REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 25, 2012

SCHOOL DISTRICT DATA	
School District: .....CENTINELA VALLEY UNION HIGH	County:.....LOS ANGELES
Application Number(s):.....50/64352-00-004	School Name:..... LEUZINGER HIGH
Total District Enrollment:..... 6,618	Project Grade Level:..... 9-12
Financial Hardship:..... NO	

PURPOSE

To present the Centinela Valley Union High School District's (District) revised appeal to close the project above to costs incurred by allowing expenditures prior to the bankruptcy of Aurora Modular Industries (Aurora) and disallowing expenditures after the bankruptcy.

DESCRIPTION

The OPSC disallowed $2,252,887 in costs related to the purchase and disposal of the Aurora modular classroom components because the District did not demonstrate reasonable measures were taken to complete the installation after the bankruptcy of Aurora Modular Industries. The District appealed OPSC's review findings on March 8, 2011.

In a revised appeal dated December 19, 2011, the District acknowledged it could have handled the Aurora bankruptcy differently; therefore, the District requests the Board find only the $723,576 paid for the modular components after the bankruptcy and its associated $26,500 demolition costs ineligible. For a complete project timeline, see Attachment B.

AUTHORITY

EC Section 17076.10(c)(1) states in part that "If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid…"

BACKGROUND

In January 2004, prior to receiving its SFP grant, the District entered into contracts with Aurora to build and install 26 new modular classrooms. After Aurora completed the modular classroom components, in August 2004, it filed for bankruptcy, which left the District without a contractor to complete the installation. Prior to Aurora's bankruptcy, the District had already paid $1,502,812 to Aurora. While still at Aurora's plant at the time, an independent inspector certified the modular components to be fully completed. In November 2004, the District gained physical possession of all the modular components through bankruptcy court for an additional $723,576, with the intent to have another contractor complete the installation. Until June 2005, the District stored the modular components in a covered storage facility. In September 2005, the District received a $3,645,047 new construction matching SFP grant to build 26 new classrooms at Leuzinger High School.

From June 2005 to August 2009, the District stockpiled the components at the Leuzinger High School softball field, unused and exposed to the elements. In June 2008, when OPSC was notified by the District of the situation, the modular components were already deemed unsalvageable. (A modular company initially expressed interest in salvaging the modular components and hired an independent consultant to inspect them. However, the consultant

(Continued on Page Two)

BACKGROUND (cont.)

declared them unsalvageable as a result of exposure to water, vandalism, and mold. In a report referenced by the consultant, see Attachment C, photographs demonstrate the condition of the modular components.) Also, during this time period, the District states that it attempted to complete the project, but no contractor would accept the job. However, the District kept no documentation of its attempts to complete the project.

Based on the consultant's findings, the District paid a company $26,500 to haul away and dispose of the modular components. After discussions with OPSC, the District made a request in May 2009 to close out this project and reduce the project to the costs incurred. In September 2009, the District demolished the components.

An OPSC review questioned what happened during the time the District had possession of the modular components to the time they were declared unsalvageable. The OPSC requested evidence that the District actively sought contractor/consultant opinions, architect/engineer reports, legal opinions, or school board meeting minutes, to substantiate the District's efforts to successfully complete the project, or document the circumstances which made the project impossible to complete. However, since the District did not provide any documentation to the OPSC to substantiate that the District made any efforts to complete the project, or its claim that the circumstances made it impossible to complete, the costs of the modular components and their disposal were disallowed.

STAFF ANALYSIS / STATEMENTS

District's Position

The District states the expenditures made prior to the Aurora bankruptcy for the modular components were contractually required; however, in hindsight the District also recognizes that it could have handled what happened after the Aurora bankruptcy differently. Therefore, it requests the Board find only the expenditures made after the Aurora bankruptcy ($723,576) as well as the associated demolition costs (26,500) are disallowed.

See Attachment A and A-1 for full text of District's original and revised position.

OPSC's Position

Without evidence to support the complete loss of the modular components, the OPSC originally did not allow the expenditures for the modular components, or their demolition. Some evidence was required to make the cost of the modular components eligible. Also, the Board has the authority under EC Section 17076.10(c) to disallow expenditures made if it determines they were not used in accordance with this law.

In consideration of the District's revised appeal, the OPSC recognizes the District was contractually obligated for the progress payments made towards the modular components prior to the Aurora bankruptcy, and concurs with the District's position that it could have handled what happened after the Aurora bankruptcy differently; therefore, the OPSC agrees with the District's revised appeal to disallow only the expenditures made after the Aurora bankruptcy.

(Continued on Page Three)

Options

The following options are presented for the Board's consideration:

1. **Accept the District's appeal**
   Reduce the project to costs incurred, but disallow the costs of the modular components ($723,576) and their demolition ($26,500) made after the Aurora bankruptcy as shown on Attachment D.

   Pro: The District would be required to return $375,038 to the State as a result of the review findings. With the addition of interest ($390,057), and the unused portion of the State grant ($2,352,313), the total amount to be returned to the State is $3,117,408.

PROJECT FINANCING	
State's contribution	$3,645,047
State's share of interest earned	$390,057
Less: Eligible expenditures ($1,835,392) at 50%	$917,696
Total Amount to Repay:	$3,117,408

   Con: Future program eligibility and funding is permanently reduced by this failed project, and pupils will not be housed with the State bond funds.

2. **Deny the District's appeal**
   Accept OPSC's original review findings and disallow costs in the amount of $2,252,888 for the modular components and their disposal.

   Pro: The State bond funds would be repaid for some of the cost of the modular components and their demolition.

   Con: The District would be required to return $1,126,444 to the State as a result of the review findings. With the addition of interest ($390,057), and the unused portion of the State grant ($2,352,313), the total amount to be returned to the State is $3,868,814.

PROJECT FINANCING	
State's contribution	$3,645,047
State's share of interest earned	$390,057
Less: Eligible expenditures ($332,580) at 50%	$166,290
Total Amount to Repay:	$3,868,814

RECOMMENDATIONS

1. Accept Option 1. Find the District was unable to move forward with the project listed on Attachment D.
2. Reduce the State apportionment to costs incurred as listed on Attachment D.
3. Direct Staff to adjust the district's baseline eligibility (identified in the "Pupils Returned to the District's Baseline" column) on Attachment D, once all funds due to the State have been received.

BOARD ACTION

In considering this Item, the SAB approved the staff's recommendations, which included but was not limited to: 1) accepting staff's Option #1, which reduced the project to costs incurred, but disallowed the costs of the modular components in the amount of $723,276 and the demolition in the amount of $26,500 since these were costs after the Aurora bankruptcy. Also, the SAB found that the District was unable to move forward with the project; 2) reducing the State apportionment to costs incurred as shown on Attachment D; and 3) directing staff to adjust the District's baseline eligibility (identified in the "Pupils Returned to the District's Baseline" column), once all funds due to the State have been received.

ATTACHMENT A

Centinela Valley Union High School District

Office of the Superintendent

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www.centinela.k12.ca.us

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March 8, 2011

Ms. Lisa Silverman, Acting Executive Officer
Office of Public School Construction
P.O. Box 980610
West Sacramento, CA 95798-0610

Dear Ms. Silverman:

On November 4, 2010 the Centinela Valley Union High School District received a Summary of Project Financing and Expenditures which rejected 85% of the eligible expenditures made on our Leuzinger High School addition project (50/64352-00-004). As you may recall, our project was caught up in the bankruptcy of Aurora Building, Inc., a modular building manufacturer. This bankruptcy affected several districts at the time and was the subject of at least one discussion before the State Allocation Board (SAB).

Inexplicably, the Office of Public School Construction (OPSC) has held the District entirely liable for the outcome of the Aurora Building bankruptcy, something over which the District had absolutely no control. To further aggravate the situation, the audit finding has been made in direct contradiction to many earlier discussions with supervisory and management members of your office.

The financial impact of this audit claim against the District is $2,252,887. That is unacceptable to the District and it is our desire to present the facts of the issue to the SAB at the earliest opportunity. Attached to this letter, please find our completed and signed SAB Form 189, *School District Appeal Request* as well as a five-page Attachment to the SAB 189 detailing our request.

If you have any questions, please feel free to contact me or Mr. Bruce Hancock of Hancock Gonos & Park at any time. Mr. Hancock can be reached at 916.443.4101.

Sincerely,

Jose A. Fernandez
Superintendent

cc: David Zian, Manager OPSC
Rick Asbell, Manager OPSC
Bruce Hancock, Hancock Gonos & Park, Inc

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Centinela Valley Union High School District	50/64352-00-004
SCHOOL NAME	COUNTY
Leuzinger High School	Los Angeles
DISTRICT REPRESENTATIVE	E-MAIL ADDRESS
Mr. Jose A. Fernandez	fernandezj@centinela.k12.ca.us

Purpose of Request:

To request that the State Allocation Board (SAB) close School Facility Program (SFP) project Number 50/64352-00-004, an addition to the Leuzinger High School, to costs incurred, and
to request that the SAB find that all costs expended on the construction contracts for the project be accepted as eligible project expenditures and included in the costs incurred for purposes of the Board's close out audit.

Basis of Request:

☐ Law (Statute) _____

☐ Regulation _____

☒ Other (specify) No legal or regulatory basis has been cited for denial.

Description:

Please see Attachment

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE

DATE 3/8/11

Attachment to SAB 189
Centinela Valley Union High School District
Leuzinger High School – Aurora Modular Construction
New Construction Project Number 50/64352-00-004

Purpose of Report

To request that the State Allocation Board (SAB) close School Facility Program (SFP) project Number 50/64352-00-004, an addition to the Leuzinger High School, to costs incurred, and find that all costs expended on the construction contracts for the project be accepted as eligible project expenditures and included in the costs incurred for purposes of the Board's close out audit.

