REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, October 17, 2016

SCHOOL DISTRICT DATA	
School District:……..….RICHGROVE ELEMENTARY	County…….TULARE
Application Number:.....61/72082-00-0002	School Name…….RICHGROVE ELEMENTARY
Total District Enrollment:.....650	Project Grade Level:……..K-8

PURPOSE OF REPORT

To present the District's request for an extension to the 21-month deadline to complete an Emergency Repair Program (ERP) project.

DESCRIPTION

The District is a one-school district with an enrollment of 650 pupils located in rural Central California. On August 20, 2014, the District received an ERP Grant in the amount of $146,166 to upgrade a failing heating, ventilation and air conditioning (HVAC) system. According to program regulations, the District is required to complete the emergency repair replacement and submit the *Expenditure Report* (Form SAB 61-04) to the Office of Public School Construction (OPSC) within 21 months from the Apportionment date. Legal issues with the District's contractor delayed the project's completion past the May 20, 2016 deadline. Therefore the District is requesting an extension of eight months, to January 20, 2017, to complete the project and submit the necessary documentation, based on its current construction schedule.

AUTHORITY

See Attachment A.

BACKGROUND

In 2004, as a result of the *Williams v. California* Settlement, Senate Bill 6, Chapter 899 established the ERP, providing $800 million to address facility conditions in low performing schools that posed urgent threats to students' or staff's health and safety. The program was originally structured as a reimbursement program; meaning that the State would reimburse the district for 100 percent of the costs of the repairs, if its application was approved. In 2007 the program was successfully converted into a grant program by Assembly Bill 607, Statutes of 2006 Chapter 704. This allowed eligible schools to receive funds before they completed repairs.

The District is located in Tulare County. The District submitted an ERP application to OPSC on April 11, 2008 to replace the school's failing HVAC system and on August 20, 2014 they received an ERP Grant Apportionment in the amount of $146,166. Because the project required the Division of the State Architect's (DSA) review and approval of structural components, the District had 21 months to complete the project and submit the Form SAB 61-04 (along with the required accompanying documents) to OPSC, per ERP Regulation Section 1859.330. The completed Form SAB 61-04 was due to OPSC by May 20, 2016.

OPSC sent reminder letters to all districts (including Richgrove) that received an ERP Grant informing them about the upcoming deadline, in August 2015 and February 2016. In April 2016, the District contacted OPSC, stating that it would probably not make the deadline to complete the project. Staff immediately responded that the deadline was clear in regulation and not flexible and that funding would be rescinded if the project was not completed and the required documents submitted by May 20, 2016.

(Continued on Page Two)

BACKGROUND (cont.)

After another inquiry by OPSC, the District informed OPSC on May 24, 2016 that the construction was "at a standstill, due to missing required documents by the contractor". OPSC advised the District that it could not administratively approve an extension, and per ERP Regulations, the project would be rescinded without further Board action since the requirements were not met. After further discussion of the District's options, the District submitted a *School District Appeal Request* (Form SAB 189) in July 2016 requesting to extend the May 20, 2016 deadline.

STAFF ANALYSIS/STATEMENTS

District Position

The District is requesting to retain its ERP Apportionment and extend the deadline to complete the HVAC project and submit the required documents to OPSC. In its appeal, the District cites legal issues with the (original) contractor hired to complete project and termination of contract as the reasons for the delayed completion.

Under the District's previous superintendent, a contractor was hired in June 2015 to replace the existing HVAC with a more efficient system. The District states that they "are in an area of extreme heat and cold". The current units are almost 20 years old and run constantly. In March 2016, the new superintendent asked the contractor to submit proof of surety bond, DSA plan approvals, engineering specifications, certified payroll, and various invoices for labor and materials. However, the contractor did not provide any of the documents. After several months of requests, the District's legal counsel sent a formal letter. Following that letter, the contractor turned in their keys to the campus. The District then terminated the contractor for "abandonment of the job" in June 2016.

Due to these events, the District was unable to meet the ERP deadline of May 20, 2016. Since that time, the District has performed a construction forensic analysis and begun the process of rebidding the project. Based on its current schedule, the District has advised OPSC that it anticipates full completion and submittal of the required documents by January 20, 2017, which is eight months from the original deadline.

The full text of the District's appeal request is included as Attachment B.

Staff Position

The District is requesting an eight-month extension to the time allotted in ERP Regulations to complete an ERP project, consisting of replacing 18 HVAC units and two heaters that are "beyond repair". OPSC is unable to administratively approve the District's request; therefore Staff is seeking Board direction.

Regulatory Requirements

ERP Regulation Section 1859.330 *Time Limit on Grant Apportionment* states that when DSA review and approval is required, within 21 months of the Grant apportionment the district shall complete the project and submit the Form SAB 61-04 to the OPSC. The regulation goes on further to state, "If the LEA does not meet the Time Limit on Grant Apportionment, the Apportionment will be rescinded without further Board action." The District received its ERP Apportionment on August 20, 2014. Therefore, the District was required to complete the project and submit the completed Form SAB 61-04 to OPSC by May 20, 2016 to retain the funds. Since the District has not met this deadline, regulations require that the Apportionment be rescinded without an action by the Board. Without an extension, the District is required to return the full amount of the original apportionment, which is $146,166.

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

District's Timeline
The District received an ERP Grant Apportionment in August 2014. Approximately 10 months later in June 2015, it hired a contractor to complete the project. After the retirement of the prior superintendent in March 2016, the new superintendent requested a number of project documents from the contractor to verify compliance with applicable laws regarding public school construction projects. When the contractor was unable to provide any of the requested documents, the District's attorney made similar requests to the contractor with no response. In June 2016, the contractor turned in his keys to the campus and did not return. The District then officially terminated the contract.

In order to complete the project, the District has been working with a new construction manager to establish a project timeline. In addition, the former contractor had purchased replacement HVAC units that the District has since confirmed do not work with the existing electrical system. Therefore, it was necessary to order new HVAC units. The District has advised Staff that DSA-approval for installation of the new units is not required. The District has provided documentation to support the project review exemption, as it is a "replacement of in-kind mechanical units". Due to these various setbacks, the project has taken longer than originally planned. The District has informed OPSC that the project will be completed and the required documents submitted by January 20, 2017.

While the District initially took 10 months to hire a contractor, from the District's description of events, it appears that some delays occurred that were out of its control. Upon termination of the prior contract, the District has, in essence, started the project over from the beginning, because the original health and safety issue that first qualified the project still remains. A timeline of events is included as Attachment C for reference.

Prior Board Action
In May 2016, the Board heard a similar appeal from a district requesting an extension to complete an ERP project that was replacing a portable classroom. In that case, the district was near completion of the project and needed an extension of only 60 days to the 21-month allowance. Ultimately, the Board approved the district's request for an extension of 60 days. The current request is for eight months, which is almost half of original 21-month allowance.

Summary
The District is requesting an extension of eight months to the 21 months already provided by regulation. Staff is unable to administratively approve the District's request due to the requirements outlined in ERP Regulations. Therefore, Staff 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 District's appeal.

(Continued on Page Four)

BOARD ACTION

In considering this Item, the Board approved the District's request, which provided an eight-month extension to the 21-month regulatory deadline to complete an Emergency Repair Program project and submit the *Expenditure Report* (Form SAB 61-04) to OPSC by January 20, 2017.

ATTACHMENT A

AUTHORITY

Education Code (EC) 17592.72

(a) (1) For the 2005–06 fiscal year, all moneys in the School Facilities Emergency Repair Account are available for reimbursement to schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school, as defined in subdivision (b) of Section 17592.70, to meet the repair costs of the school district projects that meet the criteria specified in subdivisions (c) and (d) and as approved by the State Allocation Board.

(2) Commencing with the 2006–07 fiscal year, all moneys in the School Facilities Emergency Repair Account are available for the purpose of providing emergency repair grants to schools ranked in deciles 1 to 3, inclusive, on the Academic Performance Index, pursuant to Section 52056, based on the 2003 base Academic Performance Index score for each school, as defined in subdivision (b) of Section 17592.70, to cover the costs of school district repair projects that meet the criteria specified in subdivisions (c) and (d). The State Allocation Board shall establish a grant application process, grant parameters, substantial progress requirements, and a process for providing certification of the completion of projects. The State Allocation Board shall post the grant application form on its Internet Web site.

(c) (1) For purposes of this article, "emergency facilities needs" means structures or systems that are in a condition that poses a threat to the health and safety of pupils or staff while at school. These projects may include, but are not limited to, the following types of facility repairs or replacements:

(A) Gas leaks.

(B) Nonfunctioning heating, ventilation, fire sprinklers, or air-conditioning systems.

(C) Electrical power failure.

(D) Major sewer line stoppage.

(E) Major pest or vermin infestation.

(F) Broken windows or exterior doors or gates that will not lock and that pose a security risk.

(G) Abatement of hazardous materials previously undiscovered that pose an immediate threat to pupil or staff.

(H) Structural damage creating a hazardous or uninhabitable condition.

(2) For purposes of this section, "emergency facilities needs" does not include any cosmetic or nonessential repairs.

(d) For the purpose of this section, structures or components shall only be replaced if it is more cost-effective than repair.

EC Section 17592.73

The State Allocation Board shall do all of the following:

(a) Adopt regulations and review and amend its regulations, as necessary, pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), for the administration of this article, including those regulations necessary to specify the qualifications of the personnel performing the needs assessment and a method to ensure their independence. The initial regulations adopted pursuant to this article shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this article shall be adopted by January 31, 2005.

(b) Establish and publish any procedures and policies in connection with the administration of this article as it deems necessary.

(c) Apportion funds to eligible school districts under this article.

