

**STATUTORY FUNCTIONS OF COUNTY  
SUPERINTENDENTS OF SCHOOLS & COUNTY  
BOARDS OF EDUCATION**

*Approved for Publication by the  
California County Superintendents Educational Services Association (CCSESA)  
Board of Directors on*



**Statutory Functions of County Superintendents of Schools & County Boards of Education**

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MARCH 1997

By Frank Fekete, Special Counsel to Kern County Superintendent of Schools

REVISED - MARCH 2006

By Frank Fekete, Special Counsel to Kern County Superintendent of Schools and  
Heather Edwards, Girard, Vinson & Trujillo

REVISED - JUNE 2010

By Heather Edwards  
GIRARD EDWARDS & HANCE

REVISED - JUNE 2014

By Heather Edwards and Eric Stevens  
GIRARD & EDWARDS

REVISED - JANUARY 2020

By Keith Bray, Esq.  
DANNIS WOLIVER KELLEY  
Amanda Dickey, Esq.  
CCSESA

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## I. OVERVIEW OF COUNTY OFFICE OF EDUCATION GOVERNANCE

The county superintendent of schools and the county board of education have separate duties and responsibilities. This is true whether the superintendent is separately elected, as in most counties, or appointed by the county board or the board of supervisors.<sup>1</sup> In counties with only one school district, the county board members also serve as district board members and may hire a district superintendent. (Ed. Code § 1000.)<sup>2</sup>

County superintendents of schools are established pursuant to Section 3, Article IX of the California Constitution and are considered county officers (similar to a sheriff, district attorney, or clerk). (Gov. Code § 24000.)<sup>3</sup> County boards of education are established in Education Code section 1000, as provided for in Section 7, Article IX of the California Constitution. County board members must live in and be elected by voters in trustee areas. (Ed. Code § 1000.)<sup>4</sup> County offices of education are created, but not defined by, the state legislature.

Because of the independent constitutional and statutory duties vested in the county superintendent and in the county board, the interaction between the county board and the county superintendent is very different than the relationship between a school district governing board and a district superintendent who is an employee of the board.

A wide variety of practices and policies have developed in the different counties to enable the county board and county superintendent to work cooperatively. Open communication and sharing of information help facilitate the duties and functions of the county superintendent and the county board. For example, the county superintendent and the county board work cooperatively to organize and conduct board meetings. The county superintendent serves as the ex-officio secretary and executive officer of the county board. (Ed. Code § 1010.) In this role, it is common for the county superintendent to work with the county board president to prepare the agenda for board meetings and post the notice for regular meetings of the board at least 72 hours in advance of the meeting and at least 24 hours in advance of special board meetings. (See Gov. Code §§ 54954.2, 54956.)

## II. DUTIES OF COUNTY SUPERINTENDENTS OF SCHOOLS

The county superintendent manages the day to day operations of the county office and works directly with the school districts in the county to provide support and guidance for their operations. The county superintendent performs a vital oversight role involving district budgets and local control and accountability plans (LCAPs).

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<sup>1</sup> The county boards in Sacramento, Santa Clara, and San Diego counties and the City and County of San Francisco appoint the county superintendent, and the board of supervisors in Los Angeles County appoint the county superintendent.

<sup>2</sup> The counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra and the city and county of San Francisco have only one school district and are known as a "single district/single county" office of education. (See Appendix B.)

<sup>3</sup> The California Attorney General has opined that "[A] county superintendent is vested with broad authority to carry on, and expend for, activities and programs that he or she determines to be necessary or desirable to meet the needs of the community, so long as the activities or programs are not in conflict with or inconsistent with law." (101 Ops.Cal.Atty.Gen. 56 (Aug. 23, 2018).) While opinions of the Attorney General are not controlling statements of law, they are generally given "great weight" by courts in determining the meaning of statutes. (See, e.g., *Freedom Newspapers, Inc. v. Orange County Employees Retirement System*, 6 Cal.4th 821, 829 (1993).)

<sup>4</sup> In chartered counties, the manner county board members are elected is prescribed by the charter, or by the county board of supervisors. (Ed. Code § 1000.)

## A. General Duties

Education Code Section 1240 describes the general statutory duties of the county superintendent.

County superintendents are **required** to do the following:

- (1) Superintend the schools of his or her county.
- (2) Maintain responsibility for the fiscal oversight of each school district in his or her county.<sup>5</sup>
- (3) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. The superintendent may annually present a report of the state of the schools in the county, and his or her office, including but not limited to, his or her observations while visiting schools, to the county board of education and county board of supervisors.
- (4) Submit an annual report describing the state of the underperforming schools of the districts in the county or of the county office ranked in deciles 1 to 3 as identified by the Superintendent of Public Instruction (SPI) every three years, inclusive, of the applicable API base.<sup>6</sup> Known as “Williams” reporting<sup>7</sup>, the report shall be submitted by the county superintendent at a regularly scheduled November board meeting to the governing board of each school district, county board of education, and county board of supervisors of his or her county. To monitor underperforming schools, the county superintendent shall do the following<sup>8</sup>:
  - a. Prepare an annual report that must include determinations by the county superintendent or his or her designee, regarding the status of:
    - i. the sufficiency of textbooks;
    - ii. the condition of facilities that poses an emergency or urgent threat to the health or safety of pupils or staff;<sup>9</sup>

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<sup>5</sup> See Section II C, Accountability and Oversight of School Districts

<sup>6</sup> Until statute is amended, county superintendents are required to use the API decile rankings from 2013-14 to identify the underperforming schools to be included in the “Williams” report. As of this writing, not all the references to the API in the Education Code have been repealed but the API has been deleted as pupil performance measure in Education Code § 52052. (Amended by AB 1808, Chapter 32, Statutes of 2018) .) s

<sup>7</sup> “Williams” reports, as outlined in the Education Code, are a requirement of a 2004 settlement of a class action lawsuit filed by the ACLU against the State of California.

<sup>8</sup> “Single district/single county” offices of education are required to contract with another county office of education or independent contractor to conduct “ Williams” reporting. (See Appendix B.)

<sup>9</sup> If the condition of a facility is determined by the county superintendent to pose an emergency or urgent threat to the health or safety of pupils or staff or is not in good repair, the county superintendent may return to the school to verify repairs and/or prepare a report that specifically identifies and documents the areas or instances of non-compliance if the district has not provided evidence of successful repairs within 30 days of the visit, or for major projects, has not provided evidence that the repairs will be conducted in a timely manner. This report may be provided to the governing board of the school district. If the report is provided to the school district, it must be presented at a regularly scheduled meeting and must be posted on the county superintendent’s website and removed once the county superintendent verifies that the repairs have been completed.

- iii. the accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, and the safety, cleanliness, and adequacy of school facilities, including good repair; and
    - iv. the number of teacher vacancies and teacher misassignments, if any.<sup>10</sup>
  - b. Conduct annual site visits of underperforming schools within the first four weeks of the school year which shall:
    - i. minimize disruption to the operation of the school;
    - ii. be performed by individuals who meet fingerprinting requirements; and
    - iii. consist of not less than 25% unannounced in each county made to observe the condition of school repair and maintenance and the sufficiency of instructional materials.<sup>11</sup>
    - iv. Provide a quarterly report on the result of visits and reviews of deciles 1 to 3 schools to the district governing board at a regularly scheduled meeting. If no visits or reviews are conducted during a quarter, the quarterly report should reflect that fact.
- (5) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.
- (6) On or before September 15 of each year, the county superintendent shall present a report to the governing board of the school district and to the SPI regarding the fiscal solvency of any school district that: (a) has a disapproved budget; (b) has a qualified or negative interim certification during the current fiscal year; or (c) is determined at any time to be in a position of fiscal uncertainty per Education Code § 42127.6.
- (7) Keep in his or her office the reports of the SPI.
- (8) Keep a record of his or her official acts, and of all the proceedings of the county board of education.
- (9) Enforce the course of study.
- (10) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by district governing boards in accordance with Education Code § 51050. Enforcement shall be in accordance with the following:
  - a. County superintendents shall specifically review instructional materials of schools ranked in deciles 1 to 3, inclusive, on the applicable API base that are not currently under review

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<sup>10</sup> County superintendents are required to use a standardized template to report the circumstances identified unless the current annual report already includes such details for each school (Ed. Code § 1240 (c)(2)(A).)

<sup>11</sup> In determining whether to make a single visitor multiple visits to a decile 1 to 3 school, county superintendents shall consider factors such as cost-effectiveness, disruption to the school site, deadlines, and availability of qualified reviewers. (Ed. Code § 1240 (c)(2)(H).)

by a state or federal intervention program.<sup>12</sup> Reviews shall be conducted at least once a year and shall be completed by the fourth week of the school year.

- b. A county superintendent in a county with 200 or more schools ranked in deciles 1 to 3, inclusive, on the applicable base API, may use a combination of visits and written surveys of teachers to determine sufficiency of textbooks and instructional materials.<sup>13</sup>
- c. If a county superintendent determines pursuant to Education Code § 60119 that a school does not have sufficient textbooks or instructional materials, the superintendent shall take the following steps:
  - i. Prepare a report that specifically identifies and documents areas or instances of noncompliance.
  - ii. Provide a copy of the report to the school district within five business days of the review, or if applicable, provide a copy of the report to the school district within 10 business days.
  - iii. Provide the school district with an opportunity to remedy the deficiency and ensure remediation of the deficiency no later than the second month of the school term.
  - iv. If the deficiency is not remedied as required, the superintendent shall request that the California Department of Education (CDE) purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement. The State Board of Education (SBE) at its meeting following the request shall announce that the district superintendent and governing board failed to provide students with sufficient textbooks.

(11) Preserve carefully all reports of school officers and teachers.

(12) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the CDE.

(13) Submit to the county board two interim reports each fiscal year in accordance with the following:

- a. The first interim report shall cover the financial and budgetary status of the county office of education for the period ending October 31.

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<sup>12</sup> Until statute is amended, county superintendents are required to use the API decile rankings from 2013-14.

<sup>13</sup> "Written surveys" may include paper and electronic or online surveys, (Ed. Code § 1240 (i)(3)(C).) If written surveys are used, the county superintendent shall visit the schools surveyed within the same school year to verify the accuracy of the information reported on the surveys. If a county superintendent surveys teachers at a school in which the county superintendent has found sufficient textbooks and instructional materials for the previous two consecutive years and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent must provide a copy of the insufficiency report to the school district within 10 business days. (Ed. Code § 1240 (i)(3)(B).)

- b. The second interim report shall cover the period ending January 31.
- c. Both interim reports shall be reviewed by the county board and approved by the county superintendent no later than 45 days after the close of the period being reported.
- d. As part of each interim report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certification shall be classified as positive, qualified, or negative.<sup>14</sup>
- e. The superintendent shall also send copies of each positive, qualified, or negative certification, and the interim report containing said certification, to the SPI and the Controller at the same time he or she submits them to the county board of education.<sup>15</sup>
- f. The interim reports and certifications shall be based on standards and criteria for fiscal stability adopted by the SBE and shall use format and forms prescribed by the SPI.
- g. The county superintendent shall make these reports and supporting data available to any interested party upon request.

(14) When requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(15) Report to the California Commission on Teacher Credentialing (CTC) the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program if, based on information discovered during the course of performing his/her normal duties, the county superintendent has reasonable cause to believe such false information has been reported.

**B. Development of the County Office LCAP, the LCFF Budget Overview, and the County Office Budget**

(1) Development of the County Office LCAP

To demonstrate accountability for the expenditure of funding provided by the Local Control Funding Formula (“LCFF”), county offices must annually prepare and adopt an LCAP or an update. The county office LCAP should reflect the needs of the students and the community, especially for historically underrepresented or low-achieving populations. (Ed. Code § 52059.5 (b)(3).) County office LCAPs focus on outcomes for all students, as well as goals and specific actions for certain numerically

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<sup>14</sup> Ed. Code § 1240 (l)(1)(B) describes how certifications shall be assigned to county offices of education. A positive budget certification is when the district may meet its financial obligations for the current year and the two subsequent fiscal years. A qualified budget certification is when a county office may be unable to meet its financial obligations for the current or subsequent two fiscal years. A negative budget certification is when a county office cannot meet its obligations for the current or subsequent fiscal year. Ed. Code § 1240 (l)(1)(B).

<sup>15</sup> If a county office receives a negative certification, the SPI shall exercise his/her authority which may include assigning a fiscal expert and/or encumbering all contracts and obligations. (Ed. Code §§ 1630, 1240.1-1240.2.)

significant pupil subgroups, including English learners, low income, and foster youth students in the programs and services funded by the LCFF.<sup>16</sup> (Ed. Code §§ 52052, 52066 et seq.)

Each county superintendent of schools must develop a county LCAP for the schools and programs directly generating LCFF funding for the county office and present the LCAP to the county board for adoption by July 1.<sup>17</sup> (Ed. Code § 52066 (a), (c).) The adopted county office LCAP is effective for a period of three years, must be updated annually, and must include all the information specified in the template adopted by the SBE.<sup>18</sup> (Ed. Code §§ 52066 (b), (c), 52067 (a).)

The county office LCAP must identify specific goals that address all pupils, and each numerically significant subgroup of pupils, within each county program or school reported in the LCAP.<sup>19</sup>(Ed. Code §§ 52052, 52066 (c).) The LCAP must include the information specified in the SBE’s template, including goals and specific actions for the two priorities established for county offices which require the county superintendent to coordinate both the instruction for expelled students and the services for foster youth. (Ed. Code §§ 52066 (c), (d)(9), (10).)

