California Department of Education

School District Organization Handbook

September 2019

# CHAPTER 4 ROLES AND RESPONSIBILITIES

## THE STATE BOARD OF EDUCATION AND THE CALIFORNIA DEPARTMENT OF EDUCATION

This chapter discusses the authority and responsibilities of the State Board of Education in school district organization and the assistance and support provided to the State Board of Education by the California Department of Education. The chapter distinguishes between the roles of the county committee on school district organization and of the State Board of Education. Petitioners and county committee members alike will find it useful in understanding what happens to school district organization proposals after the county committee has acted.

NOTES:

The guidance in this handbook is not binding on local educational agencies or other entities. Except for statutes, regulations, and court decisions that are referenced herein, the handbook is exemplary, and compliance with it is not mandatory (see California *Education Code* Section 33308.5).

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## A. Powers of the State Board of Education

The State Board of Education is the principal statutory authority responsible for deciding whether to approve or disapprove each petition to form a new school district, except for those meeting conditions established in *Education Code* Section 35710. (*EC* 35753 and 35754) A petition moves forward for local vote only if approved by the State Board of Education. (*EC* 35755 and 35756) The State Board of Education must hold a public hearing on each petition pertaining to the unification’s substance and conformity with the minimum conditions for approval. (*EC* 35753, 35754)

The terms “unifications” and “formations of new school districts” are used interchangeably throughout this handbook. Formations of new elementary and high school districts also are “formations of new school districts.” However, such reorganizations historically have been quite rare; so the term “unification,” over time, has come to be synonymous with “formation of a new school district.”

The State Board of Education also is required to take certain actions that pertain to the unification’s impact or lack thereof on the environment, pursuant to the California Environmental Quality Act (CEQA), *Public Resources Code* Section 21000 et seq. This requirement was temporarily removed, effective October 28, 1998, when CEQA Guidelines were revised by the Resources Agency of California to specify that school district reorganizations are not projects subject to CEQA. Those revisions were challenged in Sacramento Superior Court and, in April 2001, were invalidated (*Communities for a Better Environment v. California Resources Agency*; Sacramento Superior Court Case No. 00 CS 00300). The superior court decision subsequently was upheld on appeal, thus reinstating the requirement to address CEQA.

The State Board of Education also has authority to hear and decide appeals from decisions of county committees on school district organization concerning transfers of territory between school districts and certain formations of new school districts that have the support of all affected districts. (*EC* 35710.5, 35711)

The State Board of Education is required by statute to establish minimum standards to be used in approving or disapproving petitions for the formation or reorganization of school districts. (*EC* 35750)

The State Board of Education has both general and specific authority to establish regulations governing school district organization. (*EC* 33031, 35712, 35753[a][10], 35768) The adopted regulations specific to school district organization and procedures for public hearings are contained in the *California Code of Regulations (CCR),* Title 5, sections 18570–18573. (*CCR* Title 5 18570–18573)

Finally, based upon properly completed local requests, the State Board of Education has authority to waive many provisions of the *Education Code* and accompanying regulations. (*EC* 33050 et seq.) Waiver requests are submitted to overcome specific obstacles encountered during the school district organization process. At the time of the most recent revision of this chapter, the State Board of Education has been receiving (and has approved) numerous requests to waive the election to establish trustee areas for governing board elections (see Chapter 10 of this Handbook).

### 2. Conditions for Approval of Reorganization Petitions

a. *Authority to Approve If Conditions Are Substantially Met.* The State Board of Education may, but is not required to, approve proposals for reorganization of school districts if the conditions set forth in *EC* 35753(a) are substantially met.

Several criteria that clarify the conditions for approval are found in *CCR* Title 5 Section 18573. This section is now largely repetitive of statute because of 1990 legislation (Senate Bill 1927*,* Chapter 1658*,* Statutes of 1990), which codified much of the preexisting regulation. A side-by-side comparison of statute and regulation can be found at the end of Chapter 6.

b. *Authority to Approve If an Exceptional Situation Exists.* The State Board of Education may depart from the minimum conditions for approval in certain situations.

Specifically, the State Board of Education may determine that it is not practical or possible to apply the conditions literally and that exceptional circumstances exist that are sufficient to justify approval of the proposal. (*EC* 35753[b])

c. *Authority to Amend or Modify Proposals.* The State Board of Education has authority to amend a proposal, but the authority is limited to certain items (*EC* 35730–35738) that relate generally to governing board membership, area of election, and division of assets. Otherwise, the State Board of Education can approve or disapprove only the proposal that was determined to be sufficient by the county superintendent. (*EC* 35704, 35754)

### 3. Public Hearings on Petitions and Appeals

The State Board of Education currently holds its regular meetings every other month (January, March, May, July, September, November), usually on the second Wednesday and Thursday of the month. Following the analysis of unification proposals by California Department of Education staff and the preparation of recommendations to the State Board of Education, public hearings are scheduled as the business of the State Board of Education permits.

