
July 30, 2020

To: District and Charter Business Services
From: Shelley Stiles, Director External Fiscal Services
Subject: July 2020 Edition

State of the State: Pandemic and Recession Reshape California Budget
Excerpt from California Fiscal Focus, a monthly report from State Controller Betty T. Yee

✚ Closing the Budget Gap

The Legislature passed a placeholder budget on June 15. Legislative negotiations on specific budget details extended beyond that date, culminating in Governor Gavin Newsom on June 29 signing the \$202.1 billion spending plan for the 2020-21 fiscal year. The [2020 Budget Act](#) addresses the \$54 billion budget gap by drawing down reserves in the Rainy Day Fund, the Safety Net Reserve, and the Public School System Stabilization Account; funding reductions and deferrals that will be restored subject to additional federal funds received by October 15, such as funding for schools and state employees' salaries; continued receipt of federal funds providing direct state General Fund relief; new revenues pursuant to temporary tax law changes; special funds borrowing, transfers, and deferrals; cancelled program and service expansions; and updated revenue and caseload assumptions.

✚ Uncertainties Loom Large

The reopening of economies has encouraged public gatherings that have contributed to rising numbers of COVID-19 cases. The pandemic is far from over, and health and safety must be prioritized as the paramount criterion for expanded opening of businesses and other venues. Ongoing impacts on the state's economy and budget are certain.

✚ Focus on Economic Recovery Critical

The Governor's [Task Force on Business and Jobs Recovery](#) has pushed the U.S. Congress and President to unveil a \$1 trillion-plus comprehensive infrastructure package to provide strategic investments in areas such as clean energy, digital connectivity, and housing. In the absence of federal action, the task force is moving forward on a state plan to tackle the immediate recovery, leveraging positive change by looking to the capital markets, infrastructure, and longer-term job recovery.

✚ You can view the full monthly report at https://www.sco.ca.gov/2020_o6summary.html

✚ Attached are two School Services Fiscal Reports:

- Tax Receipts Exceed Lowered Expectations, So Far posted on July 21, 2020
- DOF Releases July Finance Bulletin posted on July 24, 2020

2019-20 P-2 Principal Apportionment

2019-20 P-2 Principal Apportionments are available and can be accessed through links at <https://www.cde.ca.gov/fg/aa/pa/pa1920.asp>.

2020-21 Advance Apportionment is now available

The 2020-21 Advance Principal Apportionment (Advance) has been certified. The Advance is based primarily on prior year funding and establishes each LEA's monthly state aid payment amount for July

2020 through January 2021. **Because this apportionment is merely a means to begin allocating funds in accordance with Education Code 41330, it should not be used by LEAs for budgeting.**

Detailed information regarding the 2020-21 Advance Principal Apportionment is available on the CDE's Web site at <https://www.cde.ca.gov/fg/aa/pa/pa2021.asp>.

The following 2020-21 Principal Apportionment resources are available on the CDE Web site, or will be updated by CDE soon, to assist in 2020-21 planning:

2020-21 Funding Rates and Information ~ <https://www.cde.ca.gov/fg/aa/pa/ratesandinfo.asp>

2020-21 Princ Apportmt At-A-Glance Calendar of Key Deadlines ~ <https://www.cde.ca.gov/re/ca/fcl/>

Federal Funds for COVID-19

1. **Learning Loss Mitigation Funds** allocations are available, and have spending deadlines! The [LLMF local educational agency allocations](https://www.cde.ca.gov/fg/aa/pa/llmf/) are now available on CDE's website at <https://www.cde.ca.gov/fg/cr/learningloss.asp> - under the Funding header. Also available is a file that shows the [LCFF Source data](#) for the Supplemental and Concentration and LCFF Entitlement amounts used in the LLMF calculations.

As a reminder, the LLMF application is now available and due by **Wednesday August 5th** for inclusion in the first apportionment of LLMF.

Resource codes have been set up in ESCAPE

- GEER Funds 3215
- CR Funds 3220
- State GF Learning Loss 7420

You can now go in and link account codes and use in both 2019-20 and 2020-21.

Remember, in 2019-20 you can only link expenditure codes. The resources can have a negative ending fund balance. This will create a TRC warning that must be explained.

All revenue must be recorded in 2020-21.

2. **ESSER Funds – Resource 3210**
ESSER funds – spending guidelines, allocations and information is included in SCOE's COVID-19 Funding Sources – Updated 7/20/20 at https://www.scoe.org/files/COVID-19_Funding_Sources_July_20_2020.pdf and on the CDE Web page at <https://www.cde.ca.gov/fg/cr/caresact.asp>

Attached is a School Services Fiscal Report: Equitable Services Requirement Applies to Certain CARES Act Funds posted July 23, 2020.

Mandate Block Grant

Watch for information about when the online application will be open. Annually each LEA makes a choice to receive funds through the grant or through the claim reimbursement process. Last year the letter announcing the application for funding came out at the end of July and application had to be submitted by 8-30-19.

The Mandate Block Grant is located at: <http://www.cde.ca.gov/fg/aa/ca/mandatebg.asp>

Cash borrowing options

Please re-read SCOE Biz Bulletin No. 20-19 dated April 23, 2020 for details about cash borrowing options. You can find it posted in the SCOE website, under DBUG resources at https://www.scoe.org/files/20-19_SCOE_Biz_Cash_Borrowing_for_Next_Fiscal_Year_with_attachment.pdf

Three options are presented in the bulletin for District consideration:

- A. County Treasurer (Line of Credit) – available to Districts only
- B. TRAN (tax and revenue anticipation notes) – available to Districts only
Although SCOE cannot make vendor recommendations, we can share a list of vendors used across the state for TRAN issuance. Please contact Shelley Stiles directly at sstiles@scoe.org if you are in need of vendor names. **BOTH SCOE and the County Treasury require notification of TRAN issuances. For individualized questions, please contact Shelley Stiles.**
- C. Interfund Borrowing
- D. Independent Banks – Charters with 501c3 status – now is the time for Charters to develop relationships with their independent banks. This is one source of cash flow loans or lines of credit – available to Charters only

SCOE will be hosting a Cash Management Workshop (via Zoom) on August 27 from 8:00-9:30 am. The workshop will be presented by Government Financial Systems, Inc. and will present information covering

- ❖ cash flow preparation/best practices and pitfalls
- ❖ cash borrowing options for both Districts and Charters
- ❖ TRAN opportunities, both individual and pooled, Districts and Charters
- ❖ SCOE is considering the possibility of offering a COE Pooled TRAN for Districts

A registration link to this FREE workshop will be sent out as soon as available.