(d) Provide technical assistance to school districts to implement this article…

Emergency Repair Program Regulation Section 1859.330 Time Limit on Grant Apportionment

The LEAs that receive ERP Grants shall comply with all of the following provisions:
(a) When the Division of the State Architect's review and approval is not required, within 15 months of the Grant apportionment the LEA shall:
(1) Complete the emergency repair or replacement; and
(2) Submit the Form SAB 61-04 to the OPSC.
(b) When the Division of the State Architect's review and approval is required, within 21 months of the Grant apportionment the LEA shall:
(1) Complete the emergency repair or replacement; and
(2) Submit the Form SAB 61-04 to the OPSC.
If the LEA does not meet the Time Limit on Grant Apportionment, the Apportionment will be rescinded without further Board action. Within 60 days of the OPSC notification, the LEA must submit to the State a warrant for the amount of the Apportionment and any interest earned on State funds. If this does not occur, the OPSC shall initiate collection procedures as delineated in 1859.324.1(a). Any rescinded funds returned to the State will be made available for the funding of future ERP Grants and Grant Adjustments. The LEA may re-file Form SAB 61-03 to request a Grant for the rescinded projects provided it meets the provisions of Section 1859.324 at the time of re-filing.

STATE OF CALIFORNIA STATE ALLOCATION BOARD **School District Appeal request** OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (Rev 10/09)

School District	Application number
Richgrove School District	**61/72082-00-0002**
School name	County
Richgrove Elementary	**Tulare County**
District representative	e-mail Address
Mario Millan, Superintendent	**mariom@richgrove.org**

Purpose of Request: We would like to request an appeal to retain the apportionment for our project, HVAC upgrade, as the due date for submittal of documentation has passed.

Basis of Request:

☐ Law (Statute) _____

☐ Regulation _____

☒ Other (specify) **Legality issues with contractor hired to perform project, and termination of contract.**

Description:

The HVAC upgrade was begun under the previous superintendent. That administration begun this job with a contractor. Upon the sudden retirement of the superintendent and my hire a request was made for the contractor to turn in proper documentation for this upgrade. Those requests were the following: Proof of bond, DSA approval of HVAC replacements due to possible structural concerns, Engineering specifications of HVAC mounting as per DSA, certified payroll, and invoices of purchases, labor and other materials. The contractor was unable to provide any of the above documentation. After several months of requests, including those from our attorney made to the contractor it was decided that a formal letter be sent to the contractor. At that point the contractor arrived at the school and turned in keys that allowed him access to our campus. The attorney to our school is treating this as abandonment of the job and has sent out a letter of termination of contract due to abandonment.

During this long period of back and forth we were unable to make our deadline as we were instructed not to interfere with the job begun by the contractor as it could be seen as "interference to perform," his contract. Now that the termination letter has been served we are waiting on a construction forensic analysis to be completed, in case of litigation, so that we can move forward with the project.

The contractor did purchase the 18 units needed to upgrade our older units, but due to their larger size engineering will be needed and DSA approval. The units also are of different voltage and may not work with our current electrical so other options will be explored to complete the upgrade.

We ask for an extension in this appeal as we are in extreme need of an HVAC upgrade to a more efficient system as we are in an area of extreme heat and cold, and run our systems constantly. Some of our systems are almost 20 years old.

Signature of Authorized district Representative	date 6/28/16

Attachment C

Richgrove Elementary ERP Project Timeline

April 11, 2008	ERP Application submitted to OPSC.
June 23, 2010	ERP Application receives an Unfunded Approval.
August 20, 2014	ERP Grant Apportionment for $146,166
June 2015	Initial contractor hired.
August 2015	1st reminder letter from OPSC to District, for ERP due date
February 2016	2nd reminder letter from OPSC to District, for ERP due date
April 1, 2016	New District Superintendent hired.
April 2016	New District Superintendent asks contractor for construction documents.
April 25, 2016	District informs OPSC that ERP project may not be complete by deadline.
May 20, 2016	ERP project completion deadline & Form SAB 61-04 due to OPSC
June 14, 2016	Initial contractor terminated.
July 28, 2016	District submits appeal request to OPSC for project extension.
January 20, 2017	Proposed Project Completion

THIS PAGE INTENTIONALLY LEFT BLANK

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, October 17, 2016

SCHOOL DISTRICT DATA	
School District: .....KLAMATH-TRINITY JOINT UNIFIED	County:.....HUMBOLDT
Application Numbers:……..51/62901-00-005, -006	School Names:....J. Norton and Orleans Elementary
Total District Enrollment:.....1,073	Project Grade Level:……K-8
Financial Hardship:.....YES	
Last Approved Local Bond Measure:……..…2016	
Qualifying Financial Hardship Criteria:……SFP Regulation Section 1859.81(c)(1)	

PURPOSE OF REPORT

To present two District Facility Hardship applications for State Allocation Board (Board) action related to funding.

DESCRIPTION

The District discovered extensive water intrusion issues at various sites beginning in April 2014 that included dry rot and mold damage plus the presence of mold spores. It immediately closed the affected facilities and began the repair process. The District has been working to repair the schools and in the process has discovered even more facilities that are impacted by mold. Located in a remote region of Northern California, the District must use specialized design elements to contend with its humid micro-climate and has escalated construction costs because of its location.

The District has submitted two additional Facility Hardship funding applications to the Office of Public School Construction (OPSC) as part of its ongoing effort to address these health and safety threats. Earlier this year in April, the Board provided funding for five Facility Hardship projects related to these same issues as well as others.

Due to the extraordinary circumstances in this school district, the District is requesting the Board to consider the following actions for these two projects and, additional consideration for three future projects:

I. Provide replacement funding for rehabilitation work on both projects.

II. Provide Apportionments to the projects outside of the priority funding process.

III. Provide direction to Staff for three additional projects.

AUTHORITY

See Attachment A.

BACKGROUND

Klamath-Trinity Joint Unified is a small district serving the Salyer, Willow Creek, Hoopa, Weitchpec, Orleans and Pecwan communities, as well as the Hoopa and Yurok Indian Reservations and Karuk Tribal lands, in Humboldt and Trinity Counties. Ninety percent of the District's students are Native American and the District estimates that approximately ninety percent qualify for free or reduced lunch this year.

(Continued on Page Two)

BACKGROUND (cont.)

The remote location of the school sites presents a variety of logistical and economic challenges for construction, including, but not limited to, the lack of multiple qualified bids, transportation to and housing of workers near the project sites, transportation of materials to the project sites, and escalated project costs for specialized design.

In February 2016, it was discovered that the mold was more widespread than previously identified. Toxic mold was also found in other buildings including cafeterias, kitchens, offices, classrooms, and boiler rooms. All eight schools in the District were closed for two weeks in February 2016, in order to do further testing and to reconfigure space in the un-affected schools and buildings, so that all students could be housed. The Board provided funding for five school sites at the April 20, 2016 meeting.

The District recently submitted two additional applications for rehabilitation work at two school sites. During the review process, Staff determined that the cost/benefit analysis for both projects shows that the cost of rehabilitating the buildings exceeds the threshold set in School Facility Program (SFP) Regulations of 50 percent of the replacement cost, which qualifies the District for replacement funding. Because of this, OPSC is unable to administratively approve the projects for the requested funding type pursuant to SFP Regulation Section 1859.82(a)(1)(A) which does not provide Staff the ability to approve replacement funding for rehabilitation work.

In order to continue the rehabilitation work, the District submitted a *School District Appeal Request* (Form SAB 189) for the projects and requested to use replacement funding for the rehabilitation work. The Form SAB 189 is included as Attachment B. The District is requesting consideration of this issue due to its district-wide extraordinary circumstances leading to higher than normal construction costs and difficulty in getting bids that reflect prices similar to projects being conducted in other areas not as remote. The District believes that replacement is not an option as true costs would exceed the replacement funding allowed under the SFP.

The two current applications represent additional buildings on those sites in need of immediate repair. The District has also submitted three additional Facility Hardship funding applications to address the mold found in other buildings on various sites within the District that will be coming forward to the Board for approval once OPSC has finalized the review and confirmed that there is sufficient bond authority available for them.

STAFF ANALYSIS/STATEMENTS

There are two topics for Board consideration of this approval. Each consideration is presented separately on the following pages. A summary of the two projects is provided in the following chart and full descriptions of each project are included as Attachments C and D:

Attachment	SFP Application & Site	Scope of Project	State Share	Financial Hardship	District Share
C	51/62901-00-005 Jack Norton ES	Mold Abatement & New Roof (Gym & Classrooms)	$2,614,447	$2,614,447	$0
D	51/62901-00-006 Orleans ES	Mold Abatement & New Roof (Gym)	$2,621,619	$2,621,619	$0
		TOTALS:	**$5,236,096**	**$5,236,066**	**$0**

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

I. Request for Replacement Funding for Jack Norton Elementary and Orleans Elementary

District Position

In its appeal, the District is requesting to use Facility Hardship replacement funding to rehabilitate multiple buildings on two sites. It believes that "rehabilitating the buildings is the most prudent use of local and State funds" due to "the unique circumstances regarding the District's geographic location, current construction climate and community significance".

The District contends that the Current Replacement Cost used by OPSC to determine if a project is eligible for rehabilitation or replacement is not reflective of the costs for its location. The District provided a chart showing that rehabilitation costs for the projects were greater than 50 percent of the replacement costs, based on bids received and calculations provided by construction managers and architects. The Form SAB 189 states that "it would not be economically feasible for the District to replace these buildings as the true replacement costs far exceed the replacement funding from the State and the District's available funds." These higher construction costs are attributed to persistent humidity increasing the design and construction costs, and the remote location creates an insufficient construction pool and low supply of construction materials.

Additionally, the District states that schools are "an important focal point for the community", as many of the buildings are used after school by various community groups. If the buildings were replaced, cost restraints would require them to be built significantly smaller, and the buildings would lose their significance and usefulness within the community. Many students spent up to 12 hours a day at the schools sites, in before or after school programs, making these sites a significant and safe place for the students.

The full text of the District's appeal request is included as Attachment B.

