

MEMORANDUM

Date: November 12, 2013

To: Craig Foster, Advocates for Malibu Public Schools (AMPS)

From: Jannelle Kubinec, WestEd

RE: Reorganization Research Findings

At the request of the Advocates for Malibu Public Schools (AMPS), in the Fall of 2012 WestEd completed a feasibility review for a proposal to create two separate districts from the current Santa Monica-Malibu Unified School District (District). This review evaluated the proposed reorganization based on the fiscal and programmatic standards outlined in the California Education Code. This study raised several considerations for AMPS, the current District, and community stakeholders. At the request of AMPS, WestEd has conducted further research and analysis to address the following areas of interest:

- 1) ***Bonded Indebtedness:*** What options are there for distributing the District's current bonded indebtedness between the newly formed districts should a reorganization proceed? What, if any precedent exists for such options?
- 2) ***Parcel Tax:*** Given the District's unique parcel tax measure, what options exist for retaining the existing parcel tax and what would be required (e.g., time, effort, and cost) to pursue such options?
- 3) ***Employment Rights and Collective Bargaining.*** If the proposed reorganization were to occur, what specific protections and options are available to employees (e.g., rights of employment, length of protection, compensation levels, collective bargaining authority)? What precedent exists for such options?
- 4) ***Other Implementation Guidance.*** What other issues are essential to address in planning a successful reorganization process?

Based on the analysis completed to address the above questions, a viable pathway exists for pursuing the proposed reorganization while protecting the financial interests of the existing and proposed districts and employee groups. Following is an in-depth explanation of findings and suggested action steps.

FINDINGS

To address the above questions, WestEd has conducted interviews with educational consultants from the California Department of Education and Madera County Office of Education, and analyzed data and other documents provided by AMPS.

The type of reorganization proposed by AMPS presents a unique situation. In recent history most district reorganizations resulted in an *existing* district changing boundaries, unifying by

combining or transferring school(s), or transferring territory. The reorganization to create a Malibu district would result in the creation of a *new* school district. According to the California Department of Education the most recent example of this type of reorganization is the creation of Golden Valley (Madera County) approximately 15 years ago. Golden Valley provides an example of a new district formation and may be instructive to demonstrate options for successfully attending to employee group interests, bond management, and starting-up a new district. Several of the issues present in the potential Malibu district formation were present in the formation of Golden Valley.

The petition to create the Golden Valley School District was approved by the local county committee on district organization in August 1997 and approved by the State Board of Education in December 1997. The petition was brought to voters with potential Governing Board candidates in July of 1998 and the new district became operational July 1, 1999. The election resulted in approval of the petition and selection of Governing Board members. The Madera County Office of Education provided administrative and technical assistance to the new Golden Valley School District Governing Board to hire a Superintendent and apply for a state start-up loan to support the process of putting the necessary district infrastructure in place prior to serving students.

Soon after the new district was formed teachers were notified that they could elect to remain employees of Madera Unified School District (original district) or become employees of the newly formed Golden Valley School District per the provisions included in Education Code Section 35555. Most employees stayed at the sites where they were teaching. During the new district start-up period (July 1998 to June 1999) they remained employees of the Madera Unified School District, but once the start-up period was completed they became employees of the Golden Valley District. Teachers in the new district received support from their regional California Teacher Association representative to assist with organizing and negotiations prior to July 1, 1999 (operational date of new district). There were no reported issues with the process and by all accounts teachers and the community were pleased with the outcome. The Golden Valley example demonstrates that while reorganizations are inherently complex that it is possible to achieve a result that satisfies the many interests and needs in the communities where they occur.

Following are the key findings for each of the questions.

1) ***Bonded Indebtedness:*** What options are there for distributing the district's current bonded indebtedness between the newly formed Districts should a reorganization proceed? What, if any precedent exists for such options?

