

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
ACA 9 (McCarty) – As Introduced February 27, 2023

[Note: This bill is double referred to the Assembly Elections Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Superintendent of Public Instruction: gubernatorial appointment

SUMMARY: Requires a Superintendent of Public Instruction (SPI) to be appointed by the Governor, subject to confirmation by the Assembly, the Senate, and the Senate Committee on Rules, and to serve at the pleasure of the Governor. Specifically, **this amendment:**

- 1) Prohibits an election for the SPI from being held in 2026.
- 2) Requires an SPI to be appointed by the Governor, subject to confirmation by the Assembly, the Senate, and the Senate committee on rules, and to serve at the pleasure of the Governor.
- 3) Makes other conforming changes.

EXISTING LAW:

- 1) Requires an SPI to be elected by the qualified electors of the State at each gubernatorial election. Requires the SPI to enter upon the duties of the office on the first Monday after the first day of January next succeeding each gubernatorial election. Prohibits an SPI from serving more than 2 terms. (California Constitution, Article IX, Section 2)
- 2) Requires that all judicial, school, county, and city offices, including the office of the SPI, to be nonpartisan. (California Constitution, Article II, Section 6)
- 3) Requires, whenever there is a vacancy in the office of the SPI, the Lieutenant Governor, Secretary of State, Controller, Treasurer, or Attorney General, or on the State Board of Equalization, the Governor to nominate a person to fill the vacancy who shall take office upon confirmation by a majority of the membership of the Senate and a majority of the membership of the Assembly and who are required to hold office for the balance of the unexpired term. Requires, in the event the nominee is neither confirmed nor refused confirmation by both the Senate and the Assembly within 90 days of the submission of the nomination, the nominee to take office as if they been confirmed by a majority of the Senate and Assembly. Requires, if such a 90-day period ends during a recess of the Legislature, the period to be extended until the sixth day following the day on which the Legislature reconvenes. (California Constitution, Article V, Section 5)
- 4) Requires the SBE to determine all questions of policy within its powers. (Education Code (EC) 33030)
- 5) Requires the SBE to adopt rules and regulations not inconsistent with the laws of the state for its own government, for the government of its appointees and employees, for the government of the day and evening elementary schools, the day and evening secondary schools, and the

technical and vocational schools of the state, and for the government of other schools, excepting the University of California (UC), the California State University (CSU), and the California Community Colleges (CCC), and may receive in whole or in part financial support from the state. (EC 33031)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “It’s time to reconsider the structure of the California Superintendent of Public Instruction and state governance of public education. ACA 9 is a good government proposal that modernizes a relic of the past, and better aligns California education leadership.

Tony Thurmond has admirably led the Department of Education for the last four and a half years. He has been an effective voice for our public schools, and a thoughtful leader for the state agency. However, public schools deserve more than a voice. ACA 9 would allow the next Governor to appoint a new SPI to work in tandem and coordinate public education matters more effectively at the state level.”

History of K-12 education governance in California. The office of the SPI was created at the California Constitutional Convention of 1849. Although historical records show that there was little debate when the position was first created, it has subsequently been a topic of spirited discussions starting at the 1878-79 Constitutional Convention, and continuing to the present.

Throughout California’s history, the elements of the statewide governance system of the K-12 education system have changed, but despite numerous challenges the SPI position has remained one chosen by the voters. The following includes a historical timeline of changes to K-12 education governance in California:

- 1849: California State Constitution established an elected SPI. Statute assigned the SPI several duties: building schools, overseeing teacher training institutes, and apportioning school funding.
- 1852: The Legislature established the SBE. Over the next 12 years, state law gave the SBE the authority to determine the required course of study, certify teachers, and adopt regulations for the public school system.
- 1879: Delegates to the second Constitutional Convention decentralized education governance by transferring most duties the Legislature had assigned to the SBE to county boards of education.
- 1884: The State Constitution was amended to establish the SBE (members serve ex officio).
- 1912: Statewide ballot passes and the Constitution is amended to give the Governor the authority to appoint SBE members. Through statute, the Legislature gave the SBE policymaking duties and made the SPI subordinate to the SBE on issues of policy.

