REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, May 28, 2014

SCHOOL DISTRICT DATA	
School District: .....MERCED COUNTY OFFICE OF ED.	County: .....MERCED
Application Number(s): 50/10249-00-034	School Name(s): .....JOE STEFANI ELEMENTARY
Total District Enrollment: 1,390	Project Grade Level: .....SDC SEVERE
Financial Hardship: .....YES	Date of Financial Hardship Status: 11/24/08
Last Approved Local Bond Measure: .....NONE	
Qualifying Financial Hardship Criteria: .....SFP Regulation Section 1859.81(c)(3)	

PURPOSE OF REPORT

To present the Merced County Office of Education's (COE) request to be allowed to submit a new set of Division of the State Architect (DSA) approved plans and specifications for new construction funding for Office of Public School Construction (OPSC) Application number 50/10259-00-034, while maintaining the same place on the Unfunded List (Lack of AB 55 Loans).

DESCRIPTION

The COE received an unfunded approval for the funding application listed above in January 2010. At this time, the COE is unable to move forward with the project because the DSA approval has expired for the project and all available extensions have been exhausted. Therefore, the COE submitted new plans to the DSA for approval and received a new DSA number. According to the COE, the new plans contain the original scope of work and are updated to incorporate current building code. The COE is requesting that the new plans be viewed as the same project for purposes of receiving School Facility Program (SFP) funding. The COE is not requesting an increase to the previously approved grant amount of $2,183,910.

AUTHORITY

See Attachment A.

BACKGROUND

The COE plans to construct a new 5,000 square foot facility for Special Day Class students at Joe Stefani Elementary School, which includes three classrooms and 1,442 square feet of therapy space. The State Allocation Board (Board) approved a design apportionment for the project on June 2, 2006, and an unfunded approval on January 27, 2010 for the final construction grant. On July 10, 2013, the COE received an apportionment as part of the May 2013 Priority Funding round. However, the COE did not submit a *Fund Release Authorization* (Form SAB 50-05) by the October 8, 2013 deadline (90 days). The COE would not have been able to do so due to the expiration of the DSA plan approval. Pursuant to SFP Regulation Section 1859.90.3, the application returned to the Unfunded List (Lack of AB 55 Loans) with a new unfunded approval date of October 8, 2013.

The COE has exhausted all available DSA extensions on the original plans, and DSA does not have the authority to approve any further extensions. The final extension expired on June 28, 2012. The COE's appeal was submitted to OPSC on August 15, 2013. Since then, the COE submitted new plans to the DSA and received approval on March 11, 2014. The history of the project approvals is included in the timeline shown on Attachment B.

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STAFF ANALYSIS/STATEMENTS

District Position

According to the COE, budget issues, workload, and staffing changes during the last six years have prevented the completion of the project. The COE has requested to be allowed to submit a new set of DSA approved plans and specifications to replace its expired plans, while maintaining the same place on the Unfunded List (Lack of AB 55 Loans) for its new construction project. The COE states that this would not affect the requested grants on the *Application for Funding* (Form SAB 50-04) and any differences between the old and new plans would be solely to accommodate recent changes in building code requirements. The COE's *School District Appeal Request* (Form SAB 189) is included as Attachment C for reference.

Staff Position

The COE submitted its original funding application with DSA-approved and valid plans. However, the expiration of the original plan approval raises the question of whether the application is now a new project.

New Project versus Existing Project
To comply with the current building codes, the District submitted a new set of plans to DSA and received approval on March 11, 2014. Both OPSC and DSA consider a new set of plans to be a new project, requiring a new application submittal. The plans and specifications of any re-submission are reviewed by DSA as a new project and a new DSA number is issued, pursuant to California Building Code, Title 24, Part 1, Section 4-330. Staff reviewed the new set of plans and the changes appear to be related to compliance with current building code.

Certifications
Pursuant to SFP Regulation Section 1859.70, "A district seeking New Construction or Modernization funding shall complete and file [*Application For Funding*,] Form SAB 50-04…" DSA approval of plans and specifications is a prerequisite for a complete application for full project funding pursuant to SFP Regulation Section 1859.2. which states that an "Approved Application(s) means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01; SAB 50-02; SAB 50-03; and SAB 50-04." The applicant for SFP funding must complete Section 21 of the Form SAB 50-04 with a valid DSA approval date that must pre-date, or be concurrent with, the application received date. Furthermore, in Sections 21 and 23, the Architect of Record and Superintendent, respectively, certify to the approval of plans and specifications by the DSA. A new DSA approval invalidates the original certifications, as the certifications pre-date the actual DSA approval for the project. The COE cannot make the certifications until approval is received by the DSA. The District submitted updated plans and specifications to DSA for approval and received approval on March 11, 2014.

