

Amend Regulation Section 1860.2

Section 1860.2. Definitions.

For the purpose of these Subgroup 5.8 regulations, the terms set forth below shall have the following meanings:

...

“New Construction” means a construction project to adequately house kindergarten pupils in an approved project, which ~~may~~ shall include the costs of design, engineering, testing, inspections, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, landscaping, necessary utility costs, utility connections and other related fees, equipment including telecommunication equipment to increase school security, furnishings, the upgrading of electrical systems, and the wiring or cabling of classrooms in order to accommodate educational technology.

...

“Retrofit” means a construction project to retrofit an existing school facility to adequately house kindergarten pupils, which ~~shall may~~ shall only include the costs of design, engineering, testing, inspection, plan checking, construction management, demolition, construction, necessary utility costs, utility connection and other related fees, the purchase and installation of air-conditioning equipment and insulation materials and related costs, furniture and equipment, including telecommunication equipment to increase school security, fire safety improvements, playground safety improvements, the identification, assessment, or abatement of hazardous asbestos, seismic safety improvements, the upgrading of electrical systems, and the wiring or cabling of classrooms in order to accommodate educational technology.

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Note: Authority cited: Sections 17280 and 17375, Education Code.

Reference: Sections 17280 and 17375, Education Code; 1771.5, Labor Code.

Amend Regulation Section 1860.3

Section 1860.3. General.

A School District seeking funding for a new construction or retrofit project pursuant to the provisions of Education Code Section 17375 shall complete and file with OPSC, the Form SAB 70-01 and all necessary documents, as defined by Approved Applications.

- (a) Assembly Bill 1808 created the Program, effective June 27, 2018, and allocated \$100 million to provide one-time grants as specified in EC Section 17375 and Program regulations. New Construction Grant and Retrofit Grant funding may be provided for a project if the district entered into a construction contract for that project on or after June 27, 2018.
- (b) The Program is revised through Senate Bill 75, effective July 1, 2019, and ~~allocated \$300 million to provide one-time grants as specified in EC Section 17375 and Program regulations.~~ Senate Bill 98, effective June 29, 2020, and, commencing with the 2019–20 fiscal year, this program is contingent upon appropriations by the Legislature. New Construction and Retrofit Grant funding may be provided for a project if the district entered into a construction contract for the project on or after June 27, 2018.

Note: Authority cited: Section 17375(g), Education Code.

Reference: Section 17375(g), Education Code.

Amend Regulation Section 1860.4

Section 1860.4. Funding Guidelines.

- (a) For the funding provided pursuant to Section 1860.3(a), funds available for the Program from the 2018-2019 Budget Act must be encumbered by the Board by June 30, 2021. Funds that are not completely encumbered or that return to the Program through project rescissions may be applied as follows:
 - (1) Any funds that return on or before June 30, 2021, shall be returned to the Full-Day Kindergarten Facilities Grant Program Account and may be used to provide additional Apportionments.
 - (2) Any funds that return, or remain unencumbered by the Board, on or after June 30, 2021, shall be returned to the General Fund.
- ~~(b) For the funding provided pursuant to Section 1860.3(b), funds available for the Program from the 2019-2020 Budget Act must be encumbered by the Board by June 30, 2022. Funds that are not completely encumbered or that return to the Program through project rescissions may be applied as follows:
 - (1) Any funds that return on or before June 30, 2022, shall be returned to the Full-Day Kindergarten Facilities Grant Program Account and may be used to provide additional Apportionments.
 - (2) Any funds that return or remain unencumbered by the Board, on or after June 30, 2022, shall be returned to the General Fund.~~
- (c) ~~(b)~~ New school facilities built in accordance with the Program shall not be included in the eligibility determination used for the purposes of the School Facilities Program pursuant to EC Section 17071.25.

Note: Authority cited: Sections 17375, Education Code; 16304 and 16304.1, Government Code

Reference: Section 17375, Education Code.

Amend Regulation Section 1860.5

Section 1860.5. Program Eligibility Criteria.

- (a) For Program funds provided pursuant to Sections 1860.3(a) ~~and Apportioned in the 2018-2019 fiscal year or for Program funds provided pursuant to 1860.3(b) and Apportioned during the 2021-2022 fiscal year~~, a School District may apply for funding made available pursuant to EC Section 17375 by submittal of a Form SAB 70-01, if all of the following requirements are met:
 - (1) The School District has a school board resolution providing approval to provide full-day kindergarten instruction at the project school site or will have approval to provide full-day kindergarten instruction at the completion of the project.
 - (2) The School District lacks the facilities to provide full-day kindergarten instruction at the project school site.