- 1920: *The Report on the Special Legislative Committee on Education*, also known as the “Jones Report,” was issued by the state Senate to investigate the “problem of meeting the needs and furnishing support for the schools and educational institutions of the state. Chaired by Senator Herbert C. Jones, the report warned of the “double-headed system” of elected SPI and an appointed SBE. The report contended that only if harmonious relations continued between these two power centers would there be an effective management of California’s educational system.
- 1921: The Legislature established the California Department of Education (CDE), to be overseen by the SPI.
- 1928: Voters rejected an initiative that would have replaced the SPI position with an appointed Director of Education.
- 1944: The “Mills Report,” a study commissioned by the Legislature and conducted by the management engineering firm J. N. Mills & Company, emphasized the need to clarify the roles and responsibilities of the SPI, the Director of Education, and the SBE. “There is a general looseness of the management structure within the Department [CDE].”
- 1945: *The Administration, Organization and Financial Support of the Public School System, State of California*, also known as the “Strayer Report,” a report required by Chapter 36, Statutes of 1944, recommended a constitutional amendment to have the SPI selected by an appointed board, rather than by voters, and noted:

Even a rough sketch of the problems confronting education in California in the postwar period indicates the desirability of taking action now to provide for the best possible organization, administration, and financing of the program of education. The highest type of leadership on the State level will demand the professionalization of the office of the State Superintendent of Public Instruction. This means the need for a constitutional amendment that will provide for the selection of this official by a lay board rather than by popular vote. There will most certainly be required an expansion of the staff of the State Department of Education in order that significant leadership and general supervision of the expanded program may be furnished. The State office must be in a position to guarantee that whatever program of education is mandated by the State is actually carried out in all local school districts.

- 1958: Voters rejected a ballot initiative that would have made the SPI an appointed position.
- 1963: An Assembly bill to amend the State Constitution to eliminate the election of the SPI by popular vote failed to make the statewide ballot. The Assembly Legislative Reference Service prepared the report, *The State Superintendent of Public Instruction: A report on the history of the office in the State of California, and a review of the recent trends in the other 49 states*, which stated:

Once again the issue of how the State Superintendent of Public Instruction shall be chosen is making news on the political front in California. Since 1961 Governor

[Edmund G. “Pat”] Brown has favored making the office appointive, and this session he has once again come out in favor of such an arrangement.

- 1964: *A New Organizational System for State-Level Educational Administration*, also known as the “Little Reports,” completed by Arthur D. Little, Inc. found that significant changes in schools required a changed role for the CDE.

The impact of Sputnik on our instructional programs, new involvements of the federal government in support of education, the “knowledge explosion” that is rendering obsolete much of what is being taught, research and experimentation in education, explosive population growth, “big city blight,” and increasing costs of education compound the demands made on education systems in all states. The educational system of California, including its state-level administration, is regarded as one of the best in the nation. However, educators and the public are well aware that improvements can be made.

- 1968: Voters rejected Proposition 1 that would have changed the process for selecting the SPI.
- 1982: The Little Hoover Commission recommended expanding the role of the SPI.
- 1985: *The Initial Report of the Commission on School Governance and Management A Legislative Report Prepared for the California Legislature and the Governor*, created in accordance with EC 33603, recommended changing the process used to select the SPI and SBE members.
- 1988: Voters approved Proposition 98, to guarantee a minimum level of funding for education.
- 1991: Governor Wilson established the Secretary for Child Development and Education by executive order, which later became the Secretary of Education cabinet position. According to the 2002 California Master Plan for Education, “the position included a small complement of staff whose duties were largely duplicative of those in the CDE.” The Legislature refused to authorize or fund the office in statute.
- 1993: California Appeals Court ruled in *SBE v. Honig*, that the SPI must execute the SBE’s policies.
- 1993: Governor Wilson vetoed SB 856, which would have placed the SPI at the center of policy-making.
- 1996: *The Final Report and Recommendations to the Governor and the Legislature* from the California Constitution Revision Commission recommended having the Governor appoint the SPI.
- 1996: SB 1570 created an advisory committee to assist the SPI in developing an accountability system.

