

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 25, 2008

OVERCROWDING RELIEF GRANT REGULATIONS

PURPOSE OF REPORT

To request:

1. Adoption of proposed regulatory amendments that modify program requirements for school districts with current financial hardship approval that require the use of condemnation proceedings to obtain a site.
2. Adoption of proposed modifications related to the filing cycles and clarification to existing Regulation Section 1859.184.
3. Authorization to file the proposed regulations with the Office of Administrative Law (OAL).

DESCRIPTION

At the May 2008 State Allocation Board (SAB) meeting, the SAB requested that Staff review and present proposed amendments to the Overcrowding Relief Grant (ORG) regulations to assist those districts that have current financial hardship approval and require the use of condemnation proceedings to acquire a site for ORG projects.

School Facility Program (SFP) regulations require that a school district requesting site acquisition funds under the ORG program include demonstration of ownership of the site on which the project will be built. Under the ORG program there are no provisions for separate site apportionments or for advance fund releases for site acquisition for financial hardship districts. Districts have stated that this prevents equal participation in the program, as financial hardship districts cannot make the required deposit with the courts to obtain the necessary court orders for condemnation which serve to demonstrate ownership of the site for purposes of the SFP.

The proposed regulatory amendments would make it possible for a financial hardship district to receive an advance fund release for site acquisition when the proposed project involves condemnation proceedings. The proposed regulatory amendments also clarify the project narrative description requirement that demonstrates that the project relieves overcrowding, and modifies the dates for future funding cycles.

AUTHORITY

Education Code (EC) Section 17079.20(c) states "The board shall require that applicant school districts comply with all of the same conditions otherwise required for new construction funding pursuant to this chapter with the exception of subdivision (b) of Section 17071.75."

EC Section 17070.70 states that "Title, including but not limited to, any leasehold interest as set forth in subdivision (c), to all property acquired, constructed, or improved with funds made available under this chapter shall be held by the school district to which the board grants the funds. Title, as defined solely for the purpose of a school district's eligibility to receive funds from the board pursuant to this chapter shall include an order for prejudgment possession issued by a court in an eminent domain proceeding."

SFP Regulation Section 1859.23 requires that "Prior to the district requesting SFP funds for facilities, the district must hold title to the real property where the facilities will be located, unless the project meets the requirements of Regulation Section 1859.22." (Section 1859.22 covers SFP Application for Funding on Leased Land.)

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STAFF COMMENTS

At the May 2008 SAB meeting, the Lennox Elementary School District, a financial hardship district, raised a concern with the current ORG program regulations. The District had planned a project that required the acquisition of additional land to increase the size of a school site, thereby reducing the pupil density and relieving overcrowding. However, some of the parcels necessary to increase the site size will need to be acquired through a condemnation/ eminent domain proceeding. The District did not have sufficient funds to open the court proceedings. As the District had not demonstrated ownership of the site without a court order of prejudgment possession, the District could not receive funding in the current cycle. Thus, the District asserts that financial hardship districts are at a disadvantage and precluded from making use of this program.

In a typical SFP project, if a district has current financial hardship approval, it can access separate site apportionments to receive funds to obtain ownership of a site. This is done in advance of the application for final apportionment. This practice was intentionally excluded from the ORG program as the ORG funds were limited and apportioned on a funding cycle basis. Staff was concerned that advance site apportionments would tie up funds for projects that would not be able to obtain full construction funding due to time constraints and that the ORG funds would be exhausted before the sites could be acquired. As an option, the original regulations were drafted and approved by the SAB to allow financial hardship districts to set aside funds for these purposes that would not count as available contribution for the financial hardship review.

Financial hardship districts face a unique set of circumstances when land needs to be acquired through eminent domain proceedings. By allowing advance site funding for these districts, it would enable participation in the ORG program. The regulatory changes proposed are designed as a solution that works within the constraints of competitive funding cycles and a limited amount of funding. In addition, the regulations amend Regulation Section 1859.184 to clarify that the required project narrative description demonstrates that the project will relieve overcrowding by increasing useable outdoor space for such uses as play areas, green space or outdoor lunch areas, and adds two additional funding cycles. Staff recommends approval of the proposed regulatory amendments.

