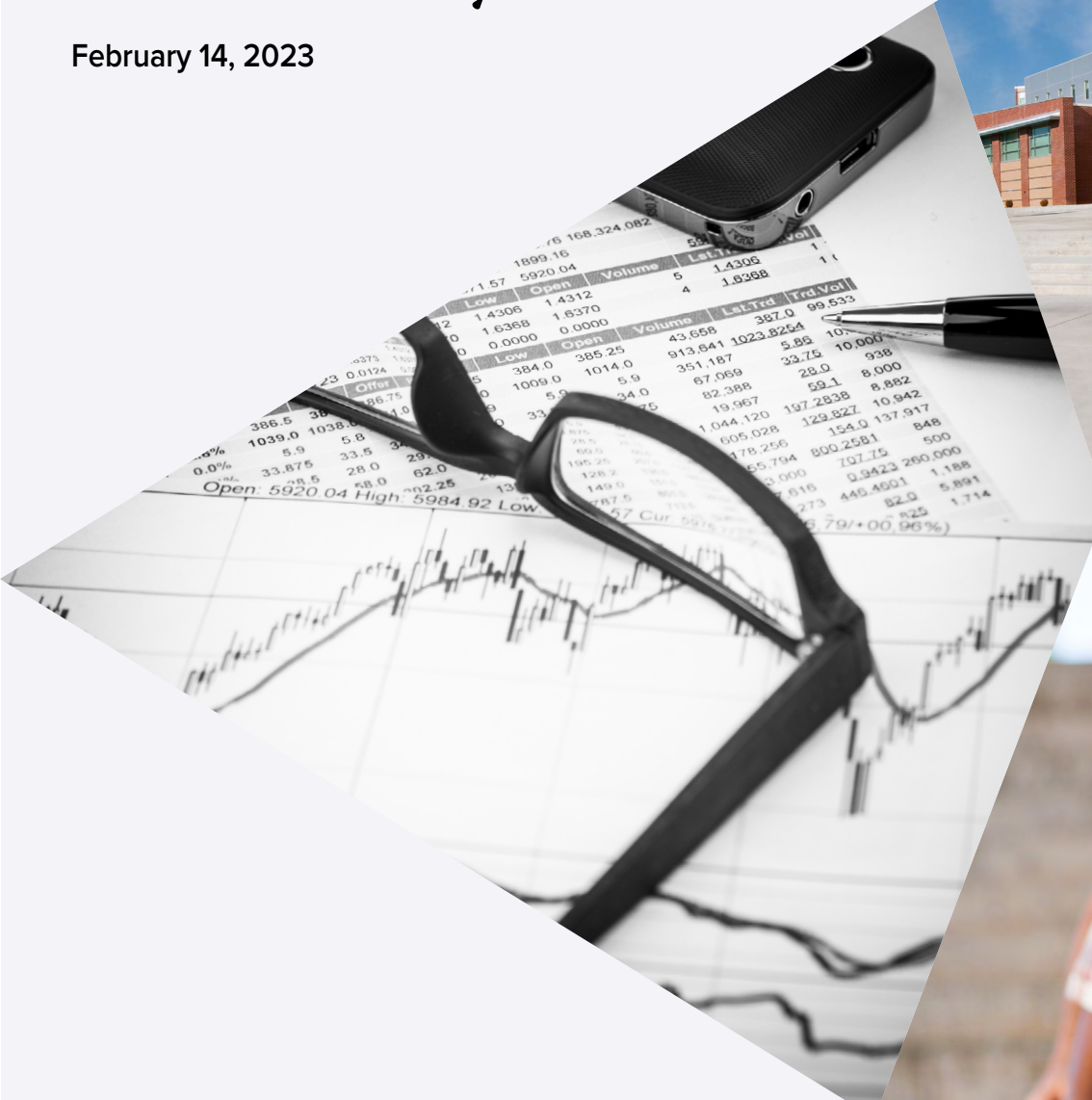


FCMAT

FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

Extraordinary Audit

February 14, 2023



Stockton Unified School District

Michael H. Fine
Chief Executive Officer

February 14, 2023

Troy A. Brown, Ed.D., Superintendent
San Joaquin County Office of Education
2922 Transworld Drive
Stockton, CA 95206

Dear Superintendent Brown:

In February 2022, the San Joaquin County Office of Education and the Fiscal Crisis and Management Assistance Team (FCMAT) entered into an agreement for FCMAT to conduct an Assembly Bill (AB) 139 extraordinary audit of the Stockton Unified School District to determine if fraud, misappropriation of funds or other illegal fiscal practices may have occurred. Specifically, the agreement states that FCMAT will perform the following:

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

This 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 San Joaquin County Office of Education and the Stockton Unified School District for their cooperation and assistance during this review.

Sincerely,



Michael H. Fine
Chief Executive Officer

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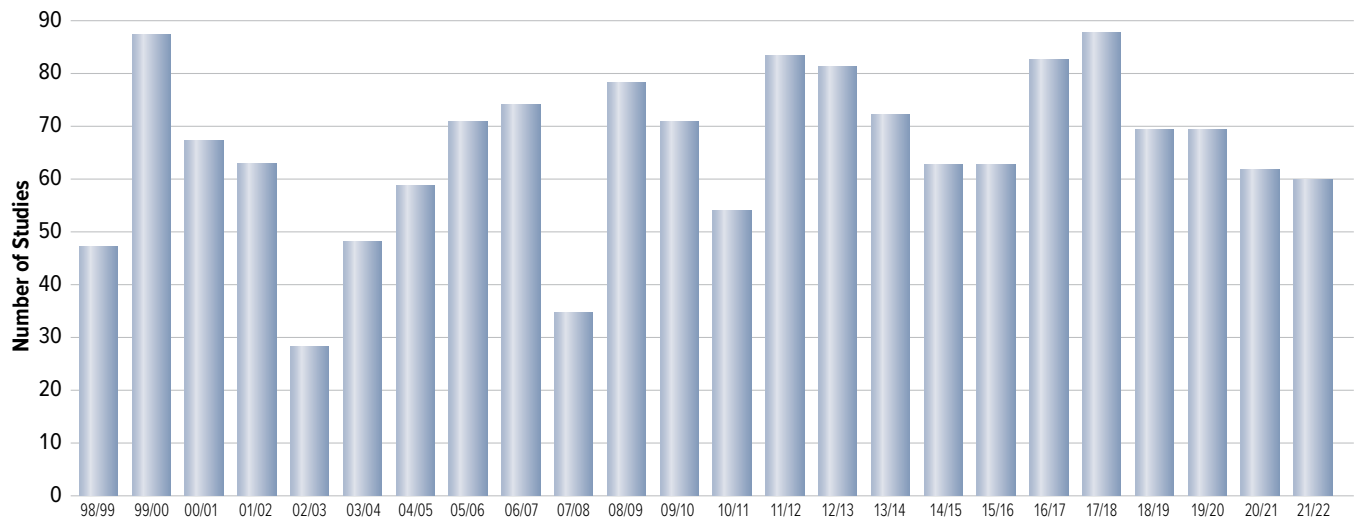
About FCMAT

FCMAT’s primary mission is to assist California’s local TK-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 TK-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

Located in San Joaquin County, the Stockton Unified School District has a seven-member governing board and serves approximately 34,000 students in transitional kindergarten (TK) through grade 12 at 49 traditional schools. The district has also authorized five district-operated charter schools and 13 independent charter schools, bringing total district enrollment to almost 40,000. According to data from the California Department of Education (CDE), noncharter student enrollment peaked at 35,258 in 2017-18 and remained stable until 2020-21, when enrollment decreased to 33,943 during the COVID-19 pandemic. The district's 2021-22 noncharter enrollment was 34,024. The district's California Longitudinal Pupil Achievement Data System (CALPADS) records indicate that its noncharter 2021-22 count of unduplicated pupils (students who qualify for free or reduced-price meals, and/or are foster youth, and/or are English learners) was 28,817, or 84.70% of noncharter enrollment.

In May 2021, a district employee met with leaders at the San Joaquin County Office of Education to relay concerns about procurement irregularities in a contract with IAQ Distribution, Inc., a distributor of indoor air quality monitoring and disinfection devices. In August 2021, another employee contacted the county office to share similar concerns.

These reported concerns and the unusual award process for IAQ prompted the county office to request that FCMAT conduct an Assembly Bill (AB) 139 extraordinary audit to determine if fraud, misappropriation of funds or other illegal fiscal practices may have occurred at the district. In the time since this audit began, current and former employees have continued to contact both the county office and FCMAT with concerns about the awarding of the contract to IAQ.

