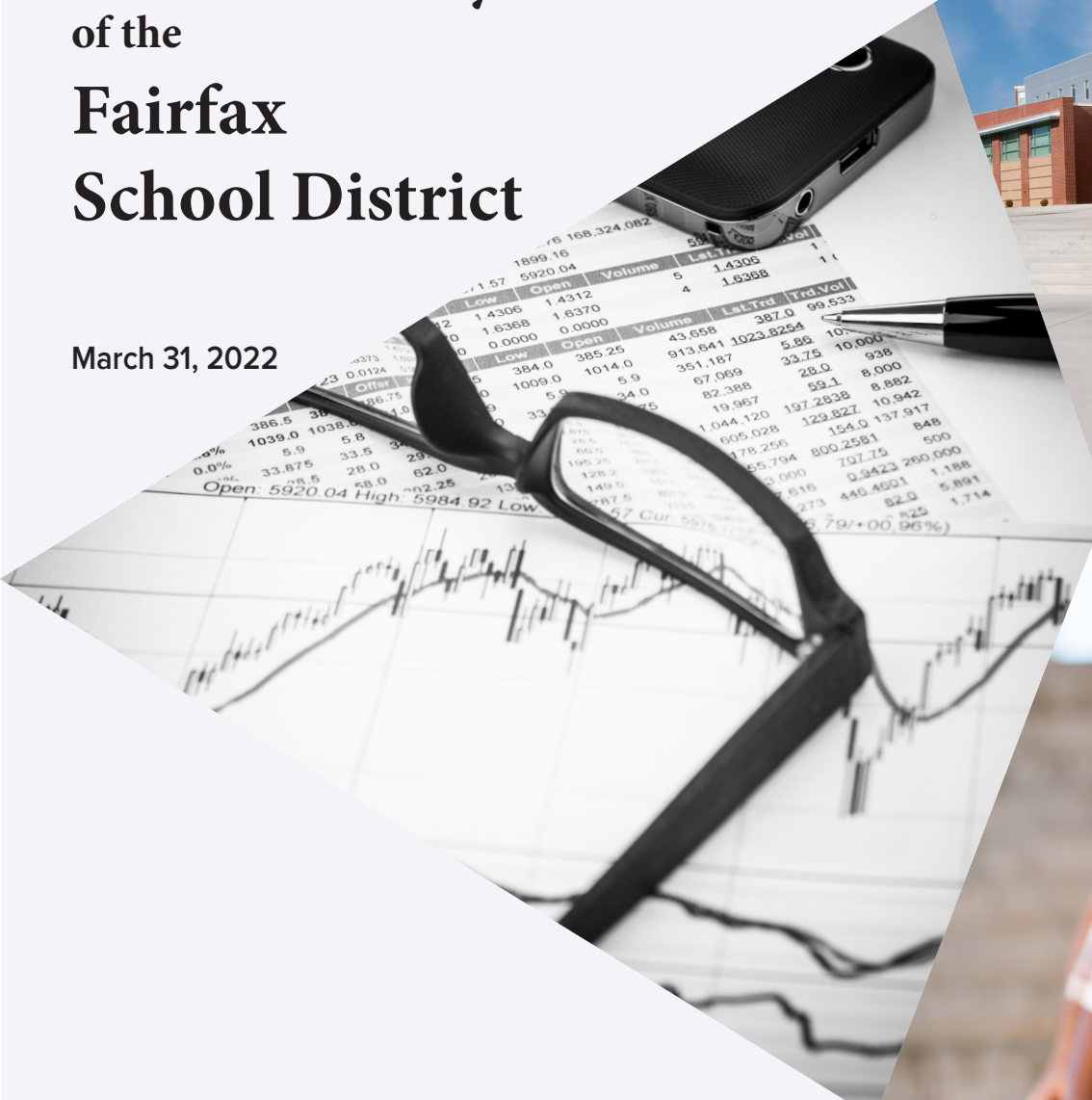




FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

Extraordinary Audit of the Fairfax School District

March 31, 2022



Kern County Superintendent of Schools Office

Michael H. Fine
Chief Executive Officer

March 31, 2022

Mary C. Barlow, Superintendent
Kern County Superintendent of Schools
1300 17th Street – City Centre
Bakersfield, CA 93301

Dear Superintendent Barlow:

On July 14, 2021, the Kern County Superintendent of Schools (KCSOS) and the Fiscal Crisis and Management Assistance Team (FCMAT) entered into an agreement to conduct an AB 139 Extraordinary Audit to determine if fraud, misappropriation of funds or other illegal fiscal practices may have occurred at the Fairfax School District.

The KCSOS received allegations of possible fraud, misappropriation of funds or other illegal fiscal practices at the Fairfax School District and requested that FCMAT review the process for awarding of contracts specifically related to professional services.

The agreement stated that FCMAT would review and test recorded professional services transactions and contracts from July 2020 to present, and any applicable board policies and minutes.

The primary focus of this review was to determine, based on the testing performed, whether:

1. adequate management and internal controls are in place regarding the district's contractual commitments relative to professional services for the district, and
2. based on that assessment, whether fraud, misappropriation of funds or other illegal fiscal practices may have occurred.

The attached final report contains the study team's findings and recommendation.

FCMAT appreciates the opportunity to serve you and extends thanks to all the staff of the Kern County Superintendent of Schools and Fairfax School District for their cooperation and assistance during the course of this study.

Sincerely,



Michael H. Fine
Chief Executive Officer

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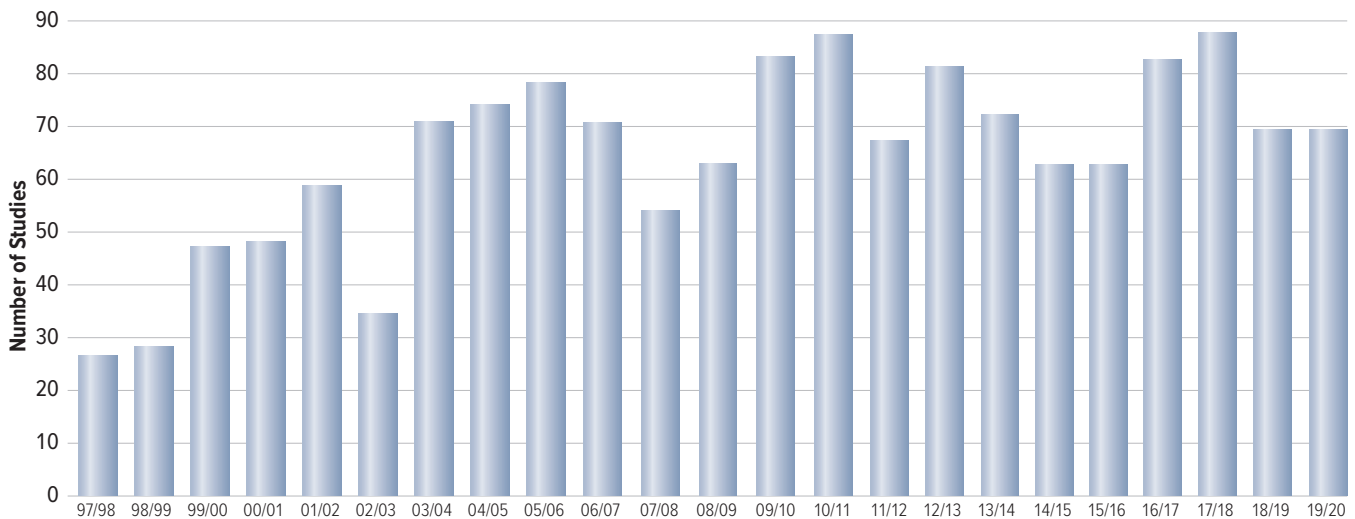
About FCMAT

FCMAT's primary mission is to assist California's local K-14 educational agencies to identify, prevent, and resolve financial, human resources and data management challenges. FCMAT provides fiscal and data management assistance, professional development training, product development and other related school business and data services. FCMAT's fiscal and management assistance services are used not just to help avert fiscal crisis, but to promote sound financial practices, support the training and development of chief business officials and help to create efficient organizational operations. FCMAT's data management services are used to help local educational agencies (LEAs) meet state reporting responsibilities, improve data quality, and inform instructional program decisions.

FCMAT may be requested to provide fiscal crisis or management assistance by a school district, charter school, community college, county office of education, the state superintendent of public instruction, or the Legislature.

When a request or assignment is received, FCMAT assembles a study team that works closely with the LEA to define the scope of work, conduct on-site fieldwork and provide a written report with findings and recommendations to help resolve issues, overcome challenges and plan for the future.

Studies by Fiscal Year



FCMAT has continued to make adjustments in the types of support provided based on the changing dynamics of K-14 LEAs and the implementation of major educational reforms. FCMAT also develops and provides numerous publications, software tools, workshops and professional learning opportunities to help LEAs operate more effectively and fulfill their fiscal oversight and data management responsibilities. The California School Information Services (CSIS) division of FCMAT assists the California Department of Education with the implementation of the California Longitudinal Pupil Achievement Data System (CALPADS). CSIS also hosts and maintains the Ed-Data website (www.ed-data.org) and provides technical expertise to the Ed-Data partnership: the California Department of Education, EdSource and FCMAT.

FCMAT was created by Assembly Bill (AB) 1200 in 1992 to assist LEAs to meet and sustain their financial obligations. AB 107 in 1997 charged FCMAT with responsibility for CSIS and its statewide data management work. AB 1115 in 1999 codified CSIS' mission.

AB 1200 is also a statewide plan for county offices of education and school districts to work together locally to improve fiscal procedures and accountability standards. AB 2756 (2004) provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans.

In January 2006, Senate Bill 430 (charter schools) and AB 1366 (community colleges) became law and expanded FCMAT's services to those types of LEAs.

On September 17, 2018 AB 1840 was signed into law. This legislation changed how fiscally insolvent districts are administered once an emergency appropriation has been made, shifting the former state-centric system to be more consistent with the principles of local control, and providing new responsibilities to FCMAT associated with the process.

Since 1992, FCMAT has been engaged to perform more than 1,400 reviews for LEAs, including school districts, county offices of education, charter schools and community colleges. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The team is led by Michael H. Fine, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

Introduction

Background

The Fairfax School District is in southeastern Bakersfield in Kern County. The district provides services to approximately 2,700 students in grades K-8 in three elementary schools and one junior high school.

In July 2020 an investigation was initiated by the governing board regarding complaints from district staff directed at a governing board member (subject board member). The superintendent and the board president at the time the complaints were filed consulted with the district's longstanding general counsel (Firm 1) to initiate an investigation. Because the superintendent was a representative board member for the Firm 1 legal consortium it was determined that an independent legal firm (Firm 2) should conduct the investigation to avoid any perceived bias or conflict.

In September 2020, Firm 2 examined the complaints and in October 2020 issued a report on their findings and recommendations. Based on the recommendations in the investigative report, the board requested Firm 1 counsel to draft a resolution of censure against the subject board member (Appendix A). The censure resolution was placed on the December 15, 2020, regularly scheduled board meeting agenda. The agenda item description states the following:

“At a special meeting on November 12, 2020, the Board directed legal counsel to prepare a proposed censure resolution concerning findings of abusive conduct made by an independent attorney investigator following an investigation of complaints from employees and an association President against a trustee.”

However, prior to that meeting changes in the governing board composition took place.

Two board member terms, including the board president, were set to expire the first Friday in December 2020. In November 2020 the incumbent board president lost his seat to another candidate; the second board member was reelected to the board.

Due to the COVID-19 pandemic the board meetings on December 15, 2020, were conducted remotely via Zoom. Three board members, including the newly elected member, the subject board member and the board clerk, refused to turn their cameras on during the meetings; two members at large kept their cameras on and could be openly viewed by all attending. During the annual organization/special board meeting the board proceeded with the annual reorganization of the board, at which time the subject board member was appointed board president. From that point forward the dynamics of the governing board shifted, and a clear 3-2 divide became evident. A series of actions taken after the annual board reorganization meeting and in the months that followed by some members of the governing board, relative to the investigative findings and recommendations and procurement of contracts for legal services, raised concerns by those directly involved and most all who observed.

Following the special meeting, the board proceeded to the regularly scheduled board meeting. The agendaized public hearing and censure resolution against the subject board member, now board president, was advanced in the reordering of the agenda. This item was addressed by the newly organized board following the public comments section.

The censure resolution was read then followed by a public hearing where numerous staff members, community members and the former board president all spoke in passionate support of the censure resolution and asked the board to adopt the resolution.

After extensive public comment, the superintendent asked the board if they had any recommended changes to the resolution; no discussion followed. The motion on the resolution of censure failed after a 2-2 split vote; the subject board member did not participate in the vote.

The matter of the censure resolution was revisited at the January 14, 2021, regular board meeting. A great deal of public comment took place encouraging the board to reconsider the censure resolution. Additionally, several requests were made that all board members turn on their cameras during the meeting, which were ignored by three of the board members. While viewing the official recording of the meeting, FCMAT observed chaotic overtalk among board members. Some board members also implied discussion was taking place between other board members in the background. Several attempts were made by a veteran board member to return for reconsideration the censure resolution prepared with the agreement and at the direction of the previously seated board. Multiple motions were made and each was rejected by the newly seated board on a 2-2 vote; the subject board member did not participate in the discussion or vote.

After the vote, the superintendent asked if there were any further questions or discussion. A veteran board member pushed for reasons from each of the two board members who voted against placing the censure resolution on a future agenda for reconsideration. The newest board member expressed that he felt it was a waste of time. Additional unproductive discussion ensued and was interrupted by the subject board member who simply pushed forward to the next agenda item, a contract for new legal counsel.

