REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, September 19, 2012

SCHOOL DISTRICT DATA	
School District: .....SANGER UNIFIED	County: .....FRESNO
Application Number(s): .. 50/62414-00-010, 011, 012, 013	School Name(s): .....John Wash Elementary
School Names(s) continued: ……...Jefferson Elementary, Fairmont Elementary, Lincoln Elementary	
Total District Enrollment:..... 10,752	Project Grade Level:..... K-6
Financial Hardship: .....NO	

PURPOSE OF REPORT

To present the District's request for Staff to process four *Fund Release Authorization* (Form SAB 50-05) requests that were returned to the District.

DESCRIPTION

The District received unfunded approvals for four projects at the December 2010 State Allocation Board (Board) meeting and subsequent apportionments on December 14, 2011 from the Kindergarten-University Public Education Facilities Bond Act of 2004 (Proposition 55) which requires districts to initiate and enforce a Department of Industrial Relations (DIR)-approved labor compliance program (LCP). The apportionments included an additional grant to enforce an LCP to monitor the public works portion of the project. The apportionments were funded as part of the priority funding process, which requires the District to submit a Form SAB 50-05 within 90 days. The District's 90 days expired on March 13, 2012. The District submitted a Form SAB 50-05 for each project; however, the District did not retain a DIR-approved third party or have a DIR-approved in-house program in place to meet the LCP requirement throughout the life of the project, as required by law. Therefore, Staff returned the Forms SAB 50-05 to the District unprocessed.

AUTHORITY

Labor Code (LC) Section 1771.5(b) states:

For purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.
(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.
(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
(4) The awarding body shall review and, if appropriate, audit payroll records to verify compliance with this chapter.
(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.
(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.
(7) The awarding body shall comply with any other prevailing wage monitoring and enforcement activities that are required to be conducted by labor compliance programs by the Department of Industrial Relations."

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AUTHORITY (cont.)

LC Section 1771.5(c) states, "For purposes of this chapter, 'labor compliance program' means a labor compliance program that is approved, as specified in state regulations, by the Director of Industrial Relations."

LC Section 1771.7(a)(1) states, "An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project."

LC Section 1771.7(d)(2)(B) states, "The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1)."

LC Section 1771.7(d)(2)(C) states, "If the State Allocation Board conducts a post award audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision."

LC Section 1771.7(3)(e) states, "Notwithstanding Section 17070.63 of the Education Code (EC), for purposes of this act, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the EC to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program."

School Facility Program (SFP) Regulation Section 1859.71.4 states, "After determining all other funding authorized by these Regulations, the Board shall increase the per-unhoused-pupil grant amount by 50 percent of the following calculation for any project for which the district is required under LC Section 1771.7(a) and (b) to and initiate and enforce a LCP."

SFP Regulation Section 1859.90.2 states, "During any priority funding round a district or charter school must submit the Form SAB 50-05 within a specified time period of the Apportionment or approved advance release of funds request, pursuant to (a)(2) or (b)(2) of this section. Projects that apply for any specific priority funding round for which the OPSC does not physically receive an original signature copy of the Form SAB 50-05 within the appropriate time limit shall be rescinded without further Board action…For purposes of this section "rescinded" or "rescission" shall mean that the apportionment or approved advance release of funds request returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be determined by the Board at the time each priority funding round is approved. The district or charter school will not be required to re-submit the application and no further application review will be required."

BACKGROUND

Pursuant to Chapter 868, Statutes of 2002 (Assembly Bill 1506 - Wesson) an LCP was required for school construction projects funded from either Kindergarten-University Public Education Facilities Bond Act of 2004

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BACKGROUND (cont.)

(Proposition 47) or Proposition 55. Districts that are required to initiate and enforce an LCP and funded from either Proposition 47 or Proposition 55 can request an additional grant. Projects that are funded from the Kindergarten-University Public Education Facilities Bond Act of 2006 (Proposition 1D) or the Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998 (Proposition 1A) do not require an LCP and are not provided an additional grant. The purpose of the LCP is to ensure appropriate compliance with certain labor laws for school construction projects, such as the appropriate prevailing wage payments for construction work.

In May 2010 the District submitted four funding applications for four separate sites. On the original submittal of the *Application for Funding* (Form SAB 50-04) for each project, the District marked "No" to the question "Will you be required to initiate and enforce a Labor Compliance Program pursuant to Labor Code Section 1771.7 for this project?" During the application review process, the District was notified that all of the Proposition 1D new construction funds had been exhausted and it would be funded from Propositions 47 and/or 55; making each project subject to the LCP requirement. On July 26, 2010 the District submitted a letter verifying that the district would enforce and meet all LCP requirements for each project. All New Construction projects receiving new unfunded approvals at the October 2010 Board meeting received an unfunded approval from Proposition 47 or 55.

