

FCMAT

FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

© Fiscal Crisis & Management
Assistance Team

Progressive Intervention EC 42127.6

Business and Administrative Services Committee
Spring Conference

March 1, 2023

Prevention is Always the Best Option

- Governing boards hold a fiduciary duty to the district – and by extension, to their students, parents, community and staff – to ensure the district’s financial condition is stable and that financial obligations can be met
 - Prevention of fiscal distress, and ultimately fiscal crisis, is always the better option
- District fiscal stability and solvency is the responsibility of the district’s governance team
 - Preparation, approval, monitoring and reporting of budgetary and actual financial data rests with the local educational agency (LEA)
- Preservation of resources is a much better strategy than restoration of depleted revenues and reserves

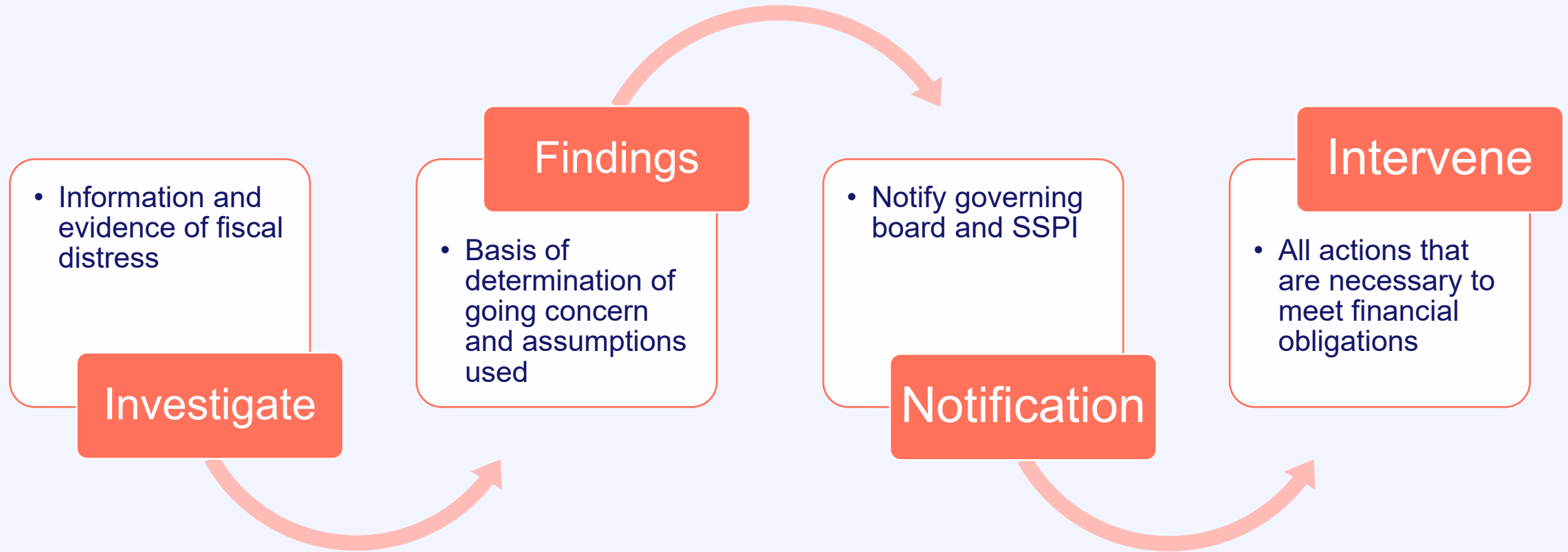
Legislatively-Created Scheme

- The county superintendent has the responsibility to assess, concur or not concur, and monitor a district's reporting and fiscal condition
 - Provide progressive intervention tailored to the severity of the problem
- When a district begins to experience fiscal distress, the county superintendent has an obligation to act
- In designing the powers and responsibilities of county superintendents with respect to fiscally distressed school districts, the legislature created a *complex progression of investigation, findings, notification, appellate review, further findings and further appellate review before the county superintendent of schools may exercise fiscal emergency powers*
- This process is outlined in subdivisions (a) through (e) of Education Code Section 42127.6

