



Lassen County Office of Education

regarding the

Westwood Unified School District/ Westwood Charter School

AB 139 Review

July 15, 2009



CSIS California School Information Services

July 15, 2009

Jud B. Jensen, Superintendent
Lassen County Office of Education
472-013 Johnstonville Road
Susanville, California 96130

Dear Superintendent Jensen:

In December 2008, the Lassen County Office of Education and the Fiscal Crisis and Management Assistance Team (FCMAT) entered into an agreement to provide an Assembly Bill 139 extraordinary audit of the Westwood Charter School. Specifically, the agreement states that FCMAT will perform the following:

1. Review district policies and procedures related to provisions contained in the Government Code to determine if the district and/or the Charter School are in direct violation of the following:

1090 – 1099 – Conflict of Interest
1126 – 1127 - Employment

The attached final report contains the study team's findings and recommendations with regard to the above areas of review.

We appreciate the opportunity to serve you, and we extend our thanks to all the staff of the Lassen County Office of Education.

Sincerely,

Joel D. Montero
Chief Executive Officer

FCMAT

Joel D. Montero, Chief Executive Officer

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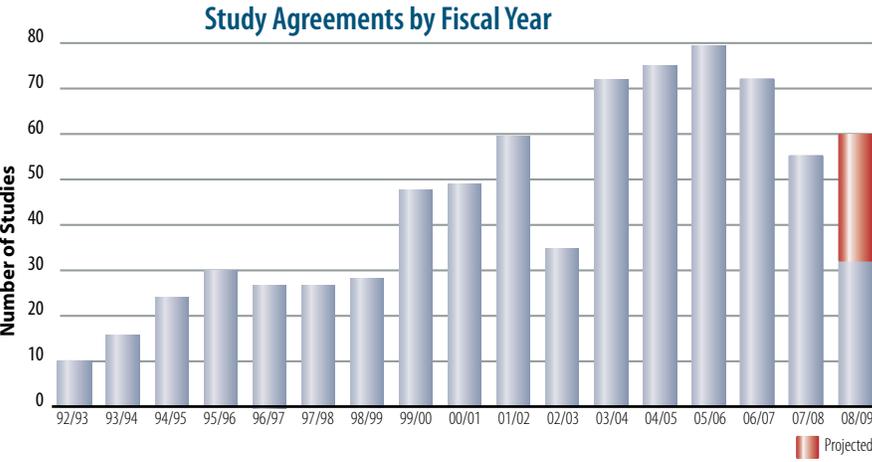
Foreword - FCMAT Background

The Fiscal Crisis and Management Assistance Team (FCMAT) was created by legislation in accordance with Assembly Bill 1200 in 1992 as a service to assist local educational agencies (LEAs) in complying with fiscal accountability standards.

AB 1200 was established from a need to ensure that LEAs throughout California were adequately prepared to meet and sustain their financial obligations. AB 1200 is also a statewide plan for county offices of education and school districts to work together on a local level to improve fiscal procedures and accountability standards. The legislation expanded the role of the county office in monitoring school districts under certain fiscal constraints to ensure these districts could meet their financial commitments on a multiyear basis. AB 2756 provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans. These include comprehensive assessments in five major operational areas and periodic reports that identify the district’s progress on the improvement plans.

In January 2006, SB 430 (charter schools) and AB 1366 (community colleges) became law and expanded FCMAT’s services to those types of LEAs.

Since 1992, FCMAT has been engaged to perform nearly 750 reviews for local educational agencies, including school districts, county offices of education, charter schools and community colleges. Services range from fiscal crisis intervention to management review and assistance. FCMAT also provides professional development training. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The agency is guided under the leadership of Joel D. Montero, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.



Total Number of Studies.....	743
Total Number of Districts in CA.....	982
● Management Assistance.....	705 (94.886%)
● Fiscal Crisis/Emergency	38 (5.114%)
Note: Some districts had multiple studies.	
● Districts (7) that have received emergency loans from the state.	(Rev. 1/22/09)

Introduction

Charter schools were established in California through the Charter Schools Act of 1992 to provide an alternative school structure that operates independently from the existing public school system. These schools may elect to operate as corporations organized under the Nonprofit Public Benefit Corporation Law, or 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), Nonprofit Benefits Corporations. Charter schools differ from traditional public schools in that they are exempt from several state laws relating to specific educational programs. While charter schools have considerable freedom in their academic approach and governance models, they are required to meet statewide educational achievement standards, utilize sound fiscal practices and employ credentialed teachers.

The chartering or sponsoring agency, usually a school district, is responsible for adequate and appropriate oversight. This includes determining whether a charter is following prudent fiscal practices and generally accepted accounting principles (GAAP) in accounting for revenues and expenditures and preparing required financial reports. The chartering entity must revoke a school's charter for fiscal mismanagement, a material violation of the charter, failure to meet or pursue any of the educational outcomes set by the charter, failure to meet generally accepted accounting principles, or violations of law. A memorandum of understanding (MOU) between the authorizing agency and the charter school is a legally binding agreement once approved. A comprehensive MOU clarifies financial and operational issues and expectations of oversight roles and responsibilities, and develops a defined periodic review process.

Westwood Charter School was granted its charter by the Westwood Unified School District on October 18, 2001. The district and the charter entered into an MOU to define the operational and oversight arrangements, and to establish a resolution process for any disagreements between the two entities. The charter school administrative operations are located on the Westwood High School campus in Lassen County. Westwood Charter Schools Services, Inc., provides consulting services to the charter school and is located in Lincoln, California. The charter school serves approximately 417 students enrolled in a non-classroom-based independent study program in five contiguous counties.

In November 2008, the Fiscal Crisis and Management Assistance Team (FCMAT) received a request from the Lassen County Office of Education for an Assembly Bill (AB) 139 extraordinary audit of the Westwood Charter School. The county office, under new leadership, had become aware that Westwood Charter School's superintendent was also the superintendent of the Westwood Unified School District. The county superintendent was concerned that this violated various California Education Code and Government Code sections regarding conflicts of interest and employment.

