REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 20, 2016

SCHOOL DISTRICT DATA	
School District: .....KLAMATH-TRINITY JOINT UNIFIED	County:.....HUMBOLDT
Application Numbers:.....51/62901-00-001, 002, 003, 004, …….. and 58/62901-00-001	School Names:.....VARIOUS
Total District Enrollment:.....1,025	Project Grade Level:..... K-12
Financial Hardship:.....YES for 4 of 5 Applications	
Last Approved Local Bond Measure: 2008	
Qualifying Financial Hardship Criteria: ..... SFP Regulation Section 1859.81(c)(1)	

PURPOSE OF REPORT

To present five Facility Hardship applications from the Klamath-Trinity Joint Unified School District (District) 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. In the same timeframe, it was discovered that the water system for one school was contaminated and needed to be replaced. 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 exhausted all available local funding options and submitted five Facility Hardship funding applications to the Office of Public School Construction (OPSC) to address these health and safety issues.

Due to the extraordinary circumstances in this school district, Staff and the District are requesting the Board to consider the following actions for these five projects:

I. Provide replacement funding for rehabilitation work on four of the five projects.

II. Allow the District to receive funding for a project in which contracts were let prior to receiving Division of the State Architect (DSA) approval.

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

AUTHORITY

See Attachment A.

(Continued on Page Two)

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 with 85 percent of its students living on Native American lands. Ninety percent of the students qualify for free and reduced lunch. 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.

The District submitted five applications for rehabilitation work at five of eight school sites. During the review process, Staff determined that the cost/benefit analysis for four of the five 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).

In order to continue the rehabilitation work, the District submitted a *School District Appeal Request* (SAB 189) for those projects and requested to use replacement funding for the rehabilitation work, which 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 District exhausted all available funds for necessary testing and completion of the work required, in order to continue to house students in these five schools. However, 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 in all five schools. 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 District anticipates submitting five or more additional Facility Hardship funding applications in the near future to address the mold found in other buildings.

STAFF ANALYSIS/STATEMENTS

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

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (cont.)

Attachment	SFP Application & Site	Scope of Project	State Share	Financial Hardship	District Share
D	51/62901-00-001 Trinity Valley Elem.	Mold Abatement & New Roof (Gym & Classrooms)	$2,616,516	$233,882	$2,382,634
E	51/62901-00-002 Orleans Elem.	Mold Abatement & New Roof (Gym)	$1,285,609	$0	$1,285,609
F	51/62901-00-003 Hoopa Valley Elem.	Mold Abatement & New Roof (Gym, Classrooms & Admin)	$2,340,576	$2,140,476	$200,100
G*	51/62901-00-004 Hoopa Valley High	Mold Abatement and New Roof & Floor (Gym)	$3,377,611-4,037,956	$1,663,726-2,324,071-	$1,713,885
H	58/62901-00-001 Jack Norton Elem.	Water Treatment Plant Renovation	$378,002	$213,963	$38,038
		TOTALS:	**$9,998,314****	**$4,252,047****	**$5,620,266**

*Conceptual approval requested; Grant amount and Financial Hardship contribution to be determined.
**Totals use the lower estimated amount for Hoopa Valley High

I. Request for Replacement Funding for Trinity Valley ES, Orleans ES, Hoopa Valley ES and Hoopa Valley High

District Position

In its appeal, the District is requesting to use Facility Hardship replacement funding to rehabilitate multiple buildings on various 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 geographic area. The District provided a chart showing that rehabilitation costs for the projects were at or below 50 percent of the replacement costs, based on bids received and calculations provided by construction managers and architects. The 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 District's appeal request can be found in its entirety as part of Attachment B.

(Continued on Page Four)

STAFF ANALYSIS/STATEMENTS (cont.)

Staff Position

Rehabilitation versus Replacement
The District is requesting to use replacement funding for rehabilitation work of qualifying buildings at four sites under the Facility Hardship Program. According to SFP Regulation, the District qualifies for replacement funding, but is requesting to rehabilitate the buildings, as it is the most prudent and economically feasible way to address the issue. SFP Regulations that implement the Education Code (EC) have been interpreted previously by the Board to allow replacement funding for a rehabilitation project that exceeded 50 percent of the replacement cost of the facility for Seismic Mitigation Program (SMP) projects. While these projects do not qualify under the SMP, 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.

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." 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, based on the current enrollment or square footage at the site.

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.

(Continued on Page Five)

STAFF ANALYSIS/STATEMENTS (cont.)

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. The building was made of poured in place concrete. The district maintained that while this building type has a life span advantage over other construction types, it also increases the cost of a seismic retrofit making it difficult to qualify for rehabilitation work as part of a modernization project as the district desired. Further, the district also maintained that it would have cost more to replace in like kind than the estimated replacement grants, due to this building type. For that project, there was a $1.57 million difference in replacement and rehabilitation funding, and the Board approved the district for replacement funding, limiting it to the rehabilitation amount.

Cost/Benefit Analysis
The current cost/benefit analyses for the projects are shown on Attachment C. 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.

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. Conversely, rehabilitation funding is limited to the minimum work required to obtain DSA approval, and if provided, the buildings would not receive a new age for purposes of modernization.

Summary
As submitted, the rehabilitation work cost estimates exceed 50 percent of the replacement cost for the projects in Attachments D, E, F and G, which qualifies the projects for replacement funding rather than rehabilitation under SFP Regulations. Given the unique situation of the projects and District, Staff agrees that the SFP Regulations do not address the issue presented by the District. However, 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 these four projects and allowing the District to perform rehabilitation work.

II. Timing of DSA Plan Approval for the Jack Norton Elementary Project

The District submitted a Facility Hardship Rehabilitation application for funding to abandon and replace a water system at Jack Norton Elementary School. The funding item for that project is included as Attachment H.

Staff is not able to present this funding item as part of the consent calendar because DSA approval was received after the District entered into contracts for the work. EC Section 17297 requires school districts to obtain written DSA approval prior to entering into contracts, and EC Section 17307 states that no contract is valid and no public funds shall be paid for any work done under the contract unless written approval is first obtained from DSA.

Once the requirement became known, the District and DSA worked together to quickly achieve approval status, which was granted on March 21, 2016. Given that the District has taken all steps to remedy this issue for the Jack Norton ES project, Staff recommends that the Board consider funding this project.

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STAFF ANALYSIS/STATEMENTS (cont.)

III. Immediate Apportionments for Four of Five Projects

Staff is recommending that the District receive immediate Apportionments for four of the five projects presented in the Attachments due to the urgency of the District's situation. 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 versus the 90 day requirement under priority funding, the projects are largely completed and the District has indicated they would submit the Fund Release Authorization immediately upon Board approval. The fifth project for Hoopa Valley High is prepared to receive a conceptual approval. Staff is currently processing the funding application for this project and anticipates it being ready for approval at the next available Board meeting. The Board could provide an Apportionment in the consent calendar at that time.

If the District were to receive unfunded approvals following the priority funding process, the earliest date the District could receive an Apportionment is July 1, 2016, but cash fund releases would not be available until later in the summer or fall. While the work for the original applications is largely complete, for the buildings where mold was discovered in 2016, the District must complete the abatement and replace the roofs and walls before students are allowed back into the facilities. Since the District has exhausted its available funding with previous repairs, access to cash quickly will allow them to continue to mitigate the mold issues, as well as reimburse funds previously borrowed to address the existing projects.

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

Staff anticipates completing the application processing for Hoopa Valley High for the next available Board meeting (tentatively scheduled for May 25, 2016). With Board approval, it could be presented for Apportionment in the consent calendar.

For reference, the applications and the proposed funding amounts are listed in the chart on Page Three.

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 five projects submitted for consideration are listed on the following page.

(Continued on Page Seven)

RECOMMENDATIONS (cont.)

I. Replacement Funding

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

Attachment	SFP Application	Site
D	51/62901-00-001	Trinity Valley ES
E	51/62901-00-002	Orleans ES
F	51/62901-00-003	Hoopa Valley ES
G	51/62901-00-004	Hoopa Valley High

Without Board approval, the District is only eligible for replacement funding for the purposes of replacing the facilities in the projects shown on Attachments D, E, F and G. At this time, the District has already entered into contracts and begun the rehabilitation work. Replacing the facilities is not a feasible option. Under these circumstances Staff recommends approving replacement funding for rehabilitation work, which is consistent with the Board's prior actions for the Simi Valley and Palm Springs Unified School Districts' projects.

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.

II. DSA Approval Date

Allow the Jack Norton Elementary School project (Attachment H) to be funded as submitted.

The District let the contract and began construction prior to receiving DSA approval due to a miscommunication/misunderstanding with DSA. Staff recommends providing funding for the project due to the circumstances.