RECOMMENDATIONS

1. Adopt the proposed regulations as shown on the Attachment and begin the regulatory process.
2. Authorize the OPSC to file these regulations with the OAL.

BOARD ACTION

In considering this item, the State Allocation Board approved staff's recommendations on June 25, 2008. In addition, the Board requested staff to notify the Board if the regulations are not approved timely by the Office of Administrative Law and will impact the third funding cycle.

ATTACHMENT
PROPOSED AMENDMENTS TO THE
SCHOOL FACILITY PROGRAM
OVERCROWDING RELIEF GRANT REGULATIONS
State Allocation Board Meeting, June 25, 2008

Amend Regulation Section 1859.2 as follows:

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

...

"Resolution of Necessity" means a school board resolution to acquire property by eminent domain as required by California Code of Civil Procedure section 1245.230.

...

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

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

Amend Regulation Section 1859.103 as follows:

...

Section 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district including the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12. The grants for the projects funded pursuant to Section 1859.70.2 or Section 1859.180 shall be limited to eligible expenditures, up to the State Apportionment for the project except as specified in Section 1859.184.1(d). Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

With the exception of savings attributable to a site apportionment made pursuant to Sections 1859.74.5 or 1859.81.2, the State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project or a Joint-Use Project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project. Any interest earned on a financial hardship project not expended on eligible project expenditures will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63, 17072.12, 17077.40 and 17079.20, Education Code.

Amend Regulation Section 1859.184 as follows:

...

Section 1859.184. Overcrowding Relief Grant Application Submittals and Apportionments.

- (a) The Board shall accept approved applications for Overcrowding Relief Grants as follows:
- (1) For the funding made available for this purpose for the first funding cycle, the School District shall submit an approved application by January 31, 2008.
 - (2) The Board shall accept approved applications on a semi-annual basis thereafter.

The Board shall apportion Overcrowding Relief Grants based upon the highest density of the eligible schools that have submitted an approved application. Any School District that does not receive an Overcrowding Relief Grant due to low school density and insufficient funds may request that its application remain with the OPSC for consideration in the following semi-annual funding cycle.

- (b) The Board shall apportion the Overcrowding Relief Grants as follows:
- (1) For the first funding cycle, up to a maximum of \$500 million for all approved applications that are received by January 31, 2008.
 - (2) For the second funding cycle, up to a maximum of \$300 million for all approved applications that are received by July 31, 2008, plus any remaining funds not apportioned during the previous funding cycle.
 - (3) Approved applications that are received by January 30, 2009 shall be apportioned any remaining funds not allocated at the previous funding cycles, plus an additional \$200 million.
 - (4) Approved applications that are received by July 31, 2009 shall be apportioned any remaining funds not allocated at the previous funding cycles.
 - (5) Approved applications that are received by January 29, 2010 shall be apportioned any remaining funds not allocated at the previous funding cycles.

The approved applications for Overcrowding Relief Grants filed after July 31, 2008 must provide a narrative indicating that demonstrates that how the project will relieve overcrowding at the eligible school-, by increasing useable outdoor space for uses such as play areas, green space, or outdoor lunch areas.

A School District may submit an approved application to request an Overcrowding Relief Grant from the funding provided under Proposition 1D for a project that has been occupied, if the construction contract for the project was signed after Board approval of these regulations. The School District must have obtained all project approvals required for a new construction funding application prior to the construction contract date.

Adopt Regulation Section 1859.184.1 as follows:

Section 1859.184.1 Application Process for Districts with Financial Hardship Approval

An approved application for districts that have received Financial Hardship approval shall be substantially identical to that of non-financial hardship districts, with the exception of those districts proposing projects that require the use of condemnation proceedings to acquire all or a portion of the site on which the project will be located. In this instance, the following conditions shall apply:

- (a) A complete application shall include:
- (1) Documentation of Financial Hardship approval pursuant to Section 1859.81.
 - (2) All project related approvals and requirements that would otherwise apply to SFP projects with the exception of ownership pursuant to Section 1859.23 for those parcels being acquired through condemnation proceedings. A CDE site approval letter is required for all components of the site, including the area to be acquired through condemnation. The CDE Final Plan Approval letter must include the acreage to be acquired through condemnation. This subsection includes the submittal of DSA approved construction plans and related documents.
 - (3) A copy of the Resolution of Necessity for the initiation of condemnation proceedings.
 - (4) For any additional parcels that are being acquired without condemnation, documentation that demonstrates that the district has opened escrow, has ownership, or holds a lease meeting the requirements of Section 1859.22.
 - (5) An appraisal for the value of all properties being acquired as part of the application.