Polster v. Sacramento County Office of Education (2009) CAL.App.4th 649, 665

Education Code Section 42127.6(a)(1)

- If LEA may be unable to meet its financial obligations for the current or two subsequent fiscal years, then the county superintendent shall:



Investigate, Findings, Notify & Intervene

- The progression of actions the county superintendent *shall* follow starts with subdivision (a) and progresses through (e) based on the response of the district; specifically in subdivision (a)(1):
 - **Investigate** – when first presented with evidence of fiscal distress the county superintendent investigates the district’s financial condition, and assesses whether the district *may be unable* to meet its financial obligations for the current *or* two subsequent fiscal years
 - The school district *shall* provide information and evidence of fiscal distress
 - The county superintendent *shall* review and consider information and evidence of fiscal distress
 - The county superintendent *shall* investigate and make a determination

Investigate, Findings, Notify & Intervene (Cont.)

- **Findings** – if, based on the investigation, the county superintendent determines that a district *may be unable* to meet its financial obligations for the current or *two* subsequent fiscal years then the county superintendent shall document the basis of its determination and the assumptions used in making its determination
 - Basis of determination generally follow the [FCMAT Indicators of Risk or Potential Insolvency](#) and may rely on a [FCMAT Fiscal Health Risk Analysis](#), if performed

Investigate, Findings, Notify & Intervene (Cont.)

- **Notification** – if the county superintendent determines that a district *may be unable* to meet its financial obligations for the current or *two* subsequent fiscal years then the county superintendent *shall* provide a written notice of going concern determination
 - To the governing board of the district
 - To the state superintendent of public instruction (SSPI)
 - Notice *shall* include the basis for the determination and the assumptions used in making the determination
 - Notice *shall* be available to the public

Investigate, Findings, Notify & Intervene (Cont.)

- **Intervene** – the county superintendent *shall* report their proposed remedial actions to the SSPI, and *shall* do at least one of the following and *all actions* that are necessary to ensure the district meets its financial obligations
 - (A) – Assign a fiscal expert to advise the district
 - (B) – Conduct a study of the financial and budgetary conditions of the district, that includes, but is not limited to, internal controls; employ technical assistance as needed
 - (C) – Direct the district to submit projections of all current year and subsequent years' fund and cash balances

Investigate, Findings, Notify & Intervene (Cont.)

