

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

*Approved for Publication by the  
California County Superintendents Educational Services Association (CCSESA)  
Board of Directors on August 4, 2014*



MARCH 1997

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REVISED - MARCH 2006

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*The purpose of this writing is to describe the law setting forth the duties and responsibilities of the superintendent and board in the following areas: (1) accountability and oversight; (2) development and administration of the budget; (3) management and monitoring of personnel; and (4) administration and management of county programs.*

## **I. GOVERNANCE**

The county superintendent 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 board, as in a few counties.

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.) County boards of education are established by Education Code section 1000. The interaction between the county board and superintendent is entirely distinct from the relationship of a school district governing board and its employed superintendent.

The county superintendent works directly with the school districts in the county to provide support and guidance for their operations. Policy determinations regarding school districts are made by the superintendent and the local school boards. The county board of education does not have a role in determining the policies of local school districts.

A wide variety of practices and policies have developed in the different counties to enable the county board and county superintendent to work cooperatively. In those counties where both offices are duly elected, each is directly accountable to the electorate. Open communication and mutual sharing of information facilitate the respective functions of the county superintendent and the board.

## **II. 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>1</sup>
- (4) Approve the annual county school service fund budget of the county superintendent of schools before its submission to the Superintendent of Public Instruction.
- (5) Review the report of the annual audit provided for the county superintendent of schools under Education Code Section 41020. The review of the report shall be a scheduled agenda item at a regularly scheduled public meeting.

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<sup>1</sup> Only fiscally non-independent counties are required to submit the annual budget to the county board of supervisors.

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, 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.”<sup>2</sup> (Ed. Code § 1207.)

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

- (1) Adopt rules and regulations governing the administration of the office of the county superintendent of schools.
- (2) Review the county superintendent of schools annual itemized estimate of anticipated revenue and expenditures before it is filed with the county auditor, and make revisions, reductions, or additions in the annual itemized estimate that the board deems advisable or proper. An annual itemized estimate cannot be filed by the superintendent until it has been reviewed and approved by the county board of education.<sup>3</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>4</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 services. A county board of education may not appoint outside counsel in addition to in-house counsel to provide unrestricted, independent advice to the board. (86 Ops. Cal. Atty. Gen. 57, April 25, 2003.) However, a county board of education may contract with outside counsel to provide advice 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 of education desires a second legal opinion from that provided by in-house counsel in a particular matter.
- (5) Fill a vacancy that occurs during the term of an elected county superintendent of schools by appointment.

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<sup>2</sup> In 1978, the Attorney General issued an opinion stating that county boards of education may not decrease a county superintendent’s salary retroactively and thus deprive the superintendent of matured contractual rights 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 of education have authority to decrease the salary of a county superintendent of schools after the election for the term for which the superintendent was elected. (62 Ops. Cal. Atty. Gen. 356, July 11, 1979.)

<sup>3</sup> **In fiscally non-independent counties, the itemized estimate must also be approved by the county board of supervisors before it is filed with the SPI.**

<sup>4</sup> This power only vests in those county boards of education that have been granted fiscal independence by the county board of supervisors.

(6) Use and expend moneys to make loans to a charter school. The county board must obtain the agreement of the county superintendent of schools, and the county superintendent must fulfill certain prerequisites, such as the solicitation of an independent financial opinion on the charter school's financial condition.

Additional statutory duties and powers of county boards of education are outlined in sections describing specific functions.

## **B. Review of 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 when the appeal is filed in accordance with the law. Education Code Section 48922 sets forth the county boards' limited scope of review in appeals hearings. The county board shall review only the following issues on appeal:

- (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).)

Upon the filing of an appeal, the county board of education must conduct a hearing within 20 school days and render a decision within three school days of the hearing. (Education Code § 48919.) This hearing must be conducted in closed session unless the student requests in writing that the hearing be conducted in a public meeting. (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.)

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

## **III. DUTIES OF COUNTY SUPERINTENDENTS OF SCHOOLS**

### **A. General Duties**

Education Code Section 1240 describes the general statutory duties of the county superintendent.<sup>5</sup> This section was significantly amended by legislation enacted to implement the settlement of the *Williams, et al v. State of California, et al.*, and *Valenzuela v. O'Connell, et al.* lawsuits.

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<sup>5</sup> As amended by AB 139 (Chapter 620, Statutes of 2001), SB 550 (Chapter 900, Statutes of 2004), SB 1108 (Chapter 22, Statutes of 2005), AB 831 (Chapter 118, Statutes of 2005), SB 512 (Chapter 677, Statutes of 2005), AB 607 (Chapter 704,

Education Code Section 1240 **requires** county superintendents to do all of 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.
- (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 schools ranked in deciles 1 to 3, inclusive, of the applicable API base.<sup>6</sup> The report shall be submitted 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. These visits and reports shall comply with the following:

(a) The annual report must include the determinations for each school made by the county superintendent, or his or her designee, regarding:

- (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;
- (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;
- (iv) the extent to which pupils who have not passed the high school exit exam by the end of grade 12 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 high school exit exam, whichever comes first;
- (v) the extent to which pupils who have elected to receive intensive instruction and services are being served; and
- (vi) teacher misassignments and teacher vacancies.<sup>7</sup>

(b) If the condition of a facility poses an emergency or urgent threat to the health or safety of pupils or staff as described in school district policy, or is not in good repair, the county superintendent *may* do one or more of the following:

- (i) return to the school to verify repairs; or

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Statutes of 2006), AB 347 (Chapter 526, Statutes of 2007), AB 114 (Chapter 43, Statutes of 2011), and AB 97 (Chapter 357, Statutes of 2013).

<sup>6</sup> See Ed. Code § 1240(c)(2) for a definition of the applicable base API.