Background

On September 28, 2005 the SAB approved an addition to the Leuzinger High School campus with a total project cost of $7,290,094. The Centinela Valley Union High School District (CVUHSD) and State each contributed 50% or $3,645,047 to build 26 classrooms using 253 per pupil grants. Although the State funding was for only 10 classrooms, it was the District's intention, using the efficiency and cost economies of modular construction, to build 16 additional classrooms within the total budget of the State and District funding.

The District entered into contracts with Aurora Building Inc. for the construction of 26 classrooms using a modular two story configuration in January 2004. Under the terms of the contract, the Centinela Valley Union High School District (CVUHSD) made construction progress payments to Aurora in the amount of $1,502,812. Without prior warning, the Aurora Building Inc. filed bankruptcy and stopped all work on the Leuzinger High School project. All building components completed to that point remained in the manufacturing plant and out of the District's control. The District funds paid up to that time were not refunded. Subsequently, the District entered into negotiations with the bankruptcy "referee" and, through a payment of $723,576 to the Trustee for the bankruptcy court, managed to get physical possession of the building components.

Although the District had possession of the buildings in largely unassembled and very unfinished form, the proprietary nature of the modular design and construction made it impossible to find an architect, engineer and contractor willing or able to assume the liability to complete the buildings. Over the period of 2 ½ years that the modular components were stored on the high school site, they became a significant health and safety concern. In June 2009 the District contracted to have the buildings removed from the site to alleviate the hazardous conditions.

Issue

Unable to complete the project and with almost $2.6 million in expenditures already made, the District turned to the Office of Public School Construction (OPSC) for guidance in mid-2008. The District and District consultants had numerous meetings with the OPSC to discuss options for resolution. In August 2008 OPSC also sent management and supervisory level personnel to tour the

site and see the issue firsthand. In a letter (undated, approximately May 28, 2009) to OPSC, the District requested that the project be closed to cost incurred. This decision was made for a number of reasons, including the District's understanding that this was acceptable to the OPSC.

Around December 29, 2009, the OPSC began an audit of the final records submitted by the CVUHSD for the Leuzinger HS Aurora Building project. Shortly thereafter the OPSC auditor began to question the circumstances surrounding the bankruptcy, the acquisition of the building components and the eventual decision to abandon the project. The District was surprised since the questioning covered the very issues that had been discussed with OPSC managers and leadership repeatedly for more than a year. It was the District's understanding that the close out and reduction to cost incurred had been approved by OPSC management, yet the questioning seemed to infer that there were issues still unaddressed. However, in the spirit of cooperation, the District attempted once again to explain the entire matter while at the same time reminding the auditor that this had been discussed with OPSC management. Then, in what was a complete shock to the District, the OPSC auditor found that the payments made to Aurora Modular were disallowed ". . .because the District failed to provide any documentation to support their due diligence to... " assemble the modular components. The effect of this finding is to require the District to pay the State $1,126,443 in addition to the $2,252,887 the District has already paid for the construction and eventual demolition of the buildings.

Discussion

The District disagrees with the audit findings for the following reasons:

1. All expenditures were eligible under the SFP. There is no legal basis for disallowing them.
2. The SAB directed that districts not be harmed by the Aurora Bankruptcy.
3. The OPSC approved reducing to costs incurred, which is a common process in the School Facility Program (SFP).
4. The District is the victim of the bankruptcy, not the perpetrator.
5. The State has no financial loss.
6. No warning that costs would be reduced. District unable to take another option.

1. All expenditures were eligible. There is no legal basis for disallowing them.

The sole basis provided to the District for disallowing the expenditures for the Aurora Buildings is contained in a paragraph in the "Summary of Project Financing and Expenditures" dated November 4, 2010. In pertinent part the paragraph states that the expenditures are disallowed because "The District failed to provide any documentation to support their due diligence to assemble two 2-story 26 modular classrooms with two elevator units."

The OPSC auditor does not challenge the legality or the eligibility of the expenditures. Since the District made the majority of the expenditures under the terms of a legally binding contract for construction and made the balance of the expenditures under the auspices of a bankruptcy court proceeding, they obviously are legal and eligible under the law and regulations governing the (SFP). Instead, the auditor cites a lack of "documentation" about the district's "due diligence" in getting

the modular components assembled into completed, field act compliant classrooms. This finding dismisses repeated explanations to both the auditor and the auditor's supervisors and managers about all aspects of the project, including the fact that the DSA approved plans were owned by Aurora Building Inc and not available to the District and that the construction assembly means and methods were proprietary. The auditor also cites the failure to "provide any discussions about the project represented in its board meetings." There seems to be an inference by the auditor that the District somehow did not care about or did not adequately explore options for the project, even though at least 50% of the funds expended (and lost) were the District's. The fact is that discussions did take place at the District Board, but they were in closed session because of the possibility of litigation. As a result, minutes or other "documentation" is not available. This was also explained to OPSC and apparently disregarded.

In short, the basis for disallowing more than $2.5 million dollars in legitimate, eligible expenditures is no more than a personal opinion that in some undefined, unknown way the District did not do what OPSC thinks it should have done. The Centinela Valley UHSD rejects this unfounded, speculative accusation and questions the very authority for such an action.

2. The SAB directed that districts not be harmed by the Aurora Bankruptcy

The bankruptcy and subsequent impact on a number of school districts was well known to the OPSC. At the February 2005 SAB meeting the matter was discussed at the SAB. At that time, the Board expressed its desire that OPSC work with affected districts and ensure that districts were not harmed by the bankruptcy.

3. The OPSC approved reducing to costs incurred, a common process in the SFP

As mentioned in the "Issue" section of this attachment, the District openly explored several options for how to resolve the problem created by the Aurora bankruptcy with OPSC management. In the end, the District reluctantly concluded that reducing the project to costs incurred would be the only viable option. Other possibilities only deepened the financial burden to the District at a time when it had no facility funding resources to draw upon. A state representative indicated in a phone call with a District consultant that reducing the project to costs incurred would be acceptable to the OPSC. The OPSC subsequently accepted the District's request to close the project to costs incurred without comment.

A reduction to costs incurred (known as an RCI) is a common practice in the SFP. It happens frequently when a project receives funding and then for a variety of reasons can't be completed. For instance, a district might receive a planning apportionment but then be unable to secure a construction apportionment due to declining enrollment. In such a case, the OPSC reviews all of the expenditures made to that point in the project to verify that they were eligible (i.e., made for purposes allowed under law and regulation.) When the review is completed, any unspent funding is returned to the State and the project is closed. As a final step, the district is 'charged' an amount of eligibility commensurate with the amount of state funding that was expended. In short, the state is repaid by a reduction in 'liability' for future eligibility and the district is permitted to keep the funding it legitimately expended.

In the case of this specific project, the District understood that following a reduction to costs incurred, it would return $2,352,312.85 and would forfeit an estimated 90 pupil grants in future funding eligibility subject to final review.

At no time during the discussions on reducing the project to costs incurred did any OPSC project manager, supervisor or manager ever indicate that the expenditures for the Aurora contract might be ineligible or disallowed. Had they done so, the option to reduce the project to cost incurred would not have been viable for the district. In accepting the request to reduce to cost incurred, the OPSC was indicating that it was an acceptable solution. It is apparent that no one in OPSC management anticipated the auditor's finding. If they had, it is assumed that they would have advised the District accordingly and would have continued discussions to find a solution that worked for all concerned. Today the other options the District had at that time have vanished with declining enrollment. After the many, many discussions on resolutions and the verbal indication that a reduction to cost incurred was acceptable, it was the District's understanding that the eligible expenditures made on the project would be honored. That is what the District now asks the SAB to do.

The District is the victim of the bankruptcy, not the perpetrator

The CVUHSD did not cause the bankruptcy of Aurora Building Inc. Nothing that the District could have done would have prevented Aurora from defaulting on the construction contract at Leuzinger High School. Because of the bankruptcy and default, the CVUHSD lost $1,126,443 in scarce facility funding that will never be recovered. Clearly the District and the students of Leuzinger High School were the victims of this situation.

The proposed OPSC audit findings seek to hold the District culpable for the entire Aurora bankruptcy by denying all expenditures on the construction contract. This blame-the-victim approach appears to be based on a feeling within OPSC that the District did something improper in the use of State funding, but no specific violation has ever been cited. However, there is nothing vague about the impact on the District: the OPSC findings will result in a total additional impact to the District of $2,252,887 because the District will be required to pay the state share of the construction costs plus "return" the same amount to the State.

The State has no financial loss

It is important to understand that in all cases of a project being reduced to costs incurred, the state protects the State bonds by reducing the eligibility of the District by an amount equivalent to the state funding used. The State funding that has been expended is not "forgiven." A deduction is made from the District's future program eligibility and funding. In other words, the state is permanently relieved of any further obligation for that number of students and is thus assured of never being in the position of "double funding" a project and a future project for the same students. Thus, the state program is fully protected and suffers no uncompensated financial loss.

The CVUHSD is prepared to return all unexpended state funds and also understands that its future eligibility in the State Program is permanently reduced by 90 pupils (estimated). The only party with an uncompensated loss from the contractor's failure to meet its contractual obligations is the Centinela Valley Union High School District.

No warning that costs would be reduced. District is unable to take another option.

Because the OPSC did not advise the District that a reduction to cost incurred might entail disallowing the expenditures for the Aurora modular components, the District selected that option as viable. Today, other options that might have worked or might have been the basis of further exploration as a possible solution are largely unavailable. Declining enrollment as well as the construction of an Overcrowding Relief Grant (ORG) project at the site has made those options impossible or no longer available.

