

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 25, 2007

FINAL ADOPTION OF PROPOSED REGULATORY AMENDMENTS
FOR REPAYMENT SCHEDULES FOR AMOUNTS DUE TO THE STATE

PURPOSE OF REPORT

To request final adoption of the proposed regulatory amendments pertaining to repayment schedules for amounts due to the State.

DESCRIPTION

On March 28, 2007, the State Allocation Board (SAB) addressed three public comments that had been submitted regarding the proposed regulations, and adopted proposed amendments to the regulations that were submitted as public comments. Based on that adoption, the Office of Public School Construction (OPSC) made available the newly amended regulatory text, with the changes clearly indicated, to the affected individuals. Statute requires an additional 15-day public comment period for only those that previously commented. This subsequent period commenced on April 9, 2007 and ended on April 24, 2007. No additional public comments were received.

AUTHORITY

The Administrative Procedure Act, Government Code Section 11346.8(c) allows a State agency to adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public if the change is sufficiently related to the original text that the public was adequately placed on notice, and the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, is made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulations.

RECOMMENDATIONS

1. Declare that the additional 15-day public comment period for the newly amended regulations, as shown on the Attachment, ended as of April 24, 2007.
2. Authorize the OPSC to complete the rulemaking process by submitting the rulemaking file to the Office of Administrative Law.

This Item was approved by the State Allocation Board on April 25, 2007.

ATTACHMENT

Amend Regulation Section 1859.106

Section 1859.106. Program Accountability Expenditure Audit.

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Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Sections 17072.13 and 17072.14 for projects with additional costs imposed by the DTSC, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. ~~Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. ~~Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

Adopt Regulation Section 1859.106.1 as follows:

Section 1859.106.1. Repayment of State Funds.

Upon adoption of the audit findings by the Board and in lieu of the collection procedures outlined in Education Code Section 17076.10(c)(1), a school district, county office of education, or charter school may request a repayment schedule of up to five years, in equal annual installments, if the total repayment of State funds within 60 days of the Board action would cause the school district, county office of education, or charter school to fall into fiscal distress. School districts, county offices of education, or charter schools requesting a repayment schedule must be in a severe hardship condition as evidenced by at least one of the following criteria:

- (a) The district or county office of education is listed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
 - (b) The amount due to the State for one or more projects would cause the district or county office of education to be listed on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education current report. The county office of education must submit a letter to the Office of Public School Construction (OPSC) on behalf of its representative school districts for consideration substantiating that the repayment will place the district on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education both of the following documents to the OPSC on behalf of the district for consideration: The CDE must submit a letter to the OPSC on behalf of the county office of education for consideration substantiating that the repayment will place the county office of education on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
- (1) A letter substantiating that the repayment will place the district on the CDE list.
 - (2) A CDE certification of negative financial condition.

(c) The amount due to the State for one or more projects would cause the charter school severe financial hardship. The charter school's authorizing agency must submit a letter to the OPSC on behalf of the charter school for consideration substantiating that the repayment may result in the charter school being unable to meet its financial obligations for the current or subsequent two fiscal years.

The repayment schedule shall include interest at the same rate as that earned on the State's Pooled Money Investment Account on the date a repayment schedule is approved by the Board.

The repayment schedule will commence on July 1 of the fiscal year following the repayment schedule approval date.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35 and 17076.10(c), Education Code.