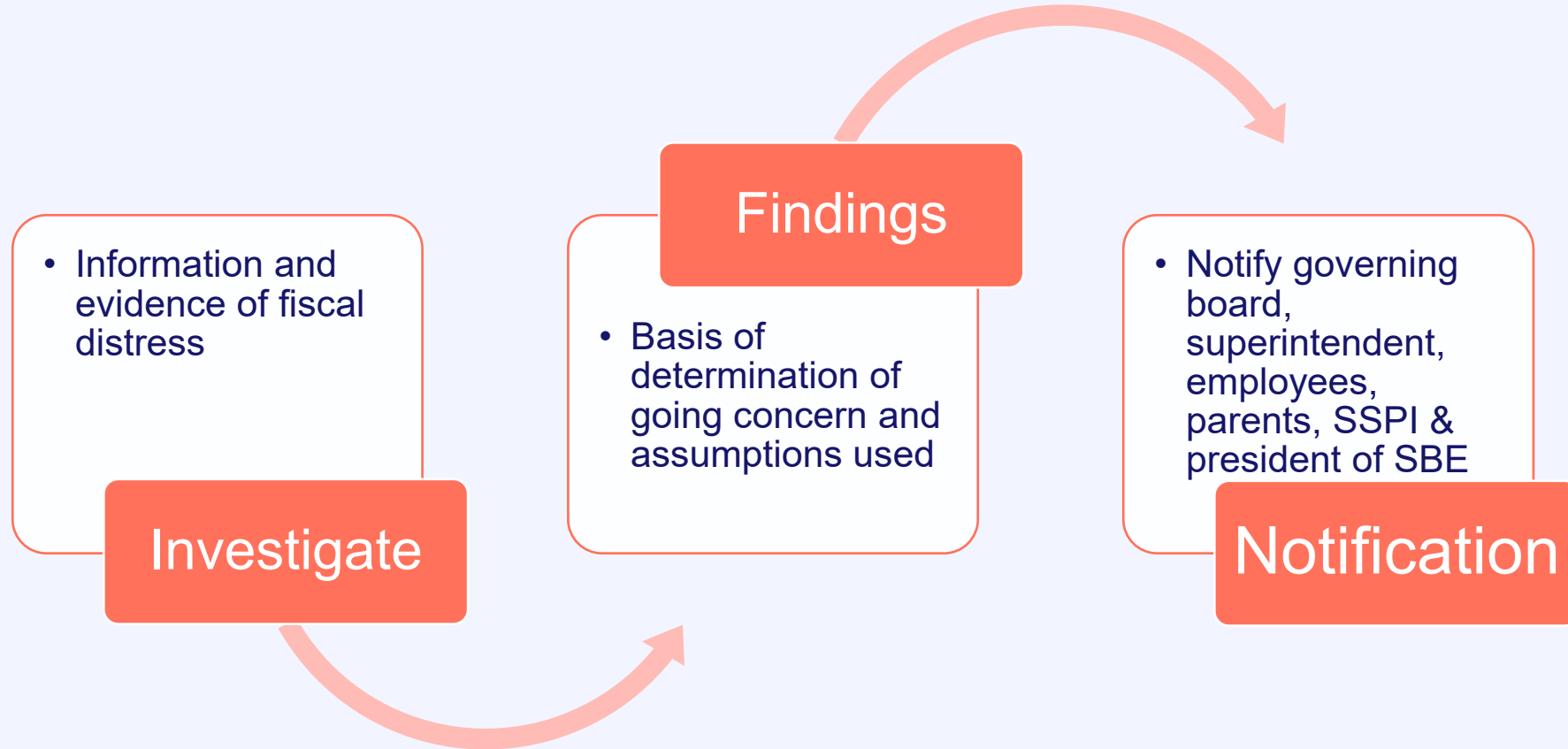
- (D) – Require the district to encumber all contracts and other obligations, to prepare cash flow analysis, monthly or quarterly budget revisions and record all receivables and payables
- (E) – Direct the district to submit a fiscal recovery plan
- (F) – Withhold compensation of board and superintendent if requested information is not provided
- (G) – Assign FCMAT to review teacher hiring practices, retention and highly qualified teachers and misassignments

Appeal

- The progression of actions the county superintendent *shall* follow starts with subdivision (a) and progresses through (e) based on the response of the district; specifically in subdivision (b):
 - **Appeal** – the district may appeal the county superintendent’s basis of determination and any proposed remedial actions to the SSPI within five days of the determination
 - The SSPI shall sustain or deny any or all parts of the appeal within 10 days

Education Code Section 42127.6(c)

- If LEA will be unable to meet financial obligations for the current or subsequent fiscal year, the county superintendent shall:



Further Investigation, Findings and Notify

- The progression of actions the county superintendent *shall* follow starts with subdivision (a) and progresses through (e) based on the response of the district; specifically in subdivision (c):
 - **Further review** – if after taking the actions in (a), the county superintendent determines that a district *will be unable* to meet its financial obligations for the current or subsequent fiscal year, the county superintendent shall
 - Further investigate the conditions
 - Make an additional determination
 - Document the basis of its determination and the assumptions used in making its determination