It is unreasonable to participate in more than a year of discussion, email and written correspondence; acknowledge the reduction to costs incurred as acceptable; and then disallow 85% of the expenditures without warning. It is made even more unjustifiable because the District allowed other possible options to pass in the understanding that a solution had been reached.

Conclusion

The District was the victim of the bankruptcy of a contractor on an SFP with the real loss of $1.25 million in District funds. In addition, the District will permanently lose an estimated 90 pupil grants in new construction eligibility in the State program.

Since the project could not be completed under the circumstances, the District and the OPSC explored possible resolutions. It was the District's understanding that the OPSC was willing to close the project to the costs incurred, thus recovering all unspent state funds and reducing the District's future program eligibility in proportion to the state funds that were expended.

OPSC auditors have unexpectedly disallowed all of the expenditures made on the construction contract without legal justification. This will force the District to return an additional $1.25 million. These funds are already spent on the construction contract, so the additional funds will have to come from existing District funds, penalizing the District and its students even further. The sole basis for this action by OPSC appears to be the personal opinion of staff members that the District did something 'wrong' although no one in OPSC has ever indicated exactly what.

This project is no different than dozens of projects which have been reduced to costs incurred when they cannot go forward to completion. There is no justification for treating this project differently. The expenditures were legal under SFP statute and regulation and should be allowed.

ATTACHMENT A-1

Centinela Valley Union High School District

Office of the Superintendent

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December 19, 2011

Ms. Lisa Silverman
Acting Executive Officer
State Allocation Board
Office of Public School Construction
P.O. Box 980610
West Sacramento, CA 95798-0610

Re: Centinela Valley Union High School District Appeal, Application 50/64352-00-004

Dear Ms. Silverman,

The above-referenced appeal by the Centinela Valley Union High School District is scheduled to be presented to the State Allocation Board (SAB) in January of 2012. The District would like to modify its appeal.

The original appeal asked the SAB to fund all costs associated with the Aurora Modular contract. The District has for the past several months met with Board members and it appears that they may be supportive of an alternative proposal that would recognize only costs expended prior to the Aurora bankruptcy. Therefore, the District is requesting that the SAB support closing this project to costs incurred ($1,502,811) plus those expenditures already approved by the Office of Public School Construction ($332,580) for a total of $1,835,391.

The District is very appreciative of your patience in this matter and requests that OPSC staff support this alternative so that the District can close this project and return the funds to the State.

Sincerely,

Jose A. Fernandez
Superintendent

Cc: Rick Asbell
Suzanne Reese
Juan Mireles
Bill Savidge

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Centinela Valley Union High	50/64352-00-004
SCHOOL NAME	**COUNTY**
Leuzinger High School	Los Angeles
DISTRICT REPRESENTATIVE	**E-MAIL ADDRESS**
Mr. Jose A. Fernandez	fernandezj@centinela.k12.ca.us

Purpose of Request:

To request that the State Allocation Board close School Facility Program project number 50/64352-00-004, an addition to the Leuzinger High School to costs incurred. The District thereby respectfully requests that the Board find that the contractually required expenditures in the amount of $1,502,811 made to Aurora Building, Inc. prior to declaration of bankruptcy be found to be eligible expenditures on the Project. All expenditures made toward the Aurora buildings through the bankruptcy referee ($723,576) as well as associated demolition costs will be disallowed for purposes of the Board's close out audit and will therefore be borne solely by the District.

Basis of Request:

☐ Law (Statute) _____

☐ Regulation _____

☒ Other (specify) _____

Description:

See Attachment

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE

Attachment to SAB 189
Centinela Valley Union High School District
Leuzinger High School – Aurora Modular Construction
New Construction Project Number 50/64352-00-004

Purpose of Report

To request that the State Allocation Board (SAB) close School Facility Program (SFP) project Number 50/64352-00-004, an addition to the Leuzinger High School (Project), to costs incurred. The Centinela Valley Union High School District (District) thereby respectfully requests that the Board find that the contractually required expenditures in the amount of $1,502,811 made to Aurora Building, Inc., (Aurora) prior to Aurora's declaration of bankruptcy be found to be eligible expenditures on the Project. All expenditures made toward the Aurora buildings through the bankruptcy referee ($723,576) as well as associated demolition costs will be disallowed for purposes of the Board's close out audit and will therefore be borne solely by the District.

Background

On September 28, 2005, the SAB approved an addition to the Leuzinger High School campus with a total project cost of $7,290,094. The District and State each contributed 50% or $3,645,047 to build 26 classrooms using 253 per pupil grants. Although the State funding was only for 10 classrooms, it was the District's intention – using the efficiency and cost economies of modular construction – to build 16 additional classrooms within the total budget of the State and District funding.

In January 2004, the District entered into a contract with Aurora for the construction of those 26 classrooms using a modular two-story configuration. Under the terms of the contract, the District made construction progress payments to Aurora in the amount of $1,502,811.

Without prior warning, Aurora filed bankruptcy and stopped all work on the Project. All building components completed to that point remained in the manufacturing plant and out of the District's control. The construction progress payments that the District paid up to that time were not refunded. Subsequently, the District entered into negotiations with the bankruptcy "referee" and, through a payment of $723,576 to the Trustee for the bankruptcy court, the District got physical possession of the building components.

Although the District had possession of the buildings in largely unassembled and very unfinished form, the proprietary nature of the modular design and construction made it impossible to find an architect, engineer and contractor willing or able to assume the liability to complete the buildings. Over the period of 2 ½ years that the modular components were stored on the high school site, they became a significant health and safety concern. In June 2009, the District contracted to have the buildings removed from the site to alleviate the hazardous conditions.

Issue

Unable to complete the Project and with almost $2.6 million in expenditures already made, the District turned in mid-2008 to the Office of Public School Construction (OPSC) for guidance. The District and its consultants had numerous meetings with OPSC staff to discuss options for resolution. In August 2008, OPSC also sent management and supervisory level personnel to tour the Project site and see the issue firsthand. In a May 28, 2009 letter to OPSC, the District requested that the Project be closed to cost incurred. The District made this request for a number of reasons, including the District's understanding that this was option was acceptable to OPSC.

Around December 29, 2009, OPSC began an audit of the final records submitted by the District for the Project. Shortly thereafter, OPSC began to question the circumstances surrounding the bankruptcy, the acquisition of the building components and the eventual decision to finally abandon the Project. This was a shock, since it was the District's understanding that the closeout and reduction to cost incurred had already been approved by OPSC staff. Finally, the OPSC auditor found that the payments made to Aurora Modular were disallowed because "... the District failed to provide any documentation to support their due diligence to..." assemble the modular components. The effect of this finding would be to require the District to pay the State $1,126,443 in addition to the $2,252,887 the District has already paid for the construction and eventual demolition of the buildings.

Discussion

The District disagrees with the audit findings for the following reasons:

1. All expenditures were eligible under the regulations that implement the School Facility Program (SFP). OPSC has not provided a legal basis for disallowing these expenditures; the District has not found a legal basis for the SAB to disallow them.
2. OPSC approved reducing to costs incurred, which is a common process in the SFP for projects that cannot proceed for various reasons.
3. The District is the victim of the bankruptcy, not the perpetrator.

1. ***All expenditures were eligible; there is no legal basis for disallowing them.***

The basis provided by OPSC to the District for disallowing the expenditures for the Project is contained in a paragraph in the "Summary of Project Financing and Expenditures" dated November 4, 2010. In pertinent part, the paragraph states that the expenditures are disallowed because, "The District failed to provide any documentation to support their due diligence to assemble two 2-story 26 modular classrooms with two elevator units." The District is unaware of any definition of or any established Board standard regarding "due diligence." The OPSC does not challenge the legality or the eligibility of the expenditures. The majority of the expenditures were made under the legally binding construction contract and the rest of the expenditures were made to the bankruptcy Trustee to settle and the Trustee's attempt to sell the building components out from under the District.

In other words, all expenditures were allowable expenditures for the Project under the law and regulations governing the SFP and no one can explain the legal basis or the standard for disallowing more than $2.5 million dollars in eligible expenditures.

2. ***The OPSC approved reducing to costs incurred, a common process in the SFP.***

As mentioned in the "Issue" section above, the District openly explored several options with OPSC management for resolving the problem created by the Aurora bankruptcy. In the end, the District concluded that reducing the Project to costs incurred would be the only viable option. Other possibilities only deepened the financial burden to the District at a time when it had no facility funding resources to draw upon. The OPSC confirmed that this would be acceptable and subsequently accepted the District's request to close the Project to costs incurred.

A reduction to costs incurred (known as an RCI) is a common practice when a project receives funding and then, for a variety of reasons, can't be completed. For instance, a

district might receive a planning apportionment but then be unable to secure a construction apportionment due to declining enrollment. In such a case, the OPSC reviews all of the expenditures made to that point in the project to verify that they were eligible (i.e., made for purposes allowed under law and regulation.) When the review is completed, any unspent funding is returned to the State and the project is closed – closed to costs incurred. As a final step, the district is 'charged' an amount of eligibility commensurate with the amount of state funding that was expended. In short, the state is repaid by a reduction in 'liability' for future eligibility and the district is permitted to keep the funding it legitimately expended. ***(Please Note: (1) There is no standard to measure or judge the reasons for a RCI approval; (2) Many RCIs are not brought before the SAB; and instead administratively approved without a known standard.)***

In the case of this specific Project, the District understood that following a reduction to costs incurred, it would return $2,352,312.85 and would forfeit an estimated 90 pupil grants in future funding eligibility subject to final review.