To date two interpretations have been rendered¹ regarding the method for distributing bonded indebtedness. To help guide further discussion in this area, given the stark differences in legal opinions, WestEd consulted the California Department of Education (CDE), which verified the opinion received from AMPS by its legal counsel. Specifically, CDE shared that in

¹ The Los Angeles County Office of Education presented information regarding distribution of bonded indebtedness, which offered a different interpretation than that offered by WestEd (see Fall 2012 report) and AMPS legal counsel.

reorganizations where outstanding bonded indebtedness exists Education Code Sections 35576 and 35738 clearly identify options for distributing such debt. Commonly allowed and applied methods include distributing outstanding debt based on the assessed valuation ratios between the districts post-reorganization or the amount spent on facilities. Other allowable methods include student counts or “other matters which the petitioners or county committee deems pertinent.”

A related question that may be of interest is how would outstanding bond authority (from the existing Santa Monica-Malibu Unified School District’s unexpended, but approved bond) be treated should the reorganization occur. The Education Code is silent on this issue, but does suggest among the criteria for evaluating the feasibility of a proposed reorganization that a reorganization does not adversely affect the bonding capacity of the local educational agencies. Furthermore, the treatment of division of bonded indebtedness would directly affect the remaining bond authority available to the districts post reorganization. Based on the research conducted an approach to consider as a means to retain available bond authority would be to reference within the petition for reorganization parameters for retention and division of the outstanding bond authority between the newly created Malibu district and remaining Santa Monica district. Given the lack of guidance in the Education Code, we advised AMPS consult legal counsel.

To the question of whether the petition could be used to specify a distribution of existing bonded indebtedness, AMPS legal counsel offered the following opinion:

Almost certainly. The Education Code does not specifically address including such a provision in the original petition for reorganization initiated by the electorate. On the other hand, it strongly implies that this is permissible. The Education Code specifically provides in Article 3 (commencing with Section 35730), that the Plans and Recommendations of the county committee for the reorganization of a school district may include "a method of dividing the bonded indebtedness ." that may be different from that provided by the Code in Section 35576. (§ 35738.) It appears that this is the provision under which the Madera County Committee included stipulations for the division of bonded indebtedness in the Plans and Recommendations for the reorganization.

Hence, while the Education Code does not specifically address including a provision for the division of bonded indebtedness in the original petition initiated by the electorate, the Code strongly implies that this is permissible.

With regards to whether the petition could be drafted to retain and split existing bonding authority, AMPS legal counsel noted that:

This scenario is not addressed in the Code. Interestingly, the Code addresses two different, but similar scenarios with the result that the authorization to issue bonds is divided. Section 35577 concerns the division of a district between two or more other districts so that the existing district "ceases to exist". In these circumstances the Code provides that "the board of supervisors shall, . . . make and enter an order in the minutes of its proceedings that the authorization to issue the unsold bonds be divided between the districts in the ratio which the assessed valuation of the territory transferred to the districts bears to the total assessed valuation of the former district. The bonds, if issued

by any new district, shall be considered a liability of the new district for purposes of computing the bonding capacity of the new district when applying the State School Building Aid Law of 1952, Chapter 8 (commencing with Section 16000) of Part 10."

The second scenario addressed by the Code in Section 35578 is when a district is included "as a whole" in a new school district. In such a case, the unsold bonds "may be issued by the board of supervisors in the name of the new district and the proceeds derived upon the sale thereof shall be the funds of the new district. However, the proceeds derived upon the sale thereof shall be expended only for the purpose, or purposes, for which such bonds were authorized."

While the Code does not specifically reference circumstances faced with the proposed reorganization, it does suggest allowance for retention of bonding authority post-reorganization.

Options:

- ***Distribute Existing Bonded Indebtedness***—Select between options for distributing existing bonded indebtedness. The most commonly used options are the greater of assessed valuation or expenses for facilities spent within each district. Based on prior analysis, both option appears viable and does not adversely affect either the proposed or existing districts.
- ***Retain Approved Bond Authority***—Reference within the petition how existing approved bond authority will be retained.

Suggested Course of Action:

- Meet with Santa Monica-Malibu School District officials to evaluate and select the best option for dividing existing indebtedness.
- Draft petition in consultation with legal counsel to include provisions for division of bonded indebtedness and retention of remaining approved bond authority. A point of reference may be the Golden Valley petition, which included some references to treatment of existing bonds. Seek input and advice from the California Department of Education regarding the language to inform final petition to include such provisions.

