

STATE ALLOCATION BOARD AGENDA

Meeting Date: August 28, 2019

State Capitol
Room 444
4:00 p.m.

Revision date: August 22, 2019

Tab #6 – Appeals

- Insert pages 158 - 182

Tab #7 – Action Items

- Insert pages 183 – 195a

Thank you,

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REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 28, 2019

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|----------------------|
| SCHOOL DISTRICT DATA |
|----------------------|

| | |
|--|---|
| School District:..... SOLANO COE | County:..... SOLANO |
| Application Numbers:.....57/10488-00-027 | School Name:..... T.C. MCDANIEL EARLY LEARNING CTR. |
| 50/10488-00-032 | |
| District Enrollment:.....397 | Grade Levels:..... SPECIAL EDUCATION |
| Financial Hardship..... | YES |

PURPOSE OF REPORT

To present the Solano County Office of Education's request for the following:

- Reinstatement of the unfunded approvals for two School Facility Program (SFP) projects that were rescinded due to non-participation in the priority funding rounds.
- Allow a change in scope to ensure these projects can be completed within the approved state grants.

DESCRIPTION

The Solano County Office of Education (SCOE) had two projects at the T.C. McDaniel Early Learning Center consisting of a modernization project (57/10488-00-027) and an eight-classroom new construction project (50/10488-00-032). These projects were approved by the State Allocation Board (Board) for placement on the Unfunded List (Lack of AB 55 Loans) on December 6, 2017.

Due to expired plan approvals from the Division of the State Architect (DSA) and the California Department of Education (CDE), the SCOE did not participate in the first available Priority Funding (PF) Filing Round in December 2017. As a result, the District received a non-participation occurrence. The SCOE did not participate in the next PF Filing Round in June 2018 due to estimated increased costs of construction. Failure to participate in the subsequent round resulted in the SCOE receiving a second non-participation occurrence. Pursuant to SFP Regulations, failure to participate in the priority funding process two times resulted in rescission of the projects.

The SCOE is requesting the Board to reinstate the unfunded approvals for both projects with an 18-month timeline, and, in addition, allow for a change in project scope.

AUTHORITY

See Attachment A.

BACKGROUND

Opened in the 1970s and situated on land leased from the Fairfield-Suisun Unified School District, the T.C. McDaniel Early Learning Center is located in Solano County and is next to Sheldon Elementary School. The school houses special day class student ages three to five years old.

BACKGROUND (cont.)

Applications for Funding History

The SCOE originally submitted Advanced Design funding requests as application numbers 50/10488-00-024 and 57/10488-00-018 on December 15, 2006 and March 5, 2007, respectively. The SCOE failed to meet substantial progress on both projects; however, at the February and June 2009 Board meetings, the Board approved extensions to the substantial progress deadlines. The SCOE submitted and received plan approvals on April 8, 2011 from the Division of the State Architect; but were unable to meet the extended substantial progress deadlines to submit funding applications. As a result, the projects were rescinded by the Board on May 25, 2011.

Resubmitted Application for Funding

The SCOE resubmitted Advanced Design funding requests for the project as application numbers 50/10488-00-032 and 57/10488-00-27 on August 1, 2011 and July 28, 2011, respectively. The Board approved both Advanced Design requests for placement on the Unfunded List (Lack of AB 55 Loans) at the October 26, 2011 meeting. Priority Funding (PF) Apportionments were approved at the June 27, 2012 meeting and funds were released to the SCOE on July 16, 2012. The SCOE submitted both applications for the full construction of the project on February 14, 2013; however, this was soon after the Board had received sufficient applications to exhaust all available bond authority.

Proposition 51 / Priority Funding Process

With the passage of Proposition 51 in November 2016, at its June 2017 meeting the Board directed staff to resume processing SFP applications. The SCOE's applications were approved by the Board at the December 2017 meeting. Because the SCOE's DSA plan approvals expired April 8, 2015, the SCOE was unable to participate in the Priority Funding Process and received one non-participation occurrence on December 7, 2017 pursuant to SFP Regulations. On June 7, 2018, the SCOE receive a second non-participation occurrence as the project could not move forward due to high estimated costs of construction, and, pursuant to SFP Regulations, the applications were rescinded. The following illustrates the timing of each application.

New Construction Application

- 12/5/2006 - Design funding application (50/10488-00-024) received by OPSC.
- 4/25/2007 - Design Apportionment approved.
- 10/25/2008 - Substantial Progress due date.
- 2/25/2009 - Substantial progress extension request approved.
- 11/4/2009 - Due date to submit plans to DSA – condition of extension request.
- 5/4/2010 - Due date to submit construction ready funding request to OPSC – condition of extension request.
- 5/25/2011 - Design application was rescinded, construction ready funding request not submitted.
- 8/1/2011 - Resubmittal of design funding application (50/10488-00-032) to OPSC.
- 10/26/2011 - Design funding approved for placement on the Unfunded List (Lack of AB 55 Loans).
- 4/4/2012 - Received CDE Final Plan Approval.
- 6/27/2012 - Design Apportionment approved.
- 2/14/2013 - Construction ready funding request submitted to OPSC, placed on Applications Received Beyond Bond Authority list.
- 11/8/2017 - 14th PF Filing period opens.
- 12/6/2017 - Project is approved by SAB and placed on the Unfunded List (Lack of AB55 Loans).
- 12/7/2017 - 14th PF Filing period closes – no request to participate submitted. 1st PF occurrence.
- 5/9/2018 - 15th PF Filing period opens.
- 6/7/2018 - 15th PF Filing period closes – no request to participate submitted. Project received 2nd PF Occurrence. Project removed from the Unfunded List (Lack of AB55 Loans).

BACKGROUND (cont.)

Modernization Application

- 3/6/2007 - Design funding application (57/10488-00-018) received by OPSC.
- 7/25/2007 - Design Apportionment approved.
- 1/25/2009 - Substantial Progress due date.
- 6/24/2009 - Substantial progress extension request approved.
- 3/1/2010 - Due date to submit plans to DSA – condition of extension request.
- 9/1/2010 - Due date to submit Construction ready funding request to OPSC – condition of extension request.
- 5/25/2011 - Design application was rescinded, construction ready funding request not submitted.
- 7/28/2011 - Resubmittal of design funding application (57/10488-00-027) to OPSC.
- 10/26/2011 - Unfunded design approval.
- 4/4/2012 - Received CDE Final Plan Approval.
- 6/27/2012 - Design Apportionment approved.
- 2/14/2013 - Construction ready funding request submitted to OPSC, placed on Applications Received Beyond Bond Authority List.
- 11/8/2017 - 14th PF Filing period opens.
- 12/6/2017 - Project is approved by SAB and placed on the Unfunded List (Lack of AB55 Loans).
- 12/7/2017 - 14th PF Filing period closes – no request to participate submitted. 1st PF occurrence.
- 5/9/2018 - 15th PF Filing period opens.
- 6/7/2018 - 15th PF Filing period closes – no request to participate submitted. 2nd PF occurrence. Project removed from the Unfunded List (Lack of AB55 Loans).

The District has also included a timeline of events that can be found in Attachment B.

STAFF ANALYSIS/STATEMENTS

SCOE's Position

The SCOE requests the two projects' (Application Numbers 50/10488-0032 and 57/10488- 00-027) unfunded approvals be reinstated and allow a change in scope due to the following considerations:

- The SCOE still has an unmet need for facilities and funding that can't be remedied any other way than through the state's program.
- The SAB [State Allocation Board] currently utilizes the regulations that require districts to participate in the PF Round process to obtain an apportionment or otherwise be rescinded, but the Board may instead apply alternative regulations that better fit the facts here.
- The request to reinstate the unfunded approvals is functionally the same as requesting a change in project scope.
- The request for a change in the scope of the new construction project is in alignment with the parameters utilized by the OPSC and SAB to determine if the revised project will still meet the requirements for state funding.

STAFF ANALYSIS/STATEMENTS (cont.)

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

Staff's Position

In the SCOE's request, the SCOE suggests the Board:

1. Reinstate the applications as unfunded approvals and apportioned the projects only after the plans are re-approved by CDE and DSA.
2. Determine the projects are "Ready for Apportionment".
3. Provide for both projects, 18 months to request a fund release pursuant to SFP Regulation Section 1859.90

The Priority Funding (PF) Process

While staff acknowledges the financial challenges faced by the SCOE, the timing of the state's fiscal crisis, and the exhaustion of bond authority in 2012, staff does not support the SCOE's request.

First established in 2008 as a result of the state's fiscal crisis, the Priority Funding process has proven to be highly successful in providing cash to construction ready projects, ensuring that limited cash proceeds from bond sales do not go unused. After the fiscal crisis was resolved, the Board created the Priorities in School Construction Funding/ Cash Management Subcommittee (Committee) to address the need for a new permanent system to manage cash and make apportionments in the future.

After discussing the topic publicly at four meetings of the Committee, at the May 2011 Board meeting, the Board approved regulations establishing two annual filing periods for prioritizing school construction applications as cash proceeds became available from bond sales to provide Apportionments. The regulations created two 30-day periods in which school districts could request to receive an Apportionment upon certification that a *Fund Release Authorization* (Form SAB 50-05) could be submitted within 90 days of receiving an Apportionment. The Office of Administrative Law (OAL) approved the regulations on July 27, 2011.

At the October 2012 meeting, the Board further refined the Priority Funding process by approving regulations that allow school districts only one time to pass on participating in the PF Process. OAL approved the regulations on March 13, 2013. Projects that do not participate in the first available PF round will receive one "non-participation occurrence". A second non-participation occurrence will result in automatic rescission of the project and loss of reserved bond authority.

SCOE's Request- Re-instate Unfunded Approval

SFP Regulations do not provide a mechanism to reinstate a project once it has been rescinded. However, all school districts are able to submit a new funding application for eligible projects. Resubmitted applications are subject to available bond authority at the time the application is submitted and are subject to SFP Regulations in effect at the time of submittal.

STAFF ANALYSIS/STATEMENTS (cont.)

Since 2013, only 59 projects (\$98.6 million) out of 1,154 projects (\$2.9 billion) have received two non-participation occurrences resulting in a rescission. In total, \$98.6 million was returned to the program and reallocated to eligible projects. Currently, there are 38 projects in the amount of \$65.4 million that have one non-participation occurrence. The vast majority of districts are able to successfully participate in the priority funding process.

SCOE's Request - Unfunded Approval Outside the Priority Funding Process

The SCOE has suggested that along with reinstating the unfunded approvals, the Board could apply alternative regulations to provide the SCOE sufficient time to obtain necessary state agency approvals and receive funding for their projects. However, staff's review has determined that the SCOE's request requires the Board to combine multiple unrelated regulations and that the regulations do not provide a mechanism for the Board to reinstate the applications.

The SCOE has requested that the Board consider the projects as "Approved Applications". This term is defined in SFP Regulations as meaning "a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application...." Normally, an Approved Application is placed on OPSC's Workload List for processing at a later date. In this request, the SCOE instead requests the applications be reinstated to the Unfunded List (Lack of AB 55 Loans). The SCOE is then asking for 18-months to obtain CDE and DSA plan approvals before determining the project are "Ready for Apportionment".