Classified School Employee Summer Assistance Program

The 2020-21 State Budget appropriated funding (one-time) for a third year for the program. Districts can choose to continue participation, or to discontinue participation, and districts that did not participate prior may decide to offer this to their qualifying classified employees.

Information regarding the CSESAP program can be found at <https://www.cde.ca.gov/fg/aa/ca/csesap.asp>

Consolidated Application and Reporting System (CARS)

The Consolidated Application and Reporting System (CARS) spring release opened July 6, 2020 (late window due to COVID-19). All data collections deadline for certification is August 17, 2020.

2020-21 PERS and STRS Rates

ESCAPE has been updated to reflect the final contribution rates for both PERS and STRS. The employer contribution rates effective with the first payroll ending in July 2020 are 20.70% for PERS and 16.15% for STRS. Attached is a School Services Fiscal Report regarding updated PERS Rates for multi-year projections.

You can find information about all contribution rates in ESCAPE on the 2020-21 Payroll Rates for 2020-21 posted on SCOE's web page at https://www.scoe.org/files/1_Payroll%20Rates%2020190101.pdf

Federal Cash Management Data Collection (CMDC) Schedule for 2020-21

This reporting is for LEAs that receive Title I, Part A; Title I, Part D; Title II, Part A; Title III, Immigrant; Title III, English Learner, and/or Title IV, Part A (ESSA formula grant) funds under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESSA) of 2015.

Reporting Period	Reporting Start Date	Reporting Deadline
1	July 10	July 31
2	October 10	October 31
3	January 10	January 31
4	April 10	April 30

Note: Cash balance to be reported regardless of the fiscal year from which the funds originated.

The CMDC reporting window opened July 10, 2020. LEAs participating in the ESSA formula grant programs must submit cash balance data through the CMDC web application **by July 31, 2020**, as well as meet other applicable program eligibility requirements and federal cash management thresholds, in order to receive an apportionment of funds in the next scheduled payment in September. Should an LEA fail to submit the CMDC report for a reporting period, the CDE will not apportion funds to the LEA for that period. Also, if the LEA reports an atypical cash balance that appears to be an error, the CDE may contact the LEA for resolution and may not apportion funds to the LEA for that period. The CDE will release funding in the subsequent period if the LEA submits cash balance data that warrants the release...

The CMDC logon page is available at <https://www.cde.ca.gov/fg/aa/cm/>. If your agency cannot locate its PIN, select the "Request PIN" link from the following web page at <https://www2.cde.ca.gov/cashmanagement/default.aspx>. Your PIN will immediately be emailed to the Superintendent or Administrator record on file with the CDE. For additional information on the CMDC, including instructions, future reporting dates, and FAQs, please visit the CDE's web page at <https://www.cde.ca.gov/fg/aa/cm/>.

Federal Quarterly Interest Reporting

CDE federal program grantees are required to report and remit interest to the CDE at least quarterly. Although grantees are allowed to keep interest amounts up to \$500 per year for administrative purposes, the \$500 is in total for all federal programs, not for each federal program. When reporting and remitting federal interest to the CDE, grantees should specify the time period of interest earning and the federal program resource codes. Interest on federal cash balances should be sent to the CDE at the following address:

California Department of Education
P.O. Box 515006
Sacramento, CA 95851
Attention: Cashier's Office

If no\$ to Remit: Email
cashmanagement@cde.ca.gov

Beginning in 2018-19 and continuing in 2020-21, please provide documentation of the interest calculations and the interest rates supplied by the county treasurer's office with your quarterly reports. A complete list of federally reimbursable programs that should be EXCLUDED from your interest calculations can be found at <https://www.cde.ca.gov/fg/ac/co/reimbursableprograms.asp>. A good report to use for documenting your calculations is the Fiscal24 Resource Cash daily balances. You will need to enter the reporting period (quarter dates), interest rate for the quarter, and specific federal resources you would like to include in the calculation. **Title I, II, III, IV and CSI would need to be included but you may have other non-reimbursable programs.**

Board Meeting Dates: Things to navigate for 2020-21

September – may require two meetings, one with a public hearing on the Learning Continuity and Attendance Plan (Continuity Plan) and a subsequent meeting to approve. The Continuity Plan must be board approved by September 30 and submitted to SCOE. Remember that Unaudited Actuals should be board approved on or before September 15 by statute.

December – may require two meetings, one for a public hearing on the Budget Overview for Parents (component of the LCAP), and a subsequent meeting for approval. The Budget Overview for Parents must be submitted to SCOE with the First Interim Report on or before December 15 by statute. December is also the Reorganization of the Board, and the required dates for this meeting changed in 2019. Please revisit School and College Legal Services Legal Update 40-2019 (attached for your reference) to make sure you are scheduling your meeting dates to comply with all deadlines and requirements.

COVID-19 Guidance documents

SCOE prepared guidance documents have been posted on the SCOE web page, under DBUG Resources <https://www.scoe.org/pub/htdocs/fiscal-dbug.html>. Updates to each document are completed, as more information becomes known. Please watch for updates via e-mail and on the SCOE web page. You can currently find the following:

- FAQ: Economic Crisis Planning Impact on Budget
- LCAP - Fiscal Perspectives - Updated 7/10/2020
- COVID-19 Closure Report Questions
- COVID-19 Funding Sources - Updated 7/20/2020
- SCOE Biz 20-22 May Revision Guidance
- Attendance Reporting Matrix
- SCOE Biz 21-01 45-Day Revise Guidance

Dates to Remember:

08/05/2020 Year-End Close checklist due to SCOE Advisor
08/13/2020 45-Day Revise due for public review
08/13/2020 ESCAPE HR/PR New User Training Webinar & Q&A
08/26/2020 ESCAPE AP/AR New User Training
08/27/2020 Cash Management Workshop: Flyer and Registration Information to follow
08/27/2020 DBUG
09/07/2020 Labor Day Holiday – SCOE Closed

Mark your calendars now! 2020-21 District Business User Group (DBUG) meeting dates:

All meetings will on the 4th Thursday of the Month, via Zoom until further notice.

Time: 12:30 pm. to approximately 2:00 pm.