2) <i>Parcel Tax:</i> Given the District’s unique parcel tax measure, what options exist for retaining the existing parcel tax and what would be required (e.g., time, effort, and cost) to pursue such options?

As noted in the feasibility report, the District’s current parcel tax is fairly unique and critical to the financial viability to the current District. The Education Code lacks clear guidance regarding the treatment of the parcel tax. **There is precedence to suggest that since the Santa Monica District would remain, it would retain its portion of the parcel tax (i.e., the portion of the parcel tax generated by parcels within the Santa Monica attendance area), but for the Malibu area to retain the parcel tax additional action may be required.** Unlike the treatment of approved bond authority, AMPS legal counsel has advised that the Education Code provides little direction on this area and that it is probably not a viable option to rely on the petition to define how the parcel tax would be treated post-reorganization. Given the lack of legal direction and precedence for this the best option would be to seek special legislation. Such legislation would specify that the parcel tax for the districts in question would be retained and divided based

on provisions adopted into California Education Code. There is precedent for special legislation in the case the creation of the Santa Barbara Unified school District, which retained a parcel tax that was in place prior to the reorganization.

Option:

- ***Develop Special Legislation***—Work with local representative (Assembly or Senate) to develop legislation that clarifies treatment of the parcel tax. The legislation could be drafted referencing unique conditions (e.g., a date in time by which a petition is approved or new district created, size or type of district formation, etc.) for which the retention and division of a parcel tax would apply. This would allow for passage of the legislation prior to the petition going into effect and limits its impact to only to the creation of the Santa Monica and Malibu districts.

Suggested Course of Action:

- Make local representative aware of the potential reorganization and gauge interest and information needs to consider options for special legislation.
- Draft special legislation referencing unique conditions that would allow for retention of the existing parcel tax once the reorganization occurs.

3) ***Employment Rights and Collective Bargaining.*** If the proposed reorganization were to occur, what specific protections and options are available to employees (e.g., rights of employment, length of protection, compensation levels, collective bargaining authority)? What precedent exists for such options?

The Education Code (§35555-35556 and 45121) recognizes that classified and certificated employees can be vulnerable to changes in employment status and agreements as a result of reorganizations. There are several provisions that provide classified and certificated employees protection and preferences in the reorganization process. Attachment A provides an overview of the process and rules outlined in the Education Code for classified, certificated, and administrative staff. This sense of vulnerability may be amplified in reorganizations that result in the creation of a new district since there is an inability to evaluate labor agreements until a petition for the new district is approved as there is no standing entity for employee groups to negotiate with until such time.

However, there are specific measures within the process outlined in law that provide protections for employees. For instance, classified employees are guaranteed in a new unified district (which would be created in this instance) continue employment for not less than two years following the original districts salaries, benefits, accumulated leave, and other rights from the original collective bargaining agreement. Rules for certificated employees specify that permanent employees assigned to a building located within the new district shall remain at their assigned site, unless they elect to remain with the original district. Employees must select the district in which they will work before February 1 of the year in which the reorganization becomes effective. In addition to these protections another important factor to remember is that when the petition is brought before voters so too would candidates for the Governing Board. This would be like any election where Governing Board members would provide public statements, discussion, and debate their positions and platforms. The process of electing representatives

provides an important measure of transparency and opportunity for the community to vote based on their view of what will best support the needs of the new district's stakeholders.

Several questions have emerged regarding specific issues related to negotiations. Attachment B addresses some of these questions in a Frequently Asked Questions format.

SUGGESTED NEXT STEPS

In addition to the actions suggested within the answers to each question, the following course of action is suggested to prepare for reorganization.