(b) Site Acquisition Funding for Financial Hardship Overcrowding Relief Grant applications using condemnation shall be equal to the sum of:

- (1) The lesser of the actual or appraised value for all parcels acquired through means other than condemnation, pursuant to Section 1859.74.
- (2) The appraised value of the parcels being acquired through condemnation, multiplied by 1.15.
- (3) Amounts for hazardous waste removal pursuant to Sections 1859.74.2, 1859.74.3 and/or 1859.74.4.

(c) The Overcrowding Relief Grant projects meeting the criteria in subsection (a) above shall be able to request an advanced fund release for site acquisition when condemnation proceedings are required for the acquisition of the site. The advanced fund release shall be equal to the State share plus the Financial Hardship grant of only the amount determined in subsection (b).

(d) Pursuant to Section 1859.103, grants for Overcrowding Relief Grant projects shall be limited to eligible expenditures, up to the State Apportionment for the project with the exception of the funds provided in subsection (b) above that are for site acquisition purposes only and cannot be transferred over to eligible construction related costs.

When making an apportionment for an Overcrowding Relief Grant project meeting the criteria in this section, the Board shall make a Final Apportionment for the total project cost. However, the fund release for the non site acquisition project costs will not be accepted or processed until the district is able to produce the court order for prejudgment possession verifying the initial amount to be paid through condemnation proceedings. The project timelines for the project as a whole, as specified in law and outlined in Section 1859.90, remain in effect. The advance fund release for site acquisition can be requested at any time after the Final Apportionment is granted by the Board. The advance fund release for site acquisition is not subject to the requirements of Section 1859.81.1.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17079.20, Education Code.

**FUND RELEASE AUTHORIZATION
SCHOOL FACILITY PROGRAM**SAB 50-05 (REV ~~01/08~~06/08)**GENERAL INFORMATION****(Refer to Title 2, California Code of Regulations, Sections 1859.90 and 1859.91)**

After a School Facility Program (SFP) grant has been funded by the Board, the Office of Public School Construction (OPSC) will release the apportioned funds with the exception of design funds, to the appropriate county treasury once the district has completed and submitted this form to the OPSC. Design funds will automatically be released to the district within 30 days of the apportionment, with the exception of Preliminary Apportionments.

The following documents must be submitted with this form (as appropriate):

1. Signature page of the contract(s) that meets the requirement for a fund release (Part IV and/or VI).
2. Notice(s) to Proceed.
3. For projects that require a Labor Compliance Program:
 - All school district and/or third party provider Department of Industrial Relations approval letters (initial, extension(s) and/or final).
 - Third party contract(s).
4. For new construction projects that complete Part IV attach:
 - Accepted bid documents including additive/deductive alternates.

For the purposes of completing this form to obtain a fund release for a Final Charter School Apportionment, a charter school shall be treated as a school district.

For the purposes of completing this form to obtain a fund release for a Final Career Technical Education Facilities Apportionment, a joint powers authority shall be treated as a school district.

SPECIFIC INSTRUCTIONS**Part I. Preliminary Apportionment—Design Only**

Check the boxes if the district has current financial hardship status pursuant to Section 1859.81 and is requesting release of Preliminary Apportionment funds for design, engineering, and other preconstruction project costs. Attach to this form the California Department of Education (CDE) Letter pursuant to Section 1859.149(a)(2).

Part II. Preliminary Charter School Apportionment

Check the boxes if the charter school is requesting a release of a Preliminary Charter School Apportionment for design and/or separate site apportionment pursuant to Section 1859.164.2. Attach to this form the Charter School Agreements.

Part III. Separate Site Apportionment

Check the box, for release of a separate site apportionment provided pursuant to Sections 1859.75.1 or 1859.81.1 or for release of Preliminary Apportionment site only acquisition pursuant to 1859.153(b) or (c).

