

Winston P. Stromberg  
Direct Dial: 213-891-8983  
winston.stromberg@lw.com

355 South Grand Avenue  
Los Angeles, California 90071-1560  
Tel: +1.213.485.1234 Fax: +1.213.891.8763  
www.lw.com

## LATHAM & WATKINS LLP

### FIRM / AFFILIATE OFFICES

Abu Dhabi	Milan
Barcelona	Moscow
Beijing	Munich
Boston	New Jersey
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	Rome
Frankfurt	San Diego
Hamburg	San Francisco
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

November 10, 2015

### **BY EMAIL AND HAND DELIVERY**

Mr. Steve Zimmer, Board President  
Board of Education  
Los Angeles Unified School District  
333 South Beaudry Avenue  
Los Angeles, CA 90017

Re: **LAUSD Board of Education Meeting, November 10, 2015,  
Agenda Item 13: Board of Education Report No. 157 – 15/16**

Dear Board President Zimmer and Members of the Board of Education:

On behalf of our client the California Charter Schools Association (CCSA) this letter comments on the recommendations and proposed actions set forth in Board Report Number 157-15/16 (Update to School Upgrade Program), which the Board will consider at today's meeting.

Without any time for the public and interested stakeholders to comment or engage in the process, LAUSD Staff has rushed to the Board a proposal to reallocate over \$525 million of Bond Program funding so that LAUSD can implement structural changes to school facilities in order to comply with ADA Title II Regulations and the Modified Consent Decree (MCD) that has been in place for over a decade. While CCSA recognizes LAUSD's need to comply with those legal requirements and the importance of ensuring that public school students with special needs have the facilities and resources they require, ***LAUSD Staff unnecessarily and unlawfully seeks to fund a substantial portion of the structural changes using nearly \$90 million of bond funding designated for charter school facilities that the voters approved when they passed Measure Q in 2008.***

CCSA urges the Board to postpone consideration of Staff's recommendation to give the public and the charter school community a reasonable time to assess and comment on it.

There can be no dispute that this proposal—a major financial decision that could impact future facilities options for thousands of public school students attending charter schools—has been rushed. On October 23, 2015, less than three weeks ago, Superintendent Cortines submitted his memorandum to the Board describing the reallocation proposal now before the Board, with the Bond Oversight Committee approving it less than one week later and clearly without having had time to assess or consider it. CCSA and others have had minimal opportunity to assess Staff's proposal and understand the breadth of its impact. There has simply

not been enough time to fully understand all of the issues implicated by the proposal. Because CCSA needs to conduct substantial additional research and analysis, this letter contains CCSA's initial concerns about the proposal. To better understand Staff's bases for the proposal, earlier today CCSA submitted a Public Records Act request.

What is abundantly clear, however, is that Staff's proposal to reallocate nearly \$90 million previously designated to providing reasonably equivalent charter school facilities contradicts the voters' will, who approved Measure Q being told that LAUSD had allocated \$450 million of that measure for the construction of charter school facilities. In approving a July 31, 2008, resolution ordering Measure Q to be placed on the November 4, 2008, ballot, the Board simultaneously adopted a summary document showing the amounts of bond proceeds to be allocated to various categories of need, including the \$450 million towards charter school facilities. Subsequent campaign materials and media reports in support of Measure Q promoted this allocation.

LAUSD even touted this \$450 million allocation to the California Supreme Court in the Proposition 39-related litigation between CCSA and LAUSD that CCSA won earlier this year.<sup>1</sup> (See <http://www.courts.ca.gov/documents/7-s208611-apps-answer-brief-merits-082113.pdf> at 7 [“Local Bond Measure Q, passed in November 2008, allocates at least an additional \$450 million to provide charter schools reasonably equivalent new and existing facilities.”].)