"Ready for Apportionment" is defined in SFP Regulations as meaning "a final review of an Approved Application has been completed by the OPSC and it has been determined that it meets all [emphasis added] requirements of law for an apportionment or eligibility, and the OPSC will recommend approval to the Board." This term was used to classify projects processed by OPSC that were funded by bond funds approved by voters prior to January 1, 2002 as it allowed OPSC staff to fully process an application in advance of bond sale proceeds being available. The term was also used for placing projects on the Unfunded List. The definition still exists in regulation, however, this process is not used in the current priority funding regulations or for 18-month Apportionments. It is also no longer used for purposes of an Unfunded List, as regulations now use the Applications Received Beyond Bond Authority list instead (where applications are accepted but not processed). This regulatory status was not intended for the purposes for which SCOE proposes.

Education Code (EC) Section 17076.10(d) allows the Board to establish a time period, not to exceed 18 months, for a school district to meet fund release criteria. Prior to the establishment of the Priority Funding process the SFP regulations provided all school districts up to 18 months after Apportionment to meet fund release criteria. This regulation still exists, however, the Board has only allowed the use of this regulation section for health and safety projects. An Apportionment outside the Priority Funding process is sometimes necessary to provide immediate cash for school districts with urgent health and safety issues. However, the Board legally cannot provide an Apportionment to school districts without CDE plan approval, and cannot release funds until the school district has obtained DSA plan approval, pursuant to EC Sections 17070.50 and 17074.16, respectively.

STAFF ANALYSIS/STATEMENTS (cont.)

SCOE's request to determine the projects are "Approved Applications" until such time they are deemed "Ready for Apportionment" with current CDE and DSA plan approvals and to provide an Apportionment up to 18 months later once the approval is obtained are not supportable in SFP regulations or statutes. Additionally, the SCOE's request exempts them from the Priority Funding process. In total, the SCOE's request for 18 months to provide updated CDE and DSA plan approvals, and use of the alternate 18-month Apportionment fund release criteria rather than the Priority Funding process, provides the SCOE three years to obtain funds. The request is contrary to policies set by the Board in regulations to ensure that projects are not holding onto bond authority for project that are not ready to move forward.

SCOE's Request - Scope Changes

Applications for funding for the construction of a project are accompanied by CDE and DSA approved plans. The Board's approval of the project funding is full and final and based on the plans accompanying the project. Flexibility is recognized as part of SFP projects; however, the intent or project scope must be maintained. In some extenuating circumstances, staff may present a school district's request for a scope change to the Board.

General guidelines for scope changes have been in place since 2005 (Attachment C). A change of scope in certain situations may be permitted if the following conditions are met:

- CDE and DSA have approved the changes in the plans.
- The amended project meets the 60 percent commensurate requirement.
- The original intent/purpose of the project is maintained.

Prior Board Actions

The Board has previously heard ten project scope change appeals, approving eight, which are outlined below:

| APPEAL DATE | DISTRICT | REQUEST | FINANCIAL HARDSHIP | BOARD ACTION |
|-------------|-----------------------------------|--|--------------------|--------------|
| 8/22/07 | Victor Valley Union High | Change to a larger gymnasium than the original plans, from 2,405 square feet to 12,430 square feet | Yes | Approved |
| 4/23/08 | Victor Valley Union High | Change from modular to permanent construction for 12 classrooms | Yes | Approved |
| 9/24/08 | Gerber Union Elementary | Change from roof repair to roof replacement due to unforeseen damage | Yes | Approved |
| 8/26/09 | Temecula Valley Unified | Change from portable construction to the purchase & renovation of State owned relocatable classrooms | No | Approved |
| 6/22/11 | Butte County Office of Education | Addition of a Library that was not in the originally approved plans | Yes | Not Approved |
| 8/24/11 | Fresno County Office of Education | Addition of solar panels not in the originally approved plans; removal of a swimming pool from plans | Yes | Approved |
| 6/27/12 | Bass Lake Joint Union Elementary | Change from building modernization to like-for-like replacement in the original footprint of the buildings | No | Approved |

STAFF ANALYSIS/STATEMENTS (cont.)

| APPEAL DATE | DISTRICT | REQUEST | FINANCIAL HARDSHIP | BOARD ACTION |
|-------------|---|--|--------------------|--------------|
| 4/15/15 | Pathways to College Charter School (Hesperia USD) | Change from modular to permanent construction for 19 classrooms and subsidiary facilities. | No, Loan | Approved |
| 8/26/15 | Alpaugh Unified | Change from multi-story to single-story construction of a classroom/administration building | Yes | Approved |
| 12/6/17 | Maple Elementary | Change from rehabilitation to replacement of a multipurpose room. | Yes | Approved |
| 09/26/2018 | Lake Elementary | Change construction of multipurpose room from permanent to modular and to reduce the number of classrooms from six to two. | Yes | Approved |

In the case of the SCOE, the SCOE requests to change the scope of the New Construction project from the construction of new classrooms to utilizing existing space, by gutting the interior and reconfiguring to create new classroom space. The scope of the modernization project to modernize playground space and the parking lot will not change; however, the SCOE will still need updated CDE and DSA plan approvals. A scope change would have been a viable option during the time an Apportionment was valid. However, the SCOE's request is different from all prior scope change requests in that the projects have already been rescinded. The SCOE was unique in that SCOE was not able to obtain an Apportionment because there was not sufficient time or funding available to obtain valid approvals. All prior requests were from school districts with active construction projects and no statutory or regulatory deadlines were extended in approving the scope change requests. The scope change process is not intended in these circumstances where the project is no longer active. Staff views these inactive projects with scope changes as new projects that should be resubmitted for processing.

Conclusion

Staff does not support the District's request. Staff believes that the Regulations do not provide the ability to extend due dates nor do SFP Regulations provide the ability for projects to be re-instated. Once a project receives a second non-participation occurrence, regulations require the project to be automatically removed from the Unfunded List (Lack of AB 55 Loans) and/or rescinded without further Board action. The SCOE does have the ability to re-submit the applications, although the Board has currently received a sufficient number of applications to exceed available bond authority for both the new construction and modernization programs.

BOARD OPTIONS

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

Alternative Option: Grant the District's appeal.

ATTACHMENT A

Education Code (EC) Section 17072.20 states:

- (a) An applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.
- (b) The application shall include, but shall not be limited to, the school district's determination of the amount of state funding that the district is otherwise eligible for relating to site acquisition, site development, new construction, and hardship funding provided pursuant to Article 8 (commencing with Section 17075.10), if any. The amount shall be reduced by the amount of the alternative fee collected pursuant to subdivision (a) of Section 65995.7 of the Government Code if a reimbursement election or agreement pursuant to Section 65995.7 of the Government Code is not in effect.
- (c) The board shall verify and adjust, as necessary, and approve the district's application.

EC Section 17070.35 states:

- (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.
 - (2) Establish and publish any procedures and policies in connection with the administration of this chapter as it deems necessary.
 - (3) Determine the eligibility of school districts to receive apportionments under this chapter.
 - (4) Apportion funds to eligible school districts under this chapter.
- (b) The board shall review and amend its regulations as necessary to adjust its administration of this chapter to conform with the act that amended this section to add this subdivision. Regulations adopted pursuant to this subdivision shall be adopted by November 5, 2002, and shall be adopted as emergency regulations in accordance with 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). The adoption of any emergency regulation pursuant to this subdivision filed with the Office of Administrative Law shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 365 days unless the board has complied with Sections 11346.2 to 11348, inclusive, of the Government Code.

EC Section 100410 (a) states:

Three billion three hundred fifty million dollars (\$3,350,000,000) of the proceeds of bonds issued and sold pursuant to this part shall be deposited in the 1998 State School Facilities Fund, which is established by Section 17070.40, and allocated by the State Allocation Board pursuant to this chapter. Before requesting the sale of bonds pursuant to Section 100432 for deposit in the State School Facilities Fund, the State Allocation Board shall request, pursuant to Section 100432, the sale of bonds sufficient to finance all projects for which application was made pursuant to the Leroy F. Greene State School Building Lease- Purchase Law of 1976 (Chapter 12 (commencing with Section 17000) of Part 10) and for which an application was approved for construction, but funding was not available, prior to November 4, 1998.

ATTACHMENT A

EC Section 100620(a)(3) states:

The amount of two billion nine hundred million dollars (\$2,900,000,000) for new construction of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 for those school districts that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate the remainder of these funds for purposes of paragraph (1)."

EC Section 100620(a)(4) states:

The amount of one billion nine hundred million dollars (\$1,900,000,000) for the modernization of school facilities pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, for those school districts that have filed an application with the Office of Public School Construction on or before February 1, 2002, including, but not limited to, hardship applications. If the amount made available for purposes of this paragraph is not needed and expended for the purposes of this paragraph, the State Allocation Board may allocate these funds for purposes of paragraph (2)."

EC Section 17009.5 states:

(a) Except as set forth in Section 17052, on and after November 4, 1998, the board shall only approve and fund school facilities construction projects pursuant to Chapter 12.5 (commencing with Section 17070.10). (b) A school district with a first priority project that has received a construction approval by the Department of General Services, Division of the State Architect, or a joint-use project approval by the board, prior to November 4, 1998, for growth or modernization pursuant to this chapter shall receive funding pursuant to this chapter for all unfunded approved project costs as it would have received under this chapter, and the increased capacity assigned to the project shall be included in calculating the district's capacity pursuant to Chapter 12.5 (commencing with Section 17070.10). Funds received for projects described in this subdivision shall constitute the state's final and full contribution to these projects. The board shall not consider additional project funding except when otherwise authorized under Chapter 12.5 (commencing with Section 17070.10).

(c) A school district with a second priority project that has received a construction approval by the Department of General Services, Division of the State Architect prior to November 4, 1998, for growth or modernization pursuant to this chapter shall elect to do either of the following:

(1) Withdraw the application under this chapter, submit an initial report and application pursuant to Chapter 12.5 (commencing with Section 17070.10), and receive per pupil allocations as set forth in Chapter 12.5 (commencing with Section 17070.10). If the district withdraws the application, any funds previously allocated under this chapter for the project shall be offset from the first grant to the district under Chapter 12.5 (commencing with Section 17070.10). (2) Convert the second priority project approved under this chapter to a first priority status and receive funds in accordance with this chapter.

(d) Notwithstanding priorities established pursuant to Chapter 12.5 (commencing with Section 17070.10), projects authorized for funding as set forth in this section shall be funded by the board pursuant to this chapter prior to funding other projects pursuant to Chapter 12.5 (commencing with Section 17070.10).

(e) For purposes of funding priority for modernization grants under Chapter 12.5 (commencing with Section 17070.10), a district that applies under subdivision (b) or paragraph (1) of subdivision (c) shall retain its original project approval date.

(f) Notwithstanding Section 17017.1, West Contra Costa Unified School District shall be eligible for state facilities funds beginning November 4, 1998.

(g) The State Allocation Board shall adopt regulations to ensure that an appropriate offset is made from funds approved pursuant to this chapter, for funds awarded to school districts pursuant to Chapter 12 (commencing with Section 17000) prior to November 4, 1998."

