

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, October 26, 2022

PROPOSED REGULATORY AMENDMENTS TO THE SCHOOL FACILITY PROGRAM

PURPOSE OF REPORT

To present the State Allocation Board (Board) with proposed amendments to the School Facility Program (SFP) Regulations, an associated form, and the Grant Agreement master templates, as a result of the California Court of Appeals' decision related to the Board's historical practice of collecting financial hardship savings outlined in SFP Regulation Section 1859.103.

DESCRIPTION

This Item is presented to the Board for purposes of communicating to school districts that financial hardship savings from financial hardship projects are no longer required to be repaid to the School Facility Program.

AUTHORITY

In the case of *San Bernardino City Unified School District v. State Allocation Board*, California Court of Appeal, Third Appellate District, case C092003 (from Sacramento Superior Court case 34-2019-80003183), the Court ruled in favor of the San Bernardino City Unified School District thereby invalidating parts of the Board's SFP Regulation Section 1859.103.

STAFF ANALYSIS/STATEMENTS

The Court's decision that invalidates parts of Regulation Section 1859.103 means that staff must repeal the parts of that regulation section along with any reference to the return of financial hardship savings pursuant to that section throughout the SFP Regulations, forms, and Grant Agreement master templates. Staff reviewed these documents and the regulations, an associated form (Form SAB 50-06) and the Grant Agreement master templates that are made part of this Item.

Clarifying Amendments

The proposed regulatory amendments to the Grant Agreement include conforming regulations pursuant to Senate Bill 820 (Chapter 110, Statutes of 2020). The statute changed the collection agency for amounts due to the state for audit findings from the California Department of Education to the Office of Public School Construction.

RECOMMENDATIONS

1. Approve the proposed amendments to SFP Regulation Section 1859.103, along with any related references of this section in the SFP Regulations, an associated form (Form SAB 50-06), and the Grant Agreement master templates, as shown on Attachments A through C.
2. Direct staff to inform school districts that financial hardship savings are no longer required to be repaid to the School Facility Program and must be spent on high priority capital outlay. School districts are required to report the expenditure of project savings annually until all state and required matching funds have been expended.
3. Authorize the Executive Officer to file the proposed regulations, the Form SAB 50-06, and the Grant Agreement master templates with the Office of Administrative Law on a non-emergency basis and make the regulations permanent.

This Item was approved by the State Allocation Board on October 26, 2022.

ATTACHMENT A

Title 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 4. Office of Public School Construction
Group 1. State Allocation Board
Subgroup 5.5. Regulations Relating to the Leroy F. Greene School Facilities Act of 1998:
(School Facility Program)

Article 1. General Provisions and Definitions

Section 1859. Purpose.

These regulations implement the Leroy F. Greene School Facilities Act of 1998, which establishes a State program to provide State per pupil funding for new construction and modernization of existing school facilities.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.10 and 17070.35, Education Code.

Section 1859.1. General Services Director.

The General Services Director, or his or her legal designee shall perform all acts necessary to carry out the provisions of the Act except such functions as are reserved to the Board and to other agencies by law or by Sections 1859 through 1859.107 inclusive. The acts to be performed include, but are not limited to, entering into contracts to administer the Act.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17070.20, Education Code.

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

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“Form SAB 50-01” means the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 05/09), and, when utilizing HSAA residency reporting, the High School Attendance Area Residency Reporting Worksheet (New 06/08), which are incorporated by reference.

“Form SAB 50-02” means the *Existing School Building Capacity*, Form SAB 50-02 (Revised 05/09), which is incorporated by reference.

“Form SAB 50-03” means the *Eligibility Determination*, Form SAB 50-03 (Revised 03/09), which is incorporated by reference.

“Form SAB 50-04” means the *Application For Funding*, Form SAB 50-04 (Revised 05/20), which is incorporated by reference.

“Form SAB 50-05” means the *Fund Release Authorization*, Form SAB 50-05 (Revised 06/17), which is incorporated by reference.

“Form SAB 50-06” means the *Expenditure Report*, Form SAB 50-06 (Revised ~~02/07~~10/22), which is incorporated by reference.

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“Fund” shall have the meaning set forth in Education Code Section 17070.15(g).

“General Location” means the proposed location of a new school as set forth in Education Code Section 17078.22 and Section 1859.142.

“General Site Development” means on-site hard surfaced areas for foot traffic, driveways, walks, parking, curbs and gutters; outdoor instructional play facilities such as turfed or paved play areas, permanent playground equipment, outdoor places of assembly, tennis/handball courts, running tracks and baseball, football and soccer fields; applicable landscaping of building frontages and outdoor facilities noted above.

“Governmental Agency” shall include but is not limited to a public entity as defined in Government Code Section 7260(a) including California federally recognized or historically established tribal governments.

“Grant Agreement” means *Grant Agreement* (New 06/17 Rev. 10/22), which is incorporated by reference.

“Hazardous Material/Waste Removal Fund” shall mean the fund established pursuant to Section 1859.163.3, in order to set aside funding at the time Preliminary Charter School Apportionments are approved by the Board for hazardous material waste removal that will be provided at the Final Charter School Apportionment when actual costs are known.

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026 and 101012(a)(8), Education Code; Section 53311, Government Code; and Sections 1771.3 in effect on January 1, 2012 through June 19, 2014 and 1771.5, Labor Code.

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Section 1859.70.2. Funding of Previously Ineligible Projects.

For any classrooms that were previously ineligible for State funding due to the construction contract being signed more than 180 days prior to the submission of the Approved Application, the district may request funding for the project if all the following conditions are met:

- (a) The Approved Application for funding must be filed with the OPSC no later than 120 days after this proposed regulation is in effect; and,
- (b) The Approved Application meets all requirements of Chapter 12.5, the Leroy F. Greene School Facilities Act of 1998; and,
- (c) The contract for the lease, lease-purchase, purchase or construction has been signed on or after January 1, 2000; and,
- (d) The grants for the projects funded pursuant to this Section shall be limited to actual eligible expenditures and the funding provided will be calculated based on the grant amounts at the time the construction contract was signed. ~~The project will not be eligible to receive project savings as provided for in Section 1859.103;~~ and,
- (e) The district has new construction eligibility for the project. If the capacity of the project is included in the district's baseline, the district may exclude the capacity from its existing school building capacity for purposes of determining eligibility for this project; and,
- (f) All project approvals required for a new construction funding application were obtained prior to the construction contract date.

If the Approved Application meets all criteria except (f) above, the district may request a case-by-case approval from the Board.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17071.10, 17071.75, 17072.10 and, 17072.20, Education Code.

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Section 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district including the relocation of district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12. ~~The grants for the projects funded pursuant to Section 1859.70.2 or Section 1859.180 shall be limited to~~

~~eligible expenditures, up to the State Apportionment for the project except as specified in Section 1859.184.1(d). Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.~~

~~With the exception of savings attributable to a site apportionment made pursuant to Sections 1859.74.5 or 1859.81.2, the State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project or a Joint-Use Project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.~~

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

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63, 17072.12, 17077.40 and 17079.20, Education Code.

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Section 1859.104. Program Reporting Requirements.

A district receiving funds in accordance with the Act shall submit the following:

- (a) An expenditure report from the district on the Form SAB 50-06. The program reporting requirements are as follows:
 - (1) The first expenditure report shall be due one year from the date that any funds were released to the district for the project pursuant to Section 1859.90 or 1859.90.2, or upon completion of the project, whichever occurs first. A project shall be deemed complete when either of the following occur:
 - (A) When the notice of completion for the project has been filed, all outstanding invoices, claims, change orders have been satisfied and the facility is currently in use by the district.
 - (B) Three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.
 - (2) The second and subsequent expenditure reports, if necessary, shall be due annually beginning one year from the first report, or upon completion of the project, whichever occurs first. The final expenditure report must be made no later than three years from the date of the final fund release for an elementary school project or four years from the date of the final fund release for a middle or high school project.
- (b) With the exception of projects that qualify for an apportionment pursuant to Section 1859.75.1, a progress report, in the form of a narrative from the district, shall be due 18 months from the date any funds were released to the district for the project pursuant to Section 1859.90 or 1859.90.2. The progress report shall include information regarding the progress the district has made towards substantial completion of the project. If the notice of completion has been filed within 18 months of the release of funds pursuant to Section 1859.90 or 1859.90.2, or the expenditure reports required in (a)(1) or (2) indicate that substantial progress (as defined in Section 1859.105) on the project has occurred, no progress report is required.
- (c) A progress report, in the form of a narrative from the district, shall be due 12 months from the date the site acquisition funds were apportioned to the district for the project pursuant to Section 1859.75.1. The progress report shall include information regarding the progress the district has made towards acquiring the site as outlined in Section 1859.105.1 and may contain other evidence of reasonable effort to substantiate progress towards acquiring the site for purposes of an extension of the site apportionment as authorized by Education Code Section 17072.13(c)(2).
- (d) If an apportionment was made for a district-owned site pursuant to Section 1859.74.5, a certification that the non-school function currently taking place on the district-owned site has been discontinued or relocated. The certification must be submitted to the OPSC no later than the following dates:
 - (1) If the project is for an elementary school, 66 months from the date of the site apportionment.
 - (2) For all other projects, 78 months from the date of the site apportionment.