*Now, with hardly any advance warning to the public and charter school community, Staff seeks to take away nearly 20% of charter school facilities funds under Measure Q.*

Staff's proposal is unlawful. A voter-adopted ballot initiative that allocates bond funds for specific purposes or projects cannot be amended or reallocated without subsequent voter approval if the purpose for which the funds are reallocated is contrary to the purposes for which the electorate approved the bond. (See *Veterans of Foreign Wars of the United States v. State of California* (1974) 36 Cal. App.3d 688; *Mills v. S.F. Bay Area Rapid Transit Dist.* (1968) 261 Cal.App.2d 666, at 668 [noting “proceeds of a bond issue may be expended only for the purpose authorized by the voters in approving issue of the bonds”].) Staff seeks to usurp the role of the voters and is promoting an unfair and improper diversion of funds.

In addition, Staff's proposal contains significant factual inaccuracies and suspicious assertions. Chief among them is Staff's claim that its proposal makes \$339.25 million in **proportional reallocations from seven categories of capital need** based on the funds remaining in each category. (Board Report, p. 1 of 6; Attachments A & B.) That is not correct. Rather, Staff only proposes a small percentage reduction to funds allocated to renovating LAUSD school buildings while unfairly burdening the six other categories of capital need and especially taking away disproportionate funds for charter school facilities.

---

<sup>1</sup> *Cal. Charter Schools Assn. v. Los Angeles Unified School Dist.* (2015) 60 Cal.4th 1221.

More specifically, the seven categories from which LAUSD claims to make proportional reallocations include:

1. ***Major Renovations/Modernizations/Reconfigurations to School Buildings (\$3.3 billion remaining)***;
2. Modernize and Repair School Cafeterias to Make Nutritious Healthy Meals Available to More Students (\$212 million remaining);
3. Build New and Repair Aging Early Childhood Education Centers to Promote Learning for Youngest Students (\$110 million remaining);
4. Provide/Upgrade Adult and Career Education Facilities Necessary to Provide Career Training and Adult Courses (\$91 million remaining);
5. ***Districtwide Charter School Facilities – Provide Reasonably Equivalent New and Existing School Facilities (\$402 million remaining)***;
6. Upgrade Districtwide Emergency Radio System Servicing Schools (\$50 million remaining); and
7. Replace Aging and Polluting School Buses (\$46 million remaining).

As the table included as Exhibit A to this letter shows, the “Major Renovations/Modernizations/Reconfigurations to School Buildings” category of need makes up over 82% of the total amount of funds remaining from the seven categories of capital need within the School Upgrade Program. Yet, in LAUSD Staff’s proposed reallocations, this category accounts for only 42% of the total reallocated funds from the seven categories. (Board Report, Attachment A.) Not only is this far from proportional, it is a misrepresentation that benefits LAUSD at the cost the public school students attending charter schools.

To compensate for this disproportional reallocation of funds, Staff’s proposal increases the amount of funds to be reallocated from the remaining six categories of need. As Exhibit A to this letter demonstrates, the charter school facilities category (“Districtwide Charter School Facilities – Provide Reasonably Equivalent New and Existing School Facilities”) makes up less than 8% of the total amount of funds remaining from the seven categories of capital need, ***yet comprises more than 26% of the total reallocated funds from the seven categories. This results in more than \$60 million being disproportionately stripped from charter schools facilities needs.***

Accordingly, Staff’s statement that it has made a “proportional” reallocation of seven identified categories is false.

Charter schools are an integral part of the educational landscape in Los Angeles. LAUSD has more charter schools than any school system in the country, and students attending independent charter schools now account for nearly 20% of LAUSD’s total enrollment. That number continues to increase each year. Unlike LAUSD, charter schools cannot tap into the local funding sources in the same way as school districts. Charter schools do not have the power to issue general obligation bonds, levy fees on new real estate developments, or ask local voters

LATHAM & WATKINS LLP

to approve taxes, as school districts routinely do. (Ed. Code, §§ 15124, 17110, 17620; Gov. Code, § 50079.) Accordingly, in order to serve the growing number of public school students choosing to attend charter schools it is critical that charter school facilities have access to sufficient funding sources.