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

...

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

...

ATTACHMENT A

“Unfunded List” means an information list of unfunded projects, with the exception of the unfunded list defined below as “Unfunded List (Lack of AB 55 Loans)”.

...

“Unfunded List (Lack of AB 55 Loans)” means an information list of unfunded projects that was created due to the State’s inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans) to fund school construction projects as declared in the Department of Finance Budget Letter #33 issued on December 18, 2008.

SFP Regulation Section 1859.90 states:

With the exception of an apportionment made pursuant to Sections 1859.81.1(e) or 1859.81.2, or of an Inactive Apportionment subject to Section 1859.96, the OPSC will release State funds that the Board has apportioned to the district after submittal, by the district, of the Form SAB 50-05, subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects. With the exception of an apportionment made for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, 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 New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II, part of a qualifying SFP Modernization project, Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district’s baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type II Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, the district must submit Form SAB 50-05 within 18 months of the date the plans and specifications for the Joint-Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

Subject to the availability of financing provided by the Pooled Money Investment Board for bond-funded projects, the OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(e) to the district within 30 calendar days of the apportionment.

SFP Regulation Section 1859.90.2 states:

The priority funding process allows the Board to distribute available funds to districts or charter schools that request, pursuant to (a) or (b) below, as applicable, an Apportionment or an advance release of funds from a Preliminary Apportionment or Preliminary Charter School Apportionment, during specific 30-calendar day filing periods beginning with July 27, 2011 and continuing with the 2nd Wednesday of January and the 2nd Wednesday of July of 2012.

Requests submitted during the filing periods described above are valid until the next filing period begins. The specific 30-calendar day filing periods subsequent to 2012 begin with January 9, 2013 and continue with the 2nd Wednesday of May and the 2nd Wednesday of November, each calendar year. Requests submitted during the filing period beginning with January 9, 2013 are valid until June 30, 2013. Requests submitted during a filing period beginning with the 2nd Wednesday of May are valid from July 1 until December 31 of that year. Requests submitted during a filing period beginning with the 2nd

Wednesday in November are valid from January 1 until June 30 of the following year. Requests must be physically received by the OPSC by the 30th calendar day of each filing period to be considered valid. During the priority funding process a district or charter school must submit a valid, original signature copy of the Form SAB 50-05 within a specified time period of the Apportionment or approved advance release of funds request, pursuant to (a)(2) or (b)(2) of this section, as applicable.

Projects receiving an apportionment as part of the priority funding process for which the OPSC does not physically receive a valid, original signature copy of the Form SAB 50-05 within the time limit pursuant to (a)(2) or (b)(2) of this section, as applicable, shall be rescinded without further Board action. (a) In order to be considered for an Apportionment, approved advance release of design funds from a Preliminary Charter School Apportionment, or approved advance release of environmental hardship site acquisition funds from a Preliminary Apportionment, the district or charter school must provide a priority funding request in the form of a written statement signed by an authorized representative that includes each of the project application numbers, and the type of apportionment request (e.g., Apportionment, separate apportionment for design or site acquisition), within the 30-calendar day filing period, and shall contain all of the following:

ATTACHMENT A

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

(3) Acknowledgement that, if the district submits the Form SAB 50-05 on or after July 1, 2013 and is required to submit an LCP third party report, pursuant to Section 1859.97(b), the report will be submitted to the OPSC and the DIR at least 60 days prior to submitting the Form SAB 50-05; and (4) For those receiving an Apportionment, acknowledgement that by participating in the priority funding process, the district or charter school is waiving its right to the 18 month timeline for fund release submittal described in Section 1859.90.

(b) In order to be considered for an approved advance release of site acquisition funds from a Preliminary Charter School Apportionment, the district or charter school must provide a priority funding request in the form of a written statement signed by an authorized representative within the 30-calendar day filing period, and shall contain all of the following:

(1) Statement that the request is to convert the advance release of funds to an approved advance release of funds request; and,

(2) Acknowledgement that a valid, original signature Form SAB 50-05 must be submitted and physically received by the OPSC within 180 calendar days of the approved advance release of funds request and that failure to do so will result in the rescission of the approved advance release of funds request without further Board action; and

(3) Acknowledgement that it must provide evidence that it has entered into the Charter School Agreements within 90 calendar days of approval of the advance release of funds request and that failure to do so will result in the rescission of the approval without further Board action.

In the event that the amount of requests received during a specific 30-calendar day filing period exceeds the funds available, the Board shall apportion based on the unfunded approval date and the application received date up to the available cash from each bond source. Projects that have requested to participate in the priority funding process for which an Apportionment cannot be provided shall retain their date order position on the Unfunded List. Requests not converted to apportionments will not be returned to the district or kept by the Office of Public School Construction (OPSC).

For purposes of this section “rescinded” or “rescission” shall mean that the apportionment or approved advance release of funds request returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be 90 calendar days after the apportionment date. The district or charter school will not be required to re-submit the application and no further application review will be required.

SFP Regulation Section 1859.129(b)(2) states:

Has 18 months from the date the [Division of State Architect] DSA and [California Department of Education] CDE approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action. If the district is requesting an Apportionment pursuant to Section 1859.90.1 or 1859.90.2, the Board will require that this time limit be reduced to no more than 90 days from the date of the apportionment.”

SFP Regulation Section 1859.197 (b)(2) states:

Has 18 months from the date the CDE plan approval and DSA-approved plans and specifications, as needed, are submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment shall be rescinded without further Board action. If the district is requesting an apportionment pursuant to Section 1859.90.1 or 1859.90.2, the Board will require that this time limit be reduced to no more than 90 days from the date of the apportionment.



Lisette Estrella-Henderson, Superintendent of Schools

5100 Business Center Drive, Fairfield, CA 94534-1658

707.399.4400 ★ www.solanocoe.net

March 14, 2019

Tracy Sharp
Supervisor, Policy and Special Projects Team
Office of Public School Construction
707 Third Street, Sixth Floor
West Sacramento, CA 95605

RECEIVED
OFFICE OF PUBLIC
SCHOOL CONSTRUCTION
2019 MAR 25 PM 3:08
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RE: APPEAL TO THE STATE ALLOCATION BOARD

Dear Ms. Sharp:

The Solano County Office of Education is hereby submitting an appeal to the State Allocation Board requesting that the unfunded approvals for two of our T. C. McDaniel Center projects (Office of Public School Construction Application Numbers 50/10488-00-024 and 57/10488-00-018) to be reinstated and permission to change the scope of the projects. Attached to this letter, therefore, please find the following documents:

- *School District Appeal Request* (Form SAB 189)
- Attachment to Form SAB 189 including the referenced exhibit

Should you have any questions or wish to discuss the appeal further, please contact Derick Lennox, Legislative Counsel with Capitol Advisors Group, at 916.557.9745 or at derick@capitoladvisors.org at any time. Thank you in advance for your time and consideration in presenting our appeal to the Board.

Sincerely,

Mike Schroeder
Director, Facilities, Maintenance, Operations & Transportation

Board of Education

Eleese Cheek, President Peggy A. Cohen-Thompson, Vice President Michelle Coleman Dana Dean Ginger Dunne Teresa Lavell Amy Sharp

AF
3-26-19

STATE OF CALIFORNIA

SCHOOL DISTRICT APPEAL REQUESTSTATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

Page 2 of 2

| | |
|---|--|
| SCHOOL DISTRICT Solano County Office of Education | APPLICATION NUMBER 50/10488-00-032; 57/10488-00-027 |
| SCHOOL NAME T. C. McDaniel Early Learning Center | COUNTY Solano |
| DISTRICT REPRESENTATIVE Mike Schroeder, Director, Facilities/Maintenance | E-MAIL ADDRESS mschroeder@solanocoe.net |

Purpose of Request:

- 1) Reinstate the unfunded approvals for two Solano COE projects that could not participate in priority funding rounds due to extenuating circumstances and financial hardship status.
- 2) Allow a change in scope to ensure our projects will be completed within the approved grant amounts.

Basis of Request:

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

Description:

Please see attachment.

| | |
|--|-----------------|
| SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE  | DATE 3/14/19 |
|--|-----------------|

**ATTACHMENT TO APPEAL REQUEST
(FORM SAB 189)****REASON FOR APPEAL**

On June 7, 2018, the State Allocation Board ("SAB" or "Board") rescinded the unfunded approvals for two Solano County Office of Education ("Solano COE") projects at the T.C. McDaniel Early Learning Center ("Center") as we did not participate and request an apportionment in the Priority Funding Process.¹ Our failure to request an apportionment was due to extenuating circumstances beyond our control and despite our best efforts.

Over the last decade, we attempted to replace the dilapidated facility twice using the financial hardship planning funds we received from the state in 2007 and 2012 to design its replacement. Each attempt to construct the project, however, was unsuccessful. Severe budget cuts to local educational agencies in 2009 forced us to reassess the number of schools we could operate with the reduced budget—including the Center—and thus, the related construction projects that should be carried out at those schools. In 2012, although Division of the State Architect ("DSA")-approved plans were in-hand, we could not move forward with construction due to the lack of state school construction bond authority at that time which ultimately didn't become available until five years later in 2017. By then, the DSA-approved plans expired permanently, a redesign was started, but skyrocketing construction costs made it impossible to build the replacement school within the state financial hardship grants approved.

The Center serves our youngest and most vulnerable severe special education students in Solano County. The facilities are fast-approaching the 50-year-old mark and are in dire need of repair or replacement.

For the reasons described below, we therefore respectfully request the SAB to:

- 1) Reinstate the unfunded approvals for two Solano COE projects that could not participate in priority funding rounds due to extenuating circumstances and financial hardship status (Office of Public School Construction Applications 50/10488-00-032 and 57/10488-00-027);
- 2) Allow a change in scope to ensure our projects will be completed within the approved grant amounts.

¹ School Facility Program Regulation Section 1859.90.3

BACKGROUND

The Center's Facilities and Educational Services

The Center, owned and operated by the Solano COE on land leased from the Fairfield-Suisun Unified School District ("FSUSD" or "District") and adjacent to the District's Sheldon Elementary School, provides instruction to special education students ages three to five years old who have significant and severe developmental delays in motor, cognitive, language, social, and adaptive skills. Services are designed to meet the specific needs of each child to enable these students to learn and practice new skills and become more independent.

The Center's facilities have not been modernized since 1971, when the Center was constructed. As a result, the County Office has been had to work around several health, safety, and accessibility problems:

- The **facilities are not secured** as they are arranged in such a manner that it is difficult to monitor access to the buildings and classrooms, thereby compromising the security of the campus.
- The **small parking lot** is shared with the Sheldon Elementary School and woefully inadequate for parking, circulation, and traffic flow. During the morning drop-off and afternoon pick-up times, the safety of students and staff is exacerbated by the crowded conditions as the drop-off circle is for both busses and vehicles. Most parents drop off their children; however, the lack of space requires two drop-off lanes next to each other which is in violation of the California Department of Education's ("CDE") standards for safety. FSUSD students dropped off across the street commonly walk across the Center parking lot between vehicles.
- The **accessibility of the site** can be significantly improved for the population served. Several of the exit doors, used in case of fire or other emergencies, do not have ramps but just stairs. Students in wheelchairs must be carefully carried down the two steps. Some restroom doors, faucets, sinks, and commodes are not accessible.
- Several **safety and health hazards** exist. The current construction of the building makes it difficult to defend against and eradicate rodents. There are exposed electrical wires behind the drop ceilings due to facility modifications made by past administrations. In addition the site suffers occasional sewer backups, lack of hot water at one of the restroom faucets, ungrounded HVAC electrical systems, and walls/rooms constructed within the building without DSA approval.

