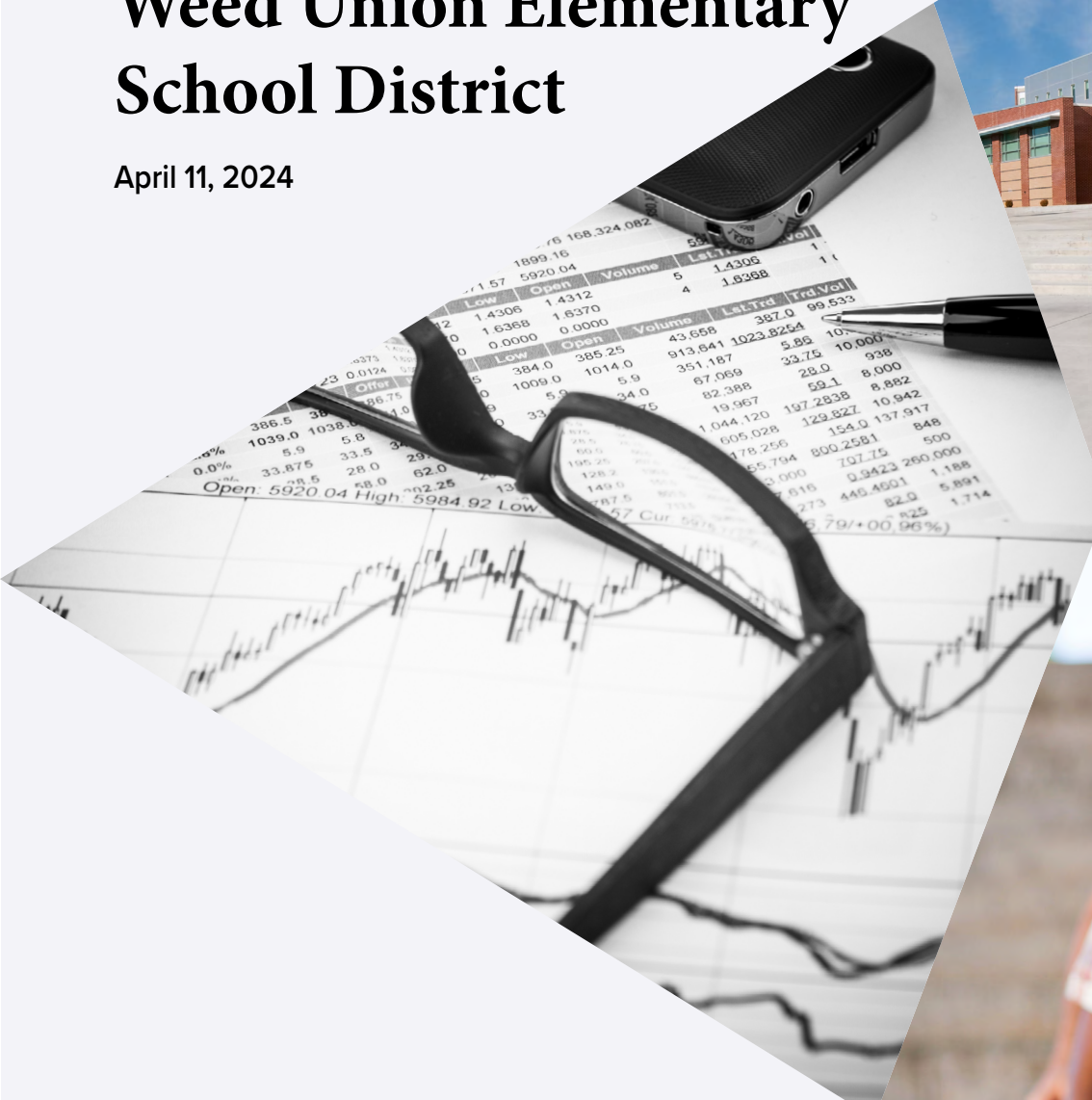


FCMAT

FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

Extraordinary Audit of the Weed Union Elementary School District

April 11, 2024



Siskiyou County Superintendent of Schools

Michael H. Fine
Chief Executive Officer

April 11, 2024

Allan S. Carver, Superintendent
Siskiyou County Office of Education
609 South Gold Street
Yreka, CA 96097

Dear Superintendent Carver:

In July 2022, the Siskiyou County Superintendent of Schools and the Fiscal Crisis and Management Assistance Team (FCMAT) entered into an agreement for FCMAT to conduct an Assembly Bill (AB) 139 extraordinary audit of the Weed Union Elementary School District to determine if fraud, misappropriation of funds or other illegal fiscal practices may have occurred.

The audit was requested because the county superintendent had received allegations of possible fraud, misappropriation of funds or other illegal fiscal practices by the school district. The county superintendent has performed sufficient due diligence to believe the allegations merit investigation.

The study agreement's scope and objective for this report are shown in Appendix A and include the following:

Siskiyou County superintendent of schools requested that FCMAT conduct an AB 139 Extraordinary Audit, in accordance with Education Code Section 1241.5 (b), to review the district's process for awarding contracts, the possible intentional misrepresentation of information used to make board decisions on construction or other contracts, payment between related parties and the existence of any related conflict of interest.

FCMAT will review information that was prepared and presented by the district staff and/or consultants as the basis for board decisions related to construction and other contracts, test awarded contracts from July 2020 to August 2023, review any applicable board policies, agendas and minutes, and utilize other investigatory means as appropriate.

The scope of work includes a review, based on the auditors' judgment and a sample of transactions and records for this period. Testing and review results are intended to provide reasonable but not absolute certainty about whether the district's processes or procedures for contracts followed board policy, public contract code laws and best practices.

The main focus of this review is to determine, based on the testing performed, the following:

1. Whether the district or its administration was involved in any undisclosed or inappropriate related-party transactions that conflicted with state and federal policies and standards or that violated conflict of interest laws.
2. Whether the district's administration intentionally misrepresented information to the school board related to construction or other contracts.

3. Whether adequate management and internal controls are in place regarding the district's existing and anticipated contractual commitments.
4. Based on that assessment, whether fraud, misappropriation of funds or other illegal fiscal practices may have occurred.

This final report contains the study team's findings and recommendations. FCMAT appreciates the opportunity to serve you and extends thanks to all the staff of the Siskiyou County Office of Education and Weed Union Elementary School District for their cooperation and assistance during this review.

Sincerely,

A handwritten signature in black ink that reads "Michael H. Fine". The signature is written in a cursive, flowing style.

Michael H. Fine
Chief Executive Officer

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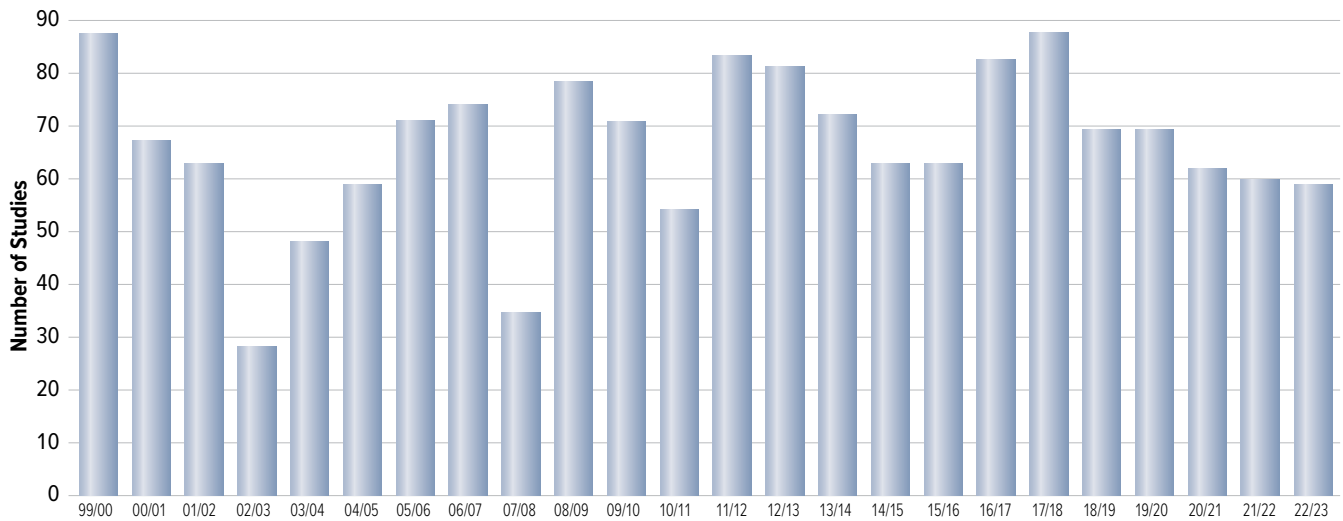
About FCMAT

FCMAT’s primary mission is to assist California’s local TK-14 educational agencies to identify, prevent, and resolve financial, human resources and data management challenges. FCMAT provides fiscal and data management assistance, professional development training, product development and other related school business and data services. FCMAT’s fiscal and management assistance services are used not just to help avert fiscal crisis, but to promote sound financial practices, support the training and development of chief business officials and help to create efficient organizational operations. FCMAT’s data management services are used to help local educational agencies (LEAs) meet state reporting responsibilities, improve data quality, and inform instructional program decisions.

FCMAT may be requested to provide fiscal crisis or management assistance by a school district, charter school, community college, county office of education, the state superintendent of public instruction, or the Legislature.

When a request or assignment is received, FCMAT assembles a study team that works closely with the LEA to define the scope of work, conduct on-site fieldwork and provide a written report with findings and recommendations to help resolve issues, overcome challenges and plan for the future.

Studies by Fiscal Year



FCMAT has continued to make adjustments in the types of support provided based on the changing dynamics of TK-14 LEAs and the implementation of major educational reforms. FCMAT also develops and provides numerous publications, software tools, workshops and professional learning opportunities to help LEAs operate more effectively and fulfill their fiscal oversight and data management responsibilities. The California School Information Services (CSIS) division of FCMAT assists the California Department of Education with the implementation of the California Longitudinal Pupil Achievement Data System (CALPADS). CSIS also hosts and maintains the Ed-Data website (www.ed-data.org) and provides technical expertise to the Ed-Data partnership: the California Department of Education, EdSource and FCMAT.

FCMAT was created by Assembly Bill (AB) 1200 in 1991 to assist LEAs to meet and sustain their financial obligations. AB 107 in 1997 charged FCMAT with responsibility for CSIS and its statewide data management work. AB 1115 in 1999 codified CSIS’ mission.

AB 1200 is also a statewide plan for county offices of education and school districts to work together locally to improve fiscal procedures and accountability standards. AB 2756 (2004) provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans.

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

On September 17, 2018 AB 1840 was signed into law. This legislation changed how fiscally insolvent districts are administered once an emergency appropriation has been made, shifting the former state-centric system to be more consistent with the principles of local control, and providing new responsibilities to FCMAT associated with the process.

Since 1992, FCMAT has been engaged to perform more than 1,400 reviews for LEAs, including school districts, county offices of education, charter schools and community colleges. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The team is led by Michael H. Fine, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

Introduction

Background

Located in Siskiyou County, the Weed Union Elementary School District is a single-school district with a five-member governing board and serves approximately 323 students in transitional kindergarten through grade eight (TK-8), according to 2022-23 data from the California Department of Education (CDE). Because of its northern California location, this region experiences a Mediterranean climate, with warm, dry summers and cooler, wetter winters with occasional snow. Extreme weather such as wildfires, attributed to dry conditions and strong winds, are additional factors that affect the school district's facilities.