On December 21, 2020, the superintendent received a request from a newly seated board member to seek new legal counsel "... who is bilingual so that I can communicate with him." The subject board member, who was included in the communication, responded to this request stating that he would be reviewing the board agenda with the superintendent following the holidays and would communicate this concern. On December 30, 2020, the subject board member requested that the superintendent outline the steps for obtaining a new law firm after acknowledging the subject board member and superintendent had already had discussion regarding the process. In this same communication he asked when the superintendent would be publishing the ad, indicating his awareness of the required request for proposals (RFP) process.

On January 11, 2021, the subject board member brought a contract for legal services to the superintendent and instructed him to place it on the January 14, 2021, board agenda as an action item; no RFP process was conducted. Communications to the board members regarding the contract for legal services with a new legal firm (Firm 3) did not describe any specialized legal service needs or unique demands of a particular issue. Furthermore, the revised agenda provided to the board members did not make any statement regarding such conditions.

When the agenda item came up during the January 14, 2021, board meeting, two veteran board members repeatedly asked why the contract was being brought before the board for approval and for what services. These same board members further expressed that they had no knowledge of any specialized needs of the governing board or that a contract was being presented for board approval (indicating no prior board discussions took place regarding an unusual circumstance requiring specialized legal services). The clerk quickly made a motion to approve the contract, but the two veteran board members continued to press for reasoning behind the contract. The subject board member repeatedly disregarded questions posed by these two board members, openly talked over those asking questions and discouraged discussion on the topic. A representative from Firm 1 advised the board that to comply with Board Policy 9124 the board needed to openly declare the need for specialized legal services.

Board Bylaw 9124 (Appendix B) states the following:

"When the district is seeking legal advice or representation, the Superintendent or designee shall initiate a Request for Proposals (RFP) to advertise and solicit proposals for legal services."

The policy further states:

“The Board may also contract for temporary, specialized legal services without initiating an RFP when a majority of the Board determines that the unique demands of a particular issue or emergency situation so requires.”

The two veteran board members continued to push for an explanation describing a need for specialized services. The superintendent expressed that he was unaware of any immediate need to approve a contract and that the agenda item could be brought back at the next meeting to allow more time for board members to understand the purpose of the contract. Despite the superintendent’s guidance, the subject board member continued to insist that the item required board action because it was placed on the agenda, and pushed for a second to the motion made by the clerk earlier in the discussions. After four failed attempts to get a second to that motion, and despite no declaration of a need for specialized legal services or description of unique demands of a particular issue or emergency, the board clerk moved for approval, which was seconded by the subject board member. The motion to approve the contract was passed at the January 14, 2021 board meeting with a 3-2 vote.

Invoices show that Firm 3 provided services on January 18, 2021. District personnel stated they reluctantly signed the contract on January 19, 2021, questioning the validity of the board’s approval. The contract for services with Firm 3 was brought before the board for consideration a second time at a special meeting on February 3, 2021. There was no conversation or explanation about why the board was acting on the contract again, and again there was no declaration of specialized need, emergency or unique demand for services.

In April 2021 the former superintendent left the district after contentious interactions with the subject board member. The assistant superintendent of educational services was appointed as the interim superintendent in May 2021 while the board conducted a search for a new superintendent with the assistance of the Kern County Superintendent of Schools.

At a special board meeting conducted on Saturday, May 22, 2021, the subject board member brought forward to the board four successive action items:

1. An evaluation of the current legal counsel firm (Firm 1)
2. Motion to terminate that same legal firm
3. Motion to retain temporary legal counsel with new legal counsel (Firm 4)
4. Motion to conduct a search for new permanent law firm pursuant to Board Bylaw 9124

The evaluation process for the first agenda item was structured and included a rubric for scoring. Three of the board members were reluctant to openly share their scores for their evaluation and unwilling to provide reasonable rationale supporting their low scores. The board was reminded by Firm 1 counsel and county administration in attendance that the board meeting is an open public meeting and that they should openly discuss their scores, the rationale supporting their scores, and offer feedback to the firm. Despite this guidance three board members, all of whom assigned low evaluation scores, provided little to no rationale for their scoring. Ultimately, all board member scores were averaged, and the evaluation was deemed “positive.”

Despite the favorable evaluation, the subject board member quickly moved to the second agenda item to terminate the services of the same law firm. Two of the five board members questioned the reasoning behind all three of the remaining items listed on the agenda and were not provided with rationale. These same two board members requested that the three remaining items be removed from the agenda until ra-

tionalization could be provided; their motion to remove the items was quickly voted down by the remaining three board members.

As the subject board member proceeded with the second agenda item a motion was again made to remove the item from the agenda, and it was again promptly voted down. When pressed further for reasoning, the subject board member first stated that it was on the agenda, then he stated he did not place the item on the agenda and suggested that the interim superintendent had the reasoning; her expressions and response indicated she did not. He then stated the reason for terminating services is “confidential” and that interested parties should request copies of the invoices from the district and analyze them.

Two dissenting board members and members of the public voiced a great deal of frustration. The subject board member called for order and stated he was making a motion to deny the public the privilege of comment, which is a violation of the Brown Act. (Government Code Section 54950 et seq.) Counsel from Firm 1 reminded the board that they are committed by contract to notify the firm of their intent to withdraw from the consortium no later than December for the following year and that they are currently under contractual obligation through June 30, 2022. The county administrator in attendance warned the board that they may be violating the law and their own board policy by terminating the contract. The subject board member made a motion to approve the agenda item to terminate services with Firm 1, which was seconded by the clerk. The board voted to terminate services with the legal firm in a 3-2 vote.

The board then considered the third item listed on the agenda, a contract for temporary legal services from yet another legal firm (Firm 4), “while we conduct a search to represent FSD in accordance with Board Bylaw No. 9124.” Counsel from the recently terminated Firm 1 advised the board that to be compliant with Board Bylaw 9124, they needed to make a finding that the board needed specialized legal services and openly disclose the unique demand or nature of the issue. He further warned the board that they were possibly violating board policy and the Brown Act as no such determination was noted on the agenda. The subject board member ignored the guidance of counsel from Firm 1, questions and protest from the two dissenting board members, and again hindered discussion by repeatedly calling for a vote and talking over disgruntled board members. In a 3-2 vote, the board approved the contract with Firm 4. Immediately after the final vote, despite vocalized dissatisfaction of the process by board members, the subject board member quickly moved to adjourn the meeting, which was immediately seconded by the clerk.

The order in which the agenda items were listed suggests a clear intent to remove and replace the current legal counsel, Firm 1. A clear, rapid first motion, second and vote ensued by the subject board member and clerk, pushing each agenda item forward. Prior to each agenda item two board members, in open opposition to the agenda items, asked for rationale supporting the motions and were not provided any. Any attempts for discussion were met with banter that appeared to be intended to cause confusion and stonewalling. The same two dissenting board members requested each item be removed from the agenda several times and were voted down in the same 3-2 vote. The actions, comments and behavior of board members observed by FCMAT while reviewing board meeting videos made a clear impression that three out of the five board members entered that meeting intending to push forward and approve all items listed on the agenda.

On May 27, 2021, the board held a special meeting to once again take action to retain temporary legal counsel from the same Firm 4. A board member asked several questions as to why the board was not following the RFP process, how this firm was procured, and what the reason was for hiring a firm without following protocol. Again that went unanswered and discussion was once again ignored, avoided and discouraged by the subject board member, the clerk and another board member. A motion to approve the contract was once again approved with the same 3-2 vote.

Many of these same matters were investigated by the Kern County Grand Jury (Appendix C), and their findings were presented in a summarized report dated May 27, 2021.

Following these events, concerns regarding them were brought to KCSOS by a whistleblower. The whistleblower asserted that members of the governing board intentionally disregarded board policy and district-established procurement procedures to engage in contracts for legal services. The whistleblower further asserted that at least one board member, the subject board member, took actions to procure legal services and guidance for his own personal benefit.

These reported concerns prompted the Kern County Superintendent of Schools to request that FCMAT perform an AB 139 extraordinary audit to determine if there is sufficient evidence to warrant a referral to law enforcement.

Study and Report Guidelines (AB 139 Audit Authority)

Education Code Section 1241.5(b) permits a county superintendent of schools to review or audit the expenditures and internal controls of any school district in the county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. This review or audit is known as an AB 139 extraordinary audit, or fraud audit. Education Code Section 42638(b) states that on completion of the fraud audit:

If the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, the county superintendent shall notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney.

The purpose of a fraud audit is to determine if sufficient evidence exists that fraud, misappropriation of funds, or other illegal fiscal practices may have occurred, and to document the findings for referral to the local district attorney's office and further investigation by law enforcement if needed.

In writing its reports, FCMAT uses the Associated Press Stylebook, a comprehensive guide to usage and accepted style that emphasizes conciseness and clarity. In addition, this guide emphasizes plain language, discourages the use of jargon, and capitalizes relatively few terms.

Fraud Audit Procedures

A fraud audit is conducted based on the study team's experience and judgment. Fraud audits have many components including obtaining and examining available original source documents; corroborating documents and information through third-party sources when possible; interviewing potential witnesses; gaining an understanding of internal controls applicable to the scope of the work; and assessing factors such as intent, capability, opportunity, and possible pressures or motives.

The audit consists of gathering adequate information about specific allegations, establishing an audit plan, and performing audit test procedures, often based on sampling of transactions using the auditor's judgment and experience to determine whether fraud may have occurred, evaluating the loss associated with the fraud, and determining who was involved and how it may have occurred.

FCMAT conducted fieldwork at the district office on August 31 and September 1, 2021, and performed additional off-site work during the weeks preceding and following that date. FCMAT interviewed county office staff, current and former district administrative personnel, district office staff and current and former board members. FCMAT also viewed the official video recordings of governing board meetings. The purpose of

FCMAT's interviews is to obtain an understanding of the district's general business practices and events that transpired during the period under review, including any alleged financial mismanagement, fraud or abuse.

During interviews, FCMAT study team members inquired about the district's policies and procedures, job responsibilities, and routine business and procurement practices. Questions were also asked to gain a clear understanding of the district's internal control structure, including control activities, lines of authority and oversight of financial activities. Open-ended questions were designed to elicit information about other possible irregularities related to the scope of work.

The objective of the team was to determine whether there is sufficient evidence to indicate that fraud, misappropriation of district funds or other illegal fiscal practices relative to contracts for legal services procured from July 2020 through July 2021 may have transpired. The following assertions have been made:

1. The subject board member solicited and engaged in obtaining unauthorized legal services for his own personal benefit
2. One or more board members committed the district to obligations for legal services in the absence of a properly procured contract
3. One or more board members violated board bylaws, board policy and/or operational policies and procedures through their actions to procure legal services

To accomplish the objectives, FCMAT developed and conducted a number of audit test procedures to analyze and evaluate the allegations and potential outcomes. Testing and examination results are intended to provide reasonable but not absolute assurance of the accuracy of the transactions and financial activity and/or to identify if fraud, misappropriation of funds or other illegal fiscal practices may have taken place during the period under review.

FCMAT reviewed, analyzed, and tested business records including general ledger, vendor history and transaction activity reports, procurement and transaction supporting documentation, board policy and administrative regulations, board resolutions, board agendas and minutes, external reports and communication records.

Audit scope, objectives, and substantive transaction testing was based on the audit team's experience and professional judgment and did not include the testing of all available transactions and records. Transactions were analyzed to determine compliance with board policy, operational procedures and industry standard or best practice procedures.

This report presents the team's findings.

Study Team

The study team was composed of the following members:

Marisa Ploog, CPA, CFE, CICA, CGMA
FCMAT Intervention Specialist

Robbie Montalbano, CFE
FCMAT Intervention Specialist

Laura Haywood
FCMAT Technical Writer

Each team member reviewed the draft report to confirm its accuracy and to achieve consensus on the final recommendation.

Fraud, Occupational Fraud, Internal Control & Fiduciary Duty

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentations of material facts. A material weakness is a deficiency in the internal control process whereby errors or fraud may occur or can be a violation of specific law or regulation. Because of the weakness, employees in the normal course of business may not detect errors in time to correct them. Although all employees have some degree of responsibility for internal controls, the governing board, superintendent and senior management are ultimately responsible.

Occupational Fraud

Occupational fraud includes asset misappropriation, corruption, and fraudulent financial statements. Occupational fraud occurs when an organization's owners, executives, managers or employees use their position within the organization to deliberately misuse or misapply the employer's resources or assets for personal benefit.

Asset misappropriation includes the theft or misuse of district assets and may take place in the form of taking cash, inventory, or other assets, and/or fraudulent disbursements. Asset misappropriation is the largest category of occupational fraud and includes 21 separate fraudulent disbursement schemes. Financial statement fraud includes the intentional misstatement or omission of material information in financial reports. Corruption schemes involve an employee(s)/board member(s) using his or her influence in business transactions to obtain a personal benefit that violates that employee's duty to the employer or the organization; conflicts of interest fall into this category.

Although there are many different types of fraud, occupational fraud, including asset misappropriation and corruption, is more likely to occur when employees are in positions of trust and have access to assets.

Internal Control

The accounting industry defines the term "internal control" as it applies to organizations, including school agencies. Internal control is "a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting and compliance." [The Committee of Sponsoring Organizations of the Treadway Commission – May 2013] The reference to achievement of objectives fundamentally refers to an organization's work of planning, organizing, directing, and performing routine tasks relative to operations, and monitoring performance.

An organization establishes control over its operations by setting goals, objectives, budgets and performance expectations. Several factors influence the effectiveness of internal control, including the social environment and how it affects employees' behavior, the availability and quality of information used to monitor the organization's operations, and the policies and procedures that guide the organization. Internal control helps an organization obtain timely feedback on its progress in meeting operational goals and guiding principles, producing reliable financial reports, and ensuring compliance with applicable laws and regulations.