III. Apportionments

A. **Provide Apportionments for the following projects:**

Attachment	SFP Application	Site
D	51/62901-00-001	Trinity Valley ES
E	51/62901-00-002	Orleans ES
F	51/62901-00-003	Hoopa Valley ES
H	58/62901-00-001	Jack Norton ES

Without Board approval for an immediate Apportionment, the projects included as Attachments D, E, F and H could only receive an unfunded approval following the priority funding process. Staff recommends that the Board approve the Apportionments for these projects today due to the extraordinary circumstances surrounding these projects.

B. **Provide a Conceptual Approval for Hoopa Valley High (Attachment G - 51/62901-00-004) with an Apportionment at the next available Board meeting.**

Staff is continuing to work with the District to finalize the grant amounts for the Hoopa Valley High project. Therefore, Staff is recommending that the Board provide a conceptual approval for this project at this time, and allow Staff to present an Apportionment for the project in the consent agenda of the next available Board meeting.

(Continued on Page Eight)

BOARD ACTION

In considering this Item, the Board approved the staff's recommendations by: 1) providing replacement funding at replacement amounts and allowing rehabilitation work for Trinity Valley Elementary, Orleans Elementary, Hoopa Valley Elementary, and Hoopa Valley High Schools; 2) allowing funding for the Jack Norton Elementary School project though the necessary approvals were obtained out of order; and 3) providing immediate State Apportionments for the Trinity Valley Elementary, Orleans Elementary, Hoopa Valley Elementary, Jack Norton Elementary Schools and providing a conceptual approval for Hoopa Valley High with direction to staff to present the associated funding item for an immediate State Apportionment at the next available Board meeting. These State Apportionments are made pursuant to Education Code Section 17076.10.

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 Klamath-Trinity Joint Unified School District	APPLICATION NUMBER 51/62901-00-001, 002, 003, 004
SCHOOL NAME Various Schools	COUNTY Humboldt
DISTRICT REPRESENTATIVE Jon Ray	E-MAIL ADDRESS 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: 4/1/16

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

April 1, 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:

- Trinity Valley Elementary – 51/62901-00-001
- Orleans Elementary – 51/62901-00-002
- Hoopa Valley Elementary – 51/62901-00-003
- Hoopa Valley High – 51/62901-00-004

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

Klamath-Trinity Joint Unified School District is located in Humboldt and Trinity Counties. The District serves the communities of Salyer, Willow Creek, Hoopa, Weitchpec, Orleans and Pecwan, CA. The District also serves the Hoopa Indian Reservation, the Yurok Indian Reservation and the Karuk Tribal Lands. 90% of the District's students are Native American.

In April of 2014, the District began to investigate water intrusion issues at various school sites. The District discovered that many of the school facilities suffered from extensive water and mold damage, including the presence of mold spores. The District immediately closed down the affected facilities and began the process of rehabilitating the buildings. 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.

The OPSC Current Replacement Cost is calculated using a cost per square foot from the SFP Regulations. Unfortunately, this cost per square foot does not take into account the increased construction costs for the District's geographic location. The District reviewed the costs to replace the buildings using construction costs for the area (please see attached Exhibit A), and the rehabilitation costs proved to be below 50% of local costs for replacement. 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. The gymnasium at Hoopa Valley High School was built in 1958. It is the largest facility in the area and is frequently used by local groups for adult recreational leagues, public ceremonies, public presentations and public meetings. Demolishing the facility for significantly smaller facility, due to the cost constraints identified above, would be a major loss to 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 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
Facility Hardship Projects

Exhibit A - Replacement Costs Determined by District based on Local Costs

	Replacement Costs	Rehabilitation Costs	% To Replacement Costs
Hoopa Valley Elementary	$9,000,000	$4,500,000	**50%**
Trinity Valley Elementary	$9,000,000	$3,500,000	**39%**
Orleans Elementary	$5,000,000	$1,800,000	**36%**
Hoopa Valley High School	$20,000,000	$7,500,000	**38%**

Rehabilitation Cost Estimates Based on bids received by the District for the project.

Replacement Costs determined by the District is based on figures provided by construction managers/project architect, see attached for detail

Detecting the problem:

SQUARE D COMPANY

The results revealed:

Structural damages:

Where do our kids go?

Cost Benefit Analyses for Klamath-Trinity Joint Unified School District

(as of April 7, 2016)

Trinity Elementary - 51/62901-00-001

Cost to Rehab vs. Replace	Rehabilitation Cost	$ 3,093,791
	Replacement Cost	$ 5,233,032
	Percentage	59.1%

Orleans Elementary - 51/62901-00-002

Cost to Rehab vs. Replace	Rehabilitation Cost	$ 1,664,306
	Replacement Cost	$ 2,571,868
	Percentage	64.7%

Hoopa Elementary - 51/62901-00-003

Cost to Rehab vs. Replace	Rehabilitation Cost	$ 4,073,642
	Replacement Cost	$ 4,681,154
	Percentage	87.0%

Hoopa Valley High 51/62901-00-004

Cost to Rehab vs. Replace	Rehabilitation Cost*	$ 4,727,085
	Replacement Cost*	$ 6,755,222
	Percentage*	70.0%

*Conceptual amounts, subject to change

ATTACHMENT D

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 20, 2016

SCHOOL DISTRICT DATA	
School District: ……..KLAMATH-TRINITY JOINT UNIFIED	County:……..……..……HUMBOLDT
Application Number:……...……51/62901-00-001	School Name:.....TRINITY VALLEY ELEMENTARY
Total District Enrollment:……..……..…...……..1,025	Project Grade Level:……...…...…..…K-8
Financial Hardship:……..……..……...…YES	

The District qualifies for financial hardship pursuant to School Facility Program (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 is at least 60 percent of the district's total bonding capacity.

PURPOSE OF REPORT

Type of Request	State Allocation Board (Board) approval for an Apportionment for a SFP Facility Hardship Replacement project.
Total Project Cost	$5,233,032
Cost to the State	$2,850,399

DESCRIPTION

Description of Health and Safety Threat	Trinity Valley Elementary School in Willow Creek, California is in a region with annual rainfall levels approaching 72 inches and abnormally high humidity levels. In the fall of 2014, staff noted visible black mold. In October 2014, a licensed industrial hygienist inspected the site. Testing revealed high levels of mold due to inadequate roof ventilation in a classroom building originally built in 1964 and the gymnasium, this was originally built in 1981. 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. Both buildings were 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	Mitigation work has been completed and both buildings are now in use.

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 classroom building and the gymnasium at Trinity Valley 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 Division of the State Architect plan approval. The new date would be July 15, 2016.

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.

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: **April 20, 2016** **New Construction - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 51/62901-00-001
School District: Klamath Trinity Joint Unified
County: Humboldt
School Name: Trinity Valley 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:	6
Master Acres:	
Existing Acres:	12
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

Fac. Hardship Other	**13,102 Sq. Ft.**	**$**	2,279,748
Fire Detection Alarm			1,800
Geographic Percent Factor (10%)			237,274
Small Size Project (4%)			91,190
Project Assistance			6,504
Total State Share (50%)			2,616,516
District Share (50%)			2,616,516
Total Project Cost		**$**	**5,233,032**

PROJECT FINANCING

State Share		
This Project	**$**	2,616,516
District Share		
Cash Contribution		2,382,633
Financial Hardship		233,883
Total Project Cost	**$**	**5,233,032**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
New Construction/Add. Grant	**047-501**	**47**		**$** 848,822.94	**$** 848,822.94
New Construction/Add. Grant	**057-500**	**1D**		1,767,693.06	1,767,693.06
District Share					
Financial Hardship	**057-500**	**1D**		233,883.11	233,883.11
Cash Contribution				2,382,632.89	
Total			**$**	**$ 5,233,032.00**	**$ 2,850,399.11**

Funding Source: Proposition 47 Bonds/2002-Nov.; Proposition 1D Bonds/2006-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 E

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 20, 2016

SCHOOL DISTRICT DATA	
School District: ……..KLAMATH-TRINITY JOINT UNIFIED	County:……..……..……HUMBOLDT
Application Number:……...……51/62901-00-002	School Name:.....ORLEANS ELEMENTARY
Total District Enrollment:……..……..…...……..1,025	Project Grade Level:……...…...…..…K-8
Financial Hardship:……..……..……...….NO	

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	$2,571,218
Cost to the State	$1,285,609

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 the spring of 2014, staff noted visible black mold. In April of 2014, a licensed industrial hygienist inspected the site. Testing revealed high levels of mold due to inadequate roof ventilation in the gymnasium. 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 gymnasium was 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	Mitigation work has been completed and gymnasium is now in use.

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 E-1.

RECOMMENDATIONS

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

2. Provide that for purposes of SFP modernization eligibility, the building age would be reset to 12 months from the date of Division of the State Architect plan approval. The new date would be July 14, 2016.

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 E-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 1859.82 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.