Thursday August 27, 2020
Thursday September 24, 2020
Thursday October 22, 2020
Thursday November 19, 2020 (3rd Thursday)
No Meeting in December
Thursday January 28, 2021
Thursday February 25, 2021
Thursday March 25, 2021
Thursday April 22, 2021
Thursday May 27, 2021
Thursday June 24, 2021

Workshops

2020-21 Interim Reporting Workshop – Thursday October 22, 2020 9:00 am-Noon
2021-22 Next Fiscal Year Workshop – Thursday May 13, 2021 9:00 am – Noon
2020-21 Year End Close Workshop – Thursday June 3, 2021 9:00 am – Noon
2020-21 Unaudited Actuals Workshop – Thursday July 26, 2020 9:00 am – Noon

NOTE:

- Want to add something to a DBUG Agenda? Want a topic added to SCOE Biz? Contract DBUG Chair Christina Menicucci
- Documents presented at DBUG found posted at <http://www.scoe.org/pub/htdocs/fiscal-dbug.html>
- Workshop manuals and Fiscal Services/IT forms may be found at <http://www.scoe.org/escape> under the heading of Resources on the left side of the page.

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

Tax Receipts Exceed Lowered Expectations, So Far



BY ROBERT MCENTIRE, EDD

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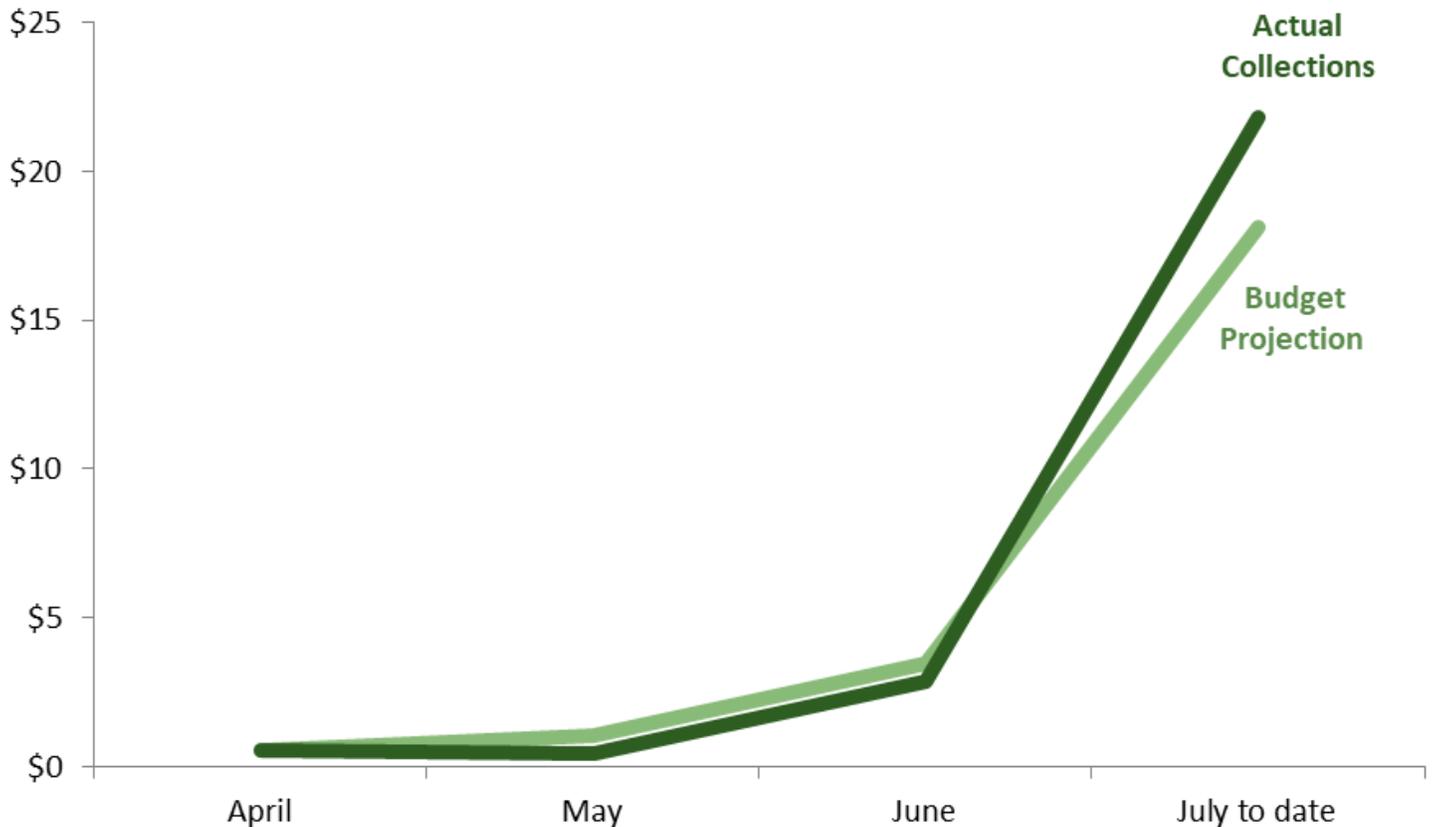
posted July 21, 2020

As part of the state and federal government response to the COVID-19 pandemic, personal income and corporate tax filing deadlines were extended to July 15, 2020. Moving tax payment dates beyond their traditional filing deadlines of April (personal income tax) and June (corporate tax) complicates the tracking of interim revenues to determine if these two critical revenue sources that support public education in California are keeping pace with expectations, or if there is more trouble looming on the horizon. Analysis is complicated further because delayed tax collections in July are comingled with normal monthly collections, obfuscating the data.

The Legislative Analyst's Office (LAO) recently published the article, "[July 2020 Tax Payments Tracker](#)" analyzing tax receipts through July 17, 2020. The LAO's graph below examines tax receipts from April 1 to July 17, which shows revenues from personal income and corporate taxes are outpacing the 2020–21 State Budget projections by approximately \$3.7 billion, or 20%.

Comparing April through July Tax Collections to Budget Projections

Cummulative personal income tax and corporation tax collections since April 1
(In billions)



The results published by the LAO incorporate similar positive monthly revenue trends from May and June. While 2020 tax receipts continue to beat expectations in the 2020–21 State Budget Act, it is important to recognize that revenues have fallen behind the 2019 pace by roughly 9%, or \$2 billion. The shifted tax deadline makes July a critical month for revenue tracking. The LAO plans to post updates on July 24 and July 31, 2020, which will be available [here](#). As always, we will provide you with the latest revenue information through our *Fiscal Report* articles.