Internal control is the principal mechanism for preventing and/or deterring fraud or illegal acts. Illegal acts, misappropriation of assets or other fraudulent activities can include an assortment of irregularities characterized by intentional deception and misrepresentation of material facts. Effective internal control provides reasonable assurance that operations are effective and efficient, that the financial information produced is reliable, and that the organization complies with all applicable laws and regulations.

Internal control provides the framework for an effective fraud prevention program. An effective internal control structure includes the board policy and administrative regulations established by the board and operational procedures used by staff, adequate accounting and information systems, the work environment, and the professionalism of employees. The five integrated components of internal control and their summarized characteristics are included in the table below.

Internal Control Component	Characteristics
Control Environment	The set of standards, processes and structures providing the basis for carrying out internal control across an organization. Comprises the integrity and ethical values of the organization. Commonly referred to as the moral tone of the organization, the control environment includes a code of ethical conduct; policies for ethics, hiring and promotion guidelines; proper assignment of authority and responsibility; oversight by management, the board or an audit committee; investigation of reported concerns; and effective disciplinary action for violations.
Risk Assessment	Identification and assessment of potential events that adversely affect the achievement of the organization's objectives and the development of strategies to react in a timely manner.
Control Activities	Actions established by policies and procedures to enforce the governing board's directives. These include actions by management to prevent and identify misuse of the district's assets, including preventing employees from overriding controls in the system.
Information and Communication	Ensures that employees receive information regarding policies and procedures and understand their responsibility for internal control. Provides opportunity to discuss ethical dilemmas. Establishes clear means of communication within an organization to report suspected violations.
Monitoring Activities	Ongoing monitoring to ascertain that all components of internal control are present and functioning; ensures deficiencies are evaluated and corrective actions are implemented.

The five components of internal control are supported by 17 underlying principles that help ensure an entity achieves effective internal control. Each of the five components listed above and their related principles must be present and functioning in an integrated manner to be effective. An effective system of internal control can provide reasonable but not absolute assurance that the organization will achieve its objectives.

While the board and all employees in the district have some responsibility for internal control, the superintendent, board and other key management personnel have a higher ethical standard, fiduciary duty and responsibility to safeguard the assets of the district.

Control Environment

The internal control environment establishes the moral tone of the organization. Though intangible, it begins with the leadership and consists of employees' perception of the ethical conduct displayed by the governing board and executive management.

The control environment is a prerequisite that enables other components of internal control to be effective in achieving the goals and objectives to prevent and/or deter fraud or illegal acts. It sets the tone for the organization, provides discipline and control, and includes factors such as integrity, ethical values and competence of employees.

Of the 17 underlying principles, five support the control environment and include:

1. The organization demonstrates a commitment to integrity and ethical values.
2. The board demonstrates independence from management and exercises oversight of the development and performance of internal control.
3. Management establishes, with board oversight, structures, reporting lines and appropriate authorities and responsibilities in the pursuit of objectives.
4. The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives.
5. The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.

Control Activities

Control activities are a fundamental component of internal control and are a direct result of policies and procedures designed to prevent and detect misuse of a district's assets, including preventing any employee from overriding system controls. Examples of control and transaction activities include the following:

1. Verifications, which compare two or more items to one another (such as a purchase order and an invoice) or compare an item with a policy (such as a contract for services to board policy). When the two items don't match up or the item is not consistent with policy a follow-up action is required.
2. Information processing, which includes the approvals (management or board), authorizations (policy), verifications (purchasing/contracting protocols) and reconciliations (contracted services vs. billed services) necessary to ensure that transactions are valid, complete and accurate.
3. Physical controls, which are the processes and procedures designed to safeguard and secure assets and records.
4. Supervisory controls, which assess whether the transaction control activities performed are accurate and in accordance with established policies and procedures.
5. Segregation of duties, which consists of processes and procedures that ensure no employee or group is placed in a position to be able to commit and conceal errors or fraud in the normal course of duties. In general, segregation of duties includes separating the custody of assets, the authorization or approval of transactions affecting those assets, the recording or reporting of related transactions, and the execution of the transactions. Adequate segregation of duties reduces the likelihood that errors will remain undetected by providing for separate processing by different individuals at various stages of a transaction, and for independent review of the work.

Employees and board members should be regularly trained in what constitutes fraud and how it damages the organization. Employees should have several avenues for reporting improprieties and should be encouraged not to ignore warning signs. Risk awareness training about suspicious situations that merit reporting will help create a districtwide culture that supports appropriate reporting.

Fiduciary Duty

Board members, superintendents, chief business officials and other senior administrators are in positions of authority and therefore are responsible for exercising a higher standard of care and for establishing the ethical tone and serving as examples to other employees. Those with governance and leadership responsibility have a fiduciary duty to the district to ensure that activities are conducted in compliance with all applicable board policies, laws, and regulations.

The district's Board Policy 3400 speaks to the board's fiduciary responsibility to oversee the district's financial integrity and the reliance on the superintendent or superintendent's designee to ensure that internal control processes and procedures function effectively.

A fiduciary duty is the highest standard of care. The person who has a fiduciary duty is called the fiduciary, and the person to whom he owes the duty is typically referred to as the principal or the beneficiary.

(Source: https://www.law.cornell.edu/wex/fiduciary_duty)

A fiduciary also may be a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). In other words, a fiduciary takes care of money or other assets for another. District board members, administrators and management are examples of those who have fiduciary responsibilities or a fiduciary duty. The Cornell law source further describes several components of fiduciary duties, which FCMAT summarizes and applies to districts as follows:

- **Duty of Care:** Before making a decision, collect all evidence and information available. Exercise due diligence by reviewing all the information and evidence available; don't just accept the information as it is presented. Assess information with a critical eye and ask the questions: who, what, when and where. A fiduciary's responsibility is to protect the assets of the district.
- **Duty of Loyalty:** You cannot use your position in the organization to further your private interests. Avoid anything that might injure the district.
- **Duty of Good Faith:** Advance the interests of the district. Do not violate the law. Fulfill your duties and responsibilities.
- **Duty of Confidentiality:** Keep confidential matters confidential and never disclose confidential information to avoid personal liability.
- **Duty of Prudence:** Be trustworthy to a degree of care and skill that a prudent board member, member of management, or fiduciary would exercise. Prudent means acting with wisdom and care, including exercising good judgment.
- **Duty of Disclosure:** Act with complete candor. Be open, sincere, honest and transparent. Disclose all financial interests on Form 700, Statement of Economic Interests.

The control environment is an essential element and provides the foundation for other internal controls to be effective in achieving the district's goals and objectives and to prevent and/or deter fraud or illegal fiscal acts. The tone of the organization, set by district leadership through its words and actions, demonstrates to others whether or not dishonest or unethical behavior will be tolerated. An atmosphere in which employees feel safe to communicate concerns is a fundamental component of a strong and effective internal control environment.

Findings

Procurement

Numerous statutes, policies, procedures, regulations, and legal interpretations must be followed in school district procurement processes. A school district will enter into a variety of different types of contracts for the purchase of goods and services, and each type will likely have different rules that must be followed for the procurement process and/or contract to be valid. Regardless of what procedure must be followed, the goal of school district procurement is to purchase the highest quality good or service at the lowest reasonable price.

The board of trustees constitutes a body of elected individuals who have the responsibility to govern their schools within the context of the law. The board's role is to be responsive to the values, beliefs, and priorities of the community by developing and approving the district's mission, strategic goals and objectives, and ensuring accountability to the public.

School boards provide policy direction and oversight for the professionals who manage the district's day-to-day operations through the adoption of board policy and administrative regulations. Day-to-day operating decisions are delegated through these policies to competent staff with the expectation that their actions comply with the related laws while maximizing efficiency and effectiveness. Board members have a responsibility to adhere to the standards of responsible governance and uphold the very policies they have adopted.

For the district, this understanding is acknowledged in Board Bylaw 9000, Role of the Governing Board, and Board Policy 9200, Limits of Board Member Authority. The board should understand the distinction between school board and administrative staff roles and avoid engaging in the day-to-day procurement activities. Additionally, trustees should refrain from performing management functions that are the responsibilities of the superintendent and administrative staff; this would include the procurement of legal services.

Interviews with staff and independent sources indicate that the subject board member frequently inserted himself into the district's business activities including procurement activities. This behavior was directly observed by FCMAT during fieldwork.

One assertion directed at the subject board member was that he solicited and engaged in obtaining unauthorized legal services for his own personal benefit. When questioned by FCMAT, the subject board member repeatedly expressed that the matters behind the contract for legal services with Firm 3 were solely focused on stopping the public release of the details in the investigative report of which he was the subject. Because the investigation was directly related to actions of the subject board member, his interest in these matters is personal in nature. In addition, by engaging legal services paid by the district the subject board member avoided the necessity of retaining his own legal counsel, possibly in violation of Government Code Section 1090. This code section makes it clear that a board member "shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

During this time frame the governing board was already engaged with Firm 1 for general legal guidance; this typically includes matters related to public records requests. Furthermore, it is not the role of board members to become involved in the process of complying with public records requests. This is the role of the superintendent or designee, which is made clear in Board Policy and Administrative Regulation 1340.

The impact of the special investigation and resulting report of findings and recommendations were directly related to the actions of a single board member, the subject board member, and were personal in nature.

Interest in blocking or limiting the release of the report details solely benefited the subject board member. Seeking legal guidance to direct the district on navigating the outcome of the investigation is not unique and could have been addressed by general counsel under existing contract. The subject board member had a personal interest in seeking separate legal counsel. FCMAT also calls into question the subject board member's act of seconding the motion to approve this contract and then voting favorably on this agenda item. This may be in violation of the common law doctrine of conflict of interest.

While direct contact with legal counsel generally occurs through the administrative leadership (e.g., superintendent or governing board president), each is not granted the authority to work independently to procure such services. Board Policy 3312 and Board Bylaw 9124 both indicate that all contracts between the district and outside agencies are to be prepared under the direction of the superintendent or their designee and approved/ratified by the board. Furthermore, these policies indicate that either a competitive bid or request for proposal process should be followed for contracts in most cases. Board Bylaw 9124 provides for an exception when a need for temporary specialized legal services exists.

The policy states the following:

"The Board may also contract for temporary, specialized legal services without initiating an RFP when a majority of the Board determines that the unique demands of a particular issue or emergency situation so requires." (*emphasis added*)

Temporary means it is not ongoing in nature. Examples of specialized legal services would include counsel who specializes in bonds or civil rights. It is not unusual for general counsel to provide governing board members with guidance in addressing a Public Records Act request; this does not constitute a specialized service nor is it a unique demand.

The district did not seek proposals for legal services prior to approving all contracts with Firm 3 and Firm 4, and observation of board member discussions as well as the minutes of the meetings in question demonstrate that no such finding was made.

Another assertion made is that one or more board members committed the district to obligations for legal services in the absence of a properly procured contract. FCMAT interviews with the subject board member and former superintendent indicate that discussions with Firm 3 regarding the censorship matter and public release of the report took place prior to a valid board approved contract.

Education Code 17604 states:

"... no contract made pursuant to the delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board, the approval or ratification to be evidenced by a motion of the board duly passed and adopted."

Interviews and documentation provided by the district indicate that the subject board member independently sought and committed district resources for legal services to obtain guidance regarding the public release of details in an investigative report commissioned by a formerly structured governing board, of which he was the subject. The evidence indicates that the subject board member bypassed district-established operational policies and procedures and violated board policy and board bylaws by soliciting legal services independent of the administration.

In at least two cases, contracts for legal services were placed on the agenda for governing board action, approved by board majority, then were returned at a subsequent board meeting for "reapproval." In both instances it was not made clear why the contracts required additional board action.

Furthermore, interviews and documents reviewed indicate that the subject board member may have pressured the administration through coercive practices to place on the board agenda for approval a contract in which he had a hidden interest or from which he expected to receive personal benefit. A coercive practice takes place if a board member threatens to impair or harm, directly or indirectly, an administrator or other party to improperly influence the action of the party.

Using his position as board president the subject board member may have deliberately misused district resources or assets for his own personal benefit.

Education Code 17604 states the following:

“In the event of malfeasance in office, the school district official invested by the governing board with the power of contract shall be personally liable to the school district employing him or her for any and all moneys of the district paid out as a result of the malfeasance.”

The Black’s Law Dictionary defines malfeasance as intentional wrongdoing or misconduct especially by a public official.

As previously stated, corruption schemes involve a board member(s) using his or her influence in business transactions to obtain a personal benefit that violates the duty to the organization. A board member’s direct involvement in soliciting, evaluating and/or recommending a contract and then approving a contract compromises the district’s system of internal control, and potentially influences the outcome or approval by asserting his or her position of authority to pressure or influence the decisions of others, and may present a conflict of interest.

A conflict of interest occurs when a personal or private interest could directly, improperly influence the performance of one’s duties or responsibilities, or appear to do so. A conflict can take the following form:

- An actual conflict of interest involves a direct conflict between official duties and school district responsibilities and a competing interest or obligation, whether personal or involving a third party.
- A perceived conflict of interest occurs when it could reasonably be perceived or appear that a competing interest could improperly influence the performance of official duties and school district responsibilities.
- A potential conflict of interest arises when an interest or obligation, whether personal or involving a third party, could conflict with official duties and school district responsibilities in the future.

A conflict of interest may occur when a public official has an undisclosed personal interest in a contract or transaction.

