

COMMISSION ON TEACHER CREDENTIALING

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89-8921

TO: All County Superintendents and County Personnel Administrators

Rich Mastain

FROM: Richard K. Mastain, Ed.D, Executive Secretary

SUBJECT: Assignment Practices--Fiscally Accountable School Districts

Certain fiscally accountable, or "independent" districts have indicated an intention to assert that their status as such, pursuant to *Cal. Ed. Code* §§ 42647 and 42650, exempts them from scrutiny by the county superintendent of schools in the context of *Cal. Ed. Code* § 44258.9 .

We asked Legal Counsel for the Commission on Teacher Credentialing to review this issue. Specifically we asked whether SB 435 authorizes county superintendents of schools to monitor the assignment practices of *all* districts, including "fiscally accountable" districts, within their counties.

SB 435 adds section 44258.9 to the Education Code and sets forth various reporting and rectification responsibilities incumbent upon certificated individuals, individual school districts within counties, county offices of education and the Commission on Teacher Credentialing.

It is significant to note that within the text of *Cal. Ed. Code* § 44258.9, subsection (b) refers to "*each* school site administrator," subsection(c) refers to "*each* district superintendent of schools," subsection (d) refers to "*each* county superintendent of schools," and subsection (g)(2) provides that "*any* certificated person who has been required by an administrative superior to accept an assignment for which he or she has no legal authorization *shall*, after exhausting any existing local remedies, notify the *county superintendent of schools...*" (Emphases added.)

The highlighted text in the immediately preceding paragraph evinces the comprehensive and mandatory intent of the statute, as well as the central role played by the county superintendent of schools. Therefore, within its own terms, *Cal. Ed. Code* § 44258.9 does not seem to conceive of exceptions.

Sections 42647 and 42650 provide the means by which the governing boards of unified school districts and/or school districts with over 10,000 average daily attendance may be enabled to draw and issue warrants against designated

funds independent of the county office of education and superintendent of schools. This procedure requires the approval of the county superintendent of schools, the county auditor and the Superintendent of Public Instruction.

Cal. Ed. Code § 44332.5 makes pertinent reference to such fiscally accountable districts as follows:

(a) A school district which may issue warrants pursuant to Section 42647 may, at its discretion, provide for the registration of any valid certification or other document authorizing the holder thereof to serve in a position requiring certification qualifications as an employee of the school district.

When the above section is read in conjunction with *Cal. Ed. Code* § 35035 (e), which includes among the powers and duties of the superintendent of each school district the determination that each employee in a position requiring certification actually possesses a valid certificated document which authorizes him or her to serve in the position to which he or she has been assigned, an argument may be made that the county superintendent of schools does not possess the authority to monitor such districts pursuant to his or her responsibilities as they are set forth in *Cal. Ed. Code* § 44258.9 (d).

We believe that unless such districts can provide different and additional authority to support such a contention, their argument fails. Merely because they have previously obtained the approval of the county superintendent of schools, the county auditor and the Superintendent of Public Instruction in order to be classified as "fiscally accountable" and because *Cal. Ed. Code* § 44332.5 (a) gives to such districts the *discretionary* authority to register certification documents, such districts are not, in our opinion, exempted from assignment practices monitoring by the county superintendent of education; neither do we believe that the county superintendent thereby absolved from his or her responsibility to monitor pursuant to *Cal. Ed. Code* § 44258.9 (d).

Accordingly, it is our opinion that, pursuant to the provisions of SB 435, county offices of education and the county superintendents of schools are authorized and required to monitor the assignment practices of *all* districts within their respective counties.