

FINDING OF EMERGENCY

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to Government Code Section 11342.545.

Specific Facts Showing the Need for Immediate Action

Immediate action is needed to approve proposed regulatory amendments, including the Grant Agreement templates for the Full-Day Kindergarten Facilities Grant Program (FDKFGP). The Governor signed into law, on July 1, 2019, Senate Bill (SB) 75, Chapter 51, Statutes of 2019, the Education Finance: Education Omnibus Trailer Bill. This bill appropriated an additional \$300,000,000 from the General Fund to the SAB for the 2019/20 fiscal year. School districts that wished to convert part-day kindergarten facilities to full-day kindergarten facilities, and for those districts lacking the facilities to provide full-day kindergarten instruction could apply for these one-time grants to construct new school facilities or retrofit existing school facilities. Since that time, however, SB 98, Chapter 24, Statutes of 2020 [the Education Finance: Education Omnibus Trailer Bill], was signed into law by the Governor on June 29, 2020 and clarified that future funding rounds and future funding for the FDKFGP would be contingent upon appropriation by the Legislature. This begins with and impacts the 2019/2020 fiscal year, as the \$300 million previously appropriated was rescinded. The bill also provided minor technical changes and clarifications to various other provisions of the program. At its October 28, 2020 meeting, the SAB adopted proposed regulatory amendments, as well as amendments to the Grant Agreement templates, on an emergency basis to align with the statutory changes.

Education Code Section 17375(g) states:

“The State Allocation Board may adopt regulations to implement this section. any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.”

Background and Problem Being Resolved

Assembly Bill (AB) 1808, Chapter 32, Statutes of 2018 [Committee on Budget. Education Finance: education omnibus trailer bill] was originally signed by the Governor on June 27, 2018 and included a one-time General Fund appropriation in the amount of \$100,000,000 for the sole purpose of providing full-day kindergarten classrooms. The Governor signed SB 75, Chapter 51, Statutes of 2019, into law on July 1, 2019, the Education Finance: Education Omnibus Trailer Bill. This bill appropriated an additional \$300,000,000 from the General Fund to the SAB for the 2019-20 fiscal year. School districts that wished to convert part-day kindergarten facilities to full-day kindergarten facilities, and for those districts lacking the facilities to provide full-day kindergarten instruction could apply for these one-time grants to construct new school facilities or retrofit existing school facilities.

The Education Finance: Education Omnibus Trailer Bill, SB 98, Chapter 24, Statutes of 2020, was signed by the Governor on June 29, 2020. This bill rescinded the \$300 million in additional program funding previously appropriated by SB 75, Chapter 51, Statutes of 2019, for the

2019/20 fiscal year, to the SAB to provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of providing full-day kindergarten classroom programs. The amended statute retains the previous changes to the FDKFGP that altered program provisions, such as the local matching share for school districts that are converting from a part-day program to a full-day program and allows school districts to retain project savings.

The Office of Public School Construction (OPSC), on behalf of the SAB, conducted a stakeholder meeting to discuss the proposed regulatory amendments to address statutory changes to the FDKFGP. There were no public comments received during or submitted after the stakeholder meeting.

OPSC performed a search on whether the proposed regulatory amendments were consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that SB 98, Chapter 24, Statutes of 2020, the Education Finance: Education Omnibus Trailer Bill, was created to clarify and make modifications to the existing FDKFGP. There are no other programs or regulations in existence that address the lack of kindergarten facilities or the conversion of part-day kindergarten facilities to full-day kindergarten facilities. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments and the grant agreement templates, will enhance applicants' awareness when partnering with the State while defining the responsibilities of funding applicant projects. This will ensure program oversight and expenditure accountability.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulatory amendments and the grant agreement templates to the Office of Administrative Law (OAL) in early January 2021, pursuant to Government Code Section 11346.1(a)(2). The proposed regulatory amendments and grant agreement templates will be attached and may be viewed on OPSC's website at:

<https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, then scroll down to "Full-Day Kindergarten Facilities Grant Program," FDK Pending Regulatory Changes and click on the AB 1302 Emergency Notice, Finding of Emergency and the regulation text along with the grant agreement templates.

Authority and Reference Citations

Authority: Sections 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(c), 17375(g), 17375(h) of the Education Code; 16304 and 16304.1 of the Government Code.

Reference: Sections 17075, 10, 17075.15, 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(b)(2)(B), 17375(c), 17375(g), 17375(h), 41024, 42238.01(a) of the Education Code; 1771.3 and 1771.5, Labor Code.