- (e) If an Apportionment was made under the Overcrowding Relief Grant pursuant to Section 1859.180, the School District must provide a certification that the replaced portables were removed from the eligible site and from service pursuant to Education Code Section 17079.30.
- (f) A School District receiving an Apportionment for high performance incentive grants pursuant to Section 1859.71.6 or 1859.77.4 shall submit a completed Project Information Worksheet to the OPSC for all expenditures related to the additional design and construction costs of the high performance building components. In addition, the School District shall provide information related to resulting energy savings and efficiency, as well as other resulting benefits. The Project Information Worksheet shall be submitted with the Form SAB 50-05 and the District's first and final Forms SAB 50-06 pursuant to (a)(1) and (2) above.
- (g) A School District receiving funds shall submit a summary report of expenditures of state funds and of school district matching funds annually until all state funds and school district matching funds are expended, pursuant to Education Code Section 17076.10(a).

Note: Authority cited: Sections 17070.35, 17072.13 and 17079.30, Education Code.

Reference: Sections 17070.35, 17070.99, 17072.12, 17072.13, 17076.10 and 17079.30, Education Code.

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~~Section 1859.169.1. Charter School Project Savings.~~

~~Projects funded under the CSFP do not generate savings pursuant to Section 1859.103. In addition, State funds remaining at the completion of the project may not be used to satisfy the local matching share obligation. Remaining funds must be returned to the State.~~

~~Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.~~

~~Reference: Sections 17078.54, Education Code.~~

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Section 1859.184.1. Application Process for Districts with Financial Hardship Approval.

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

- (a) A complete application shall include:
 - (1) Documentation of Financial Hardship approval pursuant to Section 1859.81.
 - (2) All project related approvals and requirements that would otherwise apply to SFP projects with the exception of ownership pursuant to Section 1859.23 for those parcels being acquired through condemnation proceedings. A CDE site approval letter is required for all components of the site, including the area to be acquired through condemnation. The CDE Final Plan Approval letter must include the acreage to be acquired through condemnation. This subsection includes the submittal of DSA approved construction plans and related documents.
 - (3) A copy of the Resolution of Necessity for the initiation of condemnation proceedings.
 - (4) For any additional parcels that are being acquired without condemnation, documentation that demonstrates that the district has opened escrow, has ownership, or holds a lease meeting the requirements of Section 1859.22.
 - (5) An appraisal for the value of all properties being acquired as part of the application.
- (b) Site Acquisition Funding for Financial Hardship Overcrowding Relief Grant applications using condemnation shall be equal to the sum of:
 - (1) The lesser of the actual or appraised value for all parcels acquired through means other than condemnation, pursuant to Section 1859.74.
 - (2) The appraised value of the parcels being acquired through condemnation, multiplied by 1.15.
 - (3) Amounts for hazardous waste removal pursuant to Sections 1859.74.2, 1859.74.3 and/or 1859.74.4.

- (c) The Overcrowding Relief Grant projects meeting the criteria in subsection (a) above shall be able to request an advance fund release for site acquisition when condemnation proceedings are required for the acquisition of the site. The advance fund release shall be equal to the State share plus the Financial Hardship grant of only the amount determined in subsection (b).
- (d) ~~Pursuant to Section 1859.103, Grants for Overcrowding Relief Grant projects shall be limited to eligible expenditures, up to the State Apportionment for the project with the exception of the funds provided in subsection (b) above that are for site acquisition purposes only and cannot be transferred over to eligible construction related costs.~~

When making an apportionment for an Overcrowding Relief Grant project meeting the criteria in this section, the Board shall make a Final Apportionment for the total project cost. However, the fund release for the non-site acquisition project costs will not be accepted or processed until the district is able to produce the court order for prejudgment possession verifying the initial amount to be paid through condemnation proceedings. The project timelines for the project as a whole, as specified in law and outlined in Section 1859.90 or 1859.90.2, as applicable, remain in effect. The advance fund release for site acquisition can be requested at any time after the Final Apportionment is granted by the Board. The advance fund release for site acquisition is not subject to the requirements of Section 1859.81.1.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17079.20, Education Code.

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Section 1859.199. Program Accountability.

A project shall be deemed complete when either of the following occurs, whichever occurs first:

- (a) The final notice of completion is filed for the project; or,
- (b) Four years have elapsed from the final fund release for the project.

Projects will be subject to a Program Accountability Expenditure Audit pursuant to Section 1859.106. Any repayments due back to the state as a result of these audits will be subject to the repayment provisions identified in Section 1859.106.1.

~~An applicant district may not retain savings realized by a Career Technical Education Facilities Project.~~

Note: Authority cited: Sections 17070.35 and 17078.72(k), Education Code.

Reference: Section 17078.72, Education Code.

ATTACHMENT B

STATE OF CALIFORNIA

EXPENDITURE REPORT SCHOOL FACILITY PROGRAM

SAB 50-06 (REV ~~12/10~~ 10/22)

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

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INSTRUCTIONS (Refer to Title 2, California Code of Regulations Sections 1859.104 and 1859.106)

For purposes of completing this form enter the total amount spent for the project, including expenditures that may exceed the State and district shares authorized by the State Allocation Board.

1. Enter the estimated percentage of the project completed at the time of this report.
 2. Enter the earliest issue date of the notice to proceed to the construction contractor.
 3. Enter the date construction was completed as stated in the notice of completion on the last working contract.
 4. If this is the first report submitted, enter "so" in this column. If there are prior reports, the amount reported in this column is the amount reported in column 6 of the preceding report.
 5. Enter the transaction amounts during the current report period.
 6. Enter the sum of the corresponding line items in columns 4 and 5.
 7. ~~If applicable, enter the district's future SFP financial hardship project(s) that savings from this project will be applied.~~
- Provide a detailed listing of each expenditure listing items by:
- Warrant, date of warrant, payee, warrant number, and description/purpose of the expenditure.
 - Identify any savings and the purposes for which it will be used. Identify expenditures made with district force account labor separately.
 - The use of a transaction record, in lieu of warrant number, is acceptable for force account expenditures.
 - Identify amounts applied to the project for incentive grants or rebates received by the district pursuant to Public Utilities Code Section 381. Refer to Sections 1859.77.1 and 1859.79.
- Go to the OPSC Web site at www.dgs.ca.gov/opsc for the Project Information and Expenditure Worksheets (an Excel worksheet) which may be used to assist in reporting these expenditures.