The county superintendent is required to consult with teachers, principals, administrators, other school personnel, employee bargaining units, parents/legal guardians, and students in developing the LCAP or annual update. (Ed. Code § 52066 (g).) The county superintendent is also required to establish a parent advisory committee to provide advice to the county superintendent and the county board regarding the development and adoption of the county office LCAP. (Ed. Code § 52069 (a)(1).)

If at least 15% of pupils enrolled in the county programs and schools operated by the county office are English learners, the county superintendent must also establish an English learner parent advisory committee that is composed of a majority of parents/guardians of English learner students. (Ed. Code § 52069 (b)(1).)<sup>20</sup>

Before submitting the county office LCAP to the county board, the county superintendent must: (a) solicit input from the parent advisory committee(s); (b) notify members of the public of the opportunity to submit written comments on the LCAP; (c) ensure that the LCAP is in alignment with county school plans and strategies for categorical programs; and (d) determine, following consultation with its SELPA administrator, if specific actions for individuals with exceptional needs are in the LCAP or update and if the specific actions are consistent with the strategies included in the SELPAs annual assurances

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<sup>16</sup> LCFF funding for county offices includes a base operations grant, supplemental and concentration grants, ADA funding for court and community schools, and funding for differentiated assistance except for the single district/single county offices of education. . (Ed. Code §§ 2574-2579.)

<sup>17</sup> The CDE has interpreted that “schools and programs” of the county office are those where students generate funds directly for the county office such as in court and county community schools. Schools and programs operated by county offices via an agreement with a district(s), such as continuation schools and regional special education programs, are not required to be in the LCAP.

<sup>18</sup> The SBE template will undergo significant changes per AB 1808, the 2018 education omnibus trailer bill. Those changes will include greater connectivity between goals, specific actions and the allocation of LCFF resources. (Ed. Code § 52064.) In addition, data reported in the LCAP shall be consistent with how data is reported in the California School Dashboard. (Ed. Code § 52066 (f).)

<sup>19</sup> Although not required, county offices may decide to include goals and actions in the LCAP for schools and programs where the students do not directly generate funding for the county office.

<sup>20</sup> An English learner advisory committee is required only when 15% of the students must equal 50 EL students or more. (Ed. Code § 52069 (b)(1).)

support plan. The county superintendent must respond in writing to any comments received from the two parent committees. (Ed. Code § 52068 (a)(1-2).)

Before adopting the county office LCAP, the county board must: (a) hold at least one public hearing with at least 72-hours public notice to solicit recommendations and comments regarding the LCAP from members of the public; and (b) hold at least one additional public meeting at which the county board adopts the county office's LCAP and budget. (Ed. Code § 52068 (b).)

Once the county office LCAP is approved, the county superintendent must post prominently on the county office's webpage the county office's LCAP and transmit or otherwise make the LCAP available to the SPI. (Ed. Code § 52065 (b).)

The timeline by which the SPI may seek clarification and make recommended amendments to the LCAP is similar to the process described in Section B (1) below, when a county superintendent reviews and makes recommendations about a district LCAP. (Ed. Code §§ 52070.5, 52071.5)

If the county office LCAP or update is disapproved by the SPI, the SPI shall provide technical assistance focused on revising the LCAP or update so that it can be approved.<sup>21</sup> (Ed. Code § 52071.5 (a).) In addition, the SPI must provide technical assistance to any county office where one or more pupil subgroups identified in Education Code § 52052 meet the performance criteria to be developed by the SBE, which will focus on building the capacity of the county office to develop and implement actions and services more responsive to student and community needs. (Ed. Code §§ 52064.5, 52071.5.)

## (2) LCFE Budget Overview for Parents

In addition to developing the county office LCAP, the county superintendent prepares the LCFE budget overview for parents on the template provided by the SPI.<sup>22</sup> (Ed. Code § 52064.1.) The budget overview provides parents with information including the funds apportioned for unduplicated pupils, the total budget expenditures for the planned actions and services in the LCAP, and the funds in the existing budget year that have been dedicated to increasing and improving services provided on a countywide or schoolwide basis. (Ed. Code § 52064.1 (b)(1-10).) The budget overview is adopted along with the LCAP and submitted to the SPI for approval. (Ed. Code § 52064.1 (a)(2), (c)(2)(A).) If the SPI does not approve the budget overview, the SPI will not approve the LCAP and must provide technical assistance to the county office. (Ed. Code § 52064.1 (c)(2)(B).)

## (3) Development and Administration of the County Office Budget

The county superintendent is a Constitutional Officer with the authority to administer the County Office of Education and its budget. (California Constitution Section 3, Article IX; Ed. Code § 1621.) The Education Code vests the superintendent with the power to spend money from the approved budget and provide interim budget reports to the Board. (Ed. Code §§ 1604, 1240 (1)(2).) This broad authority to administer the budget and spend funds indicates the ability to enter into contracts on behalf of the county office. Conversely, the Education Code outlines only three circumstances where the county board of education has the authority to enter into contracts: (1) to acquire, lease, lease-purchase, hold

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<sup>21</sup> The SPI must also provide technical assistance if requested by the county board. When requested, the county board must pay for the technical assistance. (Ed. Code § 52071.5 (a), (c).)

<sup>22</sup> The county superintendent is required to develop the budget overview for parents starting in the 2019-2020 school year.

and convey real property; (2) to appoint outside counsel in limited situations, and (3) to retain specially trained person to provide special services and advice in the areas of finance, economics, accounting, engineering, law, or administrative matters. (Ed Code §§ 1040, 1042.)

Additional information regarding development of the county office budget can be found in Section IV on Development, Adoption, And Administration of the County Office of Education Budget.

### C. Accountability and Oversight of School Districts

Since the approval of AB 1200 in 1991, the oversight role of county superintendents over the fiscal and academic affairs of school districts has continued to expand.<sup>23</sup> County superintendents are now responsible for approving district LCAPs and budgets, and hiring a trustee and/or an administrator to run school districts that accept emergency loans from the state.

#### (1) Review and Approval of District LCAPs

On or before July 1 of each year, the governing board of each district must adopt a LCAP or annual LCAP update. (Ed. Code § 52060(a).) District LCAPs must be approved prior to the adoption of the budget. (Ed. Code § 42127 (a)(2)(A).) Within five days after adoption, the governing board of each district must file its LCAP or annual update with the county superintendent of schools. (Ed. Code § 52070 (a).) Before August 15, the county superintendent may in writing seek clarification from the district governing board regarding the content of the LCAP. The district governing board must respond to the county superintendent's request for clarification within 15 days of receipt. (Ed. Code § 52070 (b).) The superintendent may then within 15 days, provide recommended amendments to the district's LCAP which the board must consider at a public meeting within 15 days of receipt. (Ed. Code § 52070 (c).)

The county superintendent must approve or deny a district's LCAP or annual update on or before October 8 of each year. (Ed. Code § 52070(d).)<sup>24</sup>

The county superintendent reviews district LCAPs, or annual LCAP updates, for three criteria:

- a. whether the LCAP or annual update adheres to the template adopted by the SBE and follows any instructions or directions issued by the SBE (Ed. Code § 52070(d)(1));
- b. whether the district's budget for the applicable fiscal year includes expenditures sufficient to implement the LCAP's specific actions and strategies (Ed. Code § 52070 (d)(2)); and
- c. whether the LCAP or annual update adheres to the expenditure requirements adopted by the SBE for funds apportioned on the basis of the number and concentration of

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<sup>23</sup> The California Attorney General has opined that "[W]hile school districts have their own governing boards, 'county school superintendents also have an integral role in the operation of school districts'... In this connection as alluded to above, the county superintendent has significant authority 'to act as watchdog for each school district's fiscal affairs'...In a similar vein, the county superintendent of schools plays an important role in ensuring the accountability of instructional programs". (101 Ops. Cal. Atty. Gen. 56 (Aug. 23, 2018; *Polster v. Sacramento County Off. Of Ed.* (2009) 180 Cal. App. 4th 649, 659.) While opinions of the Attorney General are not controlling statements of law, they are generally given "great weight" by courts.

<sup>24</sup> For assistance in reviewing district LCAPs, please see CCSESA's Local Control and Accountability Plan (LCAP) Approval Manual.

unduplicated pupils, including funds used school-wide or district-wide (Ed. Code §§ 42238.07, 52070 (d)(3); 5 CCR 15494-15497.5.)

If all three criteria are met, the county superintendent shall approve the district's LCAP. (Ed. Code § 52070 (d).) If the criteria are not met and the LCAP is not approved, the county superintendent shall provide technical assistance focused on revising the district LCAP or LCAP update so it can be approved. (Ed. Code § 52071 (b).) Technical assistance must be provided by the county superintendent upon request by a district. (Ed. Code § 52071 (a).)

The county superintendent is required to provide individually designed technical assistance, known as "differentiated assistance," to any district in the county that has failed to improve pupil achievement across two or more state or local priorities or indicators for one or more numerically significant pupil subgroups identified in Education Code Section 52052. (Ed. Code §§ 52064.5 (g), 52071 (c).) Differentiated assistance may include, any of the following: (a) identify the district's strengths and weaknesses with regard to state priorities; (b) review student performance data on state and local indicators included in the California School Dashboard; (c) identify evidence-based programs or practices that address areas of weakness; (d) assign an academic expert or team to provide assistance and improve performance in areas of identified weakness; (e) request another district in the county to act as a partner with the district or (f) refer the district to the California Collaborative for Educational Excellence (CCEE). (Id.)

A county superintendent may request technical assistance from a county office established as a geographic lead agency. (Ed. Code §§ 52071 (d), 52073.) As part of the state system of support, several county offices have been established as geographic lead agencies to provide and coordinate providers of differentiated assistance to districts.<sup>25</sup> County offices have also been established as lead agencies to provide and coordinate assistance with special education, equity, English learners and community engagement.

The county superintendent is also required to: (1) prominently post all approved district and charter school LCAPs and approved LCAP updates on the county office of education website; (2) post all LCAPs, or links to the LCAPs, submitted by school districts and charter schools on the county office of education website; and (3) transmit all LCAPs submitted by school districts and charter schools to the SPI. (Ed. Code § 52065 (b).)

## (2) Plan to Support District Implementation of LCAPs

County superintendents, except those with jurisdiction over a single school district, shall at the same meeting during which the county board is scheduled to adopt the county office LCAP, present a summary to the county board detailing how he/she plans to support school districts and schools in implementing their LCAPs. (Ed. Code § 52066 (i) (1-3).) Per Education Code §52066, the plan shall include:

- a. A description of how the county superintendent will support the continuous improvement of all school districts within the county, including steps that the he or she plans to take to collaborate with CCEE, CDE, other county offices selected as geographic

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<sup>25</sup> In 2017-18, 228 districts qualified for differentiated assistance and in 2018-19, 374 districts qualified.

lead agencies, and any other county superintendents to support school districts and schools within the county in implementing their LCAPs.

- b. A description of how the county superintendent will assist each district identified for technical assistance in improving pupil outcomes, including at a minimum, a clear identification of the activities being performed by the county office and the source of funding for those activities. This description shall include the actions the district will take independent of the county superintendent to improve pupil outcomes.
- c. One or more goals for each of the following:
  - i. Completing the review of local control and accountability plans submitted by the districts.
  - ii. Providing technical assistance to school districts pursuant to Section 52071 (a)-(c).
  - iii. Providing any other support to school districts and schools within the county in implementing their LCAPs.
- d. One or more metrics to assess progress toward each goal identified in (c) above.
- e. Specific actions and related expenditures to achieve each goal identified in (c) above, to the extent such information is not already not provided in (b) above.<sup>26</sup>

### (3) Review and Approval of District's LCFF Budget Overview for Parents

Concurrently with the preparation and adoption of the LCAP, school districts must complete the LCFF budget overview for parents. (Education Code § 52064.1.) As described above in Section II B (2), like county offices, the budget overview must be completed on the template prepared by the SPI and approved by the district's governing board at the same time the LCAP is approved. (Ed. Code § 52064.1 (a)(2).) The budget overview is filed along with the LCAP with the county superintendent and approved if it "adheres to the template" adopted by the SPI. (Ed. Code § 52064.1 (c)(2)(A).) If a budget overview is not approved by the county superintendent, approval of the LCAP must be withheld as well and technical assistance must be provided to the district. (Ed. Code § 52064.1 (c)(2)(B).)

### (4) Review and Approval of District Budgets

After the district board approves its annual budget, the county superintendent is **required** per Education Code §§ 42127- 42127.3 to:

- a. Examine the adopted budget of the districts within his or her jurisdiction to determine whether it complies with the standards and criteria adopted by the SBE and to identify

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<sup>26</sup> It should be noted that specific actions to achieve each goal shall not supersede the provisions of existing district collective bargaining agreements.

any technical corrections that are necessary to bring the budget into compliance with such standards and criteria.<sup>27</sup> (Ed. Code § 42127 (c)(1).)

- b. Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments. (Ed. Code § 42127 (c)(2).)
- c. Review and consider, in addition to his/her own analysis, any studies, reports, evaluations, or audits of school districts that were commissioned by the district, the county superintendent, the SPI, or state control agencies of the school district, for evidence of fiscal distress (as defined by the state standards and criteria). (Ed. Code § 42127 (c)(2).)
- d. Consider when reviewing the budget, the findings of any external reviewer who finds more than 3 of the 15 most common Fiscal Crisis and Management Assistance Team (FCMAT) predictors present.<sup>28</sup> (Ed. Code § 42127 (c)(2).)
- e. Determine whether the adopted budget includes the expenditures necessary to implement the approved LCAP or approved annual LCAP update. (Ed. Code § 42127 (c)(3).)
- f. Approve, conditionally approve, or disapprove the adopted budget for each school district on or before September 15. (Ed. Code § 42127 (d).)
  - i. Disapprove a budget if it does not include the expenditures necessary to implement the LCAP or the annual LCAP update. (Ed. Code § 42127 (d).)
  - ii. Conditionally approve or disapprove a budget that does not provide adequate assurance that the district will meet its current and future obligations, and resolve any problems identified in the referenced studies, reports, evaluations, or audits. (Ed. Code § 42127 (c)(2), (d).)
- g. Transmit recommendations on or before September 15 regarding revision of the budget to the district's governing board if the budget is disapproved or conditionally approved. Recommendations must be in writing and must include the reasons for the recommendations, including the amount of budget adjustments needed before the budget can be approved. (Ed. Code § 42127 (d).)
  - i. The county superintendent may assign a fiscal adviser to assist a school district to develop a budget in compliance with the recommended revisions or appoint a committee to examine and comment on the recommendations by September 20. (Ed. Code § 42127 (d).)