During the years reviewed in this report, the district has had multiple changes in key management positions. In April 2020, the superintendent resigned from the district, and in June 2020, the governing board appointed Brian Biedermann as the interim superintendent. That same month, the board also contracted with John Ramirez, Jr. to serve as a consultant to both the board and the interim superintendent from July 2020 through June 2021. When Biedermann stepped down in February 2021, the board appointed Ramirez as the successor interim superintendent. The governing board then appointed Ramirez superintendent in May 2021. When FCMAT began its on-site fieldwork in May 2022, the district superintendent was John Ramirez, Jr. After fieldwork and before this report was issued, Ramirez resigned as superintendent and was appointed superintendent emeritus by the governing board for a 12-month period beginning July 1, 2022.

During this same period, there were also multiple changes to the chief business official (CBO) position. In April 2020, the CBO resigned and the governing board appointed Susanne Montoya as interim CBO. In October 2020, the governing board appointed Montoya CBO. In June 2021 Montoya retired from the district. The governing board named Marcus Battle as interim CBO in May 2021, and appointed him CBO in November 2021. After fieldwork and before this report was issued, Battle resigned from the district.

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 is known as an AB 139 extraordinary audit.

The purpose of an extraordinary 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.

Extraordinary Audit Procedures

An extraordinary audit is conducted based on the study team’s experience and judgment. These 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 team’s judgment and experience to determine whether fraud, misappropriation of funds, or other illegal fiscal practices may have occurred; evaluating the loss that resulted from the inappropriate activity; and determining who was involved and how it may have occurred.

FCMAT conducted fieldwork at the Stockton Unified School District from May 16 through May 20, 2022, and performed additional off-site work during the weeks before and after those dates. FCMAT interviewed county office staff and district board members, and current and former district administrators and office staff. The purpose of FCMAT’s interviews was to obtain an understanding of the district’s general business practices and the events that transpired during the period under review, including any alleged financial mismanagement, fraud or abuse.

During interviews, FCMAT study team members asked 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 FCMAT’s scope of work.

FCMAT’s objective was to determine whether there is sufficient evidence to indicate that fraud, misappropriation of district funds or other illegal fiscal practices may have occurred related to contracts procured from July 2019 through April 2022.

To accomplish this audit’s objectives, FCMAT developed and conducted several 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 regarding how accurate the transactions and financial activity are 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; supporting documents for procurements and transactions; board policies and administrative regulations; board resolutions, agendas and minutes; external reports; communication records; and video recordings of governing board meetings.

The audit scope, objectives, and substantive transaction testing were 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 best or industry-standard practices.

This report presents FCMAT’s findings.

Study Team

The study team was composed of the following members:

Robbie Montalbano, CFE
FCMAT Intervention Specialist

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

John Von Flue
FCMAT Chief Analyst

John Lotze
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 and Internal Controls

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentations of material facts. 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 local educational agency (LEA) assets and may include taking cash, inventory or other assets, and/or fraudulent disbursements. Asset misappropriation is the largest category of occupational fraud and includes numerous fraudulent disbursement schemes. 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. Financial statement fraud includes intentionally misstating or omitting material information in financial reports.

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. Embezzlement occurs when someone who is lawfully entrusted with property takes it for his or her personal use. Common elements in all fraud include the following:

- Intent, or knowingly committing a wrongful act
- Misrepresentation or intentional false and willful representation(s) of a material fact
- Reliance on weaknesses in the internal control structure, including when an individual relies on the fraudulent information
- Concealment to hide the act or facts
- Damages, loss or injury by the deceived party

Internal Controls

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 refers to an organization’s work of planning, organizing, directing and performing routine tasks related 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 policies 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 following table.

Internal Control Component	Characteristics
Control Environment	The set of standards, processes and structures that provide 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 LEA’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 underlying principles that help ensure an entity achieves effective internal control. Each of the five components listed above and their relative 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.

Although the board and all employees in the LEA 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 LEA.

Control Environment

The internal control environment establishes the organization's moral tone. 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.

The control environment can be weakened significantly by a lack of experience in financial management and internal control.

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 an LEA's assets, including preventing any employee from overriding system controls. Examples of control and transaction activities include the following:

1. Performance reviews, which compare actual data with expectations. In accounting and business offices, this most often occurs when budgeted amounts are compared with actual expenditures to identify variances and followed up with budget transfers to prevent overspending.
2. Information processing, which includes the approvals, authorizations, verifications and reconciliations 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 their 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 provides for separate processing by different individuals at various stages of a transaction, and for independent review of the work; these measures reduce the likelihood that errors will remain undetected.

Employees and board members should be trained regularly 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 culture that supports appropriate reporting throughout the LEA.

The LEA should also implement common fraud detection methods such as a third-party anonymous tip hotline, surprise audits and/or fraud risk assessments. The knowledge that someone is checking or could anonymously report suspicious behavior can deter fraudulent activity.

Conflicts of Interest

Actual (or Appearance of) Impropriety; Government Code Section 1090; Political Reform Act; and Common Law

Broadly defined, a conflict of interest occurs when a public official participates in a decision in which the official has a personal interest of some kind that may influence their conduct or be perceived as causing divided loyalty.

Some conflict of interest laws focus on financial interests, such as contracts that come before an agency for approval when the official (or the official's spouse or registered domestic partner) has some financial connection to the transaction. An official is considered to be participating in the making of a contract not just by voting to approve it, but also by participating in the preliminary phases leading up to the vote, such as the earliest discussions about the contract, planning, soliciting for bids, and developing specifications. The decision to hire an employee is considered an approval of a contract for purposes of conflict of interest law.

As discussed below, the common law conflict of interest doctrine is not limited to financial conflict, but also addresses other situations in which a personal interest is involved, creating the potential for divided loyalty or the appearance of a conflict or impropriety in connection with the official's involvement in the decision.

Conflicts of interest are addressed in statute (Government Code Section 1090, the Political Reform Act - Government Code Section 87100 and following, Corporations Code Section 5233 for nonprofit organizations, Education Code Section 35107(e)), and in common law as reflected in court decisions. Government Code Section 1090 can carry some of the most severe consequences, and violations can rise to the level of a felony. A public official as used in Government Code Section 1090 includes board members, officers or certain designated employees of school districts, charter schools, and other governmental entities.

Financial Conflicts

Government Code Section 1090

Government Code Section 1090 prohibits the approval of contracts in which an official has a financial interest. Violations of this law can carry severe penalties. If a board member has an interest in a contract that is deemed to be a Government Code Section 1090 violation, then the entire board is prohibited from entering into the contract unless an exception applies. This is true even if the contract is with a vendor that has the best price and even if the board member with the conflict abstains from voting on the contract. Government Code Section 1090 is the highest standard to meet.

Conflict of interest laws prohibit public officials from entering into contracts "made by them in their official capacity, or by any body or board of which they are members" (Government Code 1090(a)). The law applies not only to board members but also to any employee who prepares, negotiates or recommends for approval a contract in which he or she has a financial interest. The prohibition is absolute absent a valid exception, and the contract is voidable and has no legal effect. It is not legally possible to abstain from a contract that violates Government Code Section 1090 unless a safe harbor is available, referred to as a "remote interest" under Government Code Section 1091 or "shall not be deemed to be interested" under Government Code 1091.5(a). If a board member's interest is only remote, the board can proceed to vote on the contract as long as the affected member abstains from discussion and voting on the matter.

The Fair Political Practices Commission's (FPPC's) *An Overview of Section 1090 and FPPC Advice*, October 2020, adds further clarification for conflicts of interest as follows:

In *Thomson v. Call* (1985) 38 Cal.3d 633, the California Supreme Court explained the purpose underlying Section 1090:

[E]xamination of the goals and policy concerns underlying section 1090 convinces us of the logic and reasonableness of the trial court's solution. In *San Diego v. S.D. & L.A.R.R. Co.*, *supra*, 44 Cal. 106, we recognized the conflict-of-interest statutes' origins in the general principle that "no man can faithfully serve two masters whose interests are or may be in conflict": "The law, therefore, will not permit one **who acts in a fiduciary capacity** to deal with himself in his individual capacity. . . . For even if the honesty of the agency is unquestioned. . . yet the principal has in fact bargained for the exercise of all the skill, ability and industry of the agent, and he is entitled to demand the exertion of all this in his own favor." (44 Cal. at p. 113.) We reiterated this rationale more recently in *Stigall v. City of Taft*, *supra*, 58 Cal.2d 565: "The instant statutes [§ 1090 et seq.] are concerned with *any* interest, other than perhaps a remote or minimal interest, which would prevent the officials from exercising absolute loyalty and undivided allegiance to the best interests of the city." (58 Cal.2d at p. 569.)

Furthermore, Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety."

