

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, February 25, 2004

CHARTER SCHOOL FACILITY PROGRAM REGULATION AMENDMENTS
SCHOOL FACILITY PROGRAM

PURPOSE OF REPORT

To request:

1. Adoption of proposed emergency regulations to implement and administer statutory amendments to the Charter School Facility Program (CSFP).
2. Authorization to file the proposed emergency regulations with the Office of Administrative Law.

DESCRIPTION

After the first allocation of the CSFP by the State Allocation Board (SAB) in July 2003, the SAB and the California School Finance Authority (CSFA) presented a joint report to the Legislature detailing the implementation of the program, description of the projects funded, and recommendations for statutory change. Subsequently, Senate Bill (SB) 15, Chapter 587, Statutes 2003 (Alpert) modified the CSFP in several areas requiring changes to the School Facility Program (SFP) regulations. Major changes or amendments to the SFP regulations are summarized as follows:

Eligibility Requirements

Prior to submitting an application, the charter school's chartering agreement must have been approved or amended by the appropriate chartering entity for the proposed project.

Advance Funding

Charter schools may request advance funding to assist in planning and designing the project as well as site acquisition funding to purchase land. All applicants will have the ability to request this funding.

Total Project Funding Caps

In an effort to maximize the number of projects that are approved by the SAB, total project funding caps have been established for the next round of applicants. Two funding caps have been created; one for non-urban projects and one for urban projects and each cap is dependent on the grade level of the project. In addition, an applicant will be limited to the amount of pupils that may be requested for a project. To assist with reducing the overall project cost, the California Department of Education has decreased the recommended site size for a charter school by half of a traditional school. This will help reduce site acquisition costs.

Application Filing Period

The filing period for the potential funding allocated in the 2004 Bond is set in regulation. Given the complexity of the issues and the various organizations involved, both the Office of Public School Construction (OPSC) and CSFA supported a change in the regulation to amend the filing period to begin 10 calendar days after the 2004 Bond. The amendment was presented to the SAB in October 2003. Upon review, the amendment approved by the SAB in October needs to be re-adjusted to allow time for the regulations to be approved by the Office of Administrative Law prior to the opening of the filing period.

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STAFF COMMENTS

The OPSC presented the proposed regulations to the SAB Implementation Committee on several occasions as a forum to gather input from interested parties and reach a consensus on the best way to implement SB 15. In addition, the OPSC worked closely with the CSFA to assure continuity between our agencies. Upon adoption by the SAB, the OPSC will submit these regulations as emergency regulations to the Office of Administrative Law.

RECOMMENDATIONS

1. Adopt the proposed amendments to the regulations as shown on the attachment and begin the regulatory process.
2. Authorize the OPSC to file these emergency regulations with the Office of Administrative Law.
3. Rescind the SAB Action of October 22, 2003 that amended the application filing period for the CSFP.

This Item was approved by the State Allocation Board on February 25, 2004.

ATTACHMENT
PROPOSED AMENDMENTS TO THE
SCHOOL FACILITY PROGRAM REGULATIONS
State Allocation Board Meeting, February 25, 2004

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

...

"Authority" shall have the meaning set forth in Education Code Section 17078.52(c)(1).

...

"Charter School" shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.

"Charter School Facility Account" means the fund for new construction Charter School projects authorized by Sections 100620(a)(1)(A) and 100820 (a)(1)(A).

"Charter School General Location" shall mean a three mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.

...

"Classroom-Based Instruction" shall have the meaning set forth in Education Code Section 47612.5(e)(1).

...

"Final Charter School Apportionment" shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.

...

"Financially Sound" shall have the meaning set forth in Education Code Section 17078.52(e)-(d)(4) and Title 4, California Business Regulations commencing with Section 10151, et al.

...

"Form SAB 50-09" means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (~~New 01/03~~ Revised 02/04), which is incorporated by reference.

...

"Hazardous Material/Waste Removal Fund" shall mean the fund established pursuant to Section 1859.163.3, in order to set aside funding at the time Preliminary Charter School Apportionments are approved by the Board for hazardous material waste removal that will be provided at the Final Charter School Apportionment when actual costs are known.

