

TITLE 2. CALIFORNIA ADMINISTRATIVE CODE  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 3. DEPARTMENT OF GENERAL SERVICES  
SUBCHAPTER 4. OFFICE OF PUBLIC SCHOOL CONSTRUCTION  
SUBGROUP 5.7. SCHOOL FACILITIES NEEDS ASSESSMENT AND  
EMERGENCY REPAIR PROGRAM

Article 1. General Provisions and Definitions

Section 1859.300. Purpose.

These regulations implement the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.70 and 17592.71, Education Code.

Section 1859.301. Director of General Services.

The Director of General Services, or the Director's legal designee, shall perform all acts necessary to carry out the provisions of these regulations except such functions reserved to the Board and to other agencies by law or by Sections 1859.300 through 1859.329, inclusive. These acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17070.20, Education Code.

Section 1859.302. Definitions.

For the purposes of these Subgroup 5.7 regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

"Accepted Application(s)" means a Local Educational Agency (LEA) has submitted the application and all documents to the Office of Public School Construction (OPSC) that are required to be submitted with the application as identified in the General Information and Required Documentation section of the Form SAB 61-03, *Grant Request*, (Rev. 01/07), as appropriate, and the OPSC has accepted the application.

"Act" means California Education Code (EC) Sections 17592.70 through 17592.73, inclusive, and 41207.5.

"Apportionment" means an allocation of funds by the Board for eligible School Facilities Needs Assessment Grant Program or Emergency Repair Program costs.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) by the LEA to the California Department of Education (CDE).

"Certification of Eligibility" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for the purpose of a one-time determination of whether a school site meets the provisions of Section 1859.311(b).

"Cosmetic Repairs" means repairs that enhance the physical environment of the school and are not directly related to the mitigation of a health and safety hazard.

"Deferred Maintenance Program (DMP)" means the State deferred maintenance funding authorized by EC Sections 17582 through 17588, inclusive.

"Emergency Facilities Needs" means structures or systems that in their present condition pose an immediate threat to the health and safety of pupils and staff while at school.

"Emergency Repair Program (ERP)" means the repair program implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

"ERP Grant" means an Apportionment provided by the State to the LEA for eligible costs, pursuant to EC Section 17592.72 and Regulation Sections 1859.323, 1859.323.1, and 1859.323.2.

"Employee" means an individual that is a classified or certificated temporary, probationary or permanent employee receiving a warrant as payment from the LEA.

"Expended" means work has been completed, or services rendered, and a warrant has been issued for payment.

"Form SAB 61-01" means the *Needs Assessment Report*, Form SAB 61-01 (New 01/05), which is incorporated by reference.

"Form SAB 61-02" means the *Expenditure Report*, Form SAB 61-02 (New 02/05), which is incorporated by reference.

"Form SAB 61-03" means the *Grant Request*, Form SAB 61-03 (Rev. 12/08), which is incorporated by reference.

"Form SAB 61-04" means the *Expenditure Report*, Form SAB 61-04 (Rev. 12/08), which is incorporated by reference.

"Grant" means an apportionment for a request for an Emergency Repair Program project and can include reimbursement for projects already completed.

"Grant Adjustment" means an increase or a decrease in the Grant after review of the Form SAB 61-04.

"Interim Evaluation Instrument" means the evaluation tool developed pursuant to EC Section 17002.

"Like-Kind Material/System" means a building material or system that is substantially identical in function to the existing building material or system to be replaced.

"Local Educational Agency (LEA)" means a school district or county office of education meeting the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"LEA Representative" means a member of the LEA staff or other agent authorized to execute and file application(s) with the Board on behalf of the LEA and/or act as liaison between the Board and the LEA.

"Needs Assessment" means the review of the facilities conducted pursuant to the Section 1859.315(c), the Form SAB 61-01 and EC Section 17592.70.

"Needs Assessment Grant" means the funding provided pursuant to EC Section 17592.70(c) and Sections 1859.312 and 1859.313.

"Nonessential Repairs" means work that is not directly related to the mitigation of a health and safety hazard including, but not limited to, repairs to correct items not in compliance with Title 24 of the California Code of Regulations that existed prior to and are not an Emergency Facilities Needs.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve including individuals with exceptional needs meeting the provisions of EC Section 56026.