A contract that violates Section 1090 is void. The prohibition applies even when the terms of the proposed contract are demonstrably fair and equitable or are plainly to the public entity's advantage.

Courts have recognized that Section 1090's prohibition must be broadly construed and strictly enforced. "An important, prophylactic statute such as Section 1090 should be construed broadly to close loopholes; it should not be constricted and enfeebled." [Emphasis added]

FCMAT has removed the footnote case citing from the quoted information.

Political Reform Act

The Political Reform Act, enacted by Proposition 9 in June 1974, is another California law that focuses on financial conflicts. The act has been and continues to be revised. The stated intent of the act was to establish a process for most state and local officials, as well as certain designated employees, to publicly disclose potential areas of conflict, including personal income and assets.

The act's provisions are enforced by the FPPC and supported by Government Code, requiring every state and local governmental agency to adopt a conflict of interest code. The FPPC is the state agency responsible for interpreting the provisions of the law and issuing California Form 700 – Statement of Economic Interests.

Because school governing board members are considered public officials and governing boards are considered legislative bodies, board members and certain designated individuals who participate in an LEA's financial decisions must file Form 700 annually by April 1, when they take office or begin in a position, and upon leaving office or their position. Form 700 must usually be filed by April 1 for the preceding calendar year and within 30 days of assuming or leaving office or their position, unless an exception applies. In addition, a consultant to the organization "who makes, participates in making, or acts in a staff capacity for

making governmental decisions” may be required to complete a Form 700. Failure to follow FPPC Form 700 rules can result in fines, and in extreme cases, deliberate failure to file can result in criminal charges by the attorney general or district attorney, or civil or administrative action by the FPPC or private citizens.

The Political Reform Act concerns situations in which a public official’s economic interests are affected by a government decision in which the person participates or attempts to influence. Failure to disclose information is a form of influence. If a conflict under the Political Reform Act exists, the public official must recuse themselves from every part of the decision-making process and abstain from voting. The FPPC has issued many detailed regulations about the conflicts of interest discussed below.

Non-Financial Conflicts

Appearance of Impropriety

Conflicts of interest are applicable not only to economic interests but also to the appearance of impropriety, misconduct, or even indiscretion. Conflict of interest is about self-dealing. A government official may say they did not benefit financially from a transaction; therefore, there is no conflict of interest. However, those who may commit improprieties can have hidden interests that are not always economic. A hidden interest is an undisclosed or concealed interest that does not have to be financial. This can include when a board member’s actions are detrimental to the district because they provide a benefit to a friend, romantic interest, or relative, even though the board member does not appear to benefit financially.

The California Office of the Attorney General’s Opinion, No. 97-511, dated December 5, 1997, discusses the appearance of impropriety as follows:

The Supreme Court has declared that the purpose of section 1090’s prohibition “is to remove or limit the *possibility* of any personal influence, either directly or indirectly, which might bear on an official’s decision, as well as to void contracts which are actually obtained through fraud or dishonest conduct. . . .” (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) **The statutory goal is “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.”** (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.) [Emphasis added]

Limiting the possibility of any personal influence, either directly or indirectly, is about avoiding even the appearance of a conflict. Failure to do so can be dishonest and is a breach of a public official’s fiduciary responsibilities. When a public official such as a board member, or even any government employee, conceals information relating to the official’s personal interest in a decision, the official deprives the decision maker of information that may be necessary for the board or management to make an informed decision. By acting without disclosing his or her own personal interest (self-dealing), the board member or employee gains hidden influence over the outcome of other board members’ decisions.

A governmental decision can be influenced by a board member concealing information from fellow board members or the public when, had that information been known, it would, or would have appeared to, alter the outcome of the decision. Failure to disclose information is a form of influence.

The FPPC provides many resources regarding conflicts of interest, such as *An Overview of Section 1090 and FPPC Advice*, October 2020, *Recognizing Conflicts of Interest*, August 2015, and *A Quick Guide to Section 1090*, October 2020. These resources provide further clarification regarding conflicts of interest. *A Quick Guide to Section 1090* states the following:

Section 1090 “codifies the long-standing common law rule that barred public officials from being personally financially interested in the contracts they formed in their official capacities.”

The prohibition is based on the rationale that a person cannot effectively serve two masters at the same time. Therefore, Section 1090 is designed to apply to any situation that “*would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the [public entity concerned].*” Section 1090’s goals include eliminating temptation, avoiding the *appearance of impropriety*, and assuring the public of the official’s undivided and uncompromised allegiance.

Furthermore, Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the *appearance of impropriety.*” [Emphasis added]

FCMAT has removed the footnote case citations from the quoted information.

The Political Reform Act embodies voters’ recognition that conflicts of interest in government decision-making by public officials posed a significant danger.

“Under the Act, a public official will have a statutory conflict of interest with regard to a particular government decision if it is foreseeable that the outcome of the decision will have a financial impact on the official’s personal finances or other financial interests. In such cases, *there is a risk of biased decision-making that could sacrifice the public’s interest in favor of the official’s private financial interests.* In fact, preventing conflicts of interest was of such vital importance to the voters that the Act not only prohibits actual bias in decision-making but also ‘*seeks to forestall ... the appearance of possible improprieties.*’ [Emphasis added]

The issue of the appearance of possible improprieties is also referenced in *Witt v. Morrow* (1977) 70 Cal. App. 3d 817 at 822–823 as follows:

Morrow asserts it is unconstitutional to automatically disqualify a public official from participating in decisions which may affect the investments of an entity which pays him However, the whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions *where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is also employed.* [Emphasis added]

The Act applies to all “public officials,” which is defined as “every member, officer, employee or consultant of a state or local government agency” (Government Code Section 82048). “Courts have recognized that Section 1090’s prohibition must be broadly construed and strictly enforced” (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569-571).

Common Law

Court opinions lay out common law principles that require public officials to abstain from other kinds of decisions in which they have a personal interest, even if the interest is not financial. For example, in the case of *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (CA2 1996), a city council member was considered to have a common law conflict of interest when he voted on a project that affected the view from the house he rented. Even though he did not own the house and thus no financial interest was at stake, his personal interest was seen as having the capacity to influence the decision, or at least the potential to create an appearance of impropriety, even without a financial interest. The remedy for a common law conflict of interest is for the affected individual to disclose the conflict and abstain from participating in the discussion and voting on the matter.

Reasonably Foreseeable Financial Effect

FPPC regulation 18700, the basic rule and guide to conflict of interest regulations, states the following:

2 Cal. Code Regs., Section 18700(a) states, “Basic Rule: A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to *use the official’s position to influence a governmental decision when the official knows or has reason to know the official has a disqualifying financial interest*. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or the official’s immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein. (Sections 87100, 87101, & 87103.)” [Emphasis added]

FPPC regulation 18701, which determines whether a financial effect is reasonably foreseeable, states the following:

2 Cal. Code Regs., Section 18701(a) states, “Financial Interest Explicitly Involved: A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).”

Fiduciary Responsibilities

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 or she owes the duty is typically referred to as the principal or the beneficiary (Legal Information Institute. “Fiduciary Duty;” https://www.law.cornell.edu/wex/fiduciary_duty).

A fiduciary may also 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. Board members, administrators and managers are examples of those who have fiduciary responsibilities or a fiduciary duty. The Cornell law source cited above further describes several components of fiduciary duties, which FCMAT summarizes and applies to LEAs as follows:

Duty of Care: Before making a decision, collect all evidence and information available. Do your due diligence and review all the information and evidence available – do not 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 LEA’s assets.

Duty of Loyalty: You cannot use your position in the organization to further your private interests. Avoid anything that might injure the LEA.

Duty of Good Faith: Advance the interests of the LEA. Do not violate the law. Fulfill your duties and responsibilities.

Duty of Confidentiality: Keep confidential matters confidential, and never disclose confidential information for your own benefit or to avoid personal liability.

Duty of Prudence: Be trustworthy, with the 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.

Findings

Transaction Sampling

FCMAT developed and conducted audit procedures to analyze and evaluate allegations and identify potential outcomes. The audit scope, objectives, and substantive transaction testing were based on the FCMAT study team's experience and professional judgment and did not include the testing or evaluation of all available transactions and records. Transactions sampled were those selected randomly and/or those selected specifically based on the team's judgment.

Transactions selected are analyzed and compared to board policies, administrative regulations, operational procedures and industry standards or best practices, and are evaluated for proper authorizations and reasonableness based on the team's judgment and technical expertise in school business operations, internal controls, and accounting best practices.

Sample 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 whether fraud, misappropriation of funds or other illegal fiscal practices may have taken place during the period under review.

