

Amend Regulation Section 1859.2

Regulation 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:

...

“Grant Agreement” means *Grant Agreement* (Rev. 10/22), which is incorporated by reference and applies to funding applications received by OPSC on or before October 30, 2024.

“Grant Agreement [Proposition 2]” means *Grant Agreement [Proposition 2]* (New 03/25), which is incorporated by reference and applies to funding applications received by OPSC on or after October 31, 2024.

...

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.

Amend Regulation Section 1859.51

Regulation Section 1859.51. Adjustments to the New Construction Baseline Eligibility.

The baseline eligibility for new construction determined on the Form SAB 50-03 will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140 or a Preliminary Charter School Apportionment pursuant to Section 1859.162.2.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90, 1859.90.3 and 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts using a fifth-year projection or a tenth-year projection, except decreases as provided in (j) below.

...

(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any Classroom Provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

- (1) That is a trailer and transportable/towed on its own wheels and axles.
- (2) Of less than 700 interior square feet.
- (3) That is a portable classroom, leased pursuant to Chapter 14 (commencing with Section 17085) of the Education Code.
- (4) That is a portable classroom leased for a period of less than five years, whether in a single lease or cumulative total of several leases.
- (5) That is a portable classroom that needs to be leased beyond five years to provide interim housing in a modernization or new construction project provided the cumulative lease term does

not exceed a specified time period as determined by the ~~SAB Board~~ not to exceed three years on each qualifying project. For this purpose, a project means all work contained in a single set of construction plans.

(6) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.

...

(j) For Small School Districts:

(1) Decreased by any reduction in projected enrollment that follows a ~~three~~ five-year period after the district's eligibility was approved by the Board, and either (A) or (B), as applicable:

(A) Increased/decreased by changes in projected enrollment in the 2016/2017 enrollment year using a fifth-year projection or a tenth-year projection if the Form SAB 50-01 was received at OPSC by October 31, 2017.

(B) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years following 2016/2017 using a fifth-year projection or a tenth-year projection.

...

(s) Increased by the capacity of classrooms that meet all of the following:

(1) The classrooms are included in an Approved Application that have a qualifying health and safety threat pursuant to Sections 1859.82.1 or 185.9.82.2 that were originally included in the district's baseline eligibility, except the district did not have the current enrollment to support the replacement and funding of those classrooms.

(2) The classrooms are included in an Approved Application pursuant to Sections 1859.82.1 or 1859.82.2 and did not receive funding as part of that project and were demolished or removed from classroom use. Buildings removed from K-12 classroom use that remain on the school site will be identified on a list published on OPSC's website.

(3) The Board shall approve the adjustment upon receiving the local school board resolution acknowledging that the buildings have been removed from K-12 classroom use.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20, 17077.40, 17078.72, 17079.20, 42268, and 42270, Education Code.

Amend Regulation Section 1859.60

SFP Regulation Section 1859.60. Calculation to Determine Modernization Baseline Eligibility.

The district shall calculate its modernization eligibility for each school site with the completion of the Form SAB 50-03. The eligibility determination may be made by either identifying all classrooms on the site pursuant to (a) or by the identification of all square footage on the site pursuant to (b), as follows:

(a) Identify all classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are:

(1) Permanent and at least 25 years old.

(2) Portable and at least 20 years old.

(3) The remaining classrooms not reported in (1) or (2) above.

(b) Identify all square footage at the school site that is:

(1) Permanent area and at least 25 years old.

(2) Portable classroom area and at least 25 years old.

(3) The remaining square footage on the site not reported in (1) or (2) above.

(c) Identify all classrooms at the school site located on a military installation where the site is a recipient of a federal grant for facilities modernization that requires a local matching share that are:

(1) Permanent at least 10 years old.

(2) Portable at least 10 years old.

(d) Identify all square footage at the school site located on a military installation where the site is a recipient of a federal grant for facilities modernization that requires a local matching share that are:

(1) Permanent at least 10 years old.

(2) Portable at least 10 years old.

The age of the classroom or square footage shall begin 12 months after the plans for the building were approved by the DSA. ~~or in~~ In the case of permanent or portable classrooms that were previously modernized with State funds or rehabilitated under the Charter School Facilities Program, the 25/20 year period shall begin on the date of its previous apportionment. For permanent or portable classrooms that were previously modernized with State funds and are located on a military installation, pursuant to subsection (c) and (d), the 10 year period shall begin after the date of the previous modernization apportionment. For purposes of identifying square footage at a school site, include the total enclosed exterior square footage of the school buildings. For multilevel buildings, include the square footage at each level.