The study agreement between the Lassen COE and FCMAT specifies the following scope of work:

1. Review district policies and procedures related to provisions contained in the Government Code to determine if the district and/or the charter school are in direct violation of the following:

1090 – 1099 – Conflict of Interest

1126 – 1127 - Employment

Study Guidelines

FCMAT provides a variety of services to school districts and county offices of education upon request. Education Code Section 1241.5(b) permits a county superintendent of schools to review or audit the expenditures and internal controls of any school district in that county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The review or audit conducted by the county superintendent shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner. The basis of this review is to determine if sufficient documentation exists to further investigate the findings, or if there is evidence of criminal activity that should be reported to the local district attorney's office.

This is in accordance with Education Code Section 42638 (b), which states:

If the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, the county superintendent shall notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney.

Thus, FCMAT's focus is on the charter school's consulting contract for superintendency services and his concurrent employment by the authorizing school district to determine if the charter school and/or its personnel or board members violated California Government Code 1090, Conflict of Interest, and/or Government Codes 1126-1127, Employment.

AB 139 Extraordinary Audit Findings and Classifications

Each audit finding is classified as a material weakness, a reportable condition or an area for management improvement. These classifications are provided to assist the local education agency (LEA) in developing a corrective plan of action. The plan should first address the material weaknesses, then the reportable conditions, and finally the areas for management improvement.

Material Weakness

A material weakness is a significant deficiency in internal controls that could result in a material misstatement of the financial statements that will not be prevented or detected in a timely manner by employees during the normal course of business. A material weakness may also be a violation of current laws or regulations. It is the most serious type of finding.

Reportable Condition

A reportable condition is a significant deficiency in the design or operation of the LEA's internal control processes that could adversely affect its ability to record, process, summarize and report financial data.

Management Improvement

A management improvement is not a material weakness or reportable condition, but suggests improvements to the LEA's operations to conform to industry best practices.

FCMAT representatives visited the charter school in January 2009 and May 2009 to conduct interviews, collect data and review documents. Specifically, FCMAT reviewed business records including board policies, board minutes, administrative regulations, and contracts, financial reports and internal documents secured from various departments and from independent sources. The review process also included interviews with the superintendent, business office staff and other staff members to develop information concerning any alleged mismanagement, fraud or abuse.

This report is the result of those activities and is divided into the following sections.

- Executive Summary
- Conflicts of Interest
- Employment Practices
- Internal Controls

Study Team

The FCMAT study team was composed of the following members:

Deborah Deal
Fiscal Intervention Specialist
Fiscal Crisis and Management
Assistance Team
Los Angeles, California

Laura Haywood
Public Information Specialist
Fiscal Crisis and Management
Assistance Team
Bakersfield, California



Executive Summary

Background and Chronology

A county superintendent who becomes aware of an alleged misuse of public funds is responsible for determining whether sufficient evidence exists to support the allegations. The county superintendent is authorized to request a review or audit of the allegations and to report the results of the review or audit to the governing body of the LEA and to the local district attorney and law enforcement. AB 139 (2001) amended Education Code section 1241.5(b). This section defines the role of a county superintendent under these circumstances as follows:

At any time during a fiscal year, the county superintendent may review or audit the expenditures and internal controls of any school district in his or her county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The review or audit conducted by the county superintendent shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner.

In November 2008, FCMAT received a request from the Lassen County Office of Education for an AB 139 extraordinary audit of the Westwood Charter School. The county office, under new leadership, had become aware that under an independent contractor agreement, the charter school's superintendent was also the superintendent of the Westwood Unified School District. The county superintendent was concerned that this violated provisions of California Education Code and Government Code regarding conflicts of interest regulations through the employment of the superintendent by the authorizing school district.

The following depicts a chronology of events related to the establishment of Westwood Charter School, the hiring of the superintendent, the incorporation authorization of the charter by Westwood USD, and the events leading up to this investigation.

Date	Event
7/1/00	<i>Individual A</i> hired as Superintendent of the Westwood Unified School District (WUSD).
7/11/01	State Board of Education established the Westwood Charter School at its July 11, 2001 meeting.
9/19/01	Westwood Unified School District Board of Trustees passes resolution to establish a fund (Fund 09) with Lassen County.
9/26/01	Westwood Charter School, Inc., files for Articles of Incorporation.

Date	Event
3/25/03	Letter from Chief of Staff at San Diego City Schools to San Diego County Superintendent of Schools. The letter references a complaint from San Diego County Public Health Services about a student complaint, inadequate supervision, zoning issues, and difficulty contacting anybody at the various school sites for Westwood Charter School. The letter references <i>Individual A's</i> spouse as the WCS contact and <i>Individual A</i> as both the WUSD Superintendent and also President of the WCS Board. The letter concludes that the San Diego County Superintendent of Schools immediately undertake an investigation of the operation of the San Diego sites of WCS.
3/29/03	Letter to <i>Individual A</i> from parents at the WCS campuses in Garden Grove and Westminster concerning complaints about program staff and facilities.
4/15/03	Letter from San Diego County Superintendent of Schools to the State Superintendent of Public Instruction forwarding complaints against WCS campuses in San Diego County, with a copy to Lassen County Superintendent of Schools.
6/3/03	Letter from State Superintendent of Public Instruction to San Diego County Superintendent of Schools acknowledging receipt of his letter about potential problems at satellite campuses of WCS and stating that the California Department of Education's first step when receiving information about a charter school is to contact the charter school's authorizing district, in this case Westwood USD, to conduct a detailed investigation.
6/6/03	Letter from State Superintendent of Public Instruction to <i>Individual A</i> summarizing the concerns brought forth in the complaint and directing <i>Individual A</i> to investigate these potential issues at WCS and prepare a written response, with evidence that substantiates the findings. (This is, in fact, requesting Westwood USD's superintendent to investigate himself.)
6/11/03	Letter from <i>Individual A</i> to California Department of Education Director of School Fiscal Services Division, addressing the concerns listed in the June 6, 2003 letter from State Superintendent of Public Instruction.
8/9/04	<i>Individual A</i> files Statement of Information with the California Secretary of State listing <i>Individual A</i> as CEO and Director of WCSS, Inc.
5/4/07	WCSS, Inc. files Statement of Information form with California Secretary of State listing <i>Individual A</i> as CEO and Director of WCSS, Inc.
8/14/08	WCSS, Inc. officer files Statement of Information form with California Secretary of State stating there has been no change in any of the information from the Statement of Incorporation filed May 4, 2007.
11/17/08 to 11/18/08	FCMAT representative arrives in Westwood to begin assisting the district with budget issues and the initial investigation of the Westwood USD financial status.
11/18/08	FCMAT representative meets with county superintendent to apprise him of the initial investigation of the financial status of the Westwood USD. FCMAT believed that the relationship between the Westwood USD and WCS, and particularly the role of the superintendent, warranted further scrutiny and advised an audit of both the Westwood USD and WCS pursuant to Education Code section 1241.5 and AB 139 (fraud audit).