3. ***The District is the victim of Aurora's bankruptcy, not the perpetrator.***
The District did not cause Aurora's bankruptcy. Nothing that the District could have done would have prevented Aurora from defaulting on the Project's construction contract. Because of the bankruptcy and default, the District lost $1,126,443 in scarce facility funding that will never be recovered. Clearly the District and the students of Leuzinger High School were the victims of this situation.

Request

The District continues to believe that all expenditures made for the Project are both permissible and defensible. However, the District recognizes in hindsight that it could have handled the unanticipated Aurora bankruptcy in a different manner – one that might have been more palatable to the State Allocation Board. The District thereby respectfully requests that the Board find that the contractually required expenditures in the amount of $1,502,811 made to Aurora prior to the declaration of bankruptcy be found to be eligible expenditures on the project. All expenditures made to the Bankruptcy Trustee ($723,576) as well as associated demolition costs will be disallowed and will be borne by the District.

This solution will restore a portion of the loss the District incurred by recognizing that it had no option other than to honor its contract with Aurora. It will also protect State bond funds by not holding the State financially responsible for payments made by the District to the bankruptcy court.

The Board's consideration and approval of this request will bring this protracted and expensive ordeal to an equitable end.

ATTACHMENT B

State Allocation Board Meeting, January 25, 2012

Leuzinger High School New Construction Project (50/64352-00-004) Timeline

01/27/2004 – Contract with Aurora to construct and install 10 modular classrooms.
01/28/2004 – Contract with Aurora to construct and install 16 modular classrooms.
04/02/2004 – First payment to Aurora in the amount of $530,106.
07/30/2004 – Second payment to Aurora in the amount of $972,705.
08/11/2004 – Aurora files for bankruptcy.
10/22/2004 – Modular inspector certifies modular components completed at factory.
11/11/2004 – Modular components moved to storage facility
11/22/2004 – Paid $723,576 to bankruptcy court to get remaining modular components.
05/18/2005 – *Application for Funding* (Form SAB 50-04) received.
06/01/2005 – Modular components taken out of storage and moved to school site.
09/28/2005 – SAB approved 26 classrooms with estimated total project costs of $7,290,094
12/06/2005 – Funding release date.
06/26/2008 – District notifies OPSC of Aurora bankruptcy and loss of modular units
07/26/2008 – OPSC staff visit District and site.
12/22/2008 – OPSC request documentation of District attempts to complete project.
05/28/2009 – District request for project to be reduced to costs incurred.
06/02/2009 – OPSC begins audit.
09/01/2009 – Modular components and elevators demolished and hauled away.
11/04/2010 – OPSC audit disallows cost of modular components/disposal ($2.3 million).
11/18/2010 – District writes letter stating they disagree with findings.
01/05/2011 – District meets with OPSC staff.
03/10/2011 – District submits SAB 189 to appeal audit findings.
12/19/2011 – District submits Revised SAB 189 to appeal audit findings

CENTINELA VALLEY UNION HIGH SCHOOL DISTRICT

Facilities Planning and Construction Program

MONTHLY REPORT

APRIL 22, 2008

TELACU **CONSTRUCTION MANAGEMENT**

PROGRAM/CONSTRUCTION MANAGEMENT

I. Program Management Services (continued)

Leuzinger 2-Story Aurora Building Project

On June 22, 2005 the district received a “grant” for the amount of $3.5M from the State of California, Office of Public School Construction. The "grant” was the State’s share of a 50-50 match with the district for a $7M new construction project. The project, a 2-Story Building, comprised of 30 Classrooms, has yet to be completed.

The district purchased the 2-Story Modular Classroom Building from Aurora Buildings Inc. The modular building arrived on the Leuzinger High School campus in 64 separate units. The units were to be assembled on site by the manufacturer. However, the manufacturer filed for bankruptcy with an extensive amount of work left to complete the project. As a result Aurora Buildings Inc. has not been able to meet their contractual obligations and have never installed the buildings.

It has been approximately 3 years since Aurora went out of business and those same units, depicted in the photos below, are still stockpiled on the Leuzinger High School, Softball fields. These incomplete units have deteriorated, rusted, and continue to be vandalized. Aside from their unsightly appearance, they pose a health and safety concern on the Leuzinger campus. Last year the district hired an independent consultant to review the units. The consultant stated in their report that the units are cost prohibited to salvage. TCM will work with CVUHSD Staff to provide a plan of action for the board to review at their next regularly scheduled Board Meeting in May.

Leuzinger High School
4118 W. Rosecrans Ave.
Lawndale, CA 90260
Phone: (310) 263-2200

Leuzinger 2-Story Aurora Building Project

Units stockpiled on the Softball fields on the Leuzinger Campus.

Leuzinger 2-Story Aurora Building Project (Continued)

The picture depicts deteriorated, rusted and vandalized units.

The units are now sitting directly on the ground due the deterioration of the temporary foundations (health and safely concern).

ATTACHMENT D

SCHOOL FACILITY PROGRAM

SUBSTANTIAL PROGRESS REDUCTION TO COSTS INCURRED

State Allocation Board Meeting, January 25, 2012

		Pupil Grant Adjustments			Grant Adjustments			
		Original Pupils Assigned to Apportionment		Pupils Returned to the District's Baseline				
	District/ County/ Application Number	Type of Pupils	Number of Pupils	Number of Pupils	Original Apportionment	Interest	Amount of Eligible Expenditures	Reduction in Apportionment
Adjusted Grant	Centinela Valley Union High Los Angeles 50/64352-00-004	9-12	253	189	$3,645,047	$390,057	$917,696	$3,117,408

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 25, 2012

SCHOOL DISTRICT DATA	
School District: .....SAN JOSE UNIFIED	County:.....SANTA CLARA
Application Number:..... 57/69666-00-047	School Name:..... MANN (HORACE) ELEMENTARY
Total District Enrollment:.....33,018	Project Grade Level: K-6
Financial Hardship: ..... NO	

PURPOSE OF REPORT

To present the District's request for approval and funding of the modernization application for Horace Mann Elementary School, application number 57/69666-00-047, based on its original Office of Public School Construction (OPSC) application received date of April 19, 2009.

DESCRIPTION

In 2008, the District established modernization eligibility using information from the configuration of the site in 2000, with 15 portable classrooms constructed in 1971 and one portable classroom constructed in 1997. However, the District demolished and replaced the entire site in 2002 using local funds. The modernization eligibility did not reflect the building construction dates and classrooms on the site when the eligibility application was submitted in 2008, but was based on the 1971 construction dates of buildings that had already been replaced. In 2009, the District requested modernization funding for the 2002 replacement of the original 16 portables. Subsequently, Staff determined that the modernization eligibility was invalid because it did not reflect the 2002 construction dates of the buildings on the site when the modernization eligibility application was submitted in 2008. Staff has administratively revoked the funding application and recommends that the baseline modernization eligibility be adjusted to zero. The District is requesting that the Board allow the modernization eligibility to stand as originally established.

AUTHORITY

See Attachment A.

BACKGROUND

The original school contained 15 portable classrooms constructed in 1971 and one portable classroom constructed in 1997. In 2002, the District used local funds to demolish the entire school and replace it with new permanent buildings with 33 classrooms, a net gain of 17 classrooms. The project was completed and occupied in 2003.

In 2008, before the District submitted an *Eligibility Determination* (Form SAB 50-03), the District's consultant asked if the District could establish modernization eligibility and receive funding based on the building construction dates and buildings on the site when new construction eligibility was established in 2000, before the replacement project. Staff informed the consultant that this would be allowed, and the District submitted a Form SAB 50-03 on September 16, 2008. On December 10, 2008, the baseline modernization eligibility using the buildings on the site in 2000 was approved by the Board.

(Continued on Page Two)

BACKGROUND (cont.)

On April 19, 2009, the District submitted an *Application for Funding* (Form SAB 50-04) for the 2002 modernization replacement project. The District also submitted an application to update the modernization eligibility. After reviewing the applications, Staff determined that the baseline modernization eligibility was invalid because the site information did not reflect the site when the eligibility application was submitted in 2008. Instead, the eligibility was based on information showing the 16 portable classrooms that had already been replaced in 2002 with permanent buildings. Using the 2002 construction date of the new buildings, the site would not have generated modernization eligibility. Based on this information, the District withdrew its funding and eligibility applications on November 12, 2009. On December 9, 2009, Staff informed the District that the modernization eligibility had been falsely certified.

On June 14, 2010, the District resubmitted its funding application for the replacement project, which was assigned application number 57/69666-00-048. On October 5, 2010, Staff revoked the resubmitted funding application and informed the District that the site was not eligible for modernization and the modernization eligibility would be reduced to zero. To date, the eligibility has not yet been reduced to zero. On May 9, 2011, the District submitted a *School District Appeal Request* (Form SAB 189) requesting eligibility and funding of this project.

A timeline of events is included as Attachment B.

Modernization Eligibility Calculation
School Facility Program (SFP) modernization eligibility is established on a site-specific basis using the following information: type of building (permanent or portable), age of the buildings, the number of classrooms and/or square footage of buildings, and the school's enrollment. Permanent classrooms or square footage that are 25 years and older and portables 20 years or older can generate eligibility.

STAFF ANALYSIS/STATEMENTS

The District has requested modernization eligibility based on a former configuration of the school site, before the demolition and replacement of the entire school. The issues central to this appeal are related to establishing modernization eligibility rather than determining if the replacement project qualifies for modernization funding. The issues include identifying what site information must be reported to establish modernization eligibility and determining the age of the buildings reported when establishing eligibility. Staff does not support the District's request because, since the SFP began in 1998, modernization eligibility has been based on the types and ages of the buildings that are on the site when a district submits its application to establish modernization eligibility. The District is requesting funding based on eligibility from 15 portable classrooms that were not on the site in 2008.

