



IMPLEMENTATION COMMITTEE MINUTES

June 5, 2009

Legislative Office Building
Sacramento, CA

Members Present

Susan Ronnback, SAB (Chair)

Juan Mireles, OPSC/SAB

Masha Lutsuk, OPSC/SAB

Fred Yeager, CDE

William Savidge, CASH

Mamie Starr, CCESSA (Alternate for Kenn Young)

Margie Brown, CASBO

Robert Pierce, SSD

Mark DeMan, LAUSD

Richard Conrad, DSA

Chris Ferguson, DOF (AM only)

Lettie Boggs, CEFP (Alternate for Dennis Dunston)

Gary Gibbs, CBIA

Dean Tatsuno, AIA

Members Absent

Cesar Diaz, SBCTC

Debra Pearson, SEDA

The meeting was called to order at 9:41 am.

Minutes

An audience member asked that a minor change be made to the minutes for the May 1, 2009 Implementation Committee (IMP) meeting.

Opening Remarks

Ms. Susan Ronnback introduced herself as Interim Assistant Executive Officer (AEO) of the State Allocation Board (SAB), and announced that the deadline for applications for the permanent AEO position is June 12, 2009.

The Chair announced that the newly formed SAB Rules and Regulations Subcommittee will establish some ground rules regarding the Implementation Committee, and stated that the Rules and Regulations Subcommittee is open to input on this topic. The Chair also proposed that an issue tracking document, to include a summary of the issues raised during discussion of an item be added to the analysis of each item. In addition, the Chair requested that for each item, a target date for presentation before the SAB be included in the analysis. In response to an inquiry, the Chair remarked that work on the Audits Subcommittee will begin in the near future.

AB 127 Grant Adjustments – Analysis of Project Information Worksheet Data

Overview:

OPSC staff member Josh Rosenstein presented an item on the methodology for analyzing project data provided via the Project Information Worksheet (PIW).

Discussion Points:

Concern was expressed by the Chair that there has not yet been a recommendation presented to the SAB regarding the grant adjustment methodology. The Chair suggested that an Information Item be added to the June 24th SAB Agenda to update the Board on the IMP discussions to date and to solicit Board direction on how they would like staff to proceed in

developing a methodology for determining the required AB 127 adjustment to the per pupil grants. A committee member responded that it was important to allow the time for input on the methodology in order to ensure the quality of the data.

A committee member inquired as to why PIWs with State contribution reported in error would be excluded, as outlined in the item. It was suggested that these errors be corrected instead. The OPSC responded that these would be excluded because the errors often indicated data was being reported for a different project. It was pointed out that a percentage of error would be allowed to account for adjustments due to increases by the Board and other allowable reasons that could cause districts to report slightly different amounts.

Concern was expressed by a committee member that there would not be enough data to work with if too many PIWs were excluded due to errors. It was suggested that districts be contacted to correct any identified errors. Additionally, contacting the districts and letting them know what errors were made would help them better understand how to complete the PIW in the future. OPSC staff responded that an attempt was made to contact a sample of districts without much success. It was determined that it would take a substantial amount of time for districts to research the issues and respond to the OPSC; therefore, in order to streamline the process, Staff would not contact districts during this particular analysis. Staff informed the attendees that for the future, a triage system was being developed and additional on-line instructions had been implemented to address these issues. Staff also indicated an expectation that information will be more accurate in the future as districts become more familiar with completing the PIW.

An inquiry was made by a committee member as to where savings should be reported on the PIW, with regards to savings from a different project that were being applied to the current project. Several other audience members expressed that this was a common issue with the PIW. OPSC Staff responded that savings applied to a project should be reported as the district match on the PIW.

A concern was expressed by an audience member that information was requested on the PIW that either the OPSC already had access to, or that was not necessary in determining how construction costs have changed. Additionally, a comment was made that much of this information was not going to be used in the actual analysis presented in the item. There was a concern from the audience that districts needed to know why the information was being requested. OPSC Staff responded that the additional information is necessary because it could provide possible answers as to why some projects were over or under-funded. With regards to the information the OPSC had access to, this is useful because it acts as a form of checks to ensure the districts reported information for the correct project.