A new DSA number would create a new project for OPSC, requiring the submission of a new Form SAB 50-04 and a new place in line for funding. In this case, the new project would assume a place in line for funding based on the date it is received by the OPSC for processing, pursuant to SFP Regulation Section 1859.93.1. OPSC processes applications based on date order received to ensure equity in the funding process.

Participation in Priority Funding
The COE submitted a request letter to participate in the August 2010 priority funding filing round, but insufficient cash was available to provide an apportionment. The COE did not request to participate in subsequent priority funding filing rounds in December 2010, July 2011, January 2012, July 2012, and January 2013. Had they requested to participate, they would not have been able to submit a valid Form SAB 50-05 during the July 2012 or subsequent rounds due to the expiration of the DSA plan approval on June 28, 2012. The COE submitted a request to participate in the May 2013 priority funding filing round and received an apportionment, but did not submit a Form SAB 50-05 by the October 8, 2013 deadline, and would not have been able to do so due to the expiration of the DSA plan approval.

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

The COE cannot proceed with expired DSA plans due to statutory and regulatory limitations. Education Code and Title 24 of the California Building Code prohibit execution of construction contracts without the approval of project plans and specifications by the DSA. Title 24, Part 1, Section 4-330 states, "Construction work...for a school building...shall not be commenced, and no contract shall be let until the school board has applied for and obtained from DSA written approval of plans and specifications." The DSA approval for the Approved Application is expired and the COE cannot enter into contracts for the work in the expired plans.

Education Code Section 17307 states, "no public money shall be paid for any work done under a contract or for any labor or materials furnished in constructing or altering any building, unless the plans, specifications, and estimates comply in every particular with the...requirements prescribed by the Department of General Services and unless the approval thereof in writing has first been had and obtained from the Department of General Services." The COE is currently unable to proceed with construction of the project, as doing so would be in violation of this statute.

Since the DSA approval is not valid and the COE cannot enter into construction contracts, the COE cannot certify to Part V of the Form SAB 50-05, which reads, "The district certifies that it has entered into a binding contract(s) for __ percent of the construction… which received written DSA approval on __, and has issued a Notice(s) to Proceed on __ for that contract(s) awarded on__." Therefore, a valid Form SAB 50-05 cannot be submitted and the COE cannot receive funds for the project.

Status of Current Unfunded Approval
Because the COE submitted a request to participate in the May 2013 priority funding filing round and did not submit the Form SAB 50-05 within 90 days of the apportionment, the application returned to the Unfunded List (Lack of AB 55 Loans) with a new unfunded approval date of October 8, 2013, pursuant to SFP Regulation Section 1859.90.3. Therefore, the application has one occurrence of non-participation. The COE also submitted a request to participate in the recent November 2013 priority funding filing round and received an apportionment on April 7, 2014. If the COE does not submit a valid Form SAB 50-05 by July 7, 2014, the COE will receive a second occurrence of non-participation and the application will be rescinded without further Board action. The COE would then be eligible to request that the original design apportionment be reduced to costs incurred.

If the COE elected to resubmit the project for future funding, the application would be placed on the Applications Received Beyond Bond Authority List.

Conclusion
Based on Staff analysis of SFP Regulations and past practice, a new set of DSA-approved plans would be considered a new project, requiring a new application to OPSC and a new place in line. Accepting the new plans for the project and maintaining the original application received date may potentially be a funding advantage, as the DSA approval date for the plans occurred after the OPSC received date. Staff is aware of one other project that may have a similar issue. As of March 26, 2014, there were 30 new construction projects totaling $185.4 million and 108 modernization projects totaling $207.2 million on the Unfunded List (Lack of Authority). If bond authority becomes available, projects could be moved to the Unfunded List (Lack of AB 55 Loans).

Staff is unable to administratively approve the COE's request and is seeking Board direction.

BOARD OPTION

Pursuant to the *Rules and Procedures of the State Allocation Board,* "Staff is providing the following option for the Board's consideration. A positive vote by six members is required for the Board to take action that is an alternative to Staff's administrative action. Absent a positive vote by six members of the Board, Staff's administrative action will stand and the school district's appeal will be considered closed."