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

DOF Releases July Finance Bulletin

 **BY ROBERT MCENTIRE, EDD**

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posted July 24, 2020

The Department of Finance (DOF) released its July Finance Bulletin, which summarizes significant economic data points including labor market conditions, real estate trends, and the state's monthly cash report.

Transfer receipts, including unemployment and welfare assistance, were the largest drivers of personal income growth in California and the U.S. in the first quarter with both increasing 2.3%. This is down from the 7.4% increase in the fourth quarter of 2019 in California, and the 3.6% increase nationally. California real gross domestic product (GDP) decreased by 4.7% in the first quarter of 2020 (seasonally adjusted annualized basis), while the U.S. declined by 5.0% for the same period.

The nation's unemployment rate reached a high of 14.7% in April 2020 before declining to 13.3% in May, and 11.1% in June. Similarly, California moved from a record high of 16.4% in April and May to 14.9% in June, bringing non-farm employment to 15.7 million in the state. The state gained 558,200 jobs in June, providing a much-needed record monthly growth, bringing the state's jobs recovery to about 25% of pre-recession levels. All 11 major industry sectors lost jobs between February and June, disproportionately hitting low-wage sectors such as leisure and hospitality with net job losses of 632,200, or 31%, since February 2020. However, not all job losses were in low-wage sectors—trade, transportation, and utilities industries lost 283,500 jobs, or 9.0%, while professional and business services lost 208,300, or 8.0%, of its workforce.

Building permits for May totaled 69,100, down 45% from February 2020. Single-family units increased from April by 14.5% to 30,700, while multifamily units similarly increased 15.4% to 38,400 units in May 2020. Housing permits remain 60.2% below the February levels for single-family and 21.0% for multifamily. Lackluster building perpetuates low housing supply in California.

Sales of existing single-family home sales fell to the lowest level since the Great Recession in May 2020, rebounding in June to 339,900 homes. Despite the rapid rebound, sales volume remains 19.4% below February's level. With record low inventories, the statewide median sales prices climbed to a record high of \$626,200 in June, 1.4% above the previous high in August 2019.

The state reduced revenue expectations from Governor Gavin Newsom's State Budget Proposal to the May Revision and included the delay of income tax filings to July 15 in their cash flow model. Year-to-date cash collections through June 2020 track ahead of the revised forecast by \$1.084 billion, or 0.9%—buoyed by personal income tax receipts of \$662 million, 0.8% above forecast. Sales and use tax collections are \$643 million, or 2.5%, above forecast, while corporate tax collections are \$49 million, or 0.5%, above forecast. Examination of month-specific data for June shows that personal income tax receipts beat expectations by \$892 million, or 16.7%, continuing strong performance in this revenue stream despite the economic conditions. Sales and use tax receipts exceeded expectations, beating estimates by \$683 million, or 39.8%. Corporate tax receipts also beat expectations by \$71 million, or 6.3%.

The DOF's July Finance Bulletin can be found [here](#).

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

Updated CalPERS Estimated Employer Contribution Rates

 [BY MICHELLE MCKAY UNDERWOOD](#)

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Last week, the California Public Employees' Retirement System (CalPERS) announced its fiscal year 2019–20 investment return at 4.7%. This is far below their assumed 7.0% long-term annual investment return and affects future employer contribution rates. Below is a comparison of the past projected CalPERS employer contribution rates versus the newest estimates:

	2021–22	2022–23	2023–24
Old Projected Rate	22.84%	25.50%	26.20%
New Projected Rate	23.01%	26.24%	27.14%

There is no change to the 2020–21 employer contribution rate, which is set at 20.70%.

The California State Teachers' Retirement System (CalSTRS) just released its 2019–20 investment returns at a dismal 3.9% and will be updating its out-year employer contribution rate estimates later this summer. We will update the 2020–21 Adopted State Budget Dartboard once the out-year CalSTRS employer contribution rate estimates are available.

[Click Here for COVID-19 Related Resources](#)

FISCAL REPORT

PUBLIC EDUCATION'S POINT OF REFERENCE FOR MAKING EDUCATED DECISIONS

Equitable Services Requirement Applies to Certain CARES Act Funds

 [BY LEILANI AGUINALDO](#)

 [BY DEBBIE FRY](#)

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posted July 23, 2020

“Equitable services” refers to the provisions in the Elementary and Secondary Education Act which require local educational agencies (LEAs) to set aside a portion of federal funding to ensure that students attending non-profit private schools are receiving equitable services to those attending public schools which use federal resources. This requirement applies to all of the Coronavirus Aid, Relief, and Economic Security ([CARES Act funds](#)) for K–12 education—the Elementary and Secondary School Emergency Relief (ESSER) funds and the Governor’s Emergency Education Relief (GEER) funds—which are sub-granted to LEAs. The 2020–21 Enacted State Budget uses the state-level share of the ESSER funds for grants for community schools and for providing additional funds to LEAs that participate in the National School Lunch Program, the School Breakfast Program, the Seamless Summer Option, or the Summer Food Service Program—the equitable services requirement will also apply to these resources. The Coronavirus Relief Fund, which provides the bulk of the money for the Learning Loss Mitigation resources, are not subject to equitable services.

On April 30, 2020, the U.S. Department of Education issued guidance regarding the equitable services requirement under the CARES Act which generated concerns about the practical implications of the unprecedented calculation that it included. Subsequently, on July 1, 2020, U.S. Secretary of Education Betsy DeVos issued an immediately effective Interim Final Rule (IFR) which included an additional option for calculating the equitable services share.

As a result, LEAs currently have two options for the calculation that will determine the equitable services share—either using a total student approach or using a proportion of low-income students:

1. Calculate the funds based upon the entire student enrollment in schools within the district boundaries, including all public and private school students regardless of income. The proportional share is the

percentage of students enrolled in participating nonprofit private schools within the district relative to the total number of students enrolled in public and nonprofit private schools. Using this option allows the funds to be spent districtwide.

2. Calculate the funds based on the total number of low-income students in Title I and participating private schools. This methodology allows districts to calculate this share in two ways: using the 2019–20 Title 1, Part A equitable services share, or calculating a new share using updated data regarding poverty and an updated list of Title I-participating schools.