<sup>7</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. (Education Code § 1240(c)(2)(A).)

(ii) 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. This report must be posted on the county superintendent's website, and removed once the county superintendent verifies that the repairs have been completed.

(c) The county superintendent of Alpine, Amador, Del Norte, Mariposa, Plumas, Sierra, and San Francisco must contract with another county office of education or an independent auditor to conduct the required visits and make all reports required in connection with the visits to deciles 1 to 3 schools.

(d) Site visits to schools ranked in deciles 1 to 3, inclusive, shall occur at least once a year and 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 to observe the condition of school repair and maintenance and the sufficiency of instructional materials.<sup>8</sup>

(e) The annual report must verify that:

(i) pupils who have not passed the high school exit exam by the end of grade 12 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 high school exit exam, whichever comes first; and

(ii) pupils who have elected to receive intensive instruction and services are being served.

(f) The superintendent must provide a quarterly report on the result of visits and reviews of decile 1 to 3 schools to the governing board of the school district 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 August 15 of each year, the superintendent shall present a report to the governing board of the school district and the Superintendent of Public Instruction regarding the fiscal solvency

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<sup>8</sup> In determining whether to make a single visit or 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.

of any school district that: (a) has a disapproved budget; (b) has qualified interim certification; (c) has negative interim certification, or (d) is determined at any time to be in a position of fiscal uncertainty.

(7) Keep in his or her office the reports of the Superintendent of Public Instruction.

(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 the proper authority in accordance with Section 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 by a state or federal intervention program. 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>9</sup> 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.

(c) If a county superintendent determines 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 Department purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement.

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<sup>9</sup> "Written surveys" may include paper and electronic or online surveys. (Education Code § 1240(i)(3)(C).)

(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 State Department of Education.

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

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

(b) The second report shall cover the period ending January 31.

(c) Both reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the period being reported.

(d) As part of each 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>10</sup>

(e) The superintendent shall also send copies of each positive, qualified, or negative certification, and the report containing said certification, to the Superintendent of Public Instruction and the Controller at the same time he or she submits them to the county board of education.

(f) The reports and certifications shall be based on standards and criteria for fiscal stability adopted by the State Board of Education and shall use format and forms prescribed by the Superintendent of Public Instruction.

(g) The superintendent shall make these reports and supporting data available to any interested party upon request.

(14) When so 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 Commission on Teacher Credentialing 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 that gives the county superintendent reasonable cause to believe such false information has been reported.

Additional statutory duties and powers of county superintendents are outlined in sections describing specific functions.

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<sup>10</sup> Ed. Code § 1240(l)(1)(B) describes how certifications shall be assigned to county offices of education.

## B. Monitoring Implementation of Quality Education Investment Act (QEIA)<sup>11</sup>

In 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.* For every “funded school”<sup>12</sup> located in the county, the county superintendent is *required* to:

- (1) Review the school and its data to determine if the school has met all of the following program requirements by the end of the third full year of funding:
  - (a) The school has met all its class size requirements (*See*, Ed. Code § 52055.740(a)(1));
  - (b) Each high school has a pupil-to-counselor ratio of no more than 300 to 1 and each counselor within the high school is properly credentialed;
  - (c) Ensure that each teacher in the school, including intern teachers, is highly qualified in accordance with the federal No Child Left Behind Act of 2001 (20 U.S.C Sec. 6301, *et seq.*);
  - (d) Ensure the average experience of classroom teachers in the school is equal to or exceeding the average of the school district for this type of school (*See* Index in Ed. Code § 52055.730);
  - (e) The school exceeds the API growth target averaged over the first three full years of funding. By the 5th year of funding, schools must meet their annual API growth target. If the school fails to meet its annual growth target, the school will continue to receive funding but will be subject to state review, assistance, and timeline requirements.
- (2) Determine if the school has met all of the following interim requirements:
  - (a) The school is at least one-third of the way toward meeting each of the program requirements (listed above) by the end of the first full year of funding.
  - (b) The school is at least two-thirds of the way toward meeting each of the program requirements by the end of the second full year of funding and achieved full implementation by the end of the third full year and every year thereafter.
  - (c) The school provides professional development to at least one-third of teachers and instructional aides in the school annually.
  - (d) The school has met all of the requirements of the settlement agreement in *Williams v. State of California*, including the requirements regarding teachers, instructional materials, and school facilities, by the end of the first full year of funding, and in each year thereafter.

If the county superintendent determines that the funded school has not substantially met these requirements, or any alternative program requirements (*See*, Ed. Code § 52055.760), he or she shall notify the Superintendent of Public Instruction. If all of the interim and final requirements are not met by the end of any subsequent school year, the Superintendent of Public Instruction is required to terminate funding for that school. (Ed. Code § 52055.740.)

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<sup>11</sup> Added by SB 1133. (Chapter 751, Statutes of 2006.)

<sup>12</sup> “Funded school” is defined as a school that is within a school district or chartering authority, receives funds allocated under QEIA, and complies with all applicable interim programs and alternative program requirements described in the QEIA statutes. (Education Code § 52055.720(a)(3).)

## C. Miscellaneous Reporting Duties

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

- (1) Make reports showing matters relating to the public schools in his or her county, when directed by the Superintendent of Public Instruction. (Ed. Code § 1243.)
- (2) Submit a complete report of the attendance credited to county public schools for the school year ending June 30. Reports shall be submitted annually to the Superintendent of Public Instruction by July 15 of each year. (Ed. Code § 1244.)
- (3) Submit additional reports as may from time to time be required by the Superintendent of Public Instruction. (Ed. Code § 1245.)

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

### A. Development 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.

#### 1. Fiscally Independent vs. Non-Fiscally Independent Counties

County 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, the great majority of county offices are fiscally independent.