Submit completed form to: **Department of General Services**
Office of Public School Construction
Attn: SFP Audit
707 Third Street
West Sacramento, CA 95605

ATTACHMENT B

STATE OF CALIFORNIA
EXPENDITURE REPORT
SCHOOL FACILITY PROGRAM

SAB 50-06 (REV ~~12/10~~ 10/22)

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

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SCHOOL DISTRICT		COUNTY	APPLICATION NUMBER
BUSINESS ADDRESS/CITY			REPORT NUMBER
SCHOOL NAME	DSA NUMBER	CDS NUMBER	PERIOD ENDING
PREPARER'S NAME (TYPED)	PREPARER'S TITLE (TYPED)	TELEPHONE NUMBER/E-MAIL ADDRESS	
DISTRICT REPRESENTATIVE NAME (TYPED)	DISTRICT REPRESENTATIVE TITLE (TYPED)	TELEPHONE NUMBER/E-MAIL ADDRESS	

1. **Percent of Project Complete:** _____
2. **Notice to Proceed Issue Date:** _____
3. **Notice of Completion Date:** _____

	4. Previous Report	5. Report Period	6. Total to Date
District Funds or Joint-Use Partner(s) Contribution			
State Funds			
Interest Earned			
Project Expenditures			

7.—If applicable, list the amount of savings from this financial hardship project that will be used to reduce the grant of a future School Facility Program financial hardship project which has not yet been apportioned. Attach written declaration of savings pursuant to Section 1859.103:

Project Number _____ Amount of Savings —\$ _____
 Project Number _____ Amount of Savings —\$ _____

I certify, as the District Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized district representative by the governing board of the district; and,
- under penalty of perjury, under the laws of the State of California, the foregoing statements are true and correct, and that the Public Contract Code was adhered to in the construction of this project; and,
- this form is an exact duplicate (verbatim) of the form provided by Office of Public School Construction. In the event a conflict should exist, then the language in the OPSC form will prevail.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
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ATTACHMENT C

STATE OF CALIFORNIA
GRANT AGREEMENT
SCHOOL FACILITY PROGRAM
NEW (06/17) (Rev. 10/22)

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION
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Office of Public School Construction Application Number: _____

GENERAL INFORMATION

Grantee Name: _____

School Name: _____

Grant Amount: _____ of which _____ is Financial Hardship Assistance.

Authority: _____ [relevant Bond Act(s)]

SFP Program Funding Source: _____
(e.g., New Construction, Modernization, Charter Schools Facilities Program, or Career Technical Education Facilities Program)

Future Priority Funding Rounds: _____ (first priority funding window, second priority funding window)

PROJECT DESCRIPTION

Type of Work: _____ (e.g., New Construction, Modernization, Career Technical Education Facilities Program New Construction, Facility Hardship rehabilitation work funded with New Construction grants, Facility Hardship replacement work funded with Modernization grants, etc.)

New School or Addition to an Existing Site: _____

Number of Classrooms: _____

Financial Hardship Approval Date: _____

Financial Hardship Status is valid until: _____ (date)

Agreement includes Grants for: _____ (Site Acquisition; Department of Toxic Substances Control fees and hazardous waste removal; etc.)

Agreement includes Grants for: _____ (Site Development, if appropriate)

Other Facilities being newly constructed, modernized, replaced, or rehabilitated: _____

Office of Public School Construction Application Number: _____

Square Footage being replaced: _____ Toilet Area sq. ft.
_____ Other Area sq. ft. (all non-toilet area)
(include for Facility Hardship replacement or Seismic Mitigation Program replacement projects)
For purposes of Facility Hardship and Seismic Mitigation Program projects, shower/locker area
is considered "toilet area."

Approved rehabilitation cost estimate: _____
(include for Facility Hardship rehabilitation or Seismic Mitigation Program rehabilitation projects)

This project scope and resulting funding determination relied on the following documentation
and state agency approvals:

- The Funding Application (Form SAB 50-04), executed by the District Representative on XXXXX
- The Application for Charter School Preliminary Apportionment (Form SAB 50-09), executed by the District Representative on XXXXX
- The Application for Career Technical Education Facilities Funding (Form SAB 50-10), executed by the District Representative on XXXXX
- Site Approval letter from the California Department of Education dated XXXXX
- Plan Approval letter from the California Department of Education dated XXXXX
- Division of the State Architect Approval letter(s) dated XXXXX for DSA Application Number(s) YYYY.
- Financial Hardship Approval Letter from the Office of Public School Construction dated XXXXX
- Bridge Financing Approval Letter from the Office of Public School Construction dated XXXXX
- The industry specialist report prepared by (insert name of specialist or firm), dated XXXXX that details the minimum work necessary to mitigate the (health and safety or seismic) threat in this (rehabilitation or replacement) application
- Written concurrence dated XXXX from (enter name of governmental agency) agreeing with the (health and safety or seismic) threat and the minimum work to mitigate the threat in the industry specialist report

A copy of the documentation listed here is available as part of the project file maintained by OPSC, and is also retained by the District for purposes of the project audit.

Grants are to be used in accordance with the provisions contained in the Leroy F. Greene School Facilities Act of 1998 (Education Code, Title 1, Division 1, Part 10, Chapter 12.5, commencing with Section 17070.10) and this Agreement.

The Grantee shall not make any change to the Project that would require a Change of Scope, without the State Allocation Board first approving the change to the Project.

Office of Public School Construction Application Number: _____

TERMS AND CONDITIONS OF GRANT

A. Definitions

Terms not defined below shall have the same meaning as set forth in SFP Regulation Section 1859.2.

"Act" means the Leroy F. Greene School Facilities Act of 1998 (Education Code, Title 1, Division 1, Part 10, Chapter 12.5, commencing with Section 17070.10).

"Agreement" means a contract to do or not to do a certain thing and refers to this Grant Agreement.

"Application" means a request pursuant to the Act to receive funding for a school project.

"Apportionment" shall have the meaning set forth in Education Code Section 17070.15(a).

"Audit report" means the annual compliance reviews and fiscal reviews of the Grantee's finances, in accordance with the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"Capital Outlay," for the purposes of the Grantee using Savings, pursuant to School Facility Program Regulation Section 1859.103, means capital assets in accordance with Section G of this Agreement.

"Change of Scope" means the addition or deletion of any work that would change the approved Grant amount for the Project or require updated state agency approval(s). This includes, but is not limited to, changes to site acquisition acres, or buildings, including but not limited to classrooms, multipurpose rooms, gymnasiums, administration buildings, restrooms, and libraries/media centers, and any changes to the size of those buildings, the type of building (e.g. portable, modular, or permanent), or the location on the school site of those buildings.

"Charter School Agreements" mean a memorandum of understanding, a funding agreement, and a use agreement as established by the California School Finance Authority.

"Classroom" means a teaching station that has the same meaning as the term used in Education Code Section 17071.25(a)(1).

"Expenditure Report" means the Form SAB 50-06 *Expenditure Report* and all required supplementary documentation, including but not limited to a detailed listing of project expenditures organized by fund source and provided at an object-code-level of accounting detail, pursuant to the California School Accounting Manual, that shall include fields to identify information including, but not limited to dates, payees, warrant numbers, and the description and purpose of the expenditures as described in California Code of Regulations, Title 2, Regulation Section 1859.104.

"Financial Hardship" means State funding for all or a portion of the Grantee's matching share required by School Facility Program Regulation Section 1859.77.1 or 1859.79.

"Funding Application" means the Form SAB 50-04, *Application for Funding*, or the Form SAB 50-09, *Application for Charter School Preliminary Apportionment*, or the Form SAB 50-10, *Application for Career Technical Education Facilities Funding*, and all required supplementary documentation pursuant to the Act and California Code of Regulations, Title 2, Regulation Sections 1859.70, 1859.161 or 1859.191, as applicable.

"Fund Release Application" means the Form SAB 50-05, *Fund Release Authorization*, and all required supplementary documentation, which includes but is not limited to this Agreement, pursuant to the Act and the Regulations.

Office of Public School Construction Application Number: _____

“Grants” means all eligible program grants provided by the Board to the Grantee in this Agreement.

“Grantee” means the school district (as defined in California Code of Regulations, Title 2, Regulation Section 1859.2), charter school, or joint powers authority, as applicable, whose representative has signed this Agreement for Grants.

“Grantee Representative” means the authorized representative of a school district (as defined in California Code of Regulations, Title 2, Regulation Section 1859.2), charter school, or joint powers authority, as applicable, who signed this Agreement for Grants.

“Hazardous Material/Waste Removal Fund” shall mean the fund established pursuant to California Code of Regulations, Title 2, Regulation Section 1859.163.3(b).

“In Escrow, Governmental Entities” means the approval and signature of instrument(s) that will convey a specified school parcel or site from the public/government entity including the federal government for a determinable sum, and for a determinable date of acquisition which may be based on the Grantee’s receipt of funding from the Board.

“In Escrow, Non-Governmental Entities” means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the Grantee’s receipt of funding from the Board.