Transaction Sampling

Local educational agencies (LEAs) are required to follow the California School Accounting Manual (CSAM) and to record revenues and expenditures using the standardized account code structure. Part of this account code structure is the four-digit object field. This field classifies expenditures according to the types of items purchased or services obtained. LEAs are required to code their transactions to at least the minimum object level required by the California Department of Education. According to the CSAM, objects ranging from 5000–5999 are for “recording expenditures for services, rentals, leases, maintenance contracts, dues, travel, insurance, utilities, and legal and other operating expenditures. Expenditures may be authorized by contracts, agreements, purchase orders, and so forth.” Additionally, object 5800 is for recording expen-

ditures for personal services rendered by personnel who are not on the payroll of the LEA. “Professional/ consulting services are delivered by an independent contractor (individual, entity, or firm) that offers its services to the public. Such services are paid on a fee basis for specialized services that are usually considered to be temporary or short term in nature, normally in areas that supplement the expertise of the LEA. This includes all related expenditures covered by the personal services contract.”

For the period under review, FCMAT requested from the district financial system exports including a detailed general ledger for objects ranging from 5000-5999 and reviewed transactions to determine if there were obvious misclassified expenses that should have been in object 5800. Finding no obvious misclassified expenses, FCMAT requested and was provided with a vendor history report for all vendors paid from object 5800 for the same time period.

During the initial review of the data, the team disregarded general service contracts such as water services, other governmental agencies for required services (health, building, fire inspections, etc.), expenditures for internet-based publications and materials, and costs of licensing, support, or maintenance agreements for nonequipment items, such as software.

During interviews, FCMAT asked open-ended questions of district staff to obtain an understanding of the district’s operational procedures and internal controls established for procurement and vendor payments and to evaluate the adequacy of controls in general. The district does not have written operational procedures for its purchasing and accounts payable processes.

FCMAT selected 78 payment transactions recorded from the remaining vendors and requested all procurement and payment supporting documentation including contracts, bid documents, board minutes, board policies and regulations, invoices and other documentation supporting each expenditure transaction. FCMAT reviewed documents provided by the district for each transaction to assess whether established procedures were applied in practice.

The table below summarizes the exceptions noted during FCMAT’s review.

Exception	# of Exceptions Observed	% of Total Transactions Tested
No purchase order or other form of formal approval prior to purchase	57	73.08%
No documents demonstrating competitive bidding or request for proposal (where required)	18	23.08%
No fully executed contract for services and/or board minutes demonstrating formal approval	61	78.21%
Payment not supported by an original invoice	5	6.41%
Invoice date precedes purchase order or approval date	12	15.38%
Payment not presented to the governing board for approval	4	5.13%

BP 3300, Expenditures and Purchases states:

“In order to best serve district interests, the Superintendent or designee shall develop and maintain effective purchasing procedures that are consistent with sound financial controls and that ensure the district receives maximum value for items purchased. He/she shall ensure that records of expenditures and purchases are maintained in accordance with law.”

The policy goes on to state:

“The Superintendent or designee may purchase supplies, materials, apparatus, equipment, and services up to the amounts specified in Public Contract Code 20111 and/or 22000 et seq.,

beyond which a competitive bidding process is required. The Board shall not recognize obligations incurred contrary to Board policy and administrative regulations.”

Exceptions to the described process were identified in most transactions reviewed. Payments to vendors were frequently processed without adequate supporting documentation.

Purchase orders were prepared for less than 27% of the transactions FCMAT reviewed. FCMAT noted 18 transactions lacked documents demonstrating competitive bidding or request for proposal where they may have been required by law or board policy, all of which were related to legal services or facilities projects. FCMAT questions the validity of contracts in almost every case where payment was made for legal services.

Public Contract Code (PCC) Section 20111(a) requires school district governing boards to competitively bid and award any contracts involving an expenditure of more than \$50,000, adjusted for inflation, to the lowest responsible bidder. Contracts subject to competitive bidding include:

1. Purchase of equipment, materials, or supplies to be furnished, sold, or leased to the school district.
2. Services that are not construction services.
3. Repairs, including maintenance as defined in PCC Section 20115, that are not public projects as defined in PCC Section 22002(c).

The state Superintendent of Public Instruction (SPI) is required to annually adjust the \$50,000 amount specified in PCC Section 20111(a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce, Bureau of Economic Analysis for the 12-month period ending in the prior fiscal year. Effective January 1, 2020, the SPI determined that the inflation adjusted bid threshold for 2020 was \$95,200. Public projects as defined in PCC Section 22002(c), such as construction or reconstruction of publicly owned facilities, have a lower bid threshold of \$15,000 that is not adjusted for inflation.

Public Bidding

Public bidding is commonly known as the lowest bidder process: a district selects the lowest responsive and responsible bidder, in accordance with PCC 20111. Bids are opened and read aloud, and the bidder's name and bid amount is entered on the opening list. Bids consist of several forms, including a list of sub-contractors, a bid bond, and other required items. When the governing board awards a bid, an agreement is signed, and the selected bidder (contractor) provides a performance bond, payment bond, and insurance certificate.

Requests for Proposals

Requests for proposals are used for some professional services, such as legal services. Government Code 53060 creates an exception to public bidding requirements for “special services and advice” regarding financial, economic, accounting, engineering, legal, or administrative matters, if such persons are “specially trained and experienced and competent to perform the special services required.” The selection must be made based on demonstrated competence and professional qualifications, at fair and reasonable prices.

Requests for proposals are typically used when selecting these professional services. An RFP may be advertised generally or targeted to a selected number of firms. All documents related to the selection process, including proposal, board approval, signed contract, and insurance certificates, are required to be kept on file.

Administrative Regulation 3311, Bids, states in part:

“The district shall advertise for any of the following: (Public Contract Code 20111) ... A contract that exceeds the amount specified in law, as annually adjusted by the Superintendent of Public Instruction, for any of the following:

1. The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district
2. Services, not including construction services or special services and advice in accounting, financial, legal, or administrative matters
3. Repairs that are not a public project, including maintenance”

Other Matters in Question

During FCMAT interviews the team was made aware of an instance where the subject board member used his position as a board member for his own financial benefit.

On March 2, 2020, the subject board member sent an email to the superintendent requesting that he be reimbursed for 25 political signs he had posted throughout the community during his 2018 campaign for the school board election. The rationale stated in his request was that the signs had been damaged when district maintenance staff removed them from locations throughout the community after the election concluded on November 6, 2018.

Interviews with the former superintendent indicated that the district had a practice of removing all campaign signs after each election because some candidates would leave them up indefinitely and the district would receive complaints from community members. Because of these complaints, the maintenance staff would take any remaining signs down after each election and inform candidates that they could be picked up at the district.

The district was not provided any documentation supporting the original purchase of the signs. The email was the only documentation supporting the payment made to the subject board member totaling \$1,074.75. The email was clear that the signs were used for political purposes in 2018 and stated:

“I am requesting 25 signs at the price of \$42.99. I am not including the poster board’s, Elmer’s spray glue, yard sticks, zip ties and other materials used to assemble these signs.”

Education Code 7050-7058 speaks to the political activities of school officers and employees. Education Code 7054(a) states:

“No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.”

Campaign signage has a direct political purpose. After being seated on the board for more than two years, the subject board member requested the superintendent to direct a payment of district resources to himself for the cost of his political signs. This payment represents a personal financial benefit and is in direct violation of the Education Code.

Organizational Culture, Governance, and Internal Control

Organizational culture is established by the attitudes and behaviors of district leadership, including the governing board and superintendent. It is solidified through the structures and processes developed and applied for decision-making, accountability, transparency, control and behavior at all levels of the organization. Culture is either receptive to change, continuous improvement, excellence and positive values, or it is not. The culture either fosters important boundaries, sets expectations regarding relationships, and values systems and processes that support a strong system of internal control, or it does not.

FCMAT's observation, document review and interviews of governing board members, executive management and other staff found the internal control environment in the district to be significantly deficient. Some deficiencies, such as weaknesses in procurement processes and segregation of duties identified during FCMAT's transaction testing, are in part directly related to the size of the district. Often small districts do not have sufficient staff to ensure adequate segregation of duties. Additionally, small districts also stray more often from formally established processes and procedures just to get things done.

More concerning were FCMAT's observations of the behaviors and attitudes of some board members as they engage in governance. The subject board member and clerk frequently interrupted, discouraged or otherwise interfered with attempts by other board members to engage in meaningful discussion related to agenda items. Three governing board members, including the subject board member, actively worked to limit the involvement of other board members in district governance. The behavior and interactions observed by FCMAT are indicative of intentional disregard for and discouragement of open and transparent governance.

FCMAT found that certain members of the governing board actively eroded the district's system of internal control through their leadership style of control, manipulation, and disregard for the bylaws, policies and other governance foundations established by their predecessors. The subject board member openly behaves as if the laws and regulations of the state do not apply to him. This attitude is reinforced by the fact that no consequences have resulted from the findings described in investigative and grand jury reports.

Based on interviews, documentation, and direct observation by FCMAT, the subject board member has interfered with established procurement protocol and has weakened the district's control environment by using his position to override established board policy, administrative regulations and operational policies and procedures.

The superintendent and board must work together to create a culture of transparency and commitment to following established policies and business procedures, rather than one of positional power and intimidation.

Conclusion

Based on the interviews, available documents, analytical analysis and direct observation, FCMAT finds the following:

1. The subject board member bypassed district-established operational policies and procedures and violated board policy and board bylaws by soliciting legal services independent of the administration.
2. The subject board member may have engaged in coercive practices by directing the administration to place a contract for those same legal services on the governing board agenda as an action item after those services had already been solicited by and partially rendered to the subject board member.
3. The subject board member may have engaged in coercive practices by directing the administration to reimburse him for political campaign signs used to seek his position to the board in 2018.
4. Using his position in the organization as board president, the subject board member may have deliberately misused district resources or assets for his own personal and financial benefit.
5. The subject board member's direct involvement in soliciting, evaluating and/or recommending a contract, then voting to approve that same contract in which he had a personal and possible financial interest, compromises the district's system of internal control, potentially influences the outcome or approval by asserting his or her position of authority to pressure or influence the decisions of others, may present a conflict of interest, and may be illegal.
6. The subject board member used his position as board president to pressure the administration to use school district funds to reimburse him for campaign signs used in the election two years prior. This is a violation of Education Code 7054 and may be a misuse of public funds.

In at least one contract for legal services placed on the board agenda at the direction of the subject board member, documents, board meeting minutes and video observations and interviews with both past and current staff members and board members clearly indicate the following:

1. The subject board member intended to obtain a personal and possible financial benefit by seeking legal services from Firm 3. The services procured by the subject board member were for the purposes of obtaining legal guidance regarding how to limit public access to the details, findings, and recommendations of an investigation stemming from complaints pertaining solely to the actions of the subject board member.
2. Solicitation of services violated Board Bylaw 9124. The governing board did not identify a specific need for specialized legal services prior to approving all contracts for legal services with Firm 3 and Firm 4.
3. Services may have been rendered directly to subject board member and the board clerk prior to the execution of a valid contract.

Potential for Fraud, Misappropriation of Funds or Other Illegal Fiscal Practices

Based on the findings in this report, there is sufficient evidence to demonstrate that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices may have occurred in the specific areas reviewed.

Deficiencies and exceptions noted during FCMAT's review of the district's financial records and internal control environment increase the probability of fraud, mismanagement and/or misappropriation of the district's assets. These findings should be of great concern to the Fairfax School District and the Kern County Superintendent of Schools and require immediate intervention to limit the risk of fraud, mismanagement and/or misappropriation of assets, or other illegal fiscal practices in the future.

Judgments Regarding Guilt or Innocence

The existence of fraud, misappropriation of funds and/or assets, or other illegal fiscal practices is solely the purview of the judicial process. FCMAT is not making a finding that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices have occurred. These terms are a broad legal concept, and auditors do not make legal determinations regarding whether illegal activity has occurred.

In accordance with Education Code Section 42638(b), action by the county superintendent shall include the following:

“If the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, the county superintendent shall notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney.”

In accordance with Education Code Section 1241.5(b), the county superintendent is required to report the findings and recommendations to the district's governing board at a regularly scheduled board meeting within 45 days of completing the audit. Within 15 days of receipt of the report, the governing board is required to notify the county superintendent of its proposed actions regarding the county superintendent's recommendations.

Recommendation

The county superintendent should:

1. Notify the governing board of the Fairfax School District, the State Controller, the Superintendent of Public Instruction and the local district attorney that sufficient evidence exists to indicate that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices may have occurred, and that the Kern County Superintendent of Schools has concluded its review.