For the public hearing addressing the unification proposal’s substance and minimum conditions for approval, it is typical for the State Board of Education’s presiding officer to set a time limit of 10 to 15 minutes each for proponents and opponents to present witnesses and other testimony, sometimes followed by a five-minute rebuttal period for each side. However, when the matters in disagreement are very limited and focused in nature (or when only one side plans to present testimony), the presiding officer typically will reduce the time allowance. On the other hand, when the matters in disagreement are very broad or complex and large numbers of speakers are expected, the presiding officer may increase the presentation time limit. It should be noted that the State Board of Education will not entertain repetition of arguments. (*CCR,* Title 5 18571)

County committees on school district organization have authority to approve or disapprove transfers of territory between school districts and certain proposals to form new school districts that have the support of all the affected districts without action by the State Board of Education. (*EC* 35706, 35709, and 35710) However, appeals from these decisions may be filed with the State Board of Education. (*EC* 35710.5) The appeals must be limited to specific issues of noncompliance with *Education Code* Section 35705, 35706, 35709, or 35710. Although appeals must be limited to the above stated specific issues of noncompliance, the courts have made it clear that State Board of Education review of the appeal is *de novo*. (*Burch, et al v. California State Board of Education* [1998], Los Angeles Superior Court Case No. B5034463; *San Rafael Elementary School District v. California State Board of Education* [1999], 73 Cal. App. 4th 1018) Thus, the State Board of Education, when hearing an appeal, is free to consider all factors of a territory transfer proposal including not only procedural issues, but facts to satisfy the conditions of Section 35753.

The State Board of Education does not necessarily schedule public hearings to consider appeals. If no public hearing is scheduled, it is typical for the State Board of Education’s presiding officer to set a time limit of one to three minutes each for individuals wishing to address the State Board of Education on the appeal.

Individuals wishing to address the State Board of Education at a public hearing must notify the State Board of Education Office in writing by noon of the third working day before the scheduled hearing. (*CCR,* Title 5 Section 18461) The notice should indicate the subject to be addressed, the organization (if any) being represented, and the nature of the testimony. Persons addressing the State Board of Education are well advised to be succinct and clear and to refrain from repeating what previous witnesses have said and from presenting substantial written materials at the meeting itself. Arrangements can be made with the State Board of Education Office to distribute substantial written materials to State Board of Education members, California Department of Education staff, and other interested parties in advance of the meeting; it is advisable to contact the State Board of Education Office at least two weeks before the meeting to work out the details of such a distribution.

## B. Role of the California Department of Education

### 1. Staff Studies

The California Department of Education assists the State Board of Education by preparing the studies and reports needed for school district organization proposals. (*EC* 35751 and *CCR,* Title 5 18570) Reorganization proposals and appeals are filed with the State Board of Education and are referred to specific staff in the California Department of Education’s School Fiscal Services Division for completion of the necessary studies, reports, and recommendations. For assistance from that office, call 916-324-4541 or write to:

School Fiscal Services Division

California Department of Education

1430 N Street, Suite 3800

Sacramento, CA 95814

Staff reports and services provided by that office include:

* Contacting state and local agencies to determine possible adverse environmental effects or to obtain additional information relative to the district reorganization.
* Completing preliminary CEQA studies for the State Board of Education.
* Submitting CEQA documents to the State Clearinghouse in the Governor’s Office of Planning and Research.
* Reviewing district reorganization proposals for compliance with statutes and regulations.
* Preparing reports and recommendations to the State Board of Education on whether to approve reorganization proposals.
* Reviewing the administrative record on appeals from county committees on school district organization decisions on transfers of territory and certain proposals to form new school districts that have the support of all the affected districts.
* Preparing reports and recommendations to the State Board of Education on actions to be taken to approve or deny appeals.
* Providing assistance to county committees on school district organization, school district administrators, and members of the public on legal requirements for school district reorganization.
* Coordinating with other California Department of Education units for their specialized studies and review of proposals. In particular, the Office of Equal Opportunity provides review of the possible impact of reorganization on racial and ethnic status; the Assessment, Accountability, and Awards Division reviews the possible impact on educational programs; and the School Facilities Planning Division assists in determining possible increased costs for school housing.

### 2. Legal Counsel

Although the State Board of Education retains its own legal counsel, the California Department of Education also provides legal review of school district organization issues before the State Board of Education. Legal counsel is essential at each stage of preparation of recommendations to the State Board of Education, and counsel reviews all proposals to be presented to the State Board of Education. The California Department of Education’s legal counsel also assists in representing the State Board of Education in litigation challenging State Board of Education decisions.

A local education agency (e.g., school district, county office of education, county committee) needing legal advice regarding a school district organization issue should consult its own legal counsel. The California Department of Education Legal Office does not advise anyone outside of the Department.