At one time, there was a department or office of education within the government of each county. 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." When there is such a single fund budget, the county of office of education is said to be "fiscally independent."

In non-fiscally independent counties, there are two funds from which expenses of the county board and superintendent are paid:

- (a) The general fund budget of county government which is approved by the board of supervisors. (Ed. Code § 1510.)

(b) The county school service fund. (Ed. Code § 1500.)

In fiscally independent counties, funds are consolidated into a single county school service fund budget which is forwarded only to the State Superintendent of Public Instruction.

## 2. Budget Adoption in Fiscally Independent Counties

In fiscally independent counties, the budget is 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 board holds a public hearing on the proposed budget. The hearing must be held prior to 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 is directed to adopt and approve an annual budget and file the budget with the Superintendent of Public Instruction. (Ed. Code §§ 1040, 1622(a).) If the county board neglects or refuses to make a county office of education budget, the state will not appropriate any state or federal money to that county office for the fiscal year and appropriate county officials will be notified not to approve warrants issued by the county office of education. (Ed. Code § 42120.)

(d) On or before September 8, the county board is required to revise the budget to reflect changes made necessary by revised projections of income and expenditures and to file that budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. The same notice provisions applicable to the July 1 adoption apply and the Superintendent of Public Instruction must approve the revisions. (Ed. Code § 1622(c), (d).)

As an alternative to this procedure, the county board of education may substitute the procedure found in Education Code Section 1622 (e) (1), (2), and (3).

## 3. Budget Adoption in Fiscally Non-Independent Counties

There are currently only three fiscally non-independent counties: Alpine, San Benito, and San Bernardino.

In non-fiscally independent counties, the budget is 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 submission to the county board of supervisors. (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 is identical to the process for adoption and approval of the single fund budgets in counties that are fiscally independent. (Ed. Code, § 1040(d).)

## **B. Other Budgetary Functions of the County Board of Education**

The county board is *permitted*, but not required, to review the county superintendent of school's annual itemized estimate of anticipated revenue and expenditures before it is filed with the county auditor and make any revisions, reductions, or additions it deems advisable and proper. (Ed. Code, §1042 (b).) This itemized estimate is a separate document from the budget.

The county board is *required* to review two interim financial reports submitted by the superintendent: one for the period ending October 31, and the other for the period ending January 31. Both reports must be reviewed by the board and approved by the county superintendent within 45 days of the close of the reporting period. (Ed. Code § 1240 (l).)

The county board is also *required* to review the report of the annual audit. (Ed. Code § 1040 (e).)

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

As noted above, both the consolidated budget for fiscally independent counties, and the county school service fund budget in non-fiscally independent counties, must be submitted annually to the Superintendent of Public Instruction for examination and determination of compliance by July 1. (Ed. Code § 1622.) The Superintendent of Public Instruction must either approve or disapprove the budget by August 15. If the budget is disapproved, it is returned to the county office of education with recommended revisions and reasons. The Superintendent may not approve the budget before a three-year local control and accountability plan ("LCAP"), or annual update to an existing LCAP, has been approved for the budget year.

The county board is required to respond to the Superintendent of Public Instruction recommendations on or before September 8. This is done at the same time that revisions are made to the budget to reflect any changes in projected income and expenditures that have occurred since July 1. All revisions are then forwarded to the Superintendent of Public Instruction. If the superintendent again refuses to approve the budget, he or she calls for the formation of a budget review committee pursuant to Education Code Section 1623. During the subsequent review process, the county office continues to operate on the prior year's budget. (Ed. Code § 1626.)

## **D. Budget Administration**

After the budget is adopted by the board, it is submitted to the Superintendent of Public Instruction for approval. Thereafter, administration of the budget is the responsibility of the county superintendent.

No funds may be expended in excess of the total expenditures approved by the Superintendent of Public Instruction without his or her approval. (Ed. Code § 1604.) In many counties, the superintendent presents major changes in expenditures, major shifts in spending priorities, and expenditures for new programs, to the county board for approval. However, the superintendent has the statutory authority to spend within major budget categories without further approval. Transfers among budget categories (e.g. object codes) may be made by the superintendent to meet necessary expenses. Budget funds cannot, however, be transferred from the unappropriated fund balance without approval of the county board. In addition, a budget revision by the county superintendent in excess of \$25,000, or a consultant contract for \$25,000 or more, must be incorporated

in the next interim financial report, or other board report, when that report is submitted to the county board, and must be on the agenda for discussion and approval at a regularly scheduled public meeting.<sup>13</sup> (Ed. Code §§ 1280, 1281.)

As noted above, the county superintendent is required to submit two interim reports (for periods ending October 31 and January 31) to the county board for review. At the time of these interim reports, the board and the public are informed of routine budget transfers and approval is sought from the board for budget revisions (e.g. adjustments to revenue and to total appropriation level).

### **E. Property Acquisition and Disposal**

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 and services of the county superintendent of schools.<sup>14</sup> (Ed. Code § 1042(c).) The power to acquire property includes the power to do so by eminent domain. (Ed. Code § 1047.)

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 in the office of the county superintendent. The general practice is for real property to be held in the name of the office of the county superintendent and county board, and personal property (including equipment) to be held in the name of the office of the superintendent. County boards, by a two-thirds vote, may render city and county ordinances inapplicable to certain school sites. (*See*, Gov. Code § 53094.)

Education Code Section 1279 provides a number of requirements for a county superintendent to dispose of personal property.<sup>15</sup> 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.
- (3) bring the matter to the attention of the county board of education 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 certify the value of the property in a quarterly report that is submitted to the county board of education for review.

