

STATE ALLOCATION BOARD

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Date: January 20, 2006

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on Friday, February 3, 2006 (9:30 am - 3:30 pm) at the State Capitol, Room 4203, Sacramento.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. School Facility Program Portable Chargeability---
Discussion on Education Code 17071.75 regarding adjustments to the existing building capacity of a district for portable classrooms provided after the new construction baseline eligibility is established.

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Ms. Stephanie Davis at (916) 445-3159.

A handwritten signature in black ink that reads "Mavonne Garrity".

MAVONNE GARRITY, Chairperson
State Allocation Board Implementation Committee

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STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE

Pending Items List
February 3, 2006

A. Future Items

- Replacement of single-story facilities with multi-story facilities ---
*Discussion on the limited use of the regulatory provision/
additional grant to replace single-story facilities with multi-story
facilities.*
- School Facility Program Base Per Pupil Grant ---
*Discussion on the research and findings of the Ad Hoc
meetings regarding the adequacy of the base per pupil grant.*

B. Suspended Items

None

**STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
February 3, 2006**

**SCHOOL FACILITY PROGRAM:
PORTABLE CLASSROOMS AND THE ADJUSTMENTS TO
THE NEW CONSTRUCTION BASELINE ELIGIBILITY**

At the October 19th meeting of the State Allocation Board, members requested that the School Facility Program (SFP) Regulations relating to adjustments to new construction baseline inventory be discussed at a future meeting of the Implementation Committee. This Board's request was made in response to school districts' concern, and corresponds with recent queries to the Legislative Counsel on the same subject.

Today's discussions are intended to:

- Review the formula for new construction eligibility determination
- Illustrate how school building capacity affects new construction eligibility
- Summarize the application of the SFP regulations regarding baseline adjustments
- Consider district concerns and the resolutions contained in current regulations
- Gather more information and proposed solutions related to this issue.

Establishing SFP New Construction Baseline Eligibility:

Enrollment Projection (Form SAB 50-01)
<i>less</i>
Existing School Building Capacity (Form SAB 50-02)
<i>equals</i>
Eligibility Determination (Form SAB 50-03)

Enrollment Certification/Projection (Form SAB 50-01)

Projects the 5-year K-12 enrollment.

- May be augmented by the pupils to be housed in new dwelling units and/or modified student yield factor
- Updated annually for enrollment changes based on the California Basic Educational Data System report; every three years for small school districts

Existing School Building Capacity (Form SAB 50-02)

This one time report, referred to as the “snap-shot,”¹ calculates the total existing capacity of the district, measured in number of pupils housed. [Certain types of classrooms (e.g. small size classrooms, State relocatables, interim/excessive portables) are excluded at some point during the calculation in order to maximize a district’s potential to utilize State grants to replace them.]

- District identifies all classrooms for a gross classroom inventory²
- District subtracts certain classrooms (e.g. small size classrooms), resulting in the net classroom inventory³.
- District reports net classroom inventory on the Form SAB 50-02 and calculates capacity based on Option A or Option B, whichever results in fewer “available” (portable) classrooms⁴. Both options provide exclusions for portable classrooms and interim housing portables.

Option A

The following classrooms are considered available for housing pupils:

- Interim Housing Portables leased at least 5 years
- Portable Classrooms leased at least 5 years
- Portable Classrooms owned by district
- Permanent Classrooms

The following classrooms are excluded from available capacity⁵:

- Leased State Relocatable Classrooms
- Portable Classrooms leased less than 5 years
- Interim Housing Portables leased less than 5 years

Option B

The following classrooms are considered available for housing pupils:

- Permanent Classrooms
- Portable Classrooms, excluding interim housing relocatables, up to 25% of the number of Permanent Classrooms.⁶

The following classrooms are excluded from available capacity:

- All portables in excess of 25% of permanent classrooms including State Relocatables, leased and district-owned portables.

- Available classrooms are multiplied by the appropriate State classroom loading standard to determine pupil capacity of the district.
- Existing capacity is further adjusted by substantial enrollment requirement and operational grants received.

Eligibility Determination (Form SAB 50-03)

Subtracts the available pupil capacity (Form SAB 50-02) from the 5-year enrollment projection (Form SAB 50-03); the result is the un-housed pupils (i.e., new construction baseline eligibility).