"Ready for Apportionment" means a review of an Accepted Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an Apportionment, and the OPSC will recommend approval to the Board.

"Routine Restricted Maintenance Account" means the account into which funds are deposited by LEAs pursuant to EC Section 17070.75.

"School Facilities Emergency Repair Account" means the account established by the OPSC pursuant to EC Section 17592.71(a).

"School Facilities Needs Assessment Grant Program" means the one-time assessment of school facilities implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

"School Facility Program (SFP)" means the Leroy F. Greene School Facilities Act of 1998, commencing with EC Section 17070.10.

"Section" means a section in these Subgroup 5.7 regulations.

"Unfunded List" means an information list of unfunded projects including projects partially funded on a prorated basis pursuant to Section 1859.322(b)(1).

"Web-Based Needs Assessment" means the on-line Form SAB 61-01 provided by the OPSC and accessible through the OPSC Website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for the one-time purpose of submitting the Needs Assessment data electronically.

"Web-Based Progress Report Survey" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for the purpose of submitting a one-time report on the progress made toward completing the Needs Assessment.

Includes OAL approval and Secretary of State filings of 05/31/2005, 07/02/07 and 08/31/09.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.70, 17592.71, 17592.72 and 17592.73, Education Code.

## Article 2. School Facilities Needs Assessment Grant Program

### Section 1859.310. General.

A school site that qualifies for the School Facilities Needs Assessment Grant Program according to the provisions of EC Section 17592.70(b) shall be allocated funds by the Board in order to conduct a one-time comprehensive school facilities needs assessment. An LEA that receives funds under this Article shall be required to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of Section 1859.311.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

### Section 1859.311. Eligible Schools.

An LEA that has a school site meeting all of the following is eligible for the School Facilities Needs Assessment Grant Program:

- (a) The school was identified on the list published by the CDE pursuant to EC Section 17592.70(b).
- (b) The school was newly constructed prior to January 1, 2000.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

### Section 1859.312. Apportionment of Funds.

The Board shall allocate ten dollars (\$10) per Pupil enrolled in eligible school sites, according to the 2003 October CBEDS Report, for each school site identified by CDE pursuant to Section 1859.311(a). A minimum allocation of seven thousand five hundred dollars (\$7,500) shall be made for each school site. Once an Apportionment has been made by the Board and the OPSC has received the Certification of Eligibility, funds for eligible school sites will be released by OPSC to the LEA with jurisdiction over the school site(s) along with requirements for the money to be spent at the eligible school site(s) in accordance with Section 1859.313. Any school site not meeting the provisions of Section 1859.311(b) is ineligible for funding under these regulations. Apportionments shall be reduced by the grant amount allocated for ineligible school sites upon receipt of the Certification of Eligibility.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

### Section 1859.313. Use of Needs Assessment Grant Funds.

The LEA shall only use the Needs Assessment Grant funds for the following:

- (a) Unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment.
- (b) Repairs identified in Part V of the Form SAB 61-01 at any eligible school site within the LEA where a Needs Assessment has been completed.

Apportionments may be rescinded or reduced by the grant amount provided for each eligible school site where the LEA fails to comply with the provisions of Sections 1859.310 and 1859.315.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

#### Section 1859.314. Qualifications of the Inspector.

The Needs Assessment must be prepared in accordance with all of the following:

- (a) The person(s) performing or supervising the Needs Assessment must have general knowledge of school facilities construction, operation, and maintenance and either of the following:
  - (1) A minimum of three years of experience with cost estimation and building systems life cycle analysis; or
  - (2) An Architect, Engineer, or General Contractor license under California law.
- (b) The person(s) meeting or being supervised by individuals that meet the conditions of (a), above, must personally conduct the assessment on the school site(s).
- (c) The individual(s) performing or supervising the Needs Assessment must be independent third parties and may not be Employee(s) of the LEA with jurisdiction over the school site for which the Needs Assessment is being performed.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.73, Education Code.