Local educational agencies 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, which 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 CDE. According to the CSAM, objects 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.” Objects 6000-6999 are for recording “expenditures for land, buildings, equipment, capitalized complements of books for new libraries, and other intangible capital assets, such as computer software, including items acquired through leases with option to purchase.”

For the period under review, FCMAT requested information from the district's financial system including a detailed general ledger for objects 5000-6999 as well as vendor history reports. The district failed to provide complete documentation for all vendor transactions selected for review, which resulted in FCMAT having limited documentary support for these items.

During the initial review of the data, FCMAT disregarded general service contracts such as water services and contracts with other government agencies for required services (e.g., health, building, fire inspections).

During interviews, FCMAT asked district staff open-ended questions 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. Although interviews indicate processes and procedures for procurement and bidding had been established and were being followed, the district provided no formal procedure manual.

To evaluate whether the district practiced its described processes and procedures, FCMAT selected 64 payment transactions recorded from the remaining vendors and requested all documents supporting procurement and payment, including but not limited to contracts, bid or RFP documents, board minutes, board policies and regulations, and invoices. FCMAT reviewed documents provided by the district for each transaction to assess whether the described processes and procedures were applied in practice.

Documentation of all procurement activities is required. Education Code Section 35250 states that the governing board of every school district shall "...(b) keep an accurate record of the receipts and expenditures of school moneys." For every transaction sampled, documents were missing or not provided, or other exceptions were noted. This may indicate that the district does not have a comprehensive bid and selection documentation process or does not follow one. At the very least, it calls into question the legality of executed contracts and payments and whether legally required procedures were followed consistently, and indicates improper retention of documents. The table below summarizes the total number of occurrences observed in each area of exception and the percentage of occurrence for the transactions reviewed by FCMAT.

Exceptions

Exception	Number Of Exceptions Observed	% Of Transactions with Exceptions
No purchase order or other form of formal approval prior to purchase	33	51.56%
No documents demonstrating competitive bidding or request for proposal (when required)*	54	96.43%
No fully executed contract for services and/or board minutes demonstrating formal approval	60	93.75%
Payment not supported by an original invoice	7	10.94%
Invoice date precedes purchase order or approval date	6	9.38%

*Of the 64 transactions reviewed, eight did not appear to require competitive bidding or requests for proposals (RFPs).

Procurement

Transparency in public contracting through competitive bidding requirements and other standard procurement procedures is one of the essential characteristics of public institutions. Although some flexibility may be sacrificed, such requirements and procedures are designed to reduce favoritism and corruption in the expenditure of public funds. 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 to purchase 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.

The board of trustees is 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 by ensuring accountability to the public.

School boards provide policy direction and oversight for the professionals who manage the district's day-to-day operations by adopting board policies and administrative regulations. Through these policies, day-to-day operating decisions are delegated to competent staff with the expectation that their actions will 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 policies they have adopted.

The district's Board Policy 3300, Expenditures and Purchases, states:

The Governing Board recognizes its fiduciary responsibility to oversee the prudent expenditure of district funds. 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 further states:

The Superintendent or designee may purchase supplies, materials, apparatus, equipment, and services up to the amounts specified in Public Contract Code 20111, beyond which a competitive bidding process is required. The Board shall not recognize obligations incurred contrary to Board policy and administrative regulations.

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

- Purchase of equipment, materials, or supplies to be furnished, sold, or leased to the school district.
- Services that are not construction services.
- 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 adjust the \$50,000 amount specified in PCC Section 20111(a) annually 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 (BEA) for the

12-month period ending in the prior fiscal year. The inflation adjustment is rounded to the nearest one hundred dollars (\$100). The following bid thresholds were used for transactions in this report:

Bid Thresholds

Calendar Year	Bid Threshold (Annual Aggregate)
2019	\$92,600
2020	\$95,200
2021	\$96,700
2022	\$99,100

Sources: California Department of Education and School Services of California, Inc.

Legal exceptions exist to the formal bidding requirement. The following are some examples of procurement not subject to the usual competitive bidding requirements:

- **Emergency resolutions** allow an exception to public bidding for emergency conditions when a prescribed approval process is followed. Conditions that commonly qualify as emergencies include situations with a risk of immediate harm to persons or property or that do not permit the continuance of existing school classes. For example, the failure of a water well pump affecting the delivery of water to a school would be an emergency. When an emergency occurs, the district is permitted to select a contractor of its choice; no advertisement, mandatory job walk, or bid is necessary. However, a unanimous vote by the governing board as well as the county superintendent of schools' review and approval are required. All other requirements remain, including board approval, a signed contract, a performance bond, a payment bond, an insurance certificate, a public works projects registration (PWC-100), a notice to proceed (optional) and a notice of completion.
- **The State List (CMAS)** allows for the purchase of materials, equipment, or supplies through the Department of General Services or using its California Multiple Award Schedule (CMAS) (Public Contract Code Section 20118; see also Education Code Section 17595 and Public Contract Code Section 10298 and following).
- **Piggyback** contracting is the use of a public bid previously awarded by another public agency. For piggyback bids, the district would be responsible for approving the use of the contract and all activities thereafter. The original bid and award must include a provision allowing for piggyback by others in sufficient quantities. A piggyback is not applicable to public works bids in which labor is involved. Before approval of a contract, a copy of all the original bid documents from the awarding agency should be obtained. For this audit, the original awarding agency documents were not tested for any transactions reviewed.

In addition, PCC Section 20111(d) expressly provides that contracts for professional services or advice, insurance services, other purchases, or services are exempt from Section 20111, and that work done by day labor or force account (i.e., the district's own forces) in accordance with Section 20114 is not subject to the bidding requirements outlined above.

The district's board has adopted Board Bylaw 9124, which states that the district shall initiate requests for proposal or quote (RFPs). RFPs are used for professional services (e.g., architectural and construction management services) and other services for which the selection is based on criteria such as professional competence, experience or best value, and is not required to be based on lowest cost. RFPs may be adver-

tised broadly or targeted to a selected number of firms. All selection process documents, proposal, board approval, signed contract, and insurance certificates are required.

As discussed in the previous section, FCMAT reviewed 64 transactions. For transactions that fell below the bid threshold or were otherwise exempt from formal bidding procedures, FCMAT reviewed the limited documents provided to determine whether board policies and district procedures were followed. When the transactions tested exceeded the bid threshold amount and were not exempt from competitive bidding requirements, FCMAT reviewed documents provided by the district to determine whether formal bid procedures were followed. The limited documents provided were adequate to confirm that one transaction, with IAQ, exceeded the bid threshold set in PCC 20111 and should have been bid competitively but was instead awarded by using a less formal RFP process. This is discussed in more detail in the IAQ section of this report.

Although the district did not provide enough documents for FCMAT to evaluate the RFP or bid procedures followed for every transaction, FCMAT was able to locate and review some documents, including board minutes, from the district's website and from Bonfire, a web-based procurement program to which the district posts some bids and RFPs and to which vendors can submit responses. Review of this information provided reasonable indication that the district generally follows the described standard process for awarding contracts. From these documents FCMAT noted that bid results and RFP scoring and awards were routinely included on board meeting agendas; however, as indicated in the Exceptions table above, not all documents were provided for the items FCMAT requested.

Current and former staff stated that in some cases policies and procedures were not followed and that concerns from staff were dismissed by management. Many of those interviewed believe that this environment arose from continual changes in the governing board, the superintendent, the CBO and other key management positions over the last three years, resulting in a weakening of business and administrative leadership.

IAQ

In January 2021, Trustee Scot McBrian arranged to have Alliance Building Solutions, Inc. make a presentation to the board about ultraviolet c (UVC) disinfection technology. Minutes from previous board meetings do not indicate any discussion identifying the need for the technology provided by Alliance; this raises the question of why one board member brought forward Alliance to present their product to the board for consideration. During the January 12, 2021 board meeting, Trustee McBrian stated that the products and services demonstrated by Alliance were “a solution I was in favor of for indoor air quality/COVID-19 prevention.” This same board member also stated in interviews and during the January 12, 2021 board meeting that he had sold similar equipment in the past. He recommended the district request a quote from Alliance for the product.

Trustee McBrian reported during FCMAT interviews that a special presentation by Alliance took place at a private holiday party before the presentation at the January 12, 2021 board meeting, and that multiple board members attended the party. The host of the holiday party was stated to be Anthony Silva, the head of the Stockton Kids Club, a local nonprofit youth organization, and had previously held local political office and been a district trustee. Another attendee, Zachary Avelar, was reportedly the secretary for the same nonprofit and was shortly thereafter appointed to the district’s governing board. This same presentation was brought forward by Trustee McBrian to the entire board after this event, giving the appearance that there may have been a violation of the Brown Act.