Each funding application submitted by the District contains two distinct project phases under two separate sets of construction contracts. Each funding application was submitted with the DSA approved plans for both phases of the work and as such, Staff views the combination of both phases as one project. Phase one work included the construction of a new multipurpose room on each site. Phase two converted the original multipurpose room on each site into two classrooms. Phase one work to construct the new multipurpose rooms is associated with the original construction contracts signed in 2009. The phase two construction contract to convert the original multipurpose rooms into classrooms was signed in 2011.

A timeline of events is as follows:

Phase 1 Notice to Proceed (NTP) signed for applications 11 & 13 .....01/20/2009
Phase 1 Construction Contract signed for applications 11 & 13.....01/27/2009
Phase 1 Construction Contract signed for applications 10 & 12.....06/09/2009
Phase 1 NTP signed for applications 10 & 12 .....06/09/2009
All four funding applications received 05/27/2010
Unfunded approvals (all four applications) 10/06/2010
District opened communication with LCP provider for 2011 contract.....02/14/2011
Phase 2 Construction Contracts signed for all four multipurpose room conversions.....02/22/2011
Phase 2 NTP signed for all four multipurpose room conversions (commencement 3/1/11).02/23/2011
District confirmed LCP provider for 2011 contract.....02/24/2011
Phase 2 LCP pre-job conference (prior to material work by contractor) 03/10/2011
School Board approved Phase 2 LCP service agreement.....03/22/2011
Phase 2 Third Party Labor Compliance Program contract signed 03/25/2011
Priority funding apportionments (all four applications).....12/14/2011
Original Forms SAB 50-05 submitted (all four applications) 01/18/2012
Original Forms SAB 50-05 (all four applications) returned to the District 02/24/2012
Forms SAB 50-05 (all four applications) resubmitted by the District.....03/12/2012
December 2011 priority funding round fund release submittal deadline.....03/13/2012
Forms SAB 50-05 (all four applications) returned to the District.....03/30/2012

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BACKGROUND (cont.)

Prior Board Actions

On February 23, 2011, the Board approved an amendment to an apportionment for Belmont-Redwood Shores Elementary School District to change the bond source for their project from Proposition 55 to Proposition 1D, because the District discovered its Lease-Leaseback contract did not actually require an LCP as it had previously believed. The District was able to meet the deadline to submit a Form SAB 50-05, because the Board amended the approval before the deadline. Switching the bond fund source did not prevent other projects on the unfunded list from receiving an apportionment, and there was Proposition 1D bond authority and cash available to apportion to the project.

On July 12, 2011, the Board approved Esparto Unified School District's request to change the bond authority of an unfunded approval from Proposition 47 to Proposition 1D. The District completed and occupied the project on October 2, 2009, but did not retain a DIR-approved third party or have a DIR-approved in-house program in place to meet the LCP requirement. As a result, the District was unable to submit a complete Form SAB 50-05 by the March 15, 2011 deadline, because it could not make the required LCP certification. The application was placed back on the unfunded approval list with a new unfunded approval date as required by SFP Regulation.

On October 26, 2011, the Board approved North Monterey County Unified School District's request to change the bond authority of an unfunded approval from Proposition 47 to Proposition 1D. The District completed and occupied the project on August 10, 2009 but did not retain a DIR-approved third party or have a DIR-approved in-house program in place to meet the LCP requirement. As a result, the District was able to submit a complete Form SAB 50-05 by its 18-month Time Limit on Fund Release deadline of October 28, 2011. The Board approved a bond switch for the project from Proposition 47 to Propositions 1D and 1A for a reduced amount based on the available bond authority and cash. The Board also requested that Staff send a letter notifying all districts that if their projects have received funds from Propositions 47 and 55, they are required to have an LCP in place and that bond switching is no longer an option.

STAFF ANALYSIS/STATEMENTS

The District resubmitted the Forms SAB 50-05 for each application in addition to a *School District Appeal Request* (Attachment B) on March 12, 2012 after Staff informed the District that the fund release could not be processed, because there was no LCP in place when the projects began in January and June 2009.

The fund release requests were returned to the District for a second time on March 30, 2012 as the District was unable to provide evidence that an LCP was in place for the duration of the entire project for each application. The District began communicating with the LCP provider on February 14, 2011 and signed the LCP contract on March 25, 2011. Since the district was unable to submit valid fund release requests by the priority funding submittal deadline, all four applications were placed back on the list of unfunded approvals with a Board approval date of March 13, 2012.

The classrooms on each site have been occupied so the District is unable to withdraw and resubmit the applications with the phase one work excluded for funding from Proposition 55 or an alternate bond source.

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STAFF ANALYSIS/STATEMENTS (cont.)

