

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, February 24, 2010

IMPLEMENTATION OF SENATE BILL 592

PURPOSE OF REPORT

To request adoption of proposed regulatory amendments in order to implement Senate Bill (SB) 592, Chapter 192, Statute of 2009 (Romero) which allows local governmental entities and charter schools to hold title to charter school projects receiving funds under the Charter School Facilities Program (CSFP).

BACKGROUND

In 2002, Assembly Bill (AB) 14 created the CSFP. Through the passage of Propositions 47, 55, and 1D, \$900 million has been made available for the construction of new charter school facilities or the rehabilitation of existing school district facilities for charter school use. Prior to the passage of SB 592, the school district where a CSFP project was physically located was required to hold title to the project facilities.

SB 592, which was chaptered on October 11, 2009 as an urgency statute, expands authorization for who may hold title to CSFP facilities to include local governmental entities and charter schools. In addition, for charter schools that have entered into the Charter School Agreements prior to January 1, 2010, the bill authorizes the school district to transfer title at the charter school's request if the district and charter school mutually agree to the terms and conditions of the transfer.

AUTHORITY

Article 12, Sections 17078.52 through 17078.66 of the Education Code (EC) establish and govern the CSFP within the School Facility Program (SFP).

Senate Bill 592 makes changes to EC Section 17078.62 and adds EC Section 17078.63 which will require changes to the SFP.

EC 17070.35 directs the Board to establish procedures and policies necessary for the administration of the SFP.

STAFF COMMENTS

Staff presented the proposed regulatory amendments at the February 4, 2010 Implementation Committee meeting and at a separate meeting held on February 1, 2010 to gather input from the Charter School stakeholders. The suggestions made at those two meetings have been incorporated into the attached regulations.

Staff proposes the following regulatory amendments:

Regulation Section 1859.172

Title to Project Facilities

In order to implement this law, Regulation Section 1859.172 will be added to the current School Facility Program Regulations. This regulation section is intended to detail the three entities that can hold title to charter school project facilities and the documentation and steps required for each allowable option. Charter schools must choose an entity and follow the steps outlined below prior to fund release. Below is a summary of the options.

School District – The OPSC will follow current practice for projects in which the school district holds title to the project facilities. In order to request a fund release, the charter school must either submit documentary evidence that the school district holds title to the project facilities or have entered into the Charter School Agreements which outline the process by which the district will take or receive title.

Local Governmental Entity – The charter school must submit either documentary evidence that a local governmental entity holds title to the project facilities or have entered into the Charter School Agreements which outline the process by which the local governmental entity will take or receive title. Three additional conditions must be met for a local governmental entity to hold title.

1. The local governmental entity may not exercise any control over the operation of the school.
2. The chain of title must include a restrictive covenant stating that the facility shall only be used for public school purposes.
3. The chain of title must include a remainder interest to the school district in which the charter school is physically located or if the remainder interest is disclaimed by the school district, to the Board.
 - The remainder interest will be triggered when the project facilities are no longer used for charter school purposes by the original charter school.
 - If the remainder interest is triggered, the school district has the right to disclaim the remainder interest on the property after the priorities set forth in Education Code Section 17078.62(b)(2) through 17078.62(b)(4) have been satisfied. If the remainder interest to the project facilities is disclaimed by the school district, only then shall the remainder interest to the property be transferred to the Board for disposal of the project facilities.
 - To disclaim the remainder interest the governing board of the school district must take an action and provide written notice of rejection to the Board.

The conditions detailed above will also be included in the Charter School Agreements.