Grant the COE's appeal.

BOARD ACTION

In considering this Item, the SAB granted the Merced COE's appeal for Project Number 50/10249-00-034, which would allow the COE to maintain its place in line on the Unfunded List (Lack of AB 55 Loans) while obtaining DSA approval for a new set of plans and meeting the requirements of the Priority Funding round by submitting the Form SAB 50-05 on or before July 7, 2014.

ATTACHMENT A

AUTHORITY

California Building Code, Title 24, Part 1, Section 4-330 states:

> Construction work, whether for a new school building, reconstruction, rehabilitation, alteration, or addition, shall not be commenced, and no contract shall be let until the school board has applied for and obtained from DSA written approval of plans and specifications. Construction shall be commenced within one year after the approval of the application; otherwise the approval may be voided. DSA may require that the plans and specifications be revised to meet its current regulations before a renewal of the voided approval is granted.
>
> Renewal shall not be granted after a period of four years beyond the initial date of the application approval; except for projects suspended pursuant to the Department of Finance Budget Letter No. 08-33 dated December 18, 2008 (Interim Loans for General Obligation and Lease Revenue Bond Projects), which are eligible for renewal of approval beyond four years from the initial date of the application approval.
>
> A written request for extension of approval must be made by the school board to DSA, and shall include evidence that the project suspension is pursuant to the Department of Finance Budget Letter No. 08-33 dated December 18, 2008. This extension of approval shall be granted by DSA for up to one additional year, not to exceed five years from the initial date of the application approval.
>
> The school board may complete all work or proceed with the construction of any part of the work included in the approved plans and specifications with the intent of completing the work later. All work done and materials used and installed must be in accordance with and in conformity to the approved plans and specifications.

Education Code (EC) Section 17263 states: "The plans and specifications for any school building as defined in Section 17283, together with estimates of cost, shall be submitted by the board to the Department of General Services for approval."

EC Section 17307 states:

> No contract for the construction or alteration of any school building, made or executed by the governing board of any school district or other public board, body, or officer otherwise vested with authority to make or execute a contract, is valid, and no public money shall be paid for any work done under a contract or for any labor or materials furnished in constructing or altering any building, unless the plans, specifications, and estimates comply in every particular with the provisions of this article and the requirements prescribed by the Department of General Services and unless the approval thereof in writing has first been had and obtained from the Department of General Services.

SFP Regulation Section 1859.2 states:

> "Approved Application(s)" means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01; SAB 50-02; SAB 50-03; and SAB 50-04, as specified in Section 1859.2."

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. The Board shall only provide New Construction funding if the Approved Application was received by the OPSC prior to the date of Occupancy for any classrooms included in the construction contract. After the date of Occupancy of any classroom in the construction contract, a district will be ineligible to seek New Construction funding and the classrooms will be reduced from the baseline eligibility pursuant to Section 1859.51(i) if not previously reduced.

A district affected by a reorganization election on or after November 4, 1998 may not file an application for New Construction funding after the notification of the reorganization election until a new calculation of the district's baseline eligibility has been determined on the Form SAB 50-03, or the district certifies that the reorganization election will not result in a loss of eligibility for the project for which the district is requesting new construction grants.

A district that is newly created as a result of a reorganization election may file an application for funding after approval of the election has been made by the State Board of Education.

SFP Regulation Section 1859.90.2 states:

The priority funding process allows the Board to distribute available funds to districts or charter schools that request, pursuant to (a) or (b) below, as applicable, an Apportionment or an advance release of funds from a Preliminary Apportionment or Preliminary Charter School Apportionment, during specific 30-calendar day filing periods beginning with July 27, 2011 and continuing with the 2nd Wednesday of January and the 2nd Wednesday of July of 2012. Requests submitted during the filing periods described above are valid until the next filing period begins. The specific 30-calendar day filing periods subsequent to 2012 begin with January 9, 2013 and continue with the 2nd Wednesday of May and the 2nd Wednesday of November, each calendar year. Requests submitted during the filing period beginning with January 9, 2013 are valid until June 30, 2013. Requests submitted during a filing period beginning with the 2nd Wednesday of May are valid from July 1 until December 31 of that year. Requests submitted during a filing period beginning with the 2nd Wednesday in November are valid from January 1 until June 30 of the following year. Requests must be physically received by the OPSC by the 30th calendar day of each filing period to be considered valid.