District Position

As part of each application the District completed the scope of work in the DSA-approved plans in two phases. The first phase was to construct new multipurpose rooms on each of the four sites. The second phase of each project was to convert the original multipurpose room on each site into two new classrooms. The DSA approved a set of plans for phase one and a set of plans for phase two which were submitted together as one funding application for each site.

During the phase one construction work the State was providing unfunded approvals out of Proposition 1D. When the District originally submitted the funding applications, the District checked "No" on section 17 of the Form SAB 50-04 indicating the District would not be required to initiate and enforce and LCP pursuant to LC 1771.7. During the application review process, the District was notified that Proposition 1D bond authority had been exhausted and that NC projects would be receiving Proposition 47 or 55 unfunded approvals that would require the implementation of an LCP.

In a letter dated May 11, 2012, the District stated, "It was the District's reasonable expectation that the District would pursue an LCP from that point forward as it had already notified the OPSC that it had awarded contracts on phase one and was not required to implement LCP on those contracts". As a result the District consulted with a third party LCP provider and eventually signed an LCP contract. The District has indicated that the LCP provider has reviewed the original 2009 contract documentation and the documentation is being forwarded to the DIR for a forensic review to verify that all labor code and prevailing wage requirements were met for the phase one work.

The District contends that the second set of construction contracts signed in 2011 meet the certification requirements of the Form SAB 50-05. The District believes that through the second contracts alone the District is able to certify that it has entered into binding contracts for at least 50 percent of the work included in the application, and that the District has initiated and enforced an LCP approved by the DIR.

The District has proposed alternate fund release options. The District proposed that Staff provide a partial fund release based on the second set of construction contracts in which an LCP was in place. The remainder of the funds could be released when the District obtained a retroactive approval from the DIR. If the District is not able to obtain a retroactive approval, the District proposes that the bond source be amended for that portion of the project, which would alleviate the LCP requirement.

Staff Position

Assignment of Bond Source

During the application review process, Staff notified the District in a 15-day letter dated July 14, 2010 that "Proposition 1D funds are no longer available to fund New Construction School Facility Program (SFP) Projects. Please be advised that new construction SFP projects presented at future State Allocation Board meetings will be funded from Proposition 47 or Proposition 55." On July 26, 2010 the District submitted a letter verifying that it would enforce and meet all LCP requirements for each project and an updated Form SAB 50-04 for all four applications checking "yes" in Section 17 indicating the District would be required to initiate and enforce and LCP. Had the District not submitted an updated Form SAB 50-04, it is likely the

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STAFF ANALYSIS/STATEMENTS (cont.)

application would have been returned. All New Construction projects receiving new unfunded approvals at the October 2010 Board meeting received an unfunded approval from Proposition 47 or 55. Because the District submitted a revised Form SAB 50-04, Staff processed the application and assigned Proposition 55 bond authority to each project.

Labor Compliance Program

Statute requires school districts using funds derived from Proposition 47 or 55 for a public works project to initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5. This statute outlines LCP components, which begin at the bidding process when school districts are required to have appropriate language regarding LCP requirements in bid invitations.

The District did not implement a DIR-approved LCP for the phase one contracts signed in 2009 for the construction of new multipurpose facilities. It started to pursue a DIR-approved LCP after the receipt of Staff's notification letter (July 2010) outlining LCP requirements. The District entered into a third party LCP contract on March 25, 2011, after all construction contracts and Notices to Proceed had been signed and issued.

Because the District did not have a DIR approved LCP since the beginning of original set of contracts for each site, the District is ineligible to receive Proposition 47 or 55 funding, pursuant to LC Section 1771.5.

Fund Release Authorization (Form SAB 50-05) Submittal

The directions on the Form SAB 50-05 state that projects that require an LCP must submit "all school district and/or third party provider Department of Industrial Relations approval letters (initial, extension(s) and/or final)." As the District does not have a DIR-approved LCP in place for the entire project, the District was unable to submit a valid Form SAB 50-05 to receive a fund release within the required 90-days for the project. Staff recognizes all work associated with the Form SAB 50-04 and each set of submitted DSA approved plans as part of the approved project.

Staff has consulted with legal counsel on multiple occasions regarding this issue. Each time, legal counsel has concurred that the statute requires that the receipt of any Proposition 47 or 55 funding triggers the requirement to the implement DIR-approved LCP. As a result, each of the four Forms SAB 50-05 submitted by the district were invalid, as an LCP was not in place for the entire scope of work associated with each application. LC Section 1771.7(a)(1) requires school districts using funds derived from Proposition 47 or 55 for a public works project to initiate and enforce, or contract with a third party to initiate and enforce an LCP, as described in subdivision (b) of Section 1771.5 of the LC. This section outlines the required components of an LCP (items 1-7), beginning with the requirement in Section 1771.5(b)(1) which states that "all bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter." In addition, LC Section 1771.5(c) defines labor compliance programs and states, "For purposes of this chapter, 'labor compliance program' means a labor compliance program that is approved, as specified in state regulations, by the Director of Industrial Relations." Because the District's construction contract was awarded before the implementation and DIR approval of the District's LCP, the District has not met the requirements of LC Sections 1771.5(b) and 1771.5(c).