- 1999: SB 839 proposes to clarify the responsibilities of the SPI, SBE, and the Secretaries for Child Development and Education. The bill is held in the Assembly Education Committee.
- 2002: *The California Master Plan for Education*, created on behalf of the Joint Legislative Committee to Develop a Master Plan for Education – Kindergarten through University, recommended that the Governor should have authority over California’s education system and a more limited SPI role.
- 2004: The California Performance Review recommended restructuring the Secretary of Education as the head of a prekindergarten to workforce department and maintaining the SPI in a diminished role.
- 2011: Governor Edmund G. “Jerry” Brown eliminated the Secretary of Education position.
- 2011: SB 204 proposed to reduce the responsibilities and powers of the SBE to an advisory role to the Governor, and specified the role of the SPI was to ensure delivery of high-quality education to the pupils of the state from preschool through grade 12.
- 2013: The Local Control Funding Formula (LCFF) is established. The California Commission on Educational Excellence (CCEE) is formed.

Sources: CDE, Legislative Analyst’s Office, and unpublished research from Policy Analysis for California Education (PACE)

As demonstrated by the last 174 years of California history, the education governance of the state’s public schools continues to be contemplated by policymakers and the public. As the state has grown and changed, the role of the SPI role has stayed relatively stable since the 1920s: to run the CDE. Numerous attempts to modify that role by either changing the position from elected to appointed, or diminishing the role have been unsuccessful. Although each elected SPI enters the constitutional office with their own policy priorities, in most cases they lack the authority to make significant policy changes. According to the 1996 California Constitution Revision Commission report, *The Final Report and Recommendations to the Governor and the Legislature*, “The general public and many in the education community perceive that the superintendent of public instruction has more authority over the schools than actually exists.” Many SPIs use the bully pulpit to rally support for various initiatives and projects.

The Constitution assigns no specific duties to the SPI, however state law assigns the SPI three basic responsibilities: manage the CDE, serve as executive office and secretary of the SBE, and serve on various boards and commissions as an ex officio member. As the head of the CDE, the SPI has numerous responsibilities: administer state and federal education programs; ensure schools are complying with applicable state and federal laws; allocate funding based on various formulas; compile and disseminate data on districts, schools, staff and students; oversee development of curriculum frameworks, standardized student assessments, instructional materials, and school facilities standards; and oversee county offices of education (COEs).

The SBE. The SBE was established first by statute in 1852, then by amendment to the California Constitution in 1884. Both the Constitution and statutes set forth the SBE’s duties.

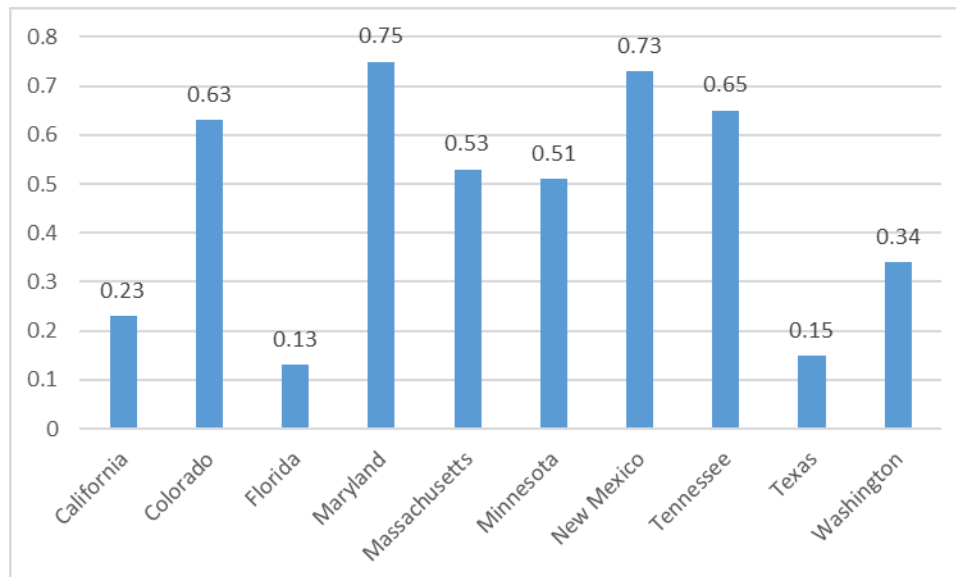
Constitutional duties of the SBE include the appointment of one deputy and three associate superintendents upon nomination of the SPI and the adoption of textbooks for use in grades one through eight. By statute, the SBE is the governing and policy-making body of the State. The Constitution and statute also assign the SBE a variety of other responsibilities: regulations, standards, adopt textbooks for kindergarten and grades one through eight, granting of waivers, assessment, district reorganization, charter schools, ensuring compliance with the federal Every Student Succeeds Act (ESSA), funding allocations, and study and planning.