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<sup>27</sup> Districts must file the adopted budget with the county superintendent within five days after adoption or by July 1, whichever occurs first. (Ed. Code § 42127 (a)(2)(A).) If the budget is not submitted by July 1, the county superintendent shall develop a budget at the district's expense. (Ed. Code § 42127 (d).)

<sup>28</sup> Based on the external reviewer's findings, the county superintendent must investigate and determine whether the district should receive a qualified or negative certification. (Ed. Code § 42127.6 (a)(1).)

- h. Review a disapproved or conditionally approved budget and the county superintendent's recommendations at a regularly scheduled meeting of the district board on or before October 8. (Ed. Code § 42127 (d)(3).)
- i. Approve or disapprove the revised budget by November 8 after determining whether it: (1) complies with the standards and criteria adopted by the SBE; (2) allows the district to meet its financial obligations during the school year; (3) satisfies all conditions established by the county superintendent in the case of a conditionally approved budget; and (4) satisfies its multiyear financial commitments. (Ed. Code § 42127 (f)(1).)
- j. Call for the formation of a budget committee when a budget has been disapproved, except in the instance where the budget has been disapproved because the district's LCAP has not been approved by the county superintendent.<sup>29</sup> (Ed. Code § 42127 (f)(1), (2).) If the budget committee formed by the district recommends approval on or before November 30, the county superintendent must accept the recommendation and approve the budget. (Ed. Code § 42127.3 (a).) If the budget committee recommends to the SPI disapproval by the November 30 deadline, the district's governing board has up to five business days to respond to the recommendation. (Ed. Code § 42127.3 (b).) If the SPI disapproves the budget, the county superintendent must, until he or she certifies the district's first interim report, act to implement any of the options listed in Education Code 42127.3, including adopting a fiscal "stabilization" plan that will allow the district to both meet its financial obligations in the budget year and its multiyear financial commitments. (Id.)
  - i. The requirement to form a budget committee may be waived upon agreement by the district, the county superintendent and CDE. If waived, the county superintendent assumes the responsibilities of the budget committee and CDE shall ensure that a balanced budget is adopted by the district's governing board by December 31. If a budget is not adopted by December 31, the SPI may adopt the district's budget. (Ed. Code § 42127 (f)(1).)
- k. Provide to the SPI by October 22 a list that identifies all school districts for which the budget may be disapproved. (Ed. Code § 42127 (e).)
- l. Submit to the SPI no later than November 8 a report identifying the districts with disapproved budgets or with budget review committees that have been waived. (Ed. Code § 42127 (g).)

(5) Audit of District Budgets

County superintendents per Education Code 1241.5 **may**:

- a. Audit at any time during the fiscal year, in a timely and efficient manner, the expenditures and internal controls of the school districts he or she determines to be

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<sup>29</sup> Instead of a three-member budget committee selected by the district, the county superintendent may instead choose to select and convene a regional review committee. The substitution of the budget committee with a regional review committee must be approved by the district's governing board and the SPI. (Ed. Code § 42127.1 (c).)

fiscally accountable. The county superintendent shall report the findings and make any recommendation to the district board within 45 days after receiving the report and the district board must notify the county superintendent within 15 days of the receipt of the report of its proposed actions to be taken based on the recommendations. Following the review of the district's proposed action, the county superintendent may revoke the district's fiscal accountability status. (Ed. Code § 1241.5 (a).)

- b. Review or audit at any time during the fiscal year, the expenditures and internal controls of school districts in his or her county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. (Ed. Code § 1241.5 (b).) County superintendents are required to focus such reviews or audits on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and to conduct such reviews or audits in a timely and efficient manner. (Id.) The county superintendent shall report to the district board at a regularly scheduled meeting, the audit findings and recommendations and shall provide a copy to the district board within 45 days of completing of the review, audit or examination. Within 15 days of receiving the report, the governing board shall notify the county superintendent of its proposed response to the recommendations. (Id.) If the county superintendent determines that there is evidence that fraud or misappropriation has occurred, he or she shall notify the district board, the State Controller, the SPI, and the local district attorney. (Ed. Code §§ 1241.5 (b), 42638 (b).)
- c. Review or audit at any time during the fiscal year, the expenditures and internal controls of any charter school in the county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. (Ed. Code § 1241.5 (c).) County superintendents are required to focus such reviews or audits on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and to conduct such reviews or audits in a timely and efficient manner. (Id.) The superintendent shall report to the charter governing board at a regularly scheduled meeting the findings and recommendations and shall provide a copy to the charter authorizer within 45 days of completing of the review, audit or examination. Within 15 days of receiving the report, the charter governing board shall notify the county superintendent and its charter authorizer of its proposed response to the recommendations. (Id.)

#### (6) Districts under Fiscal Distress - Qualified and Negative Certifications

School districts are considered to be under fiscal distress when a district's financial condition fits the standards and criteria in Education Code section 33127 based on studies, evaluations, audits or reports reviewed by the county superintendent, or a finding by an external reviewer such as by the County Office Fiscal Crisis and Management Assistance Team (FCMAT), that the district is in need of intervention. When such a finding is made, the county superintendent must investigate whether the district should receive a qualified or negative certification. (Ed. Code §§ 42127.6 (a)(1), 42131.)

The investigation of a district's finances may also be generated by the filing of the interim reports with the county superintendent. Following review, the county superintendent may change the district's certification to either qualified or negative. Notice of any change shall be given to the governing board who may appeal the new certification to the SPI. (Ed. Code § 42131 (a)(2)(A).)

For districts under fiscal distress, county superintendents are **required** per Education Code 42127.6 to do the following:

- a. Report to the SPI on the financial condition of any school district within the county that may be unable to meet its financial obligations for the current or two subsequent fiscal years, or any district that has been certified as qualified or negative. The county superintendent must also notify the district of the basis and assumptions used in making the determination. (Ed. Code § 42127.6 (a)(1).) This action may be appealed to the SPI.<sup>30</sup>
- b. Report his or her proposed remedial actions to the SPI and take all actions necessary per Education Code § 42127.6, including taking at least one of the following actions listed below, to ensure that the district meets its financial obligations:
  - i. Assign a fiscal expert, paid for by the county superintendent, to advise the district on its financial problems.
  - ii. Conduct a study of the financial and budgetary conditions of the district including a review of its internal controls.
  - iii. Direct the district to submit a financial projection of all fund and cash balances as of June 30 of the current year and subsequent fiscal years as he or she requires.
  - iv. Require the district to encumber all contracts and other obligations, prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and appropriately record all receivable and payables.
  - v. Direct the district to submit a proposal to address the fiscal conditions that resulted in the determination that the district may not be able to meet its financial obligations.
  - vi. Withhold compensation from members of the governing board and the district superintendent for failure to provide requested financial information. This action may be appealed to the SPI.<sup>31</sup>
  - vii. Assign FCMAT to review issues related to employment of teachers and provide the district with recommendations which must be followed unless the district can show good cause for not doing so. (Ed. Code § 42127.6 (a)(1)(A-G).)
- c. Determine whether, after taking any of the actions identified in i-vii above, the district will be able to meet its financial obligations for the current or subsequent fiscal years. If he or she determines that the district will be unable to meet its financial obligation, then he or she must notify in writing the governing board of the district, the SBE President or designee, and the SPI of the basis for the determination and must provide the

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<sup>30</sup> Within five days of making the determination, the district may appeal to the SPI the basis for the determination by the county superintendent as well as appeal any of the proposed actions that the county superintendent has indicated he or she may take to further examine the financial condition of the district. The SPI shall sustain or deny any or all parts of the appeal within 10 days. (Ed. Code 42127.6 (d).)

<sup>31</sup> A district may appeal the county superintendent's decision to withhold salary and stipend payments using the same procedure to appeal a determination of fiscal insolvency.

assumptions used in making the determination that the district will be unable to meet its financial obligations. (Ed. Code § 42127.6 (c). Within five days of making the determination, the district may appeal to the SPI who shall sustain or deny the appeal within 10 days. (Ed. Code § 42127.6 (d).)

- i. If the district governing board appeals to the SPI, the county superintendent may, until the appeal is resolved, stay any action of the governing board that he or she determines may be inconsistent with the district meeting its financial obligations for the current or subsequent fiscal year. (Id.)
- d. Consult with the SPI when an appeal is denied, an appeal is not filed, or the district has a negative certification to take at least one of the following actions and any other actions that are necessary to ensure that the district meets its financial obligations. (Ed Code § 42127.6 (e).)
  - i. Develop and impose, in consultation with the SPI and the district board, a budget revision that will enable the district to meet its financial obligations in the current fiscal year.<sup>32</sup>
  - ii. Stay or rescind any action that is determined to be inconsistent with the ability of the school district to meet its obligations for the current or subsequent fiscal year.<sup>33</sup> This includes any actions up to the point that the subsequent year's budget is approved by the county superintendent. The county superintendent shall inform the district board in writing of his or her justification for any action to stay and rescind an action taken by the district.
  - iii. Assist in developing, in consultation with the district's governing board, a financial stabilization plan that will enable the district to meet its future obligations.
  - iv. Assist in developing, in consultation with the district's governing board, a budget for the subsequent fiscal year. If necessary, the county superintendent shall continue to work with the governing board until the budget for the subsequent year is adopted.
  - v. As necessary, appoint a fiscal adviser to perform any or all of the duties required of the county superintendent as described in Education Code § 42127.6 (e).
- e. Provide a report on the financial condition of the district and the remedial actions proposed by the county superintendent to the SPI and the SBE President or his or her designee. (Id.)

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<sup>32</sup> Any budget revision or any action taken by the county superintendent to stay and rescind an action by the district shall be accompanied by a notice to the district board listing the reasons for the actions taken and a description of the assumptions used to support the necessity for the actions taken. (Ed. Code § 42127.6 (f).)

<sup>33</sup> The authority to stay and rescind does not authorize the county superintendent to abrogate any provision of a collective bargaining agreement that was entered into before he or she assumed authority per Education Code § 42127.6 (e). (Ed. Code § 42127.6 (g).)

- f. Reimburse the SPI for all costs if the SPI assumes the fiscal oversight responsibilities of the county superintendent based on a finding by the SPI that the actions of the county superintendent are not effective in resolving the financial problems of a school district.<sup>34</sup>

County superintendents are **required** per Government Code § 3540.2 to:

- a. Review and comment on any proposed collective bargaining agreement of a qualified or negative certified district to determine if the agreement would endanger the fiscal well-being of the district.<sup>35</sup> The county superintendent shall notify the district, the county board, the district superintendent and governing board, and each parent and teacher organization of the district, of his or her opinion within 10 days of reviewing the collective bargaining agreement. (Gov. Code § 3540.2 (a), (c).)
- b. The county superintendent shall issue a qualified or negative certification for the district on the next interim report if the district does not adopt all of the revisions needed to meet the costs of a collective bargaining agreement. (Gov. Code § 3547.5 (c).)

#### (7) Emergency Loans to Districts

When a district lacks the necessary cash to pay its bills, it may request an emergency loan from the state. (Ed. Code § 41320.) Before a loan can be issued, the county superintendent in which the district is located is **required** to do the following:

- a. Review and provide written comment on the following: (1) the independent audit report on the financial conditions and budgetary controls of the school district; (2) the management review conducted by a qualified management consultant; and (3) the fiscal plan adopted by the district board to resolve the financial problems of the district. The county superintendent shall submit copies of these reports and his or her comments to the SPI, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the Director of Finance, the SBE president or his or her designee, and the Controller. (Ed. Code § 41320 (a-c).)
- b. Certify to the Director of Finance that the action taken to correct the financial problems of the school district is realistic and will result in placing the school district on a sound financial basis. (Ed. Code § 41320 (e).)
- c. Review and comment on the repayment schedule developed by the district and submit it to the SPI for approval or disapproval. (Ed. Code § 41320 (f).)

Once a district accepts an emergency loan from state, the country superintendent is **required** do the following:

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<sup>34</sup> If the SPI decides to exercise the fiscal oversight duties of the county superintendent, the county superintendent shall be relieved of those duties. Following a request by the SPI, FCMAT shall identify the circumstances that led to the “ineffectiveness” of the county superintendent to resolve the financial problems of the district. The county office shall remediate those deficiencies in a manner determined by the SPI. (Ed. Code § 42127.6 (k).)

<sup>35</sup> Districts with positive certifications must within 45 days forward to the county superintendent any new collective bargaining agreement if any revisions to the current year’s budget are necessary to fulfill the terms of the agreement. (Ed. Code § 42142.)