Many of those interviewed by FCMAT, including board members, stated that having a vendor present to the board was out of the ordinary and inconsistent with the district’s normal practice. Interviewees noted that vendors occasionally made presentations to the board as part of a selection process, commonly after being selected for a contract, but not otherwise and not to simply provide information about a service or product.

On January 18, 2021, in a letter to interim superintendent Biedermann, Alliance stated, “In working with your team we have been able to develop a customized sanitation strategy...”

An email dated February 16, 2021 from Alliance’s senior account executive to the district’s purchasing manager, Nick LaMattina, and to CBO Montoya included a price quote for \$7,346,535 as well as a letter stating, “IAQ Distribution, Inc., a subsidiary of the ‘Alliance Companies’, and is our ‘Sole Source’ licensed distributor of the Air Guardian purification system for the State of California as, [sic] well as the Western region.”

FCMAT found departures from law, policy, procedure and past practice in the award of the contract to IAQ for ultraviolet light (UV) purification units. The district and board ignored PCC 20111 and did not conduct a formal bid for the UV purification units and instead relied on a less formal RFP process. Although the district should have conducted a formal bid, FCMAT reviewed the RFP process used to determine if it otherwise followed district policies, procedures and past practice. As detailed below, the district and board ignored their own policies, procedures and past practice in order to award the contract to their preferred vendor.

On March 1, 2021, RFP 1047, Ultraviolet Germicidal Irradiation (UVGI) System, was posted on Bonfire, with a submission deadline of March 18, 2021. The district fielded two requests for information from potential vendors before the deadline and published the first addendum to RFP 1047 at 9:01 a.m. on March 17, 2021, changing the deadline to March 24, 2021. A second addendum to RFP 1047 was posted at 4:10 p.m. on March 17, 2021, and included a major change in scope and equipment specifications. An extension of the deadline and a major change in scope just before the original deadline may be seen as manipulation of proposals to favor a specific vendor.

On March 20, 2021, the CBO Montoya emailed Interim Superintendent Ramirez with concerns about a possible conflict of interest in allowing Alliance to submit a proposal for RFP 1047. The concern expressed was that using a vendor that had made a presentation to the board before the RFP was issued and then having that same vendor “work with staff” to submit a proposal made it “appear that the vendor was an [sic] edge of being selected prior to the RFP process being finalized?” The email also included a suggestion to obtain a legal opinion. The concern expressed was that there could be an appearance of manipulating the RFP process. Interim superintendent Ramirez’s email response to the employee concern was hostile and threatening, stating the following:

What you are missing is

There is no conflict of interest with a process

The conflict that exists now is that staff defied a directive from the interim Superintendent that asked for an RFP

Please do some due diligence on conflicts regarding an RFP that hasn’t been awarded

Let me know when you would like to sit with [attorney] Jack [Lipton]and I to discuss your concerns. I can share my concerns regarding the full scope of the CBO position as well.

On March 24, 2021, purchasing manager LaMattina outlined his concerns to interim CBO Montoya about allowing Alliance to submit a proposal for RFP 1047 and suggested the district reject all proposals; purchasing manager sent these same concerns to interim superintendent Ramirez on April 19, 2021. The memo points out possible issues with conflicts of interest and federal code of regulation requirements and states, in part, “The District may be unable to overcome the appearance of impropriety due to the public opportunity to present during a board meeting, that no other vendor, during my time at SUSD at least, has received.”

Although the district rejected all proposals, RFP 1051 was posted to Bonfire with a deadline of May 20, 2021. On May 25, 2021, purchasing manager LaMattina notified Interim Superintendent Ramirez of the two vendors that met or exceeded the minimum 75 points: Aerapy and Pacific Metro Electric.

**RFP No. 1051
UVC Disinfection System**

Scoring Summary

	Total	Organization Experience and Qualifications	Plan for Delivery of Services	Technology Description and Outcomes	Cost
Supplier	/ 100 pts	/ 10 pts	/ 25 pts	/ 25 pts	/ 40 pts
AERAPY, LLC	81.5 pts	9.75 pts	18.25 pts	22.25 pts	31.25 pts
Pacific Metro Electric, Inc	75.75 pts	8.25 pts	19 pts	20.25 pts	28.25 pts
Alliance Companies	72.25 pts	9.5 pts	19.25 pts	17.5 pts	26 pts
Vizocom ICT LLC	68.5 pts	7.75 pts	15.25 pts	15.75 pts	29.75 pts
Fluoresco Service LLC	67.5 pts	7.5 pts	17.5 pts	18 pts	24.5 pts
B.R. Co.	64.5 pts	6.75 pts	14 pts	15.5 pts	28.25 pts

Subsequently, the RFP was amended to include mobile devices and to change the scoring requirement from 75 points to 116, and its deadline was extended to June 18, 2021.

The following is from the RFP 1051 addendum:

Selection Factors:

Preliminary Evaluations

1. Technology Description and Outcomes – 25 Points

The level to which the proposed technology meets the equipment and installation specifications as outlined in section 1.3.4.

2. Cost – 25 Points

The Offeror's cost to perform the services as specified in section 3.1.5 of the Bid Submission documents. Please include information regarding ongoing costs such as filters, scheduled maintenance, etc. Costs will be weighted based upon lowest price.

Offerors must score a minimum of 116 combined points, from Section 3.2 Evaluation Criteria and Section 3.2.1 Mobile Device to be considered for advancement to board presentations.

This addendum shall be acknowledged by the Bidder in the Requested Information of the Bonfire submission.

If the bidder fails to do so, the District has the right to consider any such action as Nonresponsive and will therefore be rejected.

On June 22, 2021, the purchasing manager notified Superintendent Ramirez that again only two firms, Aerapy and Cello Lighting, met the scoring threshold for board presentation and consideration.

RFP No. 1051 UVC Disinfection System

RFP Scoring Summary

	Organizational Experience and Qualifications	Plan for Delivery of Services	Technology Description and Outcomes	Cost	Mobile Device Technology Description and Outcomes	Mobile Device Price	Total
Respondent	/10 pts	/25 pts	/25 pts	/40 pts	/25 pts	/25 pts	/150 pts
Aerapy LLC	9	20	22	36.80	22	15.40	125.21
Cello Lighting, Inc	9	22	22	32.22	22	15.33	122.55
Pacific Metro Electric, Inc	8	19	21	22.87	21	10.04	101.90
ACCO Brands Corporation dba	5	10	10	40.00	10	25.00	100.00
IAQ Distribution	9	20	20	16.98	20	11.43	97.41
Fluoresco Service LLC	5	18	20	22.73	15	16.17	96.90
B.R. Co.	7	18	16	18.19	16	13.42	88.61
Norman S Wright Mechanical	9	20	15	15.85	15	8.73	83.58
Waxie Sanitary Supply - Livermore	7	14	12	21.87	12	16.14	83.01
Med Solutions LLC	7	20	17	5.68	20	9.71	79.39
Bliss Trading Co.	4	8	7	27.62	7	20.38	74.01
Plasma Air	6	10	15	7.78	15	5.74	59.52

*Offerors must score a minimum of 116 combined points to be considered for advancement to board presentations

Superintendent Ramirez directed the purchasing manager to provide the board with five vendors who would make presentations for their consideration, regardless of the scoring threshold; IAQ was the fifth ranking score among all submissions. The purchasing manager again advised the superintendent against including IAQ in the group; as an Alliance subsidiary, there was a conflict of interest, as there had been in

RFP 1047. The purchasing manager subsequently resigned rather than following this directive. In addition, interim CBO Montoya chose to retire in June 2021 because of what had occurred regarding this procurement process. A new interim CBO, Marcus Battle, was hired in May 2021.

Complying with the superintendent's directive, Interim CBO Battle brought forward the five vendors selected by the superintendent to present their proposals and products to the governing board on July 14, 2021. Each vendor was given five minutes to present. Board member Zulueta asked the same questions of four of the five vendors after their presentation:

1. Is the product manufactured in the USA?
2. Is the product and manufacturer facility registered with the EPA and the FDA?
3. Does the product produce any UV exposure, like any light coming out of the product?
4. Does the product use UV fluorescent tubes or LED chips?
5. Did you provide third-party testing proving it kills the virus that causes COVID-19 infection?

The board member declined to pose the questions to IAQ, stating, "I would ask my questions, but they seemed to have answered them." The board accepted the RFP for IAQ and, as indicated in the July 14, 2021 board meeting minutes, approved them as "a vendor from the pool of qualified vendors for UVC Disinfection" without discussion.