...

"Large Charter School" shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

"Low-income" shall be the percentage of pupils deemed to be eligible for free/reduced lunch as identified in the Free and Reduced Price Meals data on file at the CDE, these charter schools in which a percentage of the pupils receive free or reduced meals according to the CDE.

...

"Medium Charter School" shall be defined as a school with an enrollment of ~~404~~ 176 pupils to 350 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

"Non-profit entity" means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, Section 5110, et seq.

...

“Overcrowded School District” for purposes of determining preference points is any district that demonstrates eligibility in excess of two percent of their unhoused pupils.

....

“Preliminary Charter School Application” means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.

“Preliminary Charter School Apportionment” means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

....

“Region One” shall consist of the following counties: Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

“Region Two” shall consist of the following counties: Alameda, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne.

“Region Three” shall consist of the following counties: Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, ~~Tulare~~, and Ventura.

“Region Four” shall consist of the following counties: Imperial, Orange, Riverside, and San Diego.

...

“Relocation/DTSC Fee Fund” shall mean the fund established pursuant to Section 1859.163.3, in order to set aside funding at the time Preliminary Charter School Apportionments are approved by the Board for relocation expenses and/or DTSC fees that will be provided at the Final Charter School Apportionment when actual costs are known.

...

“Restricted Charter School Fund” means the funds in the 2002 (or 2004, as appropriate) Charter School Facility Account approved for a Preliminary Charter School Apportionment.

...

“Rural Area” shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

...

“Small Charter School” shall be defined as a school with an enrollment of not more than ~~400~~ 175 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Suburban Area” shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

...

“Unrestricted Charter School Fund” means the funds in the 2002 (or 2004, as appropriate) Charter School Facility Account not approved for a Preliminary Charter School Apportionment(s).

“Urban Area” shall be as a school with a locale code of one as classified by the NCES.

...

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17075.10, 17075.15, 17077.42, 17077.45, 17078.52, 17078.56, 17280, and 56026, Education Code. Section 53311, Government Code.

Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Application:
 - (1) \$5,226.82 for each elementary school pupil.
 - (2) \$5,533.65 for each middle school pupil.
 - (3) \$7,225.94 for each high school pupil.
 - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
 - (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
 - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
 - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
 - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08, ~~or Form SAB 50-09, as appropriate.~~
- (e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 ~~or Form SAB 50-09, as appropriate,~~ by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
 - (1) The district has requested an increase for multilevel construction pursuant to (b) above.
 - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined multiplying the sum of the pupil grants requested on Form SAB 50-08 ~~or Form SAB 50-09, as appropriate,~~ and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 ~~or Form SAB 50-09, as appropriate,~~ as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08, ~~or Form SAB 50-09, as appropriate.~~ For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.
 - (3) The value of the property as determined in Section 1859.145.1(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (h) For purposes of COS projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. ~~For purposes of Charter School projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than March 31, 2003.~~

- (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.
- (j) If the district received an apportionment prior to November 5, 2002 pursuant to Section 1859.81.1(e), an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.145.1. Preliminary Apportionment Site Acquisition Value.

If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
 - (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Application ~~or Preliminary Charter School Application~~ was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property. The acreage identified in the appraisal or the preliminary appraisal may not exceed the proposed useable acreage requested on Form SAB 50-08, ~~or Form SAB 50-09, as appropriate.~~
 - (2) The Median Cost of an acre of land in the General Location of the proposed project using historical information in the General Location multiplied by the number of proposed useable acres requested on Form SAB 50-08 ~~or Form SAB 50-09, as appropriate.~~ Historical information that may be considered to determine land cost may include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a period of up to two years prior to the date the Preliminary Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
 - (1) 21 percent of the value determined in (a).
 - (2) The sum of the following:
 - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
 - (B) The DTSC cost for review, approval, and oversight of the ~~POSEA~~ POESA and the PEA for the specific site to be acquired.
 - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the General Location.
- (a) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.