If a district calculates the equitable services set aside using a proportion of low-income students, then the IFR stipulates that the district may only spend its CARES Act resources on Title I schools, and notes that federal Title I supplement not supplant restrictions apply. This may significantly impact how an LEA was planning to allocate its CARES Act dollars—particularly the funds available via ESSER and the subset of Learning Loss Mitigation resources funded by the GEER—since it must still ensure that its existing state and local funds are allocated to schools in a way that is Title I-neutral. Additionally, the IFR “discourages the limited number of financially secure private schools from seeking equitable services.” That admonition is not enforceable, however.

It is important to consult with participating private schools on the types of services to be provided and how the services will be delivered (private schools must also be consulted on the allocation methodology to be selected, but the choice ultimately rests with the district). This consultation should be well documented in the LEA’s files. Another key element of the equitable services requirement in Title I and in the CARES Act is that the LEA will provide services, not funding, to the nonprofit private school, and will hold title to all equipment, materials, and supplies (including devices) purchased with equitable services funds. Services may, but do not have to, be the same or similar to those implemented at the public schools. The consultation process should highlight the services that may be provided and what portion of the services can be provided by the public school. Services must be secular, neutral, and non-ideological. The CARES Act provides a lot of discretion in the expenditure of funds, most notably allowing funds to be used for cleaning and cleaning supplies, protective equipment, training, and distance learning supports.

Finally, it is important to note that California is leading a multi-state [lawsuit](#) and preliminary injunction challenging the guidance and the IFR issued by Secretary of Education DeVos. The preliminary complaint alleges that “[a]s a result of the interim final rule, tens of millions of dollars in California alone could be diverted away from taxpayer-funded public schools in our poorest school districts to private institutions.”

The California Department of Education is expected to publish additional information shortly that will help to answer some of the questions surrounding the calculation and its impact on these federal funds. In the meantime, we will continue to provide the most updated information for your consultations with private schools.



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LEGAL UPDATE

November 21, 2019

To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Schools Legal *KAS*
Subject: 2019 Governing Board Elections and Organizational Meetings
and Frequently Asked Questions
Memo No. 40-2019

We are reissuing this Legal Update as we have received many questions regarding annual organizational meetings in the past few days.

Effective January 1, 2019, new amendments to Education Code sections 1007, 1009, and 5017 went into effect. As described below, these amendments changed only the effective date for the end of an incumbent trustee's term of office, the commencement of the term of that person's successor, and the timing of the organizational meeting.

ORGANIZATIONAL MEETINGS (Education Code Section 35143)

Each school district and county office of education is required to hold an annual organizational meeting. In an election year, a school district organizational meeting must be held on a day within the fifteen (15) day period that commences with the date upon which a governing board member elected at that election takes office (the second Friday in December). In years in which no regular election for governing board members is conducted, the organizational meeting is held during that same fifteen day period. Exceptions to this rule are discussed below. **This year, the date on which elected trustees will take office is December 13, 2019.**

Organizational meetings should be held as follows:

- 1. Governing Boards of School Districts**
The organizational meeting must be held within 15 days of the second Friday in December. Unless otherwise provided by a rule of the Governing Board, the *date* of the organizational meeting must be selected by the Board at its regular meeting held immediately *prior* to December 1st (presumably the regular November board meeting).



The organizational meeting must, therefore, be held between December 13, 2019 and December 28, 2019.

2. Governing Boards of School Districts Governed by a City Charter

These Boards have the option of holding their organizational meetings as described above, or may hold their organizational meeting between December 15th and January 14th, if so provided by the Governing Board rules.

3. County Boards of Education

Starting this December 2019, for those boards holding an organizational meeting following the November election, their organizational meetings will now be held on the second Friday in December instead of at the end of November. For boards whose members are elected in June, the organizational meeting remains July 1.

Board Member Term of Office
(Education Code Section 1007 and 5017)

County Boards of Education:

Effective this year, the date on which outgoing members' terms of office end, and on which newly-elected members take office, is moved from the last Friday in November to the second Friday in December. The terms of office of county board members elected at the California primary (whether in March or June) will continue to commence on the first day of July.

Likewise, the law has changed the date for county board organizational meetings from the last Friday in November to the second Friday in December. For those county boards with members elected at the primary, their organizational meeting remains the first board meeting held after July 1.

School Districts:

For school district board members, the amendment to Education Code section 5017 changes the last day of an incumbent trustee's term of office, and the first day of a newly-elected trustee's term, from the first Friday in December to the second Friday in December.

Because all of these changes to the terms of office—for county board and school board—lengthen the terms of office for board members slightly, any incumbent's term of office will simply be extended by that additional time beginning in December 2019 and thereafter, depending on when the term of office would otherwise have expired. For example, someone elected in 2019 will commence office on December 13, 2019. Incumbents' terms of office are similarly extended—where previously an incumbent's term would have expired on December 2, 2022, under the new law that person's term will now expire December 9, 2022. County board members, the only local body whose terms of office previously began and ended in November, will have their terms of office extended by approximately two weeks, and terms will now match those of school boards.

Election Issues

Districts with the governing board elections scheduled for 2019 should be aware of the following information:



1. **Number of Candidates Less Than or Equal to the Number of Board Seats**
 No election is held. The existing Board members continue to serve until the organizational meeting of the Board, at which time the candidate(s) are seated and become Board members.

2. **No Candidates or Insufficient Candidates for Number of Seats Vacant**
 Seats for which there are sufficient candidates are discussed above. For those seat(s) for which there are no candidates, the Board must appoint. It is important to note that, except for seats which have been specifically designated two-year seats, an appointment to a governing board seat due to lack of a candidate or candidates is a four-year appointment.

The appointment must be made *prior* to the election. Prior to making the appointment, “. . . the governing board shall cause to be published a notice once in a newspaper of general circulation published in the district or, if no such newspaper is published in the district, in a newspaper having general circulation in the district, stating that the board intends to make an appointment and informing persons of the procedure available for applying for the office.” (Education Code section 5328.5.)

3. **Changing the Election Cycle from Odd-Year to Even-Year**
 Until 2018, the “default” for school districts and community college districts under the Elections Code was to hold elections in odd-numbered years. As noted above, in 2015, AB 415 was signed into law, and required most local entities that formerly held their elections in odd-numbered years to move them to even-numbered years. Those districts that were required to do so but did not want to make the change-over immediately were required to adopt a plan, by January 1, 2018, to make this change by the November 2022 election.