As such, these outdated and dilapidated facilities are in dire need of modernization or replacement to carry out the services effectively, efficiently, and safely in accordance with 21st Century and CDE standards.

The Tale of Two Attempts to Build the Project

2007 – The First Application to Replace the Center

The Solano COE received its first planning apportionment to design the replacement of the school under the new construction program at the April 25, 2007 SAB meeting (Office of Public School Construction ("OPSC") Application Number 50/10488-00-024) and received a design apportionment under the modernization program to address the mitigation of parking lot issues, playground upgrades, and access compliance work at the July 25, 2007 SAB meeting (OPSC Application Number 57/10488-00-018). Recipients of design grants were required to submit applications for construction funding to OPSC, or at minimum submit plans to DSA for the project, within 18-months of the date that the design apportionment was received. We were unable to meet this initial timeline as the drastic cuts made to local educational agencies' budgets during the 2008-09 fiscal year forced us to put the brakes on the construction projects as we grappled with the larger issue of closing or combining schools, including the fate of the Center.

We elected to keep the Center open. To save the projects in the middle of design, we requested additional time to submit the plans to DSA and to file the applications for construction funding to OPSC. The SAB was sympathetic to our plight and granted the extension and required the new construction project plans to be submitted to DSA by November 2009² and the modernization project plans to be submitted by March 2010³. The applications for funding had to be submitted to OPSC by May 2010 and September 2010, respectively, along with the DSA-approved plans.

The new construction and modernization projects were combined into one set of plans for the construction of eight classrooms and one medical therapy unit and were submitted to DSA in time on May 4, 2009. However, continued budget cuts affecting school operations and the political environment at the time made it difficult to justify moving forward with the project. The plans were delayed and not approved by DSA until April 8, 2011, eleven months after the first deadline. As a result, we were precluded from applying to OPSC for the construction funds, the projects were subsequently closed to costs incurred, and all unspent grants were returned to the state.

2011 – The Second Application to Replace the Center

Solano COE still desired to replace the school, and therefore, we reapplied for the design funding that we had just returned to the state. The new construction (OPSC Application Number 50/10488-00-032) and modernization projects (OPSC Application Number 57/10488-

² SAB Agenda of February 25, 2009, page 38.

³ SAB Agenda of June 24, 2009, page 97.

00-027) were given an unfunded approval for design at the October 26, 2011 SAB meeting and subsequently funded at the June 12, 2012 SAB meeting. During this interim, the project plans were approved by CDE on April 4, 2012. Normally upon receipt of both CDE and DSA-approved plans, districts can file an application for construction funding. However, the Solano COE's efforts to seek construction funding were further delayed by lease negotiations with the FSUSD as School Facility Program Regulations require a 40-year lease term at the time an application is filed with OPSC. On February 5, 2013, the lease agreement was executed and the applications for construction funding were submitted to OPSC on February 14, 2013.

Proposition 1D bond funds were exhausted by the time the applications were filed with OPSC, and as a result, the applications were placed on the Acknowledged List. The applications were processed four and a half years later in September 2017 and given an unfunded approval for construction funding at the December 6, 2017 SAB meeting. The approvals were provided with the caveat that the Solano COE obtain CDE and DSA-approval of the plans prior to apportionment as DSA's original approval of the plans was no longer valid or eligible for extensions.

The clock was ticking. By regulation, we had only two opportunities to participate in the Priority Funding Process to request the apportionment of the projects. We needed as much time as possible to obtain DSA's approval of the plans, therefore, we passed up the first Priority Funding Round in December 2017 leaving only one more opportunity to participate in May 2018. Assuming a fall 2018 bond sale would occur, we planned for a September 2018 deadline to obtain the reapproval of the plans before the project apportionments.

Before embarking on the redesign, we had the project re-estimated to ensure the project could be built within the state and financial hardship grant. The combined new construction and modernization unfunded approvals amounted to a total project budget of \$7,596,130, which was intended to cover both construction and "soft" costs such as architectural fees, tests, inspections, furniture and equipment, etc. When first designed and submitted to DSA in 2009, the estimated construction cost of the project was \$5.898 million. However, nine years later the construction costs alone to build the 16,021 square foot facility were estimated between \$8.7 to \$8.9 million – a 50 percent increase. Including soft costs and escalation, the total project costs were estimated at \$13.4 million, or \$5.8 million more than we received in the state grant approval. Comparing the construction cost increase of 50 percent to the percentage the state's severe pupil grant increased from 2009 to now (23.5 percent), the state grants lag way behind by over 26 percent.

We attempted to redesign the project by scaling down the square footage. One option, a 721 square foot reduction to a 15,300 square foot facility, still resulted in the project being \$1.4 million over budget. The second option, a draconian square foot reduction down to 13,500 square feet and the removal of the restrooms and offices between the special education classrooms, wound up being approximately \$400,000 over budget. While on paper this option was financially palatable, educationally the reduction of the restrooms and offices

between the classrooms was a non-starter for staff as these facilities are integral to the education and operations of the school and the population served.

The sobering reality of not being able to build the project within the state resources left us unable to participate in the second and final Priority Funding Round. Resolved to find a solution to provide updated facilities for the special education students and staff, we went back to the drawing board. With OPSC's approval, we determined that we could gut the existing building keeping the exterior walls and construct the project within the state budget. However, with limited time left to redesign the project and to obtain the necessary state agency approvals before the fall of 2018, the projects' unfunded approvals were rescinded at the June 7, 2018 SAB meeting.

A graphic timeline of the major events is reflected on Exhibit A.

COUNTY POSITION

Solano COE's decade-long pursuit to construct the Center has been a perfect storm of depleted budgets to run our schools, bad timing, episodic bond authority, and insufficient state grants. Our plight is emblematic of why changes need to be made to the Program. While we welcome the opportunity to be a part of the discussions and solutions for a new program, our special education students and their dedicated teachers simply can't wait any longer.

For the reasons stated below, we respectfully request the State Allocation Board:

- 1) Reinstate the unfunded approvals for two Solano COE projects that could not participate in priority funding rounds due to extenuating circumstances and financial hardship status (Office of Public School Construction Applications 50/10488-00-032 and 57/10488-00-027);
- 2) Allow a change in scope to ensure our projects will be completed within the approved grant amounts.

The projects would be apportioned after re-obtaining state agency approvals.

A more detailed explanation of our position follows.

- 1) We still have an unmet need for facilities and funding that can't be remedied any other way than through the state's program.**

Requiring us to reapply will just create another vicious circle of getting plans approved by the various state agencies, waiting for bond authority and sales, and possible expiration of plan approvals in the meantime.

As explained in the Background section above, the Center is in dire need of repair. The School Facilities Program is the only option available to us to complete the work needed as we have no ability to generate local resources to construct the project. We are 100 percent reliant upon the state grants. Without the reinstatement of our unfunded approvals we will be forced to reapply for construction funds only after the project is reapproved by CDE and DSA, by which time the Proposition 51 bond authority will be exhausted. The construction of the facilities would again be delayed and predicated upon a new statewide bond or other state funding source.

2) The SAB currently utilizes the regulations that require districts to participate in the Priority Funding Round process to obtain an apportionment or otherwise be rescinded, but the Board may instead apply alternative regulations that better fit the facts here.

Prior to the State's fiscal crisis beginning in late 2008, the SAB apportioned projects on a first-in, first-apportioned basis regardless of the amount of bond sales planned or consummated⁴. This practice could be accommodated because the SAB had the ability to borrow from the Pooled Money Investment Account in advance of the actual bond sales to make the apportionments. Upon apportionment, a district had 18-months to hire a contractor, request work to start, and to ask the state for the cash. This timeline afforded districts flexibility in bidding, timing construction, and obtaining any financial match required.

However, the availability of cash was severely impacted by the financial crisis requiring that apportionments be made only after bond sales were concretely planned or completed. In direct response to the lack of cash, the decimated economy, and a recognition that the old practice of first-in, first-out "limits the ability to prioritize school construction, stimulate the economy, or create jobs"⁵, the SAB created the Priority Funding Round Process regulations in 2010 to fund construction-ready projects first. These regulations require districts to request an apportionment for a project within no more than a year of receiving an unfunded approval during two "priority funding rounds" held for 30 days starting in November and May of each year. If a district does not participate in one of these rounds, the district's unfunded approval of the project is rescinded. Upon participation in one of the rounds, the project is apportioned after the state holds a bond sale. Districts then have 90-days after apportionment to enter into a contract for the construction of the project, to issue a notice to proceed to the contractor, and to request the state

⁴ Regulations 1859.93 and 1859.93.1.

⁵ SAB Agenda of April 28, 2010, Priorities in Funding item, page 192b.

to release the monies – all under the premise that the truncated timeline would infuse much needed dollars into the economy to create immediate jobs.

These regulations are still being followed today—eight years later—despite an important distinction between the two periods. While the regulations spell out the method of apportioning projects when there is limited cash availability, they continue in operation under the presumption that the economy still needs to be stimulated through the funding of only those projects that are shovel-ready. The current economic landscape is much different now. While the sale of Proposition 51 bonds has been limited, the economy is burgeoning with no need for an infusion of school construction dollars to spur growth. The opposite is true. There's an overwhelming demand for contractors and materials creating a high bid climate and unsustainable prices. As such, the regulations are an unnecessary mandate on when a district must commit to construction.

Alternatively, the SAB can revert to applying and enforcing existing regulations⁶ to apportion projects "in the order of receipt of an Approved Application⁷ for funding." The SAB would only apportion projects with the cash made available from the bond sale provided the project is "Ready for Apportionment"⁸ where all state agency approvals are updated before the projects is funded. Applying these regulations instead would allow our unfunded approvals to be reinstated, result in the apportionment of our projects only after the plans are re-approved by CDE and DSA, and provide us with 18-months to request the cash pursuant to Regulation Section 1859.90.

3) Our request to reinstate the unfunded approvals is functionally the same as requesting a change in project scope.

Allowing our projects to be placed back on the Unfunded List would not create a disadvantage to other districts in line for funding. A district's project application from submittal to funding typically follows the following sequence:

1. Project application is designed and then approved by CDE and DSA.
2. Project application is submitted to OPSC.

⁶ Regulation Sections 1859.93 and 1859.93.1.

⁷ Regulation Section 1859.2 defines the term "Approved Application" as "...a district [that] has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01; SAB 50-02; SAB 50-03; and SAB 50-04, as specified in Section 1859.2."

⁸ Regulation Section 1859.2 defines the term "Ready for Apportionment" as "...a final review of an Approved Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an apportionment or eligibility determination, and the OPSC will recommend approval to the Board."