Staff Position

Rehabilitation versus Replacement

The District is requesting to use replacement funding for rehabilitation work of qualifying buildings at two sites under the Facility Hardship Program. According to SFP Regulation, the District qualifies for replacement funding, but is requesting to rehabilitate the buildings, as the District believes it is the most prudent and economically feasible way to address the health and safety issues. SFP Regulations that implement the Education Code (EC) have been interpreted previously by the Board to allow replacement funding for rehabilitation projects that exceeded 50 percent of the replacement cost of the facility for both Seismic Mitigation Program (SMP) and Facility Hardship projects. Staff believes that statute does not preclude the Board from allowing the District to use replacement funding for rehabilitation work. An analysis of statute and SFP Regulation is provided below, as well as a brief summary of past Board actions for consideration.

Analysis of Statute

To qualify for hardship funding, EC Section 17075.10(b)(2) requires a district to "Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities...." This section goes on to provide further clarification for projects under the SMP, but for non-SMP facility hardship projects, the SFP Regulations govern the requirements and funding allowances to be provided under the program. The issue of allowing or requiring a District to construct a new facility if the rehabilitation costs exceed 50 percent of the SFP replacement cost of the building is not addressed in statute.

(Continued on Page Four)

STAFF ANALYSIS/STATEMENTS (cont.)

Analysis of SFP Regulation
SFP Regulation Section 1859.82(a)(1)(A) allows a building whose rehabilitation cost exceeds 50 percent of the replacement cost to be eligible for replacement. It states the following: "If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost." However, the District's request is not for replacement but rather for rehabilitation. The same regulation section states: "If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(e)...."

Previously, Staff has interpreted this regulation section to mean that a district would only be eligible for the type of project dictated by the cost/benefit analysis. Those projects where rehabilitation costs exceed 50 percent of the replacement cost have only been approved for replacement funding.

Prior Board Actions
Use of the 50 percent threshold is appropriate in most cases, but does not address all unique issues.

In 2012 and January 2016, the Board approved replacement funding for the Simi Valley and Palm Springs Unified School Districts respectively to perform rehabilitation work on buildings due to their historical significance as a result of the districts' appeal requests.

In an appeal from Coalinga-Huron Joint Unified School District in 2013, the district requested replacement funding for an SMP project to rehabilitate a building that has significant historical value to the community and had increased rehabilitation costs due to the building type. For that project, there was a $1.57 million difference in replacement and rehabilitation funding. The Board approved the district for rehabilitation funding.

In April 2016, the Board approved replacement funding at replacement amounts for the District to perform rehabilitation work at five school sites on multiple buildings due to the same factors presented in this item. The Board also approved immediate State Apportionments for four of the five projects. The fifth project received an Apportionment at the following Board meeting.

Cost/Benefit Analysis
The replacement cost is calculated based on the eligible square footage of the building, and the rehabilitation is based on a cost estimate submitted by the District of the minimum work required to obtain DSA approval. The current cost/benefit analyses for the two current projects are shown in the chart below.

Cost Benefit Analysis		
Jack Norton Elementary – 51/62901-00-005		
Cost to Rehab vs. Replace	Rehabilitation Cost	$ 2,250,498
	Replacement Cost	$ 2,356,728
	Percentage	95.5%
Orleans Elementary – 51/62901-00-006		
Cost to Rehab vs. Replace	Rehabilitation Cost	$3,323,367
	Replacement Cost	$3,718,773
	Percentage	89.2%

(Continued on Page Five)

STAFF ANALYSIS/STATEMENTS (cont.)

Impact on Modernization Eligibility
If the Board were to provide replacement funding, those affected buildings would receive a new age for purposes of generating modernization eligibility under SFP Regulations, which could affect future modernization eligibility.

Summary
As submitted, the rehabilitation work cost estimates exceed 50 percent of the replacement cost for the projects on Attachments C and D, which qualifies the projects for replacement funding rather than rehabilitation under SFP Regulations. Staff agrees that the SFP Regulations do not address the unique issues presented by the District. Further, statute does not specify that buildings must be replaced if they qualify for replacement.

Staff is unable to administratively approve the District's request. Based on past Board actions and the circumstances of these projects, Staff recommends providing replacement funding for these two projects and allowing the District to perform rehabilitation work.

II. Immediate Apportionments for both Projects

District Position
The District is requesting immediate Apportionments for both projects.

Staff Position
Due to the urgency of the situation described in the District's appeal request, Staff recommends that the District receive immediate Apportionments for both projects presented as Attachments C and D Apportionments outside of the priority funding process will result in the District having immediate access to cash once a *Fund Release Authorization* is submitted. While the District would have 18 months to submit a fund release request versus the 90 day requirement under priority funding, the District has indicated they would submit the *Fund Release Authorization* immediately upon Board approval.

If the District were to receive unfunded approvals following the priority funding process, the earliest date the District could receive an Apportionment is after January 1, 2017, and more likely not until Spring 2017, when cash becomes available. While the work for the buildings in these projects is largely complete, the District must complete the abatement and replace the roofs and walls for this project before students are allowed back into the facilities.

Since the District has exhausted its available funding and qualifies for full funding under the Financial Hardship program, access to cash quickly will allow them to continue mitigating the mold issues.

Therefore, Staff is recommending that the funding be made available as Apportionments outside the priority funding process.

(Continued on Page Six)

III. Additional Applications

The District has submitted three additional applications for other school sites with similar issues as the two schools presented as part of this appeal. The applications and requested amounts as reported by the District are listed below.

SFP Application & Site	*Requested State Share	*Potential Financial Hardship Share	District Share
51/62901-00-007 Hoopa Elementary	$5,784,820	$5,784,820	$0
51/62901-00-008 Hoopa High	$6,924,585	$6,924,585	$0
51/62901-00-009 Trinity Valley Elementary	$3,052,904	$3,052,904	$0
TOTALS:	**$15,762,309**	**$15,762,309**	**$0**

*Amounts listed are the initial requested amounts only and have not yet been verified.

OPSC is confirming available bond authority and has started to process these applications to determine the total amounts each project may qualify for. It is likely that the remaining applications will also exceed the 50% threshold for rehabilitation costs and the District has indicated that there are still immediate cash needs for the other schools. Therefore, if the Board approves the appeal request for the two projects in this item, Staff requests that if the remaining projects are eligible for funding, the Board consider authorizing OPSC to present the remaining projects as part of the consent calendar inclusive of allowing replacement funding for rehabilitation work and an Apportionment outside of the priority funding process.

RECOMMENDATIONS

Pursuant to the *Rules and Procedures of the State Allocation Board,* "Staff is providing the following options, for the three different issues addressed here, 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."

Staff recommendations for the two projects are listed below.

I. Replacement Funding

Provide Replacement Funding at Replacement Amounts and Allow Rehabilitation Work for:

Attachment	SFP Application	Site	Total Grant Amount
C	51/62901-00-005	Jack Norton ES	$5,228,894
D	51/62901-00-006	Orleans ES	$5,243,238

For all Facility Hardship projects, the State portion of any and all savings which may be realized from the funding of the project must be returned to the State.

(Continued on Page Seven)

II. Apportionments

Provide Apportionments for the following projects:

Attachment	SFP Application	Site	Total Grant Amount
C	51/62901-00-005	Jack Norton ES	$5,228,894
D	51/62901-00-006	Orleans ES	$5,243,238

III. Additional Applications

Make a finding that in the event that the three remaining applications; 51/62901-00-007 at Hoopa Elementary School, 51/62901-00-008 at Hoopa High School and 51/62901-00-009 at Trinity Valley Elementary School, qualify for funding, bond authority is available, and in the event that the District requests replacement funding for rehabilitation work and an Apportionment outside of the priority funding process, Staff shall present the items for Board consideration in the consent section of a future agenda.

BOARD ACTION

In considering this Item, the Board approved staff's recommendations, which provided: 1) Replacement funding at Replacement amounts and allows Rehabilitation work for the Jack Norton Elementary and Orleans Elementary Schools, respectively; 2) State Apportionments for the two projects; and 3) that a finding be made in the event the three additional projects [Hoopa Elementary, Hoopa High, and Trinity Valley Elementary Schools] qualify for funding, and there is sufficient bond authority available, and that the District requests replacement funding for rehabilitation work and a State Apportionment outside of the priority funding process, staff shall present these three items for Board consideration in the Consent portion of a future Agenda.

ATTACHMENT A

AUTHORITY

Education Code (EC) Section 17075.10(b)(2) states that a school district applying for hardship state funding must:

> …demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities. Funds for the purpose of seismic mitigation work or facility replacement pursuant to this section shall be allocated by the board on a 50-percent state share basis…..If the board determines that the seismic mitigation work of a school building would require funding that is greater than the 50 percent of the funds required to construct a new facility, the school district shall be eligible for funding to construct a new facility under this chapter.

EC Section 17070.35(a) states the following:

> (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:
>
> (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

EC Section 17070.35(a)(2) states that the Board shall, "Establish and publish any procedures and policies in connection with the administration of…(*the SFP*) as it deems necessary."

SFP Regulation Section 1859.82 states the following: "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."

SFP Regulation Section 1859.82(a)(1)(A) states:

> If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility…If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

SFP Regulation Section 1859.90 states that "a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire…apportionment shall be rescinded without further Board action…"

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Klamath-Trinity Joint Unified School District	
SCHOOL NAME	**COUNTY**
Jack Norton Elementary, Orleans Elementary	Humboldt
DISTRICT REPRESENTATIVE	**E-MAIL ADDRESS**
Jon Ray	jray@ktjusd.k12.ca.us

Purpose of Request:

Request replacement funding for rehabilitation Facility Hardship projects that exceed 50% of the Current Replacement Cost.