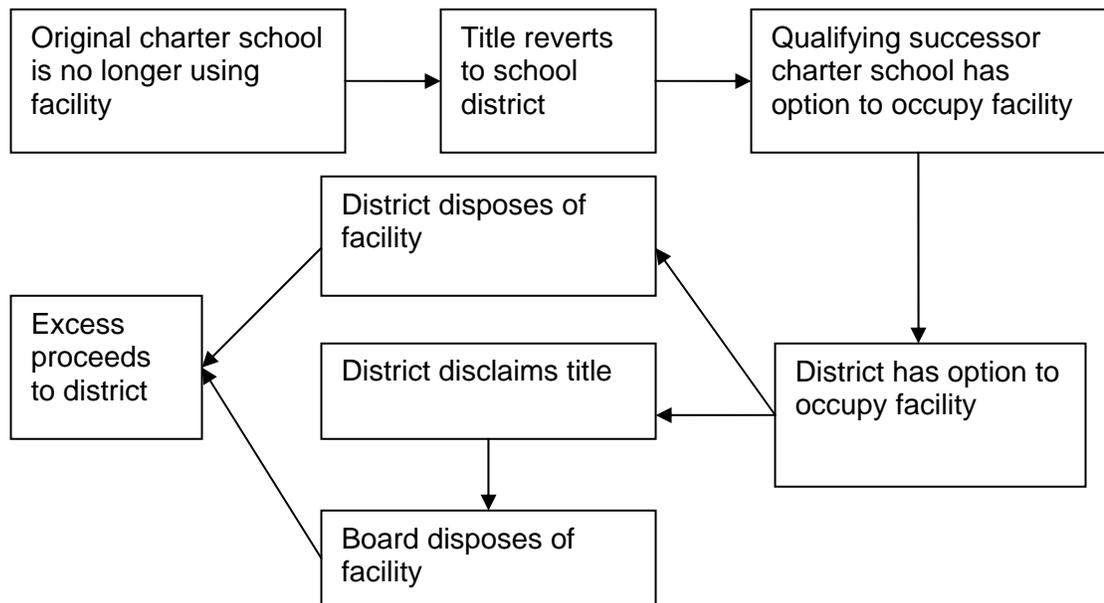
Charter School –The charter school may hold title to the project facilities if the following documentation is submitted and conditions are met:

1. The charter school must submit a written request to the OPSC to hold title to the project facilities.
2. Within the written request to hold title, the charter school must justify why title is not held by the school district and why title is not held by a local governmental entity.
3. The chain of title must include a restrictive covenant stating that the facility shall only be used for public school purposes.
4. The chain of title must include a remainder interest to the school district in which the charter school is physically located or if the remainder interest is disclaimed by the school district, to the Board.
 - The remainder interest will be triggered when the project facilities are no longer used for charter school purposes by the original charter school.
 - If the remainder interest is triggered, the school district has the right to disclaim the remainder interest on the property after the priorities set forth in Education Code Section 17078.62(b)(2) through 17078.62(b)(4) have been satisfied. If the remainder interest to the project facilities is disclaimed by the school district, only then shall the remainder interest to the property be transferred to the Board for disposal of the project facilities.
 - To disclaim the remainder interest the governing board of the school district must take an action and provide written notice of rejection to the Board.

5. A lien in favor of the Board must be recorded for the State matching share and any State loan allocated. The Board will not place a lien on any cash contribution to the project provided by the charter school which is used to make up all or part of the local matching share.

The conditions detailed above will also be included in the Charter School Agreements. The Board shall make a finding that the charter school meets all of the requirements necessary to hold title to the project facilities.

Facility Use Priority When Local Governmental Entity or Charter School Holds Title



Title Transfer

Regulation Section 1859.172 provides language allowing a charter school to request that a school district transfer title of the project facilities to a local governmental entity or to the charter school itself. The charter school may make a request if the school district and charter school entered into the Charter School Agreements prior to January 1, 2010. In order for title to transfer, the school district and charter school must mutually agree to the terms of transfer. The charter school must notify the OPSC in writing that a title transfer request is being made and that all of the necessary conditions for holding title pursuant to Education Code Section 17078.62 and 17078.63 apply.

Regulation Section 1859.171 and 1859.162.3– Regulation clarification

Regulation Section 1859.171 is being updated to address three issues. The OPSC is updating this regulation section to clean-up the current regulations and to further clarify the effects of SB 592 on the current regulations. The first change to the regulation section is to address charter schools that have had their charter petition revoked or their renewal request denied. The second update is to highlight the fact that successor charter schools have the first option to take over the project facilities. The previous two issues were in place prior to SB 592 and are being inserted to clarify the existing procedures. The third update to the regulation section is to address the disposition of the project facilities in the event that the district does not hold title to the project. This addition is in direct correlation to the changes required by SB 592.

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Specific references to a district holding title and signing the Charter School Agreements are being removed from Regulation Section 1859.162.3 because the issues are no longer applicable in all instances.