Portable buildings modernized pursuant to subsection (c) and (d) shall be replaced with a permanent structure.

Enrollment at the school shall be the latest CBEDS report for K-6, 7-8 and 9-12 pupils. If the school is closed at the time of application for eligibility determination for modernization, and the district intends to reopen it and use it as a school for at least the next five years, the enrollment may be estimated based on district demographic data.

The calculated eligibility determined on the Form SAB 50-03, shall be referred to as the modernization baseline eligibility for the specific school site.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17073.15, 17073.20 and 17074.10, Education Code.

Amend Regulation Section 1859.61

SFP Regulation Section 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

(a) Reduced by the number of pupils provided grants in a modernization SFP project or a CSFP Rehabilitation project at the specific site.

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(i) Increased for facilities previously modernized with State funds, which qualify for an additional modernization apportionment pursuant to Section 1859.78.8 or Education Code Section 17073.15(b).

(j) Decreased for facilities that were deemed eligible for modernization pursuant to Sections 1859.60 and 1859.61(d) and subsequently replaced, or will be replaced under a signed contract for construction or acquisition of facilities, in a project funded by the district without participation from the State.

(k) Adjusted as a result of replaced eligible portables funded with the Overcrowding Relief Grant, pursuant to Education Code Section 17079, et seq.

(l) Increased for additional facilities located on a military installation pursuant to Education Code Section 17073.15(b) not previously modernized with State funds, that become 10 years old, if permanent or portable. Portable buildings modernized pursuant to this subsection shall be replaced with a permanent structure.

~~(m)~~ Adjusted upon Board receipt of the local school board resolution acknowledging that the buildings have been removed from K-12 use, as follows:

(1) School Buildings and/or classrooms that receive replacement funding via the New Construction Grant or the Facility Hardship Square Footage Grant pursuant to Section 1859.82.1 or Section 1859.82.2

(2) School Buildings and/or classrooms that were originally included in the district's baseline eligibility and were later demolished or removed from classroom use due to health and/or safety concerns that meet the requirements of Regulation Section 1859.82.1 or 1859.82.2 as verified by OPSC, except the district did not have the current enrollment to support the replacement and funding of those School Buildings and/or classrooms. Buildings and/or classrooms removed from K-12 classroom use that remain on the school site will be identified on a list published on OPSC's website.

For ~~(1m)~~(1), the building age shall be reset to the date of the Apportionment for the corresponding project. For ~~(1m)~~(2) the building shall be removed from the classroom inventory used to establish modernization eligibility at the site.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.51, 17071.25, 17072.15, 17072.20, 17073.15, 17074.10, 17075.10 and 17079.30, Education Code.

Amend Regulation Section 1859.78.8

Section 1859.78.8. Modernization Grant for Facilities Previously Modernized with State Funds.

The Board shall provide an additional apportionment provided by Education Code 17074.10(a) and Section 1859.78.3, for facilities previously modernized with State funds as follows:

(a) An additional apportionment will be provided for the modernization of a permanent school building every 25 years following the date of its previous State modernization apportionment.

(b) In the case of portable classrooms, an additional apportionment will be permitted every 20 years after the date of its previous State modernization apportionment provided the modernization funds will be used to replace the portable classroom(s) and the school district must certify that the portable classrooms will be removed from any classroom use unless acceptable documentation is provided by the district indicating that the modernization of the portable classrooms is a better use of public resources.

(c) In the case of permanent school facilities that are located on a military installation and are pursuant to the criteria in Education Code Section 17073.15(b), an additional apportionment will be provided for the modernization of a permanent school building every 10 years following the date of its previous State modernization apportionment.

(d) In the case of portable school classrooms that are located on a military installation and are pursuant to the criteria in Education Code Section 17073.15(b), an additional apportionment will be provided for the replacement of the portable classrooms with a permanent structure. Portable buildings modernized pursuant to this subsection shall be replaced with a permanent structure.

If the previous SFP modernization apportionment includes both permanent and portable facilities, the number of pupil grants that will be added to the site's baseline eligibility shall be determined by the percentage of permanent or portable facilities identified on the Form SAB 50-03 that generated the initial eligibility.

The capacity and eligibility of the school district will not be adjusted for the replacement of the portable classroom pursuant to Education Code Sections 17074.10(f) and 17073.15.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17074.10 and 17073.15, Education Code.