District's Position (Please see Attachment C for the District's position.)

Staff Comments

"*Snapshot in Time" Concept*
Since the inception of the SFP, districts have been required to establish modernization eligibility based on a "snapshot" (Gross Classroom Inventory) of the site configuration when the district submits an application to establish eligibility. This is based on instructions on the Form SAB 50-03 since the Form was approved in 1998.

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

These instructions state, "The drawing must identify all permanent and portable buildings on the site and their ages….Modernization eligibility is calculated based on information at a specific site when modernization SFP grants are requested within the district." (emphasis added). Additionally, legal counsel opines:

> The Form SAB 50-03 has the same force and effect as the SFP Regulations…. If the district provides a site drawing which includes information regarding structures which are no longer on the site and excludes newer structures, it will not have complied with the requirements of the Form SAB 50-03. The OPSC does not have authority to waive this requirement or to find eligibility based on outdated site information.

Capturing current building information allows Staff to fairly and reasonably establish modernization eligibility and maintain program integrity. Conversely, allowing the District to establish its modernization eligibility on a prior site configuration may create inequity because other districts were not permitted to establish in this manner.

Age of the Buildings
SFP Regulation Section 1859.60 states that "the age of the classroom or square footage shall begin 12 months after the plans for the building were approved by the DSA [Division of the State Architect]…." A DSA plan approval, which is the basis of a building's age, is tied to the specific structures in the plans, and modernization eligibility is based on the buildings on site when the application to establish eligibility is received. Therefore, it does not appear that the program was intended to allow substitution of one building's age with the age of another building that is no longer on the site.

Staff Comment – District's Position Section 1
In support of its modernization eligibility based on a prior site configuration, the District equates replacement classrooms with any other type of modernization work. The District states that replacement projects should not "reset" the age of a building because no other type of modernization work, such as fire alarm upgrades, would do so. Education Code (EC) Section 17074.25 lists the replacement of portable classrooms as an acceptable use of modernization funds, along with other typical modernization work. However, if completed before a district establishes modernization eligibility, a replacement project is different from other types of modernization work because it can change the information that provides the basis of modernization eligibility, including the age and the type of building. In this instance, the site previously contained 15 portable classrooms constructed in 1971 and one portable constructed in 1997, but in 2008, the site contained 33 permanent classrooms constructed in 2002. The construction date changed from 1971 and 1997 to 2002, and the building type changed from portable to permanent.

The District also refers to the instructions to the Form SAB 50-03 to support its argument that the *original* DSA approval date of the original building should be used to determine the building age when establishing eligibility:

> Any drawing that includes classrooms eligible for an additional apportionment pursuant to Section 1859.78.8 should specify both the date the classroom's plans were originally approved by the DSA and the date of its previous modernization apportionment. (emphasis added by the District).

These instructions and this regulation do not apply to this project. SFP Regulation Section 1859.78.8 addresses the funding and replacement of portable classrooms that have previously received a State modernization apportionment. This regulation section does not apply to this project since the District did not previously receive modernization funding for the replaced classrooms. The word "original" distinguishes the DSA approval date

(Continued on Page Four)

STAFF ANALYSIS/STATEMENTS (cont.)

used to establish eligibility from the new DSA approval date for the replacement of the portables with the subsequent modernization apportionment.

Staff Comment – District's Position Section 2
The District states that the replacement project is eligible for modernization funding since the contract was signed after August 27, 1998. This requirement is not an issue. The replacement project appears to comply with the regulation because the construction contract was signed on January 16, 2002. However, the District must also have modernization eligibility to apply for funding.

The District also states that, "OPSC appears to be saying that if the facilities on this site had been modernized instead of replaced, the District could have established eligibility after the work was completed and received modernization funding." Staff agrees that a distinction is being made between a like-kind replacement and other modernization work, but only in that the replacement changed the building age (i.e. date of construction) and building type, which is information that provides the basis of the modernization eligibility calculation. The merits of replacements versus other modernization work are not in question.

Staff Comment – District's Position Section 3
The District states that the project is eligible for modernization funding because it is a like-kind replacement, which is an acceptable use of modernization grant funds under SFP Regulation Section 1859.79.2. This requirement is not an issue since the replacement project appears to comply with this regulation. However, in order to apply for funding, the District must also have modernization eligibility. The District does not have modernization eligibility since it demolished the original facilities and replaced them with new facilities before establishing eligibility.

Staff Comment – District's Position Section 4
The District states that Staff has cited SFP Regulation Section 1859.61(k) in support of reducing the modernization eligibility to zero because the District replaced the facilities with local funds. The District points out that "the regulation only requires the reduction to the eligibility baseline if the District does not seek participation from the State with no timeline prescribed to do so." This regulation does not apply to the District's situation. However, the eligibility approved in 2008 was not based on current site information and there would have been no site eligibility based on 2008 information; therefore, the eligibility must be reduced to zero.

Staff has reviewed the District's request to use a former site configuration to establish modernization eligibility and cannot support it, as it is not consistent with the instructions to the Form SAB 50-03, which are incorporated into the regulations by reference. In addition, because there would be zero modernization eligibility based on the configuration of the site in 2008, Staff cannot process the District's funding application. Therefore, Staff has administratively denied the District's request.

BOARD OPTIONS

1. Take no action, which would allow Staff's administrative action to stand.
2. Grant the District's appeal.

BOARD ACTION

In considering this Item, a motion was made, and failed, to approve the District's appeal. Therefore, the staff's Option #1, which was take no action and allow staff's administration action to stand, was approved by the SAB. In addition, the SAB directed the Implementation Committee to come up with some guidelines for limiting when applications could be filed, specifically requesting retroactive funding for projects that have never been filed in the first place.

ATTACHMENT A

AUTHORITY

Education Code (EC) Section 17070.15 states, "The following terms, wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:…
(i) "Modernization" means any modification of a permanent structure that is at least 25 years old, or in the case of a portable classroom, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes."

EC Section 17073.15 states, "A school district is eligible to receive an apportionment for the modernization of a permanent school building that is more than 25 years old or a portable classroom that is at least 20 years old. A school district is eligible to receive an additional apportionment for the modernization of a permanent school building every 25 years after the date of the previous apportionment or a portable classroom every 20 years after the previous apportionment."

EC Section 17074.10(a) states, "The board shall determine the total funding eligibility of a school district for modernization funding by multiplying the following amounts by each pupil of that grade level housed in school buildings that satisfy the requirements of Section 17073.15:…"

EC Section 17074.25 states, "A modernization apportionment may be used for an improvement to extend the useful life of, or to enhance the physical environment of, the school. The improvement may only include the cost of design, engineering, testing, inspection, plan checking, construction management, demolition, construction, the replacement of portable classrooms, necessary utility costs, utility connection and other fees, the purchase and installation of air-conditioning equipment and insulation materials and related costs, furniture and equipment, including telecommunication equipment to increase school security, fire safety improvements, playground safety improvements, the identification, assessment, or abatement of hazardous asbestos, seismic safety improvements, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A modernization grant may not be used for costs associated with acquisition and development of real estate or for routine maintenance and repair."

SFP Regulation Section 1859.20 states, "A School District seeking a determination of eligibility for a SFP project shall complete and file the following documents with the OPSC:
(a) …for modernization projects, the Form SAB 50-03…."

SFP Regulation Section 1859.31,"Gross Classroom Inventory" states, "The district shall prepare a gross inventory consisting of all classrooms owned or leased in the district, the HSAA or Super HSAA as appropriate. For the purpose of this gross classroom inventory, the following shall be considered a classroom. Any classroom:
(a) for which a contract was signed for the construction or acquisition of facilities or for which construction work has commenced at the time the SFP application for determination of eligibility is submitted to the OPSC;
(b) constructed with funds from the LPP;
(c) used for Special Day Class or Resource Specialist Programs;
(d) that are standard classrooms, shops, science laboratories, computer laboratories, or computer classrooms;
(e) acquired or created for Class Size Reduction purposes;
(f) used for preschool programs;
(g) converted to any non-classroom purpose including use by others;
(h) with Housing and Community Development or Department of Housing insignia;
(i) acquired for interim housing for a modernization project;
(j) leased or purchased under the State Relocatable Program pursuant to Chapter 14 of Part 10 of the Education Code;
(k) that have a waiver for continued use by the Board for Field Act exemptions;
(l) used for Community School purposes;
(m) included in a closed school."

(Continued on next page)

AUTHORITY (cont.)

SFP Regulation Section 1859.60 states, "The district shall calculate its modernization eligibility for each school site with the completion of the Form SAB 50-03. The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:
(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:
(1) Permanent and at least 25 years old.
(2) Portable and at least 20 years old.
(3) The remaining classrooms not reported in (1) or (2) above.
(b) Identify all square footage at the school site that is:
(1) Permanent area and at least 25 years old.
(2) Portable classroom area and at least 20 years old.
(3) The remaining square footage on the site not reported in (1) or (2) above.

The age of the classroom or square footage shall begin 12 months after the plans for the building were approved by the DSA…."

SFP Regulation Section 1859.61, "Adjustments to the Modernization Baseline Eligibility" states, "The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:…
(k) Decreased for facilities that were deemed eligible for modernization pursuant to Sections 1859.60 and 1859.61(d) and subsequently replaced, or will be replaced under a signed contract for construction or acquisition of facilities, in a project funded by the district without participation from the State."

SFP Regulation Section 1859.70 states, "A district seeking New Construction or Modernization funding shall complete and file Form SAB 50-04, concurrently or after completing the applicable requirements in Sections 1859.20 and 1859.40."