The SPI and the SBE. State law sets forth a few basic principles related to the relationship between the SPI and the SBE. The SBE is responsible for determining “all questions of policy” within its jurisdiction, and the SPI has control of “executive and administrative functions” but also must execute the policies approved by the SBE. According to a 2018 presentation from the LAO, *Overview of State Governance: K-12 Education*, the relationship between the SBE and the SPI is less clear in practice. There have been several disputes over roles and jurisdiction. For example, in 1997, the voters approved Proposition 227, which required English learners to be taught in English and restricted bilingual programs. The SPI advised districts that they could ask the SBE to waive these requirements, but the SBE concluded that it lacked this authority and refused to issue the waivers.

The CDE administers education programs. The CDE is the primary state entity responsible for administering federal and state education programs. According to a 2014 LAO report, *Review of the California Department of Education*, “generally the CDE does not create education policy or programs. Many of the CDE’s activities stem from federal requirements, such as overseeing the compliance of LEAs with the conditions placed on federal education grants. The state also requires the CDE to perform certain administrative tasks, such as overseeing LEAs’ compliance with state education programs and collecting and compiling statewide data. Given the size of the state, number of LEAs, and diversity among LEAs, the state typically relies on COEs—not CDE—to provide direct assistance and specific advice to LEAs on how they can improve their educational programs.”

CDE funding levels compared to other states. According to a 2018 technical report from Getting Down to Facts II, *State Structures for Instructional Support in California*, “As the agency charged with administering federal and state policy, the CDE has at least formal responsibility to help put California’s ambitious grade-level standards into instructional practice deeply and equitably.” Figure 1, below, depicts state department of education’s staffing levels per 1,000 public school students in the state in 2017. According to the technical report, the nine other comparison states were selected to reflect variation in state size, region, and partisan affiliation. California’s relatively low rate of state-level staffing relative to student enrollment is commensurate with other big states, like Texas and Florida. Compared nationally and over time, however, California has significantly fewer state education department employees, relative to the size of its student population.

Figure 1: Department of Education Staff per Students, 2017



Source: Getting Down to Facts II, State Structures for Instructional Support in California, 2018.

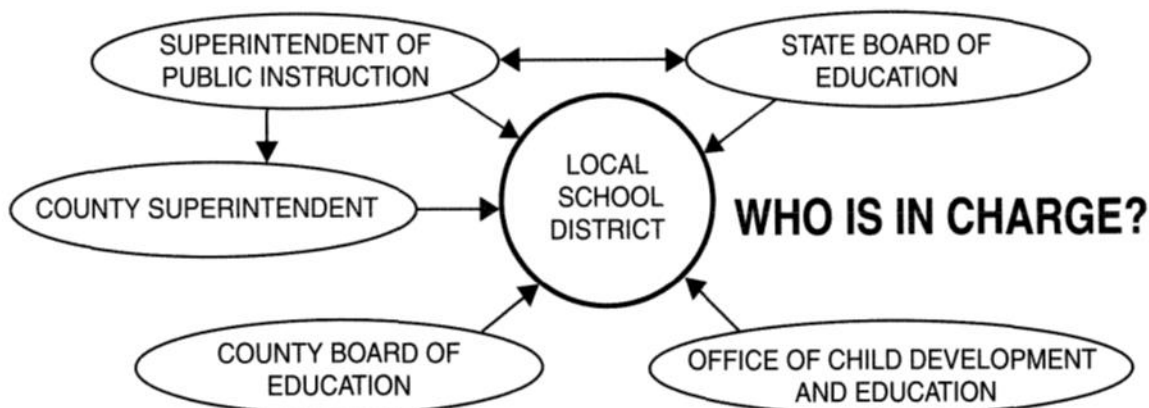
The California Collaborative for Educational Excellence. The CCEE was established legislatively in 2013 to advise and assist school districts, COEs, and charter schools achieve the goals and objectives in their Local Control and Accountability Plans (LCAPs). The CCEE was created as part of the LCFE legislation that redesigned California’s school funding and accountability systems. Subsequent legislation has added to the CCEE’s responsibilities, related to supporting struggling school districts, COEs, and charter schools.