#### Section 1859.315. Program Reporting Requirements.

An LEA that receives School Facilities Needs Assessment Grant funds pursuant to Section 1859.312 shall:

- (a) Complete a Certification of Eligibility and submit it to the OPSC. Each LEA shall submit one certification to the OPSC. Fund release(s) shall be processed by the OPSC for all eligible sites upon receipt of the complete signed and dated Certification of Eligibility.
- (b) Complete a Web-Based Progress Report Survey and submit it to the OPSC. Each LEA shall submit one survey unless the Needs Assessment for all eligible school sites has been completed pursuant to subsection (c), below:
- (c) Complete a Web-Based Needs Assessment for each applicable site and submit it to the OPSC by January 1, 2006.
- (d) Complete Form SAB 61-02 to report all expenditures made with Needs Assessment Grant funds on an LEA-wide basis and submit it to the OPSC by January 1, 2007.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.70 and 17592.73, Education Code.

#### Section 1859.316. Needs Assessment Grant Expenditures and Audit.

The projects shall be subject to audit to ensure that expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.313 and 1859.314. Any funds not Expended on the Needs Assessment or eligible repairs at the time of submittal of the Form SAB 61-02 shall be returned to the OPSC.

After the OPSC receives the expenditure report from the LEA on the Form SAB 61-02 and the LEA is notified of an impending Needs Assessment audit, an audit of the expenditures by the OPSC shall commence within six months. The OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.

Should the OPSC conduct an audit of the expenditures and information, which may include certifications, for expenditures made pursuant to Section 1859.310 and make a finding that some or all of the expenditures were not made in accordance with the provisions of Section 1859.313, the OPSC shall recommend to the Board that the Apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 30 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

Includes OAL approval and Secretary of State filings of 05/31/2005, 07/02/07 and 08/31/09.

#### Section 1859.317. Duplication of Needs Assessment Grant Expenditures.

If the LEA's expenditures for the Needs Assessment Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:

- (a) No work or expenditures are duplicated.
- (b) After eliminating the work to be funded with the Needs Assessment Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.73, Education Code.

#### Section 1859.318. Supplement, Not Supplant, Needs Assessment Grant Funds.

Needs Assessment Grant funds remaining after the completion of the Needs Assessment must be used for repairs authorized in Section 1859.313(b) and must be used to supplement, not supplant, funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with this requirement, the LEA must comply with all of the following in the 2005/2006 fiscal year:

- (a) Deposit the funding level required pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.
- (b) Deposit an amount equal to the State's matching share of the basic grant pursuant to EC Section 17584, if participating in the DMP.
- (c) If either (a) or (b) are not applicable, the district must budget an amount not less than the average maintenance budget for the three previous fiscal years.
- (d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

#### Section 1859.319. Remaining Needs Assessment Grant Funds.

Any funds unapportioned or returned to the OPSC shall be transferred into the School Facilities Emergency Repair Account.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 41207.5, Education Code.

### Article 3. Emergency Repair Program

#### Section 1859.320. General.

An LEA seeking an ERP Grant for funding of costs for repairs or replacement of existing structural components or building systems that pose(d) a health and safety threat to the pupils or staff while at school, as defined by EC Section 17592.72(c)(1), shall submit to the OPSC a completed Form SAB 61-03.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

### Section 1859.321. Eligible Schools.

Eligible schools are determined as follows:

- (a) An LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61-03:
  - (1) The school was identified on the list published by the CDE pursuant to EC Section 17592.72.
  - (2) The school was newly constructed prior to January 1, 2000.
- (b) Commencing with the 2007/08 Fiscal Year and for subsequent fiscal years, an LEA that has a school site that is identified by the CDE pursuant to EC Section 17592.72 is eligible to submit a Form SAB 61-03.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

### Section 1859.322. Emergency Repair Program Project Funding Order.

The Board shall make apportionments on a monthly basis for Grants in the order of receipt of an Accepted Application and for Grant Adjustments in the order of receipt of a complete Form SAB 61-04, as follows:

- (a) If sufficient funding is available to provide funding to all applications presented that month, all applications will receive an Apportionment of the eligible costs.
- (b) If funding is insufficient in any given month:
  - (1) Grants will be provided to each application on a prorated basis with the balance placed on the Unfunded List, unless the proration will result in funding less than 25 percent of the eligible project costs. The proration shall be determined by dividing the total funds available by the total eligible costs of all applications Ready for Apportionment. All Grant Adjustments will be placed on the Unfunded List.
  - (2) If the proration, as determined in (1) above, will be less than 25 percent of the eligible project costs, the Board shall provide Grant funding at 100 percent of the eligible project costs of the Grants based on date order received until funds are no longer available and the remaining Grant applications shall be placed on the Unfunded List. All Grant Adjustments will be placed on the Unfunded List.
  - (3) The Board will continue to accept and process applications for the purpose of developing an Unfunded List based on the order of receipt of the Accepted Applications.