Appendices

Appendix A - Draft Resolution 2021-08

Appendix B - Board Bylaw 9124

Appendix C - Summary of Findings (Grand Jury Report)

Appendix D - Study Agreement

Appendix A

BEFORE THE BOARD OF TRUSTEES OF THE FAIRFAX SCHOOL DISTRICT

**IN THE MATTER OF THE PUBLIC
CENSURE OF TRUSTEE PALMER
MOLAND**

**[PROPOSED]
RESOLUTION NO. 2021-08**

**A Resolution by the Governing
Board to Censure Trustee Palmer
Moland For Abusive and
Inappropriate Conduct**

The Board of Trustees ("Board") of the Fairfax School District ("District") hereby issues this public censure with intent of disassociating itself from and expressing disapproval of Trustee Palmer Moland's violation of Board Policies, Administrative Regulations and Bylaws, as follows:

WHEREAS,

- A. Trustee Moland was a former classified employee of the District before his election to the Board in 2018. He was sworn in to office as a Trustee in December 2018.
- B. On August 5, 2020 and August 17, 2020, District received two complaints from a group of classified confidential employees and the President of the local chapter of the classified employees union, California School Employees Association ("CSEA"), Chapter 162, alleging inappropriate, harassing and/or abusive conduct toward them and other classified employees by Trustee Moland; and
- C. District retained an independent attorney investigator to investigate the allegations raised by the classified employees. Trustee Moland was interviewed twice during the investigation and given the opportunity to respond to the employees' allegations. While the investigator did not find evidence that Trustee Moland treated employees wrongfully due to any protected status, such as race or age, under the Fair Employment & Housing Act ("FEHA") (Govt. Code §12900, et seq.), the investigator did find substantial evidence that Trustee Moland engaged in abusive, or bullying, conduct toward classified employees in violation of District policy and, further, engaged in behaviors in violation of Board Bylaws. In addition, with respect to Trustee Moland's honesty, the investigator seriously questioned Trustee Moland's credibility, concluding, based on his interview statements and the evidence provided to the investigator, including Trustee Moland's Facebook posts, that Trustee Moland was purposely untruthful, misleading, evasive, and duplicitous; and

- D. Government Code §12950.1(h)(2) and Administrative Regulation 4119.11/4119.21/4119.31 define abusive conduct as “conduct undertaken with malice that a reasonable person would find hostile or offensive and that is not related to an employer’s legitimate business interests (including performance standards). Examples of abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance.” Abusive conduct can negatively affect the work environment including a reduction in productivity and employee morale. Abusive conduct may also lead to employee claims of unlawful harassment and other potential unlawful employment and unfair labor practices. The Board takes very seriously any abuse of power or abusive conduct on the part of a board member toward students, employees and families of the District; and
- E. Board Bylaw 9200 provides “that the Board is the unit of authority over the district and that a Board member has no individual authority.” Further, “[u]less agreed to by the Board as a whole, individual members of the Board shall not exercise any administrative responsibility with respect to the schools or command the services of any school employee. Individual Board members shall submit requests for information to the Superintendent. Board members shall refer Board-related correspondence to the Superintendent for forwarding to the Board for placement on the Board’s agenda, as appropriate.” Individual Board members do not have authority to resolve complaints and should refer any complainant to the Superintendent or designee so that the complaint may appropriately be handled through District’s processes. Additionally, a “Board member whose child is attending a district school should be aware of his/her role as a Board member when interacting with district employees about his/her child.” The position of a Board member may unduly influence or inhibit the performance of school personnel; and
- F. Board Bylaw 9005.1 recognizes that the Board will govern in a dignified, professional, and respectful manner. Board members are to respect the distinctions between Board and staff roles and refrain from performing management functions of the Superintendent and staff. Questions and concerns raised by staff, students, parents or the community to individual Board members are to be communicated directly to the Superintendent. Board members are to work with all Board members and the Superintendent as a team devoted to students and dedicated to making all members of the team successful. Board members must adhere to a high standard of moral, ethical, and legal conduct and their behavior must serve as an example to the youth and families of the District; and
- G. The Board recognizes the rights of Board members to freely express their views and encourages open discussion of issues during Board meetings in ways that

promote the Board's ability to govern the District. Board members should recognize, however, that when speaking to the community and others, their statements may be perceived as reflecting the views and positions of the Board and District. As provided in Board Bylaw 9010, "Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board." Further, "[a]ll public statements authorized to be made on behalf of the Board shall be made by the Board President or, if appropriate, by the Superintendent or other designated representative;" and

- H. The Board is sincerely committed to positive, safe and supportive working conditions for District employees. The Board has delegated to the Superintendent the primary responsibility for overseeing the District's personnel system. It is the Superintendent or designee who assigns, supervises and evaluates the work of all employees in accordance with effective accountability systems approved by the Board. Oversight of District employees is not the role of an individual Board member; and
- I. The Board is further committed to upholding Board Policies, Administrative Regulations and Bylaws, open, honest and respectful communication and conduct, and adherence to state and federal laws governing the Board's actions and behaviors; and
- J. During the investigation of the two complaints by classified employees, Trustee Moland stated to the investigator that he received post-election training in the prevention of sexual harassment (which includes abusive conduct training) and the Brown Act. Trustee Moland also stated he completed a five-day training through the California School Boards Association ("CSBA"), known as the Masters on Governance Training, and confirmed to the investigator that CSBA is a recognized resource and authority on board policies and administrative regulations; and
- K. During the course of the investigation, the investigator interviewed multiple witnesses, including Trustee Moland on two separate occasions, and reviewed documents provided by the witnesses relevant to the investigation. The investigator sustained, or concluded that the evidence supported by a preponderance (i.e. the evidence on one side is more than the evidence on the other side), the following allegations of the complainants:
 - a. Trustee Moland engaged in abusive conduct toward classified employees in violation of District policy by:
 - i. *Approaching classified staff, particularly District Office staff, in a demanding or aggressive manner.* Witnesses gave credible accounts of numerous incidents where Trustee Moland scrutinized their work, failed to follow protocols, and created extra work in an

already busy office. Multiple employees also described their sense that Trustee Moland wanted to “catch” them in some kind of misconduct. The District Office staff descriptions of Trustee Moland included: bully, pushy, frustrating, demanding, manipulative, controlling, aggressive, hostile, disrespectful, hurtful, shaming, insistent, stressful and mentally draining. The MOT staff described Trustee Moland similarly. In comparison, witnesses described the other Board members as following District protocols, positive, and supportive. The investigation found credible evidence to support a nexus between Trustee Moland’s conduct and his animosity toward the Superintendent and the MOT Director in retaliation for discipline Trustee Moland received in 2015 as a classified employee when he “took” a District bus to transport his basketball team without District authorization. Multiple witnesses stated Trustee Moland expressed his desire to get rid of the Superintendent, MOT Director and another District employee. The investigator concluded that Trustee Moland’s constrained interpretation of the Superintendent’s responsibilities further supported this finding.

- ii. *Directly and repeatedly asking classified employees questions that Trustee Moland should be directing to the Superintendent.* The investigation found that Trustee Moland’s demanding, unprofessional, and persistent questioning and requests for information and documents, particularly from District Office staff and even after being directed to the Superintendent, was reasonably offensive and intimidating to the employees. This conduct was also disruptive of the legitimate business operations of the District. The investigator concluded that Trustee Moland’s behavior was more egregious because of its nexus with Trustee Moland’s expressed desire to remove the Superintendent from his position.
- iii. *Inappropriately criticizing the work performance of a confidential classified employee to another classified employee.* Board Policy 4319.23, Administrative Regulations 4112.6/4212.6/4312.6, and Board Bylaw 9011 recognize the confidentiality inherent in personnel information. While the investigation disclosed only one incident, the investigator concluded that Trustee’s Moland’s conduct was especially egregious because it concerned a District employee’s alleged substandard job performance, violated multiple District policies, and displayed a level of malice or animus toward the employee in an effort to deflect the other employee’s criticism of Trustee Moland. The investigation found the resulting hurt, embarrassment, and offense felt by the criticized employee was reasonable given the disparity in power and status between Trustee Moland and the employee he was gossiping about.

- iv. *Stating that classified employees in the District office failed to wear facemasks at work during public comment at a Board meeting and in social media posts.* The investigation found that Trustee Moland misconstrued prior Board action and the Superintendent's directives in the wearing of facemasks in the workplace and attempted to assume administrative authority belonging to the Superintendent. The investigation found Trustee Moland's derogatory remarks especially egregious given his lack of due diligence to gain accurate information concerning the directives given to employees about facemask wearing and the power disparity between Trustee Moland and the District Office staff. Trustee Moland failed to respect the distinction between his role as a Board member and the role of the Superintendent. The policing of employees using facemasks falls outside his role as a trustee. The employees were reasonably offended by Trustee Moland's derogatory and shaming remarks (social media posting included the statement "#Shameful") given Trustee Moland's lack of accurate information and his position as a trustee.
- v. *Reading an unsigned, undated letter addressed to "Dr. P. Moland" regarding dissatisfaction with classified employees during public comment.* The investigation found merit in the association President's concerns. Board Bylaw 9200 requires Board members to refer Board-related correspondence to the Superintendent for forwarding to the Board for placement on the Board's agenda, as appropriate. As with any other Board member, Trustee Moland has no authority to resolve complaints individually. Board Bylaw 9005.1 also requires Board members to communicate directly with the Superintendent whenever parent or community concerns or questions are raised, which the evidence showed Trustee Moland did not do. The investigator further concluded that Trustee Moland's actions were egregious, offensive, threatening and humiliating.
- vi. *Monitoring classified employees during the performance of their job duties, following school buses, videotaping or photographing classified employees at work, or reporting classified employees' alleged tardiness to supervisors.* The investigation found that Trustee Moland performed management or administrative functions as a trustee in a manner motivated by his self-interest to discredit the Superintendent and the MOT Director in violation of Board Bylaws 9200 and 9005.1. Trustee Moland's stated reasons for his conduct were found not credible as his actions were motivated by self-interest to discredit the Superintendent and MOT Director. The investigator determined that Trustee Moland's conduct was egregious. Trustee

Moland's unusual behavior upset and distracted the bus drivers and, due to his position, reasonably intimidated them. Further, the investigator noted that Trustee Moland's conduct may impair his ability to carry out his responsibilities as a board member in hearings and appeals of personnel matters. Board Bylaw 9000 presumes neutrality of the individual Board members. The investigator found it foreseeable that Trustee Moland's usurpation of the administrative function may create conflicts preventing Trustee Moland from serving in the Board's judicial (i.e. neutral decision-making) capacity; and

- L. The investigator found, on multiple occasions during his two interviews, that Trustee Moland gave inconsistent and clearly inaccurate statements despite his agreement to tell the truth. For example, when asked if Trustee Moland physically inspected the District buses, Trustee Moland told the investigator he may have inspected the buses with the MOT Director. He was unsure. Later in his interview, Trustee Moland described the District buses as unclean. This statement was inconsistent with his previous statement that he was unsure he had physically inspected the buses while at the MOT yard. Trustee Moland also represented to the investigator he had worked as a full time bus driver with the District for about one year. When he and the Superintendent later produced a chronology of Trustee Moland's employment with the District, he had only worked a total of 39.75 hours as a bus driver. The investigator concluded that Trustee Moland was purposely untruthful during his interview in an effort to support his contention that the MOT Director allowed him to use a District bus whenever he wanted and thus his previous discipline for unauthorized use of a District bus was inappropriate. The investigator concluded that Trustee Moland's interview statements, Facebook postings, and exhibits contained multiple statements that negatively affected his credibility. Some were clearly not truthful while others were evasive, duplicitous or erroneous; and
- M. In addition to the abusive conduct toward the classified employees described above, the Board heard from the KFTA Vice President at its November 12, 2020 meeting alleging similar, abusive behavior by Trustee Moland. Trustee Moland posted on social media that the KFTA Vice President, in support of two board members for re-election to the Board, engaged in illegal political activity and that "all eyes are watching." Due to his position as a trustee, this made the employee reasonably uncomfortable and feeling harassed. On investigation by the District, it was determined that Trustee Moland's factual account was inaccurate. This conduct is further evidence of persistent violation of Board bylaws, regulations and policy by Trustee Moland and his careless disregard for the truth. Such conduct must be immediately corrected; and
- N. Trustee Moland's abusive conduct toward District employees continues to fail to meet the professional standards expected of an elected official or the standards

expected of any District employee or trustee, and violated District Policies, Administrative Regulations and Board Bylaws, including, but not limited to, Administrative Regulation 4119.11/4119.21/4119.31, Board Bylaws 9000, 9005.1, 9010, and 9200, and Board Policy 4319.23. Further, Trustee Moland's furtive effort to "catch" employees or otherwise discredit or shame them to advance his own self-interests or for retaliatory or retributive purposes is egregious behavior that negatively affects staff morale and disrupts the mission of the District in providing a safe and welcoming environment for students to learn and succeed. As also provided in Board Policy 4030, the Board "is determined to provide a safe, positive environment where all district employees are assured of a full and equal employment access and opportunities, protection from harassment and intimidation, and freedom of any fear of reprisal or retribution for asserting their employment rights in accordance with law." Trustee Moland's abusive conduct interferes with the District's mission; and

- O. Censure is a collective, formal and public condemnation or denouncement of an individual member's conduct or behavior that violates laws or policies; it is a formal public act of disapproval of, as well as disassociation from, a member's unacceptable behavior.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Board does hereby censure, disavow and formally express its disapproval of and disassociation from the conduct of Trustee Moland described above.
2. The Board does hereby direct Trustee Moland to review and comply with Board Policies, Regulations, and Bylaws. Trustee Moland is further directed to comply with federal and state laws, including laws that prohibit retaliation, and cease and desist from engaging in abusive conduct and disrespectful and unprofessional treatment of District employees, students, fellow Trustees and members of the public.
3. Trustee Moland is instructed to further the mission of the District in providing a safe and welcoming environment for students to learn and succeed as well as a safe and positive work environment for District employees.
4. Trustee Moland is reminded that it is not his job to direct the day to day operations of the District and he is directed not to usurp the role of the Superintendent or any other administrative or management function. Unless agreed to by Board action, Trustee Moland is directed not to exercise any administrative responsibility with respect to the schools or make demands or requests of any District employee. All reasonable requests for information shall be made to the Superintendent at reasonable times mutually agreed to with the Superintendent. Trustee Moland shall be respectful of the Superintendent's time. Any Board-related correspondence shall be referred to the Superintendent for forwarding to

the Board for placement on the agenda, as appropriate. Any complaints received shall also be referred to the Superintendent.