During a board meeting on December 12, 2019, the district's chief business official at the time shared information regarding flooding and water damage that happened during the recent Thanksgiving break. As a follow-up, the superintendent at the time gave updates during subsequent board meetings regarding an insurance claim and stated that a company was hired to clean up damage in the district office, conference room, two special day classrooms and the library. The district's staff and board believed that the proper steps had been taken to remediate the damage caused by the flooding months prior.

Concurrently during this period, the superintendent/principal resigned and the district started the hiring process for a replacement. Subsequently, on April 23, 2020, the board appointed Jon Ray as superintendent/principal, pending contract negotiations.

According to Superintendent/Principal Ray, once he began his position and reported to his office, he noticed an odd yet familiar smell. During a previous position at another school district, Superintendent/Principal Ray had experienced that same smell and recalled that an investigation revealed mold. With that knowledge and experience and a certain level of concern, Superintendent/Principal Ray contracted with a vendor to investigate. As suspected, mold was discovered in the exact locations where the flooding had occurred during the prior Thanksgiving break. Although the area had been remediated, staff indicated that drywall had not been removed in that location; they did not know the extent of the remediation performed in the rest of the building.

Following four investigations — three by the district, an initial investigation by Asbestos Science Technologies, Inc. (ASTI) in October 2020, one by Regis Group in June 2021, one by GuziWest Inspection and Consulting (GuziWest) in June 2022 at the behest of the county superintendent of schools, and one by the Siskiyou County Health Department in September 2021 at the request of the county superintendent — the presence of mold/fungal contamination was confirmed. The contamination was found to be confined to two classrooms, a library, a computer lab, and the main office including the side offices. The district commissioned another investigation by GuziWest, which found that potential structural/design issues of the buildings allowed water damage to occur.

The county superintendent's oversight and review of district contracts noted that the terms "mold" and "asbestos" were used interchangeably when addressing issues and seeking approval for contracts with vendors pending board approval. FCMAT's review of the reports noted that the district's report from GuziWest Inspection and Consulting confirmed the need to mitigate mold growth and raised concerns about asbestos. According to the district, asbestos is known to exist in the building materials used in the district's structures. Despite the initial reports emphasizing the need for mold mitigation, it was later suspected and subsequently confirmed that the district's mitigation costs would be significantly higher because there was also asbestos. During FCMAT interviews, the district explained that the entire project began because mold was discovered and later asbestos; therefore, the decision was made to explore options of repairing or replacing the buildings as a safety issue for students.

When mold spores were detected in the school facilities, Resolution No. 20-21-03, approved by the district's governing board on October 23, 2020, authorized a partial closure of the school facilities to address the health risks. The board-approved resolution delegates authority to the superintendent to take necessary actions for mold remediation, including identifying remediation vendors, arranging alternative facilities for affected classrooms and administrative offices, and overseeing the overall response. The resolution emphasizes the commitment to the health and safety of the school community and includes provisions for addressing any issues that may arise. It also declares the resolution an emergency measure for the immediate welfare of the schools. The resolution requires the superintendent to notify the full board after taking actions, and any actions taken are subject to subsequent ratification by the board.

During this same October 2020 board meeting, the board approved several contracts for the construction of the Emergency Portable Project. This project was for the installation of two portable buildings to replace the current ones that were deemed unsafe and closed. Board agendas after October 2020 revealed a recurring focus on funding acquisition and contractual agreements for a significant construction project that the district calls the Weed Elementary School replacement project.

In discussions with the district and the Office of Public School Construction (OPSC), the district considers the Weed Elementary School Replacement Project as one project. OPSC explained to FCMAT that it is their understanding that the district chose to make the Weed Elementary School Replacement Project one single project, and it is further confirmed as a single project because the school district submitted only one Division of the State Architect's (DSA's) plan set for the entire school site.

As mentioned earlier, additional mold inspections were conducted districtwide. On June 17, 2021, another emergency resolution, No. 20-21-14, was approved, resulting in the closure of an additional 14 classrooms and three administrative offices. On June 10, 2021, the district became part of the California Uniform Public Construction Cost Accounting Act (CUPCCAA) (details on how this change affected approval regulations are discussed below). Similar to the prior resolution, the board delegated its powers and duties to the superintendent to address the mold infestation. The superintendent is required to notify the full board after taking action, and any actions are subject to subsequent ratification by the board.

After the emergency resolutions, the district encountered financial difficulties that affected both the construction project and day-to-day school operations. Specifically, the district's 2021-22 first interim report was self-certified as qualified, meaning the district may be unable to meet its financial obligations for the current and two subsequent fiscal years. However, the county superintendent's analysis, as outlined in a March 1, 2022 letter, concluded that the district would not meet its financial obligations in the current fiscal year, prompting a downgrade of the district's certification from qualified to negative.

The concerns raised in the letter included the following:

- On February 2, 2022, the county superintendent was copied on a letter from the Office of Public School Construction warning the district of the continued practice of awarding bids for facility construction without state funding authorization. The value of encumbrances in the district's financial system at that time exceeded \$8 million and the district did not have the funds to support these contractual commitments. The district represented that the State Allocation Board (SAB) may determine the amount of funding available for the district at its March 2022 meeting.
- On February 9, 2022, SCOE sent a letter of concern regarding the Review of Public Disclosure of Collective Bargaining Unit Agreement between WUESD and the certificated and classified bargaining unit and the confidential/management employees.

- On February 10, 2022, the district asked the county superintendent if it would be possible to transfer \$500,000 from the general fund to the special reserve fund for capital projects (construction fund) to support construction-related contract invoices. This caused the county superintendent to closely analyze the cash balances at the district, which revealed low cash levels across all funds and less than \$20,000 remaining in the general fund after the February payroll (including anticipated revenues for that same month).

Because of the issues raised and their effect on the district's finances, the county superintendent, in accordance with the provisions of Education Code (EC) 42127.6, determined that the district would not meet its financial obligations. Consequently, the county superintendent designated the district as a "lack of going concern," which means the district may be unable to meet its financial obligations for the current and two subsequent years. The district's financial position continued to deteriorate, as confirmed by its 2021-22 second interim report, in which the district self-certified as negative despite taking action to reduce or eliminate 10.6 full-time equivalent (FTE) classified positions.

As part of the county superintendent's oversight, they invoked their authority to stay and rescind any action inconsistent with the district's ability to meet its financial obligations in the current and subsequent fiscal year. In addition, the county superintendent appointed a fiscal advisor to help the district develop a fiscal stabilization plan, monitor adherence, and communicate relevant matters to the county office. Given the complexity of the construction process, the county superintendent assigned a fiscal advisor with a strong construction background to guide and monitor the district's construction project while keeping the county office informed of matters relevant to the project and the district's financial condition.

In an August 5, 2022, letter addressed to Superintendent/Principal Ray, the county superintendent explicitly highlighted their concerns and the lack of satisfactory cooperation from the district. The letter detailed various stays imposed on the district and the inadequate responses received. In response to the district's actions, the letter imposed a stay on all board actions related to the Weed Elementary School replacement project, including contracts, change orders and payments. The district was directed to provide an accounting of accounts payable for the project. The letter also demanded that the district retain documents related to facilities maintenance, construction, and capital improvement projects.

In addition, the county superintendent received allegations of possible fraud, misappropriation of funds, or other illegal fiscal practices involving district staff and the handling of construction contracts. Consequently, and in accordance with EC 1241.5(b), in July 2022, the county superintendent formally requested that FCMAT conduct an AB 139 extraordinary audit. This audit examines the district's process for awarding contracts, potential intentional misrepresentation of information crucial for board decisions related to construction or other contracts, payment between related parties, and the possible existence of conflicts of interest.

Study and Report Guidelines (AB 139 Audit Authority)

Education Code 1241.5(b) permits a county superintendent of schools to review or audit the expenditures and internal controls of any school district in the county if they have reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. This is known as an AB 139 extraordinary audit or review.

The purpose of an extraordinary audit is to determine if sufficient evidence exists that fraud, misappropriation of funds, or other illegal fiscal practices may have occurred, and to document the findings for referral to the local district attorney's office and further investigation by law enforcement if needed.

In writing its reports, FCMAT uses the Associated Press Stylebook, a comprehensive guide to usage and accepted style that emphasizes conciseness and clarity. In addition, this guide emphasizes plain language, discourages the use of jargon, and capitalizes relatively few terms.

Extraordinary Audit Procedures

An extraordinary audit is conducted based on the study team’s experience and judgment. These audits have many components, including obtaining and examining available original source documents; corroborating documents and information through third-party sources when possible; interviewing potential witnesses; gaining an understanding of internal controls applicable to the scope of the work; and assessing factors such as intent, capability, opportunity, and possible pressures or motives.

The audit consists of gathering adequate information about specific allegations, establishing an audit plan, and performing audit test procedures, often based on sampling of transactions, using the team’s judgment and experience to determine whether fraud, misappropriation of funds, or other illegal fiscal practices may have occurred; evaluating the loss that resulted from the inappropriate activity; and determining who was involved and how it may have occurred.

FCMAT visited the Weed Union Elementary School District and conducted on-site fieldwork on July 19 and 20 and September 6, 2023, and performed additional off-site work during the weeks before and after those dates. FCMAT interviewed county office staff, district board members, district administrators, construction managers, architects, and a representative from the Office of Public School Construction. FCMAT also consulted with Schools Legal Services. The purpose of FCMAT’s interviews was to gain an understanding of the district’s construction project and processes and the events that transpired during the period under review, including any alleged financial mismanagement, fraud, or abuse.

School district construction project delivery methods are typically one of the following types:

- Design-bid-build.
- Lease-leaseback.
- Construction management multiprime.
- Construction manager at-risk.
- Design-build.
- Developer built.
- General contractor.

These types of delivery methods are described in the Association of California Construction Managers’ (ACCM’s) *2018 Project Delivery Handbook, A Guide to California School and Community College Facility Delivery*, also known as the ACCM Project Delivery Handbook. The district used construction management multiprime as its construction delivery method.

Following fieldwork, FCMAT continued its review and analysis based on all information received. The team examined numerous district- and county-provided documents and information provided in an anonymous letter, including but not limited to the following:

- Construction contracts, vendor contracts, agreements, and schedules.
- Documents and analysis regarding potential related-party transactions.

- Office of Public School Construction (OPSC) communications and funding/award letters.
- Architect communications, billings and inspection reports.
- Construction manager pay application worksheet and construction project schedules.
- Purchase orders and purchase order reports, invoices, expense reports, receipts, and other such documents.
- Board minutes and agendas.
- Management reimbursement and employment documents.
- General ledger detail and journal entry reports.
- Financial reports (e.g., first and second interim, unaudited actuals, adopted budget).
- District board policies and administrative regulations.
- Job descriptions.
- Audit reports and mold and asbestos reports.
- Emails, social media, and public database documents.

The FCMAT audit team reviews and evaluates the available information and documents that fall within the audit scope. The team then assesses this data to determine whether it contributes to a finding in the report. Other information may also be included when relevant.

Study Team

The study team was composed of the following members:

Jennifer Noga, CFE
FCMAT Intervention Specialist

Marcus Wirowek, CFE
FCMAT Intervention Specialist

Michael W. Ammermon
CPA, CFE, CRFAC, DABFA
FCMAT Intervention Specialist

Mat Havens
FCMAT Consultant

John Lotze
FCMAT Technical Writer

Each team member reviewed the draft report to confirm its accuracy and to achieve consensus on the final recommendation.

Fraud, Occupational Fraud and Internal Controls

Fraud can include an array of irregularities and illegal acts characterized by intentional deception and misrepresentations of material facts. Although all employees have some degree of responsibility for internal controls, the governing board, superintendent and senior management are ultimately responsible.