When funds become available, projects on the Unfunded List will be apportioned in the order of date received. From available funds, Grants will be funded first and Grant Adjustments will be funded second. After an Apportionment has been made by the Board, funds will be released automatically by the OPSC. If local funds have been expended, the Apportionment must be used by the LEA to reimburse the special reserve fund and the original source of funds used to make the LEA expenditures for the ERP project.

Once all ERP funds have been depleted, any applications that have received a prorated Apportionment, a Grant, or a Grant Adjustment will be deemed a full and final Apportionment, any applications remaining fully unfunded on the Unfunded List will be returned to the LEA, and the Unfunded List shall be dissolved.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.71 and 17592.72, Education Code.

### Section 1859.323. Eligible Project Costs.

Funding will be provided to meet the LEA share of the repair costs of Emergency Facilities Needs as defined in Education Code Section 17592.72(c)(1). To be eligible for funding consideration, the total project cost request on the Form SAB 61-03 must be \$5000 or higher unless the LEA can justify its request for a lesser amount. Funding of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard, plus application documentation preparation and submittal costs, if any, as permissible under Regulation Section 1859.323.2(j).

Includes OAL approval and Secretary of State filings of 05/31/2005, 07/02/07 and 08/31/09.

Replacement of existing structural components or building systems is permissible provided the project is in compliance with provisions of Section 1859.323.1.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.323.1. Replacement Projects

Funding of eligible replacement costs shall be provided only if it is more cost-effective to replace rather than repair a structural component or building system that poses a health or safety threat to pupils or staff while at school. For purposes of this section, it is more cost-effective to replace a structural component or building system when the estimated cost of an eligible repair is at least 75 percent of the cost of replacement.

If the cost to repair the component or system is less than 75 percent of the current replacement cost and the district elects to replace the component or system, then Grant funding shall be equal to the estimated cost of repair. Projects that use this option are not eligible for an increase to the Grant at the time of Grant Adjustment pursuant to Section 1859.324.1.

If the request is for replacement components or systems, a cost comparison must be prepared. The cost comparison shall consist of a repair cost estimate and a Like-Kind Material/System replacement cost estimate provided by qualified individual(s) or firm(s).

Replacement of a structural component or building system shall be limited to the use of a Like-Kind Material/System except when the work in the project proposes to use an alternative building material or system which is requested by the LEA. The cost comparison must also include the estimated cost of replacement using an alternative building material or system. If replacement with an alternate material/system is more costly than replacement with a Like-Kind Material/System, the LEA will receive funding for the alternate material/system in an amount not to exceed the cost of replacement with a Like-Kind Material/System. If it is determined that the only possible replacement is with the alternate material/system, the LEA will receive funding for the actual cost of replacement with the alternate material/system.

If the request is for replacement components or systems that included structural deficiencies, the cost comparison must also include a report from a licensed design professional identifying the minimum work necessary to obtain Division of the State Architect's approval.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.323.2. Ineligible Expenditures.

An Emergency Repair Program Grant may not be used for any of the following:

- (a) New square footage, components, or building systems that did not previously exist.
- (b) Nonessential Repairs.
- (c) Cosmetic Repairs.
- (d) Land acquisition.
- (e) Furniture and equipment.
- (f) Salaries of LEA employees except when permitted pursuant to Public Contract Code Section 20114.
- (g) Costs covered under warranty or by insurance.
- (h) Costs normally borne by others including, but not limited to, public utility companies.
- (i) Costs to repair or replace facilities with structural damage if the project meets the facility hardship or rehabilitation criteria set forth in School Facility Program Regulation Sections 1859.82 and 1859.83(e).

Includes OAL approval and Secretary of State filings of 05/31/2005, 07/02/07 and 08/31/09.