A project school site will be considered lacking full-day kindergarten facilities if the current kindergarten enrollment exceeds the existing kindergarten classroom capacity prior to the construction of the project. Classrooms constructed as kindergarten classrooms or altered to house kindergarten students, regardless of current use, will be included when determining the existing kindergarten classroom capacity, as determined by CDE. For purposes of determining classroom capacity, a loading standard of 25 kindergarten pupils per classroom will be used and all kindergarten classrooms will be loaded for full-day instruction unless the School District indicates that an existing classroom(s) will continue to be used for non-full-day instruction at the completion of the project.

- ~~(b) For Program funds provided pursuant to Section 1860.3(b) and Apportioned in the 2019-2020 and 2020-2021 fiscal years~~, a School District may apply for these Program funds by submittal of a Form SAB 70-01, if all of the following requirements are met:
 - (1) The School District has a school board resolution providing approval to provide full-day kindergarten instruction on or after July 1, 2019, or will have approval to provide full-day kindergarten instruction at the completion of the project.
 - (2) The School District lacks the facilities to provide full-day kindergarten instruction at the project school site.

A project school site will be considered lacking full-day kindergarten facilities if the current kindergarten enrollment exceeds the existing kindergarten classroom capacity prior to the construction of the project. Classrooms constructed as

kindergarten classrooms or altered to house kindergarten students, regardless of current use, will be included when determining the existing kindergarten classroom capacity, as determined by CDE. For purposes of determining classroom capacity, a loading standard of 25 kindergarten pupils per classroom will be used and all kindergarten classrooms will be loaded for full-day instruction unless the School District indicates that an existing classroom(s) will continue to be used for non-full-day instruction at the completion of the project.

- (3) The project school site did not offer a Full-Day Kindergarten Program as of July 1, 2019.
- (4) The School District will use Program funds to convert a Part-Day Kindergarten Program to a Full-Day Kindergarten Program.
- (c) OPSC will determine the project scope for the Approved Application based on the schoolsite's enrollment patterns and the usage of each facility at the schoolsite. OPSC shall consult with CDE prior to determination of the Approved Application's project scope.
- (d) The Approved Application shall include the following documentation:
 - (1) A description of the proposed project including, but not limited to, the following information:
 - (A) The total number of kindergarten classrooms on the site prior to the Program project.
 - (B) The current enrollment at the site, at the time of application submittal, including transitional kindergarten students pursuant to EC Section 48000. To determine the appropriate enrollment reporting year, refer to the following:

OPSC Received Date of Form SAB 70-01	Enrollment Reporting Year
July 1 through October 31	Submit Prior Fiscal Year Enrollment Data
November 1 through June 30	Submit Current Fiscal Year Enrollment Data

- (C) The enrollment at the site for the three years immediately preceding the enrollment reporting year determined in Section 1860.5(d)(1)(B).
- (D) The total number of kindergarten classrooms on the site after the completion of the Program project.
- (E) The total number of kindergarten classrooms that will be used for full-day kindergarten instruction after the completion of the Program project.
- (2) Site map that includes labelling of all facilities and their current use, identifies all classrooms constructed or previously retrofitted to house kindergarten students, and identifies any facilities that will be retrofitted in the project. If a School District is requesting a 50-year old utilities grant, identify the age of the building(s).

Note: Authority cited: Sections 17375(a) and 17375(b), Education Code.

Reference: Sections 17375(a), 17375(b), and 17375(g), Education Code.

Amend Regulation Section 1860.6

Section 1860.6. Application Submittals.