Occupational Fraud

Occupational fraud includes asset misappropriation, corruption, and fraudulent financial statements. Occupational fraud occurs when an organization's owners, executives, managers or employees use their position within the organization to deliberately misuse or misapply the employer's resources or assets for personal benefit.

Asset misappropriation includes the theft or misuse of local educational agency (LEA) assets and may include taking cash, inventory or other assets, and/or fraudulent disbursements. Asset misappropriation is the largest category of occupational fraud and includes numerous fraudulent disbursement schemes. Corruption schemes involve one or more employees or board members using their influence in business transactions to obtain a personal benefit that violates that employee's duty to the employer or the organization; conflicts of interest fall into this category. Financial statement fraud includes intentionally misstating or omitting material information in financial reports.

Although there are many different types of fraud, occupational fraud, including asset misappropriation and corruption, is more likely to occur when employees are in positions of trust and have access to assets. Embezzlement occurs when someone who is lawfully entrusted with property takes it for his or her personal use. Common elements in all fraud include the following:

- Intent, or knowingly committing a wrongful act.
- Misrepresentation or intentional false representation(s) of a material fact.
- Reliance on weaknesses in the internal control structure, including when an individual relies on the fraudulent information.
- Concealment to hide the act or facts.
- Damages, loss or injury by the deceived party.

Internal Controls

The accounting industry defines the term "internal control" as it applies to organizations, including school agencies. The Committee of Sponsoring Organizations of the Treadway Commission (COSO) provides these organizations with guidance on internal control, risk management, governance and fraud deterrence. COSO is recognized globally for its Internal Control – Integrated Framework (ICIF), which was updated in the 2023 publication, *Achieving Effective Internal Control Over Sustainability Reporting (ICSR): Building Trust and Confidence Through the COSO Internal Control – Integrated Framework*. This publication defines internal control as follows:

A process, effected by an entity’s board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.

The reference to achievement of objectives refers to an organization’s work of planning, organizing, directing and performing routine tasks related to operations, and monitoring performance. An organization establishes control over its operations by setting goals, objectives, budgets and performance expectations.

Several factors influence the effectiveness of internal control, including the social environment and how it affects employees’ behavior, the availability and quality of information used to monitor the organization’s operations, and the policies and procedures that guide the organization. Internal control helps an organization obtain timely feedback on its progress in meeting operational goals and guiding principles, producing reliable financial reports, and ensuring compliance with applicable laws and regulations.

Internal control is the principal mechanism for preventing and/or deterring fraud or illegal acts. Illegal acts, misappropriation of assets or other fraudulent activities can include an assortment of irregularities characterized by intentional deception and misrepresentation of material facts. Effective internal control provides reasonable assurance that operations are effective and efficient, that the financial information produced is reliable, and that the organization complies with all applicable laws and regulations.

Internal control provides the framework for an effective fraud prevention program. An effective internal control structure includes the policies and administrative regulations established by the board and operational procedures used by staff, adequate accounting and information systems, the work environment, and the professionalism of employees.

In 2013, COSO defined the five components of internal control in an executive summary titled *Internal Control – Integrated Framework*. The following table provides a summary of these components and their characteristics.

Summary of Internal Control Components and Characteristics

Internal Control Component	Characteristics
Control Environment	The set of standards, processes and structures that provide the basis for carrying out internal control across an organization. Comprises the integrity and ethical values of the organization. Commonly referred to as the moral tone of the organization, the control environment includes a code of ethical conduct; policies for ethics, hiring and promotion guidelines; proper assignment of authority and responsibility; oversight by management, the board or an audit committee; investigation of reported concerns; and effective disciplinary action for violations.
Risk Assessment	Identification and assessment of potential events that adversely affect the achievement of the organization’s objectives, and the development of strategies to react in a timely manner.
Control Activities	Actions established by policies and procedures to enforce the governing board’s directives. These include actions by management to prevent and identify misuse of the LEA’s assets, including preventing employees from overriding controls in the system.
Information and Communication	Ensures that employees receive information regarding policies and procedures and understand their responsibility for internal control. Provides opportunity to discuss ethical dilemmas. Establishes clear means of communication within an organization to report suspected violations.
Monitoring Activities	Ongoing monitoring to ascertain that all components of internal control are present and functioning; ensures deficiencies are evaluated and corrective actions are implemented.

Source: Summarized from the Committee of Sponsoring Organizations of the Treadway Commission’s 2013 executive summary titled, *Internal Control – Integrated Framework*.

The five components of internal control are supported by numerous underlying principles that help ensure an entity achieves effective internal control. Each of the five components listed above and their relative principles must be present and functioning in an integrated manner to be effective. An effective system of internal control can provide reasonable but not absolute assurance that the organization will achieve its objectives.

Although the board and all employees in the LEA have some responsibility for internal control, the superintendent, board and other key management personnel have a higher ethical standard, fiduciary duty and responsibility to safeguard the assets of the LEA.

Control Environment

The internal control environment establishes the organization's moral tone. It begins with the leadership and consists of employees' perception of the ethical conduct displayed by the governing board and executive management.

The control environment is the set of standards that enables other components of internal control to be effective in preventing and/or deterring fraud or illegal acts. It sets the tone for the organization, provides discipline and control, and includes factors such as integrity, ethical values and competence of employees.

The control environment can be weakened significantly by a lack of experience in financial management and internal control.

Control Activities

Control activities are a fundamental component of internal control and are a direct result of policies and procedures designed to prevent and detect misuse of an LEA's assets, including preventing any employee from overriding system controls. Examples of control and transaction activities include the following:

1. Performance reviews, which compare actual data with expectations. In accounting and business offices, this most often occurs when budgeted amounts are compared with actual expenditures to identify variances and followed up with budget transfers to prevent overspending.
2. Information processing, which includes the approvals, authorizations, verifications and reconciliations needed to ensure that transactions are valid, complete and accurate.
3. Physical controls, which are the processes and procedures designed to safeguard and secure assets and records.
4. Supervisory controls, which assess whether the transaction control activities performed are accurate and follow established policies and procedures.
5. Segregation of duties, which consists of processes and procedures that ensure that no employee or group is placed in a position to be able to commit and conceal errors or fraud in the normal course of duties. In general, segregation of duties includes separating the custody of assets, the authorization or approval of transactions affecting those assets, the recording or reporting of related transactions, and the execution of the transactions. Adequate segregation of duties provides for separate processing by different individuals at various stages of a transaction and for independent review of the work; these measures reduce the likelihood that errors will remain undetected.

Internal controls are effective in deterring and detecting fraud, and in mitigating financial errors and errors in judgment that are not financial but that may have detrimental effects. Effective internal controls require the governing board, management and staff to discern when the system may have a weakness.

As described in the “District-Managed Contracts” section of this report, the district is responsible for the performance and finances of its public project and for the work product and management of Construction Resource Management Group (CRM Group) and has taken on all risks. Based on the documents the district provided, interviews with district managers and CRM Group, and FCMAT’s assessment, the district’s management of its construction project has characteristics of mismanagement, with poor internal controls to help ensure accurate financial reporting, project timelines, and tracking of project costs.

Fiduciary Responsibilities

A fiduciary duty is the highest standard of care. The person who has a fiduciary duty is called the fiduciary, and the person to whom he or she owes the duty is typically referred to as the principal or the beneficiary (Sources: Cornell Law School overview of fiduciary duty and the Judicial Council of California’s Civil Jury Instructions).

A fiduciary also may be a person who has a legal or ethical relationship of trust with one or more other parties (person or group of persons). In other words, a fiduciary takes care of money or other assets for another. Board members, administrators and managers are examples of those who have fiduciary responsibilities or a fiduciary duty. The Cornell law source cited above further describes several components of fiduciary duties, which FCMAT summarizes and applies to LEAs as follows:

Duty of Care: Before making a decision, collect all evidence and information available. Do your due diligence and review all the information and evidence available – do not just accept the information as it is presented. Assess information with a critical eye and ask the questions: who? what? when? and where? A fiduciary’s responsibility is to protect the assets of the LEA.

Duty of Loyalty: You cannot use your position in the organization to further your private interests. Avoid anything that might injure the LEA.

Duty of Good Faith: Advance the interests of the LEA. Do not violate the law. Fulfill your duties and responsibilities.

Duty of Confidentiality: Keep confidential matters confidential, and never disclose confidential information for your own benefit or to avoid personal liability.

Duty of Prudence: Be trustworthy, with the degree of care and skill that a prudent board member, member of management, or fiduciary would exercise. Prudent means acting with wisdom and care, including exercising good judgment.

Duty of Disclosure: Act with complete candor. Be open, sincere, honest and transparent. Disclose all financial interests on Form 700, Statement of Economic Interests.

Based on FCMAT’s analysis as described in the “Bid Splitting” section of this report, which describes the district’s apparent disregard of CUPCAA and the Public Contract Code (PCC), the district’s management exhibited characteristics of violations of the fiduciary duties of care, good faith and prudence.

Transaction Sampling

FCMAT developed and conducted audit procedures to analyze and evaluate allegations and identify potential outcomes. The audit scope, objectives, and substantive transaction testing were based on the FCMAT study team's experience and professional judgment and did not include the testing or evaluation of all available transactions and records. Transactions sampled were selected randomly and/or based on the team's judgment.

When applicable, transactions selected were analyzed and compared to board policies, administrative regulations, operational procedures and industry standards or best practices, and were evaluated for proper authorizations and reasonableness based on the team's judgment and technical expertise in school business operations, internal controls, and accounting best practices.

Sample testing and examination results are intended to provide reasonable but not absolute assurance regarding how accurate the transactions and financial activity are and to identify whether fraud, misappropriation of funds or other illegal fiscal practices may have taken place during the period under review.

FCMAT sampled district contracts to determine if payments were made for transactions associated with related parties that may result in conflicts of interest. The sampled transactions included payments to construction contractors and other vendors. In addition, business background analysis of contractors, vendors, board members, and superintendents was also performed.

The review of sampled transactions and background analysis did not identify any undisclosed or inappropriate related party transactions that violated conflict-of-interest law.

Findings

Construction and Procurement

Ensuring transparency in public contracting is a cornerstone of effective public institutions and is achieved by adhering to competitive bidding requirements and standard procurement procedures. Although these measures may introduce some rigidity, their primary purpose is to mitigate favoritism and corruption in the allocation of public funds. School district procurement processes are governed by many statutes, policies, procedures, regulations, and legal interpretations. Each contract a school district enters into for goods and services necessitates adherence to distinct rules for procurement and for maintaining the contract's validity.

The district's decision to use construction management multiphase (CMMP) as its construction method seemed questionable to both FCMAT and the county superintendent. Using the CMMP delivery method means the district assumes many of the risks of a general contractor, as well as the burden of processing each contract and billing. This means that instead of subcontractors bidding and being selected by the general contractor, each package of trades is bid by the district and assisted by the construction manager. Ultimately, the construction manager, CRM Group, manages the contracts of each trade and provides supervision, change order negotiations and other assistance to build the project. FCMAT found the number of primes or contracts to be more than 80. Nevertheless, Superintendent/Principal Ray contends that this method gave the district flexibility and cost savings, and that the governing board was fully informed.

There are many rules and regulations regarding construction and modernization of school district facilities. Compounding the complexity of the many requirements for some districts is their remote location. A remote location may mean fewer contractors are willing to submit a bid and, if they do, their cost may be higher, suppliers' costs may be higher, and climate and other conditions such as snow and forest fires may slow or stop construction, which also may add to the cost and risk.

