Superintendent Monroe identifies this as a concern, her letter appears to acknowledge that the Board has already addressed it. The letter states: "OUSD included ongoing staffing reductions in its MYP associated with the Board's approval of Resolution No. 21-0254 'Bridge Plan' of \$20.4 million of one-time funding. . . . [And] OUSD's Board has acknowledged [its] intent to review and take action to address the positions funded by one-time sources." A Lack of Going Concern determination cannot be on this basis.
- Use of One-Time Funding. It is true that the District is spending millions of dollars of one-time funds (the vast majority of which are COVID relief funds) in 2021-22, 2022-23, and 2023-24 and it is true that the District will need to eliminate those expenditures in the out years. Indeed, the Board expressly and explicitly acknowledged this as recently as November 3, 2021 when it agreed that all positions funded with one-time funds in one fiscal year will not carry over to the following fiscal year unless (i) new one-time funds are identified or (ii) the positions shift to being funded with ongoing revenue and the budget includes offsetting reductions elsewhere in the budget.⁶ Any Lack of Going Concern determination on this basis must wait until after June 2022 to see whether the Board followed through on its agreement to address expenditures funded with one-time dollars.
- Board Actions. Superintendent Monroe's letter stated that "since 2016-17 . . . [the] Board has been unable to ensure solutions are in place to adequately meet the fiscal needs of the District." However, the current iteration of the Board has only existed for 11 months, as four of the seven current Board members are new. This Board cannot be held responsible for the decisions of the past Board and must be given a chance to demonstrate their ability to "adequately meet the fiscal needs of the District." Moreover, while the Board did choose not to pursue school consolidations at this time, they did approve \$6 million in ongoing reductions. This is \$4 million more than they were required to reduce in lieu of such school consolidations. As noted above, the Board opted to reduce the higher number because it understood that there is a need to make greater ongoing reductions and the opportunity to reduce \$6 million was a necessary step in that direction. Any Lack of Going Concern determination on this basis must wait until at least January 2022 to see

⁶ It is also important to note that OUSD is regularly the beneficiary of significant (non-COVID) one-time funding. In just the last few months—since approval by the Board of the District's 2021-22 Adopted Budget at the end of June—the District has been notified that it will receive over \$15 million in (non-COVID) one-time funds. These resources, while obviously not ongoing, strengthen the District's ability to adopt the necessary spending reductions.

whether the Board has demonstrated its ability to make the decisions necessary “to adequately meet the fiscal needs of the District.”

It is important to note that OUSD’s unrestricted general fund projected ending fund balance in its unrestricted general fund is projected to \$67.6 million at June 30, 2023 (and Superintendent Monroe has not contested this number). Thus, the primary challenge for OUSD is in its restricted funds, particularly with respect to using one-time funds and ensuring that one-time expenditures are eliminated in the out years unless the District identifies new one-time funds or shifts those expenditures to ongoing revenue and offsets those shifts with ongoing reductions elsewhere in the budget. The Board understands this challenge and, as already discussed in a number of places above, has agreed that all positions funded with one-time funds in one fiscal year will not carry over to the following fiscal year unless (i) new one-time funds are identified or (ii) the positions shift to being funded with ongoing revenue and the budget includes offsetting reductions elsewhere in the budget. In other words, OUSD is confronted with a clear, manageable challenge that the Board has acknowledged and has agreed to resolve. This is not a basis for a Lack of Going Concern determination—at least at this time.

2. *Appealing each of the proposed actions*

Superintendent Monroe identifies three proposed actions to undertake in light of her Lack of Going Concern determination. As detailed below, none of these proposed actions can be justified on the bases put forward to support the Lack of Going Concern determination. Each proposed action is addressed in turn.

- Action B. Conduct Review/Hire Experts. Under this proposed action, Superintendent Monroe intends to bring on a technical expert team primarily focusing on supporting the District with (i) budget development, monitoring, and oversight, (ii) governance, and (iii) district leadership and oversight. OUSD welcomes support from the Alameda County Office of Education (“ACOE”) and, in fact, is currently receiving support from ACOE in response to a request from OUSD. In contrast, support under this proposed action—specifically the team of experts—would be *imposed* on the District. Moreover, Superintendent Monroe can only impose such a team after she has determined that the required “analytical assistance or expertise . . . is not available through the school district.” The letter makes no such determination nor does it offer any justification for such a determination and, thus, there is not a basis for this proposed action.
- Action F. Withhold Compensation. This proposed action is unnecessary and egregiously punitive. The threat of withholding compensation is to be used in situations where a district refuses to provide information or does not even attempt to do so. That is simply not the case here. Superintendent Monroe appears to include this proposed action as a threat to ensure that the experts (from Action B) are given timely and appropriate access to the requested and necessary information and materials. While there have certainly been challenges between OUSD and ACOE (and between individual OUSD and ACOE staff), there have been and continue to be frequent meetings and communication. There are multiple meetings (some scheduled and some spontaneous) each month between senior leaders at OUSD and at ACOE as well as a monthly meeting that involves Superintendent Monroe and Superintendent Johnson-Trammell. The District has also provided responses to multiple information requests from ACOE. While ACOE may not have found these responses responsive to the requests, OUSD has never refused to respond to or ignore such a request. These interactions between OUSD and ACOE do not support a need for this proposed action.

- Action G. Bring in FCMAT. In statute, this proposed action has FCMAT reviewing the following: teacher hiring practices, teacher retention rate, percentage of provision of highly qualified teachers, and the extent of teacher misassignment in the school district. It then has FCMAT provide recommendations to streamline and improve the teacher hiring process, teacher retention rate, extent of teacher misassignment, and provision of highly qualified teachers. Superintendent Monroe's letter never once mentions any of these issues.⁷ Moreover, the District has actually been quite successful in most of these areas. For instance:
 - o the District's teacher retention rate of 84%, its highest in the last 10 years, now matches the national average,
 - o the District's teacher retention rates of Black/African-American and Latinx teachers are 86% and 85%, respectively, both which are higher than the District as a whole and are the highest they have been in the last 10 years, and
 - o the California Commission on Teacher Credentialing awarded the highest accreditation review score of the District's Teacher Induction Program in 2020-21.

While COVID has made recruitment most difficult, OUSD has fared no worse (and likely better) than other large districts. In other words, there is no basis for this proposed action.

In addition to already receiving support from ACOE (in response to a request from OUSD), the District currently has a trustee pursuant to Education Code section 41320 *et seq.* and is working with the California Collaborative for Educational Excellence. The District is not in need of additional, imposed supports such as a team of experts or FCMAT. Actions B and G should also be denied on this basis.

Education Code section 42127.6, subdivision (b), states that the appeal must be sustained or denied, in whole or in part, within 10 days, which is November 23, 2021. Thank you for your consideration of this matter.

Sincerely,



Joshua R. Daniels
Chief Governance Officer
Oakland Unified School District

Cc: L.K. Monroe, Alameda County Superintendent
Dr. Kyla Johnson-Trammell, OUSD Superintendent

Bcc: OUSD Board of Education

⁷ In the subsequent section of the letter, Superintendent Monroe does state that ACOE will "work closely with FCMAT to support in the efforts to complete a comprehensive Fiscal Health Risk Analysis for OUSD." However, this appears to be separate from the proposed Action G.