(a) In order to be considered for an Apportionment, approved advance release of design funds from a Preliminary Charter School Apportionment, or approved advance release of environmental hardship site acquisition funds from a Preliminary Apportionment, the district or charter school must provide a priority funding request in the form of a written statement signed by an authorized representative that includes each of the project application numbers, and the type of apportionment request (e.g., Apportionment, separate apportionment for design or site acquisition), within the 30-calendar day filing period, and shall contain all of the following:

(1) Statement that the request is to convert the unfunded approval to an Apportionment or to receive an approved advance release of funds; and

(2) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within 90 calendar days of Apportionment or approved advance release of funds request and that failure to do so will result in the rescission of the Apportionment or approved advance release of funds request without further Board action; and

(3) Acknowledgement that, if the district submits the Form SAB 50-05 on or after July 1, 2013 and is required to submit an LCP third party report, pursuant to Section 1859.97(b), the report will be submitted to the OPSC and the DIR at least 60 days prior to submitting the Form SAB 50-05; and

(4) For those receiving an Apportionment, acknowledgement that by participating in the priority funding process, the district or charter school is waiving its right to the 18 month timeline for fund release submittal described in Section 1859.90.

(b) In order to be considered for an approved advance release of site acquisition funds from a Preliminary Charter School Apportionment, the district or charter school must provide a priority funding request in the form of a written statement signed by an authorized representative within the 30-calendar day filing period, and shall contain all of the following:
(1) Statement that the request is to convert the advance release of funds to an approved advance release of funds request; and,
(2) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within 180 calendar days of the approved advance release of funds request and that failure to do so will result in the rescission of the approved advance release of funds request without further Board action; and
(3) Acknowledgement that it must provide evidence that it has entered into the Charter School Agreements within 90 calendar days of approval of the advance release of funds request and that failure to do so will result in the rescission of the approval without further Board action.
(c) If a district or charter school receives an Apportionment or approved advance release of funds request through the priority funding process, the OPSC must receive a valid, original signature copy of the Form SAB 50-05 within the specified time period, pursuant to (a)(2) or (b)(2) as applicable. If the OPSC does not receive a valid, original signature copy of the Form SAB 50-05 within the time period:
(1) The priority funding Apportionment or approved advance release of funds request shall be rescinded without further Board action, and
(2) If the application is not subject to rescission pursuant to Section 1859.90.3(c) as defined in Section 1859.90.3(d), the application shall return to the Unfunded List (Lack of AB 55 Loans) with a new unfunded approval date that is 90 calendar days from the date of Apportionment or approval of the advance release of funds request.
(d) In the event that the amount of requests received during a specific 30-calendar day filing period exceeds the funds available, the Board shall apportion based on the unfunded approval date and the application received date up to the available cash from each bond source. Projects that have requested to participate in the priority funding process for which an Apportionment cannot be provided shall retain their date order position on the Unfunded List (Lack of AB 55 Loans). Requests not converted to apportionments will not be returned to the district or kept by the OPSC.
(e) For purposes of this section “rescinded” or “rescission” shall mean that the apportionment or approved advance release of funds request returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be 90 calendar days from the apportionment date. The district or charter school will not be required to re-submit the application and no further application review will be required.

SFP Regulation Section 1859.90.3 states:

This section applies only to applications for new construction, modernization, Facility Hardship pursuant to Section 1859.82 and rehabilitation pursuant to Section 1859.83(e), and specifically excludes applications for the Charter School Facilities and Career Technical Education Facilities Programs.
(a) For each application on the Unfunded List (Lack of AB 55 Loans) for new construction, modernization, Facility Hardship pursuant to Section 1859.82 or rehabilitation pursuant to Section 1859.83(e), the occurrences of (1) or (2) below shall be limited after the effective date of this regulation section [March 25, 2013]:
(1) The district abstains from participating in a priority funding 30-calendar day filing period described in Section 1859.90.2 for the application on the Unfunded List (Lack of AB 55 Loans).
(2) The application receives a priority funding Apportionment pursuant to Section 1859.90.2(a), and the district fails to meet the fund release requirements pursuant to Section 1859.90.2(c).
(b) The first occurrence of (a)(1) or (a)(2) shall result in the following, as applicable:
(1) If (a)(1) occurs, the application shall retain its place on the Unfunded List (Lack of AB 55 Loans).