Further Investigation, Findings and Notify

- **Further notification** – if the county superintendent determines that a district *will be unable* to meet its financial obligations for the current or subsequent fiscal year then the county superintendent *shall* provide a written notice to
 - The governing board of the district
 - The superintendent of the district
 - Each recognized employee organization of the district
 - Each recognized parent organization of the district
 - The SSPI
 - The president of the State Board of Education (SBE)

Further Appeal

- The progression of actions the county superintendent *shall* follow starts with subdivision (a) and progresses through (e) based on the response of the district; specifically in subdivision (d):
 - **Further appeal** – the district may appeal the county superintendent’s basis of determination to the SSPI within five days of the determination
 - The SSPI shall sustain or deny any or all parts of the appeal within 10 days
 - The county superintendent may stay any action of the governing board of the district that the county superintendent determines is inconsistent with the ability of the district to meet its financial obligations for the current or subsequent fiscal year until resolution of the appeal by the SSPI
 - Appeal is not applicable if interim report certification is negative

Further Intervention

- The progression of actions the county superintendent *shall* follow starts with subdivision (a) and progresses through (e) based on the response of the district; specifically in subdivision (e):
 - **Further intervention** – if the appeal in (d) is denied or not filed, *or* if the district has a negative certification, the county superintendent, in consultation with the SSPI, shall take at least one of the actions described in (e) and *all actions* that are necessary to ensure the district meets its financial obligations
 - (1) – In consultation with the SSPI and the district governing board, develop and impose a budget revision for the current year¹
 - (2) – Stay or rescind any action that is determined to be inconsistent with the ability of the district to meet its obligations for the current or subsequent fiscal year¹

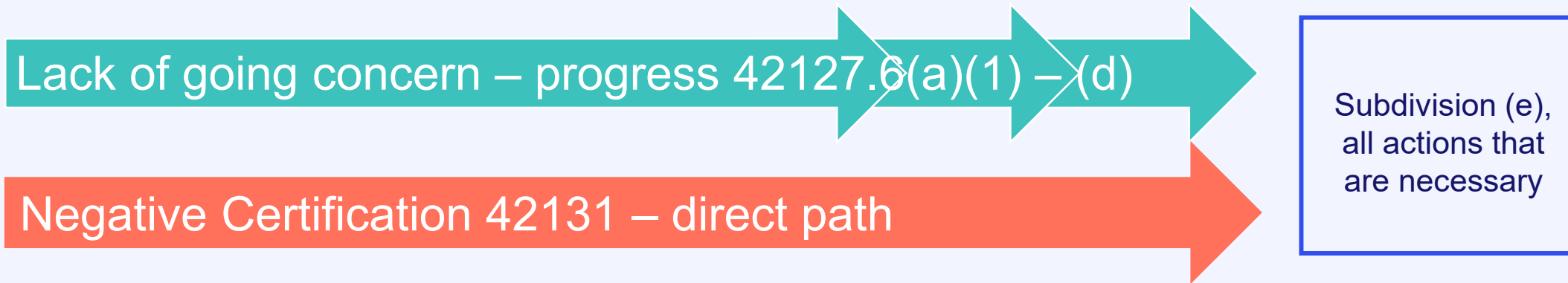
¹This action shall be accompanied by a notification that shall include the actions to be taken, the reasons for the actions, and the assumptions used to support those actions.

Further Intervention (Cont.)

- (3) – In consultation with the governing board, assist in developing a multiyear financial recovery plan
- (4) – In consultation with the governing board, assist in developing a budget for the subsequent year
- (5) – As necessary, appoint a fiscal advisor to perform any or all of the duties prescribed by this section on behalf of the county superintendent
- The county superintendent may not take any action to abrogate any provision of a collective bargaining agreement that was entered into by the district before the date the county superintendent assumed authority under (e).

Negative Certification is a Direct Path to (e)

- A negative certification on an interim report is a direct path to the authority and requirements of subdivision (e)
 - “If the appeal described in subdivision (d) is denied or not filed, or if the school district has a negative certification pursuant to Section 42131, the county superintendent...”
- As such, a district with a negative certification is not subject to the progressive intervention process.