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: **April 20, 2016** **New Construction - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 51/62901-00-002
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

Fac. Hardship Other	**6251Sq. Ft.**	**$** 1,087,674
Geographic Percent Factor (5%)		60,910
Small Size Project (12%)		130,521
Project Assistance		6,504
Total State Share (50%)		1,285,609
District Share (50%)		1,285,609
Total Project Cost		**$ 2,571,218**

PROJECT FINANCING

State Share		
This Project	**$**	1,285,609
District Share		
Cash Contribution		1,285,609
Total Project Cost	**$**	**2,571,218**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
New Construction/Add. Grant	**057-500**	**1D**		**$** 1,285,609.00	**$** 1,285,609.00
District Share					
Cash Contribution				1,285,609.00	
Total			**$**	**$ 2,571,218.00**	**$ 1,285,609.00**

Funding Source: Proposition 1D Bonds/2006-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 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 facility hardship program project must be returned to the State.

ATTACHMENT F

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 20, 2016

SCHOOL DISTRICT DATA	
School District: ……..KLAMATH-TRINITY JOINT UNIFIED	County:……..……..……HUMBOLDT
Application Number:……...……51/62901-00-003	School Name:.....HOOPA VALLEY ELEMENTARY
Total District Enrollment:……..……..…...……..1,025	Project Grade Level:……...…...…..…K-8
Financial Hardship:……..……..……...…YES	

The District qualifies for financial hardship pursuant to School Facility Program (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 is at least 60 percent of the district's total bonding capacity.

PURPOSE OF REPORT

Type of Request	State Allocation Board (Board) approval for an Apportionment for a SFP Facility Hardship Replacement project.
Total Project Cost	$4,681,152
Cost to the State	$4,481,052

DESCRIPTION

Description of Health and Safety Threat	Hoopa Valley Elementary School in Hoopa, California is in a region with annual rainfall levels approaching 72 inches and abnormally high humidity levels. In the spring of 2015, staff noted visible black mold. In May of 2015, a licensed industrial hygienist inspected the site. Testing revealed high levels of mold due to inadequate roof ventilation in three buildings: a classroom building and the administrative building, originally constructed in 1966, and the gymnasium, originally constructed in 1981. 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 three buildings 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	Mitigation was completed mid-April 2016.

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 F-1.

RECOMMENDATIONS

1. Approve the District's request for Facility Hardship replacement funding for the classroom building, the administrative building, and the gymnasium at Hoopa Valley Elementary pursuant to SFP Regulation Section 1859.82(a), as provided on Attachment F-2.

2. Provide that for purposes of SFP modernization eligibility, the building age will be reset to 12 months from the date of DSA plan approval. The new date will be September 17, 2016.

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 F-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.

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.

SFP Regulation Section 1859.83(e) provides for:

> Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. 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 district qualifies, the district is eligible for funding of Rehabilitation Costs as a modernization project. …. If the Approved Application is received after April 29, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board. An additional grant may be provided for high performance incentive pursuant to Section 1859.77.4 provided that the high performance points attained are related to the scope of the Facility Hardship project. For any project funded in whole or in part from Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.78.1(a). For any project for which the construction contract is awarded on or after January 1, 2012 the grant may be adjusted in the manner prescribed in Section 1859.78.1(b) and subject to the limitations established in Section 1859.78.1(c).

SAB Meeting: **April 20, 2016** **New Construction - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No: 51/62901-00-003
School District: Klamath Trinity Joint Unified
County: Humboldt
School Name: Hoopa Valley 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:	4
Master Acres:	
Existing Acres:	14
Proposed Acres:	
Recommended Acres:	10
Facility Hardship (a):	Yes
Financial Hardship Requested:	Yes
Alternative Education School:	No
Addition to Existing Site:	No

ADJUSTED GRANT DATA

Fac. Hardship Other	**10,882 Sq. Ft.**	**$**	1,893,468
Fire Detection Alarm			1,200
Geographic Percent Factor (10%)			212,188
Small Size Project (12%)			227,216
Project Assistance			6,504
Total State Share (50%)			2,340,576
District Share (50%)			2,340,576
Total Project Cost		**$**	**4,681,152**

PROJECT FINANCING

State Share		
This Project	**$**	2,340,576
District Share		
Cash Contribution		200,100
Financial Hardship		2,140,476
Total Project Cost	**$**	**4,681,152**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
New Construction/Add. Grant	**055-500**	**55**		**$** 368,237.17	**$** 368,237.17
New Construction/Add. Grant	**057-500**	**1D**		1,972,338.83	1,972,338.83
District Share					
Financial Hardship	**057-500**	**1D**		2,140,476.00	2,140,476.00
Cash Contribution				200,100.00	
Total			**$**	**$ 4,681,152.00**	**$ 4,481,052.00**

Funding Source: Proposition 55 Bonds/2004-Mar.; Proposition 1D Bonds/2006-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 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 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 G

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 20, 2016

SCHOOL DISTRICT DATA	
School District: ……..KLAMATH-TRINITY JOINT UNIFIED	County:……..……..……HUMBOLDT
Application Number:……...……51/62901-00-004	School Name:.....HOOPA VALLEY HIGH
Total District Enrollment:……..……..…...……..1,025	Project Grade Level:……...….....…9-12
Financial Hardship:……..……..……...…YES	

The District qualifies for financial hardship pursuant to School Facility Program (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 is at least 60 percent of the district's total bonding capacity.

PURPOSE OF REPORT

Type of Request	State Allocation Board (Board) conceptual approval for a SFP Facility Hardship Replacement project.
Estimated Total Project Cost	$6,755,222 - $8,075,912
Estimated Cost to the State	$5,041,337 - $6,362,027

DESCRIPTION

Description of Health and Safety Threat	Hoopa Valley High School in Hoopa, California is in a region with annual rainfall levels approaching 72 inches and abnormally high humidity levels. In May of 2015, a licensed industrial hygienist inspected the site. Testing revealed high levels of mold due to inadequate roof ventilation in the gymnasium, which was originally constructed in 1958. 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 building has been closed due to this issue.
Scope of Project	Rehabilitation work consists 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	The Division of the State Architect has approved the mitigation plans. Mitigation work has begun and is anticipated to be complete by the end of June 2016.

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 G-1.

RECOMMENDATIONS

1. Approve the District's request for conceptual approval for Facility Hardship replacement funding for the gymnasium at Hoopa Valley High pursuant to SFP Regulation Section 1859.82(a).

2. Provide that the District must file an Approved Application for funding within 18 months of this approval, pursuant to Regulation Section 1859.82 (c).

3. Provide that for purposes of SFP modernization eligibility, the building age will be reset to 12 months from the date of DSA plan approval. The new date will be September 17, 2016.

4. 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 G-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.

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.

SFP Regulation Section 1859.82(c) states, “A district may request a determination of eligibility for facility hardship funding in advance of project funding.”

ATTACHMENT H

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 20, 2016

SCHOOL DISTRICT DATA	
School District: ……..KLAMATH-TRINITY JOINT UNIFIED	County:……..……..……HUMBOLDT
Application Number:……...……58/62901-00-001	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 School Facility Program (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 is at least 60 percent of the district's total bonding capacity.

PURPOSE OF REPORT

Type of Request	State Allocation Board (Board) approval for an Apportionment for a SFP Facility Hardship Rehabilitation project.
Total Project Cost	$630,003
Cost to the State	$591,965

DESCRIPTION

Description of Health and Safety Threat	Jack Norton Elementary is a small, rural school located on the Yurok Indian Reservation. School enrollment fluctuates between 30 and 35 students. The school has been acquiring its water from a local spring since the school was originally constructed in 1959. In May 2014, water testing conducted by a licensed industrial hygienist through Asbestos Science Technologies Inc. revealed that the spring water was contaminated by high levels of Coliform bacteria, which indicate the presence of disease-causing pathogens. At the recommendation of Asbestos Science Technologies and with the concurrence of the Humboldt County Department of Health and Human Services (HCDHHS), the existing water system was immediately condemned and remains unusable.
Scope of Project	Rehabilitation work consists of abandoning the spring and connecting to a local public water supply.
Status of School Site	The District has completed approximately 75 percent of the work required to connect to the nearest public water supply, the Wautec Water System.

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 Humboldt County Department of Health and Human Services.
Staff Supports the District's Request	Yes
Site Visit Completed by Staff	Staff has accepted photographs and a report from the licensed structural engineer and the letter of concurrence from HCDHHS in lieu of a site visit.

(Continued on Page Two)

AUTHORITY

See Attachment H-1.

RECOMMENDATIONS

1. Approve the District's request for a State Apportionment for Facility Hardship rehabilitation funding for connecting the Jack Norton Elementary site to the Wautec Water System pursuant to SFP Regulation Section 1859.83(e), as provided on Attachment H-2.

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

ATTACHMENT H-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.

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.