5. Trustee Moland is directed to follow all protocols for District school site or facility visits. Trustee Moland shall wait to enter any school site or District facility until accompanied by a site representative.
6. The Board does hereby remove Trustee Moland from any committee or leadership position on the Board until Trustee Moland successfully completes effective governance and school laws and regulations training from a District-approved program and demonstrates a commitment to abide by Board Bylaws, Regulations, Policies, laws and suspends Trustee Moland from representing the District and the Board at public functions in any official capacity, including but not limited to school ceremonies, fundraisers, conferences, student events, and community events.
7. The Board will reevaluate Trustee Moland's conduct and commitment to honest and effective governance at a public meeting following successful completion of an effective governance and school laws and regulations training program to determine whether he has appropriately complied with the direction given in this Resolution, and the Board will determine whether or not to reinstate Trustee Moland in any leadership role or committee.
8. Notwithstanding the foregoing recommendations and directives, and due to the credibility concerns raised from the investigation, the Board recommends that Trustee Moland consider resigning from the Board to allow this Board to continue its mission of creating a safe learning and work environment worthy of the District's students, families, and employees.
9. In the event that Trustee Moland chooses to remain on the board, the Board strongly recommends that Trustee Moland seek the assistance of an executive or leadership development coach. A qualified and professional executive or leadership development coach can assist Trustee Moland in reaching self-awareness, insight, understanding and alignment of behaviors consistent with Board Policies, Administrative Regulations and Bylaws, as well as the mission of the District. Due to Trustee Moland's intentional misconduct and demonstrated lack of credibility, Trustee Moland would be solely responsible for the costs and expense of an executive coach. Should Trustee Moland commit himself to the use of an experienced and qualified executive coach, and Board determines that coaching proves effective, the Board may, in its discretion, reimburse Trustee Moland for the cost of one (1) or more coaching sessions.
10. Trustee Moland is on notice that a failure to comply with Board Policies, Administrative Regulations, Bylaws, or the directives in this Resolution will result

in the Board's refusal to indemnify Trustee Moland for any claims or actions resulting from his conduct to the extent allowed by law.

PASSED AND ADOPTED by the Board of Trustees of the Fairfax School District at a regular meeting held on December 15, 2020 by the following vote or abstention of each member present:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

_____, Board President
Fairfax School District

CERTIFICATION

I, _____, Clerk to the Board of Trustees of the Fairfax School District, certify that the foregoing Resolution was regularly introduced, passed, and adopted by the Board of Trustees at its meeting held on _____.

DATED: _____

Clerk, Board of Trustees
Fairfax School District

Appendix B

1/10/2021

GAMUT Online : Fairfax ESD : Attorney BB 9124

Fairfax ESD | BB 9124 Board Bylaws

Attorney

The Governing Board recognizes the complex legal environment in which districts operate and desires reliable, high-quality legal advice at reasonable rates. In order to meet the district's legal needs, the Board may contract with county counsel, attorneys in private practice, or appoint legal counsel as a district employee or independent contractor. The Board also supports pursuing collaborative legal efforts with other agencies and districts as appropriate.

(cf. 3320 - Claims and Actions Against the District)

(cf. 3400 - Management of District Assets/Accounts)

(cf. 4312.1 - Contracts)

(cf. 9000 - Role of the Board)

(cf. 9260 - Legal Protection)

Duties of Legal Counsel

The district's legal counsel may: (Education Code 35041.5)

1. Render legal advice to the Board and the Superintendent or designee
2. Serve the Board and the Superintendent or designee in the preparation and conduct of district litigation and administrative proceedings
3. Render advice on school bond and tax increase measures and prepare the necessary forms for the voting of these measures
4. Perform other administrative duties as assigned by the Board and Superintendent or designee

Retaining Legal Counsel

When the district is seeking legal advice or representation, the Superintendent or designee shall initiate a Request for Proposals (RFP) to advertise and solicit proposals for legal services. In evaluating the proposals, the Board and Superintendent shall consider the firm's or attorney's background, experience, and reputation in education law; experience advising or representing school districts in California; fees; and experience of attorneys at the firm who will provide legal services.

The Board and Superintendent shall annually evaluate the performance of the firm and/or attorneys providing legal services in such areas as efficiency and adequacy of advice; results obtained for the district; reasonableness of fees; and responsiveness to and interactions with the Board, administration, and community. Upon a successful evaluation, the Board may renew the agreement with legal counsel without initiating an RFP.

The Board may also contract for temporary, specialized legal services without initiating an RFP when a majority of the Board determines that the unique demands of a particular issue or emergency situation so requires.

(cf. 2121 - Superintendent's Contract)

Contacting Legal Counsel

/10/2021

GAMUT Online : Fairfax ESD : Attorney BB 9124

At his/her discretion, the Board president or Superintendent may confer with district legal counsel subject to any limits or parameters established by the Board. In addition, the Superintendent or Board president may contact district legal counsel to provide the Board with legal information or advice when so directed by a majority of the Board.

Individual Board members other than the Board president may not seek advice from district legal counsel on matters of district business unless so authorized by a majority of the Board.

(cf. 9200 - Limits of Board Member Authority)

(cf. 9321 - Closed Session Purposes and Agendas)

Legal Reference:

EDUCATION CODE

35041 Administrative adviser

35041.5 Legal counsel

35161 Powers and duties of governing board

35200-35214 Liabilities, especially:

35204 Contract with attorney in private practice

35205 Contract for legal services

GOVERNMENT CODE

814-895.8 Liability of public entities and public employees

995-996.6 Defense of public employees

26520 Legal services to school districts

53060 Special services and advice

Management Resources:

CSBA PUBLICATIONS

The Brown Act: School Boards and Open Meeting Laws, rev. 2014

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Selecting and Working with a School Attorney: A Guide for School Boards, 1997

WEB SITES

CSBA: <http://www.csba.org>

California Council of School Attorneys:

<http://www.csba.org/LegislationAndLegal/Legal/CaliforniaCouncilOfSchoolAttorneys.aspx>

National School Boards Association: <http://www.nsba.org>

8/10/2021

GAMUT Online : Fairfax ESD : Attorney BB 9124

State Bar of California: <http://www.calbar.ca.gov>

Bylaw FAIRFAX ELEMENTARY SCHOOL DISTRICT

adopted: September 10, 2020 Bakersfield, California

FAIRFAX SCHOOL DISTRICT

School Board in Crisis

SUMMARY:

The Fairfax School District (District) is one of several small elementary school districts in the County of Kern. Most school districts utilize the Kern County Superintendent of Schools (KCSOS) Legal Service (Schools Legal) for their General Counsel. Schools Legal has a pool of attorneys available to school districts that have contracts for general counsel. The Fairfax School District has a \$47,000 annual contract with Schools Legal. Due to a conflict of interest, an investigative law firm was hired to inquire into the allegations made against a Board Member, which produced the Resolution of Censure (Censure) and Report. The Fairfax School Board (Board) failed to pass the Censure, due to objection from some Board Members, on the basis that two Board Members had not been given the opportunity to read the Censure or have discussion on the matter before a vote was demanded. Once the Censure motion was defeated by a 2 to 2 vote, said Board Member was accused of hiring an outside law firm to look after their own interests regarding the Censure. To date, the Board has not addressed the complaints against or the actions of said Board Member.

The community of the Fairfax School District is now seeking to remove three Board Members with a resign/recall campaign due to the failure to discipline said Board Member, and the hiring of an outside law firm. Over 100 members of the community have attended regular Board Meetings, in person or via Zoom, to voice support for their removal. Chaos was reported at the Board Meetings with no opportunity for exchange of information, either between Board Members or the community. The community expressed concern, “Is there going to be enough money for graduation?”

PURPOSE OF INQUIRY:

Pursuant to California Penal Code section 933.5, the Grand Jury investigated the operations, management, and actions of the Fairfax School District’s Board of Trustees.

METHODOLOGY:

The Grand Jury began their inquiry by reviewing citizen complaints, conducting Internet research, viewing video recordings of Board meetings, attending two Board meetings in person, and reviewing Board agendas and minutes. Local news articles provided background information on the Board’s actions. District officials and citizens, as well as present and past Board Members, were interviewed by the Grand Jury in an attempt to understand the

community's viewpoint on the operation of the District. The Grand Jury also reviewed the **fully redacted** 500 plus page investigative report (Report) and nine-page summary, as well as the **unredacted** report submitted to the District by the investigative law firm.

DISCUSSION OF FACTS:

HISTORY:

The Fairfax School District was formed on May 6, 1891, to serve a sparsely populated area on Bakersfield's eastern fringe. Unlike almost all other school districts, there was no center of population, as the area was made up almost exclusively of small family farms. One can only speculate as to how it was determined just where to build that first Fairfax schoolhouse.

During its first year of operation, 1891-92, the District's average daily attendance was eight students, and enrollment remained relatively small for the next twenty years. No attendance records were found for those years but we know from a 1911 directory of Kern County's public schools, titled, "List of Districts, Clerks, and Teachers", reflects that all grades at the Fairfax School were still being taught by a single teacher.

The District experienced moderate growth during the next 20 years, recording an average daily attendance for the 1932-33 school years of 101 students and a staff of three teachers; one who also served as the part-time principal.

Food service was first offered to Fairfax students in 1928 and was initiated by a founding member of the Fairfax PTA, who cooked the meals at home and transported the food to the school in kettles.

Bus transportation was first made available to Fairfax students in 1935 following the District's purchase of a used REO bus from Kern County High School District.

As originally configured, the Fairfax School District encompassed an area of 57 square miles and bore little resemblance to the Fairfax District of today. The original boundary lines formed a large rectangle, the sides being four miles long from north to south and 15 miles wide from east to west. The western terminus ran on a line one mile east of, and parallel to, present day Union Avenue. The District's eastern boundary, 15 miles wide, was approximately two miles beyond Bena Station, on the Southern Pacific Railroad. Current boundaries are reflected in Appendix A.

Currently the District serves approximately 2,700 students at four schools: Shirley Lane Elementary School, Virginia Avenue Elementary School, Zephyr Lane Elementary School, and Fairfax Junior High School. The District is a feeder district for Kern High School District (Mira Monte High School and Foothill High School).

FACTS:

- A. In May of 2020, the Board addressed the formal complaints of a Board Member’s reported harassment of employees and other actions, creating a hostile work environment.
- B. On or about August 17, 2020, the Board retained an investigative firm to act solely as a factfinder (not legal counsel) and conduct a neutral, independent investigation into all allegations raised by employee complaints. This firm had no bias or pre-existing knowledge of any concerns.
- C. The results of the 2020 November Election changed the make-up of the Board, adding one new member and removing a 20-year member (President of the Board for several terms), resulting in a three member alliance.
- D. The two-month investigation resulted in the Report delivered to the Board on November 10, 2020, at a cost of \$40,000. The Report consisted of over 110 pages along with 450 pages of attachments. A nine-page summary with a list of recommendations, including a Censure of the Board Member, was presented to the Board at the Regular Board Meeting on December 15, 2020.
- E. Fairfax School District **“PROPOSED” RESOLUTION NO. 2021-08, A Resolution by the Governing Board to Censure Trustee (redacted) For Abusive and Inappropriate Conduct**, was made available to the Board Members through Schools Legal for review and placed on the agenda for the Regular District Board Meeting on December 15, 2020. With no allowed discussion from the Board, the vote was 2 to 2 with one abstention, defeating the Censure.
- F. At the next Regular District Board Meeting, January 14, 2021, with no allowed discussion, agenda item J.2. was approved by a 3 to 2 vote to hire an outside law firm. Two Board Members attempted to question the need for said hiring, due to the fact that the first time they heard of the firm was when they saw it on the agenda. No Request For Proposal (RFP) was submitted by any law firm as required by Board Bylaws.

Agreement For Legal Services with the outside law firm include:

- “SCOPE OF SERVICE, Client hires Attorney as its legal representative/counsel with respect to matters Client specifically refers to Attorney. Attorney will provide those legal services reasonably required to represent Client. Attorney will take reasonable steps to keep Client informed of progress and respond to Client’s inquiries.”

- “CONSULTANT SERVICES, Attorney may provide consulting services in addition to or in support of legal services provided pursuant to this Agreement, through qualified non-attorney Communication Services and Education Consultants. These services are intended to support Client with Communications work or educational consultant services related to labor and employment matters, special education and student matters, high-profile litigation and settlement agreements, in addition to employee, community, inter-governmental and media relations.”

G. The President of the Board called a Special Board Meeting on February 3, 2021, with only one action agenda item, D.1.: “Per Board Bylaw No. 9124, the Board may contract for temporary specialized legal services without initiating an RFP when a majority of the Board determines that the unique demands of a particular issue or emergency situation so requires. The Board will consider approving an agreement with (redacted) LLP for purposes of assistance regarding unique censure motion, and related issues, including but not limited to the 2020 investigation and PRA request for the same.” The Board approved the action on a 3 to 2 vote, with no discussion allowed from Board Members or the public.

H. Pursuant to the COVID-19 protocol, the Board meetings are conducted by a link to meeting (via Zoom), as per, “Notice of Teleconferencing Pursuant to Executive Order N-29-20 and Government Code section 54953; The Board will conduct this meeting via teleconference or video conference, with one or more board members participating from remote locations via telephone or other electronic means. Voting at this meeting shall be by roll call. Members of the public wishing to observe/listen to the meeting or make public comments as authorized under Government Code section 54954.3 may do so at the following location: 1500 S. Fairfax Rd, Bakersfield, CA 93307. Voting at this meeting shall be by roll call. Social distancing measures will be implemented to address public health issues relating to the Coronavirus (COVID 19).”

I. The outside law firm submitted an invoice to the District dated February 23, 2021, for 12.00 hours of legal services from January 18, 2021 to January 29, 2021, in the amount of \$3,230. Billing details include: teleconferencing with the board leadership; communication with two board members; communication with board members; and correspondences with the board president.