The Board shall accept Approved Applications for Program funding during specified funding rounds:

- (a) Approved Applications for Program funding for the first funding round must be received by OPSC on or after January 2, 2019, and on or before January 31, 2019. Applications that do not receive an Apportionment during this round will be returned to the School District.
- (b) Approved Applications for Program funding for the second funding round must be received by OPSC on or after May 1, 2019, and on or before May 30, 2019. Applications that do not receive an Apportionment during this round will be returned to the School District.
- (c) ~~Approved Applications for Program funding for the third funding round must be received by OPSC on or after April 1, 2020 and on or before April 30, 2020. Applications that do not receive an Apportionment during this round will be returned to the School District.~~ An applicant seeking a Program Apportionment shall complete and submit a Form SAB 70-01 during an application filing period established by the Board. New filing rounds shall commence within 180 days from the date any funds are made available for the program.
- (d) ~~If Program funds remain concluding the third funding round in (c), Approved Applications for Program funding for the fourth funding round must be received by OPSC on or after January 4, 2021 and on or before February 2, 2021. Applications that do not receive an Apportionment during this round will be returned to the School District.~~

- (e) ~~If Program funds remain concluding the fourth funding round in (d), Approved Applications for Program funding for the fifth funding round must be received by OPSC on or after July 1, 2021 and on or before July 30, 2021. Applications that do not receive an Apportionment during this round will be returned to the School District.~~

Additional filing rounds may be established by the SAB as necessary.

Note: Authority cited: Section 17375(g), Education Code.

Reference: Section 17375(g), Education Code.

Amend Regulation Section 1860.15

Section 1860.15. Application Funding Criteria.

If the estimated total Apportionments of all Approved Applications received within a funding round specified in Section 1860.6 exceed the funds available in that funding round, OPSC will calculate preference points for all Approved Applications. An Approved Application shall receive preference points based on the total of (a) and (b) up to a maximum of 80 points, as follows:

- (a) Financial Hardship: 40 points if a School District demonstrates it meets the requirements under Section 1860.14.
- (b) Low Income: Up to 40 points based on the percentage of pupils at the School District meeting the definition of Low Income. The following sliding scale shall be used to determine the number of preference points:

Percentage Eligible for Free and Reduced Price School Meals	Preference Points Assigned
60-65%	4
66-70%	8
71-75%	15
76%	16
77%	17
78%	18
79%	19
80%	20
81%	21
82%	22
83%	23
84%	24
85%	25
86%	26
87%	27
88%	28
89%	29
90%	30
91%	31
92%	32
93%	33
94%	34
95%	35
96%	36
97%	37
98%	38
99%	39
100%	40

- (c) The Board shall apportion projects in the following order:
 - (1) School Districts will be funded based on the total preference points, determined by the sum of subdivisions (a) and (b) above. If School Districts submit multiple applications in the same funding round, OPSC will use the priority order assigned to each application by the School Districts on the Form SAB 70-01 and then fund Approved Applications in the following order:
 - (A) School Districts shall have their first priority projects funded in order based on total preference points until all School Districts have had their first priority project funded, or until all funds are exhausted for that funding round, whichever comes first.
 - (B) School Districts with the same total preference points funded in order of the higher Low Income percentage reported to one decimal place. The School District with the higher Low Income percentage will be funded first.
 - (C) If School Districts have the same total preference points and the same Low Income percentage reported to one decimal place, projects will then be placed into a lottery system to determine the School District funding order.
 - (2) If sufficient funding remains after funding first priority projects pursuant to 1860.15(c)(1)(A), School Districts with multiple Approved Applications will be funded in the following order:
 - (A) The School District with the highest total preference points shall have their remaining projects funded in priority order until all projects are funded, or until all funds are exhausted for that funding round, whichever comes first. Funding shall then be provided to the School District with the next highest total preference points.
 - (B) A tie breaker will be used for School Districts with the same total preference points by using the exact Low Income percentage to one decimal place, as identified in the most recent Free and Reduced Price School Meals data on file at the CDE. The School District with the higher Low Income percentage will be funded first.
 - (C) If School Districts with the same total preference points are still tied after the review of the Low Income percentages, projects will be placed into a lottery system to determine School District funding order. The highest remaining priority project for each School District participating in the lottery will be funded until all projects from each School District participating in the same lottery round have been funded, or until all funds are exhausted for that funding round, whichever comes first.
 - (1) If the Board does not have sufficient funding to fully apportion a School District's Approved Application, that School District may elect to either:
 - (A) Accept partial funding for the project. If partial funding is accepted, the Apportionment shall become the full and final apportionment for the project.
 - (B) Decline to accept funding for the project. If partial funding is declined, the Board may offer partial funding to the next Approved Application, based on funding order determined in (c)(1) and (c)(2) above.

Note: Authority cited: Sections 17375(b)(2) and 17375(g), Education Code.