Because of these complexities, districts often seek guidance from legal counsel for construction projects. To manage its construction project, the district had available its own experience in construction, legal counsel, other consulting experts, state law, rules and regulations, and the advisors and experts the county superintendent assigned. To the county superintendent and FCMAT, it seemed the district was reacting to issues as they arose rather than following a comprehensive plan.

In FCMAT's meeting with Superintendent/Principal Ray on September 6, 2023 in his office, he stated the following:

- He had to stop construction at various stages until supplier pricing and the district's revenue position changed sufficiently for the construction to continue. He identified four potential revenue streams.
- Bid splitting was discussed. Superintendent/Principal Ray stated that the district was not bid splitting and that the district's law firm reviewed this issue and determined the district was not bid splitting. However, FCMAT believes that bid splitting occurred, and this is discussed further below.
- The lack of requests for qualifications (RFQs) was discussed. An RFQ is the process of obtaining a firm's qualifications. Superintendent/Principal Ray explained that the district's law firm gave an opinion that, because of the emergency resolutions regarding the first and second mold issues authorized by the governing board, the RFQ process could be bypassed. FCMAT disagrees, and this is discussed further below.

- Differences in the contract language regarding what a critical path method (CPM) schedule requires were discussed. FCMAT’s review of the contractor’s claimed CPM schedule did not conform to what in FCMAT experience is generally considered a true CPM schedule or to FCMAT’s interpretation of what CRM Group’s contract states is required. A CPM schedule consulting company, HSE Contractors, Inc., known for specializing in CPM, provides the definition of a CPM as follows:

At its essence, a CPM schedule (or critical path method schedule) is a project management timetable, typically presented in graphic form. A CPM schedule illustrates the specific individual tasks that comprise an overall project. It delineates the least amount of time that is necessary to satisfy the requirements of each task. The critical path itself really equates with the longest amount of time it is estimated to take to complete all individual tasks, and hence the project as a whole.

At the heart of a CPM schedule is a delineation of each of the individual tasks that must be addressed in order to ultimately complete the project in its entirety and in a timely manner....a CPM schedule comes complete with project milestones...

The critical path is the sequence of activities the sum of the time for which is longer than that of any other path through the network. The critical path is important because if the project progresses according to the schedule, its duration gives the shortest possible completion time for the overall project. Critical path schedules are significantly more labor-intensive to create and maintain than the schedules CRM Group has been providing the district. In addition, CPM activities are documented with start and completion dates that identify any delays or early completion, which identify any impact to the critical path, ultimately affecting the completion date.

Superintendent/Principal Ray’s response about the CPM requirement in the district’s contract with CRM Group was that his contractor, CRM Group, was an experienced contractor and his CPM schedule, known to CRM Group as the “look ahead schedule,” was acceptable, and that the district’s law firm also affirmed that it was acceptable. FCMAT found that the district’s allowance of CRM Group’s look ahead schedule does not align with the definition of a CPM schedule above and violates the district’s contractually-required CPM schedule. FCMAT also found that the district has allowed other variances in CRM Group’s management of the project; this is discussed further below.

Because Superintendent/Principal Ray relied on the district’s law firm’s guidance so extensively as his authority for how the project was managed, during the September 6, 2023 meeting, FCMAT asked Superintendent/Principal Ray to provide the attorney’s written opinion(s) specific to the issues described above. After the September 6, 2023 meeting, FCMAT did not receive the legal opinion information. Below is a list of the follow-up email communications between Superintendent/Principal Ray and FCMAT regarding the legal opinions that he stated he relied on:

- September 14, 2023, at 10:45 a.m., FCMAT emailed Superintendent/Principal Ray reminding him about the requested information.
- October 9, 2023, at 12:39 p.m., Superintendent/Principal Ray responded, that he would be speaking with the attorney.
- October 11, 2023, at 10:30 a.m., Superintendent/Principal Ray responded stating he contacted the attorney and explaining “...that it is really hard and expensive to respond when we don’t know specifics about what we are responding to.”
- October 16, 2023, at 8 a.m., FCMAT responded, reminding Superintendent/Principal Ray of the list of items he was already aware of.

- October 17, 2023, 8:47 PM, Superintendent/Principal Ray responded, indicating he would respond soon.

Superintendent/Principal Ray was given significant time and opportunity to provide the legal opinions requested. As of the date of this report, the district's legal guidance that Superintendent/Principal Ray stated he relied on has not been provided.

Bidding Overview and District Board Responsibilities

Any public project that exceeds the established minimum value threshold must be publicly bid. Bid splitting occurs when a contract is split into smaller parts to avoid the public bid threshold requirements.

The district’s governing board has the responsibility to govern their schools within the framework of the law. The board’s duty is to be attuned to the values, beliefs, and priorities of the community. This involves formulating and endorsing the district’s mission, strategic goals, and objectives while also being accountable to the public.

School boards provide direction for administrators and staff by establishing board policies and administrative regulations. These policies serve as the structure through which routine operational decisions are delegated to capable staff, with the expectation that their actions adhere to pertinent laws while optimizing efficiency and effectiveness. Board members carry the responsibility of adhering to the standards of responsible governance and ensuring the enforcement of the policies they have adopted.

Public Contract Code (PCC) 20111(a) requires school district governing boards to competitively bid and award to the lowest responsible bidder any contracts that include an expenditure of more than \$50,000, adjusted for inflation. Contracts subject to competitive bidding include:

- Purchase of equipment, materials, or supplies to be furnished, sold, or leased to the school district.
- Services that are not construction services.
- Repairs, including maintenance as defined in PCC 20115, that are not public projects as defined in PCC 22002(c).

The state superintendent of public instruction (SPI) is required to adjust the \$50,000 amount specified in PCC 20111(a) annually to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce, Bureau of Economic Analysis (BEA) for the 12-month period ending in the prior fiscal year. The inflation adjustment is rounded to the nearest one hundred dollars. The following table shows the bid thresholds used for transactions covered in this report:

Bid Thresholds

Calendar Year	Bid Threshold (Annual Aggregate)	Percentage Change in Implicit Price Deflator
2019	\$92,600	3.39%
2020	\$95,200	2.76%
2021	\$96,700	1.57%
2022	\$99,100	2.48%
2023	\$109,300	10.32%
2024	\$114,500	4.79%

Source: California Department of Education bid threshold adjustment letter.

In addition, public projects as defined in PCC 22002(c), such as construction or reconstruction of publicly-owned facilities, have a lower bid threshold of \$15,000 that is not adjusted for inflation. However, districts that have chosen to be subject to the California Uniform Public Construction Cost Accounting Act

(CUPCCAA) have a \$60,000 threshold. The district chose to become subject to CUPCCAA in approximately June 2021, around the time its board's emergency Resolution No. 20-21-14 was approved. This means the district is acknowledging that it will follow the rules and regulations of CUPCCAA, which includes bidding where applicable.

There are some legal exceptions to formal bidding requirements. The "Emergency Resolutions" section below discusses exceptions to the bidding requirement in emergency situations. Following are other examples of procurement that is not subject to the usual competitive bidding requirements:

- State (Department of General Services), Federal (General Services Administration), or Cooperative piggyback contracts (PCC 20118).
- Emergencies (may only be declared by the board) (PCC 20113).
- Energy conservation services (GC 4217.12).
- Instructional materials (PCC 20118.3).
- Perishable food (EC 38083).
- Special services (GC 53060).
- Leroy F. Greene School Facilities Act of 1998 (EC 17070.50).
- Public work and public purchases (GC 4525/4526).
- Waste management services (Public Resource Code 40059).
- Technology (subject to formal procurement but can accept any of the three lowest bids) (PCC 20118.1).
- Sole source.

Although there is an exception to competitive bidding for emergencies, once the emergency has passed the exception is no longer applicable. In the district's case, the emergency passed once it had adequate facilities, and FCMAT could not identify any exception to competitive bidding requirements that remained applicable once that occurred. Absent any written legal opinions convincing FCMAT that the district was not bid splitting, additional analysis was performed on the district's public project construction and job costs specific to the laws, rules and regulations regarding bidding.

Bid Splitting

Public Contract Code 20116 prohibits a district from splitting or separating work orders, projects, services or purchases to avoid competitive bidding. This code section states the following:

It shall be unlawful to split or separate into smaller work orders or projects any work, project, service or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

Chapter 897 of the Statutes of 1995 clarified the prohibition against bid splitting by amending PCC 20166 to prohibit both the splitting of projects into smaller work orders or projects and the splitting of any “work, service or purchase” into smaller work orders or projects.

This change in the statute further supports the conclusion stated above that work and labor associated with a purchase of equipment or materials to be installed to improve an existing building should not be separated from the equipment purchase to avoid the requirement for competitive bidding.

A public agency such as the district may by resolution adopt CUPCCAA and use an informal bidding procedure to award contracts.

This California Uniform Public Construction Cost Accounting Act was established to ensure consistency in cost accounting standards and bidding processes for construction work carried out or contracted by public entities in California, per PCC 22000 and following. This legislation increases the formal bid thresholds for public entities to \$200,000 and outlines specific procedures for both informal and formal bidding. Consequently, a public entity that has formally adopted CUPCCAA can use informal bidding procedures as defined by CUPCCAA for public projects that cost from \$60,000 to \$200,000. As part of these informal bidding procedures, CUPCCAA requires public entities to annually notify specific trade journals in November and compile a list of interested contractors based on responses received to the trade journal notifications. Subsequently, when it creates a master list of contractors, the public entity must notify all contractors on the list for each contract exceeding \$60,000 at least 10 calendar days before bid submissions. CUPCCAA also requires public agencies to inform construction trade journals when formally bidding contracts that exceed \$200,000, as part of CUPCCAA’s formal bid procedures.

Further information about bid splitting is defined in CUPCCAA’s list of [frequently asked questions \(FAQs\)](#), most recently revised on September 20, 2022, to help agencies that have chosen to adopt and abide by CUPCCAA processes and procedures.

Questions 30 and 31 of these FAQs address separating projects and separating labor and materials as follows:

Question 30: May a public agency bid two separate projects to occur at the same time and site, but are different types of work?

Yes, there is no violation if the work is competitively bid. If an agency wishes to use the negotiated or informal bidding process, it must apply the appropriate limits to each of the projects. Each project must be separate in scope. Projects may not be separated by trade to avoid bidding. If the total of all jobs is greater than \$60,000 then the informal bid or formal limits apply.

Question 31: Can an agency separately bid out for the materials and supplies on a project to avoid contractor markup and then bid out for the installation labor or perform installation with its own forces?

An agency may separately procure the materials and supplies for a project; however, all costs (materials, supplies, labor) of a project must be included in the project cost estimate to determine whether the project falls within the force account, informal bid, or formal bid thresholds.

In addition, if installation is performed by force account, an overhead rate must be applied to all direct costs of the project and included in the cost estimate. For example, if materials/supplies cost \$50,000 to procure separately and the estimated labor cost to install is \$25,000, the project could not be performed with force account, but would fall within the informal bid threshold because the total cost estimate is \$75,000.

Furthermore, the minutes of the May 12, 2023 California Uniform Construction Cost Accounting Commission (CUCCAC) meeting, under “New Business,” discuss a recent accounting review at the Conejo Valley Unified School District, which has similar characteristics to Weed Union Elementary School District’s construction project and how it managed its bids. The following four paragraphs summarize this meeting and review.

In the audit accounting review of the Conejo Valley Unified School District, concerns were raised about the Thousand Oaks High School Marquee Replacement Project. The Construction Industry Force Account Council (CIFAC) expressed the belief that the district violated PCC 22034 by bid splitting. A district representative reported that the district had acted as the construction manager for the project and had split the project into nine different contracts, each under the \$60,000 limit, and stated they were all negotiated. The district representative also reported that the district had purchased various project materials and performed a portion of the work.