¹ Education Code Section 17071.10

² SFP Regulation Section 1859.31

³ SFP Regulation Section 1859.32

⁴ Education Code Section 17071.30(a)(b)

⁵ Education Code Section 17071.30(a)

⁶ Education Code Section 17071.30(b)

Calculation of Existing School Building Capacity (Example):

Classroom Inventory (NET)	Total
Leased State Relocatable Classrooms	15
Portable classrooms leased less than 5 years	4
Interim Housing Portables leased less than 5 years	4
Interim Housing Portables leased at least 5 years	6
Portable Classrooms leased at least 5 years	6
Portable classrooms owned by the district	25
Permanent Classrooms	40
TOTAL	100

OPTION A:	
Interim Housing Portables leased at least 5 years	6
Portable Classrooms leased at least 5 years	6
Portable Classrooms owned by district	25
Permanent Classrooms	40
TOTAL AVAILABLE CLASSROOMS	77



A district **would not select** Option A, as it would increase capacity and lower eligibility (thereby minimizing the district's potential to replace some of the portables).

OPTION B:		
Total Classrooms		100
Total Portable Classrooms except interim housing	50	
25% of permanent classrooms (40 x 0.25)	10	
Portables in excess of 25% above (50 – 10)		(40)
TOTAL AVAILABLE CLASSROOMS		60



A district **would select** Option B, as it would lower capacity and increase eligibility (thereby maximizing the district's potential to replace some portables with permanent classrooms).

Adjusting New Construction Baseline Eligibility:

In addition to other types of adjustments, SFP Regulations require that the new construction baseline eligibility be adjusted for the following:

- “Reduced by the number of pupils housed in any *Classroom Provided* after the baseline eligibility was determined”⁷ with some exceptions.
Classroom Provided means a classroom acquired by lease, lease-purchase, or purchase for which a contract has been signed for the construction or acquisition of the classroom.
- “Reduced by the number of pupils housed in additional classrooms constructed or purchased in a modernization SFP project”:

The table below summarizes the impact on SFP eligibility for various changes to classroom inventory after the new construction baseline eligibility has been established.

When the following occurs ...	the SFP New Construction Baseline Eligibility is ...
New classrooms are provided in SFP new construction project	Decreased as a result of capacity added (OPSC initiates the adjustment)
New classrooms are leased more than 5 years or lease-purchased with local funds	Decreased as a result of capacity added (District reports on the next n/c application)
New classrooms are purchased or constructed with local funds	Decreased as a result of capacity added (District reports on the next n/c application)
New classrooms replace the same number of classrooms in SFP modernization project	No change, like for like replacement permitted in SFP modernization projects
New classrooms are provided in addition to classrooms replacing existing ones in SFP modernization project	Decreased as a result of net capacity added based on the number of additional, net classrooms provided
New classrooms replace existing ones with local funds	Decreased as a result of capacity added, not part of an SFP modernization project (District reports on the next n/c application)
Portable classrooms, deemed interim housing or leased less than 5 years at the time of initial eligibility, are leased for more than 5 years or the classrooms have been purchased.	Decreased as a result of additional capacity added, i.e. the classrooms no longer meet the definition of interim housing and are available as permanent capacity (District reports on the next n/c application)
Classrooms are demolished	No change in eligibility as the classroom capacity cannot be adjusted for deductions in inventory after the new construction baseline eligibility has been established
Classrooms are removed from inventory due to declining enrollment	No change in eligibility as the classroom capacity cannot be adjusted for deductions in inventory after the new construction baseline eligibility has been established
Portables are no longer able to house students due to poor condition of the buildings	No change in new construction eligibility. Portables may be replaced with SFP modernization funds as like-for-like replacement if the site has modernization eligibility

⁷ Education Code Section 17071.75(b)

As noted above, the new construction baseline eligibility is *reduced* under certain circumstances for classrooms added. Some Districts have identified situations, which they feel would merit *increasing* the baseline eligibility for portables removed from inventory. Several of those situations are described below with the accompanying background information, current solutions within the SFP, and ramifications should a baseline adjustment occur in response to each situation. During the course of this discussion, it is important to be mindful that *the goal is not to create higher eligibility, but to create a balance in which capacity meets enrollment demands.*

Issues and Concerns Raised by Districts

#1. Should a district's new construction baseline be adjusted for portables that are being replaced with permanent classrooms?