Part IV. Overcrowding Relief Grant - Advance Site Funds

Check the boxes if the district is requesting an advance release of funds pursuant to Section 1859.184.1.

Part IVV. New Construction/Modernization/Charter School Rehabilitation

Check the box(es) for release of new construction, modernization or rehabilitation funds and enter the following:

- a. Date of written approval by the Division of the State Architect (DSA).
- b. Enter the percent of the construction the district has under binding contract(s).
- c. Issue date of the Notice to Proceed for the construction phase of the project; and
- d. Signature date of the initial construction contract entered into by the district for this project.

For Final Charter School Apportionment attach to this form the Charter School Agreements if not previously submitted or if since revised.

Part VVI. New Construction—Site Acquisition Only

Check the boxes if the district is requesting a separate release of site acquisition funds as part of a new construction project.

Part VVII. Joint-Use Projects

Check the boxes if the district is requesting release of joint-use project funds.

Part VVIII. Identify District and Joint-Use Partners' Funding Sources

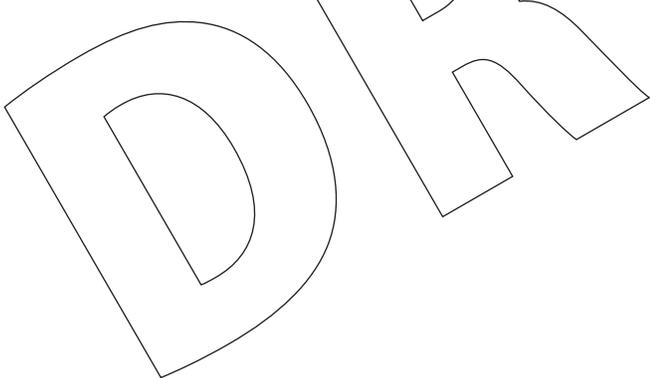
Check the appropriate box(es) that identify the district funding sources that have or will be used for the district's share of the project.

Part VVIII. Career Technical Education Facilities Projects

Check the appropriate box(es) in Part VIII if the district is requesting a release of Career Technical Education Facilities funds.

Part IXX. Identify District's Construction Delivery Method

Check the appropriate box that identifies the construction delivery method that the district utilized for this project.



SCHOOL DISTRICT	APPLICATION NUMBER
SCHOOL NAME	FIVE-DIGIT DISTRICT CODE NUMBER (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	HIGH SCHOOL ATTENDANCE AREA (HSAA) (IF APPLICABLE)

Part I. Preliminary Apportionment—Design Only

- The district certifies it has complied with Section 1859.149(a).
- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- The district certifies that it currently has Financial Hardship status under the provisions of Section 1859.81.

- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project

Part II. Preliminary Charter School Apportionment

A. Design Only

Pursuant to Section 1859.164.2(a), must be able to check all boxes:

- The Charter School certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the Charter School for the project
 - will be expended by the Charter School prior to the Notice of Completion for the project
- The Charter School certifies it has current financial soundness status from the California School Finance Authority.
- The Charter School certifies it has entered into the Charter School Agreements pursuant to Section 1859.164.2.

B. Separate Site Apportionment

Pursuant to Section 1859.164.2(b), must be able to check all boxes:

- Release site acquisition funds. The Charter School certifies the funds are needed to place on deposit in order to secure the site acquisition.
- The Charter School certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the Charter School for the project
 - will be expended by the Charter School prior to the Notice of Completion for the project
- The Charter School certifies it has current financial soundness status from the California School Finance Authority.
- The Charter School certifies it has entered into the Charter School Agreements pursuant to Section 1859.164.2.

Part III. Separate Site Apportionment

- RA on additions to existing school sites pursuant to Section 1859.74.4.

Pursuant to Sections 1859.75.1 or 1859.81.1, district must be able to check both boxes:

- Release site acquisition funds. The district certifies the funds are needed to place on deposit in order to secure the site acquisition.