“Ineligible Expenditure” means an expenditure of Grants not in accordance with this Agreement or the applicable laws and regulations governing the use of Grants.

“Local auditor” means an auditor hired at the Grantee’s expense who conducts annual compliance reviews and fiscal reviews of the Grantee’s finances, in accordance with the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting.

“Material Inaccuracy” means a finding of falsely certified eligibility or Funding Application related information submitted by Grantees, architects, or other design professionals that allowed the Grantee an advantage in the funding process. For penalties associated with Material Inaccuracy findings, see Education Code Section 17070.51.

“Modernization” means projects that are eligible for Grants based on Education Code Title 1, Division 1, Part 10, Chapter 12.5, Articles 6 (commencing with Section 17073.10) and 7 (commencing with Section 17074.10).

“Most Vulnerable Category 2 Buildings” means the building meets the criteria outlined in Section 1859.82(a)(1)(C) and is one of the following building types:

C1 – Concrete Moment Frame

C1B – Reinforced Concrete Cantilever Columns with Flexible Diaphragms

C2A - Concrete Shear Wall with Flexible Diaphragms

C3A – Concrete Frame with Infill Masonry Shear Walls and Flexible Diaphragms

PC1 – Precast/Tilt-up Concrete Shear Wall with Flexible Diaphragms

PC1A – Precast/Tilt-up Concrete Shear Wall with Rigid Diaphragms

PC2 – Precast Concrete Frame without Concrete Shear Walls and with Rigid Diaphragms

URM – Unreinforced Masonry Bearing Wall with Flexible Diaphragms

RM1 – Reinforced Masonry Bearing Wall with Flexible Diaphragms

URMA – Unreinforced Masonry Bearing Wall with Rigid Diaphragms

S1B – Steel Cantilever Columns with Flexible Diaphragms

S3 – Steel Light Frame Metal Siding and/or Rod Bracing, or

M – Mixed construction containing at least one of the above structure types.

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“New Construction” means projects that are eligible for Grants based on Education Code Title 1, Division 1, Part 10, Chapter 12.5, Articles 3 (commencing with Section 17071.75), 4 (commencing with Section 17072.10), and 5 (commencing with Section 17072.20).

“Occupancy” means the point at which pupils occupy a classroom as evident by district documents such as the school board’s adopted calendar, classroom attendance rosters, fire marshal approval of the classroom, etc.

“Office of Public School Construction (OPSC)” means the office within the California Department of General Services that assists the Board as necessary and administers the Act on behalf of the Director of General Services.

“Other Sources of Funds” means cash, the Grantee’s matching funds, or in-kind contributions that are required or used to complete the project beyond the Grants provided by this Agreement.

“Preliminary Funding Application” means the Form SAB 50-09, *Application for Charter School Preliminary Apportionment*, and all required supplementary documentation pursuant to the Act and the Regulations.

“Project” means the purposes for which the Grantee has applied for the Grants detailed in this Agreement.

“Regulations” means the School Facility Program regulations (California Code of Regulations, Title 2, Division 2, Chapter 3, Subchapter 4, Group 1, Subgroup 5.5, commencing with Regulation Section 1859).

“Relocation/DTSC Fee Fund” shall mean the fund established pursuant to Regulation Section 1859.163.3, in order to set aside funding at the time Preliminary Charter School Apportionments are approved by the Board for relocation expenses and/or DTSC fees that will be provided at the Final Charter School Apportionment upon submission of actual costs.

“Savings” means Grants not used by the Grantee for the Project, pursuant to Regulation Section 1859.103, achieved by the Grantee’s efficient and prudent expenditure of Grants.

“School District” shall have the meaning set forth in Education Code Sections 17070.15(m) and 17073.25.

“School Facility Program (SFP)” means the programs implemented under the Act.

“State” means the state of California.

“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 project as declared in the Department of Finance Budget Letter #33 issued on December 18, 2008.

(Authority: SFP Regulation 1859.2)

B. Term of Grant Agreement

The Grantee and the Executive Officer, or designee, of the Office of Public School Construction shall be the parties to this Agreement. This Agreement must be entered into by both parties prior to, and as a condition of, the release of any funding for the Project. This Agreement becomes effective on the date the Board approves the Project for placement on the Unfunded List (Lack of AB 55 Loans). This Agreement terminates once (1) all Grants and the Grantee’s matching funds, including interest generated by the Grants, is expended, and when all of the Parties’ obligations under this Grant Agreement are fully satisfied, or (2) if the Board rescinds the unfunded approval or apportionment, or (3) if the Grantee withdraws its Funding Application.

Office of Public School Construction Application Number: _____

C. Project Execution

1. The Board hereby awards to the Grantee a sum of money (Grants) \$_____ in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the description of the Project in this Agreement and its attachments and under the Terms and Conditions set forth in this Agreement. Grants may also be expended for the purposes of a future high priority Capital Outlay project as the result of Savings, or for the purposes of reimbursement, pursuant to SFP Regulation Section 1859.90.4.

(Authority: New Construction: Education Code Sections 17072.20 and 17070.63; New Construction and Modernization: SFP Regulations Article 8 commencing with Section 1859.70; Charter School Facilities Program: Article 14 commencing with Section 1859.160; Career Technical Education Facilities Program: Article 16 commencing with Section 1859.190)

2. Prior to the release of any funding for the Project, Office of Public School Construction staff has completed the following steps to finalize the Project funding amount outlined in this Agreement, as necessary:

- i. The Funding Application was accepted on _____ (date) and deemed to meet the definition of an Approved Application. The Grantee was provided written notification of any deficiencies and given 24 hours to remedy the identified deficiency(s) in order to retain the date upon which it was received.
- ii. Upon confirmation of an Approved Application, Office of Public School Construction staff reviewed the Funding Application for compliance with School Facility Program Regulations and verified eligibility for all available program grants. The Grantee was provided written notification of all deficiencies and/or changes necessary and given 15 calendar days to respond and remedy the identified deficiencies and/or changes necessary.
- iii. Upon review of the submitted corrections, Office of Public School Construction staff provided the Grantee written notification of any final deficiencies and required a response within four business days.

- iv. Upon receipt of the final amendments to the Funding Application, the Office of Public School Construction staff and the Grantee agreed that the Project was ready for presentation to the Board for placement on the Unfunded List (Lack of AB 55 Loans).

(Authority: SFP Regulation Sections 1859.2, 1859.70, 1859.93, 1859.93.1; and Office of Public School Construction process)

3. Grantee certifies that the Project complies with all laws and regulations applicable to the Project.

(Authority: Form SAB 50-04 certifications)

4. Grantee certifies that the Project complies with all labor and public contract laws, as applicable, including, but not limited to:

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- i. Public Contract Code Section 20111.6, as added by Chapter 808, Statutes of 2012 (Assembly Bill 1565), which became effective on September 30, 2012. Beginning January 1, 2014 through December 31, 2018, new contracting requirements are effective for school districts with an average daily attendance of 2,500 or more for construction projects with estimated expenditures of at least \$1,000,000 that will be funded through the SFP or any future state school bonds. These new Public Contract Code requirements require a standardized prequalification questionnaire and financial statement to be verified under oath from all bidders.
- ii. Labor Code Section 1773.3, as amended by Senate Bill 854, Chapter 28, Statutes of 2014, which requires school districts that have School Facility Program projects with an initial public works contract awarded on or after January 1, 2012, to notify the Department of Industrial Relations (DIR). The DIR must provide prevailing wage monitoring services for all such projects, except in the cases of: (1) the district operates a DIR-approved internal wage monitoring program; or (2) the district has entered into a collective bargaining agreement that includes the requirements specified in Labor Code section 1771.4(b)(2).
- iii. Chapter 378, Statutes of 2011 (Assembly Bill 436), which required the Department of Industrial Relations to monitor and enforce prevailing wage requirements for every State bond funded project, including School Facility Program projects, pursuant to Labor Code Section 1771.7 for projects in which the initial public works construction contract was awarded before January 1, 2012. The Project must have also been apportioned from either Proposition 47 or 55 and the construction phase of the Project commenced on or after April 1, 2003.
- iv. Chapter 868 Statutes of 2002 (Assembly Bill 1506), which made projects funded from either Proposition 47 (2002) or Proposition 55 (2004) with a notice to proceed date on or after April 1, 2003 subject to Labor Compliance Program requirements as outlined in Labor Code Section 1771.5.