- a. Appoint a trustee to help the district board restore fiscal stability to the district. The trustee shall be chosen from a pool of candidates identified and vetted by FCMAT and shall be appointed by the county superintendent, the SPI, and SBE president or his/her designee, by a majority vote. (Ed. Code § 41320.1 (a).)
- b. Establish the terms and conditions, including remuneration, of the trustee and any necessary staff, with concurrence from both the SPI and the SBE president or his or her designee.<sup>36</sup> The county superintendent shall provide regular updates to the SPI and the SBE president or his or her designee, regarding the work of the trustee. (Ed. Code § 41320.1 (a)(2).)
- c. Notify the Legislature, the Department of Finance, and the Controller no less than 60 days before the time that the county superintendent of schools expects that the county superintendent, the SPI, and the SBE president or his or her designee, will decide to terminate the trustee's appointment. (Ed. Code § 41320.1 (a)(3).)
- d. Determine whether the district's fiscal systems are adequate. This determination shall be based on an independent audit conducted before the emergency loan is paid off. If the fiscal systems are deemed to be inadequate, the county superintendent of schools, with concurrence from both the Superintendent and the president of the state board or his or her designee, may retain the trustee until the deficiencies are corrected. (Ed. Code § 41320.1 (a)(4).)
- e. Meet with the auditor, FCMAT, the SPI, the district superintendent, or their respective designees, before the annual audit of the district's books and accounts to discuss the terms of the audit and the timeline under which it will proceed. (Ed. Code § 41320.1(e).)
- f. Help determine whether the district is financially solvent. This determination shall be based on an audit of district's books and accounts, in lieu of the audit required by Section 41020, and shall be made by the Controller in consultation with the county superintendent and the SPI. (Ed. Code § 41320.1 (e).)

In addition, the county superintendent may:

- a. Employ, on a short-term basis, staff necessary to assist the trustee, including, but not limited to, certified public accountants. (Ed. Code § 41320.1 (a).)
- b. Establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the school district, with concurrence from the SPI. If the county superintendent determines, at any time, that the fiscal plan approved for the school district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, with concurrence from the SPI, and the school district shall comply with the plan as modified. (Ed. Code § 41320.1 (c)(4).)

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<sup>36</sup> The trustee shall report directly to the county superintendent of schools. (Ed. Code § 41320.1 (a)(2).)

- c. Request, with approval from the SPI, that the Controller transfer a portion of the district's apportionment to CDE to pay the expenses incurred by the trustee and associated costs incurred by the county superintendent. (Ed. Code § 41320.1 (d).)

The trustee, and necessary staff, shall serve until the district has adequate fiscal systems and controls in place, the SPI has determined that the district's future compliance with the fiscal plan is probable, and the county superintendent, the SPI, and the SBE president or his or her designee, decide to terminate the trustee's appointment. In no event shall the trustee serve for less than three years. (Ed. Code § 41320.1 (a)(3).)

After the appointed trustee's period of service ends, and until the loan is repaid, a county superintendent that has jurisdiction over a district in fiscal distress may stay or rescind an action of the district board that, in his or her judgment, may affect the financial condition of the district. (Ed. Code § 41320.1 (c)(2).) The county superintendent shall notify the SPI and the SBE President or his or her designee, within five business days, if he or she stays or rescinds an action of the district board. The notice shall include, but not be limited to, a description of the district board's intended action and its financial implications, and the rationale and findings that support the county superintendent's decision to stay or rescind the action. (Id.) If the county superintendent stays or rescinds an action of the district board, he or she shall report to the Legislature on or before December 30 of every year, whether the district is complying with the fiscal plan approved for the school district. (Ed. Code § 41320.1 (c)(3).)

When a district accepts an emergency loan that exceeds 200 percent of the district's recommended reserve, the county superintendent has additional duties and responsibilities. In these circumstances, the county superintendent is **required** to:

- a. Assume control of the district, under the supervision of the SPI, to ensure the district's return to fiscal solvency. (Ed. Code § 41325 (a).)<sup>37</sup>
- b. Assume all legal rights, duties and powers of the governing board. (Ed. Code § 41326 (b).)
- c. Appoint an administrator with concurrence from the SPI and SBE president or his/her designee. The administrator shall be chosen from a pool of candidates identified and vetted by FCMAT. (Id.)
- d. Direct and supervise the administrator, with concurrence from the SPI and SBE president or his or her designee. (Ed. Code § 41326 (b)(1).)
- e. Establish the salary and benefits of the administrator, with concurrence from the SPI and SBE president and his or her designee, to be paid by the district. (Ed. Code § 41326 (b)(8).)
- f. Review and approve, with concurrence from the SPI, all required reports or plans. (Ed. Code § 41327 (b).)

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<sup>37</sup> AB 1824 changed the oversight and control over school districts in fiscal distress from the SPI to the county superintendent. (Amended by AB 1824 (Chapter 426, Statutes of 2018).) For a critique of the Legislature's action please see "Analyzing Recent Changes to State Support for Fiscally Distressed Districts" prepared by the Legislative Analyst, December 2018.

- g. Determine, in consultation with FCMAT, the SPI, and the SBE president or his or her designee, based upon the school district's particular needs and circumstances, the level of improvement needed to the district's professional and legal standards before local authority will be returned to the district. (Ed. Code § 41327.1 (c).)
- h. Submit a report to the SPI, to the appropriate fiscal and policy committees of the legislature, and to the Director of Finance, after reviewing an emergency loan district's budget and interim reports. The report shall document the fiscal and administrative status of an emergency loan district and disclose whether the revenue streams to the district appear to be consistent with its expenditure plan. (Ed. Code § 41327.2 (b).)
- i. Notify the Legislature, the Department of Finance, the Controller, the SPI, and the SBE president or his or her designee, no less than 60 days before the time that the county superintendent of schools expects that conditions for restoration of authority have been met.<sup>38</sup> (Ed. Code § 41326 (g).)
- j. Appoint a trustee, with the concurrence of the SPI and the SBE president or his or her designee, after the county superintendent determines that the condition for restoration of authority have been met. (Ed. Code §§ 41320.1, 41326 (g).)

When a district has accepted an emergency loan that exceeds 200 percent of the district's recommended reserve, the county superintendent **may** also:

- a. Employ, on a short-term basis, any staff necessary to assist the administrator, including, but not limited to, a certified public accountant. (Ed. Code § 41326 (b)(3).)
- b. Grant the administrator the authority to enter into an agreement on behalf of the district and, subject to any contractual obligation of the district, change existing district rules, regulations, policies, or practices as necessary for the effective implementation of the recovery plans. (Ed. Code § 41327 (c).)

If a district that has accepted an emergency loan exceeding 200 percent of the district's recommended reserve violates a provision of the approved recovery plans within five years after the trustee is removed or the emergency loan is repaid, whichever occurs later, or violates the improvement plan specified in Section 41327.1 during the period of the trustee's appointment, the county superintendent, with concurrence from the SPI and the SBE president or his or her designee, may reassume, either directly or through an administrator appointed as described above, all of the legal rights, duties, and powers of the district board. (Ed. Code § 41326 (h).) The county superintendent, with concurrence from both the SPI and the SBE president or his or her designee, shall return to the district board all of its legal rights, duties, and powers when he or she determines that future compliance with the approved recovery plans is probable, or after a period of one year, whichever occurs later. (Id.)

The appointment of an administrator does not remove any statutory rights, duties, or obligations from the county superintendent. (Ed. Code § 41327.2 (a).)

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<sup>38</sup> See Ed. Code § 41326 (f) for a list of the conditions that must all be met before authority can be restored to the district.

After the county superintendent assumes control over a district that has accepted an emergency loan exceeding 200 percent of the district's recommended reserve, FCMAT is required to review a county superintendent's fiscal oversight of the qualifying school district. (Ed. Code § 41326 (l).) In doing so, FCMAT may consult with other county superintendents and regional fiscal teams. FCMAT shall report his or her findings to the Legislature and the Department of Finance within three months. If FCMAT determines that the county superintendent failed to carry out his or her responsibilities for fiscal oversight, the SPI with the concurrence of the SBE president or designee, may exercise the oversight authority instead of the county superintendent for the emergency loan district.<sup>39</sup> Also, if the SPI finds that the county superintendent failed to take into account indicators of fiscal distress, the SPI shall further investigate whether the county superintendent also failed to take those indicators into account in any other district with a negative or qualified certifications.

#### **D. Management And Monitoring Of Personnel**

The contrasting roles of county boards of education and district boards are highlighted in the area of personnel management, i.e. hiring, discipline, termination, and collective bargaining. Because the county superintendent is the employer charged with the responsibility of managing the personnel of the county office of education, the county board may not meet in closed session under either the "personnel exception" or the "labor negotiations exception" of the Brown Act.<sup>40</sup> (See, 72 Ops. Cal. Atty. Gen. 25, March 9, 1989.) The county superintendent is responsible for making staffing determinations, including setting of salary and the need for current and new staff positions.

In limited circumstances, county boards have the authority to contract with or employ persons to provide special services to the board, such as legal, financial, engineering, administrative, and economic services. Because the county board is the employer in this situation, it has the authority to set the employee's salary.<sup>41</sup> (Ed. Code § 1042.)

Employees of the county superintendent who staff the county office are of two types: certificated and classified. Certificated employees are those that are required by state law to have a certificate (i.e. credential) issued by the state in order to perform their functions, and classified employees are all other employees. Employees of county schools are covered by the same collective bargaining laws which cover employees of school districts; however, it is the county superintendent, not the county board, who possesses the control over employment conditions and is the employer who negotiates with the unions. (Southern Alameda County Teachers Association, PERB Dec. No. 323 (1983).)

#### **(1) Hiring Staff**

##### **a. Certificated Staff**

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<sup>39</sup> The SPI and the SBE president or designee shall require the county superintendent to remediate the deficiencies identified in the FCMAT report. (Ed. Code § 41326 (l)(4).)

<sup>40</sup> A 2002 Attorney General opinion states that a county board of education may not meet in closed session to consider the appointment, employment, salaries, fringe benefits, evaluation of performance, discipline, or dismissal of certificated or classified employees of county offices of education because county school employees are employed by the county superintendent, not by the county board of education. (See, 85 Ops. Cal. Atty. Gen. 77, April 19, 2002.) While opinions of the Attorney General are not controlling statements of law, they are generally given "great weight" by courts in determining the meaning of statutes.

<sup>41</sup> See section on "General Duties" of county boards.

Numerous statutory references confirm that it is the superintendent, not the county board that is the employer of certificated staff within the county office of education. Education Code Sections 1293 and 1294 grant to the county superintendent the right to employ certificated employees. The right to employ such persons in categorical programs is found in Education Code Section 1294.5.

The superintendent is authorized to provide services to local school districts in a number of program areas, with the approval of the county board. (For example, Ed. Code §§ 1703, 1730, 1740, 1750.) Once the county board grants general approval in these program areas, the county superintendent retains sole authority to hire staff within budgetary constraints.

#### b. Classified Staff

Education Code Section 1311 specifies that classified employees that are employed by the county superintendent are to be employed in accordance with specified code sections applicable to K-12 and community college classified employees. Education Code Section 1311 identifies the county superintendent as the employer. The state attorney general published an opinion stating that this activity vests the responsibility for hiring, and other personnel matters, in the hands of the county superintendent, not the county board. (See, 72 Ops. Cal. Atty. Gen. 25, March 9, 1989.)

#### (2) Setting Employee Salary

The county superintendent has the authority to set the salaries and benefits of all categories of employees, subject to the obligation to bargain with exclusive representatives of certain categories of employees. However, the county superintendent may not increase the salary or provide a bonus of any county office of education employee by \$10,000 or more unless the matter is brought to the attention of the county board for discussion at a regularly scheduled meeting. (Ed. Code § 1302 (a).) In addition, the county superintendent may not increase the retirement benefits of any county office employee unless the matter is brought to the attention of the county board for discussion and approval at a regularly scheduled meeting. (Id. at § 1302 (b).)

The salary of the superintendent is set by the county board, subject to certain legal and statutory limitations.<sup>42</sup>

#### (3) Discipline, Dismissal, Layoffs, Evaluations, and Leaves

Personnel decisions regarding discipline, dismissal, layoff, evaluation, and leave for certificated employees are within the purview of the county superintendent, subject to any bargaining obligation that may exist. An exception to this rule is sabbatical leave for certificated employees, which requires board approval. (Ed. Code § 1294.)

Unlike district employees, certificated employees of county superintendents must be in a “teaching position” (i.e. classroom instruction) to acquire permanency. (Ed. Code § 1296 (b); *Neumarkel v. Allard*, 163 Cal.App.3d 457 (1985).) The court in *Neumarkel* explained that this distinction is due, in part, to the Legislature’s recognition that the county superintendent is a separate legal entity performing a transitory function to meet the specific and limited needs of school districts. As a result, the Legislature also recognized county superintendents’ need to minimize the number of employees who enjoy tenure

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<sup>42</sup> See section IIIA on “General Duties” of county boards.

and tenure-related benefits. The certificated bargaining agreement or a county superintendent policy should identify the “teaching positions” that are subject to tenure benefits.

Discipline and dismissal of classified employees is also within the power of the county superintendent, subject to rules and procedures promulgated by a personnel commission (if there is one within the office), collective bargaining agreements, and state law. The county superintendent is in charge of evaluation and layoffs, subject to any collective bargaining agreement.

Education Code Section 1295 delegates the power to grant leave to classified employees to the county superintendent of schools, “with the approval of the county board of education.” However, employee leave is a mandatory subject of collective bargaining, which is the responsibility of the superintendent as employer.<sup>43</sup>

#### (4) Credential Monitoring

County superintendents are the credential monitoring authority for school districts in their county and for the programs operated by the county office: (Ed. Code § 44258.9 (b)(3)(A).)<sup>44</sup>

The CTC shall annually notify the county superintendent of the opportunity to access the database containing potential misassignments and vacancies in the local school districts and in county office programs. (Ed. Code § 44258.9 (e)(1).) For county office programs, the County Superintendent shall respond to the CTC notice within 60 days. (Ed. Code § 44258.9 (e)(2).) For school districts in the county, the County Superintendent shall within 90 days of the notification, make a determination of the number of potential misassignments and vacancies identified by the CTC. (Ed. Code § 44258.9 (e)(4).) The CTC has the authority to make the final determination on all potential misassignments. (Ed. Code 44258.9 (e)(6).)