On August 10, 2021, the board approved the IAQ contract in a 6-1 vote, using section 20118.2 of the Public Contract Code. This section states in part the following:

(a) Due to the highly specialized and unique nature of technology, telecommunications, related equipment, software, and services, because products and materials of that nature are undergoing rapid technological changes, and in order to allow for the introduction of new technological changes into the operations of the school district, it is in the public's best interest to allow a school district to consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer's warranties, and similar factors in the award of contracts for technology, telecommunications, related equipment, software, and services.

Many of those interviewed by FCMAT reported that they were concerned that there seemed to be a sense of urgency from superintendent Ramirez to approve the contract with IAQ. The county office shared these concerns and indicated that the use of this code for procuring UVC systems was questionable. An email dated August 10, 2021, from the county office deputy superintendent to CBO Battle stated:

As I mentioned, during our review of your Board agenda, this item appears problematic as in our view, PCC 20118.2 does not apply to purchase or installation of UVC disinfection systems, and the procurement process used for this purchase seems to rely completely upon it. Further, if federal funds are being used for some or all of this purchase, there may be additional procedural procurement issues involved.

Section 20118.2 of the Public Contract Code goes on to state:

(b) This section applies only to a school district's procurement of computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus. This section does not apply to contracts for construction or for the procurement of any product that is available in substantial quantities to the general public. [Emphasis added]

Even if the UVC system is “other related electronic equipment and apparatus,” it appears the district waited to rely on PCC 20118.2 until multiple attempts to manipulate the process to favor IAQ failed and then used this process to award the contract to their preferred vendor. On July 14, 2021, when the board accepted the RFP from IAQ, it does not appear to have been from a pool of qualified vendors because the board did not make that determination, required by Section 20118.2, until August; there was no discussion of the topic at the July 14, 2021 board meeting.

The governing board stated by way of resolution that they did not choose the lowest cost vendor because IAQ had “outstanding features and included mobile technology approved by the FDA to kill COVID-19...” Neither the resolution nor the board discussion indicated what the “outstanding features” were. The resolution states in part:

WHEREAS, due to the highly specialized and unique nature of technology, telecommunications, related equipment, software, and services (collectively, “Technology Equipment”), and to allow for the introduction of the Technology Equipment into the District’s operations, Public Contract Code section 20118.2 (“Section 20118.2”) permits the District, in lieu of competitive bidding, to procure Technology Equipment through a competitive negotiation process in which the District may consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer’s warranties, and similar factors in the award of contracts for technology, telecommunications, related equipment, software, and services (collectively, the “Other Evaluation Factors”);

and

Section 4. Approval of Contract with IAQ. That the Board finds that the award to IAQ, who did not provide the lowest price, was appropriate under the circumstances and in the District’s best interests because, although IAQ did not present the lowest price, IAQ’s Equipment has outstanding features and included mobile technology approved by the FDA to kill COVID-19 and was deemed to be the best option to further the District’s obligation to help ensure the continuity of safe in-person instruction for District students during the upcoming 2021-2022 academic calendar year consistent with the CDC Guidance and CDH Guidance, and to prepare for the emerging and immediate threat of the Delta variant of COVID-19. District staff is authorized to enter into the Contract with IAQ, subject to approval of the form of contract by legal counsel. [Emphasis added]

The district did not purchase the mobile technology despite the fact that it used mobile technology as justification to award the contract to IAQ over other vendors; instead, it purchased the exact product listed in the original proposal from Alliance. The district signed the contract with IAQ on August 23, 2021, and made a payment of \$2,907,030 (50% of the material subtotal) on August 31, 2021 from federal Elementary and Secondary School Emergency Relief (ESSER) funds.

Federal grant recipients are expected to administer U.S. Department of Education grants in accordance with industry standards and best practices, exercising prudent judgment to maintain proper stewardship of taxpayer dollars. This includes procedures that ensure proper disbursement of and accounting for federal funds, as well as contract language as outlined in the Federal Acquisition Regulations that may impose requirements in addition to California’s formal bidding and competitive proposal procedures. In addition, recipients may use grant funds only for obligations incurred during the funding period. Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, establishes requirements for federal awards made to nonfederal entities.

If the district used federal funds to purchase equipment, which in this case it did by board resolution, it is bound to follow multiple sections of the Code of Federal Regulations (CFR) in the procurement process. The award of the contract to IAQ appears to violate at least 2 CFR 200.319 (b), which states:

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

If the district violated federal regulations in spending federal funds, it may be required to repay the funds to the federal government.

The district failed to perform due diligence with IAQ before awarding the contract, and it paid IAQ before the company had registered with the California Secretary of State. IAQ registered initially with the state of California on September 20, 2021. In addition, on May 10, 2022, the district's governing board approved a restated purchase agreement with IAQ, removing the installation charges. The restated agreement was for a fixed price of \$6,604,857.13.

FCMAT found no evidence of discussion about why a restated agreement was necessary or about how installation would take place. Multiple interviewees stated that the change was because IAQ was not a licensed contractor registered with the California Department of Industrial Relations, and that the district received multiple complaints from organizations in its project labor agreement (PLA) with construction unions. Emails to this effect began as early as March 2022, with the district reporting IAQ to the labor commissioner for suspected public works violations. An email between the director of facilities and legal counsel on March 24, 2022, indicated that the legal team was determining "how best to address this issue" and wanted to be involved "because of the FCMAT investigation." The board awarded the contract to IAQ despite being unable to meet the full scope of the proposal, including:

5. All labor must be provided using California Prevailing Wage Rates and in compliance with all California Division of Industrial Relations standards.

At the time of fieldwork, the district had made the following payments to IAQ:

Date	Warrant #	Amount	Resource
8/31/21	20631317	\$2,907,030.00	3212 – ESSER II
3/3/22	20636365	\$1,170,718.99	3212 – ESSER II
5/16/22	20638692	\$1,697,151.07	3212 – ESSER II
6/14/22	20639844	\$829,957.13	Information not provided
Total paid		\$6,604,857.19	
Total restated agreement		\$6,604,857.13	

Legal Services

The district's Board Bylaw 9124 describes the process for contracting with attorneys and legal firms. The bylaw 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. 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. [Emphasis added]

The bylaw provides for an exception when the district needs temporary specialized legal services:

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 not ongoing. Examples of specialized legal services include counsel who specializes in bonds or civil rights. It is not unusual for general counsel to provide governing board members with guidance on the Brown Act or public employment law; this does not constitute a specialized service, nor is it a unique demand.

At its meeting on February 26, 2019, the district's governing board approved the issuance of an RFP for legal professional services for the 2019-22 school years. At the same meeting, the district approved a contract with Fagen Friedman & Fulfrost (FFF) for December 17, 2018 through June 30, 2019. On June 25, 2019, the district awarded a three-year contract to this same firm, one of five legal firms to respond to the district's RFP. In subsequent agenda items at the same meeting, the district awarded general legal contracts to three additional firms from the RFP: Orbach Huff Suarez and Henderson (OHS) specifically for "matters related to its property, business, facilities, construction and on other matters from time to time..."; Atkinson Andelson Loya Ruud & Romo for general legal and nonlegal services; and Cota Cole and Huber LLP (CCH), a firm not included in the RFP, whose contract states, "...legal counsel services as directed." The contracts included with the board agenda item for both OHS and CCH were dated in 2018, before the RFP. On July 9, 2019, contracts for 2019-20 only were approved for FFF and Dannis Woliver Kelley, which were also in the RFP response. These events are summarized in the following table:

Firm	Date Awarded	RFP? Y/N	Dates Covered
FFF	2/26/2019	N	12/17/18-6/30/19
FFF	6/25/2019	Y	7/1/19 - 6/30/22
OHS	6/25/2019	Y	7/1/19 - 6/30/22
AALRR	6/25/2019	Y	7/1/19 - 6/30/22
CCH	6/25/2019	N	7/1/19 - 6/30/22
FFF	7/9/2019	Y	7/1/19-6/30/20
DWK	7/9/2019	Y	7/1/19-6/30/20

On February 24, 2020, the board hired Burke Williams & Sorenson (BWS) as district counsel. Although a recording of the meeting was not available, minutes indicate that an RFP process was not considered and that there was a perceived conflict of interest because the attorney from BWS drove the board president to the meeting.

The adopted minutes from the February 24, 2020 board meeting state:

At the March 10, 2020 Board Meeting, the Board approved the February 24, 2020 Special Board Meeting Minutes to include the following notations:

Trustee Vargas Notations

1. Dr. Jack Lipton, Attorney for Burke, Williams & Sorensen, LLP declined to answer who invited him to attend the February 24, 2020 Special Board Meeting.
2. The Request for Proposals (RFP) process was not considered.
3. Attorney/client privilege was stated with Burke, Williams & Sorenson, LLP (BWS) without having it at the time of the February 24, 2020 Special Board Meeting and guidance was given by Dr. Jack Lipton, Legal Counsel, BWS.
4. The question of where the funds for the costs for the new attorney was not answered and the question was not permitted to be asked.
5. It was allowed to suspend Board Bylaws per Dr. Jack Lipton without having hired him yet and without a vote from the Board.