3. OPSC reviews and SAB provides an unfunded approval.
4. Project is apportioned by the SAB and then constructed.

In some instances, districts sometimes encounter unforeseen situations that necessitate a change to the original, approved project scope as approved by OPSC, CDE, and DSA. These situations include but are not limited to beneficial bid climates leading to additional uses of the remaining grants, on-site facility conditions encountered during construction warranting alternative mitigation approaches, and high construction costs requiring the scaling down of the project to meet the budget. These situations can occur after the unfunded approval or after apportionment. In most instances, the change requires the re-review and re-approval of the CDE and DSA.

On nine occasions the SAB has approved district requests to change the scope of a project where new CDE and DSA approvals were required. In none of those circumstances has the SAB required the district to withdraw and resubmit the project application, receive a new application submittal date, or receive a new unfunded approval date.⁹ Our request for reinstatement of the unfunded approvals would be no different. Our applications were submitted with appropriate state agency approvals which were the basis for the unfunded SAB approvals.

In both cases, the SAB is allowing the district's place in line to be preserved based on the original project approval and submittal dates due to extenuating circumstances. Each district is given an opportunity to redesign the project as needed without foregoing its place in line.

4) Our request for a change in the scope of the new construction project is in alignment with the parameters utilized by the OPSC and SAB to determine if the revised project will still meet the requirements for state funding.

Whenever a district desires to change the scope of a project, it must submit an appeal to the SAB requesting approval. With each request, OPSC reviews the following elements to ensure the revised project still meets the requirements of state funding. In each instance, our projects still or will meet the requirements of state funding.

The original intent of the project is maintained.

OPSC Review: OPSC determines if there is a change in the project scope such as the number of classrooms and other core facilities being constructed, pupils being housed, and type of construction that would result in a funding advantage.

⁹ SAB Agenda of September 26, 2018, Report of the Executive Officer on Lake Elementary, page 74.

Our Project: There would be no change from our original to redesigned project. Both projects result in additional pupil capacity being added through the construction of eight new classrooms, a medical therapy unit, and administration area. The type of construction will remain modular.

There is no advantage in the state agency review process or approvals.

OPSC Review: OPSC determines if the scope change could have benefited the district with a shorter CDE and/or DSA plan review time and an earlier apportionment. For example, the plan review of a portable project is usually quicker for DSA to approve so if the scope change is from portable to permanent construction, the district likely was able to submit its application earlier than had a permanent facility been designed. In addition, OPSC used to ensure prior scope changes maintained the existing DSA and CDE approvals. However, the SAB has allowed scope changes contingent upon districts obtaining updated state agency approvals.

Our Project: Our original project, although consisting of pre-approved modular buildings, did not result in a shorter CDE or DSA plan review time due to the addition of enclosed corridors connecting all of the modular buildings. Our original DSA plan approval is expired. We will obtain DSA's approval of the redesigned project before apportionment.

The district still estimates to spend sixty percent of the state grant and match on hard construction costs.

OPSC Review: OPSC ensures that a majority of the state funds are spent on the project approved and not reserved for other capital facility projects in the district.

Our Project: Our redesigned project will still meet the requirement. Any savings must be returned to the state as well since the project qualifies for financial hardship.

The eligibility, amount, and type of grants approved are still justified and adjusted as necessary.

OPSC Review: OPSC determines if the scope changes affect the grant types and amounts previously approved. Adjustments are made as necessary, but don't affect whether the scope change is approved.

Our Project: There may be some minor reductions to our new construction site development grant as the existing building will no longer be demolished. The fire lane and parking lot will not be entirely reconstructed since the existing building envelope will be preserved.

CONCLUSION

While the School Facility Program has generally been a successful program with over \$36 billion in state funds allocated to districts across the state in the last 20 years, it is no secret that there is room for improvement should the program continue. County offices, financial hardship districts, and districts with lower assessed valuations have had a tough time constructing projects due to the inability to go out for local bonds, inadequacy of local resources and state grants, and limitations on bonding capacity and accessing authority, respectively. On top of these issues, stable and predictable funding for capital facilities reigns supreme as one of the major obstacles to solving K-12 infrastructure issues. These issues and suggested improvements were recognized by the SAB and well-documented in various reports prepared by the SAB SFP Review Committee, Center for Cities & Schools, and Little Hoover Commission just to name a few.

We are a county office of education that exemplify these concerns as we have no ability to raise revenue locally, and thus, we are solely reliant upon state funding to address the facility, health, and safety issues at the Center. We attempted on two occasions to utilize state grants to construct the project, but in each attempt, we were unable to do so due to extenuating circumstances. Requiring us to reapply for state funding will just create another vicious circle of obtaining state agency approvals, waiting for bond authority and sales, and the possible expiration of plan approvals in the meantime.

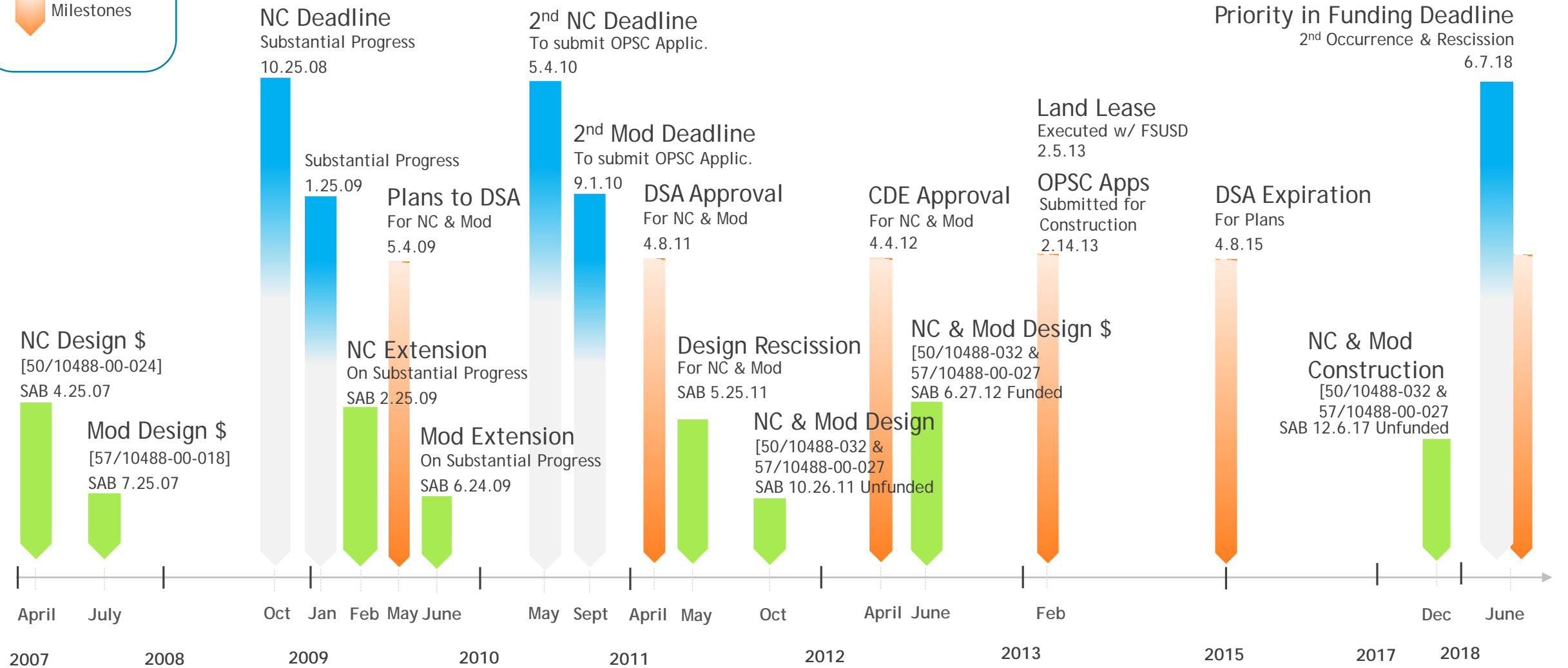
We want to help the state meet these challenges, but we cannot wait for a solution that could be years away. We need assistance now. The County, therefore, respectfully requests the SAB to reinstate our unfunded approvals based on existing regulations and to fund them after the plans are re-approved by CDE and DSA.

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T.C. McDaniel Center Project History

Legend:

-  SAB Actions
-  Deadlines
-  Milestones



Financial Crisis: "Great Recession"^[1]

Lack of Bond Authority

^[1] December 2007–June 2009: federalreservehistory.org

Change of Project Scope

BY LINDSAY KEYES, OPSC PROJECT MANAGER

As many of you are aware, each application for funding of the full grant phase of a School Facility Program (SFP) modernization or new construction project is accompanied by a complete set of plans and specifications that have been approved by the Division of State Architect (DSA) and the California Department of Education (CDE). The State Allocation Board's (SAB) full and final grant approval is based on the accompanying plans. Therefore, it is imperative that the apportionment is used for the scope of work contained in that specific set of plans.

To ensure your project meets this requirement and is successful, it is important to structure your bid with flexibility by the use of additive and deductive alternates (see page 5 of this issue of the *Advisory Actions* for more information on this topic). This will allow the project to be modified according to fluctuations in the bid climate or costs of materials. For example, as a result of excellent planning or a good bid climate, the budget for the project may exceed the cost of the work in the plans and a district may consider using those excess funds for additional work that was not contemplated in the plans. Or, the cost of materials for construction may have significantly increased and a district may consider eliminating facilities from the project to stay within the budget. When it comes to classrooms and minimum essential facilities (MEF), meaning libraries, gymnasiums, multi-purpose rooms, and toilets which are necessary and support the traditional classroom environment, there are limited circumstances where a project may deviate from the scope of work outlined in the plans that were included with the application and approved by the SAB.

Additions

It is important to keep in mind that the project may not include the addition of area not proposed in the plans approved by the SAB. This applies to classrooms, MEF and non-classroom, non-MEF space. As stipulated in Regulation Section 1859.51(i)(5), the project may include the construction of more classrooms than needed to house the pupils requested in the application as specified, but these classrooms must have been in the plans submitted with the application. The flexible structuring of the bid documents will accommodate the districts' need to make decisions based on the bid results.

If the project is non-financial hardship, then any project savings may be retained and used for any high priority capital facilities needs or as part of the district's contribution to a future SFP project. This approach would provide an alternative method to later add facilities if the district had not included the additional desired facilities in the plans for the project approved by the SAB. However, the law stipulates that classrooms provided by State or local funding shall be adjusted from the districts' SFP new construction eligibility baseline.