Date	Event
11/19/08	Letters sent to FCMAT CEO requesting an AB 139 Audit and to Westwood USD informing them that the county superintendent was requesting the audit.
11/20/08	County superintendent sends follow-up letter to FCMAT CEO, requesting that the relationship between WCS and the for-profit corporation, WCSS, Inc., should be subject to intense scrutiny.
12/9/08	Copy of Articles of Incorporation are received for Alliance Education Programs, Inc., which later changed to Westwood Charter School Services, Inc. Information from these Articles of Incorporation are referenced throughout this document.
12/10/08	<p>Lassen County Office of Education receives letter from California State Controller stating that the annual audit report for WCS for the fiscal year ended 6/30/07 did not meet the minimum reporting standards. As a result, the county office received a copy of the revised audit report that contained the following information <u>not contained in the original audit</u>:</p> <p style="text-align: center;">NOTE 12 – INVESTMENTS</p> <p>On December 12, 2002, Westwood Charter School, Inc. purchased from Charter School Resource Alliance all of the outstanding voting shares (4,000,000 shares) of Westwood Charter School Services, Inc. (formerly Alliance Education Programs, Inc.) for \$250,000.</p> <p>The terms of the purchase agreement required that Westwood Charter School, Inc. pay an initial down payment of \$50,000 to Charter School Resource Alliance with a promissory note on the balance of \$200,000. The promissory note is secured by a stock pledge agreement in which Charter School Resource Alliance was granted a first priority perfected security interest in all of the assets of Westwood Charter School Services, Inc. with the exception of Westwood Charter School Services, Inc.’s right to receive apportionment funding from the Average Daily Attendance payments. Interest on the promissory note is 5% per annum.</p> <p style="text-align: center;">NOTE 14 – RELATED PARTY TRANSACTIONS</p> <p>The superintendent of the sponsoring district, which has oversight responsibilities for the organization, is also retained as a consultant to the organization.</p> <p><i>The Organization is sole stockholder of Westwood Charter School Services, Inc. The Organization paid business service fees to Westwood Charter School Services, Inc. in the amount of \$403,700 during fiscal year.</i></p>

Date	Event
12/15/08	Lassen COE Business Director provides county superintendent a copy of the WCS 2008/09 First Interim Report. It was noted that, for 2008-09, \$720,924 was budgeted for Professional Consulting Services. This prompted an examination of WCS' unaudited actuals for fiscal years 2003-04 through 2007-08. The total spent and budgeted in this category during the past six-year period is \$4,682,525.
1/12/09	Lassen COE receives copy of letter dated January 9, 2009, from <i>Individual A</i> to FCMAT, requesting "the jurisdiction and justification behind your request for WCSS, Inc. financial records pertaining to <i>Individual A</i> ." <i>Letter was sent from Individual A to Deputy CBO of WCSS, Inc. requesting that the financial information pertaining to Individual A not be released.</i>
1/21/09	At FCMAT's direction, county superintendent requests documents from WCSS, Inc. under the authority of Education Code Section 47604.4(a) and 1241.5(b).
2/5/09	County superintendent receives letter from <i>Individual A</i> (postmarked 1/27/09) requesting attendance to the March 23, 2009, meeting of the WCS Board to "articulate the nature of the complaints prompting your inquiry" and directing the county superintendent to "forward your questions or issues to me or the Board and me at the District Office."
2/5/09	Letter from county superintendent to <i>Individual A</i> responding to letter postmarked 1/27/09 stating that county superintendent was <u>not</u> requesting a meeting with the WCS Board at this time. County superintendent reiterated the request for documents to be produced, not only under the previous Education Code cited, but also pursuant to California Government Code section 6250, et seq., also known as the California Public Records Act.
2/3/09	Letter from attorney representing WCS, responding to the request for documents.
2/12/09	County superintendent's response to attorney representing WCS letter restating the demand for the requested documents.
2/9/09	Letter from WCS Board President, inviting county superintendent to present his concerns at the WCS Board meeting scheduled for March 23, 2009, and stating that documents within their legal authority and jurisdiction to release will be provided.
2/25/09	Cover letter from Deputy CBO of WCSS, Inc. <i>Individual A</i> hand-delivered some of the documents as specified on FCMAT's document checklist. Note: The FCMAT documents checklist specified copies of all "warrants" issued. None were provided because WCS "does not issue warrants" according to letter from Deputy CBO of WCSS, Inc.
2/27/09	Letter from county superintendent to Deputy CBO of WCSS, Inc. again requesting documents and all "checks" issued to aforementioned individuals and adding <i>Individual A's</i> wife to the request.
3/25/09	Letter from county superintendent to Deputy CBO of WCSS, Inc. asking that she respond to the February 27, 2009, California Public Records Act request for documents.