Basis of Request:

- ☐ Law (Statute) _____
- ■ Regulation 1859.82(a)(1)(A)
- ■ Other (specify) Unique Circumstances

Description:

Please see attached letter.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE: Jon Ray

DATE: 9/16/2016

Klamath-Trinity Joint Unified School District

P. O. BOX 1308 + HOOPA, HUMBOLDT COUNTY, CALIFORNIA 95546

JON RAY
Superintendent

Telephone (530) 625-5600 FAX (530) 625-5611

Web address: http://www.ktjusd.k12.ca.us

September 14, 2016

Hannah Konnoff
Office of Public School Construction
707 Third Street
West Sacramento, CA 95605

Subject: SAB 189 Attachment

Purpose of Request

The Klamath-Trinity Joint Unified School District respectfully requests Facility Hardship Replacement Funding to rehabilitate school facilities at the following sites:

- Jack Norton Elementary – 62901-51
- Orleans Elementary – 62901-47

The cost to rehabilitate these school facilities exceeds 50% of the OPSC calculated Current Replacement Cost. However, based on the unique circumstances regarding the District's geographic location, current construction climate and community significance, rehabilitating the buildings is the most prudent use of local and State funds.

This SAB 189 Appeal Form is being submitted as the OPSC cannot administratively approve the District's request.

Background

In April 2014, the District began to investigate water intrusion issues at various school sites. After discovering the water damage and mold, the District closed affected facilities and immediately began the remediation process. The District filed Facility Hardship applications for those projects, and was approved for replacement funding to rehabilitate school facilities by the SAB in April 2016.

While the initial projects were taking place, in February 2016 the District discovered water damage and mold in additional facilities. All schools in the District were closed for two weeks in February 2016 while various unaffected buildings were temporarily reconfigured to house students and staff displaced by the mold. In addition to the Jack Norton and Orleans school sites, buildings at the Hoopa Valley Elementary, Trinity Valley Elementary and Hoopa Valley High School sites also require further mold remediation.

The mold and dry rot present at our school sites are an immediate threat to the health and safety of the pupils and staff at our District, as well as causing a detriment to our educational programs. Being unable to house pupils in the affected facilities has resulted in students taking classes outdoors and displacing art programs, music programs, physical education programs, library/media center facilities, computer classrooms and resource classrooms. This presents a direct disadvantage to our pupil's academic achievement goals.

The OPSC staff concurs that the issues noted above present a health and safety hazard to the District's pupils and staff.

Rehabilitation of Facilities is the Most Cost Effective Approach

Upon discovering the health and safety issues, the District reviewed the most cost effective approach to getting the students and staff back into appropriate facilities. Taking into consideration replacement costs and the District's available funds, rehabilitation work proved to be the most economical way to move forward.

The District has committed all available resources in the effort to mitigate the health and safety issues at our schools and cannot take on any additional debt. Replacing the facilities was not an available option provided the costs for replacement and the District's debt limits. It would not be economically feasible for the District to replace these buildings as the true replacement costs far exceed the replacement funding from the State and the District's available funds.

The following factors are key contributors to the increased construction costs for the District's geographic location:

Environment

The schools are located in a micro-climate that is very humid. The persistent humidity requires unique designs with regards to the building envelope to prevent water damage. This adds cost to design and construction of a replacement building and prevents the District from using prefabricated or portable structures.

Remote Location

Due to the District's remote location, the construction costs for all projects are considerably higher than other locations in the State. Contractors must bring in and house construction workers from outside the area since the local construction pool is insufficient for projects of the District's size. Low supply of construction materials in the immediate area also adds costs to the project.

Community Significance

These schools are an important focal point for the community. Due to its remote location of the District, there are no alternatives available for the students and the community if these facilities were no longer available. 90% of the District's students are Native American. 90% of the District's students qualify for free and reduced lunch. Much of the student population is at-risk and socio-economically disadvantaged, with a high rate of suicide among young males. Many students spend up to 12 hours a day at our schools sites for before and after school programs and the District provides three meals a day. The schools represent a safe and nurturing environment to help the student achieve academically and socially, and also provides interventions to address violence and substance abuse.

Conclusion

Based on the District's unique circumstances, we request the SAB to fund the rehabilitation of these facilities at the Replacement funding level.

Sincerely,

Jon Ray
Superintendent

Klamath-Trinity Joint Unified School District

P. O. BOX 1308 + HOOPA, HUMBOLDT COUNTY, CALIFORNIA 95546

JON RAY
Superintendent

Telephone (530) 625-5600 FAX (530) 625-5611

Web address: http://www.ktjusd.k12.ca.us

September 21, 2016

Hannah Konnoff
Office of Public School Construction
707 Third Street
West Sacramento, CA 95605

Subject: SAB 189 2nd Attachment

Dear Ms. Konnoff,

As an addition to the SAB 189 Appeal we submitted, the Klamath-Trinity Joint Unified School District respectfully requests cash apportionments for the school facilities for the following sites:

- Jack Norton Elementary – 62901-51
- Orleans Elementary – 62901-47

Sincerely,

Jon Ray
Superintendent

Klamath-Trinity Joint Unified School District

P. O. BOX 1308 + HOOPA, HUMBOLDT COUNTY, CALIFORNIA 95546

JON RAY
Superintendent

Telephone (530) 625-5600 FAX (530) 625-5611

Web address: http://www.ktjusd.k12.ca.us

October 5, 2016

Hannah Konnoff
Office of Public School Construction
707 Third Street
West Sacramento, CA 95605

Subject: Additional Applications

The Klamath-Trinity Joint Unified School District respectfully requests Facility Hardship Replacement Funding to rehabilitate school facilities at the following sites:

- Hoopa Valley Elementary – 51/62901-00-007
- Hoopa Valley High – 51/62901-00-008
- Trinity Valley Elementary – 51/62901-00-009

The cost to rehabilitate these school facilities exceeds 50% of the OPSC calculated Current Replacement Cost, and the District has continued need for immediate funding to complete these projects so that we may house pupils and staff in safe and appropriate facilities.

Should additional bond authority become available, the District requests that three additional rehabilitation projects mentioned above also receive replacement funding for rehabilitation work and an Apportionment outside of the priority funding process.

Sincerely,

Jon Ray
Superintendent

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, October 17, 2016

SCHOOL DISTRICT DATA	
School District: ……..…KLAMATH TRINITY JOINT UNIFIED	County:……..……..……HUMBOLDT
Application Number:……...……51/62901-00-005	School Name:.....JACK NORTON ELEMENTARY
Total District Enrollment:……..……..…...……..1,025	Project Grade Level:……...…...…..…K-8
Financial Hardship:……..…..……...…YES	

The District qualifies for financial hardship pursuant to SFP Regulation Section 1859.81(c)(4). The District has demonstrated it is financially unable to provide all or part of the matching funds and is levying the developer fees or equal alternative revenue source justified by law. The District's total bonding capacity as of November 4, 2015, is $5 million or less.

PURPOSE OF REPORT

Type of Request	State Allocation Board (Board) approval for an Apportionment for a School Facility Program (SFP) Facility Hardship Replacement project.
Total Project Cost	$5,228,894
Cost to the State	$5,228,894

DESCRIPTION

Description of Health and Safety Threat	Jack Norton Elementary School, located on the Yurok Indian Reservation in Northern California is in a region with annual rainfall levels approaching 72 inches and abnormally high humidity levels. In December of 2015 and January of 2016, a licensed industrial hygienist inspected the multipurpose room, lobby, and library as well as restrooms, the boiler room, and the heating systems in the primary building on the site. Testing revealed high levels of mold due to water incursion from the roof areas. The industrial hygienist determined that the mold constituted a health and safety issue, and the Humboldt County Department of Health and Human Services (HCDHHS) concurred. The multipurpose room, main office, and library have been closed due to this issue.
Scope of Project	Rehabilitation work consisted of mold abatement on all surfaces, including the removal and replacement of ceiling tiles, roof plywood and insulation, drywall, siding and wall plywood under a negative air containment area, and the installation of a new roofing system to provide adequate ventilation.
Status of School Site	A temporary food trailer has been set up on the campus and students are eating lunch in their classrooms. Mitigation work has not yet begun.

QUALIFYING CRITERIA

Government/State Level Concurrence	The District has obtained concurrence with the hazards reported and with the proposed minimum work for rehabilitation from the HCDHHS.
Staff Supports the District's Request	Yes

(Continued on Page Two)

Site Visit Completed by Staff	Staff has accepted photographs and a report from the licensed industrial hygienist and the letter of concurrence from the HCDHHS in lieu of a site visit.

AUTHORITY

See Attachment C-1.

RECOMMENDATIONS

1. Approve the District's request for an Apportionment for Facility Hardship replacement funding for Jack Norton Elementary pursuant to SFP Regulation Section 1859.82(a) as provided on Attachment C-2.

2. Provide that for purposes of SFP modernization eligibility, the building age would be reset to 12 months from the date of DSA plan approval.

3. Provide that the State portion of any and all project savings realized from the funding of this replacement project must be returned to the State.

ATTACHMENT C-1

AUTHORITY

Education Code (EC) Section 17075.10(a) states:

> A school district may apply for hardship assistance in cases of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, the need to repair, reconstruct, or replace the most vulnerable school facilities that are identified as a Category 2 building, as defined in the report submitted pursuant to Section 17317, determined by the department to pose an unacceptable risk of injury to its occupants in the event of a seismic event.

SFP Regulation Section 1859.81 states:

Except for Joint-Use Projects and Career Technical Education Facilities Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education….

(b) From the funds deemed available as a matching contribution, the district may retain $19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district.…

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) The district's total bonding capacity at the time of the request for financial hardship status is $5 million or less.

(5) Other evidence of reasonable effort as approved by the SAB….

SFP Regulation Section 1859.82 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.."

SFP Regulation Section 1859.82(a)(1) provides for Facility Hardship grant funding when:

> 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 the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, 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.

ATTACHMENT C-1

AUTHORITY (cont.)