SFP Regulation Section 1859.83(e) provides for:

> Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82(a)(1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. 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 district qualifies, the district is eligible for funding of Rehabilitation Costs as a modernization project. …. If the Approved Application is received after April 29, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a)(1) that has been reviewed by the OPSC and approved by the Board. An additional grant may be provided for high performance incentive pursuant to Section 1859.77.4 provided that the high performance points attained are related to the scope of the Facility Hardship project. For any project funded in whole or in part from Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, the district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.78.1(a). For any project for which the construction contract is awarded on or after January 1, 2012 the grant may be adjusted in the manner prescribed in Section 1859.78.1(b) and subject to the limitations established in Section 1859.78.1(c).

SAB Meeting: **April 20, 2016** **Rehabilitation - Adjusted Grant Approval**

SCHOOL DISTRICT DATA

Application No:	58/62901-00-001	**County:**	Humboldt
School District:	Klamath Trinity Joint Unified	**School Name:**	Jack Norton Elementary

PROJECT DATA

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

ADJUSTED GRANT DATA

Rehabilitation/Mitigation	$	374,534
Project Assistance		3,468
Total State Share (60%)		378,002
District Share (40%)		252,001
Total Project Cost	$	**630,003**

PROJECT FINANCING

State Share		
This Project	$	378,002
District Share		
Cash Contribution		38,038
Financial Hardship		213,963
Total Project Cost	$	**630,003**

HISTORY OF PROJECT COST AND APPORTIONMENT

	Fund Code	Proposition	Previously Authorized	Authorized This Action	State Apportionment This Action
State Share					
Modernization/Additional Grant	**047-571**	**47**		$ 100,000.00	$ 100,000.00
Modernization/Additional Grant	**057-570**	**1D**		278,002.00	278,002.00
District Share					
Financial Hardship	**057-570**	**1D**		213,963.00	213,963.00
Cash Contribution				38,038.00	
Total			$	$ **630,003.00**	$ **591,965.00**

Funding Source: Proposition 47 Bonds/2002-Nov.; Proposition 1D Bonds/2006-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.

STATE ALLOCATION BOARD
APPROVAL ❖ ❖ ❖ April 20, 2016

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REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 20, 2016

SCHOOL DISTRICT DATA	
District: ..... SANTA ANA UNIFIED	County:..... ORANGE
Application Numbers: 56/66670-00-002	School Name:.....HENINGER ELEMENTARY
Total District Enrollment: 56,815	Project Grade Level: K-6
Financial Hardship: ..... NO	

PURPOSE OF REPORT

To present the Santa Ana Unified School District's (District) request to keep savings from an Overcrowding Relief Grant (ORG) project for use on another capital outlay project within the District.

DESCRIPTION

The District received an unfunded approval for an ORG project at Heninger Elementary in 2009 and an apportionment in 2010. During the close-out of the project, the District reported $2,738,487 in savings for this project. The Office of Public School Construction (OPSC) contacted the District in January 2015 and requested that the savings be returned to the State, as with prior ORG projects. After several meetings and correspondence between the District and OPSC, the District maintained that they were not required to remit their savings from their ORG project to the State. The District then filed an appeal to request to retain their savings, to use on other ORG projects within the District.

AUTHORITY

See Attachment A.

BACKGROUND

Since its inception as part of Assembly Bill 127 (Chapter 35, Statutes of 2006 – Nunez and Perata), the State Allocation Board (Board) has approved projects in twelve funding cycles of ORG program funding. The program provides funding to districts to replace portable classrooms with permanent classrooms and to free up green space on existing campuses. As a condition of funding, the school district is required to remove the replaced portables from K-12 classroom use. District-wide eligibility banks for the program were established using school sites with high population densities, to form eligibility that could be used at a near-by, eligible school. School Facility Program (SFP) new construction and modernization eligibility is not needed or utilized. Funding is provided at the current new construction per-pupil grant amount, through regulations adopted by the Board on February 28, 2007 and amended on June 25, 2008.

During the twelve ORG funding cycles, the District received funding for twelve ORG projects, for a total of $91.6 million (State share). Five of the District's projects received unfunded approvals during the third funding round in August 2009, including the Heninger Elementary project. The remaining seven projects received unfunded approvals between January 2010 and November 2014.

The District received a fund release for the Heninger Elementary project in September 2010 and submitted the final *Expenditure Report* (Form SAB 50-06) in May 2014. The Form SAB 50-06 cited 100 percent completion of the project. OPSC first responded to the District on January 27, 2015, stating that the project had savings that must be returned to the State. There were several subsequent meetings and letters between OPSC and the District, related to the need to return the funds to the State, before the District submitted an appeal on June 11, 2015.

(Continued on Page Two)

STAFF ANALYSIS/STATEMENTS

District's Position

In the *School District Appeal Request* (Form SAB 189), the District is requesting to retain savings from this ORG project for use for 'other high priority capital outlay', in accordance with Education Code (EC) Section 17070.63(c). The District states the following:

- The savings from this project have already been spent on other District ORG projects;
- OPSC has misstated what savings are; and,
- OPSC has no authority in law to require savings to be returned to the State from an ORG project.

To support its position, the District included the opinion of its legal counsel for the Board's consideration. The main topics addressed in the legal opinion include the following:

- Legal structure of statutes, regulations and administrative procedures
- Savings in the Greene Act
- The statutory basis of the ORG program
- The California Code of Regulations treatment of savings
- School Districts can retain all savings, with limited exceptions

The full text of the District's submitted Form SAB 189 and attachments are included as Attachment B.

Staff Position

Staff does not support the District's request to retain savings from the ORG project. The regulations supporting the return of savings were adopted more than eight years ago with no public comments raised until now. The savings returned by districts from ORG projects will be used to fund the remaining six ORG projects currently on the workload list, which are requesting $23.3 million in State funding as shown in Attachment C. Staff maintains that the District must return savings from their ORG project for the following reasons:

- The regulations for the ORG program were legally adopted following the Administrative Procedures Act.
- The EC gives the Board the authority to create regulations for the SFP, which includes the ORG program.
- The Board adopted regulations to clarify eligible expenditures for ORG.
- School Facility Program (SFP) Regulation Section 1859.103 is misinterpreted by the District.
- Savings returned to the ORG program are used to fund qualifying projects remaining on the ORG workload list.

Implementation of the ORG Program

The Board adopted the ORG program regulations in February 2007 following three presentations at Implementation Committee (Committee) meetings. For each meeting, the agenda stated that districts will be required to return savings to the State at the end of the ORG project in order to "*maximize the number of projects to be funded and assist in relieving additional overcrowded schools*". This requirement was initially presented to the Committee in November 2006. As no comments were received from Committee members or the public, Staff presented proposed regulatory language, which included this requirement as an amendment to the existing SFP Regulation Section 1859.103, at the Committee hearing in January 2007 and again at the final adoption by the Board in February 2007. No comments were received regarding this requirement when the proposed regulations were presented.

(Continued on Page Three)

STAFF ANALYSIS/STATEMENTS (Cont.)

The Office of Administrative Law (OAL) then reviewed and approved SFP regulations regarding the ORG program, following a 45-day public comment period in which no comments were received. In the Initial and Final Statement of Reasons that were part of the public document, the stated specific purpose of amending SFP Regulation Section 1859.103 was: "*To exclude any savings realized on ORG projects from being expended on other high priority capital facility needs*". The need for the regulation was stated as: "*It was necessary to state that ORG projects are limited to the eligible expenditures since these projects do not require SFP new construction eligibility and no increase to the school district's housing capacity will occur*." This intent of the regulation is to have savings on ORG projects returned to the state. The regulations became effective on August 31, 2007 with no concerns being raised.

Interpretation of Statute

Absent any reference to savings for the ORG program in statute, EC Section 17070.35(a) directs the Board to adopt rules and regulations to administer the Greene Act, and to establish and publish policies and procedures deemed necessary in order to administer Chapter 12.5 (the Greene Act). This broad authority allows the Board to use the SFP regulations to regulate how and when savings are to be returned to the State, and under what circumstances. While there is no specific reference in the EC to savings under the ORG program, the Board is not precluded from adopting regulations to administer the ORG program, which includes the requirement to return project savings.

According to the District's interpretation of EC Section 17063(c), all programs under the SFP would allow participants to keep their savings to use on other high priority capital outlay projects. However, due to the clarifications contained in SFP regulations, there are a number of programs in which regulations specify that districts must return savings to the State: Facility Hardship Program, Charter School Facilities Program, Career Technical Education Facilities Program, ORG, 'previously ineligible' modernization projects, and projects funded with Financial Hardship assistance. By requiring that districts return savings for these programs, the Board ensures that limited bond authority remains eligible for the purpose of the program.

EC Section 17063(c) states that savings from "these funds" shall be retained by the district. Staff has interpreted section (c) to refer to the funds specified in EC Section 17063(a), "*state facilities funding represented by the number of <u>unhoused pupils</u> for which the school district is receiving the state grant*" (emphasis added). In this case, it follows that savings should only be retained by a district for projects that are for unhoused pupils, which would not include ORG projects. Alternatively, the District has interpreted section (c) more broadly, in that savings could be retained with efficient use of "*any funds* provided…under *any article* in this chapter...." (Emphasis added).

