

Amend Regulation Section 1859.2

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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Amend Regulation Section 1859.70.2

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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Amend Regulation Section 1859.103

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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Amend Regulation Section 1859.104

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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Repeal Regulation Section 1859.169.1

~~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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Amend Regulation Section 1859.184.1

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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Amend Regulation Section 1859.199

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.