SFP Regulation Section 1859.82(a)(1)(A) states:

> If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. The cost/benefit analysis shall not include increased costs associated with high performance related costs or components, with the exception of those high performance components that were pre-existing in the classroom or related facility. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for either grant below, as applicable:
>
> 1. Modernization Excessive Cost Hardship Grant for Rehabilitation Costs pursuant to Section 1859.83(e), or
> 2. A grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

SAB Meeting: **October 17, 2016** **New Construction - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 51/62901-00-005
School District: Klamath Trinity Joint Unified
County: Humboldt
School Name: Jack Norton Elementary

PROJECT DATA

Type of Project:	K-8
K-6:	
7-8:	
9-12:	
Non-Severe:	
Severe:	
Application Filing Basis:	Site Specific
Number of Classrooms:	3
Master Acres:	
Existing Acres:	2
Proposed Acres:	
Recommended Acres:	3
Facility Hardship (a):	Yes
Financial Hardship Requested:	Yes
Alternative Education School:	No
Addition to Existing Site:	No

ADJUSTED GRANT DATA

Project Assistance		$	6,504
Service Site			474,842
Off-Site			63,540
Utilities			351,419
Fac. Hardship Other	**7,817 Sq. Ft.**		1,360,158
Fac. Hardship Toilet	**300 Sq. Ft.**		93,600
Geographic Percent Factor (5%)			81,816
Fire Detection Alarm			8,117
Small Size Project (12%)			174,451
Total State Share (50%)			2,614,447
District Share (50%)			2,614,447
Total Project Cost		$	**5,228,894**

PROJECT FINANCING

State Share		
This Project	$	2,614,447
District Share		
Cash Contribution		0
Financial Hardship		2,614,447
Total Project Cost	$	**5,228,894**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
New Construction/Add. Grant	**047-500**	**47**		$ 1,189,991.97	$ 1,189,991.97
New Construction/Add. Grant	**047-501**	**47**		1,424,455.03	1,424,455.03
District Share					
Financial Hardship	**047-500**	**47**		2,614,447.00	2,614,447.00
Cash Contribution				0.00	
Total			$	$ **5,228,894.00**	$ **5,228,894.00**

Funding Source: Proposition 47 Bonds/2002-Nov.

The District is required to submit a valid Fund Release Authorization (Form SAB 50-05) within 18 months of the date of the apportionment; otherwise, the apportionment will be rescinded without further board action.

Senate Bill 854, Chapter 28, Statutes of 2014 repealed Labor Code (LC) Section 1771.3 which required school districts to provide payment to Department of Industrial Relations (DIR) for prevailing wage monitoring. As a result, school districts awarding a construction contract on or after June 20, 2014 are not mandated to provide payment for DIR monitoring and enforcement of prevailing wage requirements. Projects with an initial public works contract awarded on or after June 20, 2014 are not eligible to receive an additional grant for prevailing wage monitoring; however, school districts are still required to notify DIR within five days of initial contract award pursuant to LC Section 1773.3(a)(1).

The District qualifies for financial hardship pursuant to SFP Regulation Section 1859.81(c)(1). As of September 28, 2015, the current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity.

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

Provide that the State portion of any and all project savings realized from the funding of this Facility Hardship Program project must be returned to the State.

ATTACHMENT D
REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, October 17, 2016

SCHOOL DISTRICT DATA

School District: ……KLAMATH TRINITY JOINT UNIFIED
County:……HUMBOLDT
Application Number:……51/62901-00-006
School Name:.....ORLEANS ELEMENTARY
Total District Enrollment:……1,025
Project Grade Level:……K-8
Financial Hardship:……YES

The District qualifies for financial hardship pursuant to SFP Regulation Section 1859.81(c)(4). The District has demonstrated it is financially unable to provide all or part of the matching funds and is levying the developer fees or equal alternative revenue source justified by law. The District's total bonding capacity as of November 4, 2015, is $5 million or less.

PURPOSE OF REPORT

Type of Request	State Allocation Board (Board) approval for a State Apportionment for a School Facility Program (SFP) Facility Hardship Replacement project.
Total Project Cost	$5,243,238
Cost to the State	$5,243,238

DESCRIPTION

Description of Health and Safety Threat	Orleans Elementary School in Orleans, California is in a region with annual rainfall levels approaching 72 inches and abnormally high humidity levels. In December of 2015 and January of 2016, a licensed industrial hygienist inspected the multipurpose room, lobby, and library as well as restrooms, the boiler room, and the heating systems in the primary building on the site. Testing revealed high levels of mold due to water incursion from the roof areas. The industrial hygienist determined that the mold constituted a health and safety issue, and the Humboldt County Department of Health and Human Services (HCDHHS) concurred. The multipurpose room, main office, and library have been closed due to this issue.
Scope of Project	Rehabilitation work consisted of mold abatement on all surfaces, including the removal and replacement of ceiling tiles, roof plywood and insulation, drywall, siding and wall plywood under a negative air containment area, and the installation of a new roofing system to provide adequate ventilation.
Status of School Site	A temporary food trailer has been set up on the campus and students are eating lunch in their classrooms. Mitigation work has not yet begun.

QUALIFYING CRITERIA

Government/State Level Concurrence	The District has obtained concurrence with the hazards reported and with the proposed minimum work for rehabilitation from the HCDHHS.
Staff Supports the District's Request	Yes
Site Visit Completed by Staff	Staff has accepted photographs and a report from the licensed industrial hygienist and the letter of concurrence from the HCDHHS in lieu of a site visit.

(Continued on Page Two)

AUTHORITY

See Attachment D-1.

RECOMMENDATIONS

1. Approve the District's request for a State Apportionment for Facility Hardship replacement funding for the Main Building at Orleans Elementary pursuant to SFP Regulation Section 1859.82(a) as provided on Attachment D-2.

2. Provide that for purposes of SFP modernization eligibility, the building age would be reset to 12 months from the date of DSA plan approval.

3. Provide that the State portion of any and all project savings realized from the funding of this replacement project must be returned to the State.

ATTACHMENT D-1

AUTHORITY

Education Code (EC) Section 17075.10(a) states:

> A school district may apply for hardship assistance in cases of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, the need to repair, reconstruct, or replace the most vulnerable school facilities that are identified as a Category 2 building, as defined in the report submitted pursuant to Section 17317, determined by the department to pose an unacceptable risk of injury to its occupants in the event of a seismic event.

SFP Regulation Section 1859.81 states:
Except for Joint-Use Projects and Career Technical Education Facilities Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:
(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education….
(b) From the funds deemed available as a matching contribution, the district may retain $19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district.…
(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
(1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
(3) It is a County Superintendent of Schools.
(4) The district's total bonding capacity at the time of the request for financial hardship status is $5 million or less.
(5) Other evidence of reasonable effort as approved by the SAB….

SFP Regulation Section 1859.82 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.."

SFP Regulation Section 1859.82(a)(1) provides for Facility Hardship grant funding when:

> 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 the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, 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.

ATTACHMENT D-1

AUTHORITY (cont.)

SFP Regulation Section 1859.82(a)(1)(A) states:

> If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. The cost/benefit analysis shall not include increased costs associated with high performance related costs or components, with the exception of those high performance components that were pre-existing in the classroom or related facility. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for either grant below, as applicable:
>
> 1. Modernization Excessive Cost Hardship Grant for Rehabilitation Costs pursuant to Section 1859.83(e), or
> 2. A grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

SAB Meeting: **October 17, 2016** **New Construction - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 51/62901-00-006
School District: Klamath Trinity Joint Unified
County: Humboldt
School Name: Orleans Elementary

PROJECT DATA

Type of Project:	K-8
K-6:	
7-8:	
9-12:	
Non-Severe:	
Severe:	
Application Filing Basis:	Site Specific
Number of Classrooms:	0
Master Acres:	
Existing Acres:	9
Proposed Acres:	
Recommended Acres:	7
Facility Hardship (a):	Yes
Financial Hardship Requested:	Yes
Alternative Education School:	No
Addition to Existing Site:	No

ADJUSTED GRANT DATA

Project Assistance		$	6,504
Service Site			114,096
Off-Site			29,063
Utilities			219,916
Fac. Hardship Other	**10,649 Sq. Ft.**		1,852,926
Fac. Hardship Toilet	**168 Sq. Ft.**		52,416
Geographic Percent Factor (5%)			107,240
Fire Detection Alarm			10,817
Small Size Project (12%)			228,641
Total State Share (50%)			2,621,619
District Share (50%)			2,621,619
Total Project Cost		$	**5,243,238**

PROJECT FINANCING

State Share		
This Project	$	2,621,619
District Share		
Cash Contribution		0
Financial Hardship		2,621,619
Total Project Cost	$	**5,243,238**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
New Construction/Add. Grant	**047-500**	**47**		$ 2,621,619	$ 2,621,619
District Share					
Financial Hardship	**047-500**	**47**		2,621,619	2,621,619
Cash Contribution				0	
Total			$	$ **5,243,238**	$ **5,243,238**

Funding Source: Proposition 47 Bonds/2002-Nov.

The District is required to submit a valid Fund Release Authorization (Form SAB 50-05) within 18 months of the date of the apportionment; otherwise, the apportionment will be rescinded without further Board action.

Senate Bill 854, Chapter 28, Statutes of 2014 repealed Labor Code (LC) Section 1771.3 which required school districts to provide payment to Department of Industrial Relations (DIR) for prevailing wage monitoring. As a result, school districts awarding a construction contract on or after June 20, 2014 are not mandated to provide payment for DIR monitoring and enforcement of prevailing wage requirements. Projects with an initial public works contract awarded on or after June 20, 2014 are not eligible to receive an additional grant for prevailing wage monitoring; however, school districts are still required to notify DIR within five days of initial contract award pursuant to LC Section 1773.3(a)(1).

The District qualifies for financial hardship pursuant to SFP Regulation Section 1859.81(c)(1). As of September 28, 2015, the current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity.