Reductions, Deletions or Modifications

Some flexibility is a recognized part of SFP new construction projects. However, to continue with a project as approved by the Board, the original intent or project scope must be maintained. If modifications are considered by a district, it is critical that the affected State agencies be part of the process and that certain project requirements continue to be met. The State agencies are coordinating efforts in this area to assist districts when these situations arise. Some extenuating circumstances may be considered by the SAB, as outlined in the next column.

| CHANGE PROPOSED | PROCEDURE |
|--|---|
| Deletion of Classrooms | Permitted if: <ul style="list-style-type: none"> The capacity (based on the State loading standard) is sufficient to house the pupils requested in the application CDE and DSA have approved the change The project meets the 60 percent commensurate requirement |
| Reduction of MEF Area (Facility remains but the square footage is reduced.) | Permitted if: <ul style="list-style-type: none"> The remaining area proposed meets minimum MEF square footage requirements DSA and CDE have approved the change The project meets the 60 percent commensurate requirement Original intent/purpose of project is maintained |
| Deletion of MEF Area* *New School Allowance may be reduced or eliminated | Permitted if: <ul style="list-style-type: none"> Case-by-case review and approval by CDE DSA has approved the change Case-by-case consideration and approval by the Office of Public School Construction (OPSC)/SAB The project meets the 60 percent commensurate requirement |
| Deletion of Non-Classroom, Non-MEF Area | Permitted if: <ul style="list-style-type: none"> DSA and CDE have approved the change The project meets the 60 percent commensurate requirement |
| Permanent to Modular Construction | Permitted if: <ul style="list-style-type: none"> DSA and CDE have approved the changes The project meets the 60 percent commensurate requirement Original intent/purpose of project is maintained |
| Modular to Permanent Construction | Not permitted as part of the original project, because the project would receive an inequitable funding advantage due to the timing of the DSA plan approval. Districts may consider reapplication, so the desired type of construction can be built. |
| Changing the Placement of a Building (i.e., Site conditions discovered in the footprint of construction warrant building placement alteration; however, the building size and function does not change.) | Permitted if: <ul style="list-style-type: none"> DSA and CDE have approved the change Original intent/purpose of project is maintained |

If you have any questions or you have a situation that is not addressed in this article, please contact your OPSC Project Manager for more information.

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 28, 2019

FUNDING ORDER OF
CAREER TECHNICAL EDUCATION FACILITIES PROGRAM APPLICATIONS

PURPOSE OF REPORT

To seek Board direction regarding potential regulatory changes to alter the funding order of the Career Technical Education Facilities Program (CTEFP) applications.

DESCRIPTION

During the processing of applications of the two most recent (fourth and fifth) funding cycles of CTEFP, Staff received a number of comments from stakeholders expressing concerns with the current funding order prescribed in School Facility Program (SFP) Regulations. From the third funding cycle forward, regulations stipulate that CTEFP funds be apportioned based on the career technical education (CTE) plan score and locale (Urban, Suburban, or Rural). The applications are ordered by highest overall plan score and locale with tie-breaker protocols, as needed. The highest scoring application in each locale is selected for funding and then the pattern is repeated until applications or funds are exhausted.

The CTE plan score is assigned by the California Department of Education (CDE) based on statutory criteria. The locale is verified using information from the Federal National Center for Education Statistics (NCES) to determine whether the project's school site is located within an urban, suburban or rural area.

In response to concerns over the current funding order, Staff presented multiple funding distribution scenarios to illustrate the impact of changes and obtain feedback at stakeholder meetings held in Sacramento and Long Beach on July 24 and August 14, 2019, respectively. Links to the stakeholder meeting items can be found at the following locations:

July 24, 2019 Meeting:

https://www.dgs.ca.gov/-/media/Divisions/OPSC/Agenda-Items/2019/07-July/CTE-Stakeholder-Meeting-Item_ADA.ashx?la=en&hash=A0AEDCAF66D610E99461759CFAA38E8BB2AEB3CC

August 14, 2019 Meeting:

https://www.dgs.ca.gov/-/media/Divisions/OPSC/Agenda-Items/2019/08-August/08142019_StakeholderMeeting2_AgendaItem.ashx?la=en&hash=5AF853CD12B31940EC0FA3C2FD001DD12F5C8A96

Staff is presenting the results of those meetings and is seeking State Allocation Board (Board) direction potential regulatory changes in the funding order of CTEFP applications.

AUTHORITY

See Attachment A.

BACKGROUND

The current regulations for CTEFP were developed as a collaborative effort between the Office of Public School Construction (OPSC), CDE, and stakeholders through Implementation Committee meetings in August, October, and December 2006. The Board adopted the regulations in January 2007. In developing the regulatory funding order, the programmatic goal was to achieve equitable distribution of funding across the state in accordance with the originating statute:

BACKGROUND (cont.)

Education Code Section 17078.72(b) states:

The State Department of Education, in cooperation with the Chancellor's Office of the California Community Colleges, the Labor and Workforce Development Agency, and industry groups, shall develop criteria and pupil outcome measures to evaluate the program. The criteria shall ensure *equity*, program relevance to industry needs, and articulation with more advanced coursework at the partnering community colleges or private institutions. (*Emphasis added*)

Initially, equity was achieved through the assignment of locales and distributing the funding in the first two funding cycles by Service Regions. In anticipation of strong interest in the program for those first two cycles and the uncertainty of the amount of funds that might remain, the third and any subsequent funding cycles were designed to be based on site locale and score only. Thus making the distribution of funds a statewide competition.

History of Service Region Allocation in Cycles 1 and 2

In the first and second CTEFP funding cycles, the total funding allocated to each funding cycle was prorated among 11 Service Regions based on the total high school attendance of each service region. The 11 Service Regions align with the California County Superintendents Educational Services Region as shown on Attachment B. Service Regions are comprised of a group of counties, with the exception of one (Region 11 – Los Angeles) which is a single county. All applications within a Service Region were ranked in order of highest CTE plan score and assigned a locale. The highest ranked application in each of the three locales was apportioned, and then the pattern was repeated until funds or applications were exhausted

A virtual 12th region was used to pool funds remaining from Service Regions that were undersubscribed for applications that could not be apportioned in Service Region(s) that was oversubscribed. The funds were then apportioned in the same manner as described above.

Locale Codes

To determine each applicant's locale, OPSC uses codes determined by NCES. The NCES assigns a locale code to each school site in the United States. NCES uses 12 Locale Codes to classify the location of the site in relation to urban centers and population as follows:

| | | | |
|-------------------|--------------------|------------------|--------------------|
| 11- City, Large | 21- Suburb- Large | 31- Town, Fringe | 41- Rural, Fringe |
| 12- City, Midsize | 22- Suburb Midsize | 32- Town Distant | 42- Rural, Distant |
| 13- City, Small | 23- Suburb, Small | 33- Town, Remote | 43- Rural, Remote |

In a September 2006 Board item, SFP Regulations were amended to align with numbering changes (single digit to double digit locale designations) adopted by NCES. The following SFP Regulation Definitions were adopted for this purpose:

"Rural Area" shall be a school with a locale code of 41, 42 or 43 as classified by the National Center for Education Statistics (NCES).

"Suburban Area" shall be a school with a locale code of either 21, 22, 23, 31, 32 or 33 as classified by the NCES. (Note that currently the Suburban locale includes the Town locale codes.)

"Urban Area" shall be a school with a locale code of 11, 12 or 13 as classified by the NCES.

STAFF ANALYSIS/STATEMENTS

In the fifth CTEFP funding cycle, OPSC received 220 applications. Following current SFP Regulations, applications were ordered by highest overall plan score and locale (Urban, Suburban and Rural). The highest scoring application in each locale was selected for funding and then the pattern was repeated until funds were exhausted. Approximately 90 percent of the applications received represented the Urban and Suburban locales, and only 10 percent represented the Rural Area locale. However, over 95 percent of the applications in the Rural Area local were funded, and only 26 percent in the Urban and 23 percent in Suburban Area locales were funded. As a result, a higher minimum CTE plan score was needed within the Suburban and Urban locales to receive funding. The breakdown applications and locale is presented in the table below:

Distribution of Actual Cycle 5 Funding by Locale

| Locale | # of Projects Funded | \$ Value | # Projects Submitted | % of Projects Funded | Lowest Score Funded |
|----------|----------------------|--------------|----------------------|----------------------|---------------------|
| Urban | 24 | \$43,627,315 | 91 | 26.4% | 127.0 |
| Suburban | 24 | \$41,357,185 | 106 | 22.6% | 131.5 |
| Rural | 22 | \$37,378,447 | 23 | 95.7% | 111.5 |

Concerns Expressed in Cycles 4 and 5

During the fourth and fifth funding cycles, some stakeholders expressed concern about the equity of the funding order described above, specifically about the assignment of the NCES Town Locale codes to the SFP definition of a Suburban Area. In addition, some stakeholders expressed an interest in considering a return to the Service Region funding model that was used in the first and second CTEFP funding cycles.

In response to comments received, Staff developed alternative CTEFP funding distribution scenarios to illustrate the impact of such changes to the current funding order, which were then presented for consideration and comment at two open, public stakeholder meetings held in Sacramento and Long Beach (options summarized in the table below). Each scenario demonstrates potential changes in project funding order. The options presented included changes to the locale code groupings for the Town locale from Suburban to Rural, the re-introduction of Service Regions as an additional factor based on the percentage of High School Student Enrollment within each Service Region, or making no changes at all.

| SCENARIO | Description of Potential Change to Funding Order |
|----------|---|
| 1 | Move Town codes from Suburban to Rural. Retain current funding order. |
| 1b | Move Town codes from Suburban to Rural. Distribute funding proportionally by number of approved applications received in each locale. Fund eligible applications in order from highest to lowest score in each locale. |
| 2 | Distribute funding to the 11 Service Regions proportionally by High School enrollment. Use current funding order within each Service Region, locale and highest score (mirrors Cycles 1 and 2). |
| 3 | Fund applications in order of highest to lowest CTE Plan Score. |
| 4 | Move Town codes from Suburban to Rural. Distribute funding to the 11 Service Regions proportionally by High School enrollment. Use current funding order within each Service Region, locale and highest score (mirrors 1 st and 2 nd CTEFP Cycles). |

STAFF ANALYSIS/STATEMENTS (cont.)

Descriptions of Scenarios and Considerations

Scenario 1 – Move Town Codes to Rural

In this scenario, the current funding order model that combines CTE plan score and locale is maintained with one change. The NCES codes for Town are moved from the current SFP Regulation Definition of Suburban Area to Rural Area.

Considerations:

- Applicants with the Town code, and the majority of stakeholders submitting feedback, believe that the geographic locations of schools with a Town locale designation fit more accurately in the Rural Area locale.
- Applicants who are more similarly situated would be competing against one another in all three locales.
- Applicants with the highest CTE score in each locale will still be funded first.
- With more potential applications being received in the Town/Rural Area locale, merit-based competition in the Rural Area locale may increase.
- Maintains the concept of providing funding to various types of communities.
- More evenly distributes applications between the three locales.

Scenario 1b - Move Town Codes to Rural and Prorate Funding by Locale

A hybrid version of Scenario 1, this scenario shifts the Town designation into the Rural locale and distributes the available CTEFP funding by the number of Approved Applications OPSC receives per locale, proportional to total applications received. Funding by locale would fluctuate from cycle to cycle depending on the number of applications received in a given cycle.