Date	Event
3/20/09	Letter from attorney representing WCS in response to February 27, 2009, document request.
3/29/09	E-mail from FCMAT to WCS Board President calendaring site visit to conduct AB 139 review as requested by the Lassen COE under Education Code Sections 1241.5(b) and 47604.4(a).
3/31/09	E-mail from Deputy CBO of WCSS, Inc., advising that a packet containing the requested documents will be delivered to the Lassen COE by close of business on April 1, 2009.
3/31/09	Cover letter from Deputy CBO of WCSS, Inc. along with supporting documentation regarding documents requested per the California Public Records Act.
4/2/09	Response to FCMAT from Deputy CBO of WCSS, Inc. regarding the scheduled site visit to the Westwood Charter School.
5/4/09 & 5/6/09	Letter from county superintendent to WCS Board President requesting copies of Westwood Charter School board minutes pursuant to the California Public Records Act and WCS Board President's response.
5/4/09 & 5/7/09	Letter from county superintendent to Deputy CBO of WCSS, Inc. requesting a detailed transaction report of the \$576,000 spent for professional/consulting services as reported in the audit report for the period ending 6/30/07 pursuant to the California Public Records Act. Response from Deputy CBO of WCSS, Inc. and copy of requested expenditure report. Note: \$54,000 paid to <i>Individual A</i> ; \$414,000 paid to WCSS, Inc. No detailed backup documentation to support the payments provided.
5/6/09 & 5/13/09	Letter from attorney representing WCS to county superintendent and FCMAT, with a copy of a letter dated 4/10/09 (which neither FCMAT nor county superintendent received) with a California Public Records Request. The Lassen COE did respond to the request. All documents sent are referenced in this timeline/narrative. <i>Letter from county superintendent to attorney representing WCS acknowledging receipt of 5/6/09 letter.</i>
5/27/09	Letter from attorney representing WCS to county superintendent again requesting documents. Document sent by the Lassen COE and this letter crossed in the mail.



Conflicts of Interest

In situations that may involve conflicts of interest caused by the employment or appointment of a public official, such as a school board member or an administrator, it is important to consider the legal and ethical issues and to review any applicable board policies that may be even more restrictive than the statutory mandates.

California Government Code Section 1090 applies to elected officials of school districts and employees of school districts and states:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, “district” means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. In this AB 139 review, conflicts of interest are evidenced by contracts, expenditure reports, federal Form 1099, audit reports and other supporting documentation involving *Individual A* and the relationship with the district-sponsored charter school.

There are some exceptions to this prohibition, including California Government Code sections 1091 and 1091.5, which state that no conflict exists in situations in which the employee or official has only a remote interest in the contract. Remote interests are specified in California Government Code 1091(b) and include being an officer in a nonprofit corporation, landlord of the contracting party, an owner who owns less than 3% of a for-profit corporation and for whom the total income from dividends from the corporation does not exceed 5% of total annual income, and being a non-salaried member of a nonprofit corporation.

The Political Reform Act, California Government Code Section 81000 and following, was enacted by Proposition 9 in June 1974 and is the starting point in any consideration of conflict of interest laws in California. Chapter 7 of the Political Reform Act (California Government Code Sections 87100-87500) deals exclusively with conflict of interest situations. The Political Reform Act also limits the receipt of specified gifts and honoraria.

One of the legislative declarations at the outset of the Political Reform Act forms the foundation of the conflict of interest provisions: “Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused

by their own financial interests or the financial interests of persons who have supported them” (Section 81001(b)).

The stated intent of the Political Reform Act was to establish a mechanism whereby “Assets and income of public officials which may be materially affected by their official actions ... [are] disclosed and in appropriate circumstances the officials ... [are] disqualified from acting in order that conflicts of interest may be avoided” (Section 81002(c)).

The Fair Political Practices Commission (FPPC) is the agency primarily charged with advising officials, informing the public, and enforcing the conflict of interest provisions of the Political Reform Act.

To determine whether a conflict of interest exists under the Political Reform Act, the FPPC applies the following eight step process:

1. Is the individual a public official?
2. Is the public official making, participating in making, or influencing a governmental decision?
3. Does the public official have one of the six qualifying types of economic interest?
4. Is the economic interest directly or indirectly involved in the governmental decision?
5. Will the governmental decision have a material financial effect on the public official’s economic interests?
6. Is it reasonably foreseeable that the economic interest will be materially affected?
7. Is the potential effect of the governmental decision on the public official’s economic interests distinguishable from its effect on the general public?
8. Despite a disqualifying conflict of interest, is the public official’s participation legally required?

In California, state officers and certain state employees are required to file a Form 700, Statement of Economic Interests, issued by the FPPC. The Statement of Economic Interests is a public document and covers the following schedules:

- Schedule A-1: Investments of less than 10% ownership
- Schedule A-2: Investments 10% or greater ownership
- Schedule B: Real property
- Schedule C: Income, loans, and business positions – income other than gifts and travel payments
- Schedule D: Income – gifts
- Schedule E: Income, gifts and travel payments

On March 30, 2009, *Individual A* signed Form 700, Statement of Economic Interests declaring “**No reportable interest on the schedule.**”

According to Westwood Charter School Board Policy 9270, the charter school has adopted policies regarding conflicts of interest and statements of economic interest in accordance with California Government Code Sections 1126 and 87300-87313. These types of policies are typically adopted by the board of directors and usually include attachments that identify the positions that are required to disclose information and the categories for disclosure.

The district established Board Policy 9270(a), Conflict of Interest, that details incompatible activities, conflict of interest and financial interests in accordance with California Government Code Sections 1126 and 87300-87313 and identifies the position of Superintendent of Schools as a designated position in Category 1 in the Appendix Designated Positions/Disclosure Categories section.

Those who occupy positions in Category 1 are required to report interests as “contractors or subcontractors which are or have been within the past two years engaged in work or services of the type used by the district.” *Individual A* has been employed by the district since July 1, 2000, has reportable independent contractor earnings from Westwood Charter School from 2004 to the present, and did not report a financial interest on Form 700 with the district. Furthermore, *Individual A* is designated as the Chief Executive Officer for WCSS, Inc., per the official filing with the Secretary of State on the Statement of Information form dated August 9, 2004 and again on May 4, 2007. Again, this information was not disclosed on Form 700 as required.