(2) If (a)(2) occurs, the priority funding Apportionment shall be rescinded and the application shall be returned to the Unfunded List (Lack of AB 55 Loans) pursuant to Section 1859.90.2(c)(2).
(c) If subsection (b) has occurred, a subsequent occurrence of either (a)(1) or (a)(2) shall result in the rescission of the application's Apportionment and/or unfunded approval, as applicable, and the removal of the application from the Unfunded List (Lack of AB 55 Loans) without further Board action. The application shall be returned to the applicant.
(d) For purposes of subsection (c), "rescinded" or "rescission" of an unfunded approval shall mean that the bond authority associated with the Apportionment or unfunded approval, as applicable, returns to the appropriate School Facility Program bond authority source for reallocation. If applicable, the pupils housed in the project will be added back to the district's baseline eligibility pursuant to Sections 1859.51(d) for new construction or 1859.61(d) for modernization.

Section 1859.93.1 states:

All new construction applications, except those new construction applications identified in (a) through (c) below, shall be funded in the order of receipt of an Approved Application for funding.
(a) Approved Applications for New Construction Grant(s) funded with the proceeds of state bonds approved by the voters prior to January 1, 2002.
(b) Approved Applications for New Construction Grant(s) authorized by Education Code Sections 17078.10 through 17078.30.
(c) Approved Applications that utilize pupil eligibility derived from the Alternative Enrollment Projection method. These applications shall be funded in order of receipt once the OPSC and the DRU have approved the Alternative Enrollment Projection method or the Alternative Enrollment Projection annual update.

The *Application for Funding* (Form SAB 50-04), Section 21 states the following:

I certify as the architect of record for the project or as a licensed architect that:

- The P&S for this project were submitted to the OPSC by electronic medium (i.e., CD-ROM, zip disk or diskette) or as an alternative, if the request is for a modernization Grant, the P&S were submitted in hard copy to the OPSC.
- Any portion of the P&S requiring review and approval by the Division of the State Architect (DSA) were approved by the DSA on _____ (enter DSA approval date).
- Any portion of the P&S not requiring review and approval by the DSA meets the requirements of the California Code of Regulations, Title 24, including any handicapped access and fi re code requirements.
- If the request is for a Modernization or Charter School Facility Program Rehabilitation Grant, the P&S include the demolition of more classrooms than those to be constructed in the project, the difference is _____ classroom(s). (Indicate N/A if there are none.)
- If the request is for a Modernization or Charter School Facility Program Rehabilitation Grant, the P&S include the construction of more classrooms than those to be demolished in the project, the difference is _____ classroom(s). (Indicate N/A if there are none.)

The Form SAB 50-04, Section 23 contains the following certification:

I certify, as the District Representative, that the information reported on this form, with the exception of items 21 and 22, is true and correct and that:…

- The district has received the necessary approval of the plans and specifications from the Division of the State Architect unless the request is for a separate site and/or design apportionment."

ATTACHMENT A

AUTHORITY (cont.)

The *Fund Release Authorization* (Form SAB 50-05), Part V states:

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

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

☐ The district certifies it has entered into a binding contract(s) for _____ percent of the construction (must be at least 50 percent of the construction included in the plans and specifications applicable to the state funded project), which received written DSA approval on _____, and has issued the Notice(s) to Proceed on _____for that contract(s) awarded on _____. (If the space provided is not sufficient for all applicable contract dates, please list all dates on a separate attachment to this form.)

☐ If the district certified compliance with Education Code Section 17070.955 on its Application for Funding (Form SAB 50-04) and if it was not previously sent with the Form SAB 50-04, then the district must submit written confirmation from the district's career technical advisory committee indicating that the need for vocational and career technical facilities is being adequately met within the district consistent with Education Code Sections 51224, 51225.3(b), 51228(b), and 52336.1.