SFP Regulation Section 1859.78.8, "Modernization Grant for Facilities Previously Modernized with State Funds" states, "The Board shall provide an additional apportionment provided by Education Code 17074.10(a) and Section 1859.78.3, for facilities previously modernized with State funds as follows:….
(b) In the case of portable classrooms, an additional apportionment will be permitted every 20 years after the date of its previous State modernization apportionment provided the modernization funds will be used to replace the portable classroom(s) and the school district must certify that the portable classrooms will be removed from any classroom use unless acceptable documentation is provided by the district indicating that the modernization of the portable classrooms is a better use of public resources."

SFP Regulation Section 1859.79.2, "Use of Modernization Grant Funds" states, "The grant may not be used for the following:
(a) New building area with the exception of the following:
(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district…"

(Continued on next page)

AUTHORITY (cont.)

The *Eligibility Determination* (Form SAB 50-03) states, "Districts must be able to provide a drawing of the site where eligibility for modernization is generated with its request for an eligibility determination. The drawing must identify all permanent and portable classrooms on the site and their ages.

….

Modernization eligibility is based on information at a specific site when modernization SFP grants are requested within the district.

….

Any drawing that includes classrooms eligible for an additional apportionment pursuant to Section 1859.78.8 should specify both the date the classroom's plans were originally approved by the DSA and the date of its previous modernization apportionment.

….

3. Enter the total number of portable classrooms by grade level at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are at least 20 years old and include any portable classrooms not previously reported that have become at least 20 years old."

ATTACHMENT B

TIMELINE OF EVENTS
SAN JOSE UNIFIED – HORACE MANN ELEMENTARY
APPLICATION NUMBER 57/69666-00-047

Jul. 26, 2000	The District establishes new construction eligibility in the San Jose High School Academy Attendance Area (HSAA), where Horace Mann Elementary School is located.
Sept. 12, 2001	The project receives Division of the State Architect (DSA) plan approval.
Jan. 16, 2002	The District signs the construction contract and issues the notice to proceed.
Sept. 2003	The District completes the addition/replacement project.
Sept. 2008	The District's consultant asks Staff about the possibility of submitting eligibility and funding applications for this site and project, based on the old site configuration. Staff informs the consultant this would be acceptable.
Sept. 16, 2008	The District submits an *Eligibility* Determination (Form SAB 50-03) to establish modernization eligibility.
Dec. 10, 2008	The Board approves the baseline modernization eligibility using the old site configuration.
Mar. 20, 2009	The District receives California Department of Education plan approval for the Horace Mann Elementary replacement project which demolishes 16 portable classrooms and builds back 33 permanent classrooms.
Apr. 19, 2009	The District submits an *Application for Funding* (Form SAB 50-04) for the replacement project (57/69666-00-047) and a Form SAB 50-03 to update modernization eligibility.
Fall 2009	Staff verbally informs the District that it appeared the modernization eligibility approved in 2008 was invalid because the information submitted did not reflect the age of the buildings and number of classrooms on the site in 2008.
Nov. 10, 2009	The District withdraws the funding application and eligibility update.
Dec. 9, 2009	In a letter, Staff informs the District that it falsely certified the modernization eligibility, and that Staff would notify the Board and recommend a finding of Material Inaccuracy. Staff also informs the District that the new construction eligibility of the HSAA will be reduced by the seventeen additional classrooms constructed in the project.
	The District responds to Staff's letter (date unknown).
Jun. 14, 2010	The District's resubmits the Form SAB 50-04 for the replacement project, which is assigned application number 57/69666-00-048.
Oct. 5, 2010	In a letter, Staff returns the resubmitted Form SAB 50-04. Staff informs the District that the site was not eligible for modernization and the modernization eligibility would be reduced to zero.
May 9, 2011	The District submits a Form SAB 189 requesting eligibility and funding of this project and resubmits the Form SAB 50-04.

STATE OF CALIFORNIA

SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
San Jose Unified	57/69666-00-047
SCHOOL NAME	**COUNTY**
Horace Mann Elementary	Santa Clara
DISTRICT REPRESENTATIVE	**E-MAIL ADDRESS**
Steve Adamo, Director of Maintenance & Construc	steve_adamo@sjusd.org

Purpose of Request:
See Attachment

Basis of Request:

- [x] Law (Statute) 17073.15 and 17073.20
- [x] Regulation 1859.60, 1859.78.8, 1859.79.1 and 79.2
- [x] Other (specify) Form SAB 50-03

Description:
See Attachment

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE

DATE 5/6/11

ATTACHMENT TO FORM SAB 189

PURPOSE OF REQUEST

To request that the State Allocation Board (SAB) approve and fund the modernization reimbursement application submitted for the Horace Mann Elementary School in the San Jose Unified School District based on its original submittal date of April 2009.

SUMMARY

The District's modernization funding request for replacement-in-kind of the Horace Mann Elementary School should be approved and funded as it complies with the laws and regulations of the School Facility Program (SFP) as follows:

1) The SFP regulations allow modernization funding to be requested for reimbursement of contracts signed after August 27, 1998 even though the eligibility baseline of the site may not have been established. The contract for construction of this school was signed in January 2002.
2) The SFP regulations allow modernization funding to be used to replace facilities in-kind. This project consisted of the replacement of the entire school.
3) At the time the replacement project was constructed, the facilities were 32 years old as the entire school (with the exception of one portable) was constructed in 1971 thereby making the facilities eligible for modernization.

BACKGROUND

In August and September 2008, the District and its consultant at that time inquired with the OPSC about establishing modernization eligibility at a site in which the District had already front-funded the complete replacement of the school in order to seek reimbursement for the work. The consultant understood in discussions with the project manager that the District could submit the request to establish modernization eligibility and to seek reimbursement for the replacement project. As a result, on September 16, 2008, the District submitted an application to establish the modernization eligibility at the school. As part of the application, a site diagram depicting the original buildings and construction dates was included to document the age of the school facilities at the time they were demolished and replaced. On December 10, 2008, the SAB approved the modernization eligibility baseline.

In April 2009, the District submitted an application to update the modernization eligibility at the site and to request funding for the replacement-in-kind project. Following a few discussions on the scope of the project over several months, OPSC called the District and explained that the application for funding would be rejected. The District subsequently submitted a letter in November 2009 withdrawing the application for funding and the eligibility baseline as a result of those discussions and implications of District wrongdoing. In December 2009, OPSC sent a letter indicating the District falsely certified the age of the facility citing the facility was only six years old at the time the eligibility application was submitted.

In March 2010, the District resubmitted the application for eligibility and funding with a cover letter explaining the reasons why the application is eligible for funding and should be approved.

On October 5, 2010, OPSC sent a second letter to the District indicating that the site was not eligible for modernization funding for the same reasons indicated in the first rejection letter. The OPSC letter included no analysis or rebuttal to the points made in the District's cover letter. In November 2010, our consultant asked OPSC for the specific reasons why the application had been rejected for a second time. Instead of documenting the specific reasons for the rejection of the second submittal, OPSC requested the District to resubmit the application for a third time in order to get a written response to the justification for the approval of the application.

After months of inactivity, the District feels that its only course now is to submit an appeal to the SAB for consideration.

DESCRIPTION

OPSC's rejection of the application is based on the belief that at the time of the application the age of the portable facilities was no longer over twenty years old but rather six years since the classrooms had been replaced in 2003. In addition, OPSC has indicated that Regulation Section 1859.61(k) requires that modernization eligibility baselines be adjusted for facilities replaced with local funds without participation from the state. Because this application for reimbursement of a "replacement-in-kind" modernization project is somewhat unusual, the confusion is understandable; however, the District believes the application complies with all of the requirements of the SFP for the following reasons:

1) The portables that were on this site were 32 years old at the time the District replaced them in 2003. SFP Regulation Section 1859.60 delineates how modernization eligibility is established. Specifically, this section states that:

   "The age of the classroom or square footage shall begin 12 months after the *plans for the building were approved* by the DSA, or in the case of permanent or portable classrooms that were previously modernized with State funds or rehabilitated under the Charter School Facilities Program, the 25/20 year period shall begin on the date of its previous apportionment." (emphasis added)

   The instructions to the Form SAB 50-03 used to establish a site's modernization eligibility further state in pertinent part:

   "Any drawing that includes classrooms eligible for an additional apportionment pursuant to Section 1859.78.8 should specify both the *date the classroom's plans were originally approved by the DSA* and the date of its previous modernization apportionment." (emphasis added)

   Based on the simple reading of the regulation, instructions, and their entire context, the age of a facility is based on the date that the building was approved *originally* for construction by DSA, plus 12 months, not the date that the building was later upgraded or replaced with local funds. The only exception in regulation is when state funds are used to modernize a facility. To read the regulation as saying that the date of the facility is reset any time the building is touched with local funds would be to effectively prevent any significant work on a school building or face the loss of modernization funding. Approval by DSA is required to complete any repair on a school

building, but OPSC would not suggest, for example, that a new fire sprinkler added under a DSA approval should reset the age of a facility. Whether or not a District used local funds on a facility before it established its eligibility or after shouldn't matter as the same arguments hold true in both circumstances. Therefore, based on these regulations, the date of the facilities should be recognized as having been constructed in 1971 and not 2003.

2) SFP Regulation Section 1859.79.1, Modernization Reimbursement, states: "The Board will not provide Modernization funding for a project if the District entered into a construction contract for that project before August 27, 1998..." Or, to read the regulation conversely and as applied, any contract for the modernization of a facility entered into after August 27, 1998, is eligible for reimbursement. The contract for this project was signed in January 2002; therefore, this project complies with this regulation.