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

Provide that the State portion of any and all project savings realized from the funding of this Facility Hardship Program project must be returned to the State.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, October 17, 2016

SCHOOL DISTRICT DATA	
School District: .....SAN JUAN UNIFIED	County:.....SACRAMENTO
Application Number:.....51/67447-00-001	School Name……BELLA VISTA HIGH
Total District Enrollment:.....49,564	Project Grade Level:……9-12
Financial Hardship:.....NO	

PURPOSE OF REPORT

To present the District's request for Seismic Mitigation Program (SMP) replacement funding in order to rehabilitate an existing facility.

DESCRIPTION

The District submitted an *Application for Funding* (Form SAB 50-04) requesting replacement funding for rehabilitation work for two shop buildings at Bella Vista High under the SMP. However, the cost/benefit analysis for the project shows that the cost of rehabilitating the building exceeds the threshold set in School Facility Program (SFP) Regulations of 50 percent of the replacement cost, which qualifies the District for replacement funding. The Office of Public School Construction (OPSC) is unable to administratively approve replacement funding for rehabilitation work. Therefore, the District concurrently submitted a *School District Appeal Request* (Form SAB 189) to request approval to use replacement funding for rehabilitation work.

AUTHORITY

See Attachment A.

BACKGROUND

The District submitted a Facility Hardship request for SMP funding on August 5, 2016 for the rehabilitation (seismic retrofit) of two shop buildings (Buildings H & J) at Bella Vista High School. The buildings were constructed in the early 1960s and are classified as Most Vulnerable Category 2 Buildings. A structural engineer determined the buildings to have a "high potential for catastrophic collapse due to inadequacy of the existing lateral systems." The District also submitted a cost/benefit analysis for the project that shows that the estimated cost to rehabilitate the buildings exceeds the estimated Current Replacement Cost. The Division of the State Architect (DSA) determined the buildings qualified for SMP funding and approved the "evaluation and design criteria report" in early 2016. In June 2016 DSA approved the plans and specifications, showing that the buildings will be almost completely stripped of their interiors and a new singular building will essentially be built on top of and around the framework and existing roof of the two buildings being rehabilitated.

Upon completion of a review of the submitted documents, Staff concurred that the project qualifies for replacement funding, pursuant to SFP Regulation Section 1859.82(a)(1)(A). Along with the funding request, the District submitted a Form SAB 189 in order to request approval to use replacement funding for rehabilitation work. The District's request is based on the scope of work, the potential allowance in statute to do so, state and local funding considerations, and prior Board action for similar requests.

(Continued on Page Two)

STAFF ANALYSIS/STATEMENTS

District Position

In its request, the District requests the Board's approval to use SMP replacement funding to rehabilitate the building. The District believes this request should be granted based on the following:

1) Scope of work - The project is essentially a replacement not a rehabilitation project;
2) Law - The Education Code (EC) does not prevent such use of replacement funding;
3) State and Local Bond Fund Considerations - The District's request for 50 percent of the grant for a new construction project is less than providing 50 percent of the rehabilitation costs approved by DSA;
4) Cost and Design Considerations – The cost to demolish and replace the existing building is cost prohibitive.
5) Prior SAB Actions - A past approval by the Board of a similar project can be considered.

As part of the SAB 189, the District provided pictures of the remaining structure after the partial demolition of the existing building to demonstrate that the scope of work is essentially a replacement project. The photos show that the District has torn down all exterior walls, windows, the concrete slab, and internal plumbing and casework, with the exception of a few of the exterior flange columns and metal roof decking.

The District also states that mainly for financial reasons, it decided to rehabilitate the facility in lieu of replacing it. Replacing the existing, extensive mechanical, electrical and plumbing infrastructure would be more costly in the long run than to retain it.

The full text of the District's request in the Form SAB 189 is included as Attachment B.

Staff Position

Rehabilitation versus Replacement
The District is requesting to use replacement funding for rehabilitation work of two qualifying Most Vulnerable Category 2 buildings under the SMP. Under the current SFP regulations, the District qualifies for replacement funding, but is requesting to rehabilitate the buildings for a number of reasons, mainly financial as described in the District Position.

The statute governing SMP funding may allow flexibility. The Board has taken action on similar requests in the past. Staff has provided an analysis of SFP regulation and statute below, as well as a summary of past Board actions for consideration.

Analysis of Statute
EC Section 17075.10(b)(2) states the following: "If the board determines that the seismic mitigation work of a school building would require funding that is greater than the 50 percent of the funds required to construct a new facility, the school district *shall be eligible* for funding to construct a new facility under this chapter" (emphasis added). The statute does not explicitly state that the school district *must* construct a new facility if the rehabilitation costs exceed 50 percent of the replacement cost of the building, only that it *shall be eligible* to do so. In this situation, the statute seems to protect a district's right to construct a new facility and entitles the district to hardship funding should the district decide to replace the facility. The statute, however, does not appear to state that the Board would not fund the rehabilitation of a building should the district choose to rehabilitate it.

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

Analysis of SFP Regulations

SFP Regulation Section 1859.82(a)(1)(A) allows a building whose rehabilitation exceeds 50 percent of the replacement cost to be eligible for replacement. It states the following: "If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost." However, the District's request is not for replacement of the buildings but rather for the rehabilitation of them. There is no section specifically dedicated to SMP rehabilitation requests. The only mention of this type of request is under the same section (which assumes a replacement request), which states: "If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation."

Previously, Staff has interpreted this regulation section to mean that a district would only be eligible for the type of project dictated by the cost/benefit analysis. Those projects where rehabilitation costs exceed 50 percent of the replacement cost have only been approved for replacement funding, based on the current enrollment or square footage at the site. The purpose of the 50 percent threshold is to ensure responsible use of State bond funds, assuming that replacing a building with such extensive repair requirements with a new building is a better use of funds.

Prior Board Actions

Use of the 50 percent threshold is appropriate in most cases, but does not address all circumstances.

In 2012 and January 2016, the Board approved replacement funding for the Simi Valley and Palm Springs Unified School Districts respectively to perform rehabilitation work on buildings due to their historical significance as a result of the districts' appeal requests.

In an appeal from Coalinga-Huron Joint Unified School District in 2013, the district requested replacement funding for an SMP project to rehabilitate a building that has significant historical value to the community and had increased rehabilitation costs due to the building type. For that project, there was a $1.57 million difference in replacement and rehabilitation funding. The Board approved the district for rehabilitation funding.

In April 2016 the Board heard another appeal for Klamath-Trinity Joint Unified, to fund Facility Hardship rehabilitation work for water intrusion and mold at four school sites, at the replacement amount. The buildings in this case were not historical in nature, but the district believed that rehabilitation was the most prudent use of funds due to the district's geographic location, construction costs, and the community significance of the buildings. The Board approved the four projects at the replacement funding amounts in April and May 2016.

(Continued on Page Four)

STAFF ANALYSIS/STATEMENTS (cont.)

The following table presents a comparison of the appeals previously heard by the Board, the dollar amounts for the various types of funding, and the District's current appeal:

	SIMI VALLEY USD	COALINGA-HURON JUSD	PALM SPRINGS USD	KLAMATH-TRINITY JUSD (*4 projects)	SAN JUAN USD
Rehabilitation Grant Amount	$1,736,978	$2,164,798	$3,347,776	$17,736,911	$4,376,616
Replacement Grant Amount	$1,742,692	$3,739,034	$4,665,889	$22,662,121	$4,656,041
Difference	$5,714	$1,574,236	$1,310,212	$4,925,210	$279,425
Percent of Rehab/ Replacement	99.7%	57.9%	71.8%	59.1%, 64.7%, 87.0%, 87.5%	94.0%
District Request	Replacement Funding for Rehabilitation Work				
Board Action	Replacement Funding Amount	*Rehabilitation* Funding Amount	Replacement Funding Amount	Replacement Funding Amount	TBD

*The Board approved four projects at the April and May 2016 for Klamath-Trinity Joint Unified. The total amounts for all four are listed in the table and CBA result is listed separately.

Cost/Benefit Analysis
The current cost/benefit analysis for the project indicates an estimated rehabilitation cost that is 94.0 percent of the replacement cost. The replacement cost is calculated based on the eligible square footage of the building, and the rehabilitation is based on an OPSC-verified cost estimate submitted by the District of the minimum work required to obtain DSA approval.

Impact on Modernization Eligibility
If the Board were to provide replacement funding, the buildings would receive a new age for purposes of generating modernization eligibility under SFP Regulations. If the shop buildings received a new age by receiving replacement funding, the modernization eligibility at Bella Vista High would be adjusted to reflect the new age of the buildings. Conversely, rehabilitation funding is limited to the minimum work required to obtain DSA approval. If rehabilitation funding is provided, the building would not receive a new age for purposes of generating future modernization eligibility.

Summary
As submitted, the rehabilitation work cost estimate exceeds 50 percent of the replacement cost, which qualifies the project for replacement funding rather than rehabilitation under SFP Regulations. Staff agrees that the SFP Regulations do not address the issues presented by the District. However, statute does not specify that buildings must be replaced if they qualify for replacement, only that "the school district may be eligible for [replacement] funding." Because Staff is unable to administratively approve the District's request, Staff is seeking Board direction.

(Continued on Page Five)

BOARD OPTIONS

Without Board action, the District is eligible for replacement funding for the purposes of replacing the facilities. At this time, the District has already entered into contracts and has begun construction. To receive replacement funding the District would be required to halt rehabilitation work already in progress, obtain new DSA-approved plans, and resubmit the application for replacement funding.

Pursuant to the *Rules and Procedures of the State Allocation Board,* "Staff is providing the following options 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."

For all SMP projects, the State portion of any and all savings which may be realized from the funding of the project must be returned to the State.

1) Provide Replacement Funding at Replacement Amount and Allow Rehabilitation:
The Board could provide replacement funding per SFP Regulations and allow the District to use the funds to rehabilitate the building. A funding item reflecting an SMP replacement grant and additional grants is included as Attachment C.