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STAFF ANALYSIS/STATEMENTS (cont.)

Finally, statute prohibits the release of funds for a project funded by Propositions 47 or 55 until the LCP is verified. Therefore, the OPSC could not process the District's Forms SAB 50-05. LC Section 1771.7(d)(2)(B) states, "The State Allocation Board shall not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1)."

Project Eligibility

It is the District's contention that they meet the requirements of the Form SAB 50-05 based solely on the second set of contracts and scope of work associated with the conversion of multipurpose rooms into classrooms. Funding for each project is based on the work associated with the DSA approved plans. The total project cost is determined by reviewing work associated with each set of DSA plans submitted as part of a funding application. If the original contracts associated with the application are not included in the scope of work, the four projects would technically meet the submittal requirements of the Form SAB 50-05, but they would no longer be valid as none of the applications would meet the 60 percent commensurate requirement. This requirement is set forth in the Form SAB 50-04 and requires that hard construction costs in a project are at least 60 percent of the total project cost (combined State and local share).

The chart below shows the commensurate percentage based on the total project cost and the contract/change order amount for phase two for each site.

Application Number	Total Project Cost	Contract/Change Order	Contract % of Total Project Cost
50/62414-00-010	$1,845,520	$737,273	39.95%
50/62414-00-011	$1,547,442	$481,691	31.13%
50/62414-00-012	$2,345,756	$749,097	31.93%
50/62414-00-013	$1,361,942	$594,594	43.66%
Total	**$7,100,660**	**$2,562,655**	**36.09%**

LCP Forensic Review

The District has indicated that its LCP provider has performed a forensic review the work associated with the first construction contracts from 2009. In order to receive project funding, the District would need to provide documentation showing the work associated with the phase one contracts from 2009 were compliant with all LCP statutes and requirements.

Partial Fund Release

There is no mechanism in statute or regulation to allow Staff to perform a partial fund release of the adjusted grant amount. Pursuant to the Form SAB 50-05, "After a School Facility Program (SFP) grant has been funded by the Board, the Office of Public School Construction (OPSC) will release the apportioned funds with the exception of design funds, to the appropriate county treasury once the district has completed and submitted this form to the OPSC."

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STAFF ANALYSIS/STATEMENTS (cont.)

Conclusion

Statute requires that all projects receiving funding from Proposition 47 must have a DIR-approved LCP in place in order to receive funding. The District did not have an LCP in place for the entire life of any of the four projects. As a result, each project is not in compliance with the statutory requirements.

The Board does not have the statutory authority to grant the District's request to have Staff accept the Forms SAB 50-05 submitted for each application. All four applications will remain on the list of unfunded approvals with the new Board approval date of March 13, 2012 indefinitely.

BOARD OPTIONS

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

2. Grant the District's appeal.

BOARD ACTION

In considering this Item, the SAB approved the change in the fund source for the District's projects (Application Nos. 50/62414-00-010 through 50/62414-00-013) from Proposition 55 to Proposition 1D, including a 20 percent reduction to each project's total project cost. The District was in concurrence with this approval.

ATTACHMENT

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Sanger Unified School District	50/62414-00-10, 011, 012, & 013
SCHOOL NAME	**COUNTY**
John Wash, Jefferson, Fairmont, Lincoln Elementaries	Fresno
DISTRICT REPRESENTATIVE	**E-MAIL ADDRESS**
Richard Sepulveda	richard_sepulveda@sanger.k12.ca.us

Purpose of Request:

Process SAB 50-05 Fund Release Authorization requests for the above mentioned applications.

Basis of Request:

- [x] Law (Statute) EC Section 17072.32
- [x] Regulation Section 1859.90, Form SAB 50-05
- [ ] Other (specify) _____

Description:

The OPSC has returned, unprocessed, the District's SAB 50-05 Fund Release Authorization requests for applications #50/62414-00-010, 011, 012, and 013.

The District believes that it meets the certification requirements of the SFP statute, regulations and SAB 50-05 Fund Release Authorization form required for project fund releases.

For all of the applications, the District ha (1) entered into binding contracts for at least 50% of the construction included in the plans and specifications applicable to the State funded project, (2) had labor compliance programs on those contracts, and (3) already expended its applicable matching share.

The Sanger Unified School District requests that the State Allocation Board direct the OPSC to process its fund release requests.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
	3-30-2012

THE NEWMAN-CROWS LANDING UNIFIED/STANISLAUS
ITEM HAS BEEN WITHDRAWN

THE SANTA CLARA COE/SANTA CLARA
ITEM HAS BEEN PERMANENTLY WITHDRAWN