The ORG program is distinct from standard new construction funding in that it is *not* housing new pupils, and it is *not* using SFP eligibility. The reasoning behind allowing districts to use their savings from a *standard* new construction project on other high priority capital outlay projects is that they have met their obligation to house those pupils, and can therefore use that savings on other high priority capital outlay needs. Allowing districts to retain savings from new construction projects also ensures that they receive the full funding for the pupil grants charged to their established new construction eligibility.

However, no new pupils are being housed in the ORG program; therefore, Staff believes that this EC section does not apply, and districts must return savings from ORG projects. As funds are returned, they are re-allocated to the next highest density ORG project on the workload list as required by EC section 17079.20 (e). This section requires the Board to "prioritize and fund the projects on the basis of pupil density of the eligible schools" when insufficient funding is available to "fund all eligible applications." OPSC verifies that each application meets all of the program requirements under statute and regulations prior to presenting them to the Board for approval. If the savings are retained by the district, even if the District uses them for district identified ORG projects, the requirements of this section would not necessarily be met.

(Continued on Page Four)

STAFF ANALYSIS/STATEMENTS (cont.)

Eligible ORG Expenditures

The District referenced EC Section 17072.35 as what the eligible expenditures for an ORG project should and could be. However, not all of section 17072.35 can apply to ORG due to the limitation in section 17079.20. For example, section 17072.35 lists expenses related to housing new pupils, which the ORG does not do; the ORG program is housing *existing* pupils. It also lists "*construction, acquisition and installation of portable classrooms*" as eligible expenses, which are specifically prohibited in the ORG program, per EC Section 17079.30(d). Staff also notes that EC Section 17079.20(d) states that all districts must comply with all of the same requirements for new construction funding that are under the Greene Act, except for the requirement to have standard new construction eligibility. Using its statutory authority, the Board adopts regulations to harmonize and clarify these statutory requirements as needed to administer the program. The Board approved regulations that limit the grants for the project to eligible expenditures. Grant funds not used for eligible expenditures (savings) must be returned due to this limitation.

Interpretation of SFP Regulation Section 1859.103

SFP Regulation Section 1859.103 states in part that "The grants for the projects funded pursuant to Section 1859.70.2 or Section 1859.180 shall be limited to eligible expenditures, up to the State Apportionment for the project except as specified in Section 1859.184.1(d)." The District contends that the absence of a comma after '*Apportionment*', means that the ORG program grants shall only be for eligible expenditures, but that the State Apportionment can't be used for items under 1859.184.1(d). This is not the intent of the regulation; in fact, the phrase "except as specified in 1859.184.1(d)" was added over a year after Section 1859.103 was initially amended, in order to specify that ORG program funding overages cannot be used for site acquisition purposes, and that the site acquisition funding cannot be used for ORG construction projects.

The District also maintains that the ORG program is not one of the exceptions in the SFP Regulations to districts not having to return savings to the State. SFP Regulation Section 1859.103 clearly states that the ORG grants are only limited to the eligible expenditures for the project that is approved. Any excess unspent funds must therefore be returned to the State.

ORG Workload List

None of the District's twelve ORG projects have been officially closed out, however, the 'in progress' figures for eight of the projects show that so far the District has twice as much in savings as they do in amounts overspent. These savings amounts could potentially enable other ORG projects still on the workload list to be funded. In fact, the District had one of its ORG projects approved in November 2014 that was funded in part with savings that were collected from other ORG projects throughout the state. As of the April 20, 2016 Board agenda publication, districts have returned savings for five ORG projects for a total of $5.6 million that could be used toward funding projects on the ORG workload list. An additional $1.79 million has been returned, voluntarily by school districts, for three projects still going through the closeout process and there are more than twenty ORG projects that are scheduled to be closed out, which have potential savings. There are currently six ORG projects on the workload list totaling $23.3 million that are still waiting for adequate bond authority to become available so they can receive an unfunded approval and only $7.0 million left in remaining bond authority for the program, which is shown in Attachment C.

(Continued on Page Five)

STAFF ANALYSIS/STATEMENTS (cont.)

Conclusion
Staff recommends that the District be required to return the savings from their ORG project to the State. The return of savings is consistent with regulations and past practice of districts participating in the ORG Program. This practice and interpretation of statute has been in place with no public comments or concerns for over eight years, during which time many ORG projects have been closed out with savings being returned, allowing additional ORG projects to receive funding. In addition, returned savings would help fund the remaining six ORG projects on the workload list. The $23.3 million worth of ORG projects waiting on the workload list will likely not receive funding, without returned funding from other ORG projects in the form of savings.

Considerations
Should the Board grant the District's appeal and not require the District to return the savings from its ORG project, it may also wish to consider one or both of the following additional actions:

1. Direct Staff to develop regulation amendments that would allow school districts to retain savings on the non-financial hardship portion of ORG projects.

2. Direct Staff to return savings from closed-out ORG projects that have been previously remitted to the State by a school district.

BOARD OPTION

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."

Grant the District's appeal.

BOARD ACTION

In considering this Item, there was no motion made by the Board; therefore, staff's administrative action stands and the school district's appeal is considered closed.

ATTACHMENT A

AUTHORITY

Education Code (EC) Section 17070.35 states in part:

(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.

...

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

EC Section 17070.63 states:

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

(b) Any funds provided to a school district under any article in this chapter may not be counted towards the local match for receipt of funds under any other article in this chapter.

(c) Any savings achieved by the district's efficient and prudent expenditure of these funds shall be retained by the district in the county fund for expenditure by the district for other high priority capital outlay purposes.

EC Section 17072.35 states:

A grant for new construction may be used for any and all costs necessary to adequately house **new** pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. ...

EC Section 17076.10 states in part:

(a) A school district that has received any funds pursuant to this chapter shall submit a summary report of expenditure of state funds and of district matching funds annually until all state funds and district matching funds are expended, and shall then submit a final report to the board. The board may require an audit of these reports or other district records to ensure that all funds received pursuant to this chapter are expended in accordance with program requirements.

...

(c) (1) If the board, after the review of expenditures or audit has been conducted pursuant to subdivision (a), determines that a school district failed to expend funds in accordance with this chapter, the department shall notify the school district of the amount that must be repaid to the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as the case may be, within 60 days. ...Any amounts obtained by the Controller shall be deposited into the 1998 State School Facilities Fund, the 2002 State School Facilities Fund, or the 2004 State School Facilities Fund, as appropriate. ...

EC Section 17079 states:

(a) For purposes of this article, an eligible school is a school for which the schoolsite pupil population density is equal to or greater than 175 percent of the schoolsite pupil population density recommended by the Superintendent as of January 1, 2006, adjusted by the following factors:

(1) The density calculation shall be reduced to take into account the additional pupil capacity created by multistory construction.

(2) The schoolsite pupil population density shall be reduced to take into account approved new construction projects, including projects approved pursuant to Article 11 (commencing with Section 17078.10).

(b) The board shall adopt regulations to determine the adjustments set forth in paragraphs (1) and (2) of subdivision (a).

ATTACHMENT A

EC Section 17079.10 states:

(a) For purposes of this article, an eligible pupil is a pupil who is housed in a portable classroom, except portable classrooms used for purposes of the Class Size Reduction Program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28, at an eligible school.

(b) The board shall apportion an overcrowding relief grant to districts on behalf of each eligible pupil equal to the appropriate per-unhoused-pupil grant amount pursuant to Section 17072.10. The number of overcrowding relief grants apportioned shall be subject to the following limitations:

(1) The number of grants apportioned on behalf of an eligible school shall not exceed the number of pupils whose removal from the pupil density calculation would reduce the density of the eligible schoolsite to 150 percent of the schoolsite pupil population density recommended by the Superintendent as of January 1, 2006.

(2) A district shall not receive more grants than the number of pupils housed in portable classrooms that were included in the initial new construction eligibility determination of the district pursuant to Article 3 (commencing with Section 17071.75).

EC Section 17079.20 states:

(a) The board shall require that applications for funding pursuant to this article be used for an equivalent number of permanent new school construction classrooms to replace the portable classrooms upon which the determination of the number of eligible pupils is based. The board shall also require the application to describe how the project will relieve overcrowding at the eligible school.

(b) The board shall create a list of projects eligible for funding and shall approve applications semiannually on a schedule determined by the board.

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

(d) The board shall not apportion funds for a project pursuant to this article any portion of which involves the construction, acquisition, or transportation of portable classrooms for any school in the school district.

(e) In the event the funding available to the board for purposes of this article is less than the amount necessary to fund all eligible applications, the board shall prioritize and fund the projects on the basis of the pupil density of the eligible schools.

EC Section 17079.30 states:

(a) The board shall require both of the following as conditions for receiving funding pursuant to this article:

(1) Within six months after the date of initial occupancy of the permanent school facilities constructed pursuant to this article, the school district shall remove from the eligible school, and remove from service as classrooms in the district, the portable classrooms used for determining the number of eligible pupils.