## **V. ACCOUNTABILITY AND OVERSIGHT RESPONSIBILITIES OF COUNTY OFFICES OF EDUCATION**

The specific oversight responsibilities of the county offices of education are set forth in several sections of the Education Code. In the 2013-2014 budget year, the legislature introduced the Local Control Funding Formula ("LCFF") which eliminated most funding streams and replaced them with funds based on each school

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<sup>13</sup> Added by AB 857. (Chapter 838, Statutes of 1999.)

<sup>14</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>15</sup> Added by AB 857 (Chapter 838, Statutes of 1999).

district's student demographic profile.<sup>16</sup> To encourage accountability over increased "unrestricted" funding, school districts and county offices of education must now adopt Local Control Accountability Plans (LCAPs). LCAPs focus on services and outcomes for all students, as well as specific goals for certain pupil subgroups, including English learners, low income, and foster youth students. (Ed. Code § 52060 *et seq.*)

## **A. Accountability and Oversight of County Programs**

### 1. LCAPs

On or before July 1, 2014, each county superintendent of schools must develop a county LCAP for the schools and programs operated by the county office of education and present the LCAP to the county board of education for adoption. (Ed. Code § 52066(a).) The adopted county LCAP is effective for a period of three years. (Ed. Code § 52066(b).) The county LCAP is reviewed and updated annually. (Ed. Code § 52067(a).)

The county LCAP must identify specific goals for each county program or school and must address all pupils, and each subgroup of pupils, within each county program or school. (Ed. Code § 52066(c).) The goals identified must meet ten state priorities and must specify the actions that the county superintendent plans to take to achieve those goals. (Ed. Code §§ 52066 (c), (d).)

The county superintendent is required to establish a parent advisory committee to provide advice to the county superintendent and the county board of education regarding the development and adoption of the county LCAP. (Ed. Code § 52069(a)(1).) If at least 15% of pupils enrolled in the county programs and schools operated by the county office of education are English learners, the county superintendent is also required to establish an English learner parent advisory committee. (Ed. Code § 52069(b)(1).) (For the Section 52069(b)(1) requirement to apply, 15% of enrolled pupils must be equal to at least 50 pupils.)

Before submitting the county LCAP, the county superintendent must: (a) solicit input from the aforementioned parent advisory committee(s); (b) notify members of the public of the opportunity to submit comments on the LCAP; and (c) ensure that the LCAP is in alignment with county school plans for categorical programs. (Ed. Code § 52068(a).)

Before adopting the county LCAP, the county board of education must: (a) hold at least one public hearing 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 of education adopts the LCAP. (Ed. Code § 52068(b).)

Once the county LCAP is approved, the county superintendent of schools must post the approved county LCAP on the county office of education website and transmit the approved county LCAP to the Superintendent of Public Instruction. (Ed. Code § 52065(b).)

## **B. Accountability and Oversight of Districts**

### 1. LCAPs

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<sup>16</sup> Added by AB 97 (Chapter 47, Statutes of 2013); amended by SB 91 (Chapter 70, Statutes of 2013) and SB 97 (Chapter 357, Statutes of 2013).

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).) No more than 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).) 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).)

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 State Board of Education pursuant to Ed. Code § 52064 (Ed. Code § 52070(d)(1));
- (b) whether the budget for the applicable fiscal year adopted by the governing board of the school district 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 pursuant to Ed. Code § 42238.07 for funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to Sections 42238.02 and 42238.03. (Ed. Code § 52070(d)(3).)

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 to the governing board of the district, including, among other things, any of the following: (a) identification of the district's strengths and weaknesses with regard to state priorities; (b) assignment of an academic expert or team to provide assistance; or (c) referral to the California Collaborative for Educational Excellence provide assistance. (Ed. Code § 52071.)

The county superintendent of schools is required to: (1) post all LCAPs, or links to LCAPs, submitted by school districts on the county office of education website; and (2) transmit all LCAPs submitted by school districts to the Superintendent of Public Instruction. (Ed. Code § 52065(b).)

## 2. Budget

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

- (a) Examine the adopted budgets of the districts within his or her jurisdiction to determine whether it complies with the standards and criteria adopted by the State Board of Education and identify any technical corrections that are necessary to bring the budget into compliance with such standards and criteria. (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 studies, reports, evaluations, or audits of schools districts that were commissioned by the district, the county superintendent, the Superintendent of Public Instruction, 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) If an external reviewer finds more than 3 of the 15 most common Fiscal Crisis and Management Assistance Team (FCMAT) predictors present, the superintendent shall consider the findings of the external reviewer. (Ed. Code § 42127(c)(2).)

(i) Based on these findings, the superintendent must investigate the financial condition of the school district and determine if the district may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative certification. (Ed. Code § 42127.6(a)(1).)

(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) 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).)

(g) Approve, conditionally approve, or disapprove the adopted budget for each school district on or before August 15. (Ed. Code § 42127(d).)

(i) The county superintendent must disapprove a budget if the county superintendent determines that the budget does not include the expenditures necessary to implement the approved LCAP or approved annual LCAP update. (Ed. Code § 42127(d).)

(h) Transmit recommendations regarding revision of the budget to the governing board of the school district on or before August 15. 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. (Ed. Code § 42127(d).)

(i) Review any disapproved budget and the recommendations at a public hearing of the school district governing board on or before September 8. (Ed. Code § 42127(e).)

(j) Develop a budget for any district that does not submit one to the county superintendent by the specified deadline and transmit that budget to the district governing board by September 15. (Ed. Code § 42127(d).)

(k) Provide a list to the Superintendent of Public Instruction by September 22 that identifies all school districts for which the budget may be tentatively disapproved. (Ed. Code § 42127(f).)

(l) By October 8, examine the revised budget to determine whether it: (1) complies with the standard and criteria adopted by the state board of Education; (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 tentatively approved budget; and (4) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments.

