

Trustee

Roles and Responsibilities

Acceptance by a district of an emergency state apportionment made pursuant to Section 41320 constitutes an agreement by the district that a trustee will be appointed to ensure the district's fiscal recovery and solvency per Education Code Section 41320.1. The trustee shall be appointed jointly by the county superintendent, the Superintendent of Public Instruction (SPI), and the president of the State Board of Education. The trustee should have recognized expertise in management and finance, shall report directly to the county superintendent, and shall serve until the district has adequate fiscal systems and controls in place and the SPI has determined that the district's future compliance with the fiscal plan approved for the district pursuant to Section 41320 is probable.

The trustee shall monitor and review the operations of the district, and shall perform the following functions:

1. Serve in a fiscal oversight capacity until the district has adequate fiscal systems and controls in place, and future compliance with the approved recovery plan is probable.
2. Provide advice and make recommendations to district staff and governing board members regarding budgetary, fiscal, or other issues that may affect the financial condition of the district.
3. Attend all meetings of the governing board and review all governing board materials prior to each board meeting to determine if any items or intended action will have a negative fiscal impact on the district's financial condition.
4. Stay or rescind an action of the governing board of the district or of the personnel commission where, in the judgment of the trustee, the action may adversely affect the financial condition of the district or be contrary to the district's approved recovery plan.
5. Notify the county superintendent of schools when a stay or rescind of a governing board decision is made. The county superintendent then shall notify the Superintendent and the president of the state board or his or her designee within five business days.
6. Monitor the financial projections and cash balances of all district funds for the current and two subsequent fiscal years, and, if necessary, assist district staff in preparing these projections.
7. Monitor all collective bargaining activity and review all proposals being considered, including the resulting fiscal impact.

8. Regularly meet with the district superintendent and chief business officer to obtain updates on the district's efforts to reduce expenditures or enhance revenues.
9. Assist the county superintendent with establishing timelines and prescribing formats for reports and other materials to be used to monitor and review the district's operations.
10. Communicate openly and timely with the county superintendent, district staff, governing board, and community, and promptly inform the county superintendent of critical issues or incidents.
11. Review and approve the district's required annual report of the financial condition of the district, including all of the following information:
 - (1) Specific actions taken to reduce expenditures or increase income, and the cost savings and increased income resulting from those actions, to ensure the revisions are consistent with the district's needs and recovery plan.
 - (2) The adopted budget for the current fiscal year.
 - (3) Reserves for economic uncertainties.
 - (4) Status of employee contracts.
 - (5) Obstacles to the implementation of the adopted recovery plan.
12. Using the Fiscal Crisis and Management Assistance Team's (FCMAT's) Fiscal Health Risk Analysis, annually evaluate the district's risk of insolvency in the current and two subsequent fiscal years and communicate findings to the county superintendent.
13. Determine, with concurrence from the county superintendent and SPI, that future compliance by the district with the approved recovery plan is probable so that the district can meet its future financial obligations.
14. Provide regular updates to the county superintendent regarding the progress of the district toward fiscal stability.
15. Consult with, and seek recommendations from, the county superintendent, the SPI, and FCMAT in ensuring the fiscal recovery and solvency of the district.
16. With approval from the county superintendent, the SPI, and the president of the state board, a trustee may be appointed with the authority and responsibilities of an administrator, as set forth in Education Code Section 41325.
17. Assist in related matters as needed regarding the district's fiscal recovery and solvency, in accordance with Education Code Sections 41320.1, 41321, and 41322.
18. Review the financial and budgetary conditions of the district, including an analysis of internal controls, and determine if it may be unable to meet its financial obligations for the current or two subsequent fiscal years, or should receive a qualified or negative interim financial certification.
19. Meet with appropriate district staff, as needed, to assess fiscal health, organizational structure and staffing, effectiveness of internal controls, and other related concerns.