Considerations:

- Applicants with the Town code, and the majority of stakeholders submitting feedback, believe that the geographic locations of schools with a Town locale designation fit more accurately in the Rural Area locale.
- Because the proration of funds within each locale would be based on the raw number of Approved Applications received, the prorated amount may include applications that may never be processed to determine if they are eligible for funding.
- Applicants with the highest CTE score in each locale will still be funded first.
- With more potential applications being received in the Town/Rural Area locale, merit-based competition in the Rural Area locale may increase.
- Maintains the concept of providing funding to various types of communities.
- More evenly distributes applications between the three locales.

Scenario 2 – Reintroduce Service Region Model with no Change to Locale

This scenario reintroduces a funding distribution methodology based on Service Regions employed during the first two CTEFP funding cycles.

There was minimal support received during stakeholder meetings for a return to the Service Region model of funding. One of the main concerns expressed is that, given that an applicant or district has no control over which Service Region they are placed, the focus on funding distribution using a Service Region methodology then becomes overly dependent on location, as opposed to the merit achieved by the CTE plan score. Additionally, stakeholders expressed concern over the difficulty of establishing a relationship between the number of CTE programs or CTEFP applications and the amount of funding available in each Service Region.

STAFF ANALYSIS/STATEMENTS (cont.)

Considerations:

- Stakeholders find the region boundaries to be arbitrary in nature, with no quantitative rationale for their formation.
- There is a concern that the composition of districts within each county, within a given Service Region, is not representative of all of its communities.
- Stakeholders expressed that a proration of funding based on high school enrollment is not necessarily representative of students served by CTE programs in a given area.
- A Service Region could be allocated a disproportionate amount of funding as compared to other Service Regions when less applications are submitted by that region.
- Applicants with the highest CTE score in each locale will still be funded first.

Scenario 3 – Funding Order by CTE Plan Score Only

In this scenario, total funding available in a given CTEFP cycle is distributed based solely on CDE score rankings alone in order of highest to lowest, regardless of locale designation. Funding is allocated based solely on the CTE plan score, which reflects the factors outlined in the statute, including high school enrollment, industry needs, labor market trends, and the number of students in the program.

Considerations:

- Regional differences are not accounted for, which could inadvertently have the effect of disadvantaging some lesser-resourced districts who lack the resources to compete effectively with larger, better-resourced districts.
- Using actual Cycle 5 funding application data, the results were disproportionate amongst locales with well over half of the projects receiving funding located in the Suburban Area locale (36 of 63 projects), which does not seem to align with the statutory guidance to provide program equity.

Scenario 4 - Reintroduce Service Region Model and Move Town Codes to Rural

In this scenario, projects with a NCES Town locale designation are moved to the Rural Area locale with funding prorated (and capped) by High School Enrollment within the 11 Service Regions. The same disadvantages associated with Scenario 2 are similarly present here, although shifting the Town locales from Rural to the Suburban category could have the effect of a more equitable distribution of funding as compared to Scenario 2.

Considerations:

- Stakeholders find the Service Region boundaries to be arbitrary in nature, with no quantitative rationale for their formation.
- There is a concern that the composition of districts within each county, within a given Service Region, is not representative of all of its communities.
- Stakeholders expressed that a proration of funding based on high school enrollment is not necessarily representative of students served by CTE programs in a given area.
- A Service Region could be allocated a disproportionate amount of funding as compared to other Service Regions when less applications are submitted by that region.
- Applicants with the highest CTE score in each locale will still be funded first.
- With more potential applications being received in the Town/Rural Area locale, it may increase merit based competition in the Rural Area locale category.
- Maintains the concept of providing funding to various types of communities.
- More evenly distributes applications between the three locales.

STAFF ANALYSIS/STATEMENTS (cont.)

Conclusion

Stakeholders expressed tentative support for Scenarios 1b and 4, mixed with minimal support for Scenarios 2 and 3. However, Staff did not observe overwhelming consensus favoring one scenario option over another. One clear takeaway from both stakeholder meetings and from the written correspondence that was received, is that there is consensus to move sites classified by NCES as Town from the SFP definition of Suburban Area to Rural Area. The following table shows the breakdown of applications if this change were applied to Cycle 5:

Distribution of Cycle 5 Funding with Town Moved to Rural

| Locale | # of Projects Funded | \$ Value | # Projects Submitted | % of Projects Funded | Lowest Score Funded |
|----------|----------------------|--------------|----------------------|----------------------|---------------------|
| Urban | 20 | \$36,025,021 | 91 | 22% | 128.0 |
| Suburban | 21 | \$36,340,243 | 78 | 27% | 131.0 |
| Rural | 21 | \$51,271,272 | 51 | 41% | 129.0 |

Staff recommends making this shift and agrees that it will help equalize the number of applications funded across all three locales. Thus, Staff is seeking Board direction regarding changes to the current funding order outlined in SFP Regulations for future CTEFP funding cycles. If directed to do so, Staff will prepare proposed regulatory changes for presentation at a future Board meeting.

A detailed summary of stakeholder feedback and comments received are included as Attachment C.

RECOMMENDATIONS

1. Move the Town Area locale from Suburban to Rural. This would require regulatory amendments to existing definitions of Suburban Area and Rural Area.
2. Provide that any proposed regulatory amendments adopted as a result of this item be applied to CTEFP Cycle 6 projects.

ATTACHMENT A

AUTHORITY

School Facility Program (SFP) Regulations

SFP Regulation Section 1859.2 Definitions state in part:

...

“Rural Area” shall be a school with a locale code of 41, 42 or 43 as classified by the National Center for Education Statistics (NCES).

...

“Service Region” means one of the eleven service regions of the California County Superintendents Educational Services Association.

...

“Suburban Area” shall be a school with a locale code of either 21, 22, 23, 31, 32 or 33 as classified by the NCES.

...

“Urban Area” shall be a school with a locale code of 11, 12 or 13 as classified by the NCES.

...

SFP Regulation Section 1859.196 states in part:

(d) For the third and any subsequent cycles, the Board shall apportion funds regardless of Service Region.

(1) Funds shall be apportioned to the highest ranked project in each locale. In order to continue this funding process, one project from each locale must be apportioned. If there are no applications in a given locale(s), projects will be apportioned in the remaining locale(s).

(2) The process will continue until the applications or funds are exhausted, whichever comes first.

(3) In the event two or more applications have the same career technical education plan score, the Board shall approve the applications in the following order:

(A) The application with the highest total score in all weighted areas of the career technical education plan score identified in Education Code Section 17078.72(j).

(B) The applicant without a Career Technical Education Facilities Project in the immediate prior funding cycle or without an Approved Application for Career Technical Education Facilities Project Funding that will receive funding in the current cycle.

(C) After the above criteria have been applied, a lottery system may be used to determine the final funding order.

(e) If an Approved Application for Career Technical Education Facilities Project Funding within any funding cycle cannot be fully apportioned because insufficient funding is available, the applicant may either accept the available funding as the full and final apportionment for the project or refuse funding entirely. If funding is refused, the Board shall consider funding the next project eligible for an apportionment pursuant to this Section.

(f) For any Approved Application for Career Technical Education Facilities Project Funding not apportioned pursuant to this Section, the application shall be returned to the applicant. An Approved Application for Career Technical Education Facilities Project Funding returned to the applicant may be resubmitted during a subsequent application acceptance period identified in Section 1859.191, provided the application meets the eligibility criteria in Section 1859.192.

ATTACHMENT A

AUTHORITY

EDUCATION CODE

CHAPTER 12.5., ARTICLE 13. Career Technical Education Facilities Program [17078.70 - 17078.72]

(Article 13 added by Stats. 2006, Ch. 35, Sec. 11)

17078.70.

(a) For the purposes of this article, "reconfiguration" means any modification of a structure of any age that will enhance the educational opportunities for pupils in existing middle and high schools in order to provide them with the skills and knowledge necessary for high-demand technical careers.

(b) "Reconfiguration" may include limited new construction necessary to accommodate the reconfiguration.

(Added by Stats. 2006, Ch. 35, Sec. 11. Effective May 20, 2006. Operative after November 7, 2006, pursuant to Sec. 25 of Ch. 35 and adoption of Prop. 1D.)

17078.72.

(a) The Career Technical Education Facilities Program is hereby established to provide funding to qualifying local educational agencies for the purpose of constructing new facilities or reconfiguring existing facilities, including, but not limited to, purchasing equipment with an average useful life expectancy of at least 10 years, to enhance educational opportunities for pupils in existing high schools in order to provide them with the skills and knowledge necessary for the high-demand technical careers of today and tomorrow.

(b) The State Department of Education, in cooperation with the Chancellor's Office of the California Community Colleges, the Labor and Workforce Development Agency, and industry groups, shall develop criteria and pupil outcome measures to evaluate the program. The criteria shall ensure equity, program relevance to industry needs, and articulation with more advanced coursework at the partnering community colleges or private institutions.

(c) The program shall be based on grant applications administered by the board.

(d) Grants shall be allocated on a per-square-foot basis for the applicable type of construction proposed or deemed necessary by the board consistent with the approved application for the project.

(e) New construction grants shall not exceed three million dollars (\$3,000,000) per project per schoolsite, inclusive of equipment, and shall only be allocated to comprehensive high schools that have an active Career Technical Advisory Committee pursuant to Section 8070, in either of the following methods:

(1) For a stand-alone project on a per-square-foot basis for the applicable type of construction proposed, based on the criteria established pursuant to subdivision (b), consistent with the approved application for the project.

(2) For new school projects, as a supplement to the per pupil allocation pursuant to Section 17072.10. The supplement is intended to cover excess costs uniquely related to the facilities required to provide the career technical education program or programs.

(f) Modernization grants shall not exceed one million five hundred thousand dollars (\$1,500,000) per project per schoolsite, inclusive of equipment and may be awarded to comprehensive high schools or joint power authorities currently operating career technical education programs that have an active Career Technical Advisory Committee pursuant to Section 8070 for the purpose of reconfiguration. For comprehensive high schools, the grant shall be supplemental to the per pupil allocation pursuant to Section 17074.10. The supplement is intended to cover excess costs uniquely related to the facilities required to provide the career technical education program or programs.

(g) (1) A school district shall contribute from local resources a dollar amount that is equal to the amount of the grant of state funds awarded under subdivisions (d), (e), and (f). The required local contribution may be provided by private industry groups, the school district, or a joint powers authority.

(2) A school district shall not be required to demonstrate that it has unhoused pupils or that a permanent school building is more than 25 years old in order to receive a grant under the program.

(h) The program shall allow the required local contribution to be paid over time if sufficient local funds are not immediately available. The board may provide for a repayment schedule consistent with subparagraphs (C) and (D) of paragraph (1) of subdivision (a) of Section 17078.57. The board shall not waive the required local contribution on the basis of financial hardship or on any other basis.