- (b) For allowable costs of hazardous material/waste removal and remediation costs, one-half times the value of the property determined in either (a)(1) or (a)(2), above.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

Article 14. Charter School Facilities Program

Section 1859.160. General.

A Charter School seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.50 through ~~17078.64~~ 17078.66 for new construction shall complete and file a Form SAB 50-09.

Once the Board has approved a Preliminary Charter School Apportionment for a Preliminary Charter School Application submitted pursuant to this Section after July 2, 2003, a Charter School seeking an advance release of funds for site acquisition pursuant to Section 1859.164.2(b), shall be required to submit an additional Form SAB 50-09, to the OPSC, to determine eligible site acquisition costs. A Charter School seeking an advance release of funds for design, engineering, and other pre-construction project costs pursuant to Section 1859.164.2(a), shall not be required to submit an additional Preliminary Charter School Application.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.161. Preliminary Charter School Application Submittals.

A Charter School seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50-09 between February 2003 and March 31, 2003, or during a period of 120 calendar days beginning 30 calendar days after an election authorizing additional funding. ~~between 60 calendar days prior to and 120 calendar days after the 2004 election authorizing additional funding.~~

The Board may establish additional application filing periods as needed.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.53, Education Code.

Section 1859.162. Preliminary Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all of the following requirements are met: ~~the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level of project being proposed in the Charter School application.~~

- (a) the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level(s) being proposed in the Preliminary Charter School Application; and,
- (b) prior to submission of the Preliminary Charter School Application the requirements of EC Section 17078.53(d) are met.
- (c) the pupil grants requested on the Form SAB 50-09 do not exceed the lesser of the district's available new construction eligibility or the following:

Grade Level	Pupil Grant Request Description	Pupil Grant Limit
Elementary	K-6 or any combination thereof	350
Middle	7-8, K-8 inclusive, or any combination of 7-12 non-inclusive	450
High	9-12 or K-12, 7-12 inclusive	600

For purposes of this pupil grant limiter, Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupils will be counted towards the pupil grant limit established for the project.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

Section 1859.162.1. Overlapping District Boundaries.

If the Charter School provides or will provide instruction for a combination of grade levels and therefore is or will be located in more than one school district's boundaries (e.g. elementary and high school district, not unified), a separate Form SAB 50-09 requesting pupil grant eligibility from each district, as appropriate will be required. For the purposes of receiving a Preliminary Charter School Apportionment pursuant to Section 1859.163, the applications will be combined into one to be funded concurrently.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.53 and 17078.54, Education Code.

Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the Charter School is Financially Sound. ~~The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1.~~ In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.163.1. Preliminary Charter School Apportionment Determination.

The Preliminary Charter School Apportionment shall be separated into two categories, items that may be identified as construction costs versus site acquisition costs.

(a) The Preliminary Charter School Apportionment for construction costs shall be equal to the lesser of the sum (1) through (7) below or the amounts in the following chart:

Project Grade Level	Charter School Construction Cost Funding Cap	
	Non-Urban <u>Ineligible for (a)(5) below</u>	Urban <u>Eligible for (a)(5) below</u>
Elementary	\$5 million	\$6.6 million
Middle	\$7 million	\$9 million
High	\$10 million	\$12.9 million

The funding cap for a project containing a combination of grade levels shall be determined based on the pupil cap assigned pursuant to Section 1859.162.

