

## SAB's rejects 'material inaccuracy' fine appeal

By Tom Chorneau

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Despite the hardship of an expensive penalty that would likely impact program services, the State Allocation Board on Wednesday rejected an appeal by the San Joaquin Office of Education to reduce sanctions they faced for falsely certifying their eligibility for construction funding.

At issue are fines called for in a state law aimed at preventing districts from jumping ahead of others by accessing state funds before they are actually ready to begin building, the so-called condition of 'material inaccuracy.'

Officials from San Joaquin conceded that they have improperly accessed funding for eight school construction projects – what they argued Wednesday was that the formula the allocation board uses to establish the penalty is excessive.

Mamie Starr, director of San Joaquin's operations division, said that the penalty should be limited to only the amount of interest earned during the period of ineligibility, or \$1,439.

The existing policy of the board is to apply the penalty to the entire amount of money that had been accessed prematurely, or \$257,652.

Board members said that they believe the state law is clear and it would be improper to change policy in midstream.

"I'm sympathetic," said Assemblywoman Joan Buchanan, D-San Ramon. "But I don't understand how people can sign contracts saying you were ready to build when you were not."

Starr agreed that a mistake had been made, but also pleaded for the board to consider their appeal largely because the county office would be paying the fines out of their general fund, which would impact program services.

The dispute stems from an audit presented to the State Allocation Board in November concluded that San Joaquin County had received funding for eight projects before district officials had secured construction contracts for at least 50 percent of the work – as required under state law.

The board put off assessing penalties to review the current formula and the merits of the proposal offered by San Joaquin.

The law applies to false certifications of eligibility or related funding application information submitted by school districts, architects or other design professionals. Liability is not limited to any intent or specific knowledge on the part of a district.

To better illustrate the issue, staff at the Office of Public School Construction highlighted the terms surrounding just one of the eight disputed projects.

The project, called Kettleman Community, was provided by the state slightly more than \$2.3 million in 2003 based on the premature certification provided by the county.

Records show that it took the county 146 days to come into compliance. Thus, based on the state's existing policy, the county should be penalized \$39, 418 – based on the daily interest rate the state was paying on the underlying bond debt over that period of time.

According to a staff report, the county has argued that the "additional funding received" should be defined as only the amount of interest earned by the County Office during the premature fund release period.

In the case of Kettleman, the base should be limited to \$8,080 and thus, the penalty should be also limited to just \$138.