- (j) Application documentation preparation and submittal costs that exceed two percent of the total project cost or \$5,000, whichever is less. The total project cost shall be calculated by adding all other eligible costs and re-calculated upon the grant adjustment determination pursuant to Section 1859.324.1.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.324. Funding.

An Emergency Repair Program Grant shall be used to fund the LEA's eligible costs, as defined by Sections 1859.323 and 1859.323.1 as follows:

- (a) For schools ranked in deciles one to three, inclusive, based on the 2003 Academic Performance Index that meet requirements defined by Section 1859.321(a) and all of the following provisions:
  - (1) If contracts for services or work were signed for the project, contracts must have been entered into on or after September 29, 2004.
  - (2) Funds must have been Expended on or after September 29, 2004.
  - (3) Accepted Applications on or before June 30, 2007. If these ERP regulations are not in effect by March 31, 2007, LEAs may submit applications for 90 days following the effective date of the regulations.
- (b) For schools ranked in deciles one to three, inclusive, based on the 2006 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:
  - (1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2005.
  - (2) Funds must have been Expended on or after July 1, 2005.
  - (3) Accepted Applications on or before June 30, 2010.
- (c) For schools ranked in deciles one to three, inclusive, based on the 2009 Academic Performance Index that meet requirements defined by 1859.321(b) and all of the following provisions:
  - (1) If contracts for services or work were signed for the project, contracts must have been entered into on or after July 1, 2008.
  - (2) Funds must have been Expended on or after July 1, 2008.
  - (3) Accepted Applications on or before June 30, 2013.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.324.1. Grant Adjustments

After review of a Form SAB 61-04, projects that require a Grant Adjustment will be presented to the Board for approval based upon one of the following review determinations:

- (a) If the expenditures are less than the Grant, the Grant will be deemed the full and final apportionment for the project and the OPSC shall recommend to the Board that the Apportionment be reduced by the amount of savings realized by the LEA. The savings, which include any interest earned on the Grant funds, either declared by the LEA or determined by the OPSC, must be returned to the State when the LEA submits the Form SAB 61-04 to the OPSC. If the LEA fails to make the required payment, the OPSC shall notify the Controller and the LEA in writing, and the Controller shall deduct an amount equal to the amount due by the LEA under this subdivision from the LEA's next principal apportionment or apportionments of state funds to the LEA, other than basic aid apportionments required by Section 6 of Article IX of the California Constitution. Any amounts obtained pursuant to this Section shall be deposited into the School Facilities Emergency Repair Account and will be made available for the funding of future ERP Grants and Grant Adjustments.
- (b) If the expenditures are greater than the Grant apportionment, provided the additional expenditures are associated with the project's original scope, the OPSC shall recommend to the Board that the Apportionment be increased. The Grant Adjustment will be deemed as the full and final apportionment for the project.
- (c) If the expenditures are equal to the Grant, no further Board action is necessary. The Grant will be deemed as the full and final apportionment for the project.

Includes OAL approval and Secretary of State filings of 05/31/2005, 07/02/07 and 08/31/09.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

#### Section 1859.324.2. Interest Earned on ERP Grants.

All interest earned on ERP Grant funds provided pursuant to Section 1859.324 shall be:

- (a) Applied to eligible project costs for the project, as approved by the SAB, and pursuant to Section 1859.323; or
- (b) Returned to the State.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

#### Section 1859.325. School Facility Due Diligence.

To ensure that the LEA is exercising due diligence in the administration of its facility accounts and is using an Emergency Repair Program Apportionment to supplement existing funding for the maintenance of school facilities, the OPSC may conduct a review of the LEA's facility maintenance accounts pursuant to the provisions of Section 1859.328.

In the event that the Board finds that an LEA is failing to exercise due diligence or supplanting has occurred, the Board shall notify the county superintendent of schools in which the LEA is located and may deny future funding under these regulations.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.326. Expenditures and Audit.

The projects shall be subject to audit to ensure that the expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.327, and 1859.328.

After a full and final Apportionment has been made pursuant to Regulation Section 1859.324.1, should the OPSC notify the LEA of an impending ERP audit of the expenditures reported on the Form SAB 61-04, an audit by the OPSC shall commence within six months. Once the audit has commenced, the OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.