Amend Regulation Section 1859.79.2

Section 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25, 17074.10(f) and 17070.15(i) and may also be utilized for other purposes as set forth in Education Code Section 100420(c), and Labor Code Section 1771.3(a) in effect on January 1, 2012 through June 19, 2014. Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP. Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

(a) New building area with the exception of the following:

(1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.

(2) Building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

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Modernization Grant funds may be used on any school facilities on the site, with the exception of portable classroom facilities eligible for an additional apportionment pursuant to Education Code Sections 17073.15 and 17074.10(f) and as defined in Section 1859.78.8, or portables funded pursuant to Education Code Section 17073.15(b). If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code, and Section 1771.3 in effect on January 1, 2012 through June 19, 2014, Labor Code.

Amend Regulation Section 1859.81

SFP Regulation Section 1859.81. Financial Hardship.

Except for Joint-Use Projects and Career Technical Education Facilities Projects, a district is eligible for ~~financial hardship~~ Financial Hardship to fund all or a portion of its matching share requirement after demonstrating the requirements of (a), (c), and (d) below:

(a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for ~~financial hardship~~ Financial Hardship status shall be deemed available as a matching contribution.

After the initial request for ~~financial hardship~~ Financial Hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent ~~financial hardship~~ Financial Hardship review, with the exception of:

(1) Approved interim housing expenditures.

(2) Funding to pay for previously recognized multi-year encumbrances approved at the initial ~~financial hardship~~ Financial Hardship approval.

...

(7) Funding that is used for the express purpose of reimbursing the State a proportionate share of ~~financial hardship~~ Financial Hardship received when there has been a transfer of a special education program and title to the facility. In addition, the funding was used within five years of the title transfer.

(8) Funding to pay for obtaining a structural report pursuant to Section 1859.82.2 for an approvable and funded seismic mitigation project.

(9) All other capital facility funding for a period of three years when no subsequent ~~financial hardship~~ Financial Hardship request is made during this period, with the exception of the funding identified in (6). The three-year period begins with the date of the most recent ~~financial hardship~~ Financial Hardship new construction or modernization adjusted grant funding apportionment.

When Overcrowding Relief Grant funding is set aside pursuant to (6) and the School District has not submitted, or the OPSC has not accepted, a Form SAB 50-04 for an Overcrowding Relief Grant within three years from the date of deposit into the Special Reserve Fund, or the School District has not met the requirements in Sections 1859.90 or 1859.105, remaining funds plus interest accrued at the Pooled Money Investment Board rate at that time period shall be deemed available as matching contribution on a subsequent ~~financial hardship~~ Financial Hardship project or be captured through an audit adjustment pursuant to Section 1859.106.

The ~~financial hardship~~ Financial Hardship analysis is subject to approval by the Board.

...

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per classroom in each reporting period for the cost to provide necessary interim housing for the currently unhoused pupils displaced as a result of a ~~SAB Board~~ approved seismic mitigation project pursuant to Section 1859.82.2. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing shall be the quotient of the displaced pupils by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

(c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:

(1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities in accordance with Education Code Section 17072.35 or 17074.25 as appropriate, at the time of request for ~~financial hardship~~ Financial Hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.

(2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for ~~financial hardship~~ Financial Hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).

(3) It is a County Superintendent of Schools.

(4) (A) For applications received on or before October 30, 2024, ~~the district's total bonding capacity at the time of the request for financial hardship~~ Financial Hardship status is \$5 million or less.

(B) For applications received on or after October 31, 2024, the district's total bonding capacity at the time of the request for Financial Hardship status is \$15 million or less. Beginning July 1, 2026, the total bonding capacity amount shall be adjusted each fiscal year thereafter by the inflation adjustment computed pursuant to paragraph (2) of subdivision (d) of Education Code Section 42238.02.

(5) Other evidence of reasonable effort as approved by the ~~SAB~~ Board.

If the district's request for ~~financial hardship~~ Financial Hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

(A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied ~~financial hardship~~ Financial Hardship status.

(B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

(d) The district has not signed a contract for acquisition or construction of classrooms that replace existing facility(ies), which were included in the determination of the district's new construction eligibility pursuant to Education Code Section 17071.75, in a locally funded project during the five-year period immediately preceding the district's application for ~~financial hardship~~ Financial Hardship assistance. This restriction may be lifted if the Board finds that unforeseen and extenuating circumstances existed that required the district to use local funds to replace the facility(ies).