Since the District's new construction eligibility is based on insufficient capacity to house pupils, the State new construction grant is designed to address that insufficiency. The law is very specific that new construction funds must be used to "house new pupils."⁸ A new construction project that replaces *excluded* portables with permanent classrooms meets this criterion as the pupils in excluded portables are not considered adequately and permanently housed. Therefore, the project adds capacity. In this instance, baseline eligibility will be adjusted down; however, the district is also receiving new construction grants for added capacity.

However, a new construction project that plans to replace non-excluded portables (i.e., portables identified in the district's classroom capacity) with permanent classrooms would not be considered a viable new construction project. It could not receive pupil grants for the replacement classrooms because – barring a health and safety threat determination - the law considers the non-excluded portables as adequate pupil housing. Their removal and replacement with State funding would be in conflict with the intent of SB 50 and its attendant bond issues, which require new construction grants be used to "*house new pupils.*" Therefore, new construction grants can neither be utilized, *nor generated* (since an increase in eligibility equates to State grants), by virtue of the removal and replacement of *adequate* housing in a project that *does not result in a capacity increase.*

Assuming that portables in need of replacement are twenty years or older, a solution for some districts is to replace the portables with permanent classrooms with SFP modernization grants as a like-for-like replacement. As such, as long as there is no net gain to the district's classroom capacity, the new construction baseline would not be affected. When the modernization grant is not adequate to replace portables with permanent, the district could offset the grant discrepancy with its own funds, and replace the classrooms one-for-one (again, with no effect to its new construction baseline if there is no net gain to capacity).

⁸ Education Code Section 17072.35

#2. Should a district’s new construction baseline eligibility be adjusted (increased) for portables removed due to declining enrollment?

As illustrated previously, the statute’s formula for new construction eligibility determination is needs based, and is primarily determined by the inverse relationship between enrollment projections and classroom inventory (capacity):

$$\begin{aligned} \text{Low enrollment} + \text{High capacity} &= \text{Low new construction eligibility} \\ \text{High enrollment} + \text{Low capacity} &= \text{High new construction eligibility.} \end{aligned}$$

As such, eligibility is a picture of a district’s needs. In its efforts to bring capacity and enrollment demands in alignment, a district that has lower or declining enrollment could remove portable classrooms (though they need to seriously consider the long-term economic prudence of removing/demolishing/selling portables that could be of use in the future, should enrollment increase). It is always difficult to justify the demolition/sale of any adequate classroom, and even more difficult to justify increasing eligibility in response to the demolition/sale of that classroom. Increasing the new construction baseline by the pupils that *would* have been housed in the demolished portables (if the portables *were* needed) would provide a false representation of a district’s needs. It would, in essence, create eligibility from a *lack* of need, and, as such, an amendment to regulations to allow for such an adjustment would be in conflict with statute. Thus, the eligibility generated could eventually result in the State paying for the replacement of the facility when the capacity is later needed. More importantly, the State may be paying twice for facilities in cases where the State originally participated in the purchase of the portable.

#3. Should a district’s new construction baseline eligibility be adjusted for the elimination of an excessive portable inventory at a school site?

As illustrated earlier, the initial exclusion of a percentage of portables in the district’s capacity addressed this issue by providing additional new construction eligibility to replace at least some of those portables with permanent classrooms. [Though those excluded portables were in reality providing housing, they generated eligibility - by virtue of the exclusion - *as though they did not exist.*] It is important to remember that the reason that not all portables were initially excluded is based on the philosophy that portables add a degree of maneuverability to a district’s housing capacity, thereby leaving districts less vulnerable to demographic shifts. If the district does not need the portables at another school site, it could, with the discretion noted previously, eliminate them. However, since the district has illustrated by virtue of eliminating the classrooms that they are not needed, the baseline capacity should not be decreased for the eliminated classrooms, for the reasons noted in the issue above.

#4. Should a district’s new construction baseline eligibility be adjusted for portables removed because they are beyond their useful lifespan?

Overall, given appropriate and necessary maintenance by the districts (with assistance from the Deferred Maintenance Program and Restricted Ongoing and Major Maintenance Fund), the majority of portables less than 20 years of age are capable of providing safe and adequate pupil housing.

The law addresses the issue of substandard portables beyond twenty years of age by virtue of the SFP modernization program, under which 20-year or older portables can be modernized or replaced with another classroom (either relocatable or permanent). As stated above, if the site has modernization eligibility, classrooms could be replaced with new relocatables or permanent classrooms under like-for-like replacement. As such, if there is no net gain to the district's classroom capacity, the new construction baseline would not be affected.