Information Digest/Policy Overview Statement

At its meeting on October 28, 2020, the SAB adopted proposed regulatory amendments, as well as amendments to the grant agreement templates, on an emergency basis. The Full-Day Kindergarten Facilities Grant Program was created through AB 1808, Chapter 32, Statutes of 2018, the Education Finance: Education Omnibus Trailer Bill. On July 1, 2019, the Governor

signed SB 75, Chapter 51, Statutes of 2019, the Education Finance: Education Omnibus Trailer Bill. This bill appropriated an additional \$300,000,000 from the General Fund for the 2019/2020 fiscal year to the SAB to provide one-time grants to school districts to construct new school facilities or retrofit existing school facilities for the purpose of providing full-day kindergarten facilities. In addition, the statute limited a portion of the program's funding to school districts that would use the funding to convert part-day kindergarten facilities to full-day kindergarten facilities. Since that time, however, SB 98, Chapter 24, Statutes of 2020 [the Education Finance: Education Omnibus Trailer Bill], was signed into law by the Governor on June 29, 2020 and clarified that future funding rounds and future funding for the FDKFGP would be contingent upon appropriation by the Legislature. This begins with and impacts the 2019/2020 fiscal year, as the \$300 million previously appropriated was rescinded.

Summary of the Proposed Regulations

A summary of the proposed regulatory amendments, including the grant agreement templates, are as follows:

Existing Regulation Section 1860.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. The proposed regulatory amendments add the word "shall" and delete the word "may" in both definitions for "New Construction" and "Retrofit". This change aligns the definitions with statute.

Existing Regulation Section 1860.3 sets forth general requirements that all school districts seeking program funding must meet. This regulation also specifies that school districts may only apply for program funding for a project that entered into a construction contract on or after the program start date of June 27, 2018. The proposed regulatory amendments delete the reference to the \$300 million provided in the 2019/2020 budget and reflect that future funding for the FDKFGP would be contingent upon appropriation by the Legislature.

Existing Regulation Section 1860.4 provides general funding guidelines for the program that apply to all school districts that participate in the program. This Section clarifies that any funds returned prior to June 30, 2021 will be returned to the program account, while funds returned after June 30, 2021 will be returned to the General Fund. The proposed regulatory amendments delete language that refers to funding for the 2019/2020 fiscal year since that funding has been rescinded by statute and is no longer applicable. There is a renumbering of one of the subsections based on the deletion.

Existing Regulation Section 1860.5 sets forth several criteria that all school districts must meet in order to apply for program funding. School districts are required to provide a school board resolution providing approval to provide full-day kindergarten instruction at the project school site at completion of the project, pursuant to Education Code Section 8973. Additionally, school districts are required to prove that they currently lack full-day kindergarten facilities. This Section also requires school districts to provide a description of the proposed project that contains certain criteria. The proposed regulatory amendments in subsections (a) and (b) delete language that refers to the 2018/2019, 2019/2020, 2020/2021 and 2021/2022 fiscal years. The 2018/2019 fiscal year has passed; the funding for the 2019/2020, 2020/2021 and 2021/2022 fiscal years has been rescinded and future funding is contingent upon appropriation by the Legislature.

Existing Regulation Section 1860.6 sets forth the application submittal process, which established five 30-calendar day funding rounds for school districts to request apportionments of available program funds. The proposed regulatory amendments delete language related to the dates for the third, fourth and fifth funding rounds in subsections (c), (d) and (e). In subsection (c), new language is added to instruct school districts of what form needs to be filed in order to participate in the FDKFGP once funding has been appropriated by the Legislature and filing rounds have been established and announced by the SAB.

Existing Regulation Section 1860.15 specifies the funding priority based on a school district's preference points. Education Code Section 17375(b)(2) states that priority for FDKFGP grants will be given to school districts that qualify for financial hardship and/or that have a high population of pupils who are eligible for Free and Reduced Price School Meals (FRPM). This Section creates a system of preference points in order to determine project funding order. A maximum of 80 preference points may be earned in each funding round for each school district. A school district's preference points will be calculated into two categories. Based on a sliding scale currently used in the SFP for the Charter School Facilities Program, a sliding scale was created to determine the percentage of students a school district has eligible for FRPM. Points begin at four points for 60-65 percent of students eligible for FRMP, while 40 points will be earned if 100 percent of students within the school district qualify for FRPM. If a school district has been qualified for financial hardship by OPSC and is unable to contribute a portion or all of its matching share, the school district earns 40 points. Once OPSC has determined school districts' approved applications, school districts will be placed in a preference order based on the preference points earned. School districts will be ordered from highest to lowest points (80 points to zero points). If sufficient funds are available in that funding round, then all approved applications will be funded. If the amount of funding requested is more than the amount allocated for that round, then OPSC will begin with the highest preference point school district and fund their first priority project as stated on the Form SAB 70-01, *Application for Funding*. If two or more school districts have the same amount of preference points, then they will be placed into a lottery to determine who will be funded first. This Section also adds an additional tiebreaker for school districts with the same total preference points by using a school district's exact Low Income percentage to one decimal place identified on the most recent FRPM data on file. This tiebreaking method should reduce the likelihood of having to do a lottery and to remain in alignment with the statute to prioritize funding to lower-income school districts. However, if there is still a tie then a lottery system will take place. The proposed regulatory amendment adds a statutory reference to the Reference citation for this Section.