Comments were made that the data provided on the PIW would be more accurate as the project got closer to completion. There were several comments from audience and committee members that the PIW was required to be submitted too frequently and should only be submitted when the project is 95 to 100 percent complete. It was argued that this would resolve many of the current issues with the PIW as data provided would be actual data versus estimates, and districts would take the time to ensure the form was completed correctly. The OPSC noted a benefit in using estimates as these PIWs represent newer projects rather than projects that were bid some time ago. A comment was made that the PIW data for projects that are 95 to 100 percent complete is often more accurate because it is actual data, however, it is historical and can often represent a four year lag period. It was suggested that it would be better to use a Lee Saylor type of report versus the PIW. The OPSC responded that Staff is proposing to look at the information provided over a period of time in order to depict any trends. More recent data could be weighed differently than older data.

An inquiry was made by an audience member as to whether Financial Hardship projects that were not going to be included in the analysis would still have to follow the PIW submittal

guidelines. The OPSC responded that current regulations [Regulation Section 1859.71 and PIW Instructions] require the submittal at three different times, but that in the future this may be an area for possible regulatory change.

An audience member inquired as to whether the analysis was going to be transparent. The OPSC responded in the affirmative, stating that a summary would be provided, and any additional information would be made available upon request.

There was a discussion regarding the use of PIW information for bond accountability, the Governor's Executive Order, EO S-02-07, and the interpretation of bond accountability requirements. It was suggested that the Order had referred to State agencies being accountable for the quality of infrastructure and that OPSC had taken on a different interpretation. It was suggested that the OPSC be audited, rather than the districts. Additionally, several attendees questioned the role of the PIW. The OPSC responded that the PIW was approved by the Board and that bond accountability was part of the discussion when it was adopted.

An audience member suggested that different criteria be used for analysis since the recommendation for the grant adjustment amount was already six months overdue. The consideration of a recent report prepared by UC Berkeley was suggested.

It was suggested that if Special Day Class (SDC) and certain Financial Hardship projects' PIWs will be excluded from the analysis, districts should not have to submit PIWs for them. OPSC Staff responded that the exclusion of the Financial Hardship projects was requested by the attendees of past IMP Committee meetings and that the SDC projects were excluded because the Board does not have the authority to make an adjustment to the SDC grants; only those for K-12. Staff offered that these projects could still be analyzed for informational purposes. The OPSC requested that the discussion regarding the submittal requirements for these projects be brought up in a separate discussion about the PIW itself and not the methodology, as current regulations require that the PIW be submitted for these projects.

A committee member commented that the development process of the PIW was not collaborative and that the objections and concerns expressed by many stakeholders were ignored during its creation. It was requested that a workgroup be put together to work on the PIW revisions. The OPSC responded that a workgroup could be an option in the future.

Inquiries were made as to whether the OPSC could be ready to make a recommendation to the Board now for 2009 grant adjustments. OPSC Staff responded that this depended on the progress of the discussions for the proposed methodology.

An audience member suggested that the PIW is a flawed document that should be abandoned entirely and replaced with a different process; the audience member referenced the UC Berkeley study as a potential resource. The OPSC responded that the PIW does have value in the information it provides. The OPSC added that starting over would add additional time to the process, and having someone else perform the study could take away from the collaborative process.

Comments were made concerning whether requiring the PIW can be considered a mandate or is a condition of receiving bond funds.

An audience member suggested using a standard deviation methodology to determine a mean cost per square foot. This would account for differences in project types and costs. This could be computed yearly to determine a percentage change in costs year to year. The Board could then compare this percentage change to the Construction Cost Index increase to determine if an additional increase should be given. Additionally, this could be used to study the adequacy

of the grants by comparing the dollar per square foot to the pupils to come up with an adequate per pupil grant amount. This would require construction cost and square footage information for the project and would be easier than requesting all the information on the PIW. OPSC Staff responded that the additional information on the PIW is necessary to answer questions as to why some projects were over or under-funded, but added that they were proposing to use both a square footage and bell curve method in the analysis.

An audience member asked for clarification as to whether existing facilities should be included in the data requested on the PIW in the section regarding outdoor facilities. It was suggested that the current instructions are confusing and do not clarify what is wanted. OPSC Staff responded that the data provided should only apply to facilities that are included in the current project and that this had been clarified in the additional on-line instructions. The audience member suggested that Staff take into account that this section could have substantial errors when analyzing the data. The OPSC responded that Staff would check for errors in this section.

Concern was expressed by a committee member that including Financial Hardship projects that were only Financial Hardship at the Design phase could skew the analysis as these projects are often scaled down at the design phase with savings applied to a second phase or addition project. OPSC Staff stated that these projects could be analyzed separately if they represent a large enough sample size.

An audience member inquired as to what Staff planned to do if the analysis did not result in a normal distribution, with regards to the bell curve methodology. The OPSC responded that there currently was not an alternate plan, but that it would still be important to show the distribution so that the Board members could see the big picture to help them make their decision.