(i) Applications shall meet the criteria developed under subdivision (b) and shall require all of the following:

ATTACHMENT A

AUTHORITY

- (1) A clear and comprehensive career technical education plan for each course of study applicable to the instructional space.
- (2) Projections of pupil enrollment.
- (3) Identification of feeder schools, industry partners, and community colleges or other postsecondary schools participating in the development, articulation, and review of the educational program.
- (4) Evidence of approval of the plan by the entities listed in paragraph (3).
- (5) The method by which accountability for pupil enrollments and outcomes will be maintained. Outcomes shall include, but are not limited to, certificate completion, the successful entry of pupil to employment in the applicable industry, and successful transition to post-secondary institutions for work in the applicable industry or other areas of study.
- (6) Evidence of coordination with all feeder schools, middle schools, and high schools within the area to ensure that the project and programs complement career technical education offerings in the area.
- (7) Evidence that upon completion of the project the local educational agency will meet all of its obligations under Section 51228 relating to career technical education.
- (j) Applications shall give weight to the number of pupils expected to attend, the cost per pupil, financial participation by industry partners in the construction and equipping of the facility, commitment to accountability for outcomes and participation, the strength and relevance of the educational plans to the needs of industry for qualified technical employees applicable to the economic development needs of the region in which the project will be located, and coordination and articulation with feeder schools, other high schools, and community colleges.
- (k) The Office of Public School Construction shall develop and the board shall approve regulations to implement this article on or before April 19, 2007, and the board may promulgate those regulations first on an emergency basis, which shall be effective for no more than 12 months, after which any permanent regulations shall be promulgated in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- (l) Notwithstanding paragraphs (e) and (f), a project approved pursuant to this section is also eligible for an incentive grant from the funds specified in paragraph (8) of subdivision (a) of Section 101012 if the project meets the criteria prescribed in that section.

(Amended by Stats. 2011, Ch. 622, Sec. 2. (SB 128) Effective January 1, 2012.)

ATTACHMENT B

The Eleven Service Regions of California County Superintendents Educational Services Association (CCSESA)



Summary of Stakeholder Feedback for CTEFP Funding Order

July 24, 2019 Stakeholder Meeting, Sacramento CA

Stakeholders expressed a desire for Staff to develop options that may result in a different funding distribution methodology utilized for future funding rounds than is currently outlined in CTEFP Regulations. Feedback was favorable of the Board's decision to apportion the entire remaining \$250 million in bond authority from Proposition 51 in one final round as this would allow additional lower-scoring applications (among all locales) to have a greater probability of receiving funding. Stakeholders also offered suggestions for changing the equitable funding distribution approach with the remaining CTEFP bond authority, including funding based on a proportion of overall high school enrollment, by district or region population, by industry needs, through analysis of labor market trends and community impact, or by the overall merit of the specific project. Stakeholders also reiterated the importance of remaining focused on the ultimate benefactors of the CTE program, the students.

Stakeholder feedback from this meeting emphasized that rural districts often have fewer available resources than their urban or suburban counterparts in preparing and submitting a CTEFP application, and yet find themselves in direct competition against better-resourced suburban districts due to the current inclusion of the NCES Town designation within the Suburban Area locale. Additionally, due to a historically larger applicant pool and greater competition within the Suburban Area locale category, districts assigned a Town locale designation would have a greater likelihood of receiving funding if they were to be reclassified under the Rural Area locale.

Stakeholders also noted that the NCES classification is designated by school site and not district, which results in the possibility of larger districts having schools that are able to compete in all locale categories (Rural, Suburban, Urban), whereas smaller districts, by virtue of fewer eligible school sites concentrated in a smaller geographical area, may only be able to compete in one or two locale categories. In addition, stakeholders indicated that the Rural Area designation, and to some extent the Suburban Area designation, are typically temporary locale designations. Over time, increasing development on the lands abutting a school site could lead to a reclassification of a particular site from Rural to Suburban (as the urban center develops and grows closer in proximity to a fixed school site location) and, later, from Suburban to Urban. It was further noted the locale designation methodology used by NCES could potentially place older sites, built in smaller communities, at a disadvantage, as they would potentially be classified as Suburban regardless of the size of the community or district.

Support for Moving Town Locale to Rural, and for Enrollment Based Proration of Funds

In evaluating the various funding scenarios presented at the July 24, 2019 meeting, many stakeholders indicated support for Scenario 1 whereby projects assigned an NCES locale code of 31, 32 or 33 (Town designations) would be shifted from the Suburban Area locale to the Rural Area locale and compete for CTEFP funding along more competitively balanced lines.

Other stakeholders supported Scenario 4, as a variation whereby, after shifting the Town designation to Rural, project funding would be prorated by high school enrollment totals within each Service Region, then ordered by highest score within each locale.

Another idea that was discussed by a few other stakeholders expressed support for funding solely by CDE grant application score, regardless of locale, and noted the CDE application score already considers and incorporates such factors as high school enrollment, industry needs, labor market trends, and the number of students in the program.

Attachment C

Stakeholder feedback also included consideration to discontinue funding by Service Regions over concerns regarding the method used to determine service region boundaries.

Lastly, stakeholders expressed concern regarding Scenario 3a which would provide funding based on CDE plan score alone. Further discussion was offered regarding the transparency of CDE's grant application scoring process and noted scoring discrepancies for the same application between Cycle 4 and Cycle 5. Stakeholders also requested more real-time data from OPSC regarding the number of applications received and processed for funding in any given cycle and communicating this data to all stakeholders.

August 14, 2019 Stakeholder Meeting; Long Beach, CA

The majority of stakeholders in attendance represented medium to large size school districts (50K students or more). The feedback received during this stakeholder meeting was informative, detailed, and varied. The common thread among the comments seemed to be in support of moving the Town locale into the Rural category.

New Option to Consider

In addition to the scenarios already presented for stakeholder consideration during the July 24, 2019 meeting, a new proposal was presented representing a hybrid version of Scenario 1. The separate scenario, labeled Scenario 1b, would shift the Town locale designation codes into the Rural category and then distribute the available funding on a prorated basis based on the number of applications submitted within each locale against total applications received (in all locales). In this manner, Scenario 1b ties the funding distribution directly and proportionally to the number of applications received per locale, proportional to total applications received, with the corresponding funding distributed accordingly.

Rural Locales & Perceived Disproportionate Funding

One stakeholder felt that the current regulatory funding method is designed to favor rural communities and districts located within the northern parts of the state and the Central Valley, and felt that these regions no longer needed the extra financial help. The stakeholder also mentioned that students in the Rural category receive a disproportionate amount of funding per student when compared against students in the other two categories, and even more so when compared to how much tax revenue Rural communities generate. The stakeholder pointed out that the CDE grant application score already considers the projected number of students in the program as well as labor market trends. The stakeholder further expressed a desire to fund based on Scenario 2 or Scenario 4.

Acknowledgement of Urban Locale Challenges

Yet other stakeholders stated that, while acknowledging Rural districts often face distinct and specific challenges in applying for CTEFP funding, Urban districts similarly face unique challenges inherent to their locale designation. These stakeholders felt that the current funding methodology favors sites located within districts located within the Rural Area locale over those located in the Urban Area locale, and would like to see the funding focused more equitably towards the Urban Area locale.

Proration by Number of Students or Number of Applicants per Locale Category

One stakeholder further indicated a preference that the available funding be prorated in some manner utilizing the number of students in each locale as a criterion. The stakeholder expressed tentative support for Scenarios 2 and 4 while also expressing concerns over cost escalation during the time elapsed between applying for funding, and receiving CTEFP funding (i.e., construction costs escalating in excess of original CTE budget

Attachment C

projections), and would like to see more frequent apportionments as opposed to the current Priority Funding model.

Another stakeholder expressed strong support for Scenario 1B and would like to see the Town locale moved to the Rural category, with the amount of funding prorated among each locale category based on the number of applications received, and for projects to be funded in order of CDE score up to the maximum amount of funding available by locale.

Merit Based Distribution of Funds

Another stakeholder expressed dissatisfaction with the current funding methodology and would prefer to see the merit of the application be valued (weighted higher) over an application's locale. The stakeholder also suggested limiting the number of applications being funded at one site. Of all the funding distribution options presented, the stakeholder supported Scenario 1b the most, but indicated an openness to other suggestions as well.

Some stakeholders also wanted a greater focus to be given to the CDE score when determining funding order, as the score takes into account the number of students served and local labor market information, among other application-specific information.

Additional Factors for Funding Order

One additional stakeholder felt that the current funding methodology was unfair to districts within the Town locale, and would like an applicant's socioeconomic status to be a component in determining the funding order.

Feedback Received Outside of Stakeholder Meetings (Email & Written Correspondence)

At both meetings, OPSC encouraged stakeholders, both in attendance and not, to provide feedback either by email, letter, or phone. The feedback received outside of the two stakeholder meetings is summarized below:

Apportion Funds to Unfunded Applications from Cycle 5

One stakeholder expressed a desire for the next funding round to be limited to applications submitted but not funded in Cycle 5. This method was suggested as a way to mitigate the effects of increasing cost escalation as well as to expedite the apportioning of CTEFP funds.

Remove Locales as a Funding Methodology in Favor of Merit and/or High Student Enrollment

One stakeholder submitted written feedback that four of its five applications in Cycle 5 had scores that were high enough to have received funding had they been located in the Rural locale. As it stands, those applications were located in the Urban locale and thus did not score high enough to receive funding.

Additionally, the three locales do not equally divide the state's population. Thus, the stakeholder maintains that the locale based system creates a structured inequity that places schools located in more densely populated areas of the state at a disadvantage when competing for CTEFP funds.

The stakeholder would like to see funding distributed based on merit and the number of high school students served. As such, the stakeholder expressed support for Scenarios and 4, as they prorate the amount of funding by high school enrollment.

Attachment C

Support for Shifting Town from Suburban to Rural

One stakeholder wrote expressing a desire to see the Town locale to be moved into the Rural category as a way of balancing the number of total applicants in each category and bolstering the Rural applicant pool so that there is more competition in the Rural category. Additionally, the stakeholder feels that applicants with the Town locale generally have fewer resources than the larger, truly Suburban districts, and shifting the Town locale into the Rural category will assist otherwise disadvantaged applicants.

Opposition to Service Region Model

A stakeholder expressed opposition to returning to a service region funding model, as the regions are fairly arbitrary and unnecessarily complicated. The stakeholder feels that it would be impractical to establish a quantitative relationship between the number of CTE programs and the service regions, thus making it impossible to guarantee equity between regions as it relates to CTE programming. Additionally, the stakeholder stated that utilizing a service region method would likely result in some high scoring applications going unfunded and some low scoring applications receiving funding due to the possibility of regions with a low number of applications receiving a disproportionate amount of funding.

Lastly, the stakeholder felt that service regions would add unnecessary confusion as the remaining funding in each service region that would not be enough to fund any projects would be challenging to reallocate.

Support for Scenario 1b

One stakeholder wrote expressing support for Scenario 1b, as moving the Town locale to the Rural category would create a more balanced pool of applicants across all three categories. Additionally, the stakeholder felt that prorating the amount of funding per locale by the number of applications received in each locale will lead to more scoring parity.

Conclusion

Over the course of feedback and comment received over two stakeholder meetings, and vis a vis comments received electronically or by telephone, stakeholders expressed tentative support for Scenarios 1b and 4, with minimal support for Scenarios 2 and 3, while simultaneously expressing that they would be open to hearing different funding scenario options than those presented, should any be presented.

Applicants who submitted applications OPSC, but were not funded in the fifth cycle must reapply, as the Board took action on June 26, 2019 to allocate the remaining \$250 million in bond authority to the sixth CTEFP funding cycle.