Lack of shared goals. The position of the SPI is just one component of the larger K-12 governance structure in California including the Governor, the Legislature, the SBE, the CDE, the CCEE, and local governing boards, among others. Despite the many agencies and leaders supporting K-12 public schools, there remains little clarity as to who holds the ultimate responsibility for student outcomes. The state does not have agreement on the balance of state and local control.

The final report from the 1996 California Constitutional Revision Commission states a concern that continues today:

Responsibility for the state’s education system is further complicated by the lack of constitutional reference to the authority of the Governor for elementary and secondary education. Despite that, the historical prominence of the Governor in education policy and budget decisions leads the public to presume a certain level of gubernatorial responsibility. The dispersion of responsibility within the education system means that no one has the authority to implement reforms, and citizens don’t know whom to hold accountable for educational quality and results.

Figure 2: Who is in Charge? (1996)



Source: *The Final Report and Recommendations to the Governor and the Legislature*, California Constitution Revision Commission report, 1996.

The 2018 LAO report’s review of recent studies on K-12 governance concluded that there is broad agreement that the current governance structure is flawed – there are no clear lines of responsibility, the system does not promote coherent policy making, and there are many examples of duplication and overlap. If the SPI was changed from an elected position to an appointment, this isolated change would likely not result in significant changes to educational policy or practice because the various components are so interrelated. Rather, *the Committee may wish to consider* the value in looking at only one component of the system, namely the role of the SPI, rather than examining the entire governance structure, and its effectiveness in improving student outcomes.

The state lacks shared goals related to the outcomes of the K-12 public school system, for example: is the goal of public education to increase academic achievement for California’s students, to have all students graduate from high school ready for career or college, close achievement gaps among student groups, or to complete a course of study with a discrete set of skills and knowledge? What is the vision for the state level supports needed to meet these goals? *The Committee may wish to consider*, what state leadership structure best supports schools in meeting our goals?

The Committee may wish to consider that the race for the office of the SPI has at times been very contentious, and spending on the 2018 election of the SPI exceeded that of the race for Governor. In recent decades the office has been held by former members of the Legislature, as with many other constitutional offices.

Education governance in other states. Only eight other states share California’s state-level education governance structure, according to the 2020 Education Commission of the States (ECS) resource, *Education Governance Dashboard, K-12 Governance Models*, as shown in Table 1. The CDE is also somewhat unique among California state agencies in that it is led by an elected constitutional officer, rather than a Governor’s appointee.

Table 1: Education Governance Dashboard

| K-12 Governance Model | States |
|--|--|
| Model I: Appointed Board, Appointed Chief: Voters elect the governor, who then appoints both the members of the state board of education and the chief state school officer. | Delaware, Iowa, Maine, New Hampshire, New Jersey, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia |
| Model II: Governor Appoints Board, Board Appoints Chief: Voters elect the governor, who then appoints either all or most of the members of the state board of education. The state board, in turn, appoints the chief state school officer. | Alaska, Arkansas, Connecticut, Florida, Hawaii, Illinois, Kentucky, Maryland, Massachusetts, Missouri, Rhode Island, West Virginia |
| Model III: Appointed Board, Elected Chief: Voters elect both the governor and the chief state school officer. The governor then appoints the state board of education. | Arizona, California, Georgia, Idaho, Montana, North Carolina, North Dakota, Oklahoma, Wyoming |
| Model IV: Elected Board, Board Appoints Chief: Voters elect both the governor and the state board of education. The state board then appoints the chief state school officer. | Alabama, Colorado, Kansas, Michigan, Nebraska, Utah |
| Other: These states function using various components of the other models. | Indiana, Louisiana, Minnesota, Mississippi, Nevada, New Mexico, New York, Ohio, Oregon, South Carolina, Texas, Washington, Washington, D.C., Wisconsin |

