

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 10. School Sites: Nonuse Payments
(Unused Sites Program)

Article 1. Definitions.

Section 1864.1. Definitions.

(a) In connection with the administration of the provisions of Sections 39015 to 39018, inclusive, of Article 1, Chapter 1, Part 23, Division 3, Title 2, Education Code and for the purposes of these regulations, the terms set forth below shall have the following meanings:

(1) The Act. Sections 39015 through 39018, above.

(2) This Regulation. Shall be deemed to refer to Sections 39015 through 39018 thereof.

(3) Subject Sections. Shall be deemed to refer to Sections 39015 through 39018 of the Education Code.

(4) "Use" Within Five or Seven Year Period Specified by Section 39015.

(A) Use Prior to Effective Date of This Act Within 5 or 7 Year Period from Date of Acquisition. A district shall not be deemed to have used a site prior to the effective date of the act (January 1, 1974), within the 5 or 7 year period from the date of acquisition specified by Section 39015, unless it has within such 5 or 7 year period either:

1. entered into a lease in accordance with law which at any time in the future will result in improvements of a substantial nature on the site, or

2. made any other use thereof which either:

a. included the use of substantial improvements on the site at the time of acquisition, or

b. resulted at any time in such improvements on the site. For the purposes of this paragraph:

(i) bleachers or backstops regularly used for Little League play shall be deemed to be a substantial improvement to the site, and

(ii) the growing of agricultural or other plants shall not be deemed to be a substantial improvement to the site unless done as part of a regular school program for the benefit of the pupils of the district.

(B) Use Subsequent to the Effective Date of the Act. A site shall not be deemed to be used within the meaning of the five or seven year period of the date of acquisition specified by Section 39015 subsequent to the effective date of the act unless the use made thereof is for the specific purpose for which acquired, or for a purpose of similar dignity, as for example:

1. used to house students for all Department of Education programs authorized by the Legislature and operated by public school districts for which the district is receiving ADA apportionments. This would include Adult Education if ADA apportionments are being received,
2. used to house Special Education students,
3. used for District Administration including such support facilities as warehousing and maintenance facilities,
4. used for preschool or child care centers when operated by or under contract with public school districts or county superintendents of schools.

(5) "Purpose for Which It Was Intended" in Section 39015. The phrase "Purpose for which it was intended" in Section 39015 shall be deemed to mean the specific purpose for which the site was acquired or a purpose of similar dignity, for example:

(A) the substitution of a school of one grade level for a school of a different grade level, or

(B) used for the following reasons:

1. to house students for all Department of Education programs authorized by the Legislature and operated by public school districts for which the district is receiving ADA apportionments. This would include Adult Education if ADA apportionments are being received,
2. to house Special Education students,
3. for District Administration including such support facilities as warehousing and maintenance facilities,
4. for preschool or child care centers when operated by or under contract with public school districts or county superintendents of schools.

(6) "Will Utilize the Property . . . Within a Reasonable Period of Time" in Section 39015. The term "utilize" in the heading of this subparagraph shall refer to the same type of use as specified in (4) B above. A "reasonable period of time" shall be deemed to be a fixed period of time specified by the Board or a period of time dependent upon one or more contingent or indefinite occurrences, with or without a cutoff date, which the Board deems reasonable under the circumstances of the case. Generally, a reasonable period of time shall not exceed three years, unless the Board determines a longer period is warranted by the facts.

(7) Evidence. "Evidence" shall include information or documentation bearing upon the matter sought to be shown.

(8) Future Use. "Future Use" shall be deemed to mean "use," as defined in (4)B above within a "reasonable period of time," as defined in (6) above.

Note: Authority cited: Sections 39015-39018, Education Code.

Reference: Section 39015, Education Code.

Article 2. Procedures.

Section 1864.2. Cooperation by School Districts.

Every school district shall furnish the Executive Officer within a reasonable period of time specified by him and on forms prescribed thereby, with such attachments as may be desirable such information as may be requested by him in order for the Executive Officer or the Board to perform their functions under this regulation.