- Develop a petition based on input from stakeholders including employee groups. While it is not possible to put specific language in the petition regarding negotiated items, it would be expected that Governing Board candidates would be asked to provide comment on their position during an election.
- Consider surveying teachers to gauge (non-binding) interest in employment options should a reorganization go forward.
- Bring the petition before voters. This can be done as part of a general election or special election. A special election would be costly so it is most practical to consider placing the petition on a general election ballot (usually June or November of each year). A late-Spring or early-Summer election timeline allows for the maximum start-up time and supports a schedule that would allow for the new district to be fully formed within the beginning of the school year following the election. (This is the time frame followed by Golden Valley. See above description.)
- If approved, once the Governing Board is in place begin the process of district start-up.
 - Secure a start-up loan from the state, if needed.
 - Hire a Superintendent and other district office staff to complete start-up activities (e.g., planning and developing programs, implementing infrastructure to manage budget and human resources, etc.).
 - Engage in labor negotiations.
 - For certificated employees, prepare permanent employees to elect by February 1 if the plan to stay at their site or remain with the Santa Monica Unified School District. (Note: This decision to elect allows employees time to evaluate their options and preferences with the benefit of time for the new district to have in place a collective bargaining agreement.)
- Finalize labor agreement and staffing assignments.

4) <i>Other Implementation Guidance.</i> What other issues are essential to address in planning a successful reorganization process?

Since the feasibility study was conducted in 2012 California has adopted a new funding model (i.e., Local Control Funding Formula [LCFF]). Under this formula the District is funded based on a simplified calculation that provides a base amount per student with additional funding provided based on grade span adjustments and demographic student characteristics. The question has been asked whether under this change in funding formula there will be any adverse affect to the financial status of the remaining Santa Monica and newly formed Malibu school districts. As

noted in the feasibility report, a newly formed Malibu district would likely be funded as a basic aid district. The changes under LCFF do not appear to alter this expected status. Furthermore, under LCFF there remains a mechanism for basic aid districts to retain excess property tax. A change in law would be required to alter or eliminate basic aid and to date such changes have not materialized and appear unlikely given past history and the politics of basic aid. Based on an analysis of preliminary LCFF projections it does not appear that there will be any adverse financial impact on either district, but the exact impact is difficult to project until more accurate LCFF apportionment amounts are known for 2013-14. The California Department of Education does not expect this information to be available until July 2014.

ATTACHMENT A
Overview of Employee Rights and Collective Bargaining Provisions Related to District Reorganization

Area	Classified	Certificated	Management
Education Code Reference	Any reorganization of a school district shall not affect the rights of persons employed in positions not requiring certification to retain the status, leaves, and other benefits that they would have enjoyed, had the reorganization not occurred. (EC 35556, 45121)	The reorganization of school districts shall not affect the classification of certificated employees already employed by any affected school district. (EC 35555)	No reference in EC pertaining to Superintendents and other administrative staff would be subject to rules for classified or certificated.
Employment Status	<p>Employees regularly assigned to a particular school shall be employees of the district in which the school is located, but employees may request transfers or apply to fill vacancies following the collective bargaining procedures of the original district. Employees without a regular site may select their district of preferred employment.</p> <p>In a new unified district (which would be created in this instance), noncertificated employees are entitled to continue employment for not less than two years following the original districts salaries, benefits, accumulated leave, and other rights from the original collective bargaining agreement.</p>	<p>Permanent employees assigned to a building located within the new district shall remain at their assigned site, unless they elect to remain with the original district. Employees must select the district in which they will work before February 1 of the year in which the reorganization becomes effective. If, permanent employees elect to stay with the original district in such numbers that exceed the districts available positions, the surplus employees may be dismissed following the procedures outlined in the collective bargaining agreement.</p> <p>Probationary employees also remain at their site, unless termination notice is provided prior to May 15.</p>	No reference in EC pertaining to Superintendents and other administrative staff would be subject to rules for classified or certificated.
Compensation (level and schedule)	For at least two years follows the contract of the original district.	Addressed during design process and would include developing salary schedule, benefit package, etc. Certificated staff should be aware of such policies and structure prior to needing to declare the district where they will be employed (i.e., in advance of February 1 of the year in which the reorganization is to occur).	No reference in EC pertaining to Superintendents and other administrative staff would be subject to rules for classified or certificated.
Benefits – health and welfare	For at least two years follows the contract of the original district.		
Benefits – retirement	For at least two years follows the contract of the original district; change not anticipated because this is managed by PERS.		
Representation	New collective bargaining will be formed.	New collective bargaining will be formed.	