Best Practices – Basis of Determination

- Well documented conditions based on previous communications, including county superintendent issued letters reviewing budget, interim reports, unaudited actual, and audits; studies; budgetary and financial reports
- Investigate and evaluate all available budgetary and financial reports
- Use the [FCMAT Indicators of Risk or Potential Insolvency](#) and the [FCMAT Fiscal Health Risk Analysis](#) as guides
 - See Determining Fiscal Risk

Determining Fiscal Risk

High Risk		High Risk	Medium Risk
Budget Development and Adoption	Fund Balance and Reserve for Economic Uncertainty		Special Education
Budget Monitoring and Updates	General Fund – Current Year		Low Risk
Cash Management	Information Systems and Data Management		Annual Independent Audit Report
Collective Bargaining Agreements	Internal Controls and Fraud Prevention		Charter Schools
Contributions & Transfers	Leadership and Stability		Facilities
Deficit Spending (Unrestricted General Fund)	Multiyear Projections		
Employee Benefits	Non-Voter-Approved Debt and Risk Management		
Enrollment and Attendance	Position Control		

Best Practices - Notification

- Address letter to each governing board member and district superintendent
 - Statute provides for notice to the governing board (doesn't mention district superintendent)
 - “Dear President XYZ, Governing Board Members and Superintendent ABC”
 - Do not depend on district mail distribution; mail letters to each board member's home, send electronic copy via email as backup
- For subdivision (c) notifications, statute provides for the notice to be to the governing board, district superintendent, each recognized employee organization and each recognized parent organization of the district, SSPI and the president of the SBE

Best Practices – Notification (Cont.)

- List the basis of determination and assumptions
 - Be specific
 - See examples on next slide
- List the applicable statutory remedial action options the county superintendent has available
 - EC 42127.6(a)(1)(A)-(G)
 - EC 42127.6(e)(1)-(5)
- List the all the interventions / actions the county superintendent proposes to take

Best Practices – Notification (Cont.)

- Examples:

We have utilized the Fiscal Crisis and Management Assistance Team (FCMAT) Indicators of Risk or Potential Insolvency (available [here](#)) and have determined XYZ School District (XYZSD or district) shows a lack of function, commitment, or attention to the following indicators:

- Insufficient Budget Monitoring or Updates
 - Actual revenues and expenditures inconsistent with the most current budget
- Inattention to Enrollment and Attendance Reporting
 - Enrollment decreasing and/or unstable
 - Enrollment projections and assumption not based on historical data, industry-standard methods, and other reasonable considerations

Continued Deficit Spending

At the adoption of the 2022-23 budget, the district had a significant multiyear structural deficit of \$26.9 million for fiscal years 2022-23, 2023-24 and 2024-25. Based on your own calculations of the proposed compensation settlement, the district is expected to incur an additional cost of \$27 million annually and \$80 million over the three-year projection period, reducing the district's reserves and placing the district at the risk of insolvency. To address this anticipated cost, the district is required to prepare a detailed budget revision as part of a fiscal recovery plan that includes expenditures and other adjustments sufficient to cover all future costs resulting from existing and proposed commitments. This budget revision must be approved by the governing board before action is taken to approve any salary settlement.

Best Practices – Notification (Cont.)

- Examples (Cont.):

Implications of Lack of Going Concern

Due to the above basis of determination and listed concerns, the county superintendent has determined it is necessary to immediately take the following actions:

1. Assign a fiscal expert to the district. The fiscal expert assigned is Ms. Superstar CBO, and her assignment is effective this date. Superstar will be in touch with the superintendent within three days to set up an introductory meeting. Your cooperation is expected and appreciated.
2. Conduct a study of the financial and budgetary conditions of the district that includes, but is not limited to, a review of internal controls.

