

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 28, 2007

FINAL ADOPTION OF PROPOSED REGULATORY AMENDMENTS
FOR REPAYMENT SCHEDULES FOR AMOUNTS DUE TO THE STATE

PURPOSE OF REPORT

To request final adoption of the proposed regulatory amendments, based on public comments submitted, pertaining to repayment schedules for amounts due to the State.

BACKGROUND

On October 25, 2006, the State Allocation Board (SAB) adopted proposed emergency regulations in order to implement Assembly Bill (AB) 607, Chapter 704, Statutes of 2006, to allow a repayment schedule under the School Facility Program (SFP) to repay amounts due to the State rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. Financial close-out audits on SFP projects occasionally require refunds to the State in amounts that could cause a district to be in jeopardy of becoming financially insolvent and subject to oversight requirements. Because it was expressly required by AB 607, this regulatory action permits districts to apply for a repayment schedule only after showing that it is necessary to prevent severe financial hardship. The SAB's action established specific criteria for applicant school districts to provide evidence demonstrating severe financial hardship.

Public comments were received from two individuals and one public entity requesting specific language changes to the Board's action, as summarized on Attachment A. The SAB must consider any public comments received before approving the final adoption of proposed regulatory amendments.

AUTHORITY

The Administrative Procedure Act, Government Code Section 11346.8(a) states, "the state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation." Government Code Section 11346.9(a)(3) requires the SAB to respond to public comments in the rulemaking file how it will "accommodate each objection or recommendation, or the reasons for making no change."

STAFF COMMENTS

Staff reviewed two of the public comments received and recommends that they not be implemented because of the following reasons:

- Comment number one suggests that the regulation language be changed to allow repayment schedules for any requesting school district. This is contrary to the provision of the authorizing statute and does not meet the intent or spirit of the statute.
- Comment number two would change the financial reporting relationship between county offices of education and school districts when amounts are owed to the State. The SAB provides separate apportionments directly to either school districts or county offices of education. There are no joint apportionments. To incorporate this suggestion in regulation would not be serving the majority of the school community as a whole, not be in the best interest of the State, and contrary to the provision and the intent of the authorizing statute.

(Continued on Page Two)

STAFF COMMENTS (cont.)

Staff reviewed the public comments received by the California Department of Education (CDE) and recommends that the comments be implemented due to the following reasons:

- The comments suggested that charter schools be included in the repayment schedule process. Staff recommends that the suggestions be incorporated for charter schools established under Article 12 of Chapter 12.5 of the Education Code. This would maintain equitability and consistency for purposes of Chapter 12.5.
- The comment regarding the reporting hierarchy between the CDE, the County Office of Educations (COE), school districts, and charter schools when severe financial hardship condition is substantiated and should be incorporated. It is logical that the CDE would notify the Office of Public School Construction (OPSC) when a COE experiences severe financial hardship, that a COE would notify the OPSC when a school district experiences severe financial hardship and the charter school's authorizing entity would notify the OPSC when a charter school experiences severe financial hardship.
- The last comment suggested that the CDE would not need to certify the financial condition of a school district for a repayment schedule. Staff recommends that the suggestion be incorporated since the reporting hierarchy in the above bullet illustrates the manner by which the entities will notify the OPSC.

RECOMMENDATIONS

1. Declare that the 45-day public comment period for the proposed regulations shown on Attachment B ended as of March 19, 2007.
2. Authorize the OPSC to make available the amended regulatory text based on incorporation of the public comments accepted, pursuant to Government Code Section 11346.8(c).
3. Determine that the public comments, as presented on Attachment A as Comments #1 and #2, do not warrant revisions to the proposed regulatory amendments.
4. Determine that the public comments, as presented on Attachment A as Comment #3, does warrant revision to the proposed regulatory amendments.
5. Approve the adoption of the proposed regulatory language for repayment schedules as presented on Attachment B.
6. If no public comments are received, based on the newly adopted regulatory language, authorize the OPSC to complete the rulemaking process by submitting the rulemaking file to the Office of Administrative Law.

BOARD ACTION

In considering this Item, the Board approved the staff's recommendations. The Board requested that staff meet with Mr. Elatar, of San Bernardino City Unified School District, to determine if his specific comments merit subsequent regulatory changes at a future date.

ATTACHMENT A
PROPOSED RESPONSES TO PUBLIC COMMENTS

1. The Office of Public School Construction (OPSC) received and reviewed comments from Mr. Wael Elatar, dated February 26, 2007, regarding the proposed amendments to the State Allocation Board's (SAB) School Facility Program (SFP) regulations which would allow a repayment schedule under the SFP to repay amounts due to the State, rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. After considering his comments, the proposed changes are not accepted for adoption.
2. The OPSC received and reviewed comments from Mr. Donald Kenneth Shelton, dated February 27, 2007, regarding the proposed amendments which would allow a repayment schedule under the SFP to repay amounts due to the State, rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. After considering his comments, the proposed changes are not accepted for adoption.
3. The OPSC received and reviewed comments from Ms. Susan Lange, with the California Department of Education, dated March 19, 2007, regarding the proposed amendments which would allow a repayment schedule under the SFP to repay amounts due to the State, rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. After considering her comments, the proposed changes are accepted for adoption.