In addition to the untrue statements about proportionality in the Board Report, Staff's determination that \$600 million is needed for structural changes over a 10-year period appears suspect, as that determination was based on a very small sample size. The Board Report notes that "[b]ased on surveying approximately 10 representative sites and a subsequent analysis, staff is estimating it will cost \$600 million to make necessary and prioritized structural changes. . . ." (Board Report at 3 of 6.)

Staff has provided no back-up or verifiable documentation to the Board and the public to support the statement and finding that \$600 million in funds is necessary. As LAUSD has over 1,000 school sites of varying sizes, ages, and conditions, it is hard to believe that a sample size of 10 representative sites provides sufficient basis to make this determination. CCSA's Public Records Act request submitted this morning seeks the "analysis" purportedly conducted by LAUSD to determine the amount necessary for structural changes. CCSA also requests that LAUSD make this analysis available for public review on LAUSD's website or through a broad dissemination to interested stakeholders. ***These huge financial decisions should not be rushed to approval without public input and without the Board having the information necessary to make an important decision.***

We appreciate the opportunity to present these serious concerns to the Board for your consideration. We also want to make clear that CCSA fully supports the renovation of school facilities to ensure better access for students with disabilities. This is a critical mission for our public education system.

However, a decision to undertake such renovations cannot be conducted in a manner that disproportionately harms charter schools and the public school students that they serve. We hope that this Board will correct the inappropriate course laid out in Staff's proposed actions, and postpone action on this matter until the public is given an adequate opportunity to assess the true impacts of these reallocations.

Very truly yours,



Winston P. Stromberg  
of LATHAM & WATKINS LLP

cc: Ricardo J. Soto, Esq., CCSA  
Phillipa L. Altmann, Esq., CCSA  
James L. Arnone, Esq., Latham & Watkins LLP  
David R. Holmquist, Esq., LAUSD

Attachment

**EXHIBIT A**

<b>Seven Categories of Capital Need</b> (from which funds will be reallocated to the special education category of capital need)	<b>Remaining Spending Targets Based on September 1st Estimates</b> ( <i>See Board Report Attachment B</i> )	<b>Percentage of Total Remaining Spending Targets for Seven Categories of Capital Need</b>	<b>Proportional Reallocation for Seven Categories Based on Estimated Remaining Spending Targets</b>	<b>LAUSD Staff's Proposal to Be Allocated for Necessary and Prioritized Structural Changes</b> ( <i>See Board Report Attachments A &amp; B</i> )
<b>Major Renovations/Modernizations/Reconfigurations to School Buildings</b>	\$ 3,353,132,933.00	82.8%	\$ 280,982,283.07	\$ 142,500,000.00
Modernize and Repair School Cafeterias to Make Nutritious Healthy Meals Available to More Students	\$ 145,834,744.00	3.6%	\$ 12,220,505.46	\$ 41,250,000.00
Build New and Repair Aging Early Childhood Education Centers to Promote Learning for Youngest Students	\$ 91,774,533.00	2.3%	\$ 7,690,425.14	\$ 26,000,000.00
Provide/Upgrade Adult and Career Education Facilities Necessary to Provide Career Training and Adult Courses	\$ 47,718,121.00	1.2%	\$ 3,998,632.58	\$ 13,500,000.00
<b>Districtwide Charter School Facilities - Provide Reasonably Equivalent New and Existing School Facilities</b>	\$ 313,516,801.00	7.7%	\$ 26,271,748.92	\$ 88,750,000.00
Upgrade Districtwide Emergency Radio System Servicing Schools	\$ 50,000,000.00	1.2%	\$ 4,189,847.06	\$ 14,125,000.00
Replace Aging and Polluting School Buses	\$ 46,500,000.00	1.1%	\$ 3,896,557.76	\$ 13,125,000.00
	\$ 4,048,477,132.00	100.0%	\$ 339,250,000.00	\$ 339,250,000.00