Charter School Agreements

The Charter School Agreements will be modified to reflect the changes in the law and the regulations. When title is held by the Charter School there will no longer be a Use Agreement. Changes to the Agreement templates are underway and must be approved by both the California School Finance Authority (CSFA) and the State Allocation Board. Once the Charter School Agreements have been approved by the CSFA, they will be brought before the Board.

RECOMMENDATIONS

1. Adopt the proposed amendments to the SFP Regulations as shown on Attachment A and begin the regulatory process.
2. Authorize Staff to file the proposed SFP Regulations with the Office of Administrative Law.

This Item was approved by the State Allocation Board on February 24, 2010.

Section 1859.162.3. Overlapping District Boundaries.

If the Charter School provides or will provide instruction for a combination of grade levels and therefore is or will be located in more than one school district's boundaries (e.g. elementary and high school district, not unified), a separate Form SAB 50-09 indicating the number of unhoused pupils served from each district, as appropriate will be required. Sections 1859.162.1 and 1859.162.2 shall apply to all districts involved in the Preliminary Charter School Apportionment. For the purposes of receiving a Preliminary Charter School Apportionment pursuant to Section 1859.163, the applications will be combined into one to be funded concurrently.

In addition, if the project will be located in an area of overlapping district boundaries but proposes to house only the grade levels served by just one of the districts, the district that serves the same grade levels will be subject to the district related requirements of this article ~~(including, but not limited to holding title to the project, generating overcrowding percentages for preference points and signing the Charter School Agreements).~~

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.53 and 17078.54, Education Code.

Section 1859.171. Use of Facility.

~~If a~~ Charter School that has received funding pursuant to Section 1859.164.2(b) and has not met the timelines established in Section 1859.166 on a Preliminary Charter School Apportionment, or is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, and the review process outlined in Education Code Section 17078.62(b)(1) has been completed (if applicable), then the following events shall occur: the school district where the Charter School is physically located can either:

- (a) Any qualifying successor charter school shall be permitted to occupy the facility pursuant to Education Code Section 17078.62(b)(2).
- ~~(a)-(b)~~ If no qualifying successor charter school chooses to occupy the facility, the school district in which the project is physically located may elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
 - (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
 - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
- ~~(b)-(c)~~ If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.
- (d) Pursuant to Education Code Section 17078.62(b)(5)(B), if the school district declines to dispose of the facility it shall provide written notice of its rejection to the Board in the form of written action taken by the governing board of the school district and the Board shall dispose of the property.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.62, Education Code.

Section 1859.172. Title to Project Facilities.

- (a) Prior to the release of funds for site acquisition or new construction Final Charter School Apportionments, a charter school that has received a Preliminary Charter School Apportionment must provide one of the following:
- (1) Documentary evidence that the school district in which the project is physically located holds title to the project facilities.
 - (2) Documentary evidence that a local governmental entity holds title pursuant to all of the requirements set forth in Education Code Section 17078.63(a)(2), or
 - (3) A written request that the charter school be authorized to hold fee simple title to the subject property signed by an authorized charter school representative pursuant to all of requirements set forth in Education Code Section 17078.63(a)(3). The written request must include a statement justifying the reasons why ownership will not be vested with an entity described in (a)(1) and why ownership will not be vested with an entity described in (a)(2). The written request must also include the statement: I certify, as the charter school representative, that the information reported in this document is true and correct.
- (b) A charter school may request that a school district transfer title to project facilities to a local governmental entity or the charter school itself if prior to January 1, 2010 the school district entered into an agreement to hold title to the project facilities. The transfer of title shall only take place if the school district and charter school mutually agree to a title transfer. Prior to the transfer of title, the charter school must notify the OPSC in writing that a title transfer request is being made, enter into new Charter School Agreements with the State and a local governmental entity if applicable, and demonstrate that all of the necessary conditions for holding title pursuant to Education Code Section 17078.63 will be complied with. For purposes of title transfer pursuant to Education Code Section 17078.63(b)(1) the charter school shall not be required to provide the written request outlined in section (a)(3) above.

Note: Authority cited: Sections 17070.35 and 17078.63, Education Code.

Reference: Sections 17078.62 and 17078.63, Education Code.