A second invoice was received by the District dated March 22, 2021, for 30.40 hours of legal services from February 1, 2021 to February 25, 2021, in the amount \$7,976.

2020-2021 Kern County Grand Jury Report

Billing details include: review and analyze correspondences from general counsel; strategy regarding special meeting; review of agenda; strategize redactions in the investigative report; and review Fair Political Practices Commission complaint against trustees.

- J.* The District's General Counsel is Schools Legal as per an annual retainer contract for \$47,000.
- K.* Board Bylaws state the appropriate behavior and actions for both Board Members and District Superintendent.
1. Fairfax Board Bylaw 9200, in pertinent part, include the following:
 - "The Governing Board recognizes that the Board is the unit of authority over the District and that a Board member has no individual authority. Board members shall hold the education of students above any partisan principle, group interest, or personal interest."
 - "Unless agreed to by the Board as a whole, individual members of the Board shall not exercise any administrative responsibility with respect to the schools or command the services of any school employee."
 - "Individual Board members do not have the authority to resolve complaints. Any Board member approached directly by a person with a complaint should refer the complainant to the Superintendent or designee so the problem may receive proper consideration and be handled through the appropriate district process."
 - "A Board member whose child is attending a district school should be aware of his/her role as a Board member when interacting with district employees about his/her child. Because his/her position as a Board member may inhibit the performance of school personnel, the Board member should inform the Superintendent or designee before volunteering in his/her child's classroom"
 2. Fairfax Board Bylaw 9005.1, in pertinent part, include the following:
 - "Board members will:
 - Understand and respect the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the Superintendent and staff.

- Communicate directly with the Superintendent wherever a question or concern is raised by a staff member, student, parent, or community member.
 - Communicate one-on-one with the Superintendent when an individual concern arises; without allowing the matter to fester.”
 - “Board members and Superintendent will:
 - Act with dignity, and understand the implication of demeanor and behavior.
 - Recognize and respect difference of perspectives and style on the Board and among staff, students, and the community.”
3. Fairfax Board Bylaw 9010, in pertinent part, include the following:
- “The Governing Board recognizes the rights of Board members to freely express their views and encourages open discussion of issues during the Board meetings. The Board believes that effective Board members have a responsibility to express themselves, whether in agreement or disagreement with the Board majority, in ways that promote the Board’s ability to govern the district.”
 - “When speaking to community groups, the media, or other members of the public, individual Board members should recognize that their statements may be perceived as reflecting the views and positions of the Board. Board members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the Board.”
 - “All public statements authorized to be made on behalf of the Board shall be made by the Board president or, if appropriate, by the Superintendent or other designated representative.”

- L. As per Fairfax Board Bylaw 9124: “At his/her discretion, the Board president or Superintendent may confer with the district legal counsel subject to any limits or parameters established by the Board. In addition, the Superintendent or Board president may contact district legal counsel to provide the Board with legal information or advice when so directed by a majority of the Board. Individual Board members other than the Board president may not seek advice from district legal counsel on matters of district business unless so authorized by a majority of the Board.”

- M. The scheduled Regular Board Meeting on April 8, 2021, was canceled due to lack of a quorum. Over 30 people in attendance expressed concerns for not taking care of District business such as, the consent agenda, payroll, purchasing of new equipment, and the Superintendent's evaluation.
- N. The Special Board Meeting on April 14, 2021, had only three agenda action items: Consent Section, D.1. Warrants/Payroll; D.3. Confidential Management Director of Maintenance, Operation, and Transportation; and D.4. Resignation/Retirement.
- O. After January 2021, personal contact information for all Board Members is no longer available on the District's website.
- P. The District has scheduled and canceled two community requested town hall meetings for the month of March 2021.

FINDINGS:

1. The 2020 November election has changed the make-up of the Board, resulting in a divided and dysfunctional School Board.
2. The actions of the Board at the Regular Meeting of the Board of Trustees on December 15, 2020, was not the end of the investigation, Report, and/or Censure. The Board Member contacted and negotiated a contract with an outside law firm without the approval or knowledge of the entire Board. The Special Board Meeting on February 3, 2021, served the purpose to address any wrong doings from the Regular Board Meeting on January 14, 2021, regarding the hiring of the outside law firm. Invoices from the law firm for the months of January and February of 2021, indicate that only a few Board Members had contact with the firm. This leaves a minority of the Board and the community believing that the purpose was to solely protect the Board Member from Censure and to re-redact the Report for public release. Unfortunately, according to the Agreement For Services, the SCOPE and CONSULTANT SERVICES are unlimited.
3. The requests for the Fairfax School District - (redacted) Investigation: Detailed Investigation Report Client-Matter: SC050/014 Report under the Public Records Act (PRA), only provided the Report that was redacted by both Schools Legal and the outside law firm, before being made available to the public. This created a public report that has pages completely blacked out, including most dates, times, and names, making it impossible to read and understand the concerns.

4. When Board meetings are conducted via Zoom, and all Board Members do not turn on their cameras, it is very difficult to follow the meeting, see Board Member's reactions, or know if they are actually present. This concerns the community, as well as other Board Members.
5. When Board Members vote on agenda items without discussion and stop other Members from questioning and/or discussing the purpose of the action, it leaves the public with the suspicion that a closed door or outside planning/discussion took place prior to the meeting. Board Members need to be schooled on the requirements of the Ralph M. Brown Act, and allow for Board Member discussion on the agenda items in public meetings.
6. The Board's authorized investigation into the complaints of a hostile working environment and abusive behavior by the Board Member, resulted in an extensive Report with recommendations. The Board has not taken any formal action to resolve the complaints and/or control the behavior of said Board Member.
7. Three Board Members were not in attendance at the Regular Board Meeting on April 8, 2021, eliciting outrage by the community. Some Board Members canceled minutes before the scheduled start of the meeting.
8. The community is still demanding a town hall meeting for the opportunity to voice their opinions and address District concerns.
9. The Grand Jury determined the Board Member failed to follow:
 - Board Bylaws
 - Education Code
 - Government Code
 - Ralph M. Brown Act
 - Robert's Rules of Order
 - Ethics law and principles

Furthermore, without Board approval, the Board Member contacted a law firm(s), negotiated a contract, and allowed no discussion on the agenda item before voting to hire the outside law firm.

10. The Fairfax School District - (redacted) Investigation: Detailed Investigation Report Client-Matter: SC050/014 Report confirmed, with Grand Jury witness statements, that the Board Member did engage in abusive conduct toward classified employees in a demanding or aggressive manner; asked questions that should be directed to the Superintendent; requested reports, projects, or information directly; criticized classified employees to other employees; stated during public comment at board

2020-2021 Kern County Grand Jury Report

meetings and on their Facebook page that classified employees failed to wear masks at work; monitored classified employees during job duties by following, videotaping, photographing, and reporting tardiness to their supervisors. The above actions are in violation of Board Bylaws, Government Code, and ethics law and principles.

11. The Censure and its recommendations did not pass at the Regular Board Meeting on December 15, 2020. The Board has neither addressed nor acted upon concerns regarding the behavior of the Board Member's conduct.
12. Personal contact information for Board Members is not posted or readily available to the public on the website. Therefore, the public does not have the ability to contact a Board Member to share or discuss District concerns or verify their residency within the District, as per Education Code section 35107(a) and Fairfax Board Bylaw 9220.
13. The majority of the Board did willfully and knowingly allow the bullying of the minority in order to stop discussion and force a vote on agenda items at two or more District Board meetings.
14. The Fairfax School District - (redacted) Investigation: Detailed Investigation Report Client-Matter: SC050/014 Report, confirmed with Grand Jury witness statements, that there were violations of Board Bylaws 9200 and 9005.1. The Board Member was performing management and administrative functions without the proper authority. Evidence supported that the Board Member engaged in abusive, and unprofessional conduct, lacking "civility, dignity and respect." It also was determined that, the Board Member's misconduct might "impair" their "ability to carry out" their authorized responsibilities as a trustee. Therefore, it is foreseeable that the Board Member's ***"usurpation of administrative duties might create a conflict"*** preventing their service as a Board Member. This Board Member is the major contributing factor to the dysfunction of the Fairfax School District Board.
15. The cost of legal services paid by the District in the last 12 months, e.g., Schools Legal, outside law firm, and investigative law firm, may be placing a burden on the District's budget and taking funds that are not being used for the direct education of students. This is prompting community members to ask, "Is there enough money left for graduation?"

COMMENTS:

The Grand Jury has considered the Accusation Process (Penal Code § 922) to weigh allegations of misconduct against the Fairfax School District Board Member. Due to the time restraints of this year's Jury, it is not feasible to complete the process at this time. Future Grand Juries may consider this process if the conduct of the Board Member continues.

The Fairfax community has taken the initial step to “***take back OUR District***” and remove three Board Members by serving them with recall papers at the Regular Meeting of the Board of Trustees on May 4, 2021. The community must now express their concerns about the operation of the District.

RECOMMENDATIONS:

1. The Board should organize a retreat to provide extensive training and hire a conflict resolution specialist to build communication skills, hopefully building trust among Board Members. These team building activities should be completed before October 1, 2021. (Finding 1)
2. The Board should consult Schools Legal regarding The Brown Act, ethics training, and conflicts of interest. All Board Members must be re-trained on proper behavior and subsequent actions as a Board Member by October 1, 2021. (Findings 1 and 5)
3. By September 1, 2021, the Board should review, follow, and/or update all current Board Bylaws, and conduct Board Meetings using Robert's Rule of Order allowing for complete discussion before a vote is taken. (Findings 5 and 13)
4. The Board should immediately work on methods for conducting meetings that allow for easier public access. (Findings 4 and 5)
5. Starting immediately, the public should be allowed adequate time to express their concerns in open session at all Board Meetings and be respectfully addressed by the Board. (Findings 1, 5, 7, and 8)
6. In accordance with California Election Code, the Board should verify that Board Members are current residents within the District boundaries before the next Board Meeting. (See Appendix A) (Finding 12)
7. By September 1, 2021, the Board should complete the process and close the complaints against the Board Member. (Findings 6, 10, and 14)
8. The Board should immediately ensure that all Board Member's contact information is readily available to the public. (Finding 12)

9. The Board should immediately cease and desist bullying during meetings, allow for discussion and questions prior to the vote, and stop the practice of forcing Members to vote without having complete information. (Findings 13 and 14)
10. The Board should examine the funds spent on legal services, justify the need for multiple law firms, and report their findings to the public on or before the Regular Board Meeting in August 2021. (Finding 15)
11. By June 30, 2021, the Board should hold a town hall meeting, where public concerns can be addressed. (Finding 8)
12. The Board should remove the current President of the Board and train another Board Member to become President by June 30, 2021. This will eliminate a major contributor to the dysfunction of the Board. (Finding 14)

NOTES:

- The Fairfax School District should post a copy of this report where it will be available for public review.
- Persons wishing to receive an email notification of newly released reports may sign up at: www.kerncounty.com/grandjury.
- Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: www.kerncounty.com/grandjury.

RESPONSE REQUIRED WITHIN 90 DAYS TO:

- **PRESIDING JUDGE**
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE, SUITE 212
BAKERSFIELD, CA 93301
- **FOREPERSON**
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.

GLOSSARY:

Bylaws: a rule made by a company or society to control the actions of its members.

California Public Records Act (PRA): establishes that public records are open to inspection at all times during the office hours of the State or local agency and every person has a right to inspect any public record, except as provided in the PRA (Government Code § 6253). Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record.

Cease and Desist: is a legally enforceable order from a court or government agency, directing someone to stop engaging in a suspicious or illegal activity that is infringing on your rights.

Censure: an official reprimand and statement of disapproval.

In Pertinent Part: is relating directly to the subject being considered.

Ralph M. Brown Act: (Government Code § 54950, et seq.) Public commissions, boards, councils and other legislative bodies of local government agencies exist to aid in the conduct of the people's business. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created.

Resolution: a firm decision to do or not to do something.

Request For Proposal (RFP): a business document that announces a project, describes it, and solicits bids from qualified contractors to complete it.

Robert's Rules of Order: a political book written by Henry Martyn Robert. It is the most widely used manual of parliamentary procedure in the United States. It governs the meetings of a diverse range of organizations (including church groups, county commissions, homeowners' associations, nonprofit associations, professional societies, school boards, and trade unions) that have adopted it as their parliamentary authority.

Terminus: the end of a railroad or other transportation route, or a station at such a point; a terminal.