The governing board may determine at any time whether any outside activity is incompatible as long as such determination is consistent with California Government Code Sections 1125-1128. Responses during interviews with the current employees and official board minutes indicated that the board has not acted on its policy.

A conflict of interest arises when an individual’s private interests, such as outside professional or financial relationships, might interfere with his or her professional obligations to a public employer. Such situations do not necessarily imply wrongdoing or inappropriate activities.

Conflicts of interest often arise in the course of outside consulting or other interests that may bring an individual significant financial gain. The perception that such incentives might lead to personal benefit may detract from the overall benefits to educational programs whose objectives depend on the individual’s direction. To resolve erroneous perceptions, such conflicts must be identified and mitigated or eliminated.

Strong conflict of interest policies can protect an educational agency from the following allegations:

- Exploitation of students for private gain
- Undue personal gain from public funds
- Compromise of educational priorities due to financial considerations
- Use of educational resources for private gain
- Adverse influence by those in leadership roles on the professional or academic activities of colleagues, staff or students as a result of outside interests

To protect against such situations, governing boards must exercise their duty to safeguard district assets and develop appropriate guidelines for disclosure. These guidelines could include, but need not be limited to, employee compliance with the local educational agency policies related to conflict of interest, and disclosure of outside professional activities and financial interests on their part or on the part of their immediate family members.

California Government Code Section 1126 states that outside paid activities may be incompatible with district employment if they require time periods that interfere with the proper, efficient discharge of the employee's duties, if they entail compensation from an outside source for activities that are part of the employee's regular duties, or if they involve using for private gain the district's name, prestige, time, facilities, equipment or supplies. California Government Code Section 1127 further states that that it is not the intent to prevent the employment by private business of a public employee, such as a peace officer, fireman, forestry service employee, among other public employees, who is off duty to do work related to and compatible with his regular employment, or past employment, provided the person or persons to be employed have the approval of their agency supervisor and are certified as qualified by the appropriate agency.

Under California Government Code section 1126, educational agencies may also adopt an incompatible activities policy. This type of policy could prohibit employees from engaging in outside work that is incompatible with their official duties. The statute allows an agency to have a policy, but the agency must formally adopt a policy to make it effective.

Employment Practices

Based on the documentation and review, FCMAT has found that violations of California Government Code Sections 1090-1098; 1125-1129; 87100-87103; 82000-87210; 87300-87313 and 87500 may have existed regarding the employment of *Individual A* as superintendent in the school district and the concurrent, independent contract for superintendency services with the charter school that was sponsored by the district.

California Government Code 91000 and 91001 describe enforcement provisions. The appropriate enforcement agencies are the California Attorney General and the “district attorney of any country in which a violation occurs,” whose powers and responsibilities are concurrent with those of the Attorney General.

As previously stated, under the Fair Political Practices Act, public officials are disqualified from participating in decisions in which they have a financial interest. The disqualification provision of the Fair Political Practices Act hinges on the effect a decision will have on a public official’s financial interests.

When a decision is found to have the requisite effect, the official is disqualified from making, participating in making, or using his or her official position to influence the making of that decision at any stage of the decision-making process. By establishing a broad, objective disqualification standard, the act attempted to cover both actual and apparent conflicts of interest between a public official’s private interests and his or her public duties.

It is not necessary to show actual bias on the part of the official to trigger disqualification, nor is it usually necessary to show that an official’s assets or the amount of his or her income that will be affected by a decision. Other, more attenuated effects may bring about an official’s disqualification. Though the disqualification requirement is broad, it is by no means all-inclusive.

Charter School Superintendent’s Compensation

Westwood Charter School provided board minutes from May 17, 2004 through January 12, 2009; detailed Employee Expense Report information from August 6, 2007 through February 1, 2009; and copies of federal Forms 1099 for tax years 2004 through 2008.

FCMAT did not receive detailed expense reports for *Individual A* that correlate with federal Form 1099 information from January 1, 2007 through August 5, 2007 and estimates that \$10,901.20 in additional consulting expenditures and the related days worked are not reflected in the table below.

Individual A’s expense reports stated that the amounts paid for monthly administrative stipends have been board approved. However, FCMAT found no evidence or notation in

the official minutes of the board that these stipends were approved at a public meeting of the board of directors.

The following table depicts the monthly amount for administrative stipends for various time periods and the related board of directors' citations.

Westwood Charter School – Administrative Stipends		
Authorization Date Cited	Monthly Amount of Administrative Stipend	Board Citation
April 2004	\$2,000.00	No board minutes provided to support this authorization
June 15, 2005	\$4,000.00	March 10, 2005 board meeting minutes approved at the next board meeting held on August 24, 2005 – no board minutes provided to support this authorization
August 10, 2007	\$4,181.20	June 15, 2007 board meeting minutes approved at the next board meeting held on September 25, 2007 – no board minutes provided to support this authorization

1099 Reporting

The table below shows the amounts paid to *Individual A* as reported by the Westwood Charter School on federal Form 1099 in the 2004 through 2008 tax years.