The appointed working group received a summary of the project costs from the district and noted that all costs were listed under the same heading. The lead of the working group reported that the summary included multiple different contractors who had been paid for work on the project, a list of materials purchased, and a small amount of labor performed by the district’s own employees. The lead noted that the summary’s total of project costs was more than \$180,000; therefore, the working group team concluded that bid splitting, intentional or not, had occurred.

The district countered that their understanding of the code was that any project costing \$60,000 or less could be bid informally or negotiated directly, or a purchase order could be created. The district stated it had used multiprime construction for the project, which means the district had negotiated a contract directly with each of the subcontractors for the project.

Chair Nunan said that the project being discussed should be considered a single project. He explained that the PCC does not allow a district to act as a construction manager on a single project and have multiprime contractors. He explained that the district took the place of a general contractor that should have been allowed to bid on the project as a single project. Despite the district’s query about in-house projects, Chair Nunan clarified the process under PCC 22038. Ultimately, the commission, via a motion by Commissioner Clemens and seconded by Commissioner Smith, found the Conejo Valley Unified School District in violation of PCC 22034. The motion passed 11-0 with one abstention.

Additional information about bid splitting and CUPCAA can be found on the California state controller’s office website under CUCCAC inquiries on page 7 of 9, Questions on Bid Splitting and CUPCAA, where one question and answer regarding bid splitting is as follows:

Q: Our school district uses CUPCAA for construction projects. If we buy the materials needed through a cooperative agreement or through solicitation of quotes, and as an example we would be working on a roofing project, and then we go to our list of contractors through CUPCAA to install, would we be bid splitting if the total cost of the project (materials and install) exceeds \$109,300.00?

A: If the total cost of the project exceeds the \$60,000 threshold, the project must use the informal or formal bidding procedures set forth in Public Contract Code (PCC) Section 22032(b) or (c) of the Act.

PCC Sec. 22033 states, "It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding."

The example provided would be a case of bid splitting if the project is not advertised and bid according to the provisions of the Act since the cost of the materials and the install are contracted separately and the total cost of the project exceeds the \$60,000 threshold.

Public Contract Code 22032 further defines contracting procedures as well as dollar amount limits as follows:

- a) Public projects of sixty thousand dollars (\$60,000) or less may be performed by employees by force account, by negotiated contract, or by purchase order.
- b) Public projects of two hundred (\$200,000) or less may be let to contract by informal procedures as set forth in this article.
- c) Public projects of more than two hundred thousand dollars (\$200,000) shall, except as otherwise provided in this article, to [sic] be let to contract by formal bidding procedures.

FCMAT reviewed the district’s December 6, 2023 multiprime payment application spreadsheet (payment application) shown in the district’s December 14, 2023 governing board meeting packet, to examine a sample of contracts to determine if their labor and materials may have been separated but together exceeded the CUPCCAA bid thresholds. Based on FCMAT’s review of the documents the district provided, and communication with California Department of General Services as described in the “Background” section above, the Weed Elementary School campus replacement project under the Division of the State Architect’s (DSA’s) Application #02-119169 is a single public project as evidenced by the one DSA plan set submitted. Even if the project were to be separated into increments or phases, it could not be split to circumvent the bid requirements. This means that all contracts fall under the school campus replacement as one project. As described above, contracts under one project scope cannot be separated into lower dollar thresholds to avoid competitive bidding requirements. The table below lists examples of contract costs shown by individual contractors that FCMAT sampled for which materials, labor and other costs were presented separately as individual bids or purchase orders that in total exceed the CUPCCAA requirements and should have been bid competitively.

Examples of Bid Splitting

Contractor	Increment No.	Contract Description	CUPCCAA Process	Contract Amount
Builders Door & Window	1	Equipment Only - Doors & Hardware	Negotiated Bid Total	\$ 99,000.00
Diversified Electric Services	1	1600 MSB	Negotiated Bid	\$ 59,006.54
Diversified Electric Services	1	Temp Heat, Lighting & Power	Negotiated Bid	\$ 40,398.96
Diversified Electric Services	2	Elec Site Prep for Bldg. Demo	Negotiated Bid	\$ 49,500.00
Diversified Electric Services	2	Cafeteria Electrical Refeed	Negotiated Bid	\$ 54,750.00
		Diversified Electric Services	Negotiated Bid Total	\$ 203,655.50
Lakemann Construction	1	Doors, Frames & Hardware Labor	Negotiated Bid	\$ 28,680.00
Lakemann Construction	1	Siding Labor	Negotiated Bid	\$ 59,000.00

Contractor	Increment No.	Contract Description	CUPCAA Process	Contract Amount
		Lakemann Construction	Negotiated Bid Total	\$ 87,680.00
Salona's Hardware	1	Materials Needed - 10-27-21	Open PO	\$ 252,162.72
Salona's Hardware	3	Materials	Open PO	\$ 25,000.00
		Salona's Hardware	Open PO Total	\$ 277,162.72
Sousa Ready-Mix	1	Materials	Open PO	\$ 114,065.66
Sousa Ready-Mix	2	Materials Not Included in Bid	Open PO	\$ 10,736.00
Sousa Ready-Mix	3	Materials	Open PO	\$ 75,000.00
		Sousa Ready-Mix	Open PO Total	\$ 199,801.66
SW Maintenance	1	WES2023.1.2.3 Storm/Grading Negotiated Bid	Negotiated Bid	\$ 150,000.00
SW Maintenance	2	Excavation & Install Utility Trench	Negotiated Bid	\$ 46,956.18
SW Maintenance	2	Excavation & Install Utility Trench Work Around	Negotiated Bid	\$ 29,973.00
		SW Maintenance	Negotiated Bid Total	\$ 226,929.18
World Telecom	1	Access Control	Negotiated Bid	\$ 31,068.86
World Telecom	1	Audio Visual + Assistive Listening	Negotiated Bid	\$ 53,768.72
World Telecom	1	Public Address System	Negotiated Bid	\$ 15,756.22
World Telecom	1	Structured Cabling Voice & Data	Negotiated Bid	\$ 18,288.01
World Telecom	1	Video Surveillance	Negotiated Bid	\$ 8,480.14
World Telecom	2	Inc 2 Prep for Demo	Negotiated Bid	\$ 11,705.55
		World Telecom	Negotiated Bid Total	139,067.50
			Total	\$ 1,233,296.56

(PO = Purchase Order)

Based on the Conejo Valley Unified School District's accounting review by CUCCAC, FCMAT's selected samples of contract transactions taken from the district's December 6, 2023 multiprime payment application spreadsheet, are summarized in the table above. This information indicates that \$1,233,296.56 of the bids have characteristics of bid splitting. The presence of these characteristics is supported by the following:

- As discussed above, the CUCCAC meeting on May 12, 2023, Item 11, addressed an accounting review of Conejo Valley Unified School District (Conejo). In the Conejo audit, the commission found the following:
 - Conejo had multiple contracts that totaled more than \$180,000.
 - Each contract and materials purchase cost less than \$60,000 and was negotiated, issued by PO, or performed by Conejo labor.
 - Conejo misinterpreted PCC 22032 and thought it could negotiate multiple contracts if each contract was for less than the \$60,000 threshold.
 - The commission's decisions upheld that the \$60,000 threshold to negotiate contracts or issue purchase orders applies.

- (FCMAT concludes that a similar fact pattern exists to circumstances in Weed Union Elementary School District regarding splitting or separating work orders, projects, services or purchases to avoid competitive bidding, and thus the decision on Conejo Valley would apply to Weed.)
- The commission voted that the Conejo district violated PCC 22034, which requires special bid procedures for bid thresholds identified in PCC 22032. The commission stated that it is the deciding body and that their decision is final.
- Public Contract Code 22032 (a) states the following:
 - (a) Public projects of sixty thousand dollars (\$60,000) or less may be performed by employees of a public agency by force account, by negotiated contract, or by purchase order.
 - (b) Public projects of two hundred thousand dollars (\$200,000) or less may be let to contract by informal procedures as set forth in this article.
 - (c) Public projects of more than two hundred thousand dollars (\$200,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.
[Emphasis added]
- Public Contract Code 22002 defines a public project as “(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.”
 - This means a public project is defined as the entire project, including all costs. Individual contracts are components of an entire public project. This applies to the Weed Elementary School Replacement Project as one single public project as described above.
- Superintendent/Principal Ray explained to FCMAT that the district chose to split materials and labor, taking the purchase of materials away from the contractors, because of a volatile market during the COVID-19 pandemic.
 - FCMAT’s analysis found that, regardless of effects of the COVID-19 pandemic and a volatile construction and materials market, splitting materials and labor is not allowable. In addition, the district continued to split materials and labor after the COVID-19 pandemic.

Based on FCMAT’s review of the documents the district provided, the information shows that the Weed Elementary School campus replacement project under the DSA’s Application #02-119169 is a single public project. Even if the project were to be separated into increments or phases, it could not be split to circumvent the bid requirements. The following factors further demonstrate it is a single project:

- All increments are progressing concurrently or overlapping, with no stoppage of work.
- The project costs for all work and increments exceed the \$200,000 threshold, and all work and materials should have been competitively bid.
- The district’s project to construct the cafeteria building (increment 1), classroom wing (increment 2) and the related site work (increment 3) was a multimillion-dollar project.

The documents the district provided, the fact that the district is acting as the construction manager, and the fact that no evidence was provided to FCMAT indicating CRM Group is advising against the district

separating labor and materials to push bids under \$60,000, indicate that the district's process is characteristic of bid splitting, and it appears to have been a common practice. FCMAT sent a list of questions to Superintendent/Principal Ray regarding the district's bidding and procurement decisions. FCMAT received a response on March 29, 2023. The general themes of the responses from Ray were as follows:

- The district is not bid splitting.
- The cost to the district would be twice as much if they had not self-supplied materials.
- By self-supplying construction materials directly from vendors, the district was able to avoid contractor markup, and the amounts were under the bid thresholds.
- District change orders were under the applicable bid limits for each respective year.

The district's position on bid splitting and how it made purchasing decisions are best summarized in its March 29, 2023 response to a FCMAT question about a contract awarded for labor only of \$59,000. In the question, FCMAT cited PCC 20116, which states, "It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding." By separating the labor and materials, the district appears to have been bid splitting to avoid competitive bidding.

The district disagreed with FCMAT's assertion of bid splitting; its response stated the following:

Siding Materials was [sic] purchased direct by the District several months in advance. [Construction company name] was onsite working as a subcontractor under another contractor as [sic] was asked to provide a quote for labor only.

The District disagrees with your understanding of the prohibition against "bid splitting." Public Contract Code 20116 states that it is unlawful to split into smaller projects for the purpose of evading competitive bidding. Here, the District did not split the project into smaller projects to avoid bidding. On the one hand, the District self-supplied construction materials under Public Contract Code § 20111(a). Where the amount exceeded the bidding threshold for materials, the District competitively bid for that procurement. On the other hand, for construction services, the District was required to select contractors pursuant to the Uniform Public Construction Cost Accounting Act, which requires informal bidding for projects over \$60,000. Where the amount for construction services exceeded the informal bidding threshold, the District employed the informal bidding process. The District's practice of procuring construction materials for a project on its own behalf, and separately selecting a contractor to perform the work, does not constitute breaking up a project into multiple projects, regardless of the motivation. Moreover, and notwithstanding that a project was not fractured into multiple projects, the purpose of the District's self-supplying construction materials is and was to procure the materials at lower prices by avoiding contractor mark-up. The District's motivation to separate the materials and services contracts was to save money on the contract price, not to avoid bidding processes. By procuring the materials and separately bidding the services, the District was able to save significant amounts on the project.