Concern was expressed about including projects that under-requested pupil grants in the analysis as the dollar per square foot data for these projects could skew the data. It was argued that under-requested projects often consisted of portable classrooms versus permanent. Several comments were made that the grant was not intended to build portable classrooms and that districts were often forced to build portables because of the inadequacy of the grant; including them in the study would perpetuate this inadequacy. OPSC Staff responded that there were several reasons a district may under-request pupil grants (such as insufficient new construction eligibility) and it would not be possible to make a general statement. Additionally, an inventory of the projects could be given to the Board showing how many portable projects were in the analysis. The challenge was that there was only one grant to fund all types of projects; therefore, the analysis had to be representative of the projects it funded.

An audience member suggested taking model schools, as identified by CDE, which represent quality and efficiency and see how much it costs to build those schools.

The Chair summarized the main issues raised during the discussion and inquired as to what the committee wanted presented to the Board. A committee member suggested that the information from the PIW be presented to the Board along with other methods for determining the adjustment. Additionally, it was stated by an audience member that a full disclosure of the strengths and weaknesses of the PIW should be provided. The OPSC responded that in order to conduct the analysis, the methodology needs to be finalized so that a solid recommendation can be presented to the Board.

A committee member requested that projects on each side of the bell curve distribution as well as in the middle be analyzed. OPSC Staff responded that this was included in the proposal. Additionally, this was part of the study that required the additional project information requested on the PIW.

An inquiry was made about the use of a scattergram, as mentioned at a previous meeting. OPSC Staff replied that this concept was taken into consideration but was found to be too difficult as it is not possible to analyze more than two factors at a time. Instead, it was proposed to show the results as a whole and then break out highlights of subgroups as supplements.

Next Steps:

An informational item on this topic will be presented at the June SAB meeting, and an item may be presented at the July IMP meeting, depending on the guidance from the Board.

60 Percent Commensurate and 150 Percent Regulations

Overview:

OPSC staff members Josh Damoth and Tim Hegedus presented an item to review the 150 Percent rule and 60 Percent Commensurate requirement. The Chair summarized her understanding of the key points from the previous Committee meeting and then opened the item up for discussion.

Discussion Points:

Audience and Committee members discussed the OPSC's change in the practice of adjusting a school district's eligibility pursuant to the 150 Percent regulation at the time of audit, to making the adjustment at the time of apportionment, beginning in 2007. One concern was that the OPSC did not properly inform school districts of the procedural change. Staff stated that the OPSC does have mechanisms in place for announcing changes, but acknowledged that this change could have been communicated more effectively.

An audience member also expressed concern that this procedural change was a violation of Administrative Procedure Act requirements, and that the issue should have been brought before the SAB. The OPSC responded that the issue was discussed when an appeal related to the 150 Percent rule was heard by the SAB last year. Staff also stated that, at that time, the Board agreed with the OPSC's interpretation and application of the 150 Percent rule.

An audience member stated that the 60 Percent Commensurate requirement, which mainly affects districts with portable classroom addition projects, is problematic since these lower-cost projects do not require as much funding and therefore require a reduction to the pupil grant request. A concern was expressed that, rather than reducing the pupil grants requested to meet the 60 Percent Commensurate requirement, districts may add unneeded work to projects to ensure maximum funding.

An audience member expressed the opinion that the OPSC's interpretation of the 150 Percent regulation language is problematic and overly conservative, and that Education Code language is intended to be interpreted liberally. Another audience member raised concern that the regulations as approved by the Office of Administrative Law are more stringent than what was approved by the SAB. There was discussion regarding whether the current regulation language is clear. OPSC Staff stated that, considering the variety of interpretations, the regulations should be revised for clarity.

An audience member stated that the OPSC's change in procedure to make adjustments at the time of funding is also a concern because it disregards part of Regulation Section 1859.51(i)(7) by not taking into account whether the district has funded a portion of the project beyond its required contribution.

Formatted: Highlight

It was suggested by some audience members that School Facility Program (SFP) Regulation section 1859.51(i)(7) ought to remain unchanged, but should be interpreted in such a way that adjustments pursuant to section (i) apply only to locally-funded projects. It was further

suggested that adjustments pursuant to the 150 Percent rule only apply to SFP projects when a district spends more than its matching share.

Next Steps:

An item for continued discussion on this topic will be presented at the next Implementation Committee meeting.

Adjournment and Next Meeting

The meeting adjourned at 3:41 p.m. The next IMP meeting is scheduled for Friday, July 10, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.