Because most entities that were required to make this change have either already done so or have adopted the required plan by January 2017, we have removed from this Legal Update the detailed discussion of how to switch an election cycle from odd-numbered to even-numbered years. Any districts that have either not made the switch but that need assistance in doing so should contact our office for further information and assistance.

FREQUENTLY ASKED QUESTIONS

Eligibility to Hold Office

1. **What are the qualifications to be elected/appointed to a school board?**
 Education Code section 35107, subdivision (a) provides as follows:
 - (a) Any person, regardless of sex, who is 18 years of age or older, a citizen of the state, a resident of the school district, a registered voter, and who is not disqualified by the Constitution or laws of the state from holding a civil office, is eligible to be elected or appointed a member of a governing board of a school district without further qualifications.

2. **Can employees of the school district serve on the governing board?**
 No. Education Code section 35107, subdivision (b)(1) provides as follows:



An employee of a school district may not be sworn into office as an elected or appointed member of that school district's governing board unless and until he or she resigns as an employee. If the employee does not resign, the employment will automatically terminate upon being sworn into office.

3. Are there limitations on the employment of a spouse or other relatives of a board member?

Yes. Under Government Code section 1090, a long-term school district employee whose spouse is appointed to or elected to the district's governing board may not be promoted by the board. "Long-term" means that the employee has served for one year or more. See Government Code section 1091.5, subd. (a)(6). The spouse of a new employee, i.e., someone with less than one year of employment at the district in question, may not be elected or appointed to the board unless the other spouse resigns his or her employment first.

If a spouse has been an employee of the district for at least one year before the other spouse joins the governing board, then the other spouse may be elected or appointed to serve on the governing board. Even if the employee-spouse meets this requirement, the board will not be able to take action affecting the spouse's employment status. For example, the employee-spouse could not be promoted, changed from a temporary to a regular employee, or have his or her position selectively reclassified while the other spouse is a board member. Furthermore, under the Political Reform Act (Government Code section 87100 et seq.), the board-member spouse would have to abstain from any discussion or participation in any decision that would uniquely affect the employee-spouse.

4. Are there term limits for school board members?

There can be, but only if the voters choose to impose them. Education Code section 35107, subdivision (c) provides as follows (emphasis added):

Notwithstanding any other provision of law, the governing board of a school district may adopt or the residents of the school district may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the governing board of the school district may serve on the governing board of the school district. Any proposal to limit the number of terms a member of the governing board of the school district may serve on the governing board of the school district shall apply prospectively only *and shall not become operative unless it is submitted to the electors of the school district at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.*

Therefore, unless action is taken as set forth in section 35107, subdivision (c), term limits do not apply to school district governing boards.



5. May a school board member hold another political office?

The answer depends on whether the other public office has “potentially overlapping public duties” with the school board position. Where there is potential for overlapping duties the common law doctrine of “incompatible” offices prevents one person from holding both offices. By way of example, a board member of a “feeder” elementary school district cannot at the same time also serve as a board member of that elementary district’s high school district. (See 68 Ops.Cal.Atty.Gen. 171 (1985).)

In 2005, the Legislature adopted Government Code section 1099, thereby codifying the common law rule. Section 1099 prohibits holding incompatible offices much like the common law rule. Prior attorney general’s opinions and judicial interpretation of the common law rule will continue to aid in the application of the new statute.

Term of Office

Note: The responses set forth below may not apply to school district elections that are subject to the provisions of a city charter. Districts governed by a city charter should always review the charter to determine whether it governs the district’s elections.

6. When does the term of office begin?

For K-12 board members elected in odd-numbered years,¹ Education Code section 5000 provides as follows (emphasis added):

After the initial election of governing board members in any school district or community college district, a governing board member election shall be held biennially on the first Tuesday after the first Monday in November of each succeeding odd-numbered year to fill the offices of members *whose terms expire on the first Friday in December next succeeding the election*. Except as provided in this chapter, or in Chapter 2 (commencing with Section 5200), the elections shall be held and conducted in accordance with Chapter 3 (commencing with Section 5300).

Similarly, for board members elected in even-numbered years, Education Code section 5017 provides as follows (emphasis added):

Each person elected at a regular biennial governing board member election shall hold office for a term of four years *commencing on the second Friday in December next succeeding his or her election*. Any member of the governing board of a school district or community college district whose term has expired shall continue to discharge the duties of the office until his or her successor has qualified. The term of the successor shall begin upon the expiration of the term of his or her predecessor.

¹ See the discussion in the analysis section above. The Legislature was apparently confident that AB 415 has forced all school entities to switch from odd-year to even-year elections. This can be inferred because new legislation only requires those entities that hold elections in even-numbered years to switch the start date for terms of office to the second Friday in December. The start date for entities that hold elections in odd-numbered years has not been changed.



Finally, Elections Code section 10554 provides as follows (emphasis added):

Elective officers, elected or appointed pursuant to this part, take office *at noon* on the first Friday in December next following the general district election. Prior to taking office, each elective officer shall take the official oath and execute any bond required by the principal act.

Because Education Code section 5300 provides that provisions of the Elections Code apply to school district elections “except as otherwise provided in the code” it appears that the 2018 amendments to sections 1007 and 5017 about the terms of office commencing on the second Friday in December will take precedence over Elections Code section 10554 beginning in 2019, because the amendments to those statutes will make them the more specific statutes with respect to when each elected trustee’s term commences.

7. Is there a different rule for when the term of office begins for County Boards of Education?

Yes. Education Code section 1007, subdivision (a) provides: “Members [of county boards of education] elected at the time of the direct primary shall take office on the first day of July, and members elected at the date on which members of school district governing boards are elected shall take office on the second Friday in December subsequent to their election.” *Thus, the first day of the term of incoming board members who were elected in June is July 1, 2019 and for those elected in November, their first day is December 13, 2019.*

The organizational meeting for County Board trustees is either the first meeting on or after the first day in July (for those elected at the June primary) or the second Friday in December (for those elected in November).

Awaiting the organizational meeting is done purely for ceremonial reasons, however, and has no legal effect on the true first day in office of the incoming member (or the last day of office of the outgoing member). Some board members choose to be sworn in privately (e.g., by a notary public) before the organizational meeting. In addition, these statutes permit a district to adopt a local rule of procedure to hold the organizational meeting on a different date, so check your local rules to see if they prescribe a different date.

Oath of Office

8. Is it necessary for a board member to take an “oath of office”?

Yes. Government Code section 1360 provides as follows:

Unless otherwise provided, before any officer enters on the duties of his office, he shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX² of the Constitution of California.