In the event of a misassignment, county superintendents are required to notify, through the district superintendent, any certificated school administrator responsible for the misassignment and advise him or her to correct the assignment within 30 days (Ed. Code § 44258.9 (e)(9).)

District employees who have been required to accept an unauthorized assignment, after exhausting all local remedies, shall notify the district superintendent in writing of the illegal assignment. If no action is taken, the employee shall notify the county superintendent. The county superintendent shall advise the employee within 15 working days of the legality of the assignment. (Ed. Code § 44258.9 (g).)

At the direction of the CTC, county boards are authorized to conduct hearings, report findings, summarize the evidence, and recommend to the state the revocation or suspension of a credential of a credential holder who is serving or who last served in the county. (Ed. Code § 44422.) However,

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<sup>43</sup> “The problem posed by county board authority in regard to leaves is that the superintendent alone is empowered to negotiate leave provisions in collective bargaining. I conclude that the only way to harmonize the board’s power with bargained leave policies is to permit the board to grant or deny those leave requests which are left to the employer’s discretion under the contract. Thus, if the superintendent is empowered, but not required to grant a leave, the board may give or withhold approval of a leave the superintendent has decided to grant. The board may not grant a leave which the superintendent has decided to deny.” (Memorandum from Frank J. Fekete, Attorney at Law, to Sonoma County Superintendent of Schools, October 30, 1987 - quoted by permission.)

<sup>44</sup> The CTC is required to monitor the credentials of certificated employees in single/single county offices. (Ed. Code § 44258.9 (b)(3)(B); See Appendix B.)

county boards do not have authority to revoke licenses to teach in that county of school teachers, administrators, and other certificated employees employed by the school districts of the county or by the county superintendent. (67 Ops. Cal. Atty. Gen. 218, May 30, 1984.)

#### (5) Collective Bargaining

As discussed above, both the Attorney General and the state Public Employment Relations Board (Alameda County Board of Education, PERB Order No. 323, June 30, 1983) have determined that the county superintendent is the sole employer. The conclusion to be drawn from this is that the county superintendent of schools is the sole employer for collective bargaining purposes. As such, the county superintendent shall sunshine bargaining proposals, publicly disclose major provisions of tentative agreements, and certify, along with the chief business officer, that the projected costs to the county office during the term of the agreement will be met. (Gov. Code §§ 3547, 3547.5.) Agreements between the county superintendent and employee unions are binding contracts and any action that interferes with their performance may constitute an unfair labor practice.

#### (6) Other Personnel Functions

The county superintendent is required to appoint a teacher and open and keep a school if there is sufficient money in a school district's funds to maintain a free school for 175 days of actual teaching if the trustees of the district neglect or refuse to employ a teacher. (Ed. Code § 1256.)

### **E. Oversight of Charter Schools**

County superintendents have authority to monitor and investigate the operations of any charter school located within his or her county based upon written complaints by parents or other information that justifies the investigation. (Ed. Code § 47604.4.) In addition, county superintendents have authority to review or audit the expenditures and internal controls of any charter school in his or her county, in a timely manner, if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. (Ed. Code § 1241.5 (c).) The county superintendent must report the findings and recommendations to the governing board of the charter school and provide a copy of the information to the chartering agency within 45 days.

Education Code Section 47604.3 provides county offices of education with general authority to request information from charter schools. Charter schools must promptly respond to all "reasonable inquiries" including but not limited to, inquiries regarding financial records. For example, a county office may make a "reasonable" request for credential information from charter schools located in the county under this general authority. Education Code Section 47605 (l) specifies that the authorizing entity, not the county superintendent, is responsible for monitoring teacher credentials. Thus, the county office is only responsible for monitoring credential information when the county office is the charter authorizer.<sup>45</sup>

Education Code Section 47652 requires the county office of education, along with the charter authorizer, to approve the estimated average daily attendance (ADA) for all new charter schools

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<sup>45</sup> Because of the "mega-waiver" provision in Education Code § 47610, charter schools operate outside of most of the statutory requirements established in the Education Code for districts and county offices.

authorized by a district in the county so the charter school can receive its advanced apportionment. (Ed. Code § 47652.)

Significant reforms in 2019 of the charter petitioning and appeals process, as well of the location of charter schools outside of their authorizer’s boundaries, have placed more responsibility on the charter authorizer to monitor the location and operations of charter schools.<sup>46</sup>because county superintendents are responsible for “superintending all the schools in the county,” it is important that county superintendents know the authorizer, operator, and location of all classroom-based and non-classroom based charter schools located in their county.

#### **F. Miscellaneous Duties of the County Superintendent**

In addition to the duties listed above, the county superintendent of schools is **required** to:

- (1) Inquire and ascertain whether the boundaries of the school districts and community college districts in his or her county are definitely and plainly described in the records of the county board of supervisors, and to keep a full and correct transcript of the boundaries in his or her office. (Ed. Code § 2600.)
- (2) By July 15 of each year, submit a complete report to the SPI of the attendance credited to public schools in the county for the school year ending June 30. (Ed. Code § 1244.)
- (3) Review all schools in the county receiving Quality Education Investment Act (QEIA) funding to determine whether the school has met all of the QEIA program requirements by the end of the third full year of funding. (Ed. Code § 52055.740.)
- (4) Publish notice of the date, time and location of the district’s board meeting to adopt the proposed budget and where it may be inspected. (Ed. Code § 42103 (d).)
- (5) Accept district trustee and county board member resignations. (Ed. Code §§ 1008, 5090.)
- (6) Call district trustee and county board member elections including elections to fill vacancies. (Ed. Code §§ 5091, 5302.)
- (7) Review and approve emergency contracts approved by district boards that were not subject to the public bidding process. (Pub. Cont. Code § 20113.)
- (8) Review and comment on all district, non-voter approved debt, such as certificates of participation. (Ed. Code § 17150.1.)
- (9) Adopt and update a conflict of interest code for county office employees and designated consultants of the county office. (Gov. Code § 87300.)
- (10) Consider a waiver request submitted by a district subject to the 10% cap on general fund reserves in any year where the reserve cap is triggered. (Ed. Code § 42127.01 (b).)<sup>47</sup>

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<sup>46</sup> SB 126 (Chapter 3, Statutes of 2019, AB 1505 (Chapter 486, Statutes of 2019), AB 1507 (Chapter 487, Statutes of 2019).

<sup>47</sup> School districts subject to the reserve cap limit are non-basic aid districts with more than 2500 ADA.

### III. DUTIES OF COUNTY BOARDS OF EDUCATION

#### A. General Duties

The general duties of the county board of education are set forth in several sections of the Education Code.

Education Code Section 1040 **requires** the county board of education to do all of the following:

- (1) Adopt rules and regulations not inconsistent with the laws of this state, for their own government.
- (2) Keep a record of their proceedings.
- (3) Approve the annual budget of the county superintendent of schools before its submission to the county board of supervisors.<sup>48</sup>
- (4) Approve the annual county school service fund budget of the county superintendent of schools before its submission to the SPI.
- (5) Review the report of the annual audit provided for the county superintendent of schools under Education Code Section 41020. The report shall be reviewed at a regularly scheduled public meeting.

County boards of education are also required to “fix the salary of the county superintendent of schools.” (Cal. Const. art. IX, § 3.1(b).) This duty is subject to certain legal and statutory limitations<sup>49</sup>, including the stipulation that: (1) “In no case will the salary of the county superintendent be lowered during his term of office”; and (2) “the salary of an incumbent [county superintendent] shall not be reduced during the term for to which he was elected or appointed or for any consecutive new term to which he is elected or appointed.” (Ed. Code § 1207.)<sup>50</sup> In no instance may a county superintendent independently increase or decrease his or her salary or benefits. (Ed. Code § 1209.)

In addition, Education Code Section 1042 **permits** county boards of education to take action to do the following:

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<sup>48</sup> As discussed in Section IV, only the three fiscally dependent counties are required to submit the annual budget to the county board of supervisors.

<sup>49</sup> For example, there is no provision in state law which authorizes a county board to supervise or conduct a performance evaluation of an elected county superintendent.

<sup>50</sup> The California Attorney General has opined that notwithstanding Education Code § 1207, the county board is vested with “plenary” power over fixing a county superintendent’s salary. In 1978, the Attorney General issued an opinion stating that county boards may not decrease a county superintendent’s salary retroactively and thus deprive the superintendent for past services rendered. (61 Ops. Cal. Atty. Gen. 384, August 24, 1978.) In 1979, the Attorney General issued another opinion stating that county boards have authority to decrease the salary of a county superintendent of schools after the election for the term for which the superintendent was elected but before he or she takes office. (62 Ops. Cal. Atty. Gen. 356, July 11, 1979.) While opinions of the Attorney General are not controlling statements of law, they are generally given “great weight” by courts in determining the meaning of statutes.

- (1) Adopt rules and regulations governing the administration of the office of the county superintendent of schools.
- (2) Review in fiscally dependent counties the county superintendent's annual itemized estimate of anticipated revenue and expenditures and make revisions, reductions, or additions in the annual itemized estimate that the board deems advisable or proper before it is filed with the county auditor, as required by Government Code Section 29040, and approved by the county board of supervisors.<sup>51</sup>
- (3) Acquire, lease, lease-purchase, hold and convey real property for the purpose of housing the office and the services of the county superintendent of schools.<sup>52</sup>
- (4) Contract with and employ any persons to provide the board with special services and advice in the areas of finance, economics, accounting, engineering, law, or administrative matters if the persons hired are specially trained, experienced and competent to perform the special services required.
- (5) Fill by appointment a vacancy that occurs during the term of an elected county superintendent.

With respect to legal counsel, a county board may not appoint outside counsel, in addition to in-house counsel hired by the county superintendent, to provide unrestricted, independent advice to the board.<sup>53</sup> However, a county board may contract with outside counsel to provide advice directly to the board when the following circumstances exist:

- a. In-house counsel has a conflict of interest;
- b. In-house counsel has failed to render timely advice in a particular matter;
- c. The services being sought are in addition to those usually, ordinarily, and regularly obtained from in-house counsel; and
- d. The county board desires a second legal opinion from that provided by in-house counsel in a particular matter.<sup>54</sup>

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<sup>51</sup> Government Code § 29040 requires all "budget units" of county government to provide an annual itemized estimate to the county auditor. A fiscally independent county office of education is not a budget unit of county government; therefore, fiscally independent county offices are not required to submit an annual itemized estimate to the county auditor.

<sup>52</sup> This power only vests in those county boards of education that have been granted fiscal independence by the county board of supervisors.

<sup>53</sup> Education Code § 35041.5 provides that the county superintendent and county board appoint the "same legal counsel". Any inability of the county superintendent and the county board to agree on the same legal counsel does not limit the authority of the county superintendent to hire legal counsel to advise the county superintendent on matters he/she deems necessary.

<sup>54</sup> See 86 Ops. Cal. Atty. Gen. 57, April 25, 2003. While opinions of the Attorney General are not controlling statements of law, they are generally given "great weight" by courts in determining the meaning of statutes.

## B. Expulsion Appeals

Pupils who are expelled by a local school district governing board may appeal the expulsion to the county board of education. (Ed. Code § 48919.) The county board is required to hold a hearing within 20 school days and render a decision within three schooldays of holding the hearing. (Id.) The hearing must be conducted in closed session unless the student requests in writing that the hearing be conducted in public session. (Ed. Code § 48920). Regardless of whether the hearing is conducted in closed or public session, the county board may meet in closed session for the purpose of deliberations. (Ed. Code § 48920.)<sup>55</sup>

Education Code Section 48922 sets forth the limited scope of review of the county board in expulsion appeals hearings:

- (1) whether the school district board acted without jurisdiction, i.e., time period violations, expulsion not based upon acts specified in the law as forming the basis for expulsion, or expulsion not based on acts related to school activity;
- (2) whether the school district board conducted a fair hearing;
- (3) whether there was a prejudicial abuse of discretion by the school district governing board, i.e., procedural requirements were not met, the decision to expel was not supported by the findings, or the findings are not supported by the evidence; and
- (4) whether relevant evidence was improperly excluded by the school district board or new evidence that could have reasonably been discovered exists. (Ed. Code § 48923 (a).)

Depending on the decision rendered, the county board is required to: (a) enter an order affirming or reversing the decision of the governing board or; (b) remand the matter to the district governing board for reconsideration or adoption of the required findings; or (c) grant a (new) hearing de novo before the county board. (Ed. Code § 48923.) If the county board reverses the decision to expel, it may direct the district governing board to expunge student and district records referring to the expulsion. (Ed. Code § 48923 (c).)

## C. Interdistrict Transfer Appeals

Parents and guardians may appeal to the county board within 30 days of the final decision by the district's governing board denial of an interdistrict transfer request.<sup>56</sup> (Ed. Code § 46601) The county board must hold the hearing within 30 days unless the county superintendent or the county board extends the time for good cause for up to five additional schooldays. (Ed. Code § 46601 (b)(2)(A)(i), (iii)(B).) Unless extended by future legislation, county boards in Class 1 counties have 60 days until

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<sup>55</sup> County boards in Class 1 or 2 counties may elect to have a hearing officer or administrative panel hold the expulsion appeal hearing and make a recommendation to the board. The hearing officer or panel shall submit the recommendation within 3 schooldays of the hearing and the county board shall render its decision within 10 schooldays after receiving the recommendation. (Ed. Code § 48919.5.)