(m) Approve or disapprove the revised budget by October 8.

(n) 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. The superintendent shall notify the district, the county board of education, the district superintendent and governing board, and each parent and teacher organization of the district, of his or her determination within 10 days of reviewing the collective bargaining agreement. (Government Code §§ 3540.2(a), (c).)

(i) The 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. (Cal. Govt. Code § 3547.5(c).)

(o) Report to the Superintendent of Public Instruction on the financial condition of any school district within the county that is certified as qualified or negative. The superintendent shall report his or her proposed remedial actions and shall take all actions necessary, including at least one of the following actions, 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 internal controls.

(iii) Direct the school district to submit a financial projection of all fund and cash balances of the district as of June 30 of the current year and subsequent fiscal years as he or she requires.

(iv) Require the district to encumber all contracts and other obligations, to prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivable and payables.

(v) Direct the district to submit a proposal for addressing 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.

(vi) Assign the Fiscal Crisis and Management Assistance Team (FCMAT) to review issues related to employment of teachers and provide the district with recommendations. (Ed. Code § 42127.6(a)(1).)

(p) Reimburse the Superintendent of Public Instruction for all costs if the SPI assumes the fiscal oversight responsibility of the county superintendent of schools based on a finding that the actions of the county superintendent are not effective in resolving the financial problems of a school district. (Ed. Code § 42127.6(k).)

In addition, at any time during the fiscal year, a county superintendent may audit, in a timely and efficient manner, the expenditures and internal controls of the school districts he or she determines to be fiscally accountable.<sup>17</sup> (Ed. Code § 1241.5(a).) At any time during the fiscal year, county superintendents may review or audit 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. (*Id.* at 1241(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. If the county superintendent determines that there is evidence that fraud or misappropriation has occurred, he or she is required to notify the governing board of school district, the State Controller, and Superintendent of Public Instruction, and the local district attorney. (Ed. Code § 42638(b).)

### 3. Emergency Loan Districts

County superintendents are also required to provide specific fiscal oversight for districts that receive emergency state loans. The appointment of a State Administrator to an emergency loan district does not remove any statutory rights, duties, or obligations from the county superintendent.<sup>18</sup> (Ed. Code § 41327.2(a).) County superintendents are required to submit reports to the Superintendent of Public Instruction, appropriate fiscal and policy committees of the legislature, the Director of Finance, and the Secretary for Education, after reviewing an emergency loan district's budget. The superintendent's reports shall:

- (a) Document the fiscal and administrative status of an emergency loan district, particularly in regard to the implementation of the fiscal and management recovery plans.
- (b) Determine whether the revenue streams to the district appear to be consistent with its expenditure plan, according to the most recent data available at the time of the report. (Ed. Code § 41327.2(b).)

Such reports are required until six (6) months after all rights, duties, and powers are returned to the school district.

Education Code Section 41326(k) requires the Superintendent of Public Instruction (SPI) to review a county superintendent's fiscal oversight of an emergency loan district within his or her jurisdiction.<sup>19</sup> The SPI shall report his or her findings to the Legislature and the Department of Finance within three months. If the SPI determines that the county superintendent failed to carry out his or her responsibilities for fiscal oversight, the SPI may exercise the oversight authority of the county superintendent for the emergency loan district. 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 failed to take those indicators into account in other districts with negative or qualified certifications and shall provide an additional report to the appropriate policy and fiscal committees of the Legislature and the Department of Finance on the fiscal oversight practices of the county superintendent.

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<sup>17</sup> Amended by AB 139 (Chapter 620, Statutes of 2001); SB 430 (Chapter 357, Statutes of 2005).

<sup>18</sup> Added by AB 2756. (Chapter 52, Statutes of 2004). Amended by SB 512 (Chapter 677, Statutes of 2005); SB 942 (Chapter 347, Statutes of 2011.)

<sup>19</sup> Amended by AB 2525 (Chapter 896, Statutes of 2004); AB 1023 (Chapter 296, Statutes of 2011); AB 2278 (Chapter 159, Statutes of 2012); AB 2279 (Chapter 429, Statutes of 2012); AB 2662 (Chapter 589, Statutes of 2012); AB 383 (Chapter 76, Statutes of 2013).

## VI. MANAGEMENT AND MONITORING OF PERSONNEL

The contrasting roles of county boards of education and K-12 school boards are highlighted in the area of personnel management, i.e. hiring, discipline, termination, and collective bargaining. The county superintendent is the employer charged with the responsibility of managing the personnel of the county office of education. (*See*, 72 Ops. Cal. Atty. Gen. 25, March 9, 1989.) The superintendent is responsible for making staffing determinations, including the need for current and new staff positions.

Employees of the county superintendent who staff the county office of education 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 K-12 districts; however, the superintendent, not the board, is the employer who negotiates with the unions.

The Attorney General issued an opinion in 2002 stating that a county board of education may not meet in closed session under either the “personnel exception” or the “labor negotiations exception” of the Brown Act 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.)<sup>20</sup>

### A. Hiring Staff

#### 1. Certificated Staff

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 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 superintendent retains sole authority to hire staff within budgetary constraints.

#### 2. Classified Staff

Education Code Section 1311 specifies that classified employees that are employed by the county superintendent of schools 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.)

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<sup>20</sup> 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).)

## **B. 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 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 of education for discussion at a regularly scheduled meeting.<sup>21</sup> (Ed. Code § 1302(a).) In addition, the county superintendent may not increase the retirement benefits of any county office of education employee unless the matter is brought to the attention of the county board of education for discussion at a regularly scheduled meeting and the county board approves the increase.<sup>22</sup> (*Id.* at § 1302(b).)