Considerations

- EC does not appear to prohibit the Board from providing replacement funding.
- For purposes of SFP modernization eligibility, the building age would be reset to 12 months from the DSA plan approval. The new date would be June 1, 2017.
- District would receive more funding than what was substantiated by the cost estimate for the minimum work required to obtain DSA approval.

2) Provide Rehabilitation Funding at the Rehabilitation Amount:
The Board could provide rehabilitation funding to complete the rehabilitation work based on the estimated cost of rehabilitation. A funding item reflecting a Seismic Rehabilitation Grant and additional grants is included as Attachment D.

Considerations

- District is only apportioned the funding needed to complete the minimum work required to obtain DSA approval and contained in the cost estimate.
- District's future SFP modernization eligibility for building would not be affected.

3) Provide Replacement Funding Capped at the Rehabilitation Amount and Allow Rehabilitation:
The Board could provide replacement funding to complete the rehabilitation work based on the estimated cost of rehabilitation. A funding item reflecting an SMP replacement grant and additional grants is included as Attachment E.

Considerations

- District is only apportioned the funding needed to complete the minimum work required to obtain DSA approval.
- For purposes of SFP modernization eligibility, the building age would be reset to 12 months from the DSA plan approval. The new date would be June 1, 2017.

(Continued on Page Six)

BOARD ACTION

In considering this Item, the Board approved Option #1, which provided Replacement funding at Replacement amounts and allows Rehabilitation work and includes Attachment C. In addition, this approval extends to SFP modernization eligibility by resetting the building age to 12 months from the date of DSA plan approval; the new date would be June 1, 2017.

ATTACHMENT A

AUTHORITY

Education Code (EC) Section 17075.10(b)(2) states that a school district applying for hardship state funding must "demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities. Funds for the purpose of seismic mitigation work or facility replacement pursuant to this section shall be allocated by the board on a 50-percent state share basis…..If the board determines that the seismic mitigation work of a school building would require funding that is greater than the 50 percent of the funds required to construct a new facility, the school district shall be eligible for funding to construct a new facility under this chapter."

EC Section 17070.35(a) states the following:

> (a) In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following:
>
> (1) Adopt rules and regulations, pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, for the administration of this chapter. However, the board shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project. The initial regulations adopted pursuant to this chapter shall be adopted as emergency regulations, and the circumstances related to the initial adoption are hereby deemed to constitute an emergency for this purpose. The initial regulations adopted pursuant to this chapter shall be adopted by November 4, 1998. If the initial regulations are not adopted by that date, the board shall report to the Legislature by that date, explaining the reasons for the delay.

SFP Regulation Section 1859.2 Definitions states in part:

> "Seismic Rehabilitation Grant" means a grant allowable under Education Code Section 17075.10(a) and (b)(2) and Section 1859.82(a)(1)(A)(2), excluding additional grants.

SFP Regulation Section 1859.82 states the following: "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."

SFP Regulation Section 1859.82(a)(1)(A) states:

> If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility…If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.

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 Juan Unified	Pending
SCHOOL NAME	COUNTY
Bella Vista High	Sacramento
DISTRICT REPRESENTATIVE	E-MAIL ADDRESS
Brett Mitchell and David Burke	brett.mitchell@sanjuan.edu / david.burke@sanjuan.edu

Purpose of Request:

To request Seismic Mitigation Program funding for a project consisting of almost the complete tear down of the Shop Building H/J at Bella Vista High School.

Basis of Request:

- [x] Law (Statute) 17075.10
- [x] Regulation 1859.82
- [ ] Other (specify) _____

Description:

See Attachment

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
	July 25, 2016

ATTACHMENT
TO APPEAL REQUEST (FORM SAB 189)

REASON FOR APPEAL

The San Juan Unified School District's facility at Bella Vista High School requires seismic mitigation costs that exceed 50 percent of the current replacement cost as defined by the School Facility Program (SFP) Seismic Mitigation Program (SMP) regulations. In these instances, the OPSC has historically cited these regulations as only allowing districts to receive replacement funding for replacement projects. The District respectfully requests the State Allocation Board to allow the District to receive 50 percent of the funding for a new construction project in order to *rehabilitate its facility*.

In the interest of time, a *School District Appeal Request* (Form SAB 189) has been submitted based on the Office of Public School Construction's (OPSC) past practice that it cannot administratively approve requests of this nature.

BACKGROUND

The specialized shop facility (Building H/J) on the Bella Vista High School site was constructed in the early 1960's. The facility has been determined by Miyamoto International (Structural Engineers) to have a high potential for catastrophic collapse due to inadequacy of the existing lateral systems. The Division of State Architect (DSA) concurred with this structural evaluation and determined that the building meets the eligibility requirements for SMP funding on January 12, 2016. On February 1, 2016, DSA approved the evaluation and design criteria report indicating the scope and minimum work to mitigate the seismic issues. And on June 1, 2016, DSA approved the plans and specifications for the minimum work including the DSA requirement that the building be designed and constructed to meet today's current code and access compliance requirements.

The project was submitted to the DSA under the revised PR 08-03 procedures where only the minimum work required to mitigate the seismic issues was presented in the drawings. The DSA-approved mitigation work and associated costs total $5.5 million, or 117% of the OPSC Replacement Cost calculated at $4.734 million. Therefore, the building qualifies for replacement funding under the SMP.

DISTRICT POSITION

The District respectfully requests the State Allocation Board's (Board) approval for the District to utilize SMP replacement funding to instead rehabilitate the building. The District believes that this request can and should be granted based on the following:

1) **Scope of Work** - The project is essentially a replacement not a rehabilitation project.
2) **Law** - The Education Code (EC) does not prevent such use of replacement funding;
3) **State and Local Bond Fund Considerations** - The District's request for 50% of the grant for a new construction project is less than providing 50% of the rehabilitation costs approved by DSA.
4) **Cost and Design Considerations** - The cost to demolish and replace the existing building with a new one is cost prohibitive. It is also important for the District to maintain the design integrity of the building with the rest of the campus;
5) **Prior SAB Actions** - A past approval by the Board of a similar project can be considered.

Scope of Work

In order to make the building seismically safe, the District must essentially tear down all of the exterior walls, windows, the concrete slab, any internal plumbing and casework with the exception of a few of the exterior flange columns and the metal roof decking. For all intent and purposes, the project is essentially a replacement project. Pictures are attached to provide a sense of the amount of the existing building demolished.

Law

EC Section 17075.10 states the following:

> (a) A school district may apply for hardship assistance in cases of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, the need to repair, reconstruct, or replace the most vulnerable school facilities that are identified as a Category 2 building, as defined in the report submitted pursuant to Section 17317, determined by the department to pose an unacceptable risk of injury to its occupants in the event of a seismic event.
> (b) A school district applying for hardship state funding under this article shall comply with either paragraph (1) or (2).
> ...
> (2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities. Funds for the purpose of *seismic mitigation work or facility replacement* pursuant to this section shall be allocated by the board on a 50-percent state share basis from funds reserved for that purpose in any bond approved by the voters after January 1, 2006. If the board determines that the seismic mitigation work of a school building would require funding that is greater than 50 percent of the funds required to construct a new facility, the school district *shall be eligible for funding to construct a new facility* under this chapter. (*emphasis added*)

RECEIVED
OFFICE OF PUBLIC
SCHOOL CONSTRUCTION
2016 AUG -5 PM 4:02
MAIL ROOM

In the simple reading of the law, the EC provides that seismic mitigation program funds can be used for *seismic mitigation work or facility replacement.* In other words, the statute gives districts the option of using program funds for *seismic mitigation work or facility replacement.* The second portion of the law only defines how much funding can be received if the seismic mitigation work of a school building requires funding that is more than 50 percent of the funds needed to construct a new building. In that instance, a district *is eligible* for funding to construct a new building. Nothing in statute requires that districts that qualify for replacement funding use it for new buildings only.

State and Local Bond Fund Considerations

Approving the District's request for replacement funding has less of an impact on the state bond funds for several reasons:

- The DSA-approved mitigation work and associated costs total approximately $5.5 million representing a state rehabilitation grant of $2.75 million. The new construction grant calculation for the building is $2.468 million. Therefore, providing 50% of the new construction funding at $2.468 million as opposed to 50% of the DSA-approved mitigation costs calculated at $2.75 million has less of an impact on the state bonds.
- Providing replacement funding also leads to the building receiving a new age for purposes of generating modernization eligibility.
- Furthermore, the District has already designed and received approval from DSA on the rehabilitation of the building. Denying the appeal and suggesting that the District

design a "replacement building" in order to obtain SMP funding would be a waste of taxpayer monies.

Cost and Design Considerations
Although the building does not qualify to be placed on any historical register, the District decided to rehabilitate the building mainly for financial reasons. It was determined to have been more costly in the long run to demolish and replace the entire building as the existing building has extensive backbone infrastructure (mechanical, electrical, plumbing, etc.) due to the nature of the use of the buildings (shops) feeding into it that would be expensive to replace to serve the new building. In addition, the District and other stakeholders felt it was very important to maintain the design and character of the building so that it would continue to integrate seamlessly with the rest of the campus.