By law, while portables less than 20 years old do not generate modernization eligibility, they can be demolished and replaced under modernization eligibility generated by other buildings at the site. However, if the SFP Regulations allowed a new construction baseline adjustment for these same demolished portables, they would sanction an increase in eligibility representing grant funds *far in excess of those modernization grant funds for which the classrooms would be eligible once they were of age*. To further illustrate this point, consider that a new construction grant amount for a K-6 classroom is approximately \$170,000, whereas the modernization grant for a K-6 classroom is approximately \$75,000. At best, this could be construed as an excessive and imprudent use of State funds. Further, new construction must by law be utilized to increase capacity, and the proposed amendments would essentially allow new construction funds to be utilized for like-for-like modernization. As such, it would be in conflict with statute and an *unlawful* use of new construction grants, exacerbated by the fact the “new construction/like-for-like modernization funding” would be used on school buildings that did not even meet the criteria for modernization.

ATTACHMENT

California Education Code [Pertinent Sections]

17070.35. (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:

(1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

(2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(3) Determine the eligibility of school districts to receive apportionments under this chapter.

(4) Apportion funds to eligible school districts under this chapter.

(b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

17071.10. (a) The calculation determined by this article shall be made on a **one-time basis**, and will be used as the baseline for eligibility determinations pursuant to this chapter.

(b) Each school district that elects to participate in the new construction program pursuant to this chapter shall submit to the board a one-time report of existing school building capacity.

(c) Notwithstanding subdivisions (a) and (b), a school district newly formed, reorganized, or affected by reorganization, pursuant to an election that occurred on or after November 4, 1998, shall calculate or recalculate its existing school building capacity pursuant to regulations adopted by the State Allocation Board.

17071.30. For purposes of determining the existing school building capacity, each applicant school district shall include each relocatable classroom, whether owned or leased, except as otherwise provided in subdivision (a) or (b).

(a) Relocatable classrooms leased pursuant to Chapter 14 (commencing with Section 17085) shall be excluded from the existing school building capacity. Relocatable classrooms obtained by an applicant district pursuant to subdivision (b) of Section 17088.5 shall be excluded from the existing school building capacity, except as to any relocatable classroom or classrooms for which the district rejected the board's offer to purchase pursuant to that subdivision. Relocatable classrooms leased for a period of less than five years prior to the date of application shall not be included in existing school building capacity.

(b) The number of relocatable classrooms, reduced by the number of relocatable classrooms used as interim housing for modernization projects, that exceed 25 percent of the number of permanent classrooms available to the district shall not be included in the existing building capacity.

17071.75. After a one-time initial report of existing school building capacity has been completed, a school district's ongoing eligibility for new construction funding shall be determined by making all of the following calculations:

(a) Each school district that applies to receive funding for new construction shall calculate enrollment projections for the fifth year beyond the fiscal year in which the application is made. Projected enrollment shall be determined by utilizing the cohort survival enrollment projection system, as defined and approved by the board. The board may supplement the cohort survival enrollment projection by the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to approved and valid tentative subdivision maps.

(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for which facilities were provided shall be determined using the pupil loading formula set forth in Section 17071.25.

(c) Subtract the number of pupils pursuant to subdivision (b) from the number of pupils determined pursuant to subdivision (a).

(d) The calculations required to establish eligibility under this article shall result in a distinction between the number of existing unhoused pupils and the number of projected unhoused pupils.

(e) Apply the increase or decrease resulting from the difference between the most recent report made pursuant to Section 42268, and the report used in determining the school district's baseline capacity pursuant to subdivision (a) of Section 17071.25.

(f) For a school district with an enrollment of 2,500, or less, an adjustment in enrollment projections shall not result in a loss of ongoing eligibility to that school district for a period of three years from the date of the approval of eligibility by the board.

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house **new pupils** in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of relocatable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17074.25. A modernization apportionment may be used for an improvement to extend the useful life of, or to enhance the physical environment of, the school. The improvement may only include the cost of design, engineering, testing, inspection, plan checking, construction management, demolition, construction, **the replacement of relocatable classrooms**, necessary utility costs, utility connection and other fees, the purchase and installation of air-conditioning equipment and insulation materials and related costs, furniture and equipment, including telecommunication equipment to increase school security, fire safety improvements, playground safety improvements, the identification, assessment, or abatement of hazardous asbestos, seismic safety improvements, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A modernization grant may not be used for costs associated with acquisition and development of real estate or for routine maintenance and repair.