Project Execution Signature

All laws and regulations noted in Sections (i), (ii), (iii), and (iv) above have been, and will be, followed, as applicable.

X _____ Date _____

(Authority: Form SAB 50-04 certifications)

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D. Receiving Board Approval

1. Grantee must have (1) title, (2) leasehold, or (3) other interest to Project lands. Title may include an order for pre-judgement possession issued by a court in an eminent domain proceeding.

(Authority: Education Code Section 17070.70; SFP Regulation Sections 1859.74 and 1859.74.1)

2. Grantee understands and agrees that the Grants, combined with local funds, shall be sufficient to complete the Project.

(Authority: Education Code Section 17070.63(a))

3. The Grantee has established a "Restricted Maintenance Account" for the exclusive purpose of providing ongoing and major maintenance of school buildings and has developed an ongoing and major maintenance plan that complies with and is implemented under the provisions of Education Code Section 17070.75 and 17070.77 (refer to Regulation Sections 1859.100 through 1859.102).

(Authority: SFP Regulation Section 1859.100 and Form SAB 50-04 certifications)

4. The Grantee has or will comply with Education Code Section 17076.11 regarding at least a three (3) percent expenditure goal for disabled veteran business enterprises.

(Authority: Form SAB 50-04 certifications)

5. The Grantee understands and agrees that (1) Grants required to be adjusted for site acquisition for both New Construction and Charter School Facilities Program projects, and (2) Grants not used by the Grantee that failed to meet substantial progress and (3) unspent Financial Hardship Grants, (4) unspent Charter School Facilities Program Grants, or (5) unspent Career Technical Education Facilities Program Grants must be returned to the state school facilities fund from which the Grants were apportioned as a result of an audit, pursuant to Education Code Section 17076.10 and Education Code Section 41024, as applicable.

6. The Grantee understands and agrees that, if it does not remit the amount of Ineligible Expenditures identified in the audit report within 120 days of being invoiced by the Office of Public School Construction~~California Department of Education~~, and if no repayment plan has been approved pursuant to paragraph (d) of Section 41024 of the Education Code, then the Controller shall deduct the total amount of any Ineligible Expenditures from apportionments pursuant to paragraph (d) of Section 41024 of the Education Code. The Grantee may request a payment plan pursuant to paragraph (d) of Section 41024 of the Education Code.

7. If the Grants will be used for the construction or modernization of school facilities on leased land, the Grantee has entered into a lease agreement for the leased property that meets the requirements of School Facility Program Regulation Section 1859.22.

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8. The Grantee has established a facilities inspection system to ensure that each of its schools is maintained in good repair.

[Authority: Education Code Section 17070.75(f)]

9. The statutorily-required Grantee matching funds have either been expended by the Grantee, have been deposited by the Grantee in the county fund, or will be expended by the Grantee prior to notice of completion of the project.

(Authority: Education Code Sections 17072.30, 17074.16, 17078.72(g)(1), 17078.54(d), and 17075.10(b)(2); Form SAB 50-04 certifications)

10. The Grantee has considered the feasibility of using designs and materials for the new construction or modernization project that promote the efficient use of energy and water, maximum use of natural light and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and the other characteristics of high performance schools.

(Authority: Education Code Section 17070.96)

11. Financial Hardship Review Process

- i. If the Grantee has requested Financial Hardship Grants, the Financial Hardship approval from the Office of Public School Construction was valid (Financial Hardship approvals are valid for 180 days) on the date the Approved Funding Application was received by the Office of Public School Construction.

[Authority: SFP Regulation Section 1859.81(e)]

ii.

- a) If the Grantee has requested Financial Hardship Grants and has a bridge financing debt instrument in place, or will have a bridge financing debt instrument in place in the future in order to move the Project forward until Grants become available, then the Grantee agrees that it has received, or will receive, bridge-financing approval from the Office of Public School Construction.
- b) The Grantee also agrees to retire all bridge financing debt within 60 calendar days of receiving Grants. Failure to retire all bridge financing debt within 60 calendar days of receiving Grants will result in the amount of the Financial Hardship Grants in this Agreement being reduced by the amount of the bridge financing that was not retired.

- iii. If the Project remained on the Unfunded List (Lack of AB 55 Loans) for more than 180 days, the Grantee understands and agrees that the Office of Public School Construction shall conduct a review to determine if the Grantee has additional funds available to contribute to the Grantee's matching funds.

[Authority: SFP Regulation Section 1859.81(e) and (f)]

- iv. If the additional Office of Public School Construction review, pursuant to Section (iii) above, determined that the amount of the Financial Hardship Grant required an adjustment, pursuant to Financial Hardship rules detailed in SFP Regulation Section 1859.81, the amount of the Grants detailed in this Agreement will be amended.

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[Authority: SFP Regulation Section 1859.81(a)]

12. [Instructions: The following sections only apply to the program, or other circumstance, that is detailed in this Agreement.]

New Construction:

- i. The Grantee has received approval of the site and the plans from the California Department of Education and the Division of the State Architect. Plan approval is not required if request is for separate design Apportionment.

(Authority: SFP Regulation Section 1859.81.1)

- ii. The Grantee agrees to submit Project Information Worksheets pursuant to School Facility Program Regulation Section 1859.104.

Seismic Mitigation Program Replacement or Facility Hardship Replacement:

The Grantee agrees that the scope of this Project is the minimum work necessary to obtain approval by the Division of the State Architect and/or the federal, state, or local governmental entity with authority over of the work being performed to mitigate the

(health and safety or seismic) threat.

The Project must have an industry specialist report to substantiate the _____

(health and safety or seismic) threat and that details the minimum work necessary to mitigate the threat.

The Project must have concurrence by an appropriate governmental agency agreeing with the _____

(health and safety or seismic) threat and the minimum work necessary to mitigate the threat.

The Project must have the approval letter from DSA verifying that the building(s) in the Project qualify as one of the "Most Vulnerable Category 2 Buildings".

Site Acquisition: The Grantee has complied with Sections 1859.74 through 1859.75.1, as appropriate. The Grantee shall provide all applicable county assessor parcel numbers for the land being acquired for the Project. Grantee understands and agrees that Grants for site acquisition (i.e. site purchase, hazardous materials mitigation, relocation, etc.) as described in Section F (Accounting for Spent Funds) of this Agreement are limited to actual eligible expenditures. Therefore, the audit report may result in an adjustment (increase or decrease) to the Grant amount based on the final approved expenditures related to site acquisition separate and apart from all other Grants.

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Modernization of Portable Classrooms: If this Agreement includes the modernization of portable classrooms eligible for an additional Apportionment pursuant to Education Code Section 17073.15, the Grantee certifies that either:

- i. The Grants will be used to replace the portable classrooms and permanently remove the displaced portables from the classroom use within six months of the filing of the Notice of Completion for the project; or,
- ii. It has provided documentation to the Office of Public School Construction which indicates that modernizing the portable classrooms eligible for an additional Apportionment is better use of public resources than the replacement of these facilities.

(Authority: SFP Regulation Section 1859.78.8)

Modernization or Charter School Facilities Program Rehabilitation: If this Agreement includes the modernization or Charter School Facilities Program Rehabilitation funding, the Grantee has received approval of the plans for the project from the California Department of Education and the Division of the State Architect. Plan approval is not required if request is for separate design Apportionment or advance release of funds for design from a Preliminary Charter School Apportionment.

(Authority: Modernization: SFP Regulation Section 1859.81.1; Charter: SFP Regulation Section 1859.163)

Seismic Mitigation Program Rehabilitation or Facility Hardship Rehabilitation:

The Grantee agrees that the scope of this Project is the minimum work necessary to obtain approval by the Division of the State Architect and/or the federal, state, or local governmental entity with authority over of the work being performed to mitigate the

(health and safety or seismic) threat.

The Project must have an industry specialist report to substantiate the _____

(health and safety or seismic) threat and that details the minimum work necessary to mitigate the threat..

The Project must have concurrence by an appropriate governmental agency agreeing with the _____

(health and safety or seismic) threat and the minimum work necessary to mitigate the threat.