The salary of the superintendent is set by the county board, subject to certain legal and statutory limitations.<sup>23</sup>

## **C. Issuing Temporary Certificates**

If certificated persons meet the conditions specified in Education Code Section 44332, the county board of education may issue temporary certificates that authorize the payment of salary to teachers or children center personnel whose credentials or permits are being processed. The county board is also responsible for canceling said certificates upon notification that the certificate holder does not meet the requirements for the credential.

## **D. Discipline, Dismissal, Layoffs, Evaluations, and Leave**

Personnel decisions regarding discipline, dismissal, layoff, evaluation, and leave for certificated employees are within the purview of the county superintendent of schools, 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 school district employees, certificated employees of county superintendents must be in a “teaching position” (i.e. classroom instruction) to acquire permanency. (Ed. Code § 1296; *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 and tenure-related 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. On this subject, one commentator has opined as follows:

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<sup>21</sup> Added by AB 857 (Chapter 838, Statutes of 1999.)

<sup>22</sup> Added by AB 857 (Chapter 838, Statutes of 1999.)

<sup>23</sup> See section on “General Duties of County Boards of Education.”

“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.)

As mentioned above, 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.

### **E. Credential Monitoring**

County superintendents are required to monitor and review school district certificated employee assignment practices as follows:

- (1) On an annual basis, schools and school districts that are likely to have problems with teacher misassignments and teacher vacancies based on past experience or other available information; and
- (2) On an annual basis, schools ranked in deciles 1 to 3, inclusive, on the 2003 base Academic Performance Index if those schools are not currently under review through a state or federal intervention program. [Note: If a school has no teacher misassignments or teacher vacancies for two consecutive years, the next review of that school may be completed on a four-year cycle, unless the school is likely to have problems with teacher misassignments and teacher vacancies based on past experience or other available information]; and
- (3) All other schools on a four-year cycle.<sup>24</sup> (Ed. Code § 44258.9(b).)

In addition, county superintendents are required to investigate school and district efforts to ensure that any credentialed teacher serving in an assignment requiring a certificate or specific training completes the necessary requirements for these certificates or completes the required training. Furthermore, county superintendents are required to submit an annual report to the Commission on Teacher Credentialing summarizing the results of all assignment monitoring and review. (*Id.* at § 44258.9(c).)

In the event of a misassignment, county superintendents are required to notify, through the district superintendent, any certificated school administrator responsible for assigning a certificated person to a position for which he or she has no legal authorization of the misassignment and advise him or her to correct the assignment within 30 days (*Id.* at § 44258.9(e)(3).) If the misassignment is not corrected within 30 days, county superintendents are required to notify the Commission on Teacher Credentialing unless the administrator describes in writing to the county superintendent the extraordinary circumstances which make this correction impossible.

County superintendents are also required to notify district superintendents which have 5% or more of all certificated teachers in secondary schools misassigned and advise him or her to correct the misassignments

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<sup>24</sup> Amended by AB 3001 (Chapter 902, Statutes of 2004); AB 831 (Chapter 118, Statutes of 2005); SB 512 (Chapter 677, Statutes of 2005); SB 132 (Chapter 730, Statutes of 2007).

within 120 days. If the misassignments are not corrected within 120 days, county superintendents are required to notify the Commission on Teacher Credentialing unless the district superintendent describes in writing to the county superintendent the extraordinary circumstances which make this correction impossible. (*Id.* at § 44258.9(e)(4).)

At the direction of the Commission on Teacher Credentialing, county boards of education are authorized to conduct hearings, report findings, summarize the evidence, and recommend to the state the revocation or suspension of a credential.<sup>25</sup> (Ed. Code § 44422.) However, county boards of education 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 of schools. (67 Ops. Cal. Atty. Gen. 218, May 30, 1984.)

## **F. 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. Agreements between the superintendent and employee unions are binding contracts and any action that interferes with their performance may constitute an unfair labor practice.

## **G. 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.)

## **VII. ADMINISTRATION AND MANAGEMENT OF COUNTY PROGRAMS**

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

### **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.<sup>26</sup>*

ROC/Ps are established to provide vocational education opportunities to students. The county superintendent, with the consent of the State Board of Education, has the discretionary authority to establish and maintain an ROC/P for vocational education. (Ed. Code § 52301.)<sup>27</sup> When an ROC/P is established by the county superintendent, 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 (Ed. Code § 52310.5.) and performs certain oversight functions, including review of the program every two years for compliance with Education Code Section 52302.3.

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

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<sup>25</sup> Amended by SB 512. (Chapter 53, Statutes of 2009.)

<sup>26</sup> Added by AB 97. (Chapter 47, Statutes of 2013.)

<sup>27</sup> ROC/Ps may also be established by school districts under a joint powers agreement (JPA).

- (1) Provide necessary transportation for ROC/P students (Ed. Code § 52311)<sup>28</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.)

In addition, when the county office of education receives funding to operate a ROC/P pursuant to Section 2550, the county superintendent has certain reporting responsibilities. (Ed. Code § 52321(a).) The county superintendent also has certain certification duties with regards to Necessary Small ROC/Ps. (Ed. Code § 52324.6.)

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

Pursuant to Education Code Section 1700 et. seq., 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 county 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), youth conservation and training program (Ed. Code § 1780), Technical, Agricultural, and Natural Resource School (Ed. Code § 1790), audio and visual services facilities (Ed. Code § 1830), classes or schools for prisoners in the county jail (Ed. Code § 1900), and emergency schools (Ed. Code § 1920).

It seems clear that 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.

## **C. County Community Schools**

County community schools generally serve those students who have been removed from school districts, whether by expulsion or referral. The county board has the discretionary authority to establish these community schools (Ed. Code § 1980). Once established, the county superintendent administers the schools, and the county board adopts the curriculum (Ed. Code §§ 1983, 1984).