(2) The new school construction funding provided pursuant to this article shall result in a reduction in the total number of portable classrooms in the school district.

(b) This section does not preclude the school district from using the portable classrooms removed from eligible schools for child care or preschool programs, if those portable classrooms are not located at an eligible school.

(c) This section does not apply to eligible schools operating on double session schedules in an elementary school district in a county of the second class, as set forth in Section 28023 of the Government Code.

School Facility Program (SFP) Regulation Section 1859.2 *Definitions* states in part:

"Overcrowding Relief Grant" (ORG) means the funding provided pursuant to Education Code Section 17079, et seq.

SFP Reg. Section 1859.103 *Savings* states:

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

With the exception of savings attributable to a site apportionment made pursuant to Sections 1859.74.5 or 1859.81.2, the State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three

years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project or a Joint-Use Project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project not expended on eligible project expenditures will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

SFP Reg. Section 1859.180 *General (Overcrowding Relief Grant)* states:

A School District seeking an Apportionment pursuant to the provisions of Education Code Section 17079 through 17079.30 for new construction shall complete and file a Form SAB 50-04.

SFP Reg. Section 1859.184.1. *Application Process for Districts with Financial Hardship Approval* states in part:

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

…

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

(1) The lesser of the actual or appraised value for all parcels acquired through means other than condemnation, pursuant to Section 1859.74.

(2) The appraised value of the parcels being acquired though condemnation, multiplied by 1.15.

(3) Amounts for hazardous waste removal pursuant to Sections 1859.74.2, 1859.74.3 and/or 1859.74.4.

…

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

…

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT Santa Ana Unified School District	APPLICATION NUMBER 56/66670-00-002
SCHOOL NAME Heninger Elementary School	COUNTY Orange
DISTRICT REPRESENTATIVE Stefanie P. Phillips, Deputy Superintendent	E-MAIL ADDRESS stefanie.phillips@sausd.us

Purpose of Request:

That SAUSD retain savings from Overcrowding Relief Grants (ORG) for use on "other high priority capital outlay projects," in accordance with Ed. Code section 17070.63(c).

Basis of Request:

- [x] Law (Statute) Ed. Code § 17070.63(c)
- [x] Regulation Cal. Code of Reg § 1859.103
- [ ] Other (specify) _____

Description:

Background, Circumstances and Sequence of Events:

SAUSD met with Lisa Silverman on the following dates to discuss SAUSD's ORG project savings: Nov. 13, 2014; March 12, 2015; and April 17, 2015. At these meetings, SAUSD asked OPSC to provide the statute or regulation that stated that districts cannot keep ORG savings. OPSC did not provide a statute or regulation at that time, but stated that this was indicated on SAUSD's SAB agenda items, which it is not.

Relevant Information and Basis for Appeal:

Statute: The ORG program was approved by the California Legislature in 2006, is part of the Greene Act (SFP), and is codified in statute at Ed. Code section 17079, et seq. (Article 14 of the Greene Act). The ORG program operates under the same regulations as new construction projects. The Greene Act states "Any savings achieved by the district's efficient and prudent expenditure of these funds shall be retained by the district in the county fund for expenditure by the district for other high priority capital outlay purposes" (Ed. Code sect. 17070.63(c)). There is no specific statute that "carves out" ORG savings from this statutory requirement. Therefore, this Green Act statute controls and a district's ORG savings can be used for "other high priority capital outlay purposes." This is exactly what SAUSD did. In addition, all of the projects on which we utilized savings were other ORG projects within the District's overall ORG construction program.

OPSC's Incorrect Position: In OPSC's notice to SAUSD regarding this matter (dated May 28, 2015), OPSC misstates what "savings" are when it states, "Funding in excess of expenditures, in this case, "savings," is to be returned to the State." That is a misinformed statement of what savings are. Savings are not funds "in excess of expenditures;" savings are funds remaining on ONE project "for expenditure by the district for OTHER high priority capital outlay purposes." (Emphasis added)

SAUSD's Legal Opinion: We have attached the opinion of SAUSD's legal counsel for the SAB's consideration. Please review the entire opinion letter, but we have highlighted the analysis on pages 5 and 6 that addresses specifically the fault in OPSC's position regarding eligible expenditures and clearly explains SAUSD's position.

Request to SAB: SAB should grant this appeal since OPSC's position has no basis in applicable law and SAUSD's position is in full compliance with the applicable statute and the applicable regulation. In addition, any other conclusion is unfair to SAUSD since the State's apportionment are deemed "full and final." There is no basis for OPSC to demand SAUSD to return savings that SAUSD realized from ORG program funds.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE 6-10-15

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SCHOOL CONSTRUCTION
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ORBACH HUFF SUAREZ + HENDERSON LLP

Attorneys at Law

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501 W. Broadway
San Diego, CA 92101
619 564-4130 · PHONE

Suite 1100
600 Anton Boulevard
Costa Mesa, CA 92626
714 795-3200 · PHONE

File Number
4438.013

May 7, 2015

VIA E-MAIL ONLY

Joe Dixon
Assistant Superintendent
Santa Ana Unified School District
1601 E. Chestnut Avenue
Santa Ana, CA 92701

Re: Santa Ana Unified School District
Savings from Overcrowding Relief Grants

Dear Joe:

This letter is an analysis of whether school districts can retain and utilize the "savings" from funds a school district receives through California's Overcrowding Relief Grants ("ORG") Program. The analysis in this letter is applicable to all school districts that participate in the ORG Program, but this letter points out the specific applicability to the Santa Ana Unified School District ("SAUSD").

In short, neither OPSC nor the SAB can demand that SAUSD return any savings that SAUSD realized from SAUSD's efficient use of ORG Program funds. We have not found any legal obligation that requires the District to return those savings. To the contrary, all applicable legal authority confirms the conclusion that SAUSD can retain all its savings from the ORG Program grants for other high priority capital outlay projects.

Legal Structure

"Law is a solemn expression of the will of the supreme power of the State" (Civ. Code, § 22), which is expressed "By the Constitution" and "By Statute." (Civ. Code, § 22.1.) As an initial matter, the structure of how laws in California are to be interpreted follows this hierarchal structure:

1. **Statutes & Case law**
   Statutes passed by legislators and rulings by courts are considered enforceable law.

2. **Regulations**
   Regulations are prepared by State agency staff members and approved by the Legislative Analyst's Office. This is part of administrative agencies' rulemaking authority. However, this rulemaking authority is limited by the principle that "no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." (Gov. Code, § 11342.2.)

3. **Administrative Processes & Procedures**
   The processes and procedures prepared and distributed by state agency staff are limited. "W]hile an agency's interpretation of its own regulation is entitled to considerable judicial deference, 'the principle of deference is not without limit; it does not permit the agency to disregard the regulation's plain language'." (*Motion Picture Studio Teachers & Welfare Workers v. Millan* (1996) 51 Cal.App.4th 1190, 1195).

4. **Public Comments by Legislators**
   Legislators' comments about statutes after statutes have been passed are not binding and cannot be followed if those comments contradict statutes and regulations.

5. **Public Comments by State Agency Staff Members**
   State agency staff comments, including comments made while participating in ad hoc committees like the State Allocation Board's ("SAB") Implementation Committee, are not binding and cannot be followed if those comments contradict statutes and regulations.

Savings in the Greene Act are Savings in the ORG Program

As analyzed below, the ORG Program is within the Leroy F. Greene School Facilities Act of 1998 (Educ. Code § 17070.10, et seq. ("Greene Act"). Unless there are specific statutory provisions to the contrary, the Greene Act's general provisions control how the state and schools must proceed under the ORG Program. (See *Mitchell v. County Sanitation Dist. No. One of Los Angeles County* (1958) 164 Cal.App.2d 133, 141 [providing only that a "Where ... inconsistencies appear, courts are governed by the established principle of statutory construction that a special statute dealing expressly with a particular subject controls and takes priority over a general statute."]) Since there is no specific statute dealing with savings for the ORG Program, the Greene Act's general statute controls. The Greene Act states:

> Any savings achieved by the district's efficient and prudent expenditure of these funds shall be retained by the district in the county fund for expenditure by the district for other high priority capital outlay purposes.
> (Educ. Code § 17070.63(c).)

One's analysis could stop there. This is because, regardless of any regulation or policy or procedure or Committee discussion or SAB Agenda item or action, nothing can be contrary to this statutory requirement. All savings realized by a school district – unless there is a contrary and applicable statutory provision – can be used by the school district for high priority capital outlay purposes.

The Statutory Basis for the ORG Program

The ORG Program was approved by the California Legislature in 2006 and is codified in statute at Education Code section 17079, et seq. It is at Article 14 of Greene Act. All non-statutory regulations, procedures, processes and interpretations of the ORG Program cannot contradict the terms of Article 14 or the Greene Act as a whole. Article 14 is relatively short, consisting of only four separate statutory sections (Educ. Code §§ 17079, 17079.10, 17079.20 and 17079.30).