Prior SAB Actions
The Board approved two very similar requests of the Simi Valley Unified and Palm Springs Unified School Districts on December 12, 2012, and February 24, 2016, respectively, granting the districts funding for a replacement project. Specifically, OPSC stated the following in the agenda items to the Board:

> EC Section 17075.10(b)(2) states the following: "If the board determines that the seismic mitigation work of a school building would require funding that is greater than the 50 percent of the funds required to construct a new facility, the school district *shall be eligible* for funding to construct a new facility under this chapter (emphasis added)." The statute does not explicitly state that a school district *must* construct a new facility if the rehabilitation costs exceed 50 percent of the replacement cost of the building, only that it *shall be eligible* to do so. In this situation, the statute seems to protect a district's right to construct a new facility and entitles the district to hardship funding should the district decide to replace the facility. **The statute, however, does not appear to state that the Board would not fund the rehabilitation of the building should the district choose to rehabilitate it. (emphasis added)**
>
> SFP Regulation Section 1859.82(a)(1)(A) allows a building whose rehabilitation exceeds 50 percent of the replacement cost to be eligible for replacement. It states the following: "If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility...If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83(e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation."
>
> Previously, Staff has consistently interpreted this regulation section to mean that a district would only be eligible for the type of project dictated by the cost/benefit analysis. Those projects where rehabilitation costs exceed 50 percent of the replacement cost have only been approved for replacement funding. Replacement funding is based on the current enrollment at the site. The purpose of the 50 percent threshold is to ensure responsible use of State bond funds. This threshold supposes that replacing a building with such extensive repair requirements with a new building is a

better use of State bond funds. Providing replacement funding also leads to the building receiving a new age for purposes of generating modernization eligibility. Conversely, providing rehabilitation funding only resolves the imminent health and safety issues, but does not result in a modernized facility. A building that receives rehabilitation funding does not receive a new age for purposes of generating modernization eligibility. However, in this case, the extent of the minimum work required to complete the seismic rehabilitation is so extensive that most building finishes and systems are being replaced after being removed in order to complete the retrofit work.

Use of the 50 percent threshold is appropriate in most cases, but does not address unique issues, such as historical buildings. Staff's review of SFP Regulation Section 1859.82 has concluded that historical buildings may not have been contemplated when the Facility Hardship and SMP Regulations were created. The Board could decide that the District has "unique circumstances" not contemplated in the Regulations and approve this SMP rehabilitation conceptual approval on a one-time basis.

The rehabilitation work exceeds 50 percent of the replacement cost, which qualifies the project for replacement rather than rehabilitation under the SFP Regulations. However, approving the District's request would appear to be allowable based on the SMP language in the EC. An approval by the Board would recognize that this is a *unique circumstance* specifically related to the historical landmark designation. However, it should be noted that approval of the rehabilitation funds would not resolve all modernization needs for the building.

While the San Juan Unified School District acknowledges that its building does not qualify to be placed on a historical register as these projects did, as explained under the "Cost and Design Considerations" section, the reasons for keeping some of the building elements are equally as important.

CONCLUSION

The District believes it is complying with the intent of the EC as it relates to the use of SMP funding for the reasons explained above. The District, therefore, respectfully requests the Board's approval to utilize replacement funding for the rehabilitation of the shop building at Bella Vista High School.

RECEIVED
OFFICE OF PUBLIC
SCHOOL CONSTRUCTION
2016 AUG -5 PM 4:02
MAIL ROOM

ATTACHMENT B

BELLA VISTA HIGH SCHOOL
Seismic Mitigation of Shop Building

Post-demolition photos

All elements of building replaced except metal roof decking and some exterior flange columns

ATTACHMENT B

RECEIVED
OFFICE OF PUBLIC
SCHOOL CONSTRUCTION
2016 AUG -5 PM 4:03
MAIL ROOM

SAB Meeting: **October 17, 2016** **Seismic Mitigation Program - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 51/67447-00-001
School District: San Juan Unified
County: Sacramento
School Name: Bella Vista High

PROJECT DATA

Type of Project:	High School
K-6:	
7-8:	
9-12:	
Non-Severe:	
Severe:	
Application Filing Basis:	Site Specific
Number of Classrooms:	5
Master Acres:	
Existing Acres:	50.5
Proposed Acres:	
Recommended Acres:	51.8
Facility Hardship (a):	Yes
Financial Hardship Requested:	No
Alternative Education School:	No
Addition to Existing Site:	No

ADJUSTED GRANT DATA

Fac. Hardship Toilets	161 Sq. Ft.	50,232
Fac. Hardship Other	13,128 Sq. Ft.	2,284,272
Fire Detection Alarm		13,289
Total State Share (50%)		2,347,793
District Share (50%)		2,347,793
Total Project Cost		**$ 4,695,586**

PROJECT FINANCING

State Share		
This Project	**$**	2,347,793
District Share		
Cash Contribution		2,347,793
Financial Hardship		
Total Project Cost	**$**	**4,695,586**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	Unfunded Approval This Action
State Share					
New Construction/Add. Grant	**957-505**	**1D**		$ 2,347,793	$ 2,347,793
District Share					
Cash Contribution				2,347,793	
Total			$	$ **4,695,586**	$ **2,347,793**

Funding Source: Proposition 1D Bonds/2006-Nov.
Pursuant to the Board's action on March 11, 2009, this application has been approved and placed on the Unfunded List.
This approval does not constitute a guarantee or commitment of future State funding.

Senate Bill 854, Chapter 28, Statutes of 2014, repealed Labor Code (LC) Section 1771.3 which required school districts to provide payment to the Department of Industrial Relations (DIR) for prevailing wage monitoring. As a result, school districts awarding a construction contract on or after June 20, 2014 are not mandated to provide payment for DIR monitoring and enforcement of prevailing wage requirements. Projects with an initial public works project awarded on or after June 20, 2014 are not eligible to receive an additional grant for prevailing wage monitoring; however, school districts are still required to notify DIR within five days of initial contract award pursuant to LC Section 1773.3(a)(1).

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

Provide that the State portion of any and all project savings realized from the funding of this Seismic Mitigation Program project will be returned to the State.

STATE ALLOCATION BOARD
APPROVAL ❖ ❖ ❖ October 17, 2016

SAB Meeting: **October 17, 2016** **Seismic Mitigation Program - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No:	58/67447-00-001	**County:**	Sacramento
School District:	San Juan Unified	**School Name:**	Bella Vista High

PROJECT DATA

Type of Project:	High School	**Application Filing Basis:**	Site Specific
Pupils Assigned Under 50 Yrs: K-6:			
7-8:			
9-12:			
Non-Severe:			
Severe:			
Financial Hardship Requested:	No	**Recommended Acres:**	51.8
Alternative Education School:	No	**Existing Acres:**	50.5

ADJUSTED GRANT DATA		
Seismic Rehabilitation	$	4,376,616
Total State Share (50%)		2,188,308
District Share (50%)		2,188,308
Total Project Cost	$	**4,376,616**

PROJECT FINANCING		
State Share		
This Project	$	2,188,308
District Share		
Cash Contribution		2,188,308
Financial Hardship		
Total Project Cost	$	**4,376,616**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	Unfunded Approval This Action
State Share					
New Construction/Additional Grant	**957-505**	**1D**		$ 2,188,308	$ 2,188,308
District Share					
Cash Contribution				2,188,308	
Total				$ **4,376,616**	$ **2,188,308**

Funding Source: Proposition 1D Bonds/2006-Nov.

Pursuant to the Board's action on March 11, 2009, this application has been approved and placed on the Unfunded List.
This approval does not constitute a guarantee or commitment of future State funding.

Senate Bill 854, Chapter 28, Statutes of 2014, repealed Labor Code (LC) Section 1771.3 which required school districts to provide payment to the Department of Industrial Relations (DIR) for prevailing wage monitoring. As a result, school districts awarding a construction contract on or after June 20, 2014 are not mandated to provide payment for DIR monitoring and enforcement of prevailing wage requirements. Projects with an initial public works project awarded on or after June 20, 2014 are not eligible to receive an additional grant for prevailing wage monitoring; however, school districts are still required to notify DIR within five days of initial contract award pursuant to LC Section 1773.3(a)(1).

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

Provide that the State portion of any and all project savings realized from the funding of this Seismic Mitigation Program project must be returned to the State.

(Rev. 1)

SAB Meeting: **October 17, 2016** **Seismic Mitigation Program - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 51/67447-00-001
School District: San Juan Unified
County: Sacramento
School Name: Bella Vista High

PROJECT DATA

Type of Project:	High School
K-6:	
7-8:	
9-12:	
Non-Severe:	
Severe:	
Application Filing Basis:	Site Specific
Number of Classrooms:	5
Master Acres:	
Existing Acres:	50.5
Proposed Acres:	
Recommended Acres:	51.8
Facility Hardship (a):	Yes
Financial Hardship Requested:	No
Alternative Education School:	No
Addition to Existing Site:	No

ADJUSTED GRANT DATA

Capped Fac. Hardship Replacement	$	4,376,616
Fire Detection Alarm		13,289
Total State Share (50%)		2,194,953
District Share (50%)		2,194,953
Total Project Cost	$	**4,389,905**

PROJECT FINANCING

State Share		
This Project	$	2,194,953
District Share		
Cash Contribution		2,194,953
Financial Hardship		
Total Project Cost	$	**4,389,905**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	Unfunded Approval This Action
State Share					
New Construction/Add. Grant	**957-505**	**1D**		$ 2,194,953	$ 2,194,953
District Share					
Cash Contribution				2,194,953	
Total			$	$ **4,389,905**	$ **2,194,953**

Funding Source: Proposition 1D Bonds/2006-Nov.
Pursuant to the Board's action on March 11, 2009, this application has been approved and placed on the Unfunded List.
This approval does not constitute a guarantee or commitment of future State funding.

Senate Bill 854, Chapter 28, Statutes of 2014, repealed Labor Code (LC) Section 1771.3 which required school districts to provide payment to the Department of Industrial Relations (DIR) for prevailing wage monitoring. As a result, school districts awarding a construction contract on or after June 20, 2014 are not mandated to provide payment for DIR monitoring and enforcement of prevailing wage requirements. Projects with an initial public works project awarded on or after June 20, 2014 are not eligible to receive an additional grant for prevailing wage monitoring; however, school districts are still required to notify DIR within five days of initial contract award pursuant to LC Section 1773.3(a)(1).

The District shall ensure that it is in compliance with all applicable laws, regulations and certifications it made on the program forms.

Provide that the State portion of any and all project savings realized from the funding of this Seismic Mitigation Program project will be returned to the State.

THIS PAGE INTENTIONALLY LEFT BLANK