

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

**STATE ALLOCATION BOARD**

1130 K Street, Suite 400  
Sacramento, CA 95814



IMPLEMENTATION COMMITTEE MINUTES

April 4, 2008

Legislative Office Building  
Sacramento, CA

**Members Present**

Mavonne Garrity, SAB

Juan Mireles (Alternate for Lori Morgan, SAB/OPSC)

Fred Yeager, CDE

Debra Pearson, SSDA

William Savidge, CASH

Gary Gibbs, CBIA

Dean Tatsuno, AIA

Margie Brown, CASBO

Robert Pierce, SSD

Kenn Young, CCESSA

Kathy Hicks, DSA

Dennis Dunston, CEFPI

Mark DeMan, LAUSD

**Members Absent**

Lori Morgan, SAB/OPSC

Cesar Diaz, SBCTC

Lenin Del Castillo, DOF

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The meeting was called to order at 9:40 am.

The Chair recognized Mr. Juan Mireles from the Office of Public School Construction (OPSC) as an alternate for Ms. Lori Morgan who was not able to attend the meeting.

**Minutes**

The committee reviewed the revised minutes from the January 2008 meeting after the lunch break. A committee member presented written comments during the meeting and requested that they be included in the minutes; therefore, the January 2008 minutes were again held open for future consideration. The March 2008 minutes were approved as presented.

**Material Inaccuracy Regulations**

Mr. Rick Asbell of the OPSC presented the topic, which provides districts with protections from Material Inaccuracy findings that are based solely on information provided on the new *Project Information Worksheet*.

Staff stated that the proposed Project Information Worksheet was not yet operative because it is still going through the Office of Administrative Law review process.

A member of the audience questioned how the OPSC would determine whether “the most accurate information” was provided on the Project Information Worksheet. Staff responded that information that can be reasonably known by both the District and the OPSC would meet this standard. Staff stated that the Project Information Worksheet will not be part of the project audit. The audience member suggested the removal of the phrase “the most accurate information”.

A committee member indicated a preference for the “good faith” language from the March 7, 2008 Implementation Committee meeting, rather than the “most accurate information” language at the April 4, 2008 meeting. Another committee member suggested removing the ‘most accurate information available at the time of filing’ phrase, and putting the proposed regulation in the definition section of the School Facility Program Regulation, or Section 1859.2. Lastly, one audience member preferred the following language for the proposed regulation: “Information provided on the Project Information Worksheet shall not provide the basis for a Material Inaccuracy”. Staff agreed to consider input and bring proposed language for the next Implementation Committee meeting.

### **Material Inaccuracy Penalties**

Mr. Rick Asbell, of the OPSC, presented the remainder of this item originally introduced at the March 7, 2008 Implementation Committee meeting. He provided a brief overview of the information covered at the last meeting and concluded the presentation of this item by discussing the loss of self-certification recommendations. The responses and concerns expressed regarding this item are outlined below.

A question was raised regarding methodology in rescinding new construction projects. The “scenario 3” Material Inaccuracy findings to date have been for modernization projects only. Should the new construction situation arise, legal counsel would have to be consulted.

An audience member inquired whether expenditures, associated with a contract, determined to be ineligible by the OPSC could be used to meet threshold. Staff responded that the OPSC works diligently with the districts on a case-by-case basis to determine what expenditures will be used towards meeting the fund release certification at the time of submittal.

An audience member expressed the opinion that the grace period established for acceptance of construction management fees, for the purposes of meeting the fund release authorization requirement, should be lengthened as there is still confusion among districts as to what is eligible. Staff responded that the SAB determined the appropriate grace period based on audit data. Staff also stated that the SFP Substantial Progress and Expenditure Audit Guide very clearly defines allowable construction expenditures to alleviate any confusion on the part of the districts.

A committee member reiterated that since less than 1 percent of projects are found to be materially inaccurate, most districts have a good understanding of the Fund Release Authorization form certification relating to the “50 percent requirement.”

An audience member responded that although only 36 Material Inaccuracy related projects were presented to the SAB, there are more projects with potential material inaccuracies which are resolved by Staff. Another audience member wanted clarification as to how some of these issues are resolved. Staff responded that the OPSC requests additional contracts, construction management related information and school board meeting minutes in which the district awarded contracts.

An audience member contended that Staff are not interpreting the law and regulation correctly since EC Section 17070.51(b)(1) states that the district shall repay an amount proportionate to the additional funding received. According to this individual, “additional” implies that the district should not repay the whole apportionment amount, and interest should only be charged on this “additional” portion and not the entire apportionment. Staff responded that there is another section of law that governs fund releases that requires a rescission that must also be considered in combination with the Material Inaccuracy law.

A committee member inquired whether the district can self-certify project information immediately after paying back interest penalties associated with a Material Inaccuracy. This member also inquired whether SFP Regulation Section 1859.104 overrides EC Section 17070.51(b)(2) since it omits the portion of the EC which states that the self-certifying prohibition period could be until the district repays the amount owed. Staff agreed to consult with legal counsel on this matter.

An issue that had been raised at the March 2008 Implementation Committee meeting was revisited regarding modernization projects that were rescinded due to a material inaccuracy and resubmitted were not getting the current modernization grant amount. It was reiterated by staff that the contracts would have been entered into years prior and receiving construction cost indexes would not be appropriate as that would provide further funding advantage as a result of a district’s false/inaccurate certification.

A committee member suggested forming a group to recommend some modifications to Attachment B of the item. Two school district representatives from the committee were suggested. This item will be brought back to the next Implementation Committee meeting for further discussion.

### **Financial Hardship Checklist**

OPSC Staff member Jason Hernandez presented this topic.

The Financial Hardship Checklist & Certification was implemented and posted by the Office of Public School Construction in January 8, 2008 prior to the Implementation meeting on January 11, 2008. There were concerns addressed at the January 2008 meeting that the stakeholders were not advised of the new requirement nor did the Staff solicit input from the stakeholders.

Staff explained that the purpose of developing the checklist is a standardized internal processing tool to assist districts in identifying the type of documentation needed in order to have an accurate FH application that can be added to the workload. This in turn will help expedite the OPSC review process and ultimately districts obtaining their project approvals sooner.

The Staff also shared with the stakeholders that, based on feedback received at and subsequent to the January 2008 meeting, a separate FH Checklist & Certification was also drafted for the County Office of Education (COEs). This would assist these stakeholders in their FH submittals since they do not have the same requirements of documentation as their school district counterparts. It was also shared by Staff that the COE stakeholders initiated a meeting to address the concerns of the FH Checklist. As a result, Staff was able to institute some of the revisions into the FH COE Checklist.

Another concern addressed by the stakeholders involved the certification block and why is it necessary if it is not an official form. Staff agreed to remove the certification block from the checklist. (Later update subsequent to the meeting: This may be revisited.)

There were several discussions that involved the instructions and or the type of documentation that is necessary to submit a FH application. There was also a later discussion from the COE group regarding the COE FH Checklist. Staff acknowledged that a number of issues addressed overlapped both stakeholder groups in the FH Program.

Staff committed to meeting with a group of stakeholders that involve both school districts and COEs to address their respective FH Checklist concerns.

### **Assembly Bill 1014**

This item was not presented as there was insufficient time remaining in the meeting. However, the OPSC staff did request that the committee and audience members review the published materials and provide feedback prior to the next meeting.

### **Adjournment and Next Meeting**

The meeting adjourned at 3:35 p.m. The next committee meeting is scheduled for Friday, May 2, 2008 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.