<sup>56</sup> Districts must notify parents/guardians of its decision within 30 days of receiving the request for the current year and for future year requests, as soon as possible, but no later than 14 days after commencement of instruction. (Ed. Code § 46600.2) (a)(5)(A), (B).)

July 1, 2023. (Ed. Code § 46601 (b)(2)(A)(ii).)<sup>57</sup> Failure to file a timely appeal is good cause for rejection of an appeal. (Ed. Code § 46601 (b)(1).)

An appeal may be accepted only after the County Board’s designee has verified that appeals within the school district have been exhausted. (Id.) The designee shall investigate whether all the local remedies have been exhausted and provide any other information deemed useful to the county board in making a decision. (Ed. Code § 46601 (b)(3).) If new evidence or grounds for the request are introduced, the county board may remand the matter back to the district for further consideration. (Ed. Code § 46601 (b)(1).) Otherwise, the appeal shall be reviewed “de novo” meaning the county board, following its own, separate review of the information presented at the appeal hearing, shall either approve or deny the appeal based on its merits. (Id.)

Except for Class I counties, the decision by the county board must be rendered within three schooldays of the hearing unless the parent/guardian requests a postponement. (Ed. Code § 46601 (b)(2)(B).) If the appeal is granted, the county board may only order a student’s attendance in the requested district and not in a specific school of that district. (Ed. Code § 46602 (a).) Notice of the county board’s decision shall be provided to the parent and both districts electronically, by regular mail, or by any other means used to communicate with parents in writing. (Ed. Code § 44602 (b).)

District denials of transfer requests into or out of a “District of Choice” may not be appealed to the county board.<sup>58</sup> (See Ed. Code §§ 48300 et seq.) Also, district denials of transfer requests based on the employment of a parent or guardian in the district, commonly referred to as “Allen bill” transfers, may also not be appealed to the county board. (Ed. Code § 48204 (b).)

#### **D. Charter Appeals**

The county board may hear appeals by charter petitioners who have had their petitions denied, not renewed, or revoked by a district board within the county board's jurisdiction. (Ed. Code §§ 47605, 47607) A charter school petition that has been denied by a district board must be appealed to the county board not later than 30 calendar days after the denial. (Ed. Code § 47605 (k)(1)(A)(i).)[1] If new or different material information is included in the appeal petition, the county board must remand the petition back to the district for consideration. (Ed. Code § 47605 (k) (1)(A)(i).)

The statute is internally inconsistent regarding the deadlines for the county board to hear and decide upon charter appeals. Education Code section 47605(k)(1)(A)(i) states that the county board shall review the petition under section 47605(b),<sup>[59]</sup> which requires school districts to conduct a public hearing no more than 60 days after receiving a petition, to either grant or deny the petition within 90

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<sup>57</sup> In Class 1 and 2 counties, the interdistrict transfer appeal hearing may be conducted by a hearing officer, who if authorized by the county board, shall make the decision on the transfer request. If not, the board must make a decision within 10 days of receiving the hearing officer’s recommended decision. (Ed. Code § 46601 (b)(2)(C)(D). Class 1 and 2 counties may also have an administrative panel conduct the appeal hearing and make a recommendation to the board. (Id.)

<sup>58</sup> The county superintendent is responsible for determining whether a district of residence is meeting its budgetary obligations due to transfers out of the district and into districts of choice. (Ed. Code § 48307 (d).)

<sup>59</sup> Education Code section 47605(k)(1)(a)(1) states that the county board shall review the petition under 47605(b) and (c). Subdivision (c) specifies the substantive standards for approving or denying charter petitions, and makes no reference to hearing or decision deadlines.

days of receiving the petition (with a potential 30 day extension upon agreement of the parties), to publish all staff recommendations at least 15 days before the decision hearing, and to provide charter petitioners with equivalent time and procedures at the decision hearing to respond to staff recommendations. However, section 47605(k)(1)(a)(ii) states only that county boards will review charter appeals under section 47605(c), which specifies the substantive standards for approving or denying charter petitions, and makes no reference to the 60 and 90 day hearing deadlines applicable to school districts in 47605(b). And, yet another section states that petitioners may seek judicial review if the county board fails to act on a charter appeal within 180 days of receipt. (Ed. Code § 47605(k)(6))

Given the legislative history of AB 1505 and the internal inconsistencies in Education Code section 47605, the legislature may only have intended the staff recommendations deadline and equivalent hearing time requirements to apply to county boards, and not the 60 and 90 day hearing and decision provisions. However, the most conservative and "safest" approach is for county boards to follow the 60 and 90 day time frames for hearing and deciding charter appeals.

If the county board denies the appeal, the petitioner may appeal to the SBE within 30 days of the denial by the county board. (Ed. Code § 47605 (k)(2).). The petitioner must submit a copy of the appeal petition and supporting documentation to the state board, the school district that denied the petition, and the county board that denied the petition. (Id.) Within 30 days, the county board may submit written opposition to the state board detailing, with specific citations to the documentary record, how the county board did not abuse its discretion in denying the petition. (Id.) Upon request, the county board shall prepare a documentary record, including transcripts of the public hearing at which the county board denied the charter, within 10 business days of the petitioner's request. (Id.)

While the county superintendent and his or her staff may recommend approval or denial of a petition on appeal or on a petition submitted directly to the county board, they are not required to do so.

#### **E. Establishment of County Office Charter Schools**

A county board of education may establish a charter school if:

- (1) The pupils to be served are pupils who would normally be provided direct education and related services by the county office of education (Ed. Code § 47605.5);
- (2) As described above, the petition has been previously denied by a local school district governing board within the county (Ed. Code § 47605 (k)); or
- (3) The charter provides county-wide services that cannot be provided by a district-approved charter school. (Ed. Code § 47605.6.)

For any petition submitted to the county board, if approved, the county board becomes the authorizing entity. (Ed. Code §§ 47605 (k)(3), 47605.5, 47605.6 (a)(1) .) As the authorizer, it retains the power to revoke, renew or materially revise the charter, and has specific oversight duties including the monitoring of the fiscal conditions of the charter school and for ensuring that all special education and related services to eligible students are provided pursuant to each student's individualized education

program. (Ed. Code §§ 47604.32, 47646 (a).) The cost of performing oversight duties is to be funded by the supervisorial oversight fee.<sup>60</sup> (Ed. Code § 47613.)

#### **F. Miscellaneous Duties of County Boards**

In addition to the duties described above, a county board of education is required to:

- (1) Fill by appointment of the Board President, any seat(s) on a school or community college district governing board with a member(s) of the county boards when a majority of those seats are vacant. (Ed. Code § 5094.)
- (2) Annually adopt a resolution on or before October 15, identifying the estimated appropriations limit (Gann Limit) for the current fiscal year and the actual appropriations limit for the prior fiscal year. (Ed. Code § 1629.)
- (3) Annually hold a public hearing to determine whether students in county office programs have sufficient textbooks and/or instructional materials that are aligned with state content standards. (Ed. Code § 60119.)
- (4) In fiscally independent counties, adopt regulations for the county superintendent to pay in accordance with the regulation, the travel expenses incurred by the county superintendent and by county office staff. (Ed. Code § 1081.)
- (5) Adopt and update a conflict of interest code for county board members and designated consultants of the county board. (Gov. Code § 87300.)
- (6) Establish the compensation of county board members. (Ed. Code § 1090.)
- (7) Review the report of the annual audit. (Ed. Code § 1040 (e).)
- (8) Approve any short-term borrowing by the county office. (Gov. Code §§ 53821-53822.)
- (9) Annually certify that county office independent study courses are aligned with content standards and are the same rigor and educational quality as equivalent classroom-based courses. (Ed. Code § 51749.5 (a)(4)(A).)

A county board also has the permissive authority to:

- (1) Designate a fund balance for a specific purpose. If a designated fund balance is created, a majority vote of the county board is required to appropriate funds from the balance. (Ed. Code § 1621 (c).)
- (2) Issue temporary certificates that authorize the payment of salary to teachers or children center personnel whose credentials or permits are being processed if certificated persons meet the conditions specified in Education Code Section 44332. The county board is

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<sup>60</sup> The statutory oversight fee collected by the authorizer is either 1% of the revenues received by the charter school or, if the charter school is able to obtain substantially rent free facilities from the authorizer, a fee equivalent to 3% of the revenues. Typically, the fee for the actual cost of supervisorial oversight may be less than the cost of the duties performed.

responsible for canceling said certificates upon notification that the certificate holder does not meet the requirements for the credential.

#### **IV. DEVELOPMENT, ADOPTION, AND ADMINISTRATION OF THE COUNTY OFFICE OF EDUCATION BUDGET**

##### **A. Development of the Budget**

The county superintendent prepares the county office of education budget. (Ed. Code § 1621.)

##### **B. Adoption of the Budget**

The process by which the county budget is adopted depends upon the fiscal dependence or independence of the county office of education. However, in both fiscally independent and dependent county offices, the budget must be adopted by the county board prior to the approval of the LCAP. Every budget must include the expenditures identified in the LCAP that will be effective for the budget year. (Ed. Code § 1622)

###### **(1) Fiscally Independent vs. Fiscally Dependent County Offices**

County offices of education agencies are of two types: Those which are fiscally independent of the county board of supervisors pursuant to Education Code Section 1080, and those which are not. Today, 55 county offices are fiscally independent of the board of supervisors and three county offices, Alpine, San Benito and San Bernardino, are fiscally dependent.

At one time, there was a department or office of education within the government of each of the 58 counties. Education Code Section 1080 empowers the county board of supervisors to transfer various functions to the county board of education. These functions are:

- a. Approval of the superintendent's estimate of anticipated revenue and expenditures;
- b. Allowance of various expenses of the superintendent's office, and;
- c. Performance of other educational and recreational duties otherwise required to be performed by the board of supervisors.

Even when these functions are transferred, the expenses for them remain part of the county's general fund budget unless the county board agrees to include them in a "single fund budget." Once the expenses are included in a single fund budget, the county of office of education is said to be "fiscally independent."

In fiscally dependent county offices, there are two funds from which expenses of the county board and the county superintendent are paid:

- d. The general fund budget of county government which is approved by the board of supervisors. (Ed. Code § 1510.)
- e. The county school service fund which is established in every county office and approved by the county board. (Ed. Code §§ 1500, 1600.)

## (2) Budget Adoption in Fiscally Independent Counties

In fiscally independent counties, the annual budget is prepared and adopted by the following process:

- a. The county superintendent of schools submits a proposed budget to the county board of education in the form prescribed by the Superintendent of Public Instruction. (Ed. Code §§ 1621, 14050.)
- b. On or before July 1 of each year, the county board holds a public hearing on the proposed budget. The hearing must be held prior to budget adoption by the board, and no sooner than three days after the proposed budget is made available for public inspection. (Ed. Code § 1620.)
- c. On or before July 1, the county board must adopt and approve an annual budget and file the budget with the Superintendent of Public Instruction. (Ed. Code §§ 1040, 1622 (a).)<sup>61</sup>
- d. The SPI shall approve or disapprove the budget by September 15. In the event of a disapproval, the SPI shall in writing provide the county office recommendations regarding revisions to the budget and the reasons for those recommendations. The SPI must disapprove the budget if an LCAP has not been filed by the county board or if filed, has not been approved by the SPI. (Ed. Code § 1622 (b)(2).)
- e. On or before October 8, the county superintendent and the county board shall review and respond to the SPI's recommendations at a regularly scheduled meeting. The SPI shall examine the revised budget and approve or disapprove it by November 8. If disapproved, the SPI must call for the formation of a budget review committee as described in Section C below. (Ed. Code § 1622 (c), (d).)

## (3) Budget Adoption in Fiscally Dependent Counties

In fiscally dependent counties, the budget is prepared and adopted by the following process:

- a. The county superintendent submits a proposed annual budget for approval to the county board of education. The county board must approve the proposed budget prior to its submission to the county board of supervisors for final approval. (Ed. Code § 1040 (c).) There is no date specified, but it is generally understood that this adoption will occur on or before July 1. No specific notice requirements are in statute for this adoption, but all the Brown Act notice of meeting requirements would apply to the action of the county board.
- b. The process for adoption and approval of the county school service fund budget by fiscally dependent counties, as described above, is identical to the process for adoption and approval of the single fund budgets in counties that are fiscally independent. (Ed. Code, § 1040 (d).)

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<sup>61</sup> Following budget approval, the county superintendent shall submit to the SPI a budget by July 1 and a final budget by October 1. (Ed. Code § 14050.)

#### (4) Failure to Make a Budget

If the county board neglects or refuses to make a county office of education budget or file an interim report in accordance with applicable law and regulation, the SPI shall not appropriate any state or federal money to that county office for the fiscal year and shall notify the appropriate county official not to approve warrants issued by the county office of education. (Ed. Code § 42120.) However, a county office of education may continue to operate on the basis of the last county office of education budget adopted or revised in the fiscal year immediately preceding the budget year if the county superintendent submitted a budget in accordance with Section 14050 and is awaiting approval from the SPI. (Ed. Code § 1626.)

#### **C. Approval of the Budget by the Superintendent of Public Instruction**

As noted above, both the consolidated budget for fiscally independent counties, and the county school service fund budget in fiscally dependent counties, must be submitted annually by July 1 to the SPI for examination and determination of compliance by July 1. (Ed. Code § 1622.) The SPI must either approve or disapprove the budget by September 15. If the budget is disapproved, it is returned to the county office with recommended revisions and reasons for the recommendations.<sup>62</sup> The SPI may not approve the budget before the LCAP or annual update has been approved by the SPI for the budget year. (Ed. Code § 1622 (b)(2).)