The Project must have the approval letter from DSA verifying that the building(s) in the Project qualify as one of the "Most Vulnerable Category 2 Buildings".

The Project must have the approval letter from DSA indicating that the work in the project plans is the minimum work required to mitigate the _____

(health and safety or seismic) threat, which includes any other work triggered by the

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(health and safety or seismic) mitigation work and that is required in order to obtain DSA approval.

Charter:

- i. Facilities to be rehabilitated under the Charter School Facilities Program previously funded with School Facility Program funds meet the requirements of Regulation Section 1859.163.
- ii. The Grantee agrees to submit Project Information Worksheets pursuant to School Facility Program Regulation Section 1859.104.

Charter- Preliminary Charter School Apportionment:

- i. The Grantee agrees that failure to submit a Final Charter School Apportionment within the timelines prescribed for a Preliminary Charter School Apportionment (four years with a possible one year extension subject to Board approval) shall be cause for rescission of the Preliminary Charter School Apportionment; and,
(Authority: SFP Regulation Section 1859.166)
- ii. The Grantee agrees that when the Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the funding available for the Final Charter School Apportionment is subject to the provisions of Section 1859.167; and,
(Authority: SFP Regulation Section 1859.167)
- iii. The Grantee agrees that the California School Finance Authority must determine that the Grantee is financially sound at the time of the Preliminary Charter School Apportionment, advance release of design and/or site funds, and at the time of conversion to a Final Charter School Apportionment or the Preliminary Charter School Apportionment will be rescinded; and,
(Authority: SFP Regulation Section 1859.163)
- iv. The Grantee agrees that in addition to this grant agreement, the Grantee must also enter into the Charter School Agreements.
(Authority: SFP Regulation Section 1859.90.2)

Career Technical Education Facilities Program:

The Grantee has complied with the Career Technical Education Facilities Program (CTEFP) eligibility criteria as outlined in Section 1859.192; and,.

For Projects that received an Apportionment pursuant to SFP Regulation Section 1859.193(d) (CTEFP reservation of funds):

- i. The Grantee understands and agrees that by reserving funds in advance of obtaining the necessary approvals from California Department of Education and the Division of the State Architect, the Grantee must submit the necessary

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approvals and/or plans and specifications within one year of Apportionment; otherwise the Apportionment will be rescinded without further Board action.

ii. Upon approval for placement on the Unfunded List (Lack of AB 55 Loans), the Grantee will receive a template of the Project Grant Agreement. OPSC will provide the Grantee the final Grant Agreement for the Project upon receipt of the necessary approvals from the Division of the State Architect and California Department of Education

ii. The Grantee understands and agrees that the executed the Grant Agreement must be submitted prior to fund release.

(Authority: SFP Regulation Section 1859.197)

E. Receiving an Apportionment and Receiving Funds

The Grantee and the Executive Officer, or designee, of the Office of Public School Construction shall enter into this Agreement prior to, and as a condition of, the release of any funding for the Project.

(Authority: proposed SFP Regulation Sections 1859.90 and 1859.90.2)

Additionally:

1. The Grantee understands and agrees that, pursuant to School Facility Program Regulation Sections 1859.90.2 and 1859.90.3:
 - i. The Grantee shall participate in the priority funding process by submitting a valid priority funding request during a 30-day filing period after being placed on the Unfunded List (Lack of AB 55 Loans) in order to receive an Apportionment in accordance with Regulation Section 1859.90.3.
 - ii. Failure to submit a valid request within the filing period or failure to submit a valid *Fund Release Authorization* (Form SAB 50-05) after the Board approves an Apportionment shall result in an occurrence of non-participation.
 - iii. The Grantee understands and agrees that Grants may not be available for this Project after the Grantee has submitted a valid priority funding request. When the Grantee submits a valid priority funding request and Grants are not available, the Grantee shall not be charged with an occurrence of non-participation.
 - iv. After the second occurrence of non-participation, the funding for the Project shall be rescinded without further action by the Board.
2. Any Grants provided to Grantee under this Agreement will be disbursed upon receipt of a complete Fund Release Application, and shall not exceed \$ _____ except for _____.
(site-related exceptions)
3. Supplementary documentation submitted with, or prior to, a Fund Release Application must include this Agreement as well as documentation that proves the following:

(Authority: Education Code Sections 17072.13, 17072.14, and 17072.18)

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- i. The Grantee has entered into a binding contract(s) for at least 50 percent of the construction included in the plans and specification applicable to this Project.
 - ii. Notice to Proceed dates.
 - iii. For Career Tech projects where the Grantee received an Apportionment without needing Division of State Architect approval, evidence of Division of the State Architect approval date.
(*Authority: Form SAB 50-05 certifications*)
4. If the Office of Public School Construction finds that the Fund Release Application is incomplete, inadequate or inaccurate, it will notify the Grantee that the Grantee has ten (10) business days to address the issue(s). If the issue(s) has not been addressed after ten (10) business days, the Office of Public School Construction will consider the submittal to be invalid and the request will be returned to the Grantee. The Grantee will retain the opportunity to submit a valid Fund Release Application within 90 days of Apportionment. However, if the Grantee does not submit a valid Fund Release Application within 90 days of the Apportionment the Grantee will receive a non-participation occurrence as described in (1.)(ii) above. The Grantee will not receive Grants at that time. Furthermore, any penalties imposed on the Grantee by a contractor, or other consequence, because of delays in payment will be paid by the Grantee and is not reimbursable under this Agreement.
(*Authority: proposed amendment to School Facility Program Regulations*)

F. Accounting for Spent Funds

1. For purposes of completing the Expenditure Reports required pursuant to Education Code Section 17076.10, over the course of the project, the Grantee shall maintain a general ledger at a Project-specific level that includes fund, resource, project year, goal, function, and object codes for all expenditures for the Project, including furniture and equipment, as they are described in the *California School Accounting Manual, Procedure 301: Overview of the Standardized Accounting Code Structure and Procedure 345: Illustrations Using Account Code Structure*.
(*Authority: Education Code Section 17076.10*)
2. Annual Expenditure Reports
Pursuant to Education Code 17076.10, beginning 12 months from the first fund release, and continuing annually for a period of up to _____ years after the final fund release, as described in SFP Regulation Section 1859.104, the Grantee shall submit an Expenditure Report to the Office of Public School Construction.
3. Substantial Progress Compliance Reviews
 - i. Pursuant to Education Code Section 17076.10, the Grantee shall be subject to a substantial progress review by the Office of Public School Construction under this Agreement with respect to all matters connected with this Agreement. The Grantee shall provide substantial progress documentation 18 months from the latest fund release. The Office of Public School Construction will consider the requirements of substantial progress met if the Grantee submits its Expenditure Report for a completed project up to

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18 months from the latest fund release. The Office of Public School Construction must notify the Grantee within 60 days of receiving the documentation if a review and analysis of the information will be conducted.

(Authority: SFP Regulation Section 1859.105)

ii. For Grantees That Have Received Grants for Construction:

The substantial progress documentation required shall include evidence that either 75 percent of the site development work is complete, or 90 percent of the building work is under contract, or 50 percent of all construction activities are complete.

(Authority: School Facility Program Regulation Section 1859.105)

The documentation that the Grantee shall provide shall include, but is not limited to:

- a) The fund source indicated, for each project cost,
- b) Assessor's parcel number, for site acquisition costs,
- c) Qualification Appraisal(s) for Architect/Engineer/Construction Manager,
- d) Architect/Engineer/Construction Management Agreement(s),
- e) Evidence the Grantee has met Disabled Veteran Business Enterprise contractual requirements,
- f) Construction Contract Agreements to date,
- g) Construction Bid Summaries,
- h) Construction Delivery Method,
- i) Project expenditures, to date, submitted on Detailed Listing of Project Expenditures (DLOPE) worksheet or in an equivalent format [the Office of Public School Construction will review expenditure totals for purposes of determining compliance with substantial progress requirements but will not review expenditures to determine eligibility under the program (this will be done by the local auditor)],
- j) General ledger report that details project expenditures to date
- k) Submittal of written policy and procedures that documents processes for accounting of School Facility Program project activities.
- l) Construction schedule of values or Continuation Sheet
- m) Project cost estimate

(Authority: Education Code Section 17071.10 and SFP Regulation Section 1859.105)

iii. For Grantees That Have Received Advanced Financial Hardship Site Grants or Environmental Hardship Grants:

The documentation that the Grantee shall provide if requested by the Office of Public School Construction shall include, but is not limited to:

- a) The final site appraisal,
- b) The California Department of Education final approval letter, evidence of the completion of any and all California Environmental Quality Act requirements
- c) Final escrow instructions or evidence the Grantee has filed condemnation proceedings including intent to request an order of possession of the site, as applicable.