- (1) The amounts shown below for each pupil included in a Preliminary Charter School Application:
 - (A) \$5,870 for each elementary school pupil.
 - (B) \$6,214 for each middle school pupil.
 - (C) \$8,116 for each high school pupil.
 - (D) \$18,703 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
 - (E) \$12,509 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (2) An amount equal to 12 percent of the amount determined in (1) for multilevel construction, if requested by the Charter School.
- (3) An amount for site development cost determined, at the option of the Charter School, by one of the following:
 - (A) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
 - (B) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.
 - (C) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.
- (4) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to 1859.83(b)(1) or (b)(2), as appropriate.
- (5) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (1) and (4), plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
 - (A) The Charter School has requested an increase for multilevel construction pursuant to (2) above.
 - (B) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size for a traditional school determined by multiplying the sum of the pupil grants requested on Form SAB 50-09, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-09, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-09.
- (C) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (6) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (1), (2), (3)(C), (4) and (5) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (7) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to the items in (1) through (6) above.
 - (b) The Preliminary Charter School Apportionment for site acquisition costs construction costs shall be:
 - (1) Equal to one-half of the site acquisition value determined in Section 1859.163.2(a) and (c).
 - (2) If the Charter School is paying its matching share through the form of lease payments, pursuant to Section 1859.168, the value of the lease as determined by the Authority attributable to (1) above.
 - (c) The total amount calculated in (a) above will be added to any amount calculated in (b) above, which will provide the Preliminary Charter School Apportionment amount.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.56, Education Code.

Section 1859.163.2. Preliminary Charter School Apportionment Site Acquisition Value.

If the Preliminary Charter School Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
- (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.
 - (2) The Median Cost of an acre of land in the Charter School General Location using historical information in the Charter School General Location multiplied by the number of proposed Useable Acres requested on Form SAB 50-09. Historical information that may be considered to determine land cost shall include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Charter School Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
- (1) 15 percent of the value determined in (a).
 - (2) The sum of the following:
 - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
 - (B) The DTSC cost for review, approval, and oversight of the POESA and the PEA for the specific site to be acquired.
 - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Charter School Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the Charter School General Location.
- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, up to one-half times the value of the property determined in either (a)(1) or (a)(2) above.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.56, Education Code.

Section 1859.163.3. Establishment of Funds for Relocation/DTSC Fee and Hazardous Material/Waste Removal.

The Board shall establish two separate funds from the funding provided through the 2004 Bond for the site acquisition values calculated pursuant to costs provided in Section 1859.163.2(b) and (d) that will not be part of the Preliminary Charter School Apportionment determined in Section 1859.163.1. The amount to reserve for the funds will be determined as follows:

Relocation/DTSC Fee Fund

- (a) For all projects requesting an additional grant for relocation and DTSC costs on the Form SAB 50-09 pursuant to Section 1859.163.2(b), the value of each property as determined in Section 1859.163.2(a) will be added. The sum would then be multiplied by 15 percent. The product would provide the dollar value to be reserved, but shall not be less than \$2.75 million.

Hazardous Material/Waste Removal Fund

(b) For all projects requesting an additional grant for hazardous material/waste removal and remediation costs provided pursuant to Section 1859.163.2(d), the value of each property as determined in Section 1859.163.2(a) will be added. The sum would then be multiplied by 10 percent. The product would provide the dollar value to be reserved, but shall not be less than \$2.5 million.

Any Charter School requesting a Final Charter School Apportionment may request the funding provided in (a) or (b) above when the Form SAB 50-04 is submitted. At the time of Final Charter School Apportionment, should insufficient funds remain in either the Relocation/DTSC Fee Fund or Hazardous Material/Waste Removal Fund to fully apportion those site acquisition costs, any amount not apportioned by the Board for relocation, DTSC fees, or hazardous material waste removal or remediation shall be placed on an Unfunded List in Board date approval order. Any funds returned to Unrestricted Charter School Fund in the appropriate Charter School Facility Account pursuant to Section 1859.167(b) shall be used by the Board to fund projects remaining on the Unfunded List.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

Section 1859.164. Application Funding Criteria.

If the estimated total apportionments of all Financially Sound Preliminary Charter School Applications received in either filing period specified in Section 1859.161 exceed the funds available, the applications shall be identified in each of the following four categories:

- (a) Geographical Region One, Two, Three, or Four.
- (b) Urban, Rural, or Suburban areas.
- (c) Large, Medium, or Small Charter Schools.
- (d) K-6, 7-8, or 9-12 grade levels.