Part IV. Overcrowding Relief Grant - Advance Site Funds

Pursuant to Section 1859.184.1, districts who have received Financial Hardship approval that are acquiring sites through condemnation must be able to check all boxes:

- Release site acquisition funds. The district certifies the funds are needed to place on deposit in order to secure the site acquisition.
- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- The district certifies that it will produce an order of prejudgement possession once obtained from the court, and prior to any additional fund releases for the project.

Part IVV. New Construction/Modernization/Charter School Rehabilitation

District/Charter School must be able to check all boxes:

- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- The district certifies it has entered into a binding contract(s) for ____ percent of the construction (must be at least 50 percent of the construction included in the plans and specifications applicable to the state funded project), which received written DSA approval on _____, and has issued the Notice to Proceed on _____ for that contract signed on _____.
- If the district certified compliance with Education Code Section 17070.955 on its Application for Funding (Form SAB 50-04) and if it was not previously sent with the Form SAB 50-04, then the district must submit written confirmation from the district's career technical advisory committee indicating that the need for vocational and career technical facilities is being adequately met within the district consistent with Education Code Sections 51224, 51225.3(b), 51228(b), and 52336.1

The Charter School must also be able to check the following box:

- The Charter School certifies it has entered into the Charter School Agreements pursuant to Section 1859.164.2.

The amount of State funds released for new construction shall be 100 percent of the total SFP New Construction Adjusted Grant, less any site acquisition funds previously released in Part III.

The amount of State funds released for modernization shall be 100 percent of the SFP Modernization Adjusted Grant.

**FUND RELEASE AUTHORIZATION
SCHOOL FACILITY PROGRAM**

Part VII. New Construction—Site Acquisition Only

District must be able to check both boxes:

- The district certifies it has entered escrow for the site (attach copy of escrow instructions).
- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project

The amount of State funds released shall be equal to the additional grant provided for site acquisition.

Part VIII. Joint-Use Projects

- The district certifies that the Joint-Use Partners' financial contribution has either:
 - been received and deposited in the County School Facility Fund
 - has been received and expended by the district
 - will be received and expended by the district prior to the Notice of Completion for the project
- The district certifies it has entered into a binding contract(s) for _____ percent of the construction (must be at least 50 percent of the construction included in the plans and specifications applicable to the state funded project), and has issued the Notice to Proceed on _____ for that contract signed on _____.

The amount of State funds released for new construction shall be 100 percent of the Joint-Use Grant.

Part VIII. Identify District and Joint-Use Partners' Funding Sources

- Available bond funds such as general obligation, or Mello-Roos.
- Available developer fees, proceeds from the sale of surplus property, or federal grants.
- Other funds available (identify)
- Funds already expended by the district for the project.
- Funds already expended by the Joint-Use Partners for the project.
- Future revenue sources to be used for the project (identify)

Part VIII. Career Technical Education Facilities Projects

- The district certifies that its applicable matching share has either:
 - been deposited in the County School Facility Fund
 - has already been expended by the district for the project
 - will be expended by the district prior to the Notice of Completion for the project
- If the district requested a loan for its matching share pursuant to Section 1859.194, the district certifies that it has entered into a loan agreement with the State.

Part IX. Identify District's Construction Delivery Method

- Design-Bid-Build
- Design-Build
- Developer Built
- Lease Lease-Back
- Energy Performance Contract
- This project includes or will include piggyback contract(s), as defined in Section 1859.2
- Other: _____

I certify, as the District Representative, that the information reported on this form is true and correct and that:

- I am an authorized representative of the district as authorized by the governing board of the district; and
- The site where buildings will be modernized or rehabilitated must comply with Education Code Sections 17212, 17212.5, and 17213; and,
- The grant amount provided by the State, combined with local matching funds or the Joint-Use Partner's financial contribution, are sufficient to complete the school construction project, unless the request is for a separate site and/or design apportionment; and,
- The district has or will comply with the Public Contract Code regarding all laws governing the use of force account labor; and,
- This project for which the grant amount is provided complies with Education Code Sections 17070.50 and 17072.30; and,
- The district shall certify at the time of a fund release for the project that it complies with Section 1859.90.1.
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction (OPSC). In the event a conflict should exist, then the language in the OPSC form will prevail; and,
- If required by Labor Code Section 1771.7, the district has initiated and will enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
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