

California Department of Education / County Office of Education
School Financial Services Subcommittee
AGENDA

1430 N Street, Room 1801
Sacramento, CA

May 7, 2012
10:00 a.m.

Co-Chair: Darren Dang, Region IX – Orange COE

Co-Chairs: Peggy O’Guin / Peter Foggiano, California Department of Education

Vice Chair: Tommy Welch, Region IV – Solano COE

Issues to be Supported by CDE Staff

Requested By/ CDE Support

1. CDE Report

Peggy O’Guin / Peter Foggiano

a) AB 103 Issues

2. Legislative Update

Carol Bingham

3. BASC Reports

Mel Iizuka

4. If 12/13 Mid-Year trigger hits, how would the \$370/\$455 be implemented?

Adrian Barron

5. Redevelopment Agency

a) Excess Property Tax reports from local Auditor/Controllers

All

b) AB1290 payments. Does the district post the split between facilities and property taxes or does your office post the split when the apportionment is received.

Nancy Sheets

c) Net Increment revenue from the RPTTF is currently not subject to charter school in-lieu taxes.

All

d) Guidance on reporting RPTTF distributions

All

6. Tier III Public Hearing – AB 189

All

7. “End of the Year Report” Reviews – what is required to be submitted?

All

8. Deficit factor to wipe out 12/13 COLA of 3.243%: 22.275%

Ann Peters

9. CalSTRS Penalty and Interest

Priscilla Aquino-Dichoso

10. IRS proposed regulations that may impact charter participation in CalPERS

Judy Thomson

11. LAO Report on COE Fiscal Oversight

Mel Iizuka

<http://lao.ca.gov/reports/2012/edu/school-district-fiscal-oversight-and-intervention/school-district-fiscal-oversight-and-intervention-043012.pdf>

12. Cash Flow review tool

Brent Watson

13. State Controller’s Request Regarding Government Compensation

Brent Watson

14. Roundtable Discussions

Additional Agenda Items:

Next Meeting June 4, 2012

SFSS materials: <http://www.ocde.us/business/pages/sfss.aspx>

County of Orange - 30
Estimated Redevelopment Property Tax Trust Fund Allocations & Distributions for March 1, 2012 Covering the Period 7/1/2011 through 1/31/2012)
(Whole Numbers)

Redevelopment Property Tax Trust Fund (RPTTF) Activity	Successor Agency for Anaheim RDA	Successor Agency for Brea RDA	Successor Agency for Buena Park RDA	Successor Agency for Costa Mesa RDA	Successor Agency for Cypress RDA	Successor Agency for Fountain Valley RDA
RPTTF Beginning Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Deposits:						
Secured & Unsecured Property Tax Increment	-	-	-	-	-	-
Supplemental & Unitary Property Tax Increment	-	-	-	-	-	-
Miscellaneous Revenues	-	-	-	-	-	-
Deposit totals	-	-	-	-	-	-
RPTTF Available Balance	-	-	-	-	-	-
H&S Code 34183 Distributions						
Administrative Fees to County Auditor-Controller	-	-	-	-	-	-
SB2557 Administration Fees	-	-	-	-	-	-
City Passthrough Payments	-	-	-	-	-	-
County Passthrough Payments	-	-	-	-	-	-
Special District Passthrough Payments	-	-	-	-	-	-
K-12 School Passthrough Payments - Tax Portion	-	-	-	-	-	-
K-12 School Passthrough Payments - Facilities Portion	-	-	-	-	-	-
Community College Passthrough Payments - Tax Portion	-	-	-	-	-	-
Community College Passthrough Payments - Facilities Portion	-	-	-	-	-	-
County Office of Education - Tax Portion	-	-	-	-	-	-
County Office of Education - Facilities Portion	-	-	-	-	-	-
ROPS Enforceable Obligations Payable from Property Taxes	-	-	-	-	-	-
Successor Agency Administrative Cost Allowance	-	-	-	-	-	-
SCO Invoices for Audit and Oversight	-	-	-	-	-	-
H&S Code 34183 Dist Totals	-	-	-	-	-	-
Residual Balance	-	-	-	-	-	-
Residual Distributions						
Residual Balance to Cities	-	-	-	-	-	-
Residual Balance to Counties	-	-	-	-	-	-
Residual Balance to Special Districts	-	-	-	-	-	-
Residual Balance to K-12 Schools	-	-	-	-	-	-
Residual Balance to Community Colleges	-	-	-	-	-	-
Ending RPTTF Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

No Activity in RPTTF
SEE ADDITIONAL REPORTING INFORMATION ON PAGE 2

Pass-through payments are to be split between property tax and education facilities. All other revenues are a direct offset to revenue limit.