Trustee Flores Notations

1. Trustees Vargas, Trustee Luntao, and Trustee Flores did not agree with the process taking place and were totally ignored.
2. Dr. Jack Lipton drove Board President Garcia to the February 24, 2020 Special Board Meeting and it was a conflict of interest due to having prior communications and the decision was made prior to the start of the Special Board Meeting.
3. Chief Business Official, Ms. Lisa Grant-Dawson did not review the contract prior to the February 24, 2020 Special Board Meeting.
4. The contract with BWS was not written by the District. It was written by the lawyers and signed by the lawyers without any signatures from the District prior to approval.

Trustee Luntao Notation

1. The agreement was provided in paper form, not in digital form via traditional means.

At the March 10, 2020 board meeting, the contract with BWS was reaffirmed. The meeting minutes state:

Regarding the contract for legal services with uhh [sic] Burke, Williams & Sorensen which the Board approved on February 24, 2020, I hereby move the following:

1. The Board re-affirms its approval of the contract with Burke, Williams & Sorensen as Board Counsel;
2. That the Board re-affirms its determination, under Board Bylaw 9124 that it needs to, uhh [sic] contract for these specialized legal services without a request for proposal process due to the unique demands of the Board trustee issues; and

3. That is, that as Board Counsel, Burke, Williams & Sorensen is to participate in Board Meetings both Open Session and Closed Session and to assist the District with the Board Agenda and the Board Policies, is to assist the Board in issues involving the Superintendent and is to assist in to [sic] the Board issues at the direction of the Board or the Board [sic] or of the Board President.

Although the minutes state, "...these specialized legal services..." neither a declaration of need nor a description of the specialized services was included with the board agenda item.

It is of concern that the board set a policy and then ignored it. Even more irregular and of equal concern is that the board would contract for services from a legal firm that would not advise their prospective client to follow their own policies.

The purpose of any legal counsel is to advise the board and the superintendent on relevant issues including but not limited to board policies and bylaws, new and existing laws, and requirements for adherence to statutory regulations, and to respond to legal claims, complaints and cases brought against the district. The district's Board Bylaw 9124 states:

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

Typically, consultation with legal counsel is limited to the superintendent or superintendent's designee and the board president. Board Bylaw 9124 states:

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.

The district's governing board has hired at least nine different legal firms to represent the board and the district in general legal matters for each year in 2019-20, 2020-21, and 2021-22. At least nine different legal firms were and are concurrently providing general legal guidance to various management employees and various board members. Invoices reviewed indicated that the firms provide various types of services. Although there is no limit to the number of legal firms that may be employed, receiving legal guidance on similar matters from different firms may contribute to discord between board members and staff and a lack of consistency in the district's actions.

In awarding the contract to IAQ, the governing board's and superintendent's disregard for the law is of great concern. These actions appear to have influenced the procurement process and may have also resulted in conflicts of interest. It is important for the district to take steps to ensure that no appearance of influence or conflict of interest exists.

Internal Control Deficiencies

Background

A strong system of internal control is among the most important aspects of any fraud prevention program. Superintendents, CBOs and other senior administrators are in positions of authority and are therefore responsible for exercising a higher standard of care and establishing the ethical tone and serving as examples to other employees. Board members and employees with administrative responsibility have a fiduciary duty to the district to ensure that activities are conducted in compliance with all applicable board policies, laws and regulations.

During this review, the FCMAT study team identified multiple internal control deficiencies including the following:

- Poor ethical tone set by management and board
- Executive management and board override of established internal control activities
- Departures from board policy

The employees interviewed widely perceived the ethical conduct of the district's board, former superintendent and executive management as questionable, compromising the organization's moral tone.

Leadership

Well-defined roles and responsibilities among the superintendent, administration and governing board are critical to developing a strong working relationship. The board's role is to formulate policy, while the superintendent or his or her designee(s) is responsible for implementing and following board policies. Organizational relationships may be influenced by internal and external factors that affect school leaders during fiscal crises, such as demands to improve student academics, or increased community pressure to improve facilities.

As described earlier in this report, the control environment is an essential component of internal control. It includes the ethical tone and example set by management, and when it functions as it should it results in a workplace where employees feel safe expressing concerns. The tone of the organization, set by district leaders through their words and actions, demonstrates to others whether dishonest or unethical behavior will be tolerated.

During interviews, staff expressed frustration and concern regarding Superintendent Ramirez's and board members' tendency to micromanage operational issues. Information obtained during interviews and a review of transactions indicate that the superintendent and board members have used their positions of power to influence certain business transactions by deliberately overriding staff recommendations and board policies related to the procurement of UV purification units from IAQ and to the award of contracts for legal services.

Ethical Values and Fiduciary Duty

The district's Board Policy 3400 states that the board recognizes its fiduciary responsibility to oversee the district's financial integrity and relies on the superintendent or superintendent's designee to ensure that internal control processes and procedures function effectively and that the board has an accurate picture of the district's financial condition at all times.

Superintendent Ramirez, CBO Battle and the governing board failed to perform their fiduciary duty because they failed to perform due diligence, ignored established internal controls, bypassed established policies and procedures, and did not hold themselves to a standard of conduct commensurate with their positions.

Operational Policies and Procedures

Management is responsible for designing and implementing operational procedures, including developing a system of internal control that can provide reasonable assurance that fraud, misappropriation of funds or other illegal fiscal practices are prevented or detected through normal operating procedures and corrected in a timely manner. When developing operating procedures, the district needs to carefully consider actions that protect its assets from misuse or fraud.

A former district staff member provided FCMAT with the district's *School Bid Guidelines and Exceptions* manual. Many of the processes and procedures described by staff during interviews were consistent with the processes and procedures contained in this document.

During interviews, staff reported great concerns about the deviation from established procurement procedures, which were reportedly ignored by CBO Battle and Superintendent Ramirez. They also shared that longstanding procedures — including attention to detail, proper due diligence, transparency of activities and processes, and adherence to industry standards — were overridden or ignored during the procurement process that resulted in a contract with IAQ.

Documents related to the procurement of UV units from IAQ corroborate statements staff members made during interviews that the superintendent directed staff to bypass established internal control procedures for procurement, as described in detail earlier in this report.

Weaknesses in and the overriding of internal control elements, including the control environment and control activities, has led to an environment in which there is considerable risk for fraud, misappropriation of funds and misuse of district assets.

Political Reform Act – Disclosures, Conflicts of Interest and Enforcement

As stated earlier, in this report, school governing board members are considered public officials, and governing boards are considered legislative bodies. Board members and certain designated individuals must file Form 700 annually, when they take office or begin in a position, and upon leaving office or a designated position.

Usually, Form 700 must be filed by April 1 for the previous calendar year, and within 30 days of assuming or leaving office or other designated position, unless an exception applies. In addition, a consultant to the organization who makes, participates in making, or acts in a staff capacity for making governmental decisions may be required to complete a Form 700.

The district provided FCMAT with board policies and bylaws in compliance with Government Code 1090, which requires board members and designated staff to disclose any conflict of interest and to abstain from participating in any decisions when a conflict exists. The disclosure requirement is fulfilled through the annual submission of a Statement of Economic Interests (Form 700), which is required of the district's board members, superintendent, deputy/assistant/associate superintendents, chief of police, CBO, purchasing agent and, to a lesser degree of disclosure, other district administrators including, but not limited to, directors and principals.

Board Bylaw 9270/E 9270, revised in September 2020, includes a comprehensive conflict of interest code, including California Government Code Section 87100 and following, and designates by board resolution specific positions that must report conflicts of interest on Form 700. The board's list of designated positions omits the CBO position even though it appears to meet the criteria listed in the policy. The board needs to carefully review the designated positions and the disclosure category for each position. FCMAT noted that although the CBO position is not included in the disclosure category, each CBO filed an annual Form 700 in each of the three years reviewed; however, no forms were provided for assuming or leaving office for any CBO. Bylaw 9270/E 9270 also indicates that consultants, on a case by case basis, may also be required to disclose interests. The district does not have a process to identify possible conflict of interest with vendors. Additional steps that help identify possible conflict of interest, opportunity for collusion, and potential fraud include vendor verification and vendor affirmation of no conflict of interest. Vendor verification should include an initial check of all new vendors and annual review of the district's vendor master file. This verification should ensure vendors have been selected using the appropriate approval process; tested for any relationship with district decision-makers, including screening by vendor name, address, and Social Security or taxpayer identification number. The district should also obtain confirmation that the vendor is still in business. Vendor affirmation includes having the vendor complete and sign a Form 700 or similar form to verify their independence and the absence of any conflict of interest. Requiring these steps will strengthen the district's internal control system.

