



**CALIFORNIA DEPARTMENT
OF EDUCATION**

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STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

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November 23, 2021

Shanthi Gonzales, President
Board of Education
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607

Dear President Gonzales:

Subject: Appeal by Oakland Unified School District of Alameda County Office of Education's Written Notice of Going Concern Determination

This letter constitutes the California Department of Education's (CDE) response to Oakland Unified School District's (District) appeal (Appeal) dated November 13, 2021, of the Alameda County Office of Education's (ACOE) written notice of going concern determination, dated November 8, 2021, pursuant to California *Education Code (EC)* Section 42127.6, in which ACOE determined that the District may be unable to meet its financial obligations for the current or two subsequent fiscal years (Determination).

Based on a thorough review of the Determination and Appeal, CDE denies the District's appeal.

ACOE's Written Notice of Going Concern Determination

ACOE based its determination that the District may be unable to meet its financial obligations for the current or two subsequent years on the "significant level of budgetary reliance on one-time revenue sources and the lack of adequate assurances that fiscal solvency is certain in future years".

The ACOE also noted concerns with the following:

- Declining enrollment
- Reductions in staff not being commensurate with declining enrollment
- Unrecorded Liabilities
- Lack of progress in implementing the District's Citywide Plan and foregoing the AB1840 allocation of \$10 million that the District would otherwise have received
- Reliance on one-time short-term funding solutions without a long-term fiscal plan to address the structural deficit
- Lack of board adopted detailed ongoing budget balancing solutions

As a result, ACOE has stated that, pursuant to the actions authorized in *EC* 42127.6(a)(1), they will assign a team to assist with (1) budget development, monitoring, and oversight; (2) governance; and (3) district leadership and oversight. In addition, ACOE may assign the Fiscal Crisis and Management Assistance Team (FCMAT) to perform certain functions and may withhold compensation from members of the governing board of the school district and school district superintendent if the District fails to provide requested financial information.

Issues on Appeal

The District has asserted the following in its appeal:

1. There is no basis for ACOE's written notice of going concern determination.
2. ACOE proposed to assign a fiscal team without first determining that the analytical assistance or expertise is not available through the district.
3. The threat of withholding compensation is unnecessary and punitive.
4. The district is not in need of additional support from FCMAT.

CDE Findings of Fact and Conclusions of Law

After a thorough review of the District's Appeal, the CDE makes the following findings of fact and conclusions of law with respect to the issues raised in the District's Appeal:

1. Basis for ACOE's Written Notice of Lack of Going Concern Determination.

The District asserts in its appeal that ACOE's concerns are not sufficient to justify a going concern determination **at this time**. The District states in response to ACOE's concern of reductions in staff not being commensurate with declining enrollment, "Any Lack of Going Concern determination...must wait until at least January 2022 to see whether the Board followed through on its declaration and made the necessary expenditure reductions or ongoing budget-balancing solutions." Additionally, in response to ACOE's concern of a structural deficit, the District states "Any Lack of Going Concern determination...must wait until at least January 2022 to see whether the Board has demonstrated its ability to make the decisions necessary to adequately meet the fiscal needs of the District".

Findings: The going concern determination is that the District **may be unable to meet its financial obligations for the current or subsequent two fiscal years**. The intent of the fiscal oversight process established by Assembly Bill (AB) 1200 is to provide early interventions and assistance to districts experiencing fiscal distress. The process is intended to be proactive rather than reactive and preventative to avoid fiscal insolvency and loss of local control of the district. Early interventions allow for sufficient time to make corrections and avoid potentially deeper cuts that may be required if early actions are not taken.

The District itself has acknowledged that it may be unable to meet its financial obligations by certifying its interim financial reports, pursuant to *EC* Section 42131 as “Qualified”. The District has had qualified certifications of its interim reports continuously since Fiscal Year 2016–17. The District stated in its 2020–21 Second Interim Report that it “will continue to self-certify as Qualified until it meets its commitment to strategize and execute a viable financial and operational plan assuring its ability to meet its obligations and reduce its liabilities”.