The county superintendent and the county board are required to review and respond to the SPI's recommendations at a regularly scheduled board meeting on or before October 8. Revisions may be made to the revised budget to reflect any changes in projected income and expenditures that have occurred since July 1. Responses to the recommendations are then forwarded to the SPI. The SPI shall examine the revised budget and approve or disapprove the budget by November 8. If the SPI again disapproves the budget, a budget review committee shall be formed pursuant to Education Code § 1623.

The budget review committee shall be composed of three members selected by the county superintendent and the county board from a candidate list provided by the SPI. In the event the county superintendent and the county board do not select the committee within five working days of receipt of the list, the SPI will select the members of the committee. On or before November 30, the budget review committee will forward to the SPI its recommendation to either approve or disapprove the budget. A disapproval shall include a report with recommended revisions to the proposed budget. Within five working days of the receipt of the report, the county superintendent and the county board may submit to the SPI a response to the budget committee's recommendations. (Ed. Code §§ 1623, 1624.)

Based on the budget committee's recommendations and any response by the county superintendent and county board, the SPI shall approve or disapprove the revised budget. If disapproved, the SPI may implement several options, including developing a fiscal plan that will allow the county office to meet both its current financial obligations and its multiyear commitments. (Ed. Code § 1624.)

## **D. Budget Administration**

The administration of the county office budget is the responsibility of the county superintendent. The county superintendent pays all the charges against the county school service fund. (Ed. Code § 1602.) In fiscally independent counties, the county superintendent may withdraw warrants without approval by the county auditor. (Ed. Code § 1604.) However, no funds may be expended in excess of the total budget expenditures approved by the SPI without his or her approval. (Ed. Code § 1604.)

The county superintendent is required to submit two interim reports to the county board for review for the periods ending on October 31 and January 31. At the time of these interim reports, the county board and the public are informed of routine budget transfers (Ed. Code § 1240 (l)). In some counties, the county superintendent presents major changes in expenditures, major shifts in spending priorities, and expenditures for new programs, to the county board for approval. However, once the budget is approved the county superintendent has the statutory authority to spend within major budget categories and transfer funds among object codes to meet necessary expenses without further county board approval. Neither of these actions constitutes a budget revision (i.e. a net increase or decrease to the total budget).<sup>63</sup> When a county superintendent proposes a budget revision in excess of \$25,000 or enters into a \$25,000 consultant contract that constitutes a budget revision, it shall be incorporated in the next interim financial report or other board report when the report is submitted to the county board for discussion and approval at a regularly scheduled public meeting. (Ed. Code § 1280, 1281.)

To transfer funds from an unappropriated fund balance, the county superintendent must first receive approval of the county board. (Ed. Code § 42125.)

## **E. Qualified or Negative Certifications**

If a county superintendent files a qualified or negative certification for the second interim report, or if a county office budget is classified as such by the SPI, the county superintendent shall provide the Controller and the SPI with a financial statement no later than June 1 that covers the county office's financial and budgetary status for the period ending April 30 and projects the fund and cash balances as of June 30. (Ed. Code § 1240.2.) In addition, any county office that has received a qualified or negative certification must allow the SPI at least 10 working days to review and comment on any proposed collective bargaining agreement in order for the SPI to opine whether the agreement would endanger the fiscal well-being of the county office. (Ed. Code § 1240 (l)(1)(B); Gov. Code § 3540.2 (e).) The SPI shall notify the county superintendent and the county board of his or her determination within 10 days of reviewing the agreement. (Id.)

## **V. PROPERTY ACQUISITION AND DISPOSAL**

### **A. Real Property<sup>64</sup>**

Subject to the myriad of laws setting forth proper procedures, county boards of education have the power to lease, lease-purchase, hold, and convey real property for the purpose of housing the offices

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<sup>63</sup> The California School Accounting Manual defines budget revisions as "net increases and decreases to the budget. They may include increases due to new grant funds and decreases due to the need to reduce appropriations to keep spending within available revenues." (California School Accounting Manual 2019 Edition, California Department of Education.)

<sup>64</sup> Real property is anything immovable that is fixed to the land including structures built or otherwise affixed to the land. (Civil Code §§ 658, 660.)

and services of the county superintendent of schools.<sup>65</sup> (Ed. Code § 1042 (c).) The power to acquire real property includes the power to do so by eminent domain. (Ed. Code § 1047.) In addition, county boards, by a two-thirds vote, may render city and county zoning ordinances inapplicable to community school sites, and to any county office sites related to water storage or transmission and electrical energy facilities. (See, Gov. Code § 53094, 53096; San Jose Unified School Dist. v. Santa Clara County Office of Ed. (2017) 7 Cal. App. 5<sup>th</sup> 967).)

### **B. Personal Property<sup>66</sup>**

The county superintendent has the authority to enter into contracts and make purchases of personal property. Education Code Section 1605 provides that title to all property purchased by the county superintendent from the county school service fund is held in the name of the office of the county superintendent. The general practice is for real property to be held in the name of both the office of the county superintendent and the county board, and for personal property to be held in the name of the office of the superintendent. Both real and personal property may also be held in the name of the county office of education.

Education Code Section 1279 provides a number of requirements for a county superintendent to dispose of personal property. To dispose of any item of personal property worth over \$25,000, the county superintendent must:

- (1) obtain an independent valuation of the property;
- (2) advertise the property for sale in a newspaper of general circulation within the district, or in any newspaper of general circulation that is regularly circulated in the district.<sup>67</sup>
- (3) bring the matter to the attention of the county board for discussion at a regularly scheduled public meeting; and
- (4) obtain the approval of the county board of education.

To dispose of any item of personal property worth less than \$25,000, the county superintendent must first certify the value of the property in a quarterly report that is submitted to the county board of education for review. (Ed. Code § 1279 (b).)

## **VI. ADMINISTRATION AND MANAGEMENT OF COUNTY OFFICE PROGRAMS AND SERVICES**

The following sections briefly describe some of the programs operated by county offices, and the respective roles and duties of the county board and county superintendent.

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<sup>65</sup> This power only applies in those counties that have achieved fiscal independence from the county board of supervisors or have secured the right by agreement with the county board of supervisors.

<sup>66</sup> Personal property is defined as any kind of property that is not considered real property such as computers, cars, copiers, and clothes. (Civil Code § 663.)

<sup>67</sup> The "district" in Education Code 1279 means the school district where the property owned by the county office is located.

## **A. Regional Occupational Centers and Programs (ROC/Ps)/Career Technical Education (CTE)**

Note: The state no longer provides categorical education funding for ROC/Ps. However, the statutes governing ROC/Ps remains in place. A county superintendent may enter into agreements with school districts to provide CTE services, including, but not limited to, ROC/Ps.

ROC/Ps are established to provide vocational education opportunities to students. The county superintendent, with the consent of the SBE, has the discretionary authority to establish and maintain an ROC/P for vocational education. (Ed. Code § 52301.)<sup>68</sup> When an ROC/P is established, the county superintendent operates the ROC/P and performs administrative functions, including the management and monitoring of ROC/P personnel, while the county board acts as the governing board of the ROC/P and performs certain oversight functions. (Ed. Code § 52310.5 (c).)

If the county superintendent elects to establish a ROC/P, he or she may:

- (1) Provide necessary transportation for ROC/P students (Ed. Code § 52311)<sup>69</sup> ;
- (2) Acquire a site and buildings for the ROC/P (Ed. Code § 52312);
- (3) Accept and expend public and private grants for vocational education (Ed. Code § 52313);
- (4) Determine the admission of pupils into the ROC/P. (Ed. Code § 52314.)

## **B. County School Service Fund Programs and Services**

The county superintendent is authorized, with approval of the county board, to provide coordination of the educational programs among school districts, and to provide professional and financial assistance to school districts. Once established, the superintendent is empowered to employ various staff to provide for coordination of services. The types of programs and services that are specified are:

- (1) Preparation of courses of student and development of curriculum and instructional materials for K-12 schools (Ed. Code § 1720);
- (2) Supervision of instruction (Ed. Code § 1730), supervision of attendance (Ed. Code § 1740), supervision of health (Ed. Code § 1750), and counseling and guidance services (Ed. Code § 1760);
- (3) Establishment and maintenance of a county school library service (Ed. Code § 1770), classes or schools for prisoners in the county jail or state prison (Ed. Code §§ 1900-1909.5)<sup>70</sup> , emergency schools for children residing in the county, and operating any district school that a school board neglects or refuses to do so. (Ed. Code §§ 1920, 1256).

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<sup>68</sup> ROC/Ps may also be established by school districts under a joint powers agreement (JPA).

<sup>69</sup> If the county superintendent elects to establish a ROC/P, it "shall be established at a readily accessible placed selected to serve the pupils who will attend the center." (Ed. Code § 52311.)

<sup>70</sup> In addition to the approval by the county board, county superintendents may provide classes to prisoners in county jail with the approval of the county board of supervisors and in state prison per an agreement with the Department of Corrections.

- (4) Inform the citizens of the county about the educational programs and activities of school districts in the county. (Ed. Code § 1260 (c).)

The county superintendent has the authority to determine the necessity of providing such services and programs, and to design a program that will meet the needs of the school districts and their students. (Ed. Code § 1703; 5 CCR 17320.)

### **C. County Community Schools and Plans for Expelled Students**

County community schools generally serve those students who have been removed from school districts, whether by expulsion or referral by a student attendance review board, or serve students supervised by a probation officer and/or who have been placed consistent a juvenile court order. (Ed. Code § 1981 (a),(b),(c).)<sup>71</sup> The county board has the discretionary authority to establish these community schools. (Ed. Code § 1980.)<sup>72</sup> For purposes of establishing a county community school, the county board is deemed to be a school district. (Ed. Code § 1984.) Once established, the county superintendent may elect to administer the schools, while the county board adopts the curriculum (Ed. Code §§ 1983, 1986). County community school facilities, including the leasing of any such facilities, are within the purview of the county superintendent. (Ed. Code § 1986.)

The county superintendent shall work with district superintendents to develop a plan to provide services to expelled students in the county. The plan shall be adopted by the county board and by each school board in the county. (Ed. Code § 48926.) A county superintendent may also contract with districts located outside of the county to provide services to their expelled students. (Ed. Code § 48916.1.)

### **D. Juvenile Court Schools**

Education Code Section 48645.2 states that the “county board shall provide for the administration and operation of juvenile court schools” either “by the county superintendent” or “by contract with the respective governing boards of the school districts in which the juvenile court school is located.” Court schools are to be “conducted in a manner prescribed by the county board of education” to best accomplish the statutory purpose. (Ed. Code § 48645.3 (a).) The board adopts the curriculum and the school calendar as recommended by the county superintendent, and evaluates the educational program. (Ed. Code § 48645.3.) Students in juvenile court schools who have satisfied either their district of residence’s graduation requirements or the statewide course requirements for graduation shall be issued a diploma by their district of residence or by the county superintendent. (Ed. Code § 48645.5 (a), (d).)<sup>73</sup>

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<sup>71</sup> Students who are involuntarily enrolled in a county community school have the right to reenroll in their former school or another comprehensive school upon readmission by the district governing board. (Ed. Code § 1981.5.)

<sup>72</sup> Prior to its repeal, Education Code Section 48667 had provided that for purposes of community day schools, county offices were deemed to be a school district. Community day schools are now under the jurisdiction of school districts but by agreement, may be operated by a county office.

<sup>73</sup> A county office must notify a juvenile court school student when he or she becomes entitled to a diploma. (Ed. Code § 48645.7)

## **E. Local Child Care and Development Planning Councils**

County superintendents of schools, in conjunction with the county board of supervisors, are required to establish local child care and development planning councils that provide a forum for the identification of local priorities for child care and the development of policies to meet the needs identified within those priorities. (Ed. Code § 8499.3.)

## **F. County School Attendance Review Boards**

A county school attendance review board (SARB) may be established in each county.<sup>74</sup> (Ed. Code § 48321 (a)(1).) County superintendents shall appoint district members to a county SARB following their nomination by their respective governing boards. All other persons or group representative shall be appointed by the county board. (Ed. Code § 48321 (a)(4).) For county SARBs, the county superintendent must convene a meeting at the beginning of each school year for the purpose of promoting interagency and community cooperation. (Ed. Code § 48321 (a)(5)(A).)

## **VII. SCHOOL DISTRICT REORGANIZATION**

### **A. County Committee on District Organization**

Each county has a county committee on school district organization.<sup>75</sup> (Ed. Code § 4000.) The county committee may be the local initiator, coordinator, analyst, facilitator and arbitrator for the reorganization of school districts, including formation, unification and dissolution.<sup>76</sup> (Ed. Code § 35511.) It may formulate plans, respond to petitions, conduct public hearings, develop and release information, and analyze proposals throughout the approval process of reorganization.<sup>77</sup> Some petitions for the transfer of territory do not require SBE approval; instead, the county committee gives final approval or disapproval.<sup>78</sup> (Ed. Code § 35709.) In these cases, the county committee's decision may be appealed to the SBE. (Ed. Code §§ 35710.5, 35711.) The county committee also establishes or rearranges governing board trustee areas as requested.<sup>79</sup> (Ed. Code §§ 1002, 5019.)

In more than 30 counties, the county board of education serves as the county committee by order of the SBE. (Ed. Code §§ 4020-4021.) When the SBE has not ordered the county board to serve as the county committee, in counties with less than six school or community college districts, the county superintendent shall determine the number of members and make the appointments. (Ed. Code § 4002.) In counties with six or more school or community college districts, the county committee shall

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<sup>74</sup> School districts may also form local SARBs which must include a representative of the county superintendent. (Ed. Code § 48321 (b).)