District required actions

Please complete the following by November 16, 20xx

1. Revise 2022-23 budget to reflect the true revenue and expenditure position of the district.
2. Review and reconcile position control with the current year's budget.
3. Prepare a multiyear projection based on the revised 2022-23 budget.

Best Practices – Notification (Cont.)

- Set specific, measurable actions with dates for the district to accomplish in short durations as indicators of progress, or the lack thereof
 - Avoid setting unreasonable deadlines that are either too short or too long
 - Avoid setting deadlines that are already in statute
 - For example, instead of saying “update cash flow as part of the second interim report,” say, “update cash flow at the end of January.”
- If also qualified or negative certification, include a reminder of non-voter-approved debt (EC 42133) and collective bargaining (GC 3540.2)
- Cite the applicable appeal language – EC 42127.6(b) or (d)

Best Practices - Intervention

- The district and county superintendent need to communicate openly, honesty and regularly on the financial conditions, governance practices, fiscal policy and procedures and the work that needs to be accomplished to stabilize the district financially
 - The system is built on a presumption of cooperation
- The county superintendent determines the level of intervention and corrective action needed
 - Provide progressive intervention tailored to the severity of the problem
 - The goal of county superintendent intervention is to assist the district in resolving its financial problem at the lowest level of outside intervention
 - A parallel process in the instructional setting is a multitiered system of supports (MTSS) where targeted and intensive supports are provided to struggling students

Best Practices – Fiscal Expert, Fiscal Advisor

- County superintendents appointing either a fiscal expert or a fiscal advisor should:
 - Notify the district of the appointment, including name and contact information
 - Require the appointee to prepare a weekly or biweekly written report for the county superintendent that summarizes activities, meetings with district and other personnel, observations of conditions, areas of concern, recommended solutions and priorities for the next week / two weeks
 - Use the activities report as a basis for determining the district's level of cooperation and progress, including helping to inform the basis of progression from (a) to (c), and the district's level of intervention

See FCMAT job descriptions for Fiscal Expert and Fiscal Advisor

Timing and Duration

- If *at any time* during the fiscal year the county superintendent determines that a district may be unable to meet its financial obligations for the current or two subsequent fiscal years
 - May be in conjunction with or immediately following budget approval
 - May be in conjunction with or following an interim report downgrade
 - May be at any time
- The designation as a lack of going concern remains until the county superintendent approves the district's subsequent year budget
- An interim report certification (qualified or negative) remains until the next required interim report certification [EC 42131(e)]

SSPI Approvals / Consultation

- Any contract entered into by a county superintendent for the purposes of subdivision (a) is subject to the approval of the SSPI [EC 42127.6(a)(2)]
 - Fiscal expert [EC 42127.6(a)(1)(A)]
 - Short-term technical assistance and studies [EC 42127.6(a)(1)(B)]
 - FCMAT [EC 42127.6(a)(1)(G)]
- Actions to develop and impose a budget revision for the current fiscal year shall be made in consultation with the SSPI [EC 42127.6(e)(1)]

SSPI Appeals

- Within five days¹, districts may appeal to the SSPI the following
 - Basis of going concern determination
 - County superintendent's proposed actions in subdivision (a)
 - Withholding of compensation to governing board members and district superintendent
 - Further determination that the district will be unable to meet its financial obligations for the current or subsequent fiscal year
 - The SSPI shall sustain or deny any or all parts of the appeal within 10 days¹

¹Days are defined as calendar days, excluding the first day and including the last day, unless the last day is a holiday and then it is also excluded [EC 9]

Responsibility for Costs of Intervention

Role	Responsibility
Fiscal expert	County superintendent ¹
Short-term technical assistance and studies	Split 75% district, 25% county superintendent ²
Administrative expenses associated to any actions under EC 42127.6(e), including fiscal adviser	Split 75% district, 25% county superintendent ³

Note: County superintendents may file for full or partial reimbursement from FCMAT when performing these oversight duties:

¹Reimbursable up to 25%

²Reimbursable up to 100%

³Fiscal advisor (42127.6(e)(5) reimbursable up to 100%

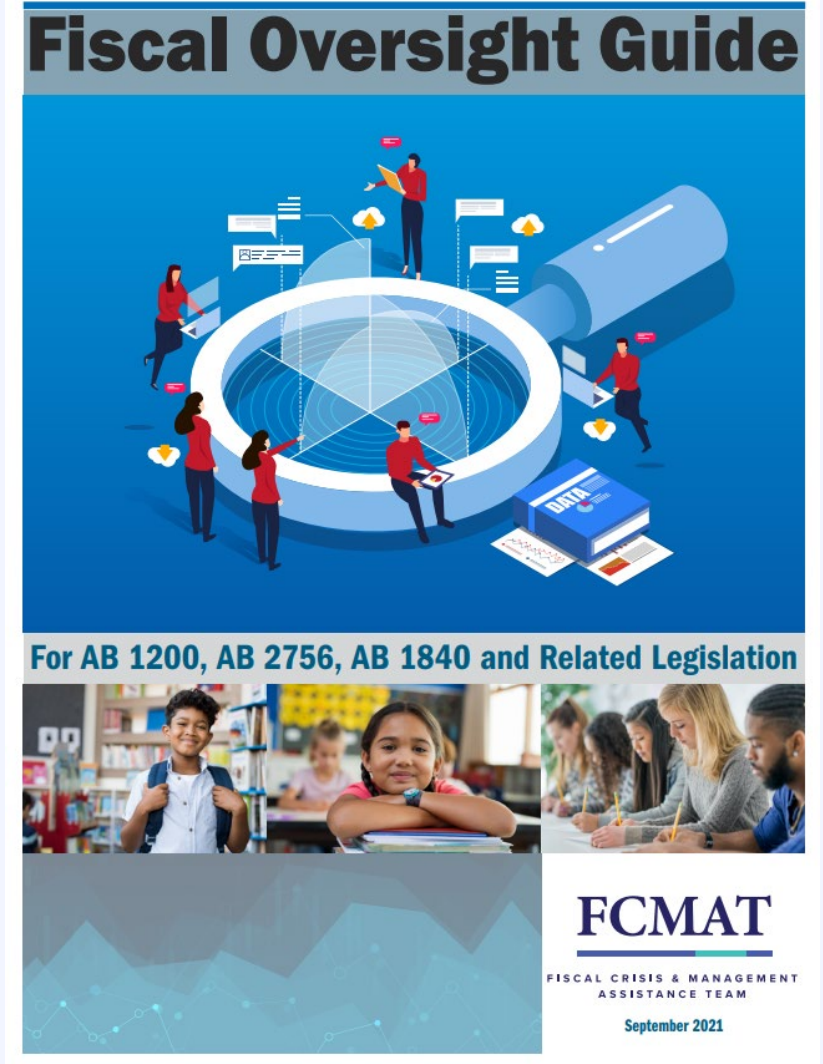
Response to Fiscal Distress

Characteristics of Districts

That Make A Successful Turnaround	That Require Severe Measures
Recognize they have a problem	Deny they have a problem
Do not mask the problem	Resist scrutiny from outsiders
Take advantage of financial expertise that is available	Don't seek external assistance
Work collaboratively with oversight agencies	Are combative with oversight agencies
Are part of the solution	

Additional Resources

- The “AB 1200 Process” encompasses many statutory provisions enacted over 30 years
- The overarching provisions and steps of LEA fiscal oversight are covered in the FCMAT Fiscal Oversight Guide
 - The guide is available at:
<https://www.fcmat.org/publicationsreports/fiscal-oversight-guide-2021.pdf>
 - FCMAT also offers a two-day training on fiscal oversight; sample materials are at:
<https://sites.google.com/view/fiscal-oversight-training>



Thank you!

Appendix: Statute

Education Code 42127.6

- [Link to Education Code Section 42127.6](#)