   OPSC, however, has verbally indicated that because this project consists of the replacement-in-kind of the facilities, it differs from projects that entail modernization of existing facilities. Projects in which existing facilities are modernized any time after August 1998 are eligible for reimbursement regardless of when the application for eligibility is filed. In other words, OPSC appears to be saying that if the facilities on this site had been modernized instead of replaced, the District could have established eligibility after the work was completed and received modernization funding. However, replacement is an accepted use of modernization funding and is, in fact, modernization. The OPSC is trying to make a distinction that not only doesn't make sense but is unfair and unsupported in law or regulation.

3) SFP Regulation Section 1859.79.2, Use of Modernization Grant Funds, allows modernization grants to be used for replacement building area of like kind. The District intends to use the modernization funding to reimburse the costs for a project done exactly this way.

4) OPSC has cited Regulation 1859.61(k) warranting the reduction of the modernization eligibility baseline to zero because the District replaced the facilities with local funds. However, the regulation only requires the reduction to the eligibility baseline if the District does not seek participation from the state with no timeline prescribed to do so. This District has sought reimbursement as legally allowed and explained above, therefore, this eligibility adjustment does not apply.

CONCLUSION

We believe that the regulations cited support our request for reimbursement for the replacement of Horace Mann Elementary School and respectfully request your reconsideration. The District had eligibility for modernization funding at the time the work was done at the school, and now simply wishes to file for and receive funding based on that eligibility.

The District believes the original application should have never been rejected in the first place, and therefore, also respectfully request that the application retain its April 2009 OPSC received date.

In the end, the San Jose USD has provided enhanced educational facilities for its students and staff and the state has a brand new facility for the price of a modernization project.

THE PITTSBURG UNIFIED/CONTRA COSTA
(50/61788-00-006) HAS BEN WITHDRAWN

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 25, 2012

SCHOOL DISTRICT DATA	
School District: .....NEEDLES UNIFIED	County:..... SAN BERNARDINO
Application Number:..... 51/67801-00-001	School Name:..... NEW PARKER DAM ELEMENTARY
Total District Enrollment:.....1,026	Project Grade Level: K-6
Financial Hardship: ..... No	
Last Approved Local Bond Measure:..... 06/03/2008 ($10.9 million)	

PURPOSE OF REPORT

To present the District's request for additional funding for the demolition of Parker Dam Elementary, which was previously approved for Facility Hardship abandonment and replacement.

DESCRIPTION

In February 2000, the District originally received a Facility Hardship conceptual approval to abandon and replace Parker Dam Elementary due to its remote location on a hazardous, winding two-lane road along the Colorado River. The District's lease with the United States Department of the Interior, Bureau of Reclamation was set to expire in 2006 and it required the District to vacate the site and remove all the District's buildings, improvements and equipment within 120 days of the termination of the lease. The District received an apportionment for the replacement school in August 2008. The District received several extensions to their lease, but was finally required to vacate the site by August 12, 2011. On September 14, 2011, the District submitted a *School District Appeal Request* (Form SAB 189) for an increase to the apportionment for 51/67801-00-001 for $505,191 in demolition costs at the abandoned Parker Dam Elementary site (Attachment A).

AUTHORITY

See Attachment B.

BACKGROUND

The Parker Dam Elementary site was originally constructed in 1953 on land leased from the Bureau of Reclamation to serve the children of government and water district employees. In February 2000, the Board approved a Facility Hardship conceptual approval to abandon and replace Parker Dam Elementary. The conceptual approval states that "The majority of pupils who attend the current school are transported about 50 miles round trip each day. The road to the school is a dangerous two-lane road that follows the curvature of the Colorado River." In addition, the District's 50-year lease, with a 3-year extension, was set to expire in 2006. The conceptual approval states that District's lease required the District to vacate the site and remove all the District's buildings, improvements and equipment within 120 days of the termination of the lease.

The District received several extensions to the conceptual approval because of difficulties in finding a party willing to lease land to the District for the new school and then lengthy negotiations for the new school site. The land in the area is primarily owned by various federal and local agencies, and the Colorado River Indian Tribes. In the meantime, the District was able to obtain extensions to the lease for the Parker Dam site until August 12, 2011.

In January 2007, the Board approved Financial Hardship status for the Parker Dam Elementary Facility Hardship project. On August 27, 2008, the District received an adjusted grant apportionment for the replacement school,

(Continued on Page Two)

BACKGROUND (cont.)

Big River Elementary, with a 50 percent State Share of $7,135,533 and Financial Hardship assistance of $6,961,430. The District did not request funding for the demolition of Parker Dam Elementary facilities on this application.

The District closed the school on June 3, 2011. On July 20, 2011, the District requested demolition funding for the abandoned site. On August 16, 2011, Staff administratively denied the District's request. In mid-August 2011, the District completed demolition of the buildings and utilities on the site. The District submitted a Form SAB 189 for demolition funding for the abandoned Parker Dam Elementary site on September 14, 2011.

STAFF ANALYSIS/STATEMENTS

District's Position (See Attachment A for the complete text.)

The District states that the Bureau of Reclamation notified it that the lease agreement for Parker Dam Elementary, dated August 13, 1981, required the District to remove all of the District's buildings, improvements, and equipment from the leased land. The lease states that the District must "…leave said land in a neat and orderly condition satisfactory to the Regional Director of the United States Department of the Interior, Bureau of Reclamation." The District adds that if it did "not accomplish the task within a specified time following termination of the lease, the Federal Government may remove the buildings and improvements and restore the land at the expense of the District." The District states that the Bureau of Reclamation wished to terminate the lease of the Parker Dam Elementary site because it did not want to maintain the obsolete wastewater treatment plant that was serving the school. The District explored alternate governmental uses for some of the buildings including possible use by the San Bernardino County Sheriff's Department. The efforts were unsuccessful due to the elimination of water and sewage services for the site and the presence of asbestos which could become friable.

The District believes that, had the District made the project architect and the OPSC [Office of Public School Construction] aware of the demolition requirement contained in the original property lease, the work would have been considered and may have been included in the Facility Hardship funding application in 2008. The District states that it "cannot explain how the oversight happened, but [it] must ask for the SAB's assistance in rectifying this error." The District has proposed two possible avenues for a resolution: an errors or omissions adjustment to the apportionment, or an adjustment to the grant for "The difference in the value of the site, relocation costs…used to determine the New Construction Additional Grant and the actual amount paid by the district…" pursuant to School Facility Program (SFP) Regulation Section 1859.106. The District did not request Financial Hardship assistance for the demolition costs.

Staff Position

Staff does not support the District's request because the law and SFP regulations do not allow an increase to the apportionment for demolition costs at site abandoned due to a Facility Hardship. In addition, the demolition work was a requirement in the District's lease agreement that preceded the Facility Hardship finding, and had to be done when the District left the site, regardless of a Facility Hardship.

Demolition Funding in the SFP

The District proposes that the demolition costs could be funded as an "errors or omissions" adjustment to the original grant. However, the law and SFP regulations do not provide the type of demolition funding that the

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

District is requesting, even if the District had originally requested it in 2008. EC Section 17072.35 allows funding for demolition but also states that "A grant for new construction may be used for any and all costs necessary to adequately house new pupils…" The original apportionment provided replacement facilities for the displaced pupils. Demolition of the abandoned site does not contribute to adequately housing the pupils on the replacement site. The Facility Hardship regulations do not specifically provide additional funding for the demolition of a site abandoned under Facility Hardship. SFP Regulation Section 1859.82 simply states that, "If the district qualified for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project…." SFP Regulation Section 1859.76, which provides site development grants for new construction projects, underscores EC Section 17072.35, stating, "The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards." The District must also certify on the *Application for Funding* (Form SAB 50-04), that "The district has complied with the provisions of Sections 1859.76 and 1859.79.2 and that the portion of the project funded by the State does not contain work specifically prohibited in those Sections." Also, SFP Regulation Section 1859.76(a)(2) provides funding for demolition, but only for "Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development." The demolition of the abandoned school is not in the footprint of the replacement school; therefore, it is not an eligible cost according to the SFP regulations.

"Full and Final Contribution" Provision

Education Code (EC) Section 17070.63(a), which states in part that the "total funding provided under this chapter shall constitute the state's full and final contribution to the project…," does not allow an increase to the project grant after apportionment. However, EC Section 17072.14 and SFP Regulation Section 1859.106(a) provide exceptions to the "full and final" provision in EC Section 17070.63(a), allowing additional site, relocation, and hazardous waste removal and oversight costs after the adjusted grant apportionment. The District proposes the demolition funding could be provided as an additional relocation expense pursuant to SFP Regulation Section 1859.106(a). However, the relocation costs that are allowed in SFP Regulation Section 1859.106(a) are based on SFP Regulation Sections 1859.74 (a)(1) and (b)(1) that define relocation expenses as those allowed in Title 25, California Code of Regulations (CCR) Section 6000, et seq. CCR Section 6000 et seq. outlines relocation payments to persons who are displaced or otherwise affected by an eminent domain proceeding. Consequently, the District's demolition costs for an abandoned site is not an eligible relocation cost.

Past Practice

It does not appear that the Board has previously provided funding for demolition of schools that were abandoned under Facility Hardship. However, the Parker Dam Elementary approval is unique in that the abandoned school is on leased property that requires the demolition. No prior Facility Hardship projects that required replacement on another site involved abandoning a school entirely on leased property. Thus, the abandoned property in the previous Facility Hardship projects could be sold without demolishing the buildings.

Although the District's circumstances are unusual, the requirement to demolish the school buildings was a part of the District's lease since August 13, 1981, over 18 years before the Facility Hardship conceptual approval in February 2000. The Facility Hardship health and safety hazard was not related to the condition of the school buildings, but rather the school's remote location on a dangerous road. Moreover, the conceptual approval item acknowledges that the District was required to remove all buildings and improvements to the site, but demolition funding for the abandoned site was not specifically included as part of the approval.