Westwood Charter School – Federal Form 1099 Payments to Individual A, Calendar Years 2004-2008	
Year	Total Miscellaneous Income Reported
2004	\$28,000.00
2005	\$32,000.00
2006	\$48,000.00
2007	\$70,607.20
2008	\$88,424.40
Total	\$267,031.60

The federal Form 1099 payments represented a monthly administrative stipend plus additional amounts for consulting fees based on a daily rate shown in the table below:

Payment Detail from Expense Sheets Signed by Individual A					
Time Period	Administrative Stipend	Additional Consulting Fees	Total	Number of Days Reported on Weekdays	Notes
August 17, 2004 to December 15, 2004	\$28,000.00	\$0.00	\$28,000.00	0	No detailed expense sheets provided
January 5, 2005 to December 5, 2005	\$32,000.00	\$0.00	\$32,000.00	0	No detailed expense sheets provided
January 9, 2006 to December 7, 2006	\$48,000.00	\$0.00	\$48,000.00	0	No detailed expense sheets provided
January 8, 2007 to November 26, 2007	\$48,906.00	\$10,800.00	\$59,706.00	9 – from August 6, 2007 to November 26, 2007 (incomplete backup information provided to FCMAT)	Detailed expense sheets start on August 6, 2007 Missing \$10,901.20 in additional consulting fee expense sheets
January 1, 2008 to November 13, 2008	\$50,174.40	\$38,250.00	\$88,424.40	49	
December 15, 2008 to January 22, 2009	\$ 8,362.40	\$3,150.00	\$11,512.40	7	Not a complete year
Total	\$215,442.80	\$52,200.00	\$267,642.80	65 – Missing 7 months in 2007	

Copies of checks drawn on the charter school checking account for other miscellaneous reimbursements that were provided to FCMAT payable to *Individual A* and or the spouse of *Individual A* were also signed by *Individual A*.

The most recent contract dated April 17, 2008 between the Westwood USD Board of Education and *Individual A* states that *Individual A* shall be compensated \$134,391 annually beginning July 1, 2008 plus \$2,400 auto allowance. In addition, the contract states that *Individual A* “shall render a full twelve (12) months of service to the District and will be entitled to twenty-five (25) days of annual paid vacation.” Vacation time cannot be accumulated from year to year according to the contract. The table above shows 65 con-

sulting days reported by *Individual A* on weekdays from January 8, 2007 to January 22, 2009. Forty-nine of these days are in one year, indicating that several of these consulting days may have occurred during contracted work days paid by the Westwood USD

Related Party Transactions Independent Auditors' Reports

On August 2, 2006, the independent auditor's report for Westwood Charter School, Inc. for the fiscal year ended June 30, 2006 contained the following in the Notes to Financial Statements section:

NOTE 14 – RELATED PARTY TRANSACTIONS

The superintendent of the sponsoring district, which has oversight responsibilities for the Organization, is also retained as a consultant to the Organization.

On September 24, 2007, the independent auditor's report for the fiscal year ended June 30, 2007 contained the following in the Notes to Financial Statements section:

NOTE 14 – RELATED PARTY TRANSACTIONS

The superintendent of the sponsoring district, which has oversight responsibilities for the Organization, is also retained as a consultant to the Organization.

The Organization is sole stockholder of Westwood Charter School Services, Inc. The Organization paid business service fees to Westwood Charter School Services, Inc. in the amount of \$403,700 during the fiscal year.

On August 18, 2008, the independent auditor's report for the fiscal year ended June 30, 2008 contained the following in the Notes to Financial Statements section:

NOTE 14 – RELATED PARTY TRANSACTIONS

The superintendent of the sponsoring district, which has oversight responsibilities for the Organization, is also retained as a consultant to the Organization.

The Organization is sole stockholder of Westwood Charter School Services, Inc. The Organization paid business service fees to Westwood Charter School Services, Inc. in the amount of \$387,000 during the fiscal year.

Secretary Of State – Statement of Information

Westwood Charter School Services, Inc. is required to file a Statement of Information with the California Secretary of State. The Statement of Information is a document for domestic nonprofit stock corporations due 90 days after the date of incorporation and

biannually thereafter. (Statutory provisions are found in Corporations Code section 1502, 2117, 6210, 8210 and 9660.)

Records received by the Lassen COE from the Secretary of State's office show that on August 9, 2004 and May 4, 2007, *Individual A* filed as CEO and Director of WCSS, Inc.

As the CEO and Director of WCSS, Inc., *Individual A* has a financial interest in the corporation. Unaudited actuals reports for Westwood Charter School obtained from the Lassen COE for the 2003-04 through 2007-08 fiscal years shows that the total spent for professional services was \$4,682,525. The majority of these expenditures were paid to WCSS, Inc. for bookkeeping services for Westwood Charter School operations.

Individual A was paid a full salary from Westwood USD; a monthly administrative stipend; additional consulting fees from Westwood Charter School; and is a corporate officer of Westwood Charter School Services, Inc. The table below shows that *Individual A* had total reportable earnings of \$847,388.37 from 2004 to December 31, 2008 from Westwood Charter School and Westwood USD.

Total Reportable Earnings from Westwood Charter School and Westwood USD for the period 2004 through 2008			
Westwood Charter School- Federal Form 1099 Payments to Individual A		Westwood USD – Federal Form W-2 Payments to Individual A	Combined Total Reportable Earnings from Westwood Charter School and Westwood USD
Year	Total Miscellaneous Income Reported	Total W2 Earnings Reported	
2004	\$28,000.00	\$106,835.37	\$134,835.37
2005	\$32,000.00	\$109,727.46	\$141,727.46
2006	\$48,000.00	\$113,814.47	\$161,814.47
2007	\$70,607.20	\$124,861.47	\$195,468.67
2008	\$88,424.40	\$124,506.80	\$212,931.20
Total	\$267,031.60	\$579,745.57	\$847,388.37

Individual A's spouse is a full-time employee of WCSS, Inc. and has W-2 wage and tax statements that total \$149,154.64 from 2006 through 2008.

The county superintendent requested information under the California Public Records Act from WCSS, Inc. to determine if *Individual A*, the spouse of *Individual A*, and/or Westwood Charter School board members had received any compensation from WCSS,

Inc. Although *Individual A* is listed as both a director and CEO of WCSS, Inc., a letter from the attorney representing Westwood Charter School dated February 2009 states:

“WCSS does not now, nor has it ever employed Individual A nor to the best of its knowledge, has Individual A sought or received any payments of WCSS funds.”

Based on the findings in this report, FCMAT determined that material weaknesses and deficiencies exist in the conflict of interest, employment regulations and related party transactions by Westwood USD and Westwood Charter School.

Recommendations

The county superintendent should:

1. In accordance with Education Code Section 42638(b), notify the governing board of the school district, the State Controller, the Superintendent of Public Instruction, and the local district attorney that, based on the findings of the FCMAT report, violations of California Government Code Sections 1090, 87300, 1126 and 1127 have occurred.