20. Consult with the governing board on fiscal and budgetary matters, facilities projects, debt obligations and other operational areas, as needed.
21. Provide recommendations for improvements in district processes related to the budget, including position control, areas for cost containment, reducing unrestricted contributions from the general fund, etc.
22. Confirm that the district conducts its business operations in compliance with statutory requirements and within acceptable legal and professional standards.
23. Advise county superintendent regarding potential action to improve or protect the fiscal solvency of the district.
24. Provide additional support, technical assistance, professional learning, and advice outlined in the five operational areas defined by Education Code Section 41327.1 in the Long Range Recovery Plan (LRRP). Focus on assisting the district in addressing recommendations identified in the LRRP to support maintaining future solvency, organizational effectiveness and recovery. Report annually to the county superintendent regarding the progress made by the district in implementing LRRP.

State of California

EDUCATION CODE

Section 41320.1

41320.1. Acceptance by the school district of the apportionments made pursuant to Section 41320 constitutes the agreement by the school district to all of the following conditions:

(a) The county superintendent of schools, the Superintendent, and the president of the state board or his or her designee shall, by majority vote, appoint a trustee from a pool of candidates identified and vetted by the County Office Fiscal Crisis and Management Assistance Team pursuant to subdivision (b) who has recognized expertise in management and finance and may employ, on a short-term basis, staff necessary to assist the trustee, including, but not limited to, certified public accountants, as follows:

(1) The expenses incurred by the trustee and necessary staff shall be borne by the school district.

(2) The county superintendent of schools, with concurrence from both the Superintendent and the president of the state board or his or her designee, shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall report directly to the county superintendent of schools. The county superintendent of schools shall provide regular updates to the Superintendent and the president of the state board or his or her designee regarding the work of the trustee.

(3) The trustee, and necessary staff, shall serve until the school district has adequate fiscal systems and controls in place, the Superintendent has determined that the school district's future compliance with the fiscal plan approved for the school district pursuant to Section 41320 is probable, and the county superintendent of schools, the Superintendent, and the president of the state board or his or her designee decide to terminate the trustee's appointment, but in no event for less than three years. The county superintendent of schools shall notify the Legislature, the Department of Finance, and the Controller no less than 60 days before the time that the county superintendent of schools expects these conditions to be met.

(4) Before the school district repays the loan, including interest, the recipient of the loan shall select an auditor from a list established by the Superintendent and the Controller to conduct an audit of its fiscal systems. If the fiscal systems are deemed to be inadequate, the county superintendent of schools, with concurrence from both the Superintendent and the president of the state board or his or her designee, may retain the trustee until the deficiencies are corrected. The cost of this audit and any additional cost of the trustee shall be borne by the school district.

(5) Notwithstanding any other law, all reports submitted to the trustee are public records.

(6) To facilitate the appointment of the trustee and the employment of necessary staff, this section is exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(7) If the trustee appointed pursuant to this section is an employee of the department, the salary and benefits of that employee shall be established by the Superintendent and paid by the school district. During the time of appointment, the employee is an employee of the school district, but shall remain in the same retirement system under the same plan as if the employee had remained in the department. Upon the expiration or termination of the appointment, the employee shall have the right to return to his or her former position, or to a position at substantially the same level as that position, with the department. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the department.

(b) The County Office Fiscal Crisis and Management Assistance Team, when selecting the pool of candidates for trustee, shall consider candidates' expertise in management and finance, previous experience mitigating fiscal distress in school districts, and ability to meaningfully engage with the community that the school district serves, and shall provide an opportunity for public input on the selection of the pool of candidates for trustee.

(c) (1) The trustee appointed pursuant to this section shall monitor and review the operation of the school district. During the period of his or her service, the trustee may stay or rescind an action of the governing board of the school district that, in the judgment of the trustee, may affect the financial condition of the school district.

(2) After the trustee's period of service, and until the loan is repaid, the county superintendent of schools that has jurisdiction over the school district may stay or rescind an action of the governing board of the school district that, in his or her judgment, may affect the financial condition of the school district. The county superintendent of schools shall notify the Superintendent and the president of the state board or his or her designee, within five business days, if he or she stays or rescinds an action of the governing board of the school district. The notice shall include, but not be limited to, both of the following:

(A) A description of the governing board of the school district's intended action and its financial implications.