Further, in practice, the District evidenced no intention of avoiding bidding. This is most clearly supported by the fact that both the labor and materials were actually put out for bid in each instance in which either Public Contract Code § 20111(a) or the Uniform Public Construction Cost Accounting Act required it. In many instances, the District has bid twice as much as they would have if they had not self-supplied materials (in which case the District would only have bid once, but suffered the loss of savings by way of contractor mark-up on materials procured on behalf of the District).

As stated above, Superintendent/Principal Ray relied on guidance from the district's law firm regarding how the project should be managed. No response was given to FCMAT's request to Superintendent/Principal Ray to provide the attorney's written opinion(s), including any regarding bid splitting. Although Superintendent/Principal Ray's March 29, 2023, response reads as if the district is justified in how it managed its contracts, FCMAT's review of CUPCCAA, the PCC, and the district's contracts with vendors indicates that the district may have engaged in the illegal fiscal practice of bid splitting.

The district's apparent disregard for CUPCCAA and PCC requirements is characteristic of a failure in its governing board's fiduciary duties of care, good faith, and prudence. These types of failures in fiduciary duties are noted because, based on the information obtained by FCMAT, the following has occurred:

- The district's board, administrators and construction manager were not performing their due diligence to understand CUPCCAA and the PCC and to act with a duty of care.
- The district's board, administrators and construction manager did not perform their duty of good faith to abide by the law and did not fulfill their duties and responsibilities.
- The district's board and administrators may not have been prudent, because, by violating the law and various contracting rules and regulations, they give the appearance of manipulating the contracting system and being untrustworthy.

Emergency Resolutions

In emergency situations, PCC 20113 authorizes school districts to enter into a written contract for labor and materials or supplies without advertising for or inviting bids. The emergency repairs to any public school facilities must be necessary to permit the continuance of existing school classes or to avoid danger to life or property. The district's governing board must, by a unanimous vote and with the approval of the county superintendent of schools, approve the emergency contract or authorize the use of day labor or force account to perform repairs, alterations or improvements. PCC 20113 reads as follows:

- (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of public schools to permit the continuance of existing school classes, or to avoid danger to life or property, the board may, by unanimous vote, with the approval of the county superintendent of schools, do either of the following:
 - (1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.
 - (2) Notwithstanding PCC Section 20114, authorize the use of day labor or force account for the purpose.
- (b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

Public Contract Code 1102 describes emergencies as follows:

“Emergency,” as used in this code, means a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Because of the discovery of irregular levels of black mold (*stachybotrys chartarum*) spores in the district's first mold inspection report by ASTI in October 2020, the governing board unanimously passed Emergency Resolution No. 20-21-03, dated October 23, 2020. This resolution authorized the partial closure of specific facilities, including two classrooms, one library, one computer lab, one main office, and three administrative offices. The resolution also delegated authority to Superintendent/Principal Ray to take all appropriate action to respond to the mold and conduct remediation efforts, including but not limited to the following:

1. The identification of an appropriate vendor for comprehensive mold remediation in effected [sic] district facilities.
2. The identification of an appropriate alternative and temporary facilities for all effected [sic] classrooms and administrative offices shall be moved to temporary portable structures for the duration of the closure and subsequent remediation efforts.

As mentioned earlier and in accordance with PCC 20113, the district is required to obtain county superintendent approval when implementing an emergency resolution. However, in interviews, the county superintendent's management indicated that when the district informed them of the ASTI mold report, crucial details were omitted. For example, the district did not communicate its intent to proceed with an emergency resolution, which would ultimately result in the closure of identified classrooms and office space. The district also did not seek the requisite approval from the county superintendent for the emergency resolution, as mandated by PCC 20113. This information highlights a gap in communication and procedural adherence between the district and the county superintendent regarding the handling of the reported mold issues and the subsequent decision-making process.

On June 10, 2021, the district approved Resolution No. 20-21-13, adopting the CUPCCAA procedures and informal bidding ordinance. This resolution states that the district, as outlined in PCC 22030, becomes subject to the uniform construction cost accounting procedures set forth in CUPCCAA and to the CUCCAC's policies and procedures manual and cost accounting review procedures. The significance of this and its timing is that in the week following this resolution the district brought forth another emergency resolution because of mold spores, resulting in the closure of the remaining facilities of Weed Elementary School.

Districts that have chosen to be subject to CUPCCAA are not required to submit an emergency resolution request to a county superintendent for approval. Emergency work costing \$60,000 or more and defined in PCC 22035 must be performed pursuant to the terms of PCC 22050(a), which are as follows:

- (1) In the case of an emergency, a public agency, pursuant to a four-fifth vote of its governing body, may repair a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice to bids for let contracts.
- (2) Before a governing body takes any action pursuant to paragraph (1), it shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency. [Emphasis added]

FCMAT's review of district documents, board minutes, and interviews did not find any evidence that the district complied with PCC 22050(2) by making a finding that the emergency would not permit a delay resulting from competitive bidding. Furthermore, emergency resolutions may not be considered for major construction and/or modernization projects unless they meet the criteria of PCC 1102 and 20113.

Although these provisions define an emergency and delineate the type of work that can be performed, the information FCMAT obtained from the district indicates that the district's emergency ended once the interim classrooms and administrative buildings were in place. In addition, PCC 22050(3)(c) requires a district to review the emergency resolution at every regularly scheduled board meeting until terminated; however, FCMAT was not provided with and could not find any documents or evidence to indicate that the district met this requirement.

As Superintendent/Principal Ray explained to FCMAT in the September 6, 2023 meeting, the district's law firm provided the district with an opinion that, because of the emergency resolutions authorized by the governing board, the standard bidding process could be bypassed. Although this may be true, doing so requires following certain procedures. The information FCMAT obtained indicates that the district may have fallen short of complying with the proper procedures as follows:

- The county superintendent must be fully informed.
 - The county superintendent indicated that crucial details about the mold were not communicated and that the district did not inform the county superintendent that they were proceeding with an emergency resolution or obtain county superintendent approval to do so.
- The district adopted CUPCCAA on June 10, 2021, which does not require the district to submit an emergency resolution to the county superintendent.
 - The district's first emergency resolution was dated October 23, 2020, and the second was dated June 17, 2021. The first emergency resolution was required to be approved by the county superintendent because it was before the district adopted CUPCCAA.

Request for Qualifications

According to EC 17070.50, the State Allocation Board's (SAB's) position is that a school district is categorized as a local agency for the purposes of the Mini-Brooks Act (Government Code (CG) 4525 and 4526), which is intended to prevent districts (and other state and local agencies) from selecting architects and others based solely on cost without first determining qualifications.

Education Code 17070.50 states,

The board shall not apportion funds to any school district, unless the applicant school district has certified to the board that the services of any architect, structural engineer, or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and has obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

Government Codes 4525 and 4526 govern contracts between public entities and private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms under the state school building program. These statutes establish a qualification-based selection method that public agencies in California must use to contract for professional services.

Further, GC 4525 requires that state and local agencies select architects, structural engineers and other design professionals using a competitive process and not merely based on price. Whether or not a school district is a local agency within that statute, EC 17070.50 prohibits the SAB from allocating funds for design professionals unless they have been selected using a competitive process that is consistent with GC 4525. It is up to the SAB to apply EC 17070.50 to requests for funding of projects the district has approved based on an emergency. There is no provision in the statute by which the district can, by resolution, waive this requirement.

FCMAT's interviews with district managers, the contractor and the architect indicated that this process was not followed for the hiring of CRM Group as the construction management group, or for Ruhnau Clark Architects (RCA), or for the land surveyors used for the permanent buildings. FCMAT's review of the district's agenda for its February 11, 2021 board meeting, at which the governing board approved an owner/architect agreement with RCA, found that the agreement did not include a date, was not signed, and referenced a project scope proposal that was not included with the board agenda item.

During the interview with Superintendent/Principal Ray about this provision and the fact that the district did not adhere to it, he stated that the project fell under emergency resolution Nos. 20-21-03 and 20-21-14, as approved at the October 23, 2020 and June 17, 2021 board meetings, respectively. Superintendent/Principal Ray contends those resolutions delegated to him the authority to waive this process. As stated previously, FCMAT disagrees with the degree to which these resolutions provide relief from standard procurement methods. The resolution specifically delegated to the superintendent the authority to take all appropriate action to respond to the mold and conduct remediation, including but not limited to the following:

- The identification of an appropriate vendor for comprehensive mold remediation in effected [sic] District Facilities.
- The identification of appropriate and temporary facilities for all effective [sic] classrooms and administrative offices [that] shall be moved to temporary portable structures

for the duration of the closure and subsequent remediation efforts.
[Emphasis added]

In addition, some firms were retained before the second resolution was passed, which calls into question a reliance on the second resolution for the emergency declaration as it pertains to exemptions from any applicable competitive bidding requirements.

Based on the information obtained and FCMAT's interpretation of the emergency resolutions and the construction project as a whole, the district's emergency resolutions are limited to mold remediation and temporary facilities. Therefore, FCMAT disagrees with Superintendent/Principal Ray's interpretation and continued use of the emergency resolutions to bypass PCC rules and regulations and the Mini-Brooks Act for work at the district.

District-Managed Contracts

On October 23, 2020, the district board approved the CRM Group agreement. FCMAT requested CRM Group's contracts from the district. FCMAT reviewed the CRM construction management agreement and numerous amendments to this agreement approved by the board. Although not identified as the master agreement, FCMAT considered the subsequent amendments to be amendments to the master agreement approved on October 23, 2020, and considers these to collectively constitute the agreement. The master agreement states, "District and Construction Manager agree that the Construction Manager shall be retained to assist in the development and construction of the various construction and rehabilitation projects."

The agreement indicates that the district hired CRM Group as construction manager to assist with the installation of a temporary portable administration building, temporary portable restroom building, and various rehabilitation projects. The type of agreement the board approved is referred to as an agency multiprime construction management contract, or CMMP. FCMAT interprets this contract to mean that CRM Group is acting as an agent of the district with no risk at stake. In FCMAT's experience, this is different than the more common construction management contracts that are at-risk, in which there is a set maximum project amount. The agreement also committed the district to hire CRM Group for all of its various rehabilitation projects.

The district hired CRM Group under the emergency resolution approved earlier at the same board meeting. In doing so, it handed the entire construction project over to CRM Group. Once the emergency resolution work was complete, the district continued with CRM Group as construction manager. As construction manager, CRM Group has an implied responsibility to advise the district on the proper methods of construction and how to comply with the many laws, rules and regulations, and to follow through with DSA procedures and other requirements.

The table below presents selected information from CRM Group contracts and a report titled, *Multi-Prime Payment Application Spreadsheet*, presented during the September 21, 2022 board meeting.

Examples of CRM Group Contracts and Payments

		CRM Group Contracted Fee	CRM Group Amount Paid
Project Description	Reference	(Amounts Rounded)	(Amounts Rounded)
Emergency Portable Project	(A)	\$ 15,000	\$ 15,000
Admin/Media/Classroom Bldg.	(B)	\$ 405,000	\$ 45,000
Multi-Purpose/Mechanical Bldg. (Increment 1)	(C)	\$ 486,000	\$ 457,412
Dry In 3 months Increment 1	(D)	\$ 85,765	\$ 85,765
A.3 Extension Increment 1	(E)	\$ 200,118	\$ 200,118
Emergency Portable (Phase) 2	(F)	\$ 35,000	\$ 35,000
Admin/Classroom Bldg./Sitework (Increment 2 & 3)	(G)	\$ 2,214,156	\$ 1,476,103
Limited Scope Agreement (Increment 2)	(H)	\$ 200,000	\$ 200,000
Totals		\$ 3,641,038	\$ 2,514,398

- (A) This project indicates that \$2,500 of the \$15,000 total was for DSA closeout. The district paid CRM Group without completing the DSA closeout. Regarding DSA closeout, the agreement states the following at Item 21, Final Documents:

The construction Manager, in cooperation with the District and Architect, shall assist with the coordination and processing of all necessary paperwork and closeout documents with the OPSC, DSA, and any other applicable public agencies.