The Board shall first apportion one project of each possible type, a maximum of four in category (a) and a maximum of three in categories (b) through (d), starting with (a) and continuing through (d). If more than one application is received of the same type within a category, the Board will apportion based on which project has the highest preference points, calculated in Section 1859.164.1. If a project has the highest preference points but was previously apportioned, the project with the next highest preference points will be apportioned. The same process will continue for the remaining categories until the Board has apportioned a project within each type in categories (a) through (d), or until no funding remains. If after funding one project in each category (a) through (d), funding remains available, the process shall be repeated until no funding remains.

All funds approved as a Preliminary Charter School Apportionment shall be transferred to the Restricted Charter School Fund within the appropriate Charter School Facility Account. Any funds not approved as a Preliminary Charter School Apportionment shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account.

All Preliminary Charter School Applications received from an Charter School will be processed in the date order received by the OPSC. If more than one Preliminary Charter School Application is received on the same day from the same entity for a Charter School project located within the geographical jurisdiction of same district, those applications will be processed by the OPSC based on the priority order assigned to those applications by the Charter School on Form SAB 50-09.

If two or more Preliminary Charter School Applications have the same preference points, the Board shall first apportion that Preliminary Charter School Application that was received first by the OPSC. Any

applications the SAB is unable to provide a Preliminary Charter School Apportionment to will be returned to the Charter School.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points based on the percentage of pupils at either the Charter School or school district where the Charter School is or will be located meeting the definition of Low-income. The Charter School may report the highest percentage of the two. if a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a Financially Sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for the district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:

Percentage Receiving Free/Reduced Lunch	Preference Points Assigned
5-15%	4
16-30%	8
31-39%	12
40-47%	16
48-55%	20
56-64%	24
65-73%	28
74-82%	32
83-91 <u>92%</u>	36
<u>92-100%</u> <u>93</u>	<u>40</u> <u>36.5</u>
<u>94</u>	<u>37</u>
<u>95</u>	<u>37.5</u>
<u>96</u>	<u>38</u>
<u>97</u>	<u>38.5</u>
<u>98</u>	<u>39</u>
<u>99</u>	<u>39.5</u>
<u>100</u>	<u>40</u>

- (b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment (round up) and multiplying the product by 100. Use the following sliding scale to determine the number of preference points:

Percentage Overcrowded	Preference Points Assigned
<u>2-5%</u>	4
<u>6-9%</u>	8
<u>10-13%</u>	12
<u>14-17%</u>	16

18-21%	20
22-27%	24
28-34 %	28
35-41%	32
42-50%	36
51% and above	40

<u>Percentage Overcrowded</u>	<u>Preference Points Assigned</u>
<u>2-9%</u>	<u>4</u>
<u>10-13%</u>	<u>8</u>
<u>14-16%</u>	<u>12</u>
<u>17-19%</u>	<u>16</u>
<u>20-22%</u>	<u>20</u>
<u>23-25%</u>	<u>24</u>
<u>26-33 %</u>	<u>28</u>
<u>34-41%</u>	<u>32</u>
<u>42-49%</u>	<u>36</u>
<u>50% and above</u>	<u>40</u>

- (c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 20 preference points.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

Section 1859.164.2 Preliminary Charter School Apportionment Fund Release.

A Charter School receiving a Preliminary Charter School Apportionment from the Board after July 2, 2003 may request an advance release of funds for either of the following:

- (a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a)(1) through (6).
- (b) A separate advance release of funds for site acquisition once the requirements in Section 1859.81(a)(2) and (3) are met for an amount not to exceed the Preliminary Charter School Apportionment for site acquisition. The Board shall release to the Charter School an amount up to the Preliminary Charter School Apportionment determined in Section 1859.163.1(b).

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial soundness status from the Authority. The OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Charter School Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the Charter School may request a release of the remaining funds as prescribed in Section 1859.90.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code

Reference: Section 17078.53, Education Code

Section 1859.165. Conversion of Preliminary Charter School Apportionment.

When a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, all the following criteria must be met:

- (a) The Final Charter School Apportionment request must meet all criteria on the Form SAB 50-04 for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (b) A Charter School seeking to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment shall complete and file Form SAB 50-04, The number of pupils being requested which cannot exceed more than 100 percent of the pupils the amount the Charter School originally requested and received at the Preliminary Charter School Apportionment.