Existing Regulation Section 1860.16 specifies the process in which funds will be released to school districts with SAB-approved applications. School districts that have none or only a portion of the supporting documents required for a full fund release, may indicate that they will need an advance for design or site acquisition. This advance of funds will help school districts move forward with their projects. If a school district is doing a new construction project with an advance release of funding, then they will receive 40 percent of the new construction base grant. If a school district is applying for a retrofit project, and they have none or only a portion of appropriate supporting documentation then they may apply for an advance release of funding of 25 percent of the base grant. These percentages are identical to those in the SFP Regulations for standard new construction and modernization projects. When a school district is requesting two percent for other site costs for site acquisition assistance, a grant agreement must be executed and received by OPSC. For funds other than two percent site other to be released for either site acquisition, design or site other, a grant agreement must be executed and received by OPSC.

OPSC must ensure that specific requirements have been met and those requirements are: the school district has entered into escrow for the site and the escrow must be valid, there has been a final appraisal of the site, the school district has either received contingent or final site approval from CDE, a valid Form SAB 70-02, *Fund Release Authorization*, has been received; for a new construction or retrofit project, all unreleased funds will be released once an executed full grant agreement has been received by OPSC, along with verification of these documents: the school district's applicable matching share has been deposited or expended by the school district for the project, with the exception of financial hardship projects which are exempt from this requirement (requirements for financial hardship may be found in 1860.14); the school district has entered into a binding contract(s) for the completion of the project; the plans and specifications for the project have been approved by DSA. If there has been site acquisition then a final appraisal of the site, the site received written final approval from CDE, and the school district has entered into escrow for the site. Finally, for all remaining funds to be released, all requirements above must be met, as well as a valid Form SAB 70-02, *Fund Release Authorization*, and grant agreement has been received by OPSC.

For school districts that request either a new construction or retrofit grant that did not request an advance release of funding, a valid Form SAB 70-02, *Fund Release Authorization*, must be submitted with all the required approvals within 180 days of apportionment. If a valid Form SAB 70-02, *Fund Release Authorization*, request is not submitted within 180 days, the apportionment will be rescinded. For school districts that receive an advance release of funding for either new construction or retrofit projects, a valid Form SAB 70-02, *Fund Release Authorization*, must be submitted to OPSC with 12 months of apportionment. If a valid Form SAB 70-02, *Fund Release Authorization*, is not received within 12 months, then the apportionment shall be rescinded and returned to the Program for reallocation. Subject to available funds, site acquisition grants shall be adjusted based on actual costs prior to the release of funds. The proposed regulatory amendments add the words "the first" in subsections (e) and (f). This clarifies the timeline for the fund release and the deadline to submit required fund release documents beginning at the time of the first Apportionment.

Existing Regulation Section 1860.20 specifies the audit process and requirements that school districts who receive FDKFGP funding will be subject to, as required in Education Code Section 17375(h). Projects will be subjected to an audit conducted pursuant to Education Code Section 41024 to ensure the expenditures incurred by the school district were made in accordance with Education Code Section 17375. School districts must retain all documents and records referring to the FDKFGP project and should be able to provide them if an auditor requests the documents. If an audit determines that funding was spent on ineligible expenditures, CDE shall ensure that the school district corrects the audit exception by implementing an equal penalty payment of funds. The proposed regulatory amendment adds the word "an" for proper grammar and is considered a minor non-substantive change.

The existing Grant Agreement template (which is incorporated by reference) includes sections relevant to the FDKFGP for new construction and retrofit funding. It is the intent that the grant agreement will be entered into for every future funding application that is processed; therefore, each grant agreement will contain the relevant project information. The grant agreements serve as binding documents and key resources that define the responsibilities of the state and school districts from the determination of the amount eligible state funding to the reporting of all project funds, including any savings achieved. This will ensure greater transparency and accountability for the program grants being awarded under FDKFGP. The Grant Agreement template also incorporates the submittal of annual expenditure reports 12 months from the date of the full fund release, and the ability for financial hardship districts to retain savings and the retention of

savings may be expended on professional development or instructional materials to build capacity for the implementation of a full-day kindergarten program. The proposed regulatory amendments clarify the deadline for a school district to submit an *Expenditure Report* (Form SAB 70-03) within one year from full fund release and corrects regulatory references throughout the document which aligns with statute.

Mandate on Local Agencies or School Districts

The Executive Officer of the SAB has determined that the proposed regulations, along with the grant agreement templates, do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts to incur additional costs in order to comply with the proposed regulations.

Cost Estimate

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.

Document Incorporated by Reference

Grant Agreement, (Rev. 10/20), referenced in Regulation Section 1860.2 and is incorporated by reference.

Technical Documents Relied Upon

The SAB's Action Item, dated October 28, 2020, entitled "Proposed Amendments to the Full-Day Kindergarten Facilities Grant Program."

Benefits of the Proposed Regulations

There are indirect benefits associated with these proposed regulatory amendments. With the COVID-19 pandemic, the General Fund appropriation was rescinded in order to help offset the State's General Fund budget deficit. The regulatory amendments provide clarity that funds and application filing rounds are not currently available for this program.