## **D. Community Day Schools**

Community day schools are operated by school districts and county offices of education. Community day schools serve expelled students, students referred by a School Attendance Review Board or probation

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<sup>28</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)

department, and other high risk youth. Education Code Section 48667 provides that for purposes of community day schools, county offices of education are deemed to be a school district.<sup>29</sup> Thus, the county board of education has discretionary authority to establish these community day schools. (Ed. Code § 48660.)

### **E. Special Education**

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. (Ed. Code § 56000 *et seq.*)

*Note: 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.)*

### **F. 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. The board adopts the curriculum and evaluates the educational program. (Ed. Code § 48645.3.)

### **G. 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.)

## **VIII. COUNTY AUTHORIZED CHARTER SCHOOLS**

### **A. Establishment of County 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<sup>30</sup> (Ed. Code § 47605.5);
- (2) The petition has been previously denied by a local school district governing board within the county (Ed. Code § 47605(j))<sup>31</sup>; or
- (3) The charter provides county-wide services that cannot be provided by a district-approved charter school.<sup>32</sup> (Ed. Code § 47605.6.)

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<sup>29</sup> Added by AB 1845. (Chapter 847, Statutes of 1998.)

<sup>30</sup> Added by AB 544. (Chapter 34, Statutes of 1998.)

<sup>31</sup> Amended by SB 772 (Chapter 569, Statutes of 2007); SB 1498 (Chapter 179, Statutes of 2008); SB 1290 (Chapter 576, Statutes of 2012); AB 97 (Chapter 47, Statutes of 2013).

In any case, if the county board approves the charter, it is the authorizing entity. As such, it retains the power to revoke or renew the charter, has supervisory and oversight responsibilities over the charter school, and is responsible for ensuring that all special education and related services to eligible students are provided pursuant to each student's individualized education program. (Ed. Code §§ 47605.6, 47607, 47646.)

A charter school petition that has been denied by the governing board of a school district must be received by the county board of education not later than 180 calendar days after the denial. Reviews by a county board of education must be completed within 60 days of receipt, but an extension of up to 30 days is possible if both parties are willing. Any petition received more than 180 calendar days after denial by a district will not be acted upon by the county board of education. (5 CCR § 11967.) If, upon receipt of the petition, the Board fails to act within 120 days, the petitioner(s) may seek judicial review of the district board's denial. (Ed. Code § 47605(j)(4).)

## **B. Oversight of County 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.<sup>33</sup> (Ed. Code § 47604.4.) In addition, beginning January 1, 2006, 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.<sup>34</sup> (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 a charter school. Therefore, a county office may request credential information from charter schools under their general authority. However, Education Code Section 47605(l) specifically provides for the monitoring of credentials by the authorizing entity. The sections of law that generally provide the county office of education with a role in credential monitoring for districts do not apply to charter schools. Thus, a county office would only have credentialing monitoring responsibility under Education Code Section 47605(l) if it were the charter authorizing entity.

Also, Education Code Section 47652 provides county offices of education in which a charter-granting agency is located approval authority over the estimated average daily attendance of new charter schools in order for such charter schools to receive advanced apportionment.

## **IX. SCHOOL DISTRICT REORGANIZATION**

There is in each county, except a county that is also a city (i.e., San Francisco), a county committee on school district organization. (Ed. Code § 4000.) The county committee is the local initiator, coordinator, analyst, facilitator and arbitrator for the reorganization of school districts. It formulates plans, responds to petitions, conducts public hearings, develops and releases information, and analyzes proposals throughout the approval process of reorganization. For petitions for transfers of territory, where state approval is not required, the county committee gives final approval or disapproval (Ed. Code §§ 35709, 35710<sup>35</sup>), subject only to appeal to

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<sup>32</sup> Added by AB 1994 (Chapter 1058, Statutes of 2002); amended by AB 97 (Chapter 47, Statutes of 2013).

<sup>33</sup> Added by AB 1994. (Chapter 1058, Statutes of 2002.)

<sup>34</sup> Added by SB 430. (Chapter 357, Statutes of 2005.)

<sup>35</sup> Amended by AB 174. (Chapter 314, Statutes of 2009.)

the State Board of Education. (Ed. Code §§ 35710.5, 35711.) The county committee on school districts also establishes or rearranges governing board trustee areas as required. (Ed. Code § 1000.)

In many counties, the county board of education serves as the county committee on school district organization by order of the State Board of Education. (Ed. Code §§ 1000,4021.)

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 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. (Ed. Code § 35700.1.)

In addition, county superintendents are required to 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.)

## **X. THE PERMISSIVE EDUCATION CODE**

Education Code Section 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.”

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.” The Legislature received authority to grant permissive authority to school districts from a Constitutional amendment that specified only “school districts.” Some have questioned whether the Constitutional language permitted the Legislature to extend the authority to either the county superintendents or county boards of education. To date, no one has challenged this grant of authority and educational agencies have proceeded on the basis that the extension is authorized.

## XI. ADDITIONAL SERVICES PROVIDED BY COUNTY OFFICES OF EDUCATION

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

### A. Oversight of Interdistrict Pupil Transfers

As regional coordinators, county offices of education provide certain interdistrict services. Current law provides several means to authorize interdistrict attendance of a student who resides in one school district but wishes to attend public school in another district.

#### 1. Interdistrict Attendance Agreements (Education Code §§ 46600, et seq.)

The first, which has been in existence since the mid-1980's, is related to an agreement between two or more school districts for the interdistrict attendance of pupils who are residents of the respective districts. (*See*, Ed. Code § 46600, *et seq.*) If there is no interdistrict attendance agreement between two districts, a parent may request that one be entered into.