If the Charter School is unable to meet the criteria in this Section, the Preliminary Charter School Apportionment shall be rescinded pursuant to the provisions of Section 1859.166.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Section 1859.166. Time Limit on Preliminary Charter School Apportionment.

- (a) A complete request to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment pursuant to Section 1859.165 shall be made within four years of the date of the Preliminary Charter School Apportionment unless the Charter School received approval of an extension pursuant to Section 1859.166.1.
- (b) If (a) is not met, and the Charter School has not received an advance release of funds as provided in Section 1859.164.2, the following will occur: the Preliminary Charter School Apportionment shall be rescinded and the SFP New Construction Eligibility will be increased for the pupils assigned to the Preliminary Charter School Application for the school district that physically contains the Charter School within its geographical boundaries.
 - (1) the Preliminary Charter School Apportionment shall be rescinded and any remaining Preliminary Charter School Apportionment, not released to the Charter School, shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;
 - (2) the SFP New Construction Eligibility will be increased for the pupils assigned to the Preliminary Charter School Application for the school district that physically contains the Charter School within its geographical boundaries.
- (c) If (a) is not met, and the Charter School has received an advance release of funds as provided in Section 1859.164.2, the following will occur:
 - (1) The Preliminary Charter School Apportionment shall be rescinded and any remaining Preliminary Charter School Apportionment, not released to the Charter School, shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;
 - (2) Funds released pursuant to Section 1859.164.2(a) shall be reduced to cost incurred and closed-out pursuant to Section 1859.106 with a corresponding SFP new construction baseline eligibility adjustment for the pupils assigned to the Preliminary Charter School Application. Funds returned pursuant to Section 1859.106 shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account, and;
 - (3) Funds released pursuant to Section 1859.164.2(b) shall be subject to the provisions of Section 1859.171.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.166.1. Preliminary Charter School Apportionment Time Limit Extension.

A Charter School that has received a Preliminary Charter School Apportionment may request a single one-year extension of the time limit prescribed in Section 1859.166(a). The Board shall approve the request provided the criteria in (a) or (b) are met:

- (a) The Charter School has provided evidence of both of the following:
 - (1) The CDE has made a contingent or final approval of the proposed site; and,
 - (2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.
- (b) Other evidence satisfactory to the Board justifying the extension.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Section 1859.167. Final Charter School Apportionment.

(a) For Charter School Preliminary Apportionments provided by the Board on July 2, 2003, the amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the Charter School will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (1)(a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Final Charter School Apportionment shall be funded entirely. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Charter School Fund in the 2002 Charter School Facility Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (2)(b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
 - (A)(1) If the balance in the Unrestricted Charter School Fund in the 2002 Charter School Facility Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment entirely. The Final Charter School Apportionment shall become the full and final apportionment for the project.
 - (B)(2) If the balance in the Unrestricted Charter School Fund in the 2002 Charter School Facility Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment using any remaining balance in the Unrestricted Charter School Fund in the 2002 Charter School Facility Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) For Preliminary Charter School Apportionments provided by the Board after July 2, 2003:
 - (1) the Final Charter School Apportionment will be subject to the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04 is submitted and accepted for processing by the OPSC for the Final Charter School Apportionment; and,
 - (2) the per-pupil grant amounts shall not exceed the amount allotted in 1859.163.1(a)(1); and,
 - (3) if the Preliminary Charter School Apportionment was based on the Charter School being eligible for the additional grant in Section 1859.163.1(a)(5) and at the time the Final Charter School Apportionment is provided the Charter School does not meet the requirements to receive that adjustment pursuant to Section 1859.83(d), the Charter School construction cost funding cap will be re-established based on the non-urban project amount, pursuant to Section 1859.163.1(a); and,