The District acknowledges that there is a structural deficit, and has stated that they intend to eliminate one-time funded positions or make reductions in other ongoing sources of funding to free up funds for these positions. However, based on the state agency conversation with the District on November 1, 2021, some of the one-time funded positions that will need to be eliminated have not yet been identified. It is not known to what extent these were new positions funded with one-time funds or if previous ongoing positions were redirected to the short-term one-time source of funding. The details and impact of the commitment to eliminate one-time funded positions or make other ongoing reductions to fund them are not yet known, and these reductions will likely be difficult for any board to make.

ACOE has identified concerns with 11 of the 15 Indicators of Risk for Potential Insolvency established by FCMAT for school districts. FCMAT states that the existence of **any one** of the indicators increases the risk of potential insolvency and the need for assistance from outside agencies.

Based on the above factors, it was reasonable for the ACOE to make the determination that the District may be unable to meet their financial obligations for the current or subsequent two fiscal years and designate the District a lack of going concern.

2. ACOE proposed to assign a fiscal team without first determining that the analytical assistance is not available through the district.

Findings: FCMAT, in its March 1, 2021, letter regarding the District, states that “more intensive support from the Alameda County Office of Education will be needed in the coming months and years to prevent district insolvency”.

The actions that ACOE has proposed to take pursuant to *EC* 42127.6 are the same actions that they are authorized to take for a District with a qualified interim report certification, which the District has self-certified.

The ACOE has noted that the District has “shown limited progress to identify or incorporate budget balancing solutions”. The District’s interim report multi-year projections have included unidentified ongoing expenditure reductions and the ACOE has continued to request board approved detailed ongoing budget balancing solutions. ACOE asked for this list to be submitted with the 2021–22 First Interim Report and the District requested an extension until January 31, 2022, to provide this list.

Based on the above, it is reasonable for the ACOE to provide additional assistance to the District to identify budget solutions in a timely manner and possibly avoid deeper reductions and more intensive interventions at a later date.

3. The threat of withholding compensation is unnecessary and punitive.

The District asserts that the “threat” of withholding compensation is to be used in situations where a district refuses to provide information or does not even attempt to do so and that the District has been responsive to ACOE’s requests for information.

Findings: The withholding of compensation is authorized in statute for a District with a qualified certification or a going concern determination. Thus, it was appropriate for ACOE to put the District on notice of what additional steps may be taken. ACOE has not implemented any withholding of compensation at this time. If the District were to refuse to provide information, statute allows this and other more intensive interventions to ensure the fiscal solvency of the District. Should any action be taken by the ACOE to withhold compensation, the District would be able to appeal the action on its merits.

4. The District is not in need of additional support from FCMAT.

The District asserts that the ACOE has proposed assigning FCMAT to review teacher hiring practices, teacher retention, highly qualified teachers, and the extent of teacher misassignment and that the District is not in need of this review.

Findings: The provision referenced by the ACOE authorizes a number of activities that FCMAT can assist with, other than reviewing teacher hiring practices, including reviewing the causes that led to a finding of moderate or high risk of intervention and recommending corrective action. The ACOE has not indicated that they intend to assign FCMAT to review any of the teacher issues mentioned above. The ACOE states that they will work with FCMAT in support of the Fiscal Health Risk Analysis that FCMAT is already required to perform as a result of the qualified interim report certifications.

Conclusion

Based on the facts and evidence presented, CDE finds that the Alameda County Superintendent of Schools has acted reasonably in making its going concern determination and its assignment of actions as required pursuant to *EC* Section 42127.6. Therefore, CDE denies the District’s appeal.

Shanthi Gonzales, President

November 23, 2021

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If you have any questions regarding this decision, please contact Elizabeth Dearstyne, Director, School Fiscal Services Division, by email at edearstyne@cde.ca.gov.

Sincerely,

Lisa Constancio, Deputy Superintendent
Operations and Administration Branch

LC:jf

cc: Board of Education, Oakland Unified School District (USD)
Kyla Johnson-Trammell, Ed. D., Superintendent, Oakland USD
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