The brevity of the terms of the ORG Program is easily explained: The ORG Program is to be operated as other programs under the Greene Act. There was no need to prepare separate statutory provisions or regulations; the existing statutory structure and regulatory processes are more than sufficient for the ORG Program. This includes, without limitation:

- The ORG Program grant amount is controlled by section 17072.10 (See Educ. Code § 17079.10(b).);

- The pupil count in portable classrooms is controlled by the new construction eligibility determination in section 17071.75, et seq. (See Educ. Code § 17079.10(b)(2).); and

- School districts must comply with new construction funding conditions except for section 17071.75(b) (See Educ. Code § 17079.20(c).).[1]

The California Code of Regulations Treatment of Savings

Even though the statute provides the primary and only necessary authority for school districts to retain any realized savings consistent with the Education Code, the California Code of Regulations provides secondary and supportive authority as well.

Section 1859, et seq., of Subgroup 5.5, Group 1, Subchapter 4, Chapter 3, Division 2 of Title 2 of the California Code of Regulations ("CCR") contains the regulations relating to the Greene Act. "These regulations implement the Leroy F. Greene School Facilities Act of 1998, which establishes a State program to provide State per pupil funding for new construction and modernization of existing school facilities." (CCR § 1859.)

CCR section 1859.103 in Article 11 of the CCR ("Miscellaneous School Facility Program Requirements") is the general provision in the CCR that explains how the State and school districts are to treat savings:

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

We understand that some contend that this provision, especially the bold sentence, allows the Office of Public School Construction ("OPSC") and the SAB to take back any savings realized by school districts under the ORG Program. Therefore, a careful evaluation of this regulation – this sentence – is needed to provide a better understanding of the intent of this regulation.

---

[1] Section 17071.75(b) relates to how to count pupils and is irrelevant to a savings analysis. This letter will not analyze the eligibility determinations, the pupil counts, or the calculations to determine grant amounts. Those factors are not at issue with this analysis regarding school district savings under the ORG Program.

- **Section 1859.180**. Section 1859.180 refers specifically to the ORG Program, but the **bold** sentence does not change the first sentence. The first sentence states that school districts may retain savings, which is consistent with Education Code section 17070.63(c).

- **Eligible Expenditures**. The **bold and underline** portion of the sentence states the grants shall be used for eligible expenditures. "Eligible expenditures" is a term cited in CCR section 1859.152, which states that grants must comply with Education Code section 17072.35, which in turn states:

  > A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. [And other property purchases, building conversions, energy and water efficiency, etc.]

  Eligible expenditures include many components. SAUSD expended the ORG Program savings it realized on items identified in Education Code section 17072.35 and only on other SAUSD ORG Program projects.

- **"[U]p to the State Apportionment for the project"**. This is not in dispute. The only monies we are analyzing are portions of the amounts that the State apportioned for each project; the District is not seeking additional funds.

  Also, this phrase cannot be read to mean that the savings from one project – the first sentence – would need to be spent on that one project. That would not make sense, since those monies would not be "savings," would they?[2] And only if there were a

[2] "We begin with the text of the statute as the best indicator of legislative intent [citation], but we may reject a literal construction that is contrary to the legislative intent apparent in the statute or that would lead to absurd results [citation]." (*Simpson Strong-Tie Company, Inc. v. Gore* (2010) 49 Cal.4th 12, 27.)."

comma after "Apportionment" and before "for the project" could that sentence be read to mean that anyway. As it is punctuated now, it is clear that this second sentence is intended to clarify that the ORG Program grants shall only be for eligible expenditures, but that amount (the "State Apportionment for the project") cannot be used for items under Section 1859.184.1(d).[3]

- **Section 1859.184.1(d)**. The **bold** portion at the end of the sentence states that the eligible expenditures cannot include items within CCR section 1859.184.1(d).
    - CCR section 1859.184.1 is the section that describes the "Application Process for Districts with Financial Hardship Approval" (Emphasis added.).
    - Subsection (d) states that "grants for [ORG] projects shall be limited to eligible expenditures, up to the State Apportionment for the project with the exception of the funds provided in subsection (b) above that are for site acquisition purposes only and cannot be transferred over to eligible construction related costs."
    - Subsection (b) indicates the pricing of property in a condemnation setting and is clearly intended to not allow school districts to convert what would otherwise be "construction" funds to "site acquisition" funds.

  Convoluted, yes, but understandable. Importantly, SAUSD used its savings for construction-related projects. None were Financial Hardship ORG projects. None included any site acquisition. In fact, all the projects that SAUSD used its savings on were construction projects under the ORG Program (more on this below).

- **Section 1859.70.2.** This section relates to modernization projects that were previously ineligible and is not related to the ORG program. Further information is analyzed below.

[3] To clarify this grammatical point, if there was a comma after "State Apportionment" then one could read the sentence to state that "savings" could only be used for eligible expenditures for the project ("*...shall be limited to eligible expenditures, up to the State Apportionment, for the project except...*). In that way, "for the project" would have modified "eligible expenditures." As it stands, "for the project" modifies "State Apportionment." In any event, even if the punctuation was changed, it would still not make sense to modify the use of savings to be for that one specific project – those are not savings.

School Districts Can Retain All Savings, with Limited Exceptions

As stated above, the CCR allows school districts to retain savings. There are three exceptions, but none relate to the ORG Program.

- CCR section 1859.70.2(d) ("Funding of Previously Ineligible Projects") in Article 7 of the CCR ("Modernization Eligibility Determination") is a specific provision in the CCR that limits school districts' ability to retain savings for previously ineligible modernization projects. It states, "The project will not be eligible to receive project savings as provided for in Section 1859.103."

- CCR section 1859.169.1 ("Charter School Project Savings") in Article 14 of the CCR ("Charter School Facilities Program") is a specific provision in the CCR that limits charter school districts' ability to retain savings. It states, "Projects funded under the CSFP do not generate savings pursuant to Section 1859.103."

- CCR section 1859.199 ("Program Accountability") in Article 16 of the CCR ("Career Technical Education Facilities Program") is a specific provision in the CCR that limits school districts' ability to retain savings on projects funded through the Career Tech Program. It states, "An applicant district may not retain savings realized by a Career Technical Education Facilities Project."

These are the only three exceptions in the CCR to the general rule that school districts can retain savings, and none of these relate to the ORG program and none are applicable to SAUSD's situation. This is extremely important. This is direct evidence that the State's determination – more specifically the State agency(ies) that drafted the CCR sections that implement the Greene Act – that there are situations where savings cannot be retained by a school district. The State could have tried to do the same thing for the ORG Program, but it did not. Therefore, the State must follow the general provision that a school district can retain its ORG Program savings for other high priority projects – especially on other ORG projects, which is what SAUSD did.

The intent of a statute is to be determined by the language of the statute. In *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919, the California Supreme Court stated, "If the language of the statute is not ambiguous, the plain meaning controls." There is no ambiguity and no exception in the ORG Program: School districts can retain savings for other high priority projects.

Conclusion

There is no basis for OPSC or the SAB to demand that SAUSD return any savings that SAUSD realized from ORG Program funds. Only if SAUSD did not expend those funds on "other high priority capital outlay purposes" would the District be obligated to return those funds to the State. We suggest that SAUSD demand that the OPSC or the SAB provide, in writing, its legal basis to support its demand for the return of ORG Program savings. Only then will SAUSD know if there is a justification for the State's demand. Based on the analysis above, we have not found any legal obligation that requires the District to return those savings.

Very truly yours,
ORBACH HUFF SUAREZ & HENDERSON LLP

Philip J. Henderson

PJH:TH

DGS CALIFORNIA DEPARTMENT OF GENERAL SERVICES

Governor Edmund G. Brown Jr.

May 28, 2015

Joe Dixon, Assistant Superintendent
Facilities/Governmental Relations
Santa Ana Unified School District
1601 East Chestnut Avenue
Santa Ana, CA 92701-6322

Dear Mr. Dixon:

Thank you for your letter, dated May 7, 2015, discussing whether savings may be retained on Overcrowding Relief Grant (ORG) Program projects.

It remains the position of the Office of Public School Construction (OPSC) that the State's share of the savings from an ORG project shall be returned to the State. The School Facility Program (SFP) regulation section 1859.103 states "[t]he grants for the projects funded pursuant to...Section 1859.180 shall be limited to eligible expenditures, up to the State Apportionment for the project..." The funding, therefore, for ORG projects, is limited to eligible expenditures. Funding in excess of expenditures, in this case, "savings," is to be returned to the State.

Attached is a revised Summary of Project Financing and Expenditures (SOPFE) requesting the District return $1,369,244 to the State. As stated in the attachment, the District has two options:

- Concur with OPSC Findings, sign and return the SOPFE; or
- Disagree with OPSC Findings

If the District disagrees with OPSC's Findings, please submit a *School District Appeal Request* (SAB Form 189). The District's appeal will be processed and heard at a future State Allocation Board meeting.