²That is, “Article 20.”



Failure to take the oath of office and file a bond as required by law is one way in which a public office becomes vacant, as provided in Government Code section 1770, subdivision (i).

9. Who can administer the oath of office to a newly elected/appointed board member?

Any person listed in Education Code section 60 or Government Code section 1362 may administer the oath to a newly elected/appointed board member.

Education Code section 60 provides as follows:

The Superintendent of Public Instruction, Deputy and Assistant Superintendents of Public Instruction, secretary of the Superintendent of Public Instruction, members of the Board of Governors of the California Community Colleges, the Chancellor of the California Community Colleges, county superintendents of schools, school trustees, members of boards of education, secretaries and assistant secretaries of boards of education, city superintendents of schools, district superintendents of schools, assistant superintendents of schools, deputy superintendents of schools, principals of schools, and every other officer charged with the performance of duties under the provisions of this code may administer and certify oaths relating to officers or official matters concerning public schools.

Government Code section 1362 provides as follows:

Unless otherwise provided, the oath may be taken before any officer authorized to administer oaths.

This is a very broad provision—“any officer authorized to administer oaths.” It includes judges, virtually all elected officials, notaries public, and numerous county and state officers.

10. What happens if the elected/appointed officer fails or refuses to take the oath of office?

Education Code section 5017 provides, in pertinent part, as follows:

. . . Any member of the governing board of a school district or community college district whose term has expired shall continue to discharge the duties of the office until his or her successor has qualified. The term of the successor shall begin upon the expiration of the term of his or her predecessor.

In addition, Government Code section 1302 provides as follows:

Every officer whose term has expired shall continue to discharge the duties of his office until his successor has qualified.



Thus, if an elected or appointed official fails or refuses to take the oath of office, the outgoing board member can continue to discharge the duties of office until a new member qualifies. Conversely, if the office becomes vacant, then the position remains vacant until filled by a qualified candidate, either by appointment or election depending on the procedure to be followed.³

11. When may the oath be taken by a newly elected/appointed school board member?

Elections Code section 10554 provides as follows (emphasis added):

Elective officers, elected or appointed pursuant to this part, take office at noon on the first Friday in December next following the general district election. *Prior to taking office*, each elective officer shall take the official oath and execute any bond required by the principal act. (Emphasis added.)

Thus, the oath of office may be administered at any time after the election results are certified by the county clerk. This is typically done at the district's organizational meeting, but once elected, a new board member can choose to be sworn in earlier, as discussed above.

12. How long does the county clerk have to certify the election results?

Elections Code section 15372 provides as follows:

The elections official shall prepare a certified statement of the results of the election and submit it to the governing body within 28 days of the election or, in the case of school district, community college district, county board of education, or special district elections conducted on the first Tuesday after the first Monday in November of odd-numbered years, no later than the last Monday before the last Friday of that month.

Elections Code sections 15400 and 15401 provides as follows:

The governing body shall declare elected or nominated to each office voted on at each election under its jurisdiction the person having the highest number of votes for that office, or who was elected or nominated under the exceptions noted in Section 15452. The governing board shall also declare the results of each election under its jurisdiction as to each measure voted on at the election.

The elections official shall make out and deliver to each person elected or nominated, as declared by the governing body, a certificate of election or nomination, signed and authenticated by the elections official.

³ As discussed below, district boards can sometimes make an appointment within 60 days of a vacancy. In other cases, if the vacancy occurs too close to a scheduled election or the end of a member's term, the vacancy must await an upcoming regular election or a special election.



13. What are the rules with respect to the annual organizational meeting?

Education Code section 35143 provides as follows:

The governing board of each school district shall hold an annual organizational meeting. In a year in which a regular election for governing board members is conducted, the meeting shall be held on a day within a 15-day period that commences with the date upon which a governing board member elected at that election takes office. Organizational meetings in years in which no such regular election for governing board members is conducted shall be held during the same 15-day period on the calendar. Unless otherwise provided by rule of the governing board, the day and time of the annual meeting shall be selected by the board at its regular meeting held immediately prior to the first day of such 15-day period, and the board shall notify the county superintendent of schools of the day and time selected. The clerk of the board shall, within 15 days prior to the date of the annual meeting, notify in writing all members and members-elect of the date and time selected for the meeting.

If the board fails to select a day and time for the meeting, the county superintendent of schools having jurisdiction over the district shall, prior to the first day of such 15-day period and after the regular meeting of the board held immediately prior to the first day of such 15-day period, designate the day and time of the annual meeting. The day designated shall be within the 15-day period. He shall notify in writing all members and members-elect of the date and time.

At the annual meeting the governing board of each high school district, union high school district, and joint union high school district shall organize by electing a president from its members and a clerk.

At the annual meeting each city board of education shall organize by electing a president from its members.

At the annual meeting the governing board of each other type of school district, except a community college district, shall elect one of its members clerk of the district.

As an alternative to the procedures set forth in this section, a city board of education whose members are elected in accordance with a city charter for terms of office commencing in December, may hold its annual organizational meeting required in this section between December 15 and January 14, inclusive, as provided in rules and regulations which shall be adopted by such board. At the annual meeting the city board of education shall organize by electing a president and vice president from its members who shall serve in such office during the period January 15 next to the following January 14, unless removed from such office by majority vote



of all members of the city board of education.

Note that, as discussed in section 7 above, section 35143 permits a district, by local rule, to choose a different date for its organizational meeting.

14. At the organizational meeting which board members (e.g., outgoing or incoming) convene the meeting?

Where the oath of office is administered at the organizational meeting, the outgoing board may convene the meeting, the oath(s) may be administered, and then the board with new members seated would complete the remainder of the agenda. If a new member or members have taken the oath of office prior to the organizational meeting, the meeting should convene with any previously-sworn members sitting with the board.

Brown Act

15. Does the Brown Act apply to newly elected members before they take office?

Yes. Government Code section 54952.1 provides as follows:

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

We believe the reference to “elected to serve” applies once the county clerk has certified the election results (See Elections Code sections 15372, 15400 and 15401, set forth above.)

Board Member Resignation

16. May a school board member resign from his/her office?

Yes. Government Code section 1770, subdivision (c) provides that “[a]n office becomes vacant . . . [upon the incumbent’s] resignation.”

17. How does a school board member resign?

Education Code section 5090 provides that “a vacancy resulting from resignation occurs when the written resignation is filed with the county superintendent of schools . . .”