(e) If the district meets the ~~financial hardship~~ Financial Hardship requirements in this Section, the amount of ~~financial hardship~~ Financial Hardship is equal to the district's matching share less funds deemed available in (a).

(1) Once a district has been notified by OPSC that it meets the requirements of ~~financial hardship~~ Financial Hardship in this Section, the district may file Form SAB 50-04 under the provisions of ~~financial hardship~~ Financial Hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

(2) If the district does not submit Form SAB 50-04 under the provisions of ~~financial hardship~~ Financial Hardship within 180 calendar days of the OPSC notification of approval of ~~financial hardship~~ Financial Hardship status, the district must re-qualify for ~~financial hardship~~ Financial Hardship status under the provisions of this Section by submittal of a new request for ~~financial hardship~~ Financial Hardship status.

(3) If the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

~~Financial hardship~~ Hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

(f) If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of ~~financial hardship~~ Financial Hardship and the project(s) has been included on the "Unfunded List (Lack of AB 55 Loans)" for more than 180 calendar days as a result of the State of California's inability to provide interim financing from the Pooled Money Investment Account (AB 55 loans), the Board may suspend the unfunded review requirement as defined in Regulation Section 1859.81(e). Projects added to any other unfunded list shall be subject to the review detailed in Regulation Section 1859.81(e). Regulation Section 1859.81(f) shall become inoperative July 1, 2011.

...

- (i) Any project expenditures made prior to a district requesting Financial Hardship status is considered contribution due to expenditure and will reduce the Financial Hardship apportionment amount received on the project, with the exception of: A district may begin making expenditures on a project while seeking Financial Hardship consideration only if the district uses bridge financing and/or interfund borrowing that meets the following criteria:
- (1) The district must contact the OPSC in writing with their request to seek bridge financing prior to making any project expenditures.
- (2) The request must specifically list the SFP project(s), and SFP application number(s) (if known) that will be funded with the bridge financing.
- (3) The district's bridge financing instrument must either be a certificate of participation, lease-purchase agreement, or other lease financing arrangement entered into with a party other than the applicant district for the purpose of financing eligible SFP project costs authorized in the Education Code.
- (4) Interfund borrowing that conforms to Education Code Section 42603 requirements may also be utilized to allow a district to move forward with their SFP Financial Hardship project(s). The district must provide detailed General Ledger (GL) transactions that clearly indicate the following:
- a. The transfer out of the fund the district is borrowing from and,
- b. The transfer into the fund the monies were deposited in.
- (5) The total amount of net bridge financing and interfund borrowing shall not exceed the sum of the Modernization Adjusted Grant or New Construction Adjusted Grant, including Financial Hardship funding.
- (6) The district must have a school board resolution which details the bridge financing instrument or interfund transfer that will be used to make any project expenditures that will occur prior to receiving state funding. The school board resolution must include the following:
- a. Name the specific project(s) that will be moved forward.
- b. List the specific debt instrument or interfund borrowing that will be used to move the project(s) forward.
- c. List the maximum amount of funding that will be borrowed or transferred.
- d. Statement that once any state funding is released for the SFP project(s), the district must utilize the grant funding to retire the bridge financing debt and/or repay the interfund transfer within 60 calendar days of receiving the state funding.
- e. If using debt financing, acknowledgement that the district is entering into the debt financing at their own risk and that there is no guarantee of future state funding.
- f. Acknowledgement that any expenditures made prior to the school board resolution will be considered as the district's required matching contribution due to expenditures.
- (7) Once any state funding is released for the SFP project(s), the district must utilize the grant funding to retire the bridge financing debt and/or repay the interfund transfer within 60 calendar days of receiving the state funding.
- (8) Within 30 days of retiring the debt service, the district must submit to OPSC documentation demonstrating that the debt has been retired. This documentation shall include the following:
- a. A detailed general ledger which documents the transaction; and
- b. School board resolution or school board minutes authorizing the debt retirement.
- (9) After state funds are released, the state will treat the debt as retired, and the bridge financing related debt will not be included in the district's bonded indebtedness calculation for the purpose of a future Financial Hardship review.
- (10) Any bridge financing debt not retired after state funding is received will be considered as available contribution for the project and result in a reduction of the Financial Hardship funding on the project.

Note: Authority cited: Sections 17070.35, 17075.15, 17078.72 and 17592.73, Education Code.

Reference: Sections 17071.75, 17075.10, 17075.15, and 17079.20, Education Code.