BIBLIOGRAPHY:

AGREEMENT FOR LEGAL SERVICE: [file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/J_2_FagenFriedmanFulcrostLLPContract_0%20\(1\).pdf](file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/J_2_FagenFriedmanFulcrostLLPContract_0%20(1).pdf)

THE BAKERSFIELD CALIFORNIAN:

Monday, February 1, 2021, “Fairfax school board majority hires new law firm without asking questions”

Friday, February 5, 2021, “Fairfax school board reapproves legal contract during raucous board meeting”

Saturday, May 8, 2021, “Three Fairfax school board members get recall notices”

BAKERSFIELD. COM NEWS:

https://www.bakersfield.com/news/despite-outcry-from-staff-fairfax-school-district-board-fails-to-censure-board-member-accused-of/article_a949e7d8-417d-11eb-ab0b-eba6de3b8d37.html

DISTRICT BYLAWS: <http://www.gamutonline/district.net/district/fairfax/PolicyCategoryList/2375/9>

https://www.bakersfield.com/news/fairfax-school-board-reapproves-legal-contract-during-raucous-meeting/article_651a6f90-671d-11eb-8e4e-cbb13475d6ef.html

https://www.bakersfield.com/news/newly-hired-law-firm-is-at-work-asking-for-redactions-for-fairfax-school-board-president/article_1eadebba-6a68-11eb-9bea-ef1ea9b6a0c8.html

<https://www.kget.com/news/local-news/resolution-fails-to-pass-against-school-board-member-accused-of-abusive-bullying-conduct/>

FAIRFAX SCHOOL DISTRICT WEBSITE:

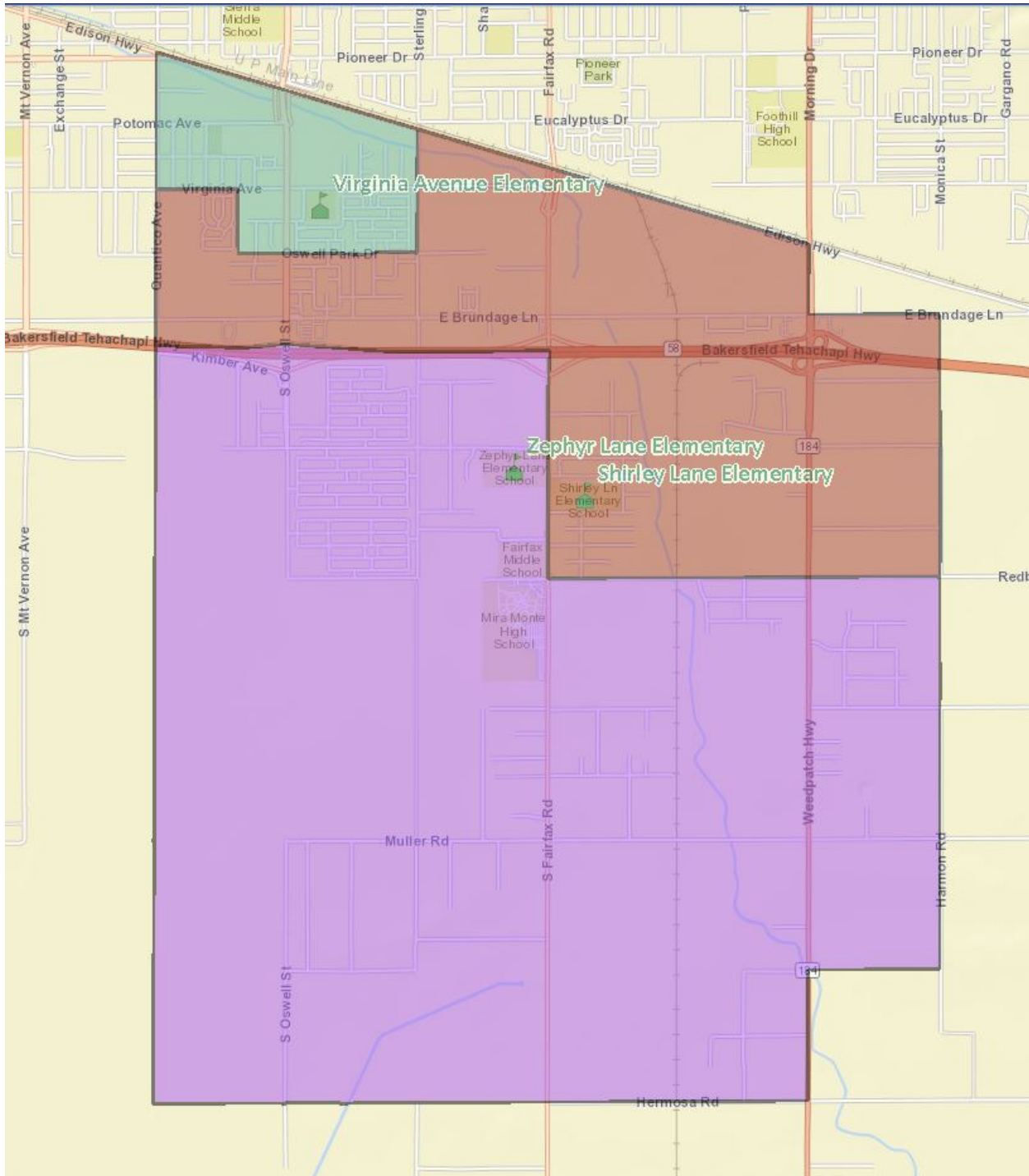
<https://www.fairfax.k12.ca.us/District>

Fairfax.cyberschool.com/District/1120-Untitled.html

RESOLUTION 2021-08 CENSURE RESOLUTION: [file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/I_1_Resolution202108CensureResolution_0%20\(1\).pdf](file:///C:/Users/gj012/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/I_1_Resolution202108CensureResolution_0%20(1).pdf)

APPENDIX A:

FAIRFAX SCHOOL DISTRICT BOUNDARY



Map provided by Fairfax School District Website – see link above

2020-2021 Kern County Grand Jury Report



**FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM
AB139 STUDY AGREEMENT
July 14, 2021**

The Fiscal Crisis and Management Assistance Team (FCMAT), hereinafter referred to as the team, and the Kern County Superintendent of Schools, hereinafter referred to as the COE, mutually agree as follows:

1. BASIS OF AGREEMENT

The team provides a variety of services to local educational agencies (LEAs). Pursuant to the provisions of Education Code (EC) Section 1241.5 (b), county superintendents may review or audit the expenditures and internal controls of any school in their county if they have reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The extraordinary audits conducted by the county superintendent shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner.

All work shall be performed in accordance with the terms and conditions of this agreement.

2. SCOPE OF THE WORK

A. Scope and Objectives of the Study

The Kern County Superintendent of Schools has requested FCMAT to assign professionals to conduct an AB 139 Extraordinary Audit. This audit will be conducted pursuant to Education Code Section 1241.5 (b). The COE has received allegations of possible fraud, misappropriation of funds or other illegal fiscal practices at the Fairfax School District and is requesting that FCMAT review the process for awarding of contracts specifically related to professional services.

The team will review and test recorded professional services transactions and contracts from July 2020 to present, and any applicable board policies and minutes. Any testing for this review will be based on the auditor's judgment and a sample of transactions and records for this period. Testing and review results are intended to provide reasonable but not absolute certainty about whether the district's processes and procedures related to contractual commitments followed board policy and best practices.

The primary focus of this review is to determine, based on the testing performed, whether (1) adequate management and internal controls are in place regarding the district's contractual commitments relative to professional services for the district, and (2) based on that assessment, whether fraud, misappropriation of funds or

other illegal fiscal practices may have occurred.

B. Services and Products to be Provided

1. Orientation Meeting – The team will conduct an orientation session at the district to brief management and supervisory personnel on the team’s procedures and the purpose and schedule of the study.
2. On-site Review – The team will conduct an on-site review at the district office and at school sites if necessary; pertinent documents will also be reviewed off-site.
3. Progress Reports – The team will inform the COE of material issues as the review is performed.
4. Exit Meeting – The team will hold an exit meeting at the conclusion of the on-site review to inform the COE of any significant findings to that point.
5. Draft Report – When appropriate, electronic copies of a preliminary draft report will be delivered to the COE’s administration for review and comment on a schedule determined by the team.
6. Final Report – Electronic copies of the final report will be delivered to the COE and/or district following completion of the review. Printed copies are available from the FCMAT office upon request.
7. Follow-Up Support – If requested, the team will meet with the COE and/or district to discuss the findings and recommendations of the report.

3. PROJECT PERSONNEL

The FCMAT study team may include:

- A. *To Be Determined FCMAT Staff***
B. *To Be Determined FCMAT Consultant*

Other equally qualified staff or consultants will be substituted in the event one of the above individuals is unable to participate in the study.

4. PROJECT COSTS

The cost for studies requested pursuant to EC 42127.8 (d) (1) shall be:

- A. \$1,100 per day for each staff team member while on site, conducting fieldwork at other locations, preparing or presenting reports, or participating in meetings. The cost of independent FCMAT consultants will be billed at their actual daily rate for all work performed.
- B. All out-of-pocket expenses, including travel, meals and lodging.

Based on the elements noted in Section 2A, the total estimated cost of the study will be \$44,000.

- C. Any change to the scope will affect the estimate of total cost.

Payments for FCMAT's services are payable to Kern County Superintendent of Schools - Administrative Agent, located at 1300 17th Street, City Centre, Bakersfield, CA 93301. Clients may qualify for reimbursement from funds set aside for this purpose, pursuant to AB 139.

5. RESPONSIBILITIES OF THE COE AND/OR DISTRICT

- A. The district will provide office and conference room space during on-site reviews.
- B. The district will provide the following if requested:
1. Policies, regulations and prior reports addressing the study request.
 2. Current or proposed organizational charts.
 3. Current and two prior years' audit reports.
 4. Any documents requested on a supplemental list. Documents requested on the supplemental list should be provided to FCMAT only in electronic format; if only hard copies are available, they should be scanned by the district and sent to FCMAT in an electronic format.
 5. Documents should be provided in advance of fieldwork; any delay in the receipt of the requested documents may affect the start date and/or completion date of the project. Upon approval of the signed study agreement, access will be provided to FCMAT's online SharePoint document repository where the district shall upload all requested documents.
- C. The COE administration will review a draft copy of the study. Any comments regarding the accuracy of the data presented in the report or the practicability of the recommendations will be reviewed with the team prior to completion of the final report.

Pursuant to EC 45125.1(c), representatives of FCMAT will have limited contact with pupils. The district shall take appropriate steps to comply with EC 45125.1(c).

6. PROJECT SCHEDULE

The following schedule outlines the planned completion dates for different phases of the study and will be established upon the receipt of a signed study agreement:

<i>Orientation:</i>	<i>To be determined</i>
<i>Staff Interviews:</i>	<i>To be determined</i>
<i>Exit Meeting:</i>	<i>To be determined</i>
<i>Draft Report Submitted:</i>	<i>To be determined</i>
<i>Final Report Submitted:</i>	<i>To be determined</i>

7. COMMENCEMENT, TERMINATION AND COMPLETION OF WORK

FCMAT will begin work as soon as it has assembled an available and appropriate study team consisting of FCMAT staff and independent consultants, taking into consideration other jobs FCMAT has previously undertaken and assignments from the state. The team will work expeditiously to complete its work and deliver its report, subject to the cooperation of the district and any other parties from which, in the team's judgment, it must obtain information. Once the team has completed its fieldwork, it will proceed to prepare a draft report and a final report. Prior to completion of fieldwork, the COE may terminate its request for service and will be responsible for all costs incurred by FCMAT to the date of termination under Section 4 (Project Costs). If the COE does not provide written notice of termination prior to completion of fieldwork, the team will complete its work and deliver its report and the COE will be responsible for the full costs. The COE understands and agrees that FCMAT is a state agency and all FCMAT reports are published on the FCMAT website and made available to interested parties in state government. In the absence of extraordinary circumstances, FCMAT will not withhold preparation, publication and distribution of a report once fieldwork has been completed, and the COE shall not request that it do so.

8. INDEPENDENT CONTRACTOR

FCMAT is an independent contractor and is not an employee or engaged in any manner with the COE. The manner in which FCMAT's services are rendered shall be within its sole control and discretion. FCMAT representatives are not authorized to speak for, represent, or obligate the COE in any manner without prior express written authorization from an officer of the COE.

9. INSURANCE

During the term of this agreement, FCMAT shall maintain liability insurance of not less than \$1 million unless otherwise agreed upon in writing by the COE, automobile liability insurance in the amount required under California state law, and workers' compensation as required under California state law. FCMAT shall provide certificates of insurance, with Kern County Superintendent of Schools named as additional insured, indicating applicable insurance coverages upon request.

10. HOLD HARMLESS

FCMAT shall hold harmless the COE, its officers, agents, and employees from all third-party suits, claims and liabilities resulting solely from negligent acts or omissions of FCMAT's officers, agents and employees undertaken under this agreement. The COE shall hold harmless FCMAT, its officers, agents, and employees from all third-party suits, claims and liabilities resulting solely from negligent acts or omissions of FCMAT's officers, agents and employees undertaken under this agreement.

11. COVID-19 PANDEMIC

Because of the existence of COVID-19 and the resulting shelter-at-home orders, local educational agency closures and other related considerations, at FCMAT's sole

discretion, the Scope of Work, Project Costs, Responsibilities of the District (Sections I, IV and V herein) and other provisions herein may be revised. Examples of such revisions may include, but not be limited to, the following:

- A. Orientation and exit meetings, interviews and other information-gathering activities may be conducted remotely via telephone, videoconferencing, etc. References to on-site work or fieldwork shall be interpreted appropriately given the circumstances.
- B. Activities performed remotely that are normally performed in the field shall be billed hourly as provided as if performed in the field (excluding out-of-pocket costs).
- C. The district may be relieved of its duty to provide conference and other work area facilities for the team.


12. **FORCE MAJEURE**

Neither party will be liable for any failure of or delay in the performance of this study agreement due to causes beyond the reasonable control of the party, except for payment obligations by the district.

13. **CONTACT PERSON**

Contact: Mary Barlow, Ed.D.
Telephone: (661) 636-4600
E-mail Address: mabarlow@kern.org

Mary C. Barlow, Ed.D., Superintendent Kern County Superintendent of Schools	Date
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 Michael H. Fine Chief Executive Officer Fiscal Crisis & Management Assistance Team	July 14, 2021 Date
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IV and V herein) and other provisions herein may be revised. Examples of such revisions may include, but not be limited to, the following:


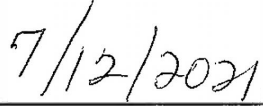
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E-mail Address: mabarlow@kern.org

Mary C. Barlow, Ed.D., Superintendent Date
Kern County Superintendent of Schools

 July 14, 2021

Michael H. Fine Date
Chief Executive Officer
Fiscal Crisis & Management Assistance Team