Section 1864.3. Evidence of Use – Determination by Executive Officer If Favorable; Otherwise by Board.

The Executive Officer may determine that the site has been so used if he determines the evidence warrants the same, for the following:

(A) Where the district furnishes evidence of use within the meaning of Section 1864.1(4) A or B above,

(B) Where the district furnishes evidence that a school site has been utilized for one-half or more of the number of days in a year by a school district or by any other governmental entity pursuant to agreement with the school district for school or community playground, playing field, or other outdoor recreational purposes.

Otherwise, he shall submit the question of use or non-use to the Board for its determination.

Note: Authority cited: Section 39015, Education Code.

Reference: Section 39015, Education Code.

Section 1864.4. No Evidence of Past Use.

Where a district fails to furnish to the Executive Officer evidence of past use within the meaning of Section 1864.1(4)A above, within a reasonable time prescribed by such officer, the Executive Officer shall make a determination of non-use, which shall constitute the Board's determination referred to in 39017.

Note: Authority cited: Sections 39015-39018.

Education Code. Reference: Section 39017, Education Code.

Section 1864.5. Non-Use Determination by the Board.

Where the Executive Officer, pursuant to Section 1864.3, has not made a favorable determination that the site has been used, the Board shall consider the evidence submitted and shall make such determination of use or non-use.

Section 1864.6. Board's Determination of Future Use.

When any finding of non-use has been made pursuant to Section 1864.4 or 1864.5, the district shall be given a reasonable time, as determined by the Executive Officer, to furnish evidence of future use to the Board for its determination as to whether the same will occur, together with the recommendation by the Executive Officer as to the Board's action with respect thereto.

Section 1864.7. Determination That Reasonable Time Has Elapsed Prior to the Expiration of Maximum Period Specified.

When the Board has made a determination that a district will use the site within a reasonable period of time, it may subsequently determine that such reasonable period has elapsed, though less than the time specified, where the Board receives information that satisfies it, that such site will not be used during such period for the purpose for which it was intended within the meaning of Section 1864.1(a)(5). Any affected district shall, if it desires, be given an opportunity to be heard by the Board prior to such determination. Any such determination shall be deemed a determination of non-use at the time it is made for the purposes of Section 39017. For the purpose of this paragraph, the term "period" as used herein may include either a fixed period or an open-ended period.

Note: Authority cited: Sections 39015-39018.

Education Code. Reference: Section 39015, Education Code.

Section 1864.8. Purchase Price Modification Factor.

Any school district subject to non-use payments pursuant to Section 39015, Education Code may furnish the Board with a copy of a current appraisal of the fair market value of the site under consideration made either by a qualified independent appraiser or the county assessor. The Executive Officer may use such appraised value as the modified purchase price for determination of non-use payments pursuant to Section 39015.

Note: Authority cited: Sections 39015-39018.

Education Code. Reference: Section 39015, Education Code.

Section 1864.9. No Certification Where Acquisition for Nominal Consideration.

Where a district has acquired the property for a nominal consideration, no certification shall be made by the Executive Officer to the State Controller with respect to each fiscal year prescribed by Section 39016. A consideration shall be deemed to be nominal with respect to any fiscal year during which a certification would otherwise be made by the Executive Officer, where it appears likely to him that it would result in a deduction by the Controller during the next succeeding fiscal year of less than \$5 for any of the installments specified in Section 39016.

Note: Authority cited: Sections 39015-39018.

Education Code. Reference: Section 39016, Education Code.

Section 1864.10. Lease-Purchase Same As Sale.

When a district has entered into a lease-purchase agreement with another public agency which will result in the transfer of title for the site to such public agency upon completion of the purchase, such lease-purchase shall be considered to be a sale within the meaning of Section 39017, Education Code.

Note: Authority cited: Sections 39015-39018.

Education Code. Reference: Section 39017, Education Code.