18. Is it necessary for the school board to take action to accept a member’s resignation?

No. As noted above the resignation is effective upon the county superintendent of schools’ receipt of the written resignation.

Some governing board meetings do have public agenda items to “accept” a member’s resignation. This is usually done for purposes of creating an occasion to honor a departing board member and is purely ceremonial with no legal significance.

19. May a board member rescind a written resignation once it is filed with the county superintendent of schools?

No. Education Code section 5090 provides that a “written resignation. . . shall, upon



being filed with the county superintendent of schools be irrevocable.”

20. What constitutes “filing” a resignation with the county superintendent?

A resignation is filed with the county superintendent upon physical receipt by the county superintendent’s office of a writing indicating a resignation.

21. May a board member defer the effective date of a resignation?

Yes. Education Code section 5090 provides that a board member’s written resignation may indicate a “deferred effective date.” Section 5091 provides further that the resignation may not be deferred “for more than 60 days after he or she files the resignation with the county superintendent of schools.”

22. Would an e-mail or facsimile transmission constitute a written resignation?

Probably not. The law applicable to resignations has not been amended to provide for electronic or facsimile substitution for written resignations.

23. What is the effective date of a resignation?

Unless the resignation contains a “deferral” date, the effective date of a written resignation is the date it is actually received by the county superintendent’s office.

24. Are there any limits on the role of a board member who files with the county superintendent a written resignation with a deferred effective date?

Yes. Education Code section 35178 provides as follows (emphasis added):

A member of the governing board of a school district who has tendered a resignation with a deferred effective date pursuant to Section 5090 shall, until the effective date of the resignation, continue to have the right to exercise all powers of a member of the governing board, *except that such member shall not have the right to vote for his or her successor in an action taken by the board to make a provisional appointment pursuant to Section 5091.*

Note: This prohibition applies only to the actual vote and does not appear to preclude the member whose resignation is pending from participating in the selection process or board discussion of who to appoint.

25. What does a school board need to do after learning of a resignation from one of its members?

Education Code section 5091 provides that the governing board “shall, within 60 days of the vacancy or the filing of the deferred resignation, either order an election or make a provisional appointment to fill the vacancy.”

Note: The 60 days starts to run when the resignation is received by the county superintendent even if the resignation contains a deferred effective date.

The governing board must also make sure that the person provisionally appointed to the position is “qualified” under Education Code section 35107 as discussed in more detail



above.

26. May the board meet in closed session to develop questions or interview candidates?

No. Under the Brown Act, all aspects of making a provisional appointment must be done in public session, except where the board appoints an advisory ad hoc committee of less than a quorum of board members and no other members. If an advisory ad hoc committee is appointed it may assist in screening or evaluating applications and preparing interview questions, but may not make any final decisions for the board. (See Government Code section 54952, subdivision (b).)

The provisional appointment must be put on the public session agenda and the full Board must take action to approve the appointment.

27. Once the board makes a provisional appointment to fill a vacancy, what happens next?

Education Code section 5092 provides as follows:

Whenever a provisional appointment is made to the governing board of a school district pursuant to Section 5091, the board shall, within 10 days of the provisional appointment of a person to fill a vacancy which occurs or will occur, post notices of both the actual vacancy or the filing of a deferred resignation and also the provisional appointment in three public places in the district and shall publish a notice pursuant to Section 6061 of the Government Code. If there is no newspaper of general circulation published in the district, notice need not be published.

The notice shall state the fact of the vacancy or resignation and the date of the occurrence of the vacancy or the date of the filing of, and the effective date of, the resignation. The notice shall also contain the full name of the provisional appointee to the board and the date of his appointment, and a statement that unless a petition calling for a special election, containing a sufficient number of signatures, is filed in the office of county superintendent of schools within 30 days of the date of the provisional appointment, it shall become an effective appointment.

Thus, the residents of the district whose board has appointed a provisional board member can petition to force a special election—although in practical terms, this rarely happens.

28. What happens if vacancies occur in a majority or more of the board seats at the same time?

Education Code section 5094 provides as follows:

If for any reason vacancies should occur in a majority of the offices on any school district or community college district governing board, the president of the county board of education having jurisdiction may appoint members of the county board of education to the district governing board until new members of the governing board are elected or appointed.



Note: At the discretion of the president of the county board of education, appointments may be made in one or more of the vacant positions. In other words, the county board president is not limited to making appointments only sufficient to create a quorum on the district board. Thus, on a five person board with 3 vacancies, the county board president may designate up to 3 members of the county board of education to serve as district board members. Once appointed, the county board members continue to serve as district board members until new members “are elected or appointed.”

29. May a district board reappoint the same person who resigned from the seat that is vacant?

No. Government Code section 1752, subdivision (a) provides, in pertinent part, as follows:

. . . no person elected or appointed to the governing body of any city, county, or district having an elected governing body, shall be appointed to fill any vacancy on that governing body *during the term for which he or she was elected or appointed* (emphasis added).

Please note: This provision also prohibits a board member with a “short” term from resigning and being appointed to a vacant “long” term.

30. If the district chooses to call for written applications from candidates who wish to be considered for appointment, are the submitted applications public records?

Yes. Under the Public Records Act (Govt. Code section 6250 et seq.) copies of any applications for a board vacancy that are received by the district must be made available for public inspection and copies provided upon request.

Note: Because the applications become public records, we recommend that prospective candidates be so-informed before they submit an application.

31. If the board chooses to interview candidates one at a time before making an appointment do all candidates have a right to be present?

Under the Brown Act all persons—including candidates for a board appointment—have a right to attend all public sessions of the board.

At the same time the board may request (but not require) the other candidates to remain outside the meeting room until after they are interviewed.

Our experience has been that most candidates honor the request, as they understand the essential fairness of the request, and that the refusal to do so may have an impact on the remaining board members’ willingness to appoint a candidate who refuses to cooperate.

32. If everything must be done in public session, how does the board develop questions that will not be known in advance by the candidates?

Good question! The Brown Act simply does not provide a ready response to this question. We have recommended against using email (or other private communications)



among board members to reach a board decision on what questions to ask the candidates.

It is recommended that individual board members submit proposed questions to the board president, who will compile a composite question list. The board can also have such questions referred to an executive officer, such as the superintendent, who can undertake the task of compiling such questions, perhaps in concert with a single board member or an ad hoc committee of the board.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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