(Continued on Page Four)

STAFF ANALYSIS/STATEMENTS (cont.)

The District's request for additional demolition funding is not an allowable exception to the statutory "full and final contribution" provision. In addition, the SFP regulations do not provide funding for demolition outside the footprint of the proposed project. The demolition is a requirement of the District's lease that preceded the Facility Hardship finding and was required regardless of a Facility Hardship. Therefore, Staff has administratively denied the District's request for additional funding for demolition of the abandoned Parker Dam Elementary School.

BOARD OPTIONS

1. Take no action, which would allow Staff's administrative action to stand.

2. Grant the District's appeal.

BOARD ACTION

In considering this item, a motion was made, and failed, to approve the District's appeal. A request was made to place this item on call, and after some time, a second vote, which was to approve the District's appeal, failed. Therefore, the staff's Option #1, which was take no action and allow staff's administrative action to stand, was approved by the SAB.

STATE OF CALIFORNIA

SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Needles Unified	51/67801-00-001
SCHOOL NAME	**COUNTY**
Parker Dam Elementary	San Bernardino
DISTRICT REPRESENTATIVE	**E-MAIL ADDRESS**
Michael Davitt	mikedavitt@needles.k12.ca.us

Purpose of Request:

Please refer to attachment.

Basis of Request:

☐ Law (Statute) _____

☐ Regulation _____

☐ Other (specify) _____

Description:

Please refer to attachment.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
Michael Davitt	

Attachment to Form SAB 189 (Appeal)
Needles Unified School District
San Bernardino County
Application Number 51/67801-00-001

Purpose of Report

To request an increase to the project budget and apportionment for necessary demolition cost associated with the abandonment of Parker Dam Elementary.

Background

The Needles Unified School District received a Facility Hardship conceptual approval in February 2000 and a construction grant for the abandonment and replacement of the Parker Dam Elementary school on August 27, 2008. The District was required to vacate the Parker Dam Elementary School by the United States Department of the Interior. Due to the remoteness of the project as well as the challenge of finding property not owned by the Federal Government or Native American Tribes, it has taken years to develop this project. The Office of Public School Construction (OPSC) and the State Allocation Board (SAB) have been instrumental in helping the District overcome all of these obstacles and many more. The District is on the verge of occupying the new School and is in need of the SAB's support in providing financial assistance to demolish facilities that remain on the abandoned site in order to comply with the United States Department of the Interior demand to return the site to its original condition.

Discussion

The District has been notified by the United States Department of the Interior that in order to be compliant with the lease agreement for the original Parker Dam Elementary School site, dated August 13, 1981, the District must remove all of the District's buildings, improvements and equipment from the leased land. The District must ". . . leave said land in a neat and orderly condition satisfactory to the Regional Director of the United States Department of the Interior, Bureau of Reclamation." If the District does not accomplish the task within a specified time following termination of the lease, the Federal Government may remove the buildings and improvements and restore the land at the expense of the District. To date, the District has obtained extensions from the Federal Government and has explored alternate governmental uses for some of the buildings including possible use by the San Bernardino County Sheriff's Department, but all efforts have been unsuccessful.

We believe that had the District made the project architect and the OPSC aware of the demolition requirement contained in the original property lease, the work would have been considered and may have been included in the Facility Hardship funding application in 2008. The rejection is based not on the eligibility of the costs but only on the fact that the OPSC believes that there is no mechanism by which the additional funding can be provided.

The District cannot explain how the oversight happened, but we must ask for the SAB's assistance in rectifying this error. The District is requesting that the SAB recognize this oversight as an error and requests an adjustment to the project budget in the amount of $505,191 to allow the District to adhere to the United States Department of the Interior requirements to restore the site to its original condition. The costs are far beyond the means of our small District.

The Needles USD appreciates all of the assistance that the OPSC has provided throughout this most difficult and unusual project, and we respect the OPSC position that it does not have a mechanism to recommend the additional funding. We understand that the regulations do not directly address this issue. One would hardly expect to find such a unique, one-of-a-kind situation already contemplated and resolved. However, we believe that is the reason that the SAB exists: to interpret its own regulations and to equitably and rationally administer the program. We suggest two possible avenues for a resolution, but welcome any other possible resolution.

- Errors and Omissions
  The SAB has revised an apportionment many times in the past when it could be shown that either a state agency made an error to the disadvantage of the District or when the District or a District consultant failed to include information in an application that could be shown to have existed at the time or made an obvious clerical error. We believe the ability to correct such errors or omissions should be a proper part of the fair, reasonable and equitable administration of the program, and we believe it is a major reason the SAB exists.
- Adjustment to the SAB Grant
  SAB regulation section 1859.106 (a) permits an adjustment in the SFP grant for *"The difference in the value of the site, relocation costs . . . used to determine the New Construction Additional Grant and the actual amount paid by the district . . ."* This language is specifically provided to allow the SAB to adjust a "full and final" apportionment under certain conditions. The District understands that this language was developed to address a circumstance different than ours, but it would seem reasonable that it could be applied here. The value of the new (replacement) site for the old Parker Dam School, including costs to relocate, certainly can be said to include the required demolition on the original site. Of course the Board was not contemplating this one-of-a-kind situation when that language was adopted, but it requires no reinterpretation to apply it. It requires only the will to correct an omission / error on the District's part and the desire to complete the Parker Dam school replacement approved by the Board in 2000.

The District believes that the costs to meet the Federal Government requirement are an integral part of the replacement project approved by the SAB and they are the final hurdle in our years-long effort to replace the Parker Dam Elementary School. The District respectfully requests that the SAB consider these costs as an adjustment to the State grant to address this issue as an "errors and omission" from the original cost estimate.

ATTACHMENT B

AUTHORITY

Education Code (EC) Section 17070.63 (a) states, "The total funding provided under this chapter shall constitute the state's full and final contribution to the project and for eligibility for state facilities funding represented by the number of unhoused pupils for which the school district is receiving the state grant. As a condition of receipt of funds, a school district shall certify that the grant amount, combined with local funds, shall be sufficient to complete the school construction project for which the grant is intended."

EC Section 17070.71 states, "(a) Notwithstanding subdivision (a) of Section 17070.70, new construction or modernization funded pursuant to this chapter may be upon real property leased to the applicant school district if all of the following conditions are met:

(1) The property is leased from another governmental entity.

(2) The term of the lease is for at least 40 years after approval of the project under this chapter, or the school district has a lease for at least 25 years on federal property. The board may authorize a lesser term, of not less than 30 years only if the board finds that granting an exception to this requirement would be in the state's best interest.

(b) The applicant school district, and the facility on leased land, if any, shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, schoolsites and school buildings.

(c) Lease costs are not eligible project or site acquisition costs under this chapter."

EC Section 17072.14 states, "Notwithstanding Section 17070.63, the board may allow adjustments to a new construction grant if, as a result of additional requirements imposed by the Department of Toxic Substances Control, the actual amount paid by a school district for allowable costs of hazardous materials evaluation and removal, including associated fees, exceeds the amount of the grant apportionment for those purposes. The combined amount of the initial apportionment for these purposes and the adjustment pursuant to this section may not exceed the amount permitted pursuant to Section 17072.13."

EC Section 17072.35 states, "A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use. A grant for new construction may also be used for the costs of designs and materials that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and other characteristics of high performance schools."

SFP Regulation Section 1859.74, "New Construction Additional Grant for Site Acquisition Cost" states, "With the exception of projects that received site acquisition funds under the LPP or projects that qualify for site acquisition funds under Section 1859.74.5, the Board shall provide funding, in addition to any other funding authorized by these Regulations, for the lesser of one half of the actual cost of the site or one-half of the appraised value of the site acquired as described in (a) and (b) of this Section.

(a) Actual Site Cost

The actual cost of the site shall be the purchase price as shown on the escrow documents or other appropriate documents such as court orders in condemnation or as specifically identified in agreements when the site is transferred in lieu of other legally required payments or fees due to the district. The actual cost shall be adjusted for the following:

(Continued on next page)

AUTHORITY (cont.)

(1) Increased by the approved relocation expenses that conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance…."

SFP Regulation Section 1859.76, "New Construction Additional Grant for Site Development Costs" states, "In addition to any other funding authorized by these Regulations, the Board shall provide funding equal to 50 percent of the following approved site development and applicable design costs:
(a) Service site development cost, within school property lines for:…
(2) Demolition and removal of existing buildings and site improvements which lie in the footprint of a proposed building or proposed site development....

The district must submit a detailed cost estimate for all requests for site development work, with the exception of General Site Development, and any justification documents that will support the work with the Form SAB 50-04.

The Board will approve reasonable and appropriate site development work which meet common engineering practices and industry standards that are consistent with the specific site conditions if the site development costs are consistent with the most current edition of the Saylor Current Construction Costs. The design professional must certify to the district that the site development work does not exceed the minimum requirements to develop the site to meet educational needs and/or standards."

SFP Regulation Section 1859.82, "Facility Hardship" states, "A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:
(a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:
(1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include…traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.
…
If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the replaced facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.…"

SFP Regulation Section 1859.106, "Program Accountability Expenditure Audit" states, "The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects…. The audit will also assure that the district complied with all site acquisition guidelines as provided in Education Code Sections 17072.13 and 17072.14 and Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:
(a) The difference in the value of the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, relocation costs, DTSC fees, and hazardous waste/materials removal costs. For applications received on or after January 1, 2004, the adjustment may be made regardless of whether the hazardous waste/materials removal costs were requested on the application for funding."