The district’s governing board should:

1. Exercise its oversight role to request designated employees to confirm that outside activities do not conflict with their role, responsibility, or work calendar required under the terms of their employment or voluntary service with the district.
2. Exercise its authority to question designated employees and members of the board regarding outside activities or financial interests included in California Government Code sections 1090 and 1126.
 - a. Ensure that the district’s elected officials, administration and designated employees complete ethics training regarding the roles and responsibilities of public officials in relation to conflicts of interest and the Fair Political Practices Act.
3. Require that designated employees and members of the board of education complete Form 700, Statement of Economic Interests, annually in accordance with Westwood USD Board Policy 9270 and California Government Code Sections 1126 and 87300-87313.

The charter’s board of directors should:

1. Ensure that contractors’ and/or employees’ outside activities do not conflict with their role, responsibility, or work calendar required under the terms of their employment or service with the charter school.

2. Exercise its authority to question officers, designated employees and members of the board of directors regarding outside activities or financial interests included in California Government Code Sections 1090 and 1126.
3. Ensure that the board of directors, administration and designated employees complete ethics training regarding the roles and responsibilities of public officials in relation to conflicts of interest and the Fair Political Practices Act.



Internal Controls

Illegal acts, misappropriation of funds or fraud can include an array of irregularities characterized by intentional deception and misrepresentation of material facts. The principal mechanism for deterring fraud or illegal practices in an organization is a strong system of internal controls. Effective internal control processes provide reasonable assurance that a district's operations are effective and efficient, that the financial information produced is reliable, and that the district is operating in compliance with all applicable laws and regulations. The internal control structure includes the policies and procedures used by district staff, accounting and information systems, the work environment and the professionalism of employees.

The lack of proper internal controls may include but is not limited to the following:

- Failure to segregate duties and responsibilities of authorization
- Unrestricted access to assets or sensitive data (such as cash, fixed assets, or personnel records)
- Not recording transactions, resulting in lack of accountability
- Not reconciling assets with the appropriate records
- Unauthorized transactions
- Unimplemented controls because of unqualified personnel
- Collusion among employees where little or no supervision exists

A system of internal controls consists of policies and procedures designed to provide management with reasonable assurance that the school district achieves its objectives and goals. Traditionally referred to as hard controls, these include segregation of duties, limiting access to cash, management review and approval, and reconciliations. Other types of internal controls include soft controls such as management tone, performance evaluations, training programs, and maintaining established policies, procedures and standards of conduct. The internal control environment also includes the integrity, ethical values and competence of personnel; the philosophy and operating style of management; the way management assigns authority and responsibility and organizes and develops its people; and the attention and direction provided by the governing board and executive management.

Effective internal controls are designed to ensure the following:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations

Internal controls can provide only reasonable assurance, not absolute assurance, that the district will be successful in achieving its goals and objectives.

Material Weaknesses

FCMAT found significant material weaknesses in the district's internal controls related to conflicts of interest and employment practices, which increase the probability that fraud and/or abuse can occur.

Every organization faces a variety of internal and external risks that must be identified, assessed and managed. While all employees in the organization bear some responsibility for internal controls, the governing board, superintendent and upper management are ultimately responsible. These leaders must demonstrate high ethical values and integrity to set an example for the organization as a whole.

Regular external audits are a strong deterrent to mismanagement and fraud, but they cannot serve as the only method of ensuring accountability. It is imperative for the district and charter school governing boards to review the findings and recommendations disclosed during the audit process to hold the responsible parties accountable. Audit reports for both Westwood USD and Westwood Charter School disclose related party transaction statements in the Notes to Financial Statements section.

Recommendations

The district should:

1. Develop and implement more stringent oversight and separation of duties regarding the district's oversight responsibilities for the charter school.
2. Ensure that all contracts for work to be performed, including independent contractor agreements, are in compliance with the California Education and Government Codes related to conflict of interest and employment practices.
3. Review the district and charter board policies on conflict of interest and the requirements under the Fair Political Practices Commission related to the disclosure of certain financial interests and sources of income to the public. Confirm whether any actions by *Individual A* related to earnings and other compensation by both entities resulted in a personal or financial benefit to *Individual A*.

Appendices

Appendix A - Legal References and Web Sites

Appendix B - Study Agreement

Appendix A

Legal References and Web Sites

Education Code

1241.5 – Audit by County Superintendent

35107 – School district employees

35230-35240 –Corrupt practices

42638(b) – Procedure on disapproval of district orders

47604.4(a) – County superintendent of schools; authority to monitor and investigate charter schools within county

California Government Code

6250 - California Public Records Act

1090 - 1098 Prohibitions applicable to specified officers

1125 - 1129 Incompatible activities

81000 - 91015 Political Reform Act of 1974, specifically:

82019 - Definition of designated employee

87100 - 87103.6 General prohibitions

82000 - 87210 Disclosure

87300 - 87313 Conflict of Interest Code

87500 - Statement of Economic Interests

91000 - 91014 Enforcement

Code of Regulations, Title 2

18110 18997 Regulations of the Fair Political Practices Commission, specifically:

18702.5 Public identification of a conflict of interest for Section 87200 filers

Web Sites:

Fair Political Practices Commission: <http://www.fppc.ca.gov>

California Law: <http://leginfo.public.ca.gov>

Appendix B

Study Agreement



FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM STUDY AGREEMENT December 9, 2008

The FISCAL CRISIS AND MANAGEMENT ASSISTANCE TEAM (FCMAT), hereinafter referred to as the Team, and the Lassen County Office of Education hereinafter referred to as the COE, mutually agree as follows:

1. BASIS OF AGREEMENT

The Team provides a variety of services to school districts and county offices of education upon request. Based on the provisions of Assembly Bill 139 and Education Code Section 1241.5 (b) or (c), the County Superintendent of Schools may review or audit the expenditures and internal controls of any school district or charter school in his or her county if he or she has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The review or audit conducted by the county superintendent shall be focused on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and shall be conducted in a timely and efficient manner.