If you have any questions or concerns please contact me at (916) 375-4751 or lisa.silverman@dgs.ca.gov.

Sincerely,

Lisa Silverman

Lisa Silverman
Executive Officer
Office of Public School Construction

cc: Richard L. Miller, Ph.D., Superintendent

Enclosure

DGS CALIFORNIA DEPARTMENT OF GENERAL SERVICES

Governor Edmund G. Brown Jr.

May 21, 2015

Application No.: 56/66670-00-002
School: Heninger Elementary
County of Orange

Mr. Joe Dixon
District Representative
Santa Ana Unified School District
1601 East Chestnut Avenue
Santa Ana, CA 92701

Dear Mr. Dixon:

The *Revised Summary of Project Financing and Expenditures* is attached and supersedes the *Summary of Project Financing and Expenditures* sent on January 27, 2015. Please do one of the following by **June 5, 2015**.

- If the District concurs with the OPSC findings:

  Sign and date the attached *Summary of Project Financing and Expenditures* and return it to the OPSC. Subsequently, a copy of the closing action will be sent to the District.

- If the District disagrees with the OPSC findings:

  Submit a written statement to the OPSC with applicable supporting documentation.

This is an Overcrowding Relief Grant (ORG) project and the State share of savings, in the amount of $1,369,244, must be returned to the State. SFP Regulation Section 1859.103 states "The grants for the projects funded pursuant to...Section 1859.180 shall be limited to eligible expenditures, up to the State Apportionment for the project..."

Should you have any questions concerning this matter, please contact me at larisa.samoylovich@dgs.ca.gov or (916) 375-4327, or my supervisor Mr. Jason Hernandez at jason.hernandez@dgs.ca.gov or (916) 376-5369.

Sincerely,

LARISA SAMOYLOVICH, Auditor
Office of Public School Construction

LS:ls

Attachment

cc: Dr. Thelma Melendez, District Superintendent
Orange County Office of Education
Project file: 56/66670-00-002

Revised
Summary of Project Financing and Expenditures

District Name:	Santa Ana Unified
School:	Heninger Elementary
County:	Orange
SFP Application Number:	56/66670-00-002
LPP Application Number:	None
Auditor Name:	Larisa Samoylovich
Date:	5/21/2015

Line				
1	LPP State Apportionment	1	$	-
2	SFP State Apportionment	2	$	6,441,947
3	Financial Hardship Apportionment	3	$	-
4	District Contribution	4	$	6,441,947
5	Interest	5	$	-
6	**Total Project Funding**	6	**$**	**12,883,894**
7	Reported Expenditures	7	$	10,145,407
8	Reported Savings	8	$	2,738,487
9	Grant Adjustments	9	$	-
10	Total Review Adjustments	10	$	-
11	**Revised Expenditures**	11	**$**	**10,145,407**
12	**Net Savings**	12	**$**	**2,738,487**
13	State Share of Savings	13	$	1,369,244
14	District Share of Savings	14	$	1,369,243
15	**Total to be Returned to the State**	**15**	**$**	**1,369,244**

Explanations:

Line 12, 13, & 15 :

This is an Overcrowding Relief Grant (ORG) project and has savings in the amount of $ 2,738,487. The State share of the savings in the amount of $1,369,244 must be returned to the State. SFP Regulation Section 1859.103 states "The grants for the projects funded pursuant to...Section 1859.180 shall be limited to eligible expenditures, up to the State Apportionment for the project..."

These are the final authorized amounts needed to bring the District's accounting records into compliance. Amounts shown supersede all authorized amounts shown on the Office of Public School Construction Fund Release documents.

ON BEHALF OF THE DISTRICT I CONCUR WITH THIS ANALYSIS AND REQUEST THAT THE OFFICE OF PUBLIC SCHOOL CONSTRUCTION CLOSE ITS BOOKS FOR THIS PROJECT.

District Representative

Date

ATTACHMENT C

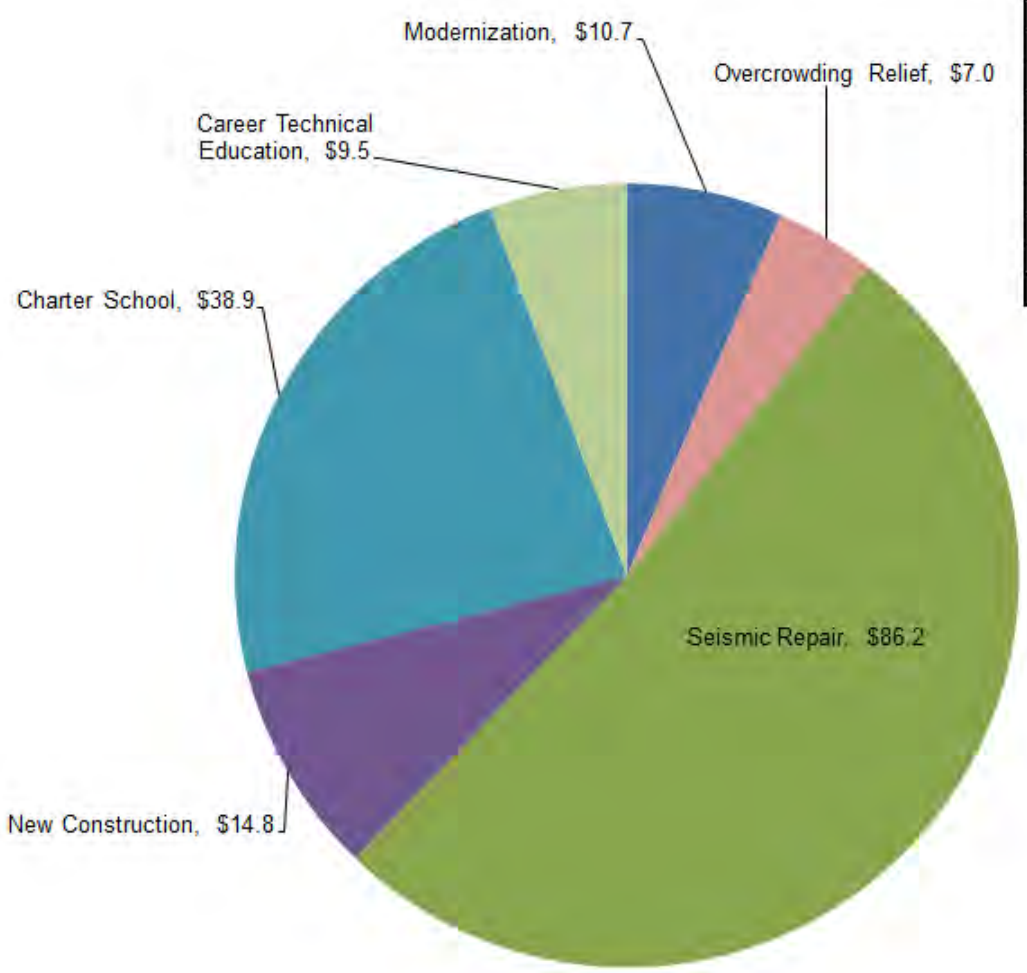
SFP APPLICATIONS
Overcrowding Relief Grant - School Facilities Program
- Workload as of March 31, 2016 -

District	County	Site	Application Number	50-04 Date Received	ORG State Share	Status
Newhall Elementary	Los Angeles	Valencia Valley Elementary	56/64832-00-001*	7/30/2013	$ 1,157,110	Beyond Authority
Pasadena Unified	Los Angeles	Sierra Madre Middle	56/64881-00-002*	7/31/2013	$ 358,948	Beyond Authority
Newhall Elementary	Los Angeles	Meadows Elementary	56/64832-00-002*	7/30/2013	$ 1,371,392	Beyond Authority
Val Verde Unified	Riverside	Southeast High	56/75242-00-001*	5/22/2013	$ 7,338,095	Beyond Authority
Covina Valley Unified	Riverside	Sierra Vista Middle	56/64436-01-001*	7/29/2013	$ 4,311,517	Beyond Authority
Chaffey Joint Union	San Bernardino	Ontario High	56/67652-00-003*	7/25/2013	$ 8,739,582	Beyond Authority
					$ 23,276,644	

* Overcrowding Relief Grant applications received by OPSC for the 2013 Filing Round. The OPSC has not yet reviewed the total grant requested and the total number of projects exceed available bond authority. Placement on this list does not confirm funding.

Remaining Bond Authority - $167.1 million

(by program, in millions)
As of April 20, 2016



Remaining Bond Authority (in millions)	
Modernization	$ 10.7
Overcrowding Relief	$ 7.0
Seismic Repair	$ 86.2
New Construction	$ 14.8
Charter School	$ 38.9
High Performance Schools	$ -
Critically Overcrowded Schools	$ -
Hardship	$ -
Career Technical Education	$ 9.5
Grand Total	**$ 167.1**