ATTACHMENT B
Frequently Asked Questions
Related to District Reorganization and Employment Rights and Collective Bargaining

Q: What happens after the petition is passed? When will the Board be seated and staff hired?

A: When the petition is brought before voters, new board members should also be elected. This would allow for immediate formation of the district should the petition be approved. The first task of the new board is to hire a superintendent so that a management team can be assembled. The state offers start-up loans to help with this process.

Q: Who will select the Board and how will they handle negotiations during the transition to ensure classified and certificated staff are treated fairly?

A: As noted above, the Board should be elected at the same time that the petition is on the ballot. The process of electing new board members provides for potential board members to share their intentions and expectations to support public accountability. See Attachment A, "Overview of Employee Rights and Collective Bargaining" for more information.

Q: Assuming that the petition is approved, how soon will the new district begin operating? What are the implications for current staff?

A: Once the petition is approved and a Board is in place, the new district exists and has one year to begin operations. During this initial year it has time to plan and implement start-up activities such as hiring administrative staff, developing programs, putting in place business systems, and negotiating with employee groups. The Education Code provides current employees with many layers of protection during this transition period. Classified employees are entitled to continue employment for not less than two years following the original district's salaries, benefits, accumulated leave, and other rights continue during this time from the original collective bargaining agreement. Permanent certificated staff have until February 1 prior to the beginning of the new district operating to determine which district they wish to be employed by. If permanent employees elect to stay with the original district in such numbers that exceed the district's available positions, the surplus employees may be dismissed following the procedures outlined in the collective bargaining agreement.

Q: Can a teacher in a Santa Monica school choose to be assigned to a Malibu school during this transition period, or is it the case that Malibu teachers are the only ones allowed to elect a different placement?

A: There are two parts that need to be considered in answering this question. During the transition/start-up period the Santa Monica-Malibu Unified School District's collective bargaining agreement is in effect. As such, the provisions regarding request for change in assignment, bumping rules, etc. remain in place. In other words, if a teacher wishes to be reassigned in the year prior to the operations of the new district, they would do so following the contracts terms and conditions. The second part is that permanent teachers at a site within the new district may elect on or before February 1 to remain in the Santa Monica district (and move

to a Santa Monica school) or remain at the site in Malibu and become a Malibu district employee.

Q: How is bumping and seniority affected by the reorganization? Will teachers lose seniority?

A: The Education Code Section 35555 states that “The reorganization of any school district or districts shall not affect the classification of certificated employees already employed by any school district affected. Those employees have the same status with respect to their classification by the district, including time served as probationary employees of the district, after the reorganization as they had prior to it.” In other words, seniority must be honored following the reorganization. During the transition/start-up year, the existing Santa Monica-Malibu provisions regarding bumping and seniority will be in place. As noted in the question above, teachers at a Malibu sites may elect to remain at their site and become an employee of the new Malibu district. Once the new district becomes fully operational (within one year of the petition being approved by voters) the collective bargaining agreement created by the Malibu district will govern bumping, but must honor years of service earned.

Q: Will the reorganization affect pension contributions or payments?

A: The pension systems for certificated and classified staff are managed by the state. All certificated staff are in STRS and classified in PERS. These systems continue to manage all retirement savings and are unaffected by the reorganization.

Q: Are there any unique provisions that apply to teachers of specialized programs such as special education? How will special education services be provided by the new district?

A: Special education teachers are subject to the same provisions that apply to any certificated staff (see above). The new district must offer a comprehensive special education program.

Q: What provisions exist regarding employment of administrators?

A: There are no specific protections for administrators. Each district would need to evaluate their administrator needs and staff accordingly. Those administrators with prior certificated teaching experience may have return rights depending on the provisions included in the contract at the time of the transition.