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentation of material facts. The principal mechanism for deterring fraud or illegal practices in an organization is a strong system of internal controls. Effective internal control processes provide reasonable assurance that a district's operations are effective and efficient; that the financial information produced is reliable; and that the district is operating in compliance with all applicable laws and regulations. The internal control structure includes the policies and procedures used by district staff, accounting and information systems, the work environment and the professionalism of employees. Other types of internal controls include soft controls such as management tone, performance evaluations, training programs, and maintaining established policies, procedures and standards of conduct. The internal control environment also includes the integrity, ethical values and competence of personnel; the philosophy and operational

style of management; the way management assigns authority and responsibility; how management organizes and develops its people; and the attention and direction provided by the Governing Board and senior management.

Education Code Section 42638 (b) further states that if the county superintendent determines that there is evidence that fraud or misappropriation of funds has occurred, the county superintendent shall notify the governing board of the school district, the state controller, the Superintendent of Public Instruction and the local district attorney. Ineffective internal controls may include, but are not limited to, the following:

- Failure to segregate duties and responsibilities of authorization
- Unrestricted access to assets or sensitive data (e.g. cash, fixed assets, personnel records)
- Failure to record transactions resulting in lack of accountability
- Failure to reconcile assets with the appropriate records
- Unauthorized transactions
- Unimplemented controls because of unqualified personnel
- Collusion among employees where little or no supervision exists

The purpose of the AB 139 Extraordinary Audit Report is to determine if sufficient documentation exists to further investigate the findings or if there is evidence of criminal activity that should be reported to the local district attorney's office.

The COE has requested that the Team provide for the assignment of professionals to study specific aspects of the Westwood Unified School District and the district sponsored Westwood Charter School. These professionals may include staff of the Team, County Offices of Education, the California State Department of Education, school districts, or private contractors. All work shall be performed in accordance with the terms and conditions of this Agreement.

2. SCOPE OF THE WORK

A. Scope and Objectives of the Study

The scope and objectives of this study pursuant to the provisions of Education Code Section 1241.5:

- 1) Review district policies and procedures related to provisions contained in the Government Code to determine if the district and/or Charter School are in direct violation of the following:

A) 1090 -1099 - Conflict of Interest regulations

B) 1126 -1127 - Employment

B. Services and Products to be Provided

- 1) Orientation Meeting - The Team will conduct an orientation session at the Lassen County Office of Education to brief COE administration and supervisory personnel on the procedures of the Team and on the purpose and schedule of the study.
- 2) On-site Review - The Team will conduct an on-site review at the Westwood Charter School Services and at school sites if necessary; and will continue to review pertinent documents off-site.
- 3) Progress Reports - The Team will inform the District and COE of material issues as the review is performed.
- 4) Draft Reports - Sufficient copies of a preliminary draft report will be delivered to the COE administration for review and comment.
- 6) Final Report - Sufficient copies of the final study report will be delivered to the COE following completion of the review.
- 7) Follow-Up Support - Subsequent to the completion of the study, the Team will meet with the COE as requested by the COE to discuss the findings and recommendations of the report

3. PROJECT PERSONNEL

The study team will be supervised by Anthony L. Bridges, Deputy Executive Officer of the Fiscal Crisis and Management Assistance Team, Kern County Superintendent of Schools Office. The study team may also include:

- A. Debi Deal, FCMAT Fiscal Intervention Specialist
- B. FCMAT Consultant, CPA, or Certified Fraud Examiner (CFE)

Other equally qualified consultants will be substituted in the event one of the above noted individuals is unable to participate in the study.

4. PROJECT COSTS

The cost for studies requested pursuant to E.C. 42127.8 (d) (1) shall be:

- A. \$500.00 per day for each Team Member while on site, conducting fieldwork at other locations, preparing and presenting reports, or participating in meetings.

- B. All out-of-pocket expenses, including travel, meals, lodging, etc. Based on the elements noted in section 2 A, the total cost of the study is estimated at \$8,500.00. The COE will be invoiced at actual costs, with 50% of the estimated cost due following the completion of the on-site review and the remaining amount due upon acceptance of the final report by the COE.
- C. Any change to the scope will affect the estimate of total cost.

Payments for FCMAT services are payable to Kern County Superintendent of Schools- Administrative Agent. Based on the provisions of AB 139, the COE is eligible to submit a claim for reimbursement of 100% of the cost of this review after the report has been issued and FCMAT has billed the COE and received payment.

5. RESPONSIBILITIES OF THE COE

- A. The COE will provide office and conference room space while on-site reviews are in progress.
- B. The COE will provide the following (if requested):
 - 1) A map of the local area
 - 2) Existing policies, regulations and prior reports addressing the study request
 - 3) Current organizational charts
 - 4) Current and four (4) prior years' audit reports
 - 5) Any documents requested on a supplemental listing
- C. The COE Administration will review a preliminary draft copy of the study. Any comments regarding the accuracy of the data presented in the report or the practicability of the recommendations will be reviewed with the Team prior to completion of the final report.

Pursuant to EC 45125.1(c), representatives of FCMAT will have limited contact with Charter/District pupils. The COE shall take appropriate steps to comply with EC 45125.1(c).

6. PROJECT SCHEDULE

The following schedule outlines the planned completion dates for key study milestones:

Orientation:	January, 2009
Charter School Staff Interviews:	January, 2009

Exit Interviews:	January, 2009
Preliminary Report Submitted	To be determined
Final Report Submitted	To be determined
Board Presentation	To be determined

7. CONTACT PERSON

Please print name of contact person: Jud Jensen, County Superintendent

Telephone	530 257-2196
	FAX 530 257-2518

Internet Address jjensen@lassencoe.org

Jud B. Jensen, Superintendent
Lassen County Office of Education

Date



Barbara Dean, Deputy Administrative Officer
Fiscal Crisis and Management Assistance Team

December 9, 2008

Date