Source: ECS

Arguments in opposition. The California School Boards Association writes, “If adopted, ACA 9 would eliminate a critical element of the state’s system of checks and balances and downgrade a non-partisan, publicly elected statewide constitutional officer whose sole duty is to serve and promote public education in California. With due respect to the current Governor and Legislature, and the educational advancements the state has made in recent years, establishing the SSPI as a gubernatorially appointed position would place full control of the state’s executive responsibilities in public education solely in the hands of the Governor. Centralizing all aspects of statewide education governance within the Office of the Governor would dilute the emphasis on and importance of public education in California. ACA 9 would also formally insert partisan politics into a historically nonpartisan office, beginning in 2027. This is antithetical to the role of public education in California and would further subject statewide public education policy to partisan politics beyond what it already faces today. Access to and the promotion of public education is critical to a functioning democracy and informed electorate, and through its role the SSPI has and can be a strong independent voice on any challenge facing public education.”

Related legislation. AB 1101 (Eng) of the 2011-12 Session would have replaced the Governor-appointed retiree representative on the Teachers' Retirement Board (TRB) with a representative

elected by the retirees of the California State Teachers' Retirement System (CalSTRS). This bill was vetoed by the Governor, with the following message:

The state's retirement system boards need greater independence, not less. This bill would move in the wrong direction by giving CalSTRS members an additional representative on the CalSTRS board.

SB 204 (Liu) of the 2011-12 Session would have changed the state-level governance structure for K-12 education by reducing the responsibilities and powers of the SBE to an advisory role to the Governor, and specified the role of the SPI was to ensure delivery of high-quality education to the pupils of the state from preschool through grade 12, as specified. This bill was subsequently amended into a different jurisdiction.

AB 1862 (Eng) of the 2009-10 Session would have replaced the Governor-appointed retiree representative on the California State Teachers' Retirement Board with an elected member to represent the same population. This bill was vetoed by the Governor, with the following message:

There is no documented problem that demonstrates the need to change current law with this bill.

SB 839 (Alpert) of the 1999-00 Session would have to clarify the responsibilities of the SPI, the SBE, and the Secretaries for Child Development and Education. The bill is held in the Assembly Education Committee.

SB 1186 (Liu) of the 2009-10 Session was substantially the same as SB 204 of the 2011-12 Session. The bill was subsequently amended was held in the Senate Appropriations Committee.

SB 856 (Dills) and SB 1856 (Dills) of the 1993-94 Session, would have removed the expanded powers of the SBE under the SBE v. Honig court decision. Both measures were vetoed by then Governor Wilson. The veto message of SB 856 read:

The relationship between the SPI and the SBE is both complicated and complementary. The existing statutory and constitutional provisions create a system analogous to the corporate model with a board of directors and an executive director. Ideally, a strong SBE and a strong SPI serve each other well.

The SBE reflects California's ethnic and cultural diversity – an individual cannot. The SBE conducts its business in full public view, with prior notice, and with public input. A SPI, as an individual, does not have to meet the standards of open government that a board does.

Finally, this bill would restrict all governors' ability to shape education policy... To deny the chief executive of the state the ability to articulate policy objectives in matters of education would be shortsighted and unreasonable.

Proposition 140 (1990) prohibits an SPI from serving more than two terms.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Parents Union
California Retired Teachers Association
California School Boards Association
California Teachers Association
Moms for Liberty Santa Clara County
Natomas USD for Freedom
14 individuals

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