California Department of Education
District Organization Handbook
August 2021

# CHAPTER 11THE APPEALS PROCESS

Chapter 11 provides a brief summary of the appeals process related to reorganizations of school districts. The issues that may be appealed, the time line, the steps the appellant must follow, and the options available to the State Board of Education are presented. This chapter will be particularly useful to individual petitioners or school districts contemplating the filing of appeals with the State Board of Education.

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. General Appeals(*EC* 35710.5)

The State Board of Education has authority for final decisions for most school district unification proposals. County committees on school district organization have authority for final decisions over territory transfer proposals and reorganizations that meet the conditions of *Education Code* Section (*EC*) 35710(b), but their decisions are subject to appeal to the State Board of Education. The State Board of Education is the final authority for appeals of county committee on school district organization decisions.

1. The chief petitioner or any one or more of the affected school districts may appeal a county committee on school district organization decision to approve a territory transfer proposal, or to approve a unification proposal if the conditions of *EC* 35710(b) are met. Appeals are heard by the State Board of Education.

2. The appeal may be made only on issues of noncompliance regarding procedural matters and the substantive provisions of the following *Education Code* sections:

* *EC* 35705 Public hearings; notice
* *EC* 35706 Recommendations of county committee on school district organization
* *EC* 35709 Order; notification; criteria in *EC* 35753
* *EC* 35710 Notification of approval; election; conditions; criteria in *EC* 35753 determination of the area of election

3. The appellant has 5 days, or 30 days if a school district, from the date of final action by the county committee on school district organization to file the notice of appeal with the county committee on school district organization and provide a copy to the county superintendent of schools. The action of the county committee on school district organization must be stayed pending the outcome of the appeal.

4. Within 15 days after the filing of the notice of appeal, the appellant must file a statement of reasons and factual evidence with the county committee on school district organization.

5. The county committee on school district organization, within 15 days of receipt of the statement, must send the statement and the complete administrative record of the county committee on school district organization’s proceedings to the State Board of Education. In addition to the appeal itself, the administrative record includes the notice of appeal, the petition, notices of public hearings, the description of the petition provided at least 10 days before the public hearings, transcripts of public hearings, related letters, legal briefs, minutes of county committee on school district organization meetings, studies, and any other materials relevant to the appeal that would enable the State Board of Education to determine whether there was evidentiary support for the county committee on school district organization’s decision.

6. The State Board of Education may elect to:

a. Review the appeal either on the administrative record or in conjunction with a public hearing;

*or*

b. Deny review of the appeal (thus ratifying the county committee on school district organization’s decision).

7. The State Board of Education, if it decides to review the appeal, may:

a. Affirm the action of the county committee on school district organization;

*or*

b. Reverse or modify the action of the county committee on school district organization.

8. If the State Board of Education action on the appeal results in a reorganization proposal that is sent to an election, the State Board of Education must determine the territory in which the election is to be held.

9. Issues regarding noncompliance of *EC* sections 35705, 35706, 35709, and 35710 include procedural matters described in those sections. However, the Court of Appeals in *San Rafael Elementary School District v. California State Board of Education (1999) 73 Cal. App 4th 1018*, held that the State Board of Education has the authority "to conduct a de novo review of the issue whether the facts supporting a transfer satisfy the substantive conditions of [*EC*] section 35753". (Id, pages 1025 and 1031).

As discussed in Part B of Chapter 6 of this handbook, the State Board of Education has discretionary authority. Thus, the State Board of Education may approve an appealed reorganization proposal even when one or more of the *EC* Section 35753 conditions are not met. By the same token, the State Board of Education may disapprove an appealed reorganization proposal even when all of the conditions are met.

10. The State Board of Education must notify the county committee on school district organization of its decision and then the county committee on school district organization must notify the county board of supervisors or the county superintendent of schools, as appropriate, pursuant to *EC* 35709 or 35710.

## B. Appeals Based on Racial or Ethnic Integration(*EC* 35711)

1. Any person questioning the findings that the proposed reorganization will not adversely affect the racial or ethnic integration of the schools of the affected districts may appeal the decision made by the county committee on school district organization regarding such findings.

2. Appeals made on issues of whether the school district organization proposal will adversely affect the racial or ethnic integration of schools of the affected districts must be made to the State Board of Education within 30 days of the county committee on school district organization’s decision. *EC* 35711 does not provide for a stay of the county committee on school district organization’s decision pending the outcome of the appeal.

3. The State Board of Education must notify the county committee on school district organization of its decision to:

a. Deny the request for an appeal, in which case the decision of the county committee on school district organization shall stand;

*or*

b. Approve the request for appeal, in which case it shall review the findings of the county committee on school district organization. The county committee on school district organization shall transmit a copy of its proceedings to the State Board of Education who will review the county committee on school district organization’s findings.

4. In reviewing the findings, the State Board of Education may:

a. Reverse the decision of the county committee on school district organization;

*or*

b. Affirm the decision of the county committee on school district organization;

*or*

c. Direct the county committee on school district organization to reconsider its decision and to hold another hearing if the board’s review appears to indicate that inadequate consideration was given to the effect of the reorganization on integration of the schools of the affected districts.

Unlike appeals under *EC* 35710.5, appeals under *EC* 35711 do not include authority for the State Board of Education to determine the area of election.

## C. Resubmissions and Petitions for Reconsideration

**(*California Code of Regulations*, *Title 5*, Section 18572)**

1. At any time following a decision by the State Board of Education on a proposal, petition, or appeal, the original petitioners, the county committee on school district organization, or any affected school district may resubmit the same or an essentially identical proposal or may petition the State Board of Education for reconsideration of the board’s decision.

2. Any resubmission or petition for reconsideration must be accompanied by new arguments or new facts not previously presented to the State Board of Education.

3. No resubmission or petition for reconsideration will be acted upon by the State Board of Education with respect to any reorganization proposal for which an election has been called, pursuant to *EC* 35710.51 or 35756.