The district provided FCMAT with forms 700 for 2019-20, 2020-21 and 2021-22 (through December 2021). Many forms were incomplete. It was clear from reviewing the forms that there is no monitoring of the completion or filing of the required forms. Forms are collected and filed without regard to completion or appropriate timing. The district needs to provide training to the district's filing officer, the governing board and the superintendent. Some legal counsels made an annual filing in each year. No assuming or leaving office forms were provided by the district, and not all legal counsels provided forms. Legal counsels are not required to file Form 700 unless designated by the board. Because no specific designation criteria were provided to FCMAT, it calls in to question why only a few legal counsels filed disclosures.

2019 Designated Position	Name	Type	Exception(s)	Exception Notes
Assistant/Associate Superintendent	Cowan, Mary		x	Sections 3 and 4 not completed
Assistant/Associate Superintendent	Lowery, Sonjhia	Annual		
Chief Business Official	Grant-Dawson, Lisa	Annual		
Governing Board Members	Flores, Angel Ann	Annual		
Governing Board Members	Garcia, Kathleen	Annual		
Governing Board Members	Luntao, Lange	Annual		
Governing Board Members	McBrien, Scot	Annual		
Governing Board Members	Mendez, Cecilia	Annual		
Governing Board Members	Mendez, Cecilia	Annual		
Governing Board Members	Mendez, Maria	Annual		
Governing Board Members	Vargas, Candelaria	Annual		
Not noted	Cappella, Robyn		x	Sections 1 and 3 not completed
Not noted	Dalmau, Dara	Annual	x	Sections 1 and 3 not completed
Not noted	Risso, Lori		x	Sections 1 and 3 not completed
Not noted	Martir, Eduardo	Annual	x	Sections 1 and 4 not completed
Not noted	Biedermann, Brian	Annual	x	Sections 1, 2 and 4 not completed
Not noted	Gonzales, Carla	Annual		Section 1 not completed
Purchasing manager	LaMattina, Nicholas	Annual		
Special Counsel	Scholar, Ronald	Annual		
Superintendent	Deasy, John	Annual		

2020 Designated Position	Name	Type	Exception(s)	Exception Notes
Assistant/Associate Superintendent	Baird, Francine	Annual		
Assistant/Associate Superintendent	Swanson, Erik	Annual		
CBO	Montoya, Susanne	Annual		
Executive Director	Alimbini, Dorcas	Annual		
Executive Director	Jacobs, Jovan	Annual		
Executive Director	Pollack, Joshua	Annual		
General Counsel	Scholar, Ronald	Annual	x	Schedule C noted but not provided
Legal Counsel	Nakamura, Marie	Annual		
Not noted	Bettencourt, Bernadette	Not noted	x	Sections 1, 2 and 3 not completed
Not noted	Biedermann, Brian	Annual	x	Sections 1 and 4 not completed
Not noted	Cappalia, Robyn	Not noted	x	Sections 1 and 3 not completed
Not noted	Dalmau, Dara	Annual		Section 1 not completed
Not noted	Gonzales, Carla	Annual	x	Sections 1, 2 and 4 not completed
Not noted	Juarez, Joan	Annual	x	Section 1 not completed
Not noted	Knudsen, Sondra	Not noted	x	Sections 1,2 and 3 not completed
Not noted	Martir, Eduardo	Annual	x	Sections 1 and 4 not completed
Not noted	Mogan, Tommy	Not noted	x	Nothing completed
Not noted	Risso, Lori	Not noted	x	Sections 1 and 3 not completed
Not noted	Roberts, Linda	Not noted	x	Sections 1, 2 and 3 not completed
Not noted	Whitesides, Thomas	Not noted	x	Sections 1,2 and 3 not completed

2020 Designated Position	Name	Type	Exception(s)	Exception Notes
Governing Board Members	Luntao, Lange	Leaving	x	Late filing

In 2020, the only trustee who filed form 700 was Lange Luntao, who left office in December 2020. No other forms 700 were provided for any other trustees. Absent also were a leaving office filing for outgoing superintendent John Deasy and an assuming office filing for interim superintendent Biedermann.

2021 Designated Position	Name	Type	Exception(s)	Exception Notes
Assistant/Associate Superintendent	Villasenor, Roxanna	Annual		
Assistant/Associate Superintendent	Baird, Francine	Annual		
CBO	Battle, Marcus	Annual		
Governing Board Members	Avelar, Zachary	Annual		
Governing Board Members	Flores, Angel Ann	Annual		
Governing Board Members	McBrian, Scot	Annual		
Governing Board Members	Mendez, Cecilia	Annual		
Governing Board Members	Mendez, Maria	Annual		
Governing Board Members	Rico, Alicia	Annual		
Governing Board Members	Zulueta, Raymond	Annual	x	Incorrectly dated
Legal Counsel Service	Scholar, Ronald	Annual		
Not noted	Biedermann, Brian	Annual		
Not noted	Cappalla, Robyn	Not noted	x	Section 3 not completed
Not noted	Gonzales, Carla	Annual	x	Sections 1, 2 and 4 not completed
Not noted	Martir, Eduardo	Annual	x	Section 4 not completed
Not noted	Medina, Kay	Not noted	x	Sections 1, 2 and 3 not completed
Not noted	Oki, Kevin	Annual	x	Sections 2 and 4 not completed
Not noted	Reeves, Stephanie	Not noted	x	Sections 1, 2 and 3 not completed
Not noted	Risso, Lori	Not noted	x	Section 3 not completed
Not noted	Roberts, Janice	Annual		
Not noted	Santella, Maryann	Annual		
Superintendent	Ramirez, John	Annual		

Former Trustee Candelaria Vargas left office in June 2021; however, no filing for leaving office was provided by the district. John Ramirez, Jr. was named interim superintendent in February 2021; however, no Form 700 was provided by the district for assuming office.

Also absent from the forms submitted was the disclosure of interests at the time of assuming office (August 10, 2021) for Trustee Zachary Avelar. Using the annual filing of Form 700, the trustee indicated no reportable interests on any schedule. However, the trustee is listed as the chief financial officer for Lifeguard and Pool Management of California, a company with which the district had a contract from June 21 to August 6, 2021. The trustee did not disclose his affiliation with the company.

Conclusion

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 LEA's financial records and internal control environment increase the probability of fraud, mismanagement and/or misappropriation of the LEA's assets. These findings should be of great concern to the Stockton Unified School District and the San Joaquin County Office of Education 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 of schools 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 Stockton Unified School District, the State Controller, the SPI 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 San Joaquin County Office of Education has concluded its review.

Appendix

Study Agreement



FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

**FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM
AB 139 STUDY AGREEMENT
February 9, 2022**

The Fiscal Crisis and Management Assistance Team (FCMAT), hereinafter referred to as the team, and the San Joaquin County Office of Education, 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 San Joaquin County Office of Education 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 Stockton Unified School District and is requesting that FCMAT review the process for awarding contracts and possible related conflicts of interest.

The team will review and test awarded contracts from July 2019 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, 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:

- | | |
|----------------------------|-------------------------|
| <i>A. To Be Determined</i> | <i>FCMAT Staff</i> |
| <i>B. To Be Determined</i> | <i>FCMAT Consultant</i> |

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 \$50,000.

- 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:

Orientation:	To be determined
Staff Interviews:	To be determined
Exit Meeting:	To be determined
Draft Report Submitted:	To be determined
Final Report Submitted:	To be determined

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. Upon the request of the COE and the receipt of the signed study agreement, FCMAT shall provide certificates of insurance, with San Joaquin County Office of Education named as additional insured, indicating applicable insurance coverages.

10. HOLD HARMLESS

FCMAT shall hold the COE, its board, officers, agents, and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of FCMAT's board, officers, agents and employees undertaken under this agreement. Conversely, the COE shall hold FCMAT, its board, officers, agents, and employees harmless from all suits, claims and liabilities resulting solely from negligent acts or omissions of the district's board, 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: Scott Anderson, Deputy Superintendent of Business Services
Telephone: (209) 468-4807
E-mail Address: scanderson@sjcoe.net

Troy A. Brown Digitally signed by Troy A. Brown Date: 2022.02.16 16:47:06 -08'00' 02/16/2022

Troy A. Brown, Ed.D., Superintendent Date
San Joaquin County Office of Education

 2/18/22

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