Comment #1 Summary and Response:

Mr. Elatar acknowledges that the proposed regulation permits districts to apply for a repayment schedule only upon a showing that it is necessary to prevent severe financial hardship. He contends that "a district could have a healthy general fund but still have a hardship in making a single facility related payment versus a time payment." He requests that districts have the right to decide whether to use a repayment schedule or not.

The SAB considered the public comment noted above and determined that the comment does not warrant revisions to the regulations because the legislative language expressly required that districts be permitted to apply for a repayment schedule only after showing that it is necessary to prevent severe financial hardship.

Comment #2 Summary and Response:

Mr. Shelton suggests adding three paragraphs to Regulation Section 1859.106.1, "Repayment of State Funds." His "additions are intended to address the situation of joint projects between county offices of education and school districts, and to specifically address the joint projects of the Los Angeles County Office of Education and the Lancaster School District . . .".

Mr. Shelton proposes adding to this Regulation Section certain sentences from Education Code Sections 17076.10 and 17076.10(c)(2). It is unnecessary to repeat the wording of Education Code sections that are already referenced by number in the text of the regulation section.

Finally, Mr. Shelton requests language in the Regulation Section specifying that:

"For special education projects that are implemented in partnership between a county office of education and a school district for the purpose of providing an instructional environment on a regular school campus with the least amount of physical restriction for students with disabilities, Education Code Section 17076.10(c)(2) is interpreted in a manner that applies the five-year repayment provisions to the subject school district, if the school district is required by the county office of education to repay the amount identified. This interpretation will apply regardless of whether the audit was applied to the project of the county office of education or the project of the school district."

The SAB considered the public comments noted above and determined that the comments do not warrant revisions to the regulations because apportionments are made by the SAB directly to individual school district or county office of education projects. This would go beyond the scope of the authorizing statute as well as impact the integrity of the regulation.

Comment #3 Summary and Response:

Ms. Lange suggests that charter schools be included in the repayment schedule process. Additionally, the reporting hierarchy between the CDE, COEs, school districts, and charter schools when severe financial hardship condition is substantiated should be changed in the regulation.

The SAB considered the public comments noted above and determined that the comments warrant revision to the regulation. By allowing charter schools in the repayment schedule process ensures equitability and consistency for purposes of charter schools established under Article 12 of Chapter 12.5 of the Education Code. The reporting hierarchy allows appropriate notification to the OPSC when a COE, school district or charter school experiences severe financial hardship.

ATTACHMENT B

Amend Regulation Section 1859.106

Section 1859.106. Program Accountability Expenditure Audit.

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Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Sections 17072.13 and 17072.14 for projects with additional costs imposed by the DTSC, 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 district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. ~~Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

Adopt Regulation Section 1859.106.1 as follows:

Section 1859.106.1. Repayment of State Funds.

Upon adoption of the audit findings by the Board and in lieu of the collection procedures outlined in Education Code Section 17076.10(c)(1), a school district, county office of education, or charter school may request a repayment schedule of up to five years, in equal annual installments, if the total repayment of State funds within 60 days of the Board action would cause the school district, county office of education, or charter school to fall into fiscal distress. School districts, county offices of education, or charter schools requesting a repayment schedule must be in a severe hardship condition as evidenced by at least one of the following criteria:

- (a) The district or county office of education is listed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
 - (b) The amount due to the State for one or more projects would cause the district or county office of education to be listed on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education current report. The county office of education must submit a letter to the Office of Public School Construction (OPSC) on behalf of its representative school districts for consideration substantiating that the repayment will place the district on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education both of the following documents to the OPSC on behalf of the district for consideration: The CDE must submit a letter to the OPSC on behalf of the county office of education for consideration substantiating that the repayment will place the county office of education on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
- (1) A letter substantiating that the repayment will place the district on the CDE list.
 - (2) A CDE certification of negative financial condition.

(c) The amount due to the State for one or more projects would cause the charter school severe financial hardship. The charter school's authorizing agency must submit a letter to the OPSC on behalf of the charter school for consideration substantiating that the repayment may result in the charter school being unable to meet its financial obligations for the current or subsequent two fiscal years.

The repayment schedule shall include interest at the same rate as that earned on the State's Pooled Money Investment Account on the date a repayment schedule is approved by the Board.

The repayment schedule will commence on July 1 of the fiscal year following the repayment schedule approval date.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35 and 17076.10(c), Education Code.