Should the OPSC conduct an audit of the expenditures and information provided by the LEA, which may include certifications, for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of EC Section 17592.72(c) and Regulation Sections 1859.323 through 1859.329 inclusive, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 60 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a).

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

Includes OAL approval and Secretary of State filings of 05/31/2005, 07/02/07 and 08/31/09.

#### Section 1859.327. Duplication of Emergency Repair Program Expenditures.

If the LEA's expenditures for the Emergency Repair Program Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:

- (a) No work or expenditures are duplicated.
- (b) After eliminating the work to be funded with the Emergency Repair Program Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.328. Supplement, Not Supplant, Emergency Repair Program Grant Funds.

Emergency Repair Program Grant funds must be used to supplement, not supplant funds already available for routine, deferred, planned and scheduled maintenance, or emergency repairs of school facilities. In accordance with these requirements, the LEA must comply with all of the following at the time the Accepted Application and the Form SAB 61-04 are submitted to the OPSC:

- (a) Deposit the funding level required for the current fiscal year pursuant to EC Section 17070.75 in the Routine Restricted Maintenance Account, if participating in the SFP.
- (b) If participating in the DMP, the district:
  - (1) For applications submitted prior to January 1, 2006, has deposited an amount equal to the State's matching share of the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and
  - (2) For applications submitted on or after January 1, 2006, has deposited an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the latest available determination; and
  - (3) Will deposit an amount equal to the maximum basic grant, calculated pursuant to EC Section 17584, for the next scheduled determination.
- (4) Shall not transfer excess local funds in accordance with EC Section 17583 from the deposits made as specified in (2) and (3), above.
- (c) If either (a) or (b) are not applicable, the district must budget for the current fiscal year an amount not less than the average maintenance budget for the three previous fiscal years.
- (d) In an effort to ensure that each of its schools is maintained in good repair, the LEA shall expend or encumber by issuing a purchase order or entering into a legal contract or document, or dedicate funds from the sources listed in subsections (a) through (c), above, to correct problems identified in the facilities inspection system required pursuant to EC Section 17070.75(e), which may include items listed in the DMP five-year plan, or the Interim Evaluation Instrument that do not qualify for funding as described in EC Section 17592.72(c)(1). For those projects eligible for ERP funding, the LEA may seek funding at any time provided that the LEA has or will meet the above requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

#### Section 1859.329. Withdrawal and Amendment of Applications.

In the event an LEA has omitted costs from the Form SAB 61-03 at the time of submittal and the project has not received a Grant Apportionment from the Board, the LEA may withdraw its application and resubmit a revised Form SAB 61-03. The resubmitted application shall receive a new processing date by the OPSC. If the Board has already provided a Grant Apportionment for the project, the LEA may request the additional cost on the Form SAB 61-04. Additional expenditures must be associated with the project's original scope. If the Board has already provided a Grant Adjustment for the project, the LEA will not be able to receive additional funding for the project and the Apportionment provided by the Board will be considered full and final.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

Section 1859.330. Time Limit on Grant Apportionment.

The LEAs that receive ERP Grants shall comply with all of the following provisions:

- (a) When the Division of the State Architect's review and approval is not required, within 15 months of the Grant apportionment the LEA shall:
  - (1) Complete the emergency repair or replacement; and
  - (2) Submit the Form SAB 61-04 to the OPSC.
- (b) When the Division of the State Architect's review and approval is required, within 21 months of the Grant apportionment the LEA shall:
  - (1) Complete the emergency repair or replacement; and
  - (2) Submit the Form SAB 61-04 to the OPSC.

If the LEA does not meet the Time Limit on Grant Apportionment, the Apportionment will be rescinded without further Board action. Within 60 days of the OPSC notification, the LEA must submit to the State a warrant for the amount of the Apportionment and any interest earned on State funds. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a). Any rescinded funds returned to the State will be made available for the funding of future ERP Grants and Grant Adjustments. The LEA may re-file Form SAB 61-03 to request a Grant for the rescinded projects provided it meets the provisions of Section 1859.324 at the time of re-filing.

Note: Authority Cited: Sections 17592.72 and 17592.73, Education Code.

Reference: Section 17592.72, Education Code.