- (4) the Final Charter School Apportionment shall not contain additional grants beyond that which the Charter School may have requested at the time of the Preliminary Charter School Application; and,
- (5) prior to the Board providing a Final Charter School Apportionment the Charter School will need to have a current Financial Soundness certification from the Authority; and,
- (6) The amount of the Final Charter School Apportionment shall not exceed the Preliminary Charter School Apportionment determined in Section 1859.163.1, and the Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:
 - (A) If the portion of the Preliminary Charter School Apportionment calculated pursuant to Section 1859.163.1(a) is greater than the Final Charter School Apportionment request for the items identified as construction costs then the difference shall be transferred to the Unrestricted Charter School Fund in the appropriate Charter School Facility Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
 - (B) If the portion of the Preliminary Charter School Apportionment calculated pursuant to Section 1859.163.1(b) is greater than the Final Charter School Apportionment request for the site acquisition cost items then the difference shall be transferred to the Unrestricted Charter School Fund within the appropriate Charter School Facility Account. If the project is eligible for an additional grant for relocation expenses, DTSC fees, or hazardous waste removal pursuant to Sections 1859.74 or 1859.74.2, the Preliminary Charter School Apportionment may be increased accordingly using the funding set aside in Section 1859.163.3. The Final Charter School Apportionment shall become the full and final apportionment for the project.
 - (C) If the portion of the Preliminary Charter School Apportionment calculated pursuant to Section 1859.163.1(a) is less than the Final Charter School Apportionment request for the items identified as construction costs, the amount of funding provided at the Preliminary Charter School Apportionment shall become the full and final apportionment for the project.
 - (D) If the portion of the Preliminary Charter School Apportionment calculated pursuant to Section 1859.163.1(b) is less than the Final Charter School Apportionment request for the site acquisition cost items, the amount of funding provided at the Preliminary Charter School Apportionment shall become the full and final apportionment for the project. If the project is eligible for an additional grant for relocation expenses, DTSC fees, or hazardous waste removal pursuant to Sections 1859.74 or 1859.74.2, the Preliminary Charter School Apportionment may be increased accordingly using the funding set aside in Section 1859.163.3.
 - (E) The Board may approve any funds deposited into the Unrestricted Charter School Fund in the appropriate Charter School Facility Account pursuant to (b)(6)(A) or (B) shall be first used to fund remaining site acquisition costs on the Unfunded List pursuant to Section 1859.163.3. If no projects remain on the Unfunded List the Board shall use any funds for other Charter School facility projects.

~~Any funds deposited into the Unrestricted Charter School Facilities Account pursuant to this Subsection (a), and not used under (b)(1), or (b)(2), shall be used by the Board for other Charter School facility projects.~~

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.56, Education Code.

Section 1859.167.1. Final Charter School Apportionment Conversion Site Acquisition Guidelines.

When a Charter School submits the Form SAB 50-04 for a Final Charter School Apportionment pursuant to Section 1859.167, the Final Charter School Apportionment for site acquisition costs may not exceed the amount calculated pursuant to Section 1859.163.1(b). The Useable Acres for the project may not exceed the CDE recommended site size for the project established at the time the initial Preliminary Charter School Application was submitted to the OPSC.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.56 and 17078.58, Education Code.

Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

~~Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment,~~ The Charter School will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Unrestricted Charter School Fund in the appropriate Charter School Facility Facilities Unrestricted Account. Any funds deposited in either Account shall be first used to fund remaining site acquisition costs off the Unfunded List pursuant to Section 1859.163.3. Should no projects remain on the Unfunded List the Board may use the funds for purposes of this Article.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.54 and 17078.58, Education Code.

Section 1859.169. Eligible Expenditures.

Expenditures made with the Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52, Education Code.

Section 1859.170. Additional Program Reporting Requirements.

A Charter School filing a Form SAB 50-09 on its own behalf pursuant to this Article shall comply with the reporting requirements of Sections 1859.100, 1859.101, 1859.102, and 1859.106.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.54, Education Code.

Section 1859.171. Use of Facility.

~~Once a~~ A Charter School that has received funding pursuant to Section 1859.164.2(b) and has not met the timelines established in Section 1859.166 or is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, the school district where the Charter School is physically located can either:

- (a) Elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
 - (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
 - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
- (b) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education

Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.62, Education Code.