FCMAT reviewed DSA rules and regulations, which state that a project cannot be certified by DSA until all work is complete. DSA approval of school construction projects is another requirement.

- (B) The district’s pay application indicates the \$45,000 paid to CRM Group was charged to increment 1, Cafeteria. The funding for the admin/media/classroom building, which is increment 2, may have been repurposed to the cafeteria, which is increment 1.
- (C) The building is occupied, but there is no DSA closeout. See (A) regarding DSA closeout.
- (D) The "Dry In 3 Months" contract description listed in the December 21, 2023, board agenda attachment titled, "Multi-Prime Payment Application Spreadsheet" (payment application) indicates it was board approved on September 21, 2022. However, the agenda for the board's special meeting on September 21, 2022 does not reference any contract titled “Dry In 3 Months” or the contract price of \$85,765.
- (E) This line item in the payment application concerns the board’s September 21, 2022 special meeting agenda’s limited scope professional services agreement for CRM Group in the amount of \$50,000 per month and totaling \$200,000 for services from October 2022 through January 2023. The Cost to Provide Limited Scope Services section of the limited scope agreement states, “This amount will be credited back to original contract...” This may be referring to another \$200,000 contract. The pay application indicates the district was invoiced and paid the invoice for the four months from October 2022 through January 2023, with the final payment made in February 2023. The Dry In 3 Months invoices and payments were made from November 2022 through February 2023. Because the pay application spreadsheet does not show any credit from CRM Group to the district, it gives the appearance that CRM Group received a \$50,000 benefit that was not given back to the district per the board’s authorization on September 21, 2022.
- (F) No DSA closeout. See item (A) above regarding DSA closeout.
- (G) CRM Group estimated the project will take 18 months. Based on FCMAT’s interview with CRM Group and analysis of costs, FCMAT concludes the project may take longer, cost more than anticipated, or may need to be scaled down due to insufficient funds. The October 27, 2021, board agenda approved a CRM Group agreement that included a fee schedule for increments 2 and 3, comparing the estimate of total construction costs, the costs as if a general contractor were used, and the cost under a multiprime contract with CRM Group. The fee schedule is shown below.

WUESD Fee Schedule (Inc 2 & 3)

10/19/2021

Weed Elementary Project (Inc 2 & 3)	Est of Total Construction Cost	General Contractor (GC)	Multi-Prime (CRM)	Notes
Admin/Classroom Bldg & Sitework Const Cost (Inc 2 & 3)	\$20,000,000.00	\$20,000,000.00	\$20,000,000.00	CRM estimate of Const Costs for Inc 2 & Inc 3

Weed Elementary Project (Inc 2 & 3)	Est of Total Construction Cost	General Contractor (GC)	Multi-Prime (CRM)	Notes
Soft Costs	\$4,000,000.00			20% soft costs are industry standard
Contingency	\$900,000.00			With GC, this number is shared with District. With MP, this is the District's to use
	\$24,900,000.00			
Multi-Prime (CRM) Fee			\$2,214,156.00	
Contractor Cost (incl 15% markup for GC)		\$3,000,000.00		
Sub-Contractor Cost (15% markup for GC)		\$3,000,000.00	\$0.00	
Change Orders (15% markup on subs CO's at 10% of Const Cost)		\$300,000.00	\$0.00	10% CO's of overall const costs is what most GC's look for
Bidding Differences				GC gets hard numbers with no room for negotiation - this is their bid. Multi-Prime in our region allows for possible negotiated bids when receiving one or no bids.
Total Const Cost with markups above		\$26,300,000.00	\$22,214,156	
Potential difference in overall Const Cost		\$4,085,844.00		

FCMAT disagrees with the CRM table estimates. FCMAT estimated the projected remaining costs of the project using the rates in the contracts, the district’s payment application data, and how much has been paid to CRM Group. Per the CRM construction management agreement, exhibit *WESD A.5 WES Admin-CR-Sitework 10.15.21(1)*, approved during the October 27, 2021 special board meeting, once construction starts, the preconstruction phase is complete and the total amount of funds remaining is \$1,475,804.31 for 18 months of construction plus \$82,005.77 for closeout of the project, for a total of \$1,557,810.08. Twelve months have been billed for construction at \$82,005.73 per month, for a total of \$984,068.76. The December 14, 2023, board agenda includes a *WES Master All Increments* spreadsheet indicating that Increment 2 – Main Buildings is 30% complete. The remaining balance in CRM Group’s contract is \$573,741.32 (\$1,557,810.08 - \$984,068.76). The balance remaining of \$573,741.32 will also need to pay for increments 2 and 3, or six months of billings ending July 2024.

Furthermore, the district is building its classroom and administration building in two phases. FCMAT projects phase I of the main classroom building will be substantially complete after July of 2024 based on the district’s *WES Master Project Schedule (1.15.2023)*. The January 15, 2023 master schedule indicates a completion and occupancy date for increment 2 (administration and classroom building) of December 31, 2024, and a completion date for increment 3 (Sitework/Landscaping) of August 26, 2025. FCMAT projects at least eight additional months of CRM Group services may be needed to complete increment 2 and all site work through August 2025. This means, if billed at \$82,005.73 per month, an additional eight months of con-

struction services from January 2025 through August 2025 would cost a total of \$656,045.84 (\$82,005.73 x 8) in addition to the remaining balance of \$984,070.

Because a true CPM schedule is not being provided by CRM, as far as FCMAT can determine, the project continues with no firm completion date, will most likely cost more than the district and CRM group anticipate, or may need to stop when construction funds run out, resulting in the district not being able to build everything it estimated.

- (H) Continuing with (E) above, the governing board approved a limited scope agreement with CRM Group at a cost of \$200,000 that stipulated the \$200,000 would be credited back to the original contract. Although the payment application indicates that CRM Group has been paid in full, FCMAT cannot determine if there has been a credit back to the original contract for this amount.

The district informed FCMAT that it does not have enough funding to complete all building and site improvements. When FCMAT discussed this with CRM Group and the district, they could not identify how much the shortfall will be. When FCMAT asked CRM Group, whether it would be \$5 million or \$10 million to complete the project, the answer was that CRM did not know.

The district's governing board is responsible for the performance and finances of its public project and for the work product and management of CRM Group, and it has taken on all risks. Even though district administrators explained to FCMAT that the district has several revenue streams that may offset potential construction costs, it was unclear whether the revenue would be realized. Because it is conducting a public construction project, the district has a fiduciary responsibility to properly document and manage its construction funds. FCMAT found that, similar to what the county superintendent experienced, the district was unable to quantify in detail the project costs and any potential funding shortfall. Based on the documents the district provided, interviews with district management and CRM Group, and FCMAT's assessment, the district's management of its construction project has elements of mismanagement, including poor internal controls for financial reporting, project timelines, and tracking of project costs.

Field Act and DSA Concerns

The Field Act, created the Office of State Architect (now known as the Division of the State Architect (DSA)), which is responsible for reviewing, overseeing, and approving all school construction in the state (Education Code 17280 and following). The DSA supersedes oversight by all local building departments (Education Code 17295). The Field Act states the following in Education Code 17307:

No contract for the construction or alteration of any school building, made or executed by the governing board of any school district . . . is valid, and no public money shall be paid for any work done under a contract or for any labor or materials furnished in constructing or altering any building, unless the plans, specifications, and estimates comply in every particular with the provisions of this article [the Field Act] and the requirements prescribed by the Department of General Services [DSA].

The DSA requires a series of reports from architects, engineers and inspectors in which each attests to their personal knowledge that all aspects of construction meet the requirements of the Field Act. Specifically, EC 17309 states the following:

From time to time, as the work of construction or alteration progresses and whenever the Department of General Services requires, the licensed architect or structural engineer in charge of observation of construction or registered engineer in charge of observation of other work, the inspector on the work, and the contractor shall each make to the Department

of General Services a report, duly verified by him or her, upon a form prescribed by the Department of General Services, based upon his or her own personal knowledge, indicating that the work during the period covered by the report has been performed and materials have been used and installed, in every material respect, in compliance with the approved plans and specifications, setting forth such detailed statements of fact as are required by the Department of General Services.

The term “personal knowledge” as used in this section and as applied to the architect, and the registered engineer, means the personal knowledge which is obtained from periodic visits to the project site of reasonable frequency for the purpose of general observation of the work, and also which is obtained from the reporting of others as to the progress of the work, testing of materials, inspection and superintendence of the work that is performed between the above-mentioned periodic visits of the architect or the registered engineer. The exercise of reasonable diligence to obtain the facts is required.

The term “personal knowledge” as applied to the inspector means the actual personal knowledge which is obtained from his or her personal continuous inspection of the work of construction in all stages of its progress at the site where he is responsible for inspection and, when work is carried out away from the site, that personal knowledge which is obtained from the reporting of others on the testing or inspection of materials and workmanship for compliance with plans, specifications or applicable standards. The exercise of reasonable diligence to obtain the facts is required.

The term “personal knowledge” as applied to the contractor means the personal knowledge which is obtained from the construction of the building. The exercise of reasonable diligence to obtain the facts is required.

Education Code 17312 states, “Any person who violates any of the provisions of this article [Field Act] or makes any false statements in any verified report or affidavit required pursuant to this article is guilty of a felony.”

In addition to the Field Act requirements, the architect overseeing the district’s school replacement construction project expressed the following significant concerns about the district’s management of contracts:

1. The district has implemented what appears to be a pay-as-you-go system, by which the district is contracting to address immediate needs without formal bids.

This approach has made it difficult for the architect to accurately track costs, because expenditures are often made for local vendors without proper documentation or a formal contract.

2. Instances in which district personnel are involved in project labor, as documented in the inspector of record’s weekly reports.

Although these activities seem to be recorded in the board’s records, concerns linger about their legality in the context of public works projects, particularly in light of PCC 20114. This code states that governing boards may use day labor or force account for repairs, alterations, additions, or maintenance on school buildings, grounds, or equipment, if the total number of hours on the job does not exceed specified limits. However, it remains unclear whether the district’s use of its personnel aligns with the parameters in the code.

3. The high cost of construction management services, which are currently contracted to CRM for over \$3.1 million. Given the anticipated duration of the project, there are apprehensions

about the potential doubling of these costs, which the architect views as unusually high for such services.

Construction management costs typically vary based on a sliding scale, ranging from 4% to a maximum of 8% of total project costs, depending on the scope of work and the type and duration of services. In the district's case, most of the construction management contracts are on a per-square-foot, per-month basis, with no limit. In addition, there is the appearance of duplicate billing in some cases because some items that are normally considered an integral part of a building have been billed for separately. For example, the heating, ventilation and air conditioning (HVAC) system was billed for separately even though it is usually considered part of a building.

To date, construction management costs are approximately 12% of total costs but have the potential to increase significantly with the extended timeline for the project.

4. Potential cost overruns and funding uncertainties, particularly for increment 2 of the project. With hard costs already surpassing initial projections and progress lagging significantly, the architect anticipates significant challenges ahead, compounded by the district's apparent lack of contingency plans.
5. Safety and compliance issues for increment 2 of the construction project. The current construction plan does not include a portion of the increment 2 building as designed in the original approved plans. If completed without this portion, the building could not be legally occupied because of the absence of legal exit plans and the lack of an elevator to access the second floor. These deviations from regulatory standards raise serious implications for the safety and legal compliance of the building once completed.

