

BYLAWS OF THE BOARD

SUBJECT: Attorney

The County Board of Education (County Board) recognizes that the complex legal environment in which it discharges its functions creates the need for sound and dependable legal services and advice. The County Board also recognizes that a County Superintendent of Schools or designee (County Superintendent) is not limited by statute as to what legal services the County Superintendent may contract with legal counsel to perform.

The County Board may arrange to obtain legal services and advice in accordance with law.

General Legal Services and Advice

As authorized by law, the County Board and County Superintendent will collaborate to appoint a shared legal counsel. Subject to County Board approval, the County Superintendent may hire and fix the compensation to be paid for shared legal counsel for the County Board and County Superintendent. When the proposed appointee is an employee of the County Superintendent, the County Superintendent shall fix the compensation and be responsible for the evaluation as an employee.

If the County Board and County Superintendent cannot agree on the appointment of a shared legal counsel to jointly represent them, the County Superintendent may appoint shared legal counsel, and the shared legal counsel shall provide general legal services and advice to the County Board and the County Superintendent. However, if the County Board determines that there is a conflict of interest that necessitates retaining legal counsel, the County Board may appoint legal counsel to independently represent the County Board. Additionally, the County Board may seek special legal services and advice pursuant to Education Code 1042 and as specified in the section "Special Legal Services and Advice," below.

Any attorney representing the County Office of Education (County Office) shall be admitted to practice law in California. (Education Code 35041.5)

The duties of the shared legal counsel may include: (Education Code 35041.5)

1. Rendering legal advice to the County Board, County Superintendent, and County Office employees and other officers and employees as appropriate
2. Serving the County Board and County Superintendent in the preparation and conduct of County Office litigation and administrative proceedings
3. Rendering administrative duties as may be assigned by the County Superintendent or by the County Board

The County Board may request to have shared legal counsel attend a County Board meeting to provide legal advice or to prepare a written legal opinion on issues within the jurisdiction of the County Board including, but not limited to, expulsion appeals, charter school petitions and

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appeals, interdistrict transfer appeals, open meeting laws, real property transactions, the County Office budget, and the County Office local control accountability plan.

The County Board may consult with the shared legal counsel on matters affecting the operations of the County Board. The County Board may consult with the shared legal counsel as a group or authorize a specific County Board member to consult with the shared legal counsel on behalf of the County Board. Any individual County Board member who consults with the shared legal counsel on behalf of the County Board shall report the conversation to the County Board, and when requested, the shared legal counsel shall provide the advice or opinion directly to the County Board.

Consultation with the shared legal counsel shall occur in open session except when closed session is authorized by law. (Government Code 54962)

Special Legal Services and Advice

The County Board may contract with a trained, experienced, and competent legal counsel other than the shared legal counsel, to furnish special services and advice in any of the following situations:

1. When, for reasons beyond the County Board's control, the shared legal counsel has a conflict of interest or has failed to render timely advice in a particular matter
2. The services being sought by the County Board are in addition to those usually, ordinarily and regularly obtained from the shared legal counsel
3. The County Board desires a second legal opinion in a particular matter

In such situations, the County Board shall fix the compensation to be paid for the special services or advice, and may pay such compensation from any available funds. (Education Code 1042)

Legal Reference:

EDUCATION CODE

1042 County boards: authority

1302 Increases of salary or bonus of employees by county superintendent of schools

35041.5 Legal counsel: Relieving duties of county counsel and district attorney

GOVERNMENT CODE

814-895.8 Liability of public entities and public employees

995-996.6 Defense of public employees

53060 Miscellaneous