(B) The rationale and findings that support the county superintendent of school's decision to stay or rescind the action of the governing board of the school district.

(3) If the county superintendent of schools notifies the Superintendent and the president of the state board or his or her designee pursuant to paragraph (2), the county superintendent of schools shall report to the Legislature, pursuant to Section 9795 of the Government Code, on or before December 30 of every year, whether the school district is complying with the fiscal plan approved for the school district.

(4) The county superintendent of schools, with concurrence from the Superintendent, may establish timelines and prescribe formats for reports and other materials to be used by the trustee to monitor and review the operations of the school district. The trustee shall approve or reject all reports and other materials required from the school district as a condition of receiving the apportionment. The Superintendent, upon the recommendation of the trustee, may reduce an apportionment to the school district in an amount up to two hundred dollars (\$200) per day for each late or unacceptable report or other material required under this part, and shall report to the Legislature a failure of the school district to comply with the requirements of this section. If the county superintendent of schools determines, at any time, that the fiscal plan approved for the school district under Section 41320 is unsatisfactory, he or she may modify the plan as necessary, with concurrence from the Superintendent, and the school district shall comply with the plan as modified.

(d) At the request of the county superintendent of schools, with approval from the Superintendent, the Controller shall transfer to the department, from an apportionment to which the school district would otherwise have been entitled pursuant to Section 42238.02, as implemented by Section 42238.03, the amount necessary to pay the expenses incurred by the trustee and associated costs incurred by the county superintendent of schools.

(e) For the fiscal year in which the apportionments are disbursed and every year thereafter, the Controller, or an auditor that is designated by the Controller as both active and able to perform K–12 local education agency audits, shall cause an audit to be conducted of the books and accounts of the school district, in lieu of the audit required by Section 41020. At the Controller’s discretion, the audit may be conducted by the Controller, his or her designee, an auditor that is designated by the Controller as both active and able to perform K–12 local education agency audits, or an auditor selected by the school district and approved by the Controller. The costs of these audits shall be borne by the school district. These audits shall be required until the Controller determines, in consultation with the county superintendent of schools and the Superintendent, that the school district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest. The auditor selected pursuant to this subdivision, if any, the county superintendent of schools, a County Office Fiscal Crisis and Management Assistance Team representative, the Superintendent, and the school district superintendent, or their respective designees, shall meet before the audit to discuss the terms of the audit and the timeline under which it will proceed. In addition, the Controller shall conduct quality control reviews pursuant to subdivision (c) of Section 14504.2.

(f) For purposes of errors and omissions liability insurance policies, the trustee appointed pursuant to this section is an employee of the local educational agency to which he or she is assigned. For purposes of workers’ compensation benefits, the trustee is an employee of the local educational agency to which he or she is assigned, except that a trustee appointed pursuant to paragraph (7) of subdivision (a) is an employee of the department for those purposes.

(g) Except for an individual appointed by the vote pursuant to subdivision (a) as a trustee described in paragraph (7) of subdivision (a), the trustee appointed pursuant to this section is a member of the State Teachers' Retirement System, if qualified, for the period of service as trustee, unless the trustee elects in writing not to become a member. A person who is a member or retirant of the State Teachers' Retirement System at the time of appointment shall continue to be a member or retirant of the system for the duration of the appointment. If the trustee chooses to become a member or is already a member, the trustee shall be placed on the payroll of the school district for the purpose of providing appropriate contributions to the system. The Superintendent may also require that an individual appointed as a trustee described in paragraph (7) of subdivision (a) be placed on the payroll of the school district for purposes of remuneration, other benefits, and payroll deductions. For purposes of workers' compensation benefits, the state-appointed trustee is deemed an employee of the local educational agency to which he or she is assigned, except that a trustee who is described in paragraph (7) of subdivision (a) is an employee of the department for those purposes.

(Amended by Stats. 2018, Ch. 426, Sec. 7. (AB 1840) Effective September 17, 2018.)