(Authority: SFP Regulation Section 1859.105 or 1859.105.1, as applicable)

Office of Public School Construction Application Number: _____

- iv. For Grantees That Have Received Advanced Financial Hardship Grants for Design: The documentation that the Grantee shall provide if requested by the Office of Public School Construction shall include, but is not limited to:
- a) An Approved New Construction or Modernization Adjusted Grant Application; or,
 - b) A certification that the final building plans have been submitted to and accepted by the Division of the State Architect for review and approval.

(Authority: SFP Regulation Section 1859.105)

v.

- a) Should the Office of Public School Construction determine that the Grantee has not made substantial progress as described in (F)(3)(i), (ii), (iii), and (iv), it will inform the Grantee of its findings and require the Grantee to submit a final expenditure report within 60 days of notification, pursuant to SFP Regulation Section 1859.105. If no Grants have been expended by the Grantee, then the Office of Public School Construction will recommend to the Board that the project be rescinded.
- b) If Grants have been expended by the Grantee, then
 - I. The Project shall be subject to an audit pursuant to Section 41024 of the Education Code and the applicable provisions outlined in Section (F)(4) of this Agreement. The audit shall identify Grants expended in accordance with program requirements and the amount of any unspent Grants and the amount of any Ineligible Expenditures.
 - II. Once the amount of unspent Grants has been determined in the audit report described in (I) to be repaid and the Grantee repays the Grants, the Office of Public School Construction shall take an item to the State Allocation Board make a corresponding baseline eligibility adjustment, when applicable.

(Authority: SFP Regulation Section 1859.105)

4. Final Project Audit

The Grantee understands and agrees to the following:

- i. Upon Project completion pursuant to SFP Regulation Section 1859.104, the Office of Public School Construction may notify the Grantee, the Grantee's County Office of Education, and the State Controller's Office that the Grantee is subject to an audit of the Project by a local auditor that is in accordance with the Guide for Annual Audits of K-12 Local Education Agencies and State Compliance Reporting. The Grantee shall retain all financial accounts, documents, and records necessary for an audit pursuant to Education Code Section 41024(a)(4) and shall provide Project documentation, if requested by the local auditor.

[Authority: proposed amendment to School Facility Program Regulation Section 1859.104(a)]

Office of Public School Construction Application Number: _____

- ii. Project documentation that the Grantee shall provide when requested by the local auditor, for the purposes of the audits described in Education Code Section 41024, shall include, but is not limited to:
 - a) Proof of acreage purchased
 - b) Proof of site costs and adjusted site grants, where applicable
 - c) Copy of Form SAB 50-04
 - d) Copy of SAB Board item(s) (Approval of project Apportionment)
 - e) DSA Approval Letter
 - f) Final CDE Approval Letter
 - g) Architect Final Billing
 - h) Proof of Routine Restricted Maintenance Account Deposit or documentation demonstrating district's facilities are maintained in good repair
 - i) Project-specific accounting records, such as a general ledger, as described in Spending Funds (Section F, paragraph 1), for all sources of funding
 - j) Final construction billing and invoices,
 - k) Any and all change orders
 - l) Proof of date of Occupancy
 - m) If the Grantee's matching funds have already been expended for this Project or have been deposited in the County School Facility Fund, the Grantee shall provide accounting records, such as a general ledger, for all sources of funding, verifying those previous expenditures or deposits. If the matching funds have been or will be spent from a Certificate of Participation (COP), then the Grantee shall indicate the fund that the proceeds from the COP were originally deposited into or will be deposited into. The Grantee shall also include a copy of the COP booklet. Providing the official notice of intent to sell bonds may be provided to prove that the Grantee will expend the Grants prior to the time the project is completed, as described complete pursuant to SFP Regulation Section 1859.104. If the Grantee has funds from another source not listed here, the Grantee shall provide the accounting records, such as a general ledger verifying the expenditures and deposits.

(Authority: Education Code Section 17076.10 and SFP Regulation Section 1859.106)
- iii. During the local auditor's audit and/or upon completion of the audit report, the Grantee understands and agrees that its Expenditure Report is final and may not be subsequently adjusted or amended.
- iv. The Grantee understands and agrees that:
 - (a) Should the audit report determine that the Grantee spent Grants on Ineligible Expenditures, the local auditor will inform the Office of Public School Construction ~~California Department of Education~~ of the amount of the Ineligible Expenditure. The amount to be remitted will be limited to the proportionate percentage of Grants and Financial Hardship Grants. Grantees will not be required to provide the state with payments related to the amount of their matching funds. Ineligible Expenditures funded by Grants will not be considered Savings.
 - (b) The Grantee may appeal the finding of any Ineligible Expenditures, as described in Education Code Section 41024(d).

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(c) The Office of Public School Construction~~California Department of Education~~ will recover Grants spent on Ineligible Expenditures, pursuant to Education Code Section 41024(d)(1).

(d) The Grantee may request a repayment plan from the Office of Public School Construction~~California Department of Education~~ related to the recovery of Grants described in (c).

(e) In order to recover funds as part of a repayment plan described in (d), the Office of Public School Construction~~California Department of Education~~ will notify the State Controller of the repayment plan and the State Controller will withhold funds from the Grantee's principal apportionment or Education Protection Account payments, pursuant to Education Code Section 41024(d).

(Authority: Education Code Sections 17070.63(c), 17076.10, and 41024; SFP Regulation Section 1859.106)

vi. The Grantee shall provide its Expenditure Report for a Project deemed complete pursuant to SFP Regulation Section 1859.104, and any and all audit reports, including the audits of Savings, to the Office of Public School Construction.

(Authority: Education Code Section 17076.10)

vii. The Grantee shall also provide site access to the local auditor to determine if the project work is in accordance with the Board-approved project scope, including a final inspection for a Project deemed complete pursuant to SFP Regulation Section 1859.104.

(Authority: Education Code Section 17076.10)

5. Savings Audit(s)

Grantees may retain Savings for expenditure for other high priority Capital Outlay ~~with the exception of when Savings are generated:~~

- ~~(1) in the Charter School Facilities Program, or~~
- ~~(2) in the Career Technical education Facilities Program, or~~
- ~~(3) in advance of a site adjustment, or~~
- ~~(4) for Financial Hardship Grants.~~

(Authority: Education Code Section 17070.63 and SFP Regulation Section 1859.103)

~~If the Grantee uses Savings to contribute to the Grantee's matching share on other SFP projects, then those SFP projects may only be funded from the same program (e.g. New Construction, Modernization), that this Project is funded from.~~

~~*(Authority: SFP Regulation Section 1859.103)*~~

The Grantee understands and agrees to the following:

- i. Upon the Grantee declaring Savings pursuant to SFP Regulation Section 1859.103, the Office of Public School Construction may notify the Grantee, the Grantee's County Office of Education, and the State Controller's Office, that the Grantee is subject to annual audits of the Savings by a local auditor that is in accordance with the Guide for

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Annual Audits of K-12 Local Education Agencies and State Compliance Reporting until the Grantee has expended all Savings. The Grantee shall retain all financial accounts, documents, and records necessary for an audit pursuant to Education Code Section 41024(a)(4) and shall provide documentation related to the use of Savings, when requested by the local auditor.

[Authority: proposed amendment to School Facility Program Regulation Section 1859.104(a)]

- ii. Savings documentation that the Grantee shall provide when requested by the local auditor, for the purposes of the audits described in Education Code Section 41024, shall include, but is not limited to:

- a) The Grantee's final expenditure report submitted to the Office of Public School Construction, and
- b) Project-specific accounting records, such as a general ledger, as described in Spending Funds (Section F, paragraph 1), and
- c) General ledger report verifying that the Savings has been deposited to county school facilities fund and detail verifying the expenditure of the funds for high priority Capital Outlay, and
- d) Construction billing and related invoices.