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

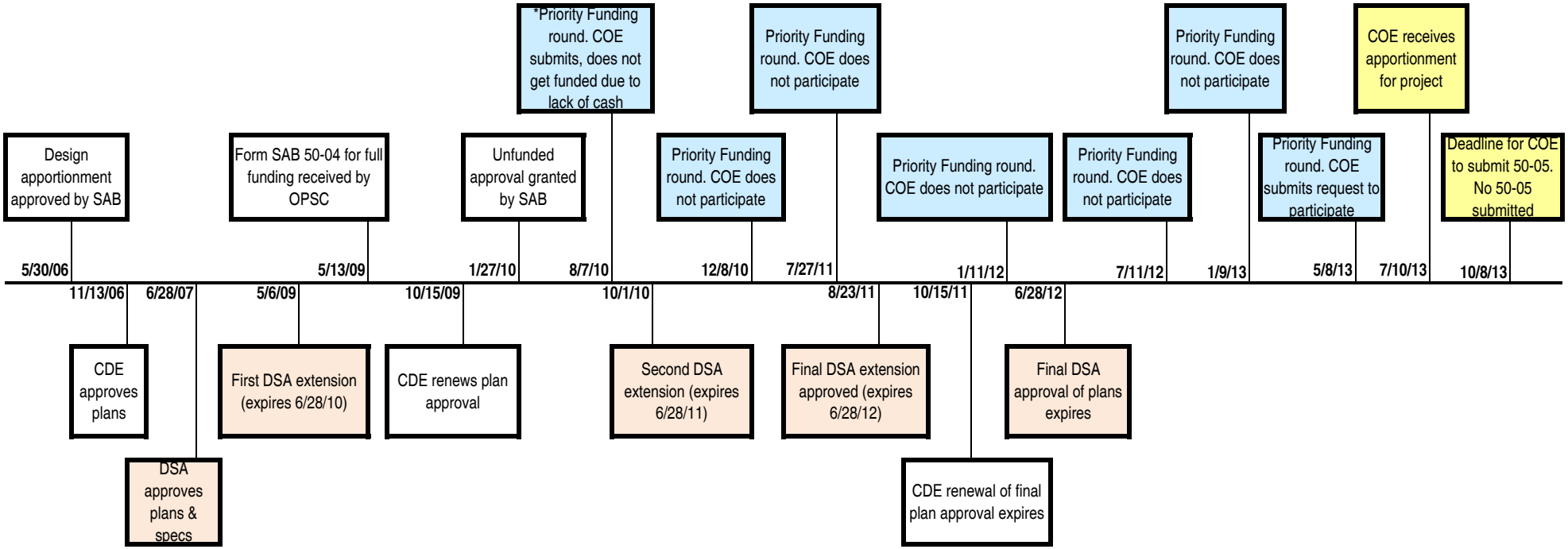
☐ The Charter School certifies it has entered into the Charter School Agreements pursuant to Section 1859.164.2.

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

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

ATTACHMENT B

MERCED COUNTY OFFICE OF EDUCATION (COE) TIMELINE



Abbreviations

State Allocation Board (SAB)
California Department of Education (CDE)
Division of the State Architect (DSA)
Application for Funding (Form SAB 50-04)
*Priority Funding rounds listed indicate the opening of the filing period. Applicants have 30 days from this date to submit a participation letter.

SCHOOL DISTRICT	APPLICATION NUMBER
Merced County Office of Education	50/10249-00-34
SCHOOL NAME	COUNTY
Ranchero/Stefani	Merced
DISTRICT REPRESENTATIVE	E-MAIL ADDRESS
Janet Riley	jriley@mcoe.org

Purpose of Request:

MCOE is required by DSA to re-submit and acquire a new DSA number as the plan approval has expired for project 50/10249-00-34. MCOE is requesting OPSC to maintain MCOE's place on the approved unfunded list.

Basis of Request:

- ☐ Law (Statute) _____
- ☐ Regulation _____
- ☒ Other (specify) Code Changes

Description:

Due to State budget issues, MCOE work loads and staffing changes over the last six years, MCOE has not been able to complete project 50/10249-00-34.

Based on these issues, MCOE's DSA application has expired (after all possible extensions have been utilized). DSA is requiring MCOE to re-submit their plans with current code requirements. This will require MCOE to acquire a new DSA approval number.

It is MCOE's understanding that by resubmitting and acquiring a new DSA number OPSC may consider this a new project, thus, the project loses it's place on the Approved Unfunded List and MCOE would have to re-apply for funding.

MCOE is requesting we maintain our place on the Approved Unfunded List with a new DSA number. MCOE is confident we can obtain plan approval and meet the requirements of the upcoming priority funding round.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
Janet Riley	October 25, 2013

THE ORANGE COUNTY DEPARTMENT OF EDUCATION
(50/10306-00-018) APPEAL ITEM
HAS BEEN WITHDRAWN

THE TWIN RIVERS UNIFIED (51/76505-00-002)
ITEM HAS BEEN WITHDRAWN