<sup>75</sup> San Francisco does not have a county committee on school district reorganization because it is both a county and a city.

<sup>76</sup> School districts may change boundaries, transfer territory, or combine with another district(s).

<sup>77</sup> See CDE's "School District Organization Handbook", January 16, 2018, for a description of the district reorganization process, including the responsibilities of the county committee at pps. 17-20.

<sup>78</sup> The petition must either involve the transfer of uninhabited territory where the owner or the majority of owners, and where the school board of each affected school district agrees to the transfer, or, of inhabited territory, where the transfer involves less than 10% of the assessed value of the district from which the territory is being transferred, and, each affected school district agrees to the transfer.

<sup>79</sup> County committees also have initial jurisdiction over districts that "lapse" and have their territory annexed by an adjacent district(s). (Ed. Code §§ 35780-35787.)

consist of 11 members who are elected by representatives of the school and community college districts at the annual meeting called by the county superintendent. (Ed. Code §§ 4003, 4005, 35023.)

County superintendents have authority to provide assistance in connection with school district reorganizations through the services of the county committee on school district organization. For example, prior to the initiation of an action to reorganize, county superintendents pursuant to Education Code § 35700.1 have authority to:

- (1) Provide information, coordination, and guidance to potential petitions for reorganization and to other parties about the petition process;
- (2) Provide procedural advice and counseling;
- (3) Provide information and assistance for community meetings, information and briefing sessions;
- (4) Provide for coordination of media and community relations;
- (5) Assist with processing and evaluation of multiple petitions to reorganize one or more school districts by ensuring compliance with all requirements and timelines;
- (6) Apply new and preexisting evaluation criteria;
- (7) Assist newly organized school districts to ensure smooth transitions with minimum disruption to students and staff; and
- (8) Provide advisory and consulting expertise in various areas.

### **VIII. THE PERMISSIVE EDUCATION CODE**

Education Code § 35160 provides “school districts” with permissive authority to:

“initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.”

In response to Proposition 8 passed by the voters in 1972, the Legislature enacted Education Code Section 35160 for the purpose of granting broad authority to school districts and county offices over education matters in order to be relieved of the necessity of granting specific authorization for every activity carried out by school districts and county offices of education. (See Ballot Pamphlet, Gen. Election (Nov. 7, 1972) p. 14); *Choice in Education League v. Los Angeles USD* (1993) 17 Cal.App.4<sup>th</sup> 415.) To further effectuate this broad grant of authority, the Legislature further declared that it was the “the intent of the Legislature that Section 35160 be liberally construed....” (Ed. Code § 35160.1)

Education Code Section 35160.2 states that “for the purposes of Section 35160, school district shall include county superintendents of schools and county boards of education.” **ADDITIONAL SERVICES AND PROGRAMS PROVIDED BY COUNTY OFFICES**

The following represents a sample of additional services and programs provided by county offices of education:

### **A. Special Education and Special Education Local Plan Areas (SELPA)**

The county superintendent may operate special education classes under the SELPA Local Plan and participate in the IEP process in order to develop programs suited to individual needs. Curriculum decisions and proficiency standards are the responsibility of local school districts.<sup>80</sup> (Ed. Code §§ 56000 et seq.)

For the purpose of special education services performed for school districts, the county superintendent is considered the “county office”. (Ed. Code § 56022.) As such, the county superintendent may initiate and submit to the SPI a countywide plan for coordinated special education services or join with any district(s) in the county that submit to the SPI their own local SELPA plan. (Ed. Code § 56140 (a), (d).)

#### **(1) Posting Local Area Plans**

The county superintendent shall post on the county office website any local plan, annual service plan, and the annual assurances and support plan, as well as any updates or revisions to the plans that are subject to the approval of the county office. (Ed. Code § 56205.5 (b)(1).) The county superintendent shall also post all local area plans or links to the plans submitted by any SELPA in the county. (Ed. Code § 56205.5 (b)(2).)

### **B. Professional Development**

County superintendents are authorized to conduct teacher institutes for the professional development of teachers employed by school districts within the county, and to select the speakers and materials to be presented at such institutes. (Ed. Code § 1278, 79 Ops. Cal.Atty.Gen. 109, June 20, 1996.) County superintendents are authorized to offer CTC approved teacher induction programs. (Ed. Code §§ 44259 (c)(2)(B), 44279.2 (c).)

County superintendents may also establish administrator training and evaluation programs, operated in conjunction with teacher education and computer center programs, to provide school administrators support and development activities designed to improve clinical supervision skills. (Ed. Code § 44682.)

### **C. Business Services**

The county superintendent shall examine pay orders and issue warrants for school districts. (Ed. Code §§ 42636, 42639.) County superintendents may also provide services to “direct service districts” and with the approval of the SPI, the county board, and the county auditor, may process payroll for designated school districts within the county. (Ed. Code §§ 1700, 42646.) County superintendents are also authorized to provide fiscal, budgetary, and data-processing services through contractual

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<sup>80</sup> When the responsibility for operating a special education program is transferred from a county superintendent to a school district, the county superintendent of schools may retain the property tax revenues previously allocated to fund the program if the tax revenues will be used for other special education programs in a manner that ensures that all individuals with exceptional needs residing in the county will have access to appropriate special education programs and related services. (See, 89 Ops. Cal. Atty. Gen. 182, August 15, 2006.) While opinions of the Attorney General are not controlling statements of law, they are generally given “great weight” by courts in determining the meaning of statutes.

agreements with school districts that have been determined to be fiscally accountable. (Ed. Code § 42650.) With the approval of the county superintendent, the district board may cause warrants to be drawn for the payment of expenses on designated funds in the county treasury. (Id.) The county superintendent may also revoke or suspend the authority to draw warrants of fiscally accountable districts that have a qualified or negative certification. (Ed. Code § 42652.)

#### **D. Child Development Programs and Centers**

County superintendents may, with approval of the county board and the SPI, contract with the SPI to establish and maintain child development centers and programs which meet the developmental needs of children and offer child care and developmental alternatives to parents/guardians in the community. (Ed. Code §§ 8320-8321, 8203.5.) The superintendent shall prepare for county board approval the program's written philosophical statement, and its goals and objectives that reflect the cultural and linguistic characteristics of the families to be served. (5 CCR 18271.)

#### **E. Technology Leadership**

County offices of education also play an integral role in coordinating the K-12 High Speed Network which provides high-speed, high-bandwidth Internet access to all county offices, school districts, and schools in the state. (Ed. Code § 11800.)

#### **F. Participation in Federal Programs**

County superintendents are authorized to: (1) perform acts necessary to receive the benefits and spend funds provided by an act of Congress, and (2) cooperate with, or enter into agreements with, the federal government or any agency thereof, the SBE, school districts, and private or public nonprofit organizations in order to receive the benefits and spend funds provided by the act of Congress. (Ed. Code § 12400.)

#### **G. Scholarship Programs**

County boards are authorized to grant scholarships and monetary awards to county students when it is acting as the governing board of a school district. The Attorney General has opined that districts under Education Code §§ 35310 and 44015, have the express authority to grant scholarships and monetary awards and that county boards, when acting as a school district, would have the authority to do so as well. (See, 85 Ops. Cal. Atty. Gen. 167, August 28, 2002; Ed. Code § 1984.)

#### **H. Outdoor Science Education Programs**

County superintendents of schools may, with approval of the county board of education, enter into agreements with school district governing boards or private schools to provide outdoor science and conservation education programs to students. (Ed. Code §§ 8763-8765.)

#### **I. Services to Migrant Children**

The SPI is authorized to contract with county superintendents to provide services to migrant children residing in specified geographical regions. (Ed. Code § 54444.)

## **J. Medi-Cal Administrative Activities (MAA) Program**

The Medi-Cal Administrative Activities (MAA) Program, authorized under Welfare and Institution Code Section 14132.47, provides a way for school districts to obtain federal reimbursement for the cost of certain administrative activities necessary for the proper and efficient administration of the Medi-Cal program. Local Educational Consortia (LECs) are defined in law as a local agency that is one of the service regions of the California County Superintendent Educational Services Association (CCSESA). (Wel. & Inst. Code § 14132.47.) County offices, in the service regions established by CCSESA, may serve as lead agencies for the LECs by contracting with the Department of Health Services to operate the program, and providing services for school districts within their respective LEC.

## APPENDIX A: CHRONOLOGY OF THE OFFICES OF THE COUNTY SUPERINTENDENT OF SCHOOLS AND COUNTY BOARDS OF EDUCATION IN CALIFORNIA

- 1849 Position of county superintendent of schools first established in Article IX of California Constitution as ex officio duty of the county assessor.
- 1852 Office of county superintendent of schools recreated (Common School Act).
- 1856 The office of county superintendent of schools is made elective as a position of county government.
- 1860 Legislature creates county boards of examination (headed by county superintendents).
- 1872 The Legislature authorizes, but repeals in 1874, that a person eligible for city or county superintendent must be a professional teacher and holder of a teacher's certificate. It was not until 1947 that professional requirements were required for county superintendents.
- 1879 New California Constitution established position of county superintendent of schools as elected constitutional office.
- 1881 Legislature created county boards of education (county superintendent and four educators appointed by the county board of supervisors).
- 1915 Responsibility for child welfare and attendance supervision.
- 1917 Responsibility for health and physical education.
- 1933 School finance law establishes three funds to support duties.
- 1939 Legislature authorizes by law the following:
- (1) The county board of supervisors is permitted to contract with the county superintendent of schools in order to provide health supervision of elementary school buildings and pupils enrolled in any elementary school within the county, carried out by health officers or other employees of the county health department.
  - (2) County superintendents are given discretion to provide for the education of physically handicapped minors who would otherwise be denied proper educational services.
  - (3) County superintendents are permitted, with the approval of the county boards of education, to provide for the preparation and coordination of courses of study, and for conducting and coordinating research and guidance activities for elementary and high schools under their jurisdiction.
- 1940 Additional powers granted by statute, including mandates to serve small school districts.
- 1946 Constitutional amendment authorized legislature to prescribe qualifications and fix salaries of county superintendents.

- 1947 County school service fund is created, increasing powers and duties of county superintendent.
- 1955 The Legislature enacts a law establishing elected county boards of education, consisting of five or seven members to be elected at large, and at least one member residing in each of the designated trustee areas determined by the county committee on school district reorganization.
- 1976 Constitutional amendment authorized county voters in non-chartered to choose between an elected or appointed county superintendent, and authorizes the county board of education to fix the salary of the county superintendent.
- 1991 Assembly Bill 1200 (Chapter 1213, Statutes of 1991), which took effect on January 1, 1992, redefined and expanded county superintendents' fiscal oversight of school districts responsibilities.
- 2004 Assembly Bill 2756 (Chapter 52, Statutes of 2004), which took effect on June 21, 2004, made significant changes to the school district financial accountability statutes.
- 2004 *Eliezer Williams, et al., v. State of California, et al.* ("Williams") settled resulting in legislative enactments which required county superintendents to conduct annual visits of underperforming schools to review sufficiency of instructional materials, adequacy of school facilities, and verify information on the school accountability report card. County superintendents also required to submit annual reports of such visits to district governing boards, county boards of education, and county boards of supervisors.
- 2006 The Quality Education Investment Act (Ed. Code §§ 52055.700, et seq.) was enacted for the purpose of, among other things, implementing the settlement in *CTA, et al. v. Schwarzenegger, et al.* The legislation required county superintendents to annually monitor implementation QEIA in funded schools.
- 2007 *Valenzuela v. O'Connell, et al.* ("Valenzuela"), a lawsuit challenging the California High School Exit Exam ("CAHSEE"), settled resulting in legislative enactments which required county superintendents to conduct oversight activities including (1) verifying that eligible pupils are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the CAHSEE, and (2) ensuring that pupils who elect to receive services are being served.
- 2013 Assembly Bill 97 (Chapter 47, Statutes of 2013), amended by Senate Bill 97 (Chapter 357, Statutes of 2013), introduced the Local Control Funding Formula (LCFF) to reform California's educational funding system. The LCFF instituted a change in local educational agency accountability for unrestricted funding in the form of three-year LCAPs, with annual updates, that focus on service outcomes for all students. (Ed. Code §§ 52060, et seq.) It requires county superintendents to review and approve or deny their local districts' LCAPs concurrently with the county superintendents' review of their local districts' budgets, and to provide technical assistance when an LCAP is denied. This builds upon county superintendents' existing oversight functions under Assembly Bill 1200 and Williams.
- 2016 *Anderson Union High School District v. Shasta Secondary Home School* clarified that Education Code 47605.1 does not permit a charter school to establish a resource center, meeting space, or

other satellite facility outside of the authorizing district in the same county. ((2016) 4 Cal. App. 5th 262.) The court reasoned that allowing a charter school to do so would be tantamount to establishing a countywide charter school without complying with the limits in Ed. Code 47605.6.

- 2018 Assembly Bill 1808 (Chapter 32, Statutes of 2018) amended local accountability systems and added new responsibilities for the county superintendent. The bill requires the county superintendent to develop a LCFF budget overview for parents, requires the county superintendent provide an annual assurance support plan that describes how the county superintendent will support the continuous improvement of school districts and how it will provide technical assistance; requires the county superintendent to provide technical assistance to districts upon request or if the district LCAP is not approved; requires districts, county offices, and SELPAs to coordinate their accountability plans; requires county superintendents to prominently post all approved LCAPs, annual budget plans, annual service plans, and annual assurances support plans on their website.
- 2018 Assembly Bill 1840 (Chapter 426, Statutes of 2018) significantly changed the duties of a county superintendent when a district receives an emergency loan from the state. Under the new law, the county superintendent, not the SPI, is responsible for hiring and managing a trustee and/or administrator.