(Authority: Education Code Section 17076.10 and SFP Regulation Section 1859.106)

- iii. The Grantee understands and agrees that its Savings expenditure reports submitted to the local auditor are final and may not be subsequently adjusted or amended.

- iv. The Grantee understands and agrees that:

(a) Should the audit report determine that the Grantee spent Savings on Ineligible Expenditures, the local auditor will inform the Office of Public School Construction~~California Department of Education~~ of the amount of the Ineligible Expenditure. The amount to be remitted will be limited to the Savings. Grantees will not be required to provide the state with payments related to the amount of their matching funds.

(b) The Grantee may appeal the finding of any Ineligible Expenditures, as described in Education Code Section 41024(d).

(c) The Office of Public School Construction~~California Department of Education~~ will recover Grants spent on Ineligible Expenditures, pursuant to Education Code Section 41024(d)(1).

(d) The Grantee may request a repayment plan from the Office of Public School Construction~~California Department of Education~~ related to the recovery of Grants described in (c).

(e) In order to recover funds as part of a repayment plan described in (d), the Office of Public School Construction~~California Department of Education~~ will notify the State Controller of the repayment plan and the State Controller will withhold funds from the Grantee's principal apportionment or Education Protection Account payments, pursuant to Education Code Section 41024(d).

(Authority: Education Code Sections 17070.63(c), 17076.10, and 41024; SFP Regulation Section 1859.106)

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v. The Grantee shall provide its Savings expenditure reports, and any and all audit reports, to the Office of Public School Construction, pursuant to Education Code Section 17076.10.

vi. The Grantee shall also provide site access to the local auditor to determine if the project work is in accordance with eligible uses of Savings.
(Authority: Education Code Section 17076.10)

6. Site Adjustments

Should the audit report determine that the amount of Grants received for site acquisition requires adjustment, then, upon receipt of the audit, the Office of Public School Construction will present the Project to the State Allocation Board for an adjustment to the Apportionment, in accordance with Education Code Section 41024 (c)(2).

~~7. Charter School Facilities Program and Career Technical Education Facilities Program
Unspent Grants, plus Interest~~

~~Should the audit report determine that the Grantee completed either the Charter Schools Facilities Program Project or the Career Technical Education Facilities Program Project without using all the Grants provided for eligible expenditures, the Office of Public School Construction will present the Project to the State Allocation Board for an adjustment to the Apportionment, in accordance with Education Code Section 41024 (c)(2).~~

~~8. Financial Hardship~~

~~Should the audit report determine that there are unspent Financial Hardship Grants, then the Grantee agrees to either (1) repay the unspent Financial Hardship Grants pursuant to Education Code Section 41024(c)(2) or (2) use the unspent Financial Hardship Grants on a future project(s), provided the Grantee qualifies for Financial Hardship Grants when it applies for funding for the future project(s).~~

~~i. Upon receipt of the audit report, the Office of Public School Construction will notify the Grantee to determine whether the Grantee will repay the unspent Financial Hardship Grants immediately or use them for a future project(s). The Grantee will have 30 days to respond to the request.~~

~~ii. If the Grantee intends to use unspent Financial Hardship Grants on a future project(s), it must do so within three years of the audit report's determination that not all Financial Hardship Grants were expended for this Project or from the date that Savings was declared by the Grantee, whichever comes first. Failure to use unspent Financial Hardship Grants on a future project(s) within that time will result in the Grantee repaying the unspent amount plus interest.~~

~~(Authority: Education Code Section 41024 and SFP Regulation Section 1859.81)~~

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting; October 26, 2022

OPTIONS FOR THE RETURN OF FINANCIAL HARDSHIP SAVINGS

PURPOSE OF REPORT

To provide the State Allocation Board (Board) with information on past Financial Hardship project savings that were remitted to the School Facilities Fund (Fund) and that should be returned back to specific school districts in light the decision in *San Bernardino City Unified School District v. State Allocation Board* (California Court of Appeal, Third District Case C092003; 79 Cal.App.5th 12 (May 24, 2022) (*San Bernardino City Unified*)).

DESCRIPTION

At its June 2022 meeting, the Board was made aware of the ruling in *San Bernardino City Unified*. Specifically, the Court of Appeal held that Education Code section 17070.63, subdivision (c) allows all districts, including those that obtained hardship funding assistance, to retain: “Any [project] savings achieved by the district’s efficient and prudent expenditure of these funds . . .”. The Court further ruled that, to the extent that California Code of Regulations section 1859.103 conflicts with Education Code section 17070.63(c) by requiring that hardship districts return unused hardship monies to the Fund, the regulation is invalid and unenforceable.

Given the Court of Appeal’s ruling, it is necessary to identify those other school districts that have previously returned hardship savings and that have a timely legal claim for recovery of such returned savings.

DISCUSSION

Two steps are involved in determining whether a claim for recovery of returned hardship funds should be deemed timely. First, the statute of limitations period applicable to such a claim must be identified. Second, the time such a cause of action accrued must also be identified.

Two statutes of limitations periods are potentially applicable. One is the three-year statute of limitations set out in Code of Civil Procedure section 338, subdivision (a), which is applicable to “[a]n action upon a liability created by statute, other than a penalty or forfeiture.” A second potentially applicable statute is the four-year “catch-all” statute of limitations set out in Code of Civil Procedure section 343, which provides that: “[a]n action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.” Given that there is uncertainty whether the three-year limitations period provided for in section 338(a) properly applies, it is recommended that the four-year “catch-all” limitations period be applied as it is more favorable to districts that returned unused hardship funds.

The second step requires that a determination be made as to when a cause of action for recovery of returned hardship savings monies accrued. Again, two possibilities exist. The earliest accrual date would be the date the Office of Public School Construction (OPSC) completed its review of a project’s finances and informed a school district of the obligation to return unused hardship funds. A later potential accrual date would be the date unused hardship funds were actually returned by a school district to the Fund. The latter of these two potential accrual dates is more favorable to school districts and OPSC therefore recommends that the date unused hardship funds were returned to the Fund be deemed the date a cause of action accrued.

DISCUSSION (cont.)

Finally, it is noted that OPSC discontinued recovery of hardship savings and informed school districts during the pendency of *San Bernardino City Unified* that no action on hardship savings would be taken until that case was decided on appeal. OPSC therefore recommends that the Board look back four years from that date of that final decision in order to identify those school districts that should be reimbursed. Accordingly, OPSC recommends that hardship project savings that were remitted to the Fund during the time period of May 24, 2018, to May 24, 2022, be returned to those school districts that remitted such savings.

Based on the foregoing, attached is a spreadsheet showing those school districts that returned project savings to the Fund between May 24, 2018, and May 24, 2022. The total amount of such savings remitted to the Fund and that OPSC recommends be returned to the respective districts is \$29,376,842.79.

OPTIONS FOR THE BOARD

Staff requests that the Board decide whether to apply a three-year versus a four-year statute of limitations period, commencing at the time a school district returned unused hardship savings to the Fund, to claims for recovery of such monies, and that the Board authorize OPSC to return such monies to the remitting districts in light of the decision rendered in *San Bernardino City Unified*.

Option 1: Four-Year Statute of Limitations Applies

In this scenario, school districts that returned project savings to the Fund between May 24, 2018, and May 24, 2022, would have those funds returned. A total of \$29,376,842.79 would be paid back to school districts for 55 projects. This is not inclusive of interest due, which will be calculated based on the Pooled Money Investment Account yield rate and returned to school districts as well.

Option 2: Three-Year Statute of Limitations Applies

In this scenario, school districts that returned project savings to the Fund between May 24, 2019, and May 24, 2022, would have those funds returned. A total of \$17,616,139.33 would be paid back to school districts for 31 projects. This is not inclusive of interest due, which will be calculated based on the Pooled Money Investment Account yield rate and returned to school districts as well.

RECOMMENDATION

It is recommended that the Board authorize repayment of \$29,376,842.79 (this does not include interest) as noted in **Option 1**, as this is more favorable to potential claimant school districts.

The State Allocation Board approved Option 1 as shown under the “Options for the Board” heading and the recommendation noted above.