

## Public Disclosure Requirements for Unrepresented Employee Groups and Individuals

### Background

This fiscal alert addresses the need and best practices for public disclosure of collective bargaining that affects unrepresented employee groups and individuals. As stated in Government Code Section 3547.5(a), the requirement for public disclosure of a collectively bargained agreement refers specifically to an agreement with “an exclusive representative covering matters within the scope of representation.”

A literal interpretation of this statute suggests that it applies only to employees in groups that are in a collectively bargained agreement and does not apply to unrepresented employee groups and individuals.

However, the relevant Government Code and Education Code sections should not be interpreted in isolation. Pursuant to the oversight provisions in Assembly Bills 1200 and 2756 (and subsequent related legislation), each county superintendent of schools has a statutory responsibility to monitor the fiscal health of its school districts. Because 80-90% of a school district’s general fund expenditures typically comprise salaries and benefits, any changes to salaries and benefits, including those of unrepresented employees, should be disclosed by each LEA and reviewed for fiscal sustainability by each respective county office of education. FCMAT’s guidance on this issue follows; it should be considered best practice rather than legal advice.

### Relevant Issues

With the heightened interest in administrators’ salaries following the compensation scandal in the City of Bell, California in 2010, the importance of the public disclosure forms and processes extends well beyond the vital need for public transparency. Indeed, the current status of all district compensation agreements is also included in the Standardized Account Code System (SACS) Criteria and Standards. In Management Advisory 92-01, titled, “Public Disclosure of Collective Bargaining Agreements” (issued May 15, 1992), the California Department of Education provided advice on the minimum information that should be included in collective bargaining public disclosure documents, and advised that such minimum amount of information would also serve to satisfy the requirements of the salary settlement notification component in the Criteria and Standards.

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History shows that many instances of LEA fiscal distress are attributable to a lack of understanding of negotiated terms, incomplete and inaccurate disclosures of the cost and terms of compensation agreements, and the multiplier effect of “me too” clauses.

The Criteria and Standards require that when employee negotiations are settled, the reviewing agency (the county superintendent for districts and the State Superintendent of Public Instruction for county offices) be provided with a compensation settlement notification that includes an analysis of the cost of the settlement and its impact on the operating budget. The Criteria and Standards includes all employees, not just those who are represented. This is almost the same as the requirements outlined in statute for the public disclosure of collective bargaining.

The Criteria and Standards, Section S8C – Status of Labor Agreements, requires districts to include the status of *all* groups, including those that are often unrepresented, such as management, supervisory and confidential employees. The form states:

The school district must determine the cost of the settlement, including salaries, benefits, and any other agreements that change costs, and provide the county office of education with an analysis of the cost of the settlement and its impact on the operating budget [this is also nearly the same as the requirement for the public disclosure]. The county superintendent shall review the analysis relative to the criteria and standards and may provide written comments to the president of the district governing board and superintendent.

FCMAT recommends that every county superintendent of schools communicate in writing to their districts any concerns regarding a tentative settlement, especially when such an agreement may compromise a district’s fiscal health.

Although unrepresented and unorganized employee groups are typically not collectively bargained with, settlements with those groups are often the result of the collective bargaining process (e.g., via a “me too” clause) and are therefore a logical extension of that process. One could argue that if “me too” clauses exist for any employee group or individuals, the extended cost of applying the compensation adjustment to the other group(s) is a cost of the initial collectively bargained agreement and should be disclosed concurrently with the initial agreement.

The disclosure of all settlements by a district, and their subsequent review by the county office of education, supports the intent of the statutory provisions. This includes the need for public openness as well as the ability for the county office to conduct fiscal oversight to ensure ongoing fiscal solvency.

Many county offices require that all salary and benefit settlements, including those for unrepresented employees, be disclosed in the same manner. This includes submission to the county office for review and analysis. Many county offices also ask districts to give the county office 10 days to review settlements before any board action, regardless of a district’s interim certification status. The 10-day review period is required in Government Code Section 3540.2 for districts that have a qualified or negative interim status. In these instances, a county office must increase its focus on the affordability of the settlements

to ensure that the fiscal impact of any proposed agreement does not further jeopardize a district's financial position.

## **Conclusion**

Although not specifically required by Government Code and Education Code provisions, the need for public disclosure of all increases to salaries and benefits in an open and transparent manner is a vital function of each school district and governing board. The main objectives of the public disclosure requirements, regardless of the group affected, are to inform the public of any increases in compensation and other costs associated with working conditions and topics subject to bargaining, and to provide an opportunity for an analysis of the agreements' affordability by both the district and its county office of education. FCMAT therefore recommends that all districts follow the same disclosure requirements for all groups, including providing their respective county offices of education with sufficient information and ample time to review any cost increases.

For an example of the impact of a district's failure to disclose a settlement with an unrepresented group (in this case, management), FCMAT recommends reviewing its recent *Extraordinary Audit of the Sweetwater Union High School District*. The relevant section begins on page 14 of the report.