Reference: Sections 17075.10, 17075.15, 17375(b)(2), 17375(b)(2)(A), 17375(b)(2)(B), 17375(g), and 42238.01(a), Education Code.

Amend Regulation Section 1860.16

Section 1860.16. Fund Release Process.

OPSC will release State funds that have been Apportioned by the Board pursuant to Sections 1860.9, 1860.10, 1860.10.2, 1860.10.3 and 1860.12 when the following requirements have been satisfied:

- (a) For an advance fund release for design costs, 40 percent of the grant determined in 1860.9(a) or 25 percent of the grant determined in 1860.12(a) will be released once an executed design, or design and site, Grant Agreement, as required by Section 1860.17, has been received by OPSC.
- (b) For an advance fund release for two percent site other costs, funds will be released once an executed site, or design and site, Grant Agreement, as required by Section 1860.17, has been received by OPSC.
- (c) For an advance fund release for site acquisition costs, other than two percent site other, funds will be released once an executed site, or design and site, Grant Agreement, as required by Section 1860.17, has been received by OPSC and the following requirements have been met:
 - (1) The School District has entered escrow for the site.
 - (2) There has been a final appraisal of the site.
 - (3) The School District received either contingent or final site approval from the California Department of Education.
 - (4) A complete Form SAB 70-02 has been received by OPSC.

- (d) For New Construction Grant or Retrofit Grant funding, all unreleased funds will be released once an executed full grant agreement, as required by Section 1860.17, has been received by OPSC and the following requirements have been met:
 - (1) The School District's applicable matching share has already been deposited or expended by the School District for the project, unless the School District meets the requirements for Financial Hardship pursuant to Section 1860.14.
 - (2) The School District has entered into a binding contract(s) for the completion of the project.
 - (3) The plans and specifications applicable to the state funded project have been approved by DSA.
 - (4) If the project includes site acquisition, there has been a final appraisal of the site, the site received written final approval by CDE and the School District has entered escrow for the site.
 - (5) A complete Form SAB 70-02 has been received by OPSC.
- (e) For New Construction Grant or Retrofit Grant funding, without a request for an advance release of funds pursuant to Sections 1860.7(a) and 1860.7(c), a complete *Fund Release Request* (Form SAB 70-02) with all required approvals must be submitted within 180 days of the first Apportionment. If a complete Form SAB 70-02 is not received within 180 days of Apportionment, the Apportionment shall be rescinded.
- (f) For an Apportionment received pursuant to Section 1860.7(b) and 1860.7(d), where submittal of the necessary CDE plan approval and/or DSA-approved plans and specifications were not required at the time the Board granted an Apportionment, the School District has up to 12 months to submit the required approvals from the date of the first Apportionment. If the required submittals are not received within 12 months, the Apportionment shall be rescinded and the Full-Day Kindergarten Facilities Grant will return to the Program for reallocation.
- (g) Subject to available funds, site acquisition grants shall be adjusted based on actual costs prior to the release of funds.
- (h) Prior to fund release, OPSC will verify that the School District has included multilevel classrooms in the plans for the project, if multilevel funding was requested.
- (i) Financial hardship approval status by OPSC for a design and/or site advance will apply to any subsequent funding phases for the project(s) during the same application filing round, as established in Section 1860.6.

Note: Authority cited: Sections 17375(c) and 17375(g), Education Code.

Reference: Section 17375(c), Education Code.

Amend Regulation Section 1860.20

Section 1860.20. Program Accountability Expenditure Audit.

Projects will be subject to an audit conducted pursuant to Education Code Section 41024 to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17375. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1860.10, 1860.10.1, 1860.10.2, and 1860.10.3.

Districts shall retain all financial accounts, documents, and records necessary for an audit of completed projects pursuant to Education Code Section 41024(a)(4) and shall provide project documentation, if requested by the local auditor.

Pursuant to Education Code Section 41024(c)(5), should an audit of the School District certifications or the expenditures for the project make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17375 and Sections 1860.9 to 1860.13, CDE shall ensure that the School District has corrected the audit exception by implementing a required penalty payment of funds equal to the amount of funds disallowed in the audit exception. Subject to available funds, site acquisition grants shall be adjusted based on actual costs.

Note: Authority cited: Section 17375(h), Education Code.

Reference: Sections 17375(h) and 41024 Education Code; Section 1771.3, Labor Code.