If either of the school districts fails to approve a transfer or fails, upon request, to enter into an agreement within 30 calendar days, the person having legal custody may appeal the failure to the county board of education having jurisdiction over the district of residence of the parent/guardian/person with legal custody. (Ed. Code § 46601.)

In general, where interdistrict attendance involves school districts located in different counties, the county board of education with jurisdiction over the district denying the transfer has jurisdiction for purposes of an appeal. However, where both school districts deny the transfer, the county board of education with jurisdiction over the district of residence has jurisdiction for purposes of an appeal and must seek concurrence of the other county board of education. If the two county boards do not then concur, the pupil's appeal shall be denied. (Ed. Code § 46601(d).)

The county board has the responsibility within prescribed timelines and subject to certain procedures to determine whether the pupil should be permitted to attend and the applicable period of time.

#### 2. District of Choice Program (Ed. Code §§ 48300, et seq.)<sup>36</sup>

The second program, known as the "District of Choice" program, provides that a school district may, by resolution, elect to accept up to a specified number of students from other districts. (Ed. Code § 48301(a).) The district must select students through a "random, unbiased process" that does not account for academic or athletic performance. However, siblings of students already enrolled in the district are entitled to priority. (Ed. Code § 48306(a).) If the number of transfer applications exceeds the number of transfers the governing board has elected to accept, approval for transfer shall be determined by a public random drawing at a regularly scheduled meeting of the school district governing board. (Ed. Code § 48301(a).) In addition, school districts of residence that received a negative status on the most recent budget certification completed by the county superintendent in any fiscal year may limit the number of pupils who transfer out of that district in that year. (Ed. Code § 48307(c).)

Furthermore, school districts may limit the number of additional pupils who transfer out of that district for the upcoming school year if the following conditions are met:

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<sup>36</sup> As amended by SB 680. (Chapter 198, Statutes of 2009.)

(a) If the county superintendent determines that the district would not meet the standards and criteria for fiscal stability specified in Ed. Code § 42131 for the subsequent fiscal year exclusively due to the impact of additional pupil transfers pursuant to the District of Choice program in that year; and

(b) If the county superintendent identifies a number beyond which number of additional transfers would result in a qualified or negative certification in that year exclusively as a result of additional transfers pursuant to the District of Choice program. (Ed. Code § 48307(d).)

Students accepted for transfer under the “District of Choice” program are deemed to have fulfilled the residency requirements for school attendance in a district. Thus, no interdistrict agreement is required for the transfer. However, there is no statutory right to appeal a denial of a transfer request under the “District of Choice” program. As a result, the county board of education does not have an appellate role. This program, which was enacted in 2004, “sunssets” on July 1, 2016. (Education Code § 48315.)

### 3. Allen Bill Transfer Program (Ed. Code § 48204(b))

The third program which authorizes students to attend school in a district other than their “home” district is found in Section 48204 of the Education Code. In this program, known as “Allen Bill Transfers,” a student is authorized to attend school in a district where the student’s parent(s) works for a minimum of 10 hours during the school week, rather than where the student and parent(s) reside. The district where the parent is employed must agree to this alternative and either district of residence or parental employment may prohibit the transfer if it would negatively affect a desegregation plan or if the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer. Similar to the “District of Choice” program described above, there is no statutory right to appeal a denial of a transfer request under the “Allen Bill Transfer” program. As a result, the county board of education does not have an appellate role. This program is scheduled to “sunset” on July 1, 2017.

## **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 new teacher induction programs through the Beginning Teacher Support and Assessment (BTSA) program. (Ed. Code §§ 44259(c), 44279.2(c).) These programs are administered jointly by the Commission on Teacher Credentialing and the county superintendent. County superintendents may also establish administrator training and evaluation programs to provide school administrators support and development activities designed to improve clinical supervision skills. (Ed. Code § 44682.)

## **C. Business Services**

County superintendents are authorized to provide fiscal, budgetary, and data-processing services through contractual agreements with school districts that have been determined to be fiscally accountable under Education Code Section 42650. (Ed. Code § 42650.) Also, county superintendents may, with the approval of the

State Superintendent of Public Instruction, the county board of education, and the county auditor, process payroll for designated school districts within the county. (Ed. Code § 42646.)

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

County superintendents may, with approval of the county board of education and the Superintendent of Public Instruction, establish and maintain child development centers and programs. (Ed. Code § 8321.)

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

County offices of education are authorized to serve as lead agencies to provide a range of technology services including staff development and technical assistance to all school districts and county offices of education within each region. (Ed. Code § 51871.) 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 of education, school districts, and schools in the state.

#### **F. Regional System of District and School Support**

For purposes of complying with the federal No Child Left Behind Act of 2001 (20 U.S.C. § 6301 *et seq.*) county offices of education provide assistance to identify school districts and schools that are in need of improvement or that may be subject to corrective action by reviewing and analyzing all facets of a school's operation, including the design and operation of the instructional program and making recommendations for improving student performance and school operations. (Ed. Code § 52059.)

#### **G. 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 State Board of Education, 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.)

#### **H. Scholarship Programs**

County boards of education are authorized to grant scholarships and monetary awards to county students when it is acting as the governing board of a school district. (*See*, 85 Ops. Cal. Atty. Gen. 167, August 28, 2002.)

#### **I. 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 §§ 8764-8765.)

#### **J. Services to Migrant Children**

The Superintendent of Public Instruction is authorized to contract with county superintendents of schools (or local educational agencies) to provide services to migrant children residing in specified geographical regions. (Ed. Code § 54444.)

## **K. 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. (Welf. and Inst. Code § 14132.47(q)(1).) County offices of education 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.<sup>37</sup>

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<sup>37</sup> Amended by AB 2527. (Chapter 464, Statutes of 2008.)

## 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.