These deviations from standard construction processes, as outlined by the architect, not only raise questions about the legality and transparency of the project but also have serious implications for its safety, compliance, and financial viability.

Furthermore, the architect expressed concerns about the lack of communication regarding cost-reduction measures the district and CRM Group are making. The district has indicated a need to revise items in the estimate for increment 3 without providing concrete direction. Despite acknowledging the need for modifications, no directives have been given to the architect to alter or modify the approved design. This raises uncertainties about the project's compliance with DSA and code requirements, particularly concerning the omission of certain components in increment 2, such as the administration and library areas. If the district does not address these concerns, the project may face interruptions or noncompliance issues, further exacerbated by uncertainties surrounding the scope of increment 3. Although no official changes have been made to the project yet except for minor adjustments to finishes, it is anticipated that the district may encounter financial constraints in executing all approved work, posing significant challenges to the project's completion and adherence to regulatory standards.

Conclusion

Potential for Fraud, Misappropriation of Funds, or Other Illegal Fiscal Practices

Based on the findings in this report, there is sufficient evidence to demonstrate that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices may have occurred specific to bid splitting and other areas reviewed.

Deficiencies and exceptions noted during FCMAT's review of the district's financial records and internal control environment increase the probability of fraud, mismanagement and/or misappropriation of the district's assets. These findings should be of great concern to the Weed Union Elementary School District and the Siskiyou County Superintendent of Schools and require immediate intervention to limit the risk of fraud, mismanagement and/or misappropriation of assets, or other illegal fiscal practices in the future.

Judgments Regarding Guilt or Innocence

The existence of fraud, misappropriation of funds and/or assets, or other illegal fiscal practices is solely the purview of the judicial process. FCMAT is not making a finding that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices have occurred. These terms are a broad legal concept, and auditors do not make legal determinations regarding whether illegal activity has occurred.

In accordance with EC 42638(b), action by the county superintendent of schools shall include the following:

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.

In accordance with EC 1241.5(b), the county superintendent is required to report the findings and recommendations to the district's governing board at a regularly scheduled board meeting within 45 days of completing the audit. Within 15 days of receipt of the report, the governing board is required to notify the county superintendent of its proposed actions regarding the county superintendent's recommendations.

Recommendations

The county superintendent should:

1. Notify the governing board of the Weed Union Elementary School District, the state controller, the SPI and the local district attorney that sufficient evidence exists to indicate that fraud, misappropriation of funds and/or assets, or other illegal fiscal practices may have occurred, and that the Siskiyou County Superintendent of Schools has concluded its review.
2. Report any concerns over bid splitting or other possible CUPCCAA and PCC violations to CUCCAC.
3. Provide a copy of this report to the Executive Officer of the Office of Public School Construction.

Appendix

Study Agreement

FCMAT

FISCAL CRISIS & MANAGEMENT
ASSISTANCE TEAM

FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM AB139 STUDY AGREEMENT July 19, 2022

The Fiscal Crisis and Management Assistance Team (FCMAT), hereinafter referred to as the team, and the Siskiyou 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 local educational agencies (LEAs). Pursuant to the provisions of Education Code (EC) Section 1241.5 (b), county superintendents may review or audit the expenditures and internal controls of any school in their county if they have reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The extraordinary audits 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.

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 Siskiyou County Office of Education (SCOE) has received anonymous allegations of possible fraud, misappropriation of funds or other illegal fiscal practices at the Weed Union Elementary School District. SCOE has performed sufficient due diligence to believe the allegations have merit to be investigated. Accordingly, and pursuant to Education Code Section 1241.5 (b), the SCOE has requested that FCMAT conduct an AB 139 Extraordinary Audit to review the district's process for awarding contracts, the possible intentional misrepresentation of information used to make board decisions on construction or other contracts, payments between related parties, and the existence of any related conflicts of interest.

The FCMAT study team will review information that was prepared and presented by district staff and/or consultants as the basis for board decisions related to construction and other contracts, test awarded contracts from July 2020 to present, review any applicable board policies, agendas and minutes, and utilize other investigatory means as appropriate. Any testing for this review will be based on the auditor's judgment and a sample of transactions and records for this period. Testing and review results are intended to provide reasonable but not absolute certainty about whether the district's processes and procedures for contracts followed board policy, public contract code laws and best practices.

The primary focus of this review is to determine, based on the testing performed, the following: (1) whether the district or its administration was involved in any undisclosed or inappropriate related-party transactions that were in conflict with state and federal policies and standards, or that violated conflict of interest laws; (2) whether the district's

administration intentionally misrepresented information to the school board in relation to construction or other contracts; (3) whether adequate management and internal controls are in place regarding the district's existing and anticipated contractual commitments, and (4) based on that assessment, whether fraud, misappropriation of funds or other illegal fiscal practices may have occurred.

B. Services and Products to be Provided

1. Orientation Meeting - The team will conduct an orientation session at the district to brief management and supervisory personnel on the team's procedures and the purpose and schedule of the study.
2. On-site Review – The team will conduct an on-site review at the district office and at school sites if necessary; pertinent documents will also be reviewed off-site.
3. Progress Reports – The team will inform the COE of material issues as the review is performed.
4. Exit Meeting – The team will hold an exit meeting at the conclusion of the on-site review to inform the COE of any significant findings to that point.
5. Draft Report – When appropriate, electronic copies of a preliminary draft report will be delivered to the COE's administration for review and comment on a schedule determined by the team.
6. Final Report – Electronic copies of the final report will be delivered to the COE and/or district following completion of the review. Printed copies are available from the FCMAT office upon request.
7. Follow-Up Support – If requested, the team will meet with the COE and/or district to discuss the findings and recommendations of the report.

3. PROJECT PERSONNEL

The FCMAT study team may include:

- | | |
|----------------------------|-------------------------|
| <i>A. To Be Determined</i> | <i>FCMAT Staff</i> |
| <i>B. To Be Determined</i> | <i>FCMAT Consultant</i> |

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

4. PROJECT COSTS

The cost for studies requested pursuant to EC 42127.8 (d) (1) shall be:

- A. \$1,100 per day for each staff team member while on site, conducting fieldwork at other locations, preparing or presenting reports, or participating in meetings. The cost of independent FCMAT consultants will be billed at their actual daily rate for all work performed.
- B. All out-of-pocket expenses, including travel, meals and lodging.

Based on the elements noted in Section 2A, the total estimated cost of the study will be \$101,000.

C. Any change to the scope will affect the estimate of total cost.

Payments for FCMAT’s services are payable to Kern County Superintendent of Schools - Administrative Agent, located at 1300 17th Street, City Centre, Bakersfield, CA 93301. Clients may qualify for reimbursement from funds set aside for this purpose, pursuant to AB 139.

5. RESPONSIBILITIES OF THE COE AND/OR DISTRICT

- A. The district will provide office and conference room space during on-site reviews.
- B. The district will provide the following if requested:
 - 1. Policies, regulations and prior reports addressing the study request
 - 2. Current or proposed organizational charts
 - 3. Current and two prior years’ audit reports
 - 4. Any documents requested on a supplemental list. Documents requested on the supplemental list should be provided to FCMAT only in electronic format; if only hard copies are available, they should be scanned by the district and sent to FCMAT in an electronic format
 - 5. Documents should be provided in advance of fieldwork; any delay in the receipt of the requested documents may affect the start date and/or completion date of the project. Upon approval of the signed study agreement, access will be provided to FCMAT’s online SharePoint document repository where the district shall upload all requested documents.
- C. The COE administration will review a 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 pupils. The district shall take appropriate steps to comply with EC 45125.1(c).

6. PROJECT SCHEDULE

The following schedule outlines the planned completion dates for different phases of the study and will be established upon the receipt of a signed study agreement:

Orientation:	To be determined
Staff Interviews:	To be determined
Exit Meeting:	To be determined
Draft Report Submitted:	To be determined
Final Report Submitted:	To be determined

7. COMMENCEMENT, TERMINATION AND COMPLETION OF WORK

FCMAT will begin work as soon as it has assembled an available and appropriate study team consisting of FCMAT staff and independent consultants, taking into consideration other jobs FCMAT has previously undertaken and assignments from the state. The team will work expeditiously to complete its work and deliver its report, subject to the cooperation of the district and any other parties from which, in the team’s judgment, it must obtain

information. Once the team has completed its fieldwork, it will proceed to prepare a draft report and a final report. Prior to completion of fieldwork, the COE may terminate its request for service and will be responsible for all costs incurred by FCMAT to the date of termination under Section 4 (Project Costs). If the COE does not provide written notice of termination prior to completion of fieldwork, the team will complete its work and deliver its report and the COE will be responsible for the full costs. The COE understands and agrees that FCMAT is a state agency and all FCMAT reports are published on the FCMAT website and made available to interested parties in state government. In the absence of extraordinary circumstances, FCMAT will not withhold preparation, publication and distribution of a report once fieldwork has been completed, and the COE shall not request that it do so.

8. INDEPENDENT CONTRACTOR

FCMAT is an independent contractor and is not an employee or engaged in any manner with the COE. The manner in which FCMAT's services are rendered shall be within its sole control and discretion. FCMAT representatives are not authorized to speak for, represent, or obligate the COE in any manner without prior express written authorization from an officer of the COE.

9. INSURANCE

During the term of this agreement, FCMAT shall maintain liability insurance of not less than \$1 million unless otherwise agreed upon in writing by the COE, automobile liability insurance in the amount required under California state law, and workers' compensation as required under California state law. Upon the request of the COE and the receipt of the signed study agreement, FCMAT shall provide certificates of insurance, with Siskiyou County Office of Education named as additional insured, indicating applicable insurance coverages.

10. HOLD HARMLESS

FCMAT shall hold the COE, its board, officers, agents, and employees harmless from all suits, claims and liabilities resulting from negligent acts or omissions of FCMAT's board, officers, agents and employees undertaken under this agreement. Conversely, the COE shall hold FCMAT, its board, officers, agents, and employees harmless from all suits, claims and liabilities resulting solely from negligent acts or omissions of the district's board, officers, agents and employees undertaken under this agreement.

11. COVID-19 PANDEMIC

Because of the existence of COVID-19 and the resulting shelter-at-home orders, local educational agency closures and other related considerations, at FCMAT's sole discretion, the Scope of Work, Project Costs, Responsibilities of the District (Sections I, IV and V herein) and other provisions herein may be revised. Examples of such revisions may include, but not be limited to, the following:

- A. Orientation and exit meetings, interviews and other information-gathering activities may be conducted remotely via telephone, videoconferencing, etc. References to on-site work or fieldwork shall be interpreted appropriately given the circumstances.
- B. Activities performed remotely that are normally performed in the field shall be billed hourly as provided as if performed in the field (excluding out-of-pocket costs).


C. The district may be relieved of its duty to provide conference and other work area facilities for the team.

12. FORCE MAJEURE


Neither party will be liable for any failure of or delay in the performance of this study agreement due to causes beyond the reasonable control of the party, except for payment obligations by the district.

13. CONTACT PERSON

Contact: Sarah Applegate, Associate Superintendent
Telephone: (530) 598-1530
E-mail Address: sapplegate@siskiyoucoe.net

 7/21/22

Allan Carver, Assistant Superintendent Date
Siskiyou County Office of Education

 7/21/22

Michael H. Fine Date
Chief Executive Officer
Fiscal Crisis & Management Assistance Team