Please report on the J29 all funds outside of the pass-through so that the numbers will be used by the State to offset the revenue limit.

Please refer to the following two links:

Education Trailer Bill

The bill shows the clear intent for excess revenues distributed from the RDA to offset revenue limit

http://www.dof.ca.gov/budgeting/trailer_bill_language/education/documents/%5b401-409,%20413-416,%20423,%20427-429,%20432,%20443%5d%20Omnibus%20Education%20Trailer%20Bill.pdf

J29 Tax Software website

This website has been updated to communicate how to report the excess revenue

<http://www.cde.ca.gov/fg/sf/tc/tax1112.asp>

See the State certified local revenue worksheet from 2011-12 P-1 on the next page. The worksheet shows how the State will use the excess revenue (Line A-4) to reduce revenue limit.

In addition, the excess revenue distributions should be coded as Object 8047 Community Redevelopment Funds until further notice.



California Department of Education
School Fiscal Services Division

School District Local Revenue

County: Napa
District: Napa Valley Unified

Period: 2011-12 P-1
CDS Code: 28 66266

Local Revenue

Local Property Taxes	A-1 \$	<u>67,831,947</u>	0587
Miscellaneous Funds 50%	A-2 \$	<u>0</u>	0588
Community Redevelopment Funds	A-3 \$	<u>239,752</u>	0589
Redevelopment Property Tax Trust Fund	A-4 \$	<u>815,606</u>	0721
Local Revenue Subtotal (A-1 + A-2 + A-3 + A-4)	A-5 \$	<u>68,887,305</u>	0590

Charter Schools In Lieu Taxes

Total District and Charter ADA	B-1	<u>17,494.66</u>	0039
Total Countywide Charter ADA	B-2	<u>0.00</u>	0592
Total ADA (B-1 - B-2)	B-3	<u>17,494.66</u>	0593
Tax per ADA (If A-1 < 0, 0; else A-1 / B-3)	B-4 \$	<u>3,877.29</u>	0594
Total Charter Schools in Lieu Taxes	B-5 \$	<u>9,201,896</u>	0595

District Local Revenue

Total Local Revenue (A-5 - B-5)	C-1 \$	<u>59,685,409</u>	0126
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Export to Excel

Questions: Office of Principal Apportionment and Special Education | 916-324-4541
Office of Charter Apportionments and District Reorganization | 916-324-4541

Web Policy

Excerpt of the Law:

Per Education Code 42605, as a condition of receiving funds for Tier III categorical programs, the governing board of a school district must hold a public hearing to discuss and approve or disapprove the proposed explicit uses of each Tier III Programs' funding. This hearing must take place regardless of whether districts opt to use funds for their original purpose or for another purpose. Previously, the hearing was allowed to take place at any time. Based on AB 189, **the Tier III public hearing must now be held prior to and independent of the meeting at which the budget is adopted. AB 189 also requires the governing board to identify in the notice of the public hearing, any Tier III program that is proposed to be closed.**

Advice from SSC**Volume 32****For Publication Date: April 27, 2012****No. 8****Ask SSC. . . Can You Please Provide Additional Clarification on AB 189, Public Hearings, and the Impact on Tier III Flexibility?**

Q. Our district's external auditor recently sent us information that changes the way districts conduct the public hearing for categorical flexibility beginning in fiscal year 2012-13. What do we have to do differently?

A. Assembly Bill (AB) 189 (Chapter 606/2011), became effective January 1, 2012, and changed the public hearing requirement regarding the use of the Tier III funds. AB 189 requires governing boards to separately act to close any Tier III categorical programs eligible for flexibility. Specifically, the change relates to when the board meeting is held and what is to be included on the agenda.

The hearing must be held at a regularly scheduled board meeting prior to and independent of the meeting at which the annual budget will be adopted. AB 189 also requires a governing board to identify any program (e.g., adult education, deferred maintenance, gifted and talented education, etc.) that is proposed to be closed in the agenda of the public hearing.

Local educational agencies (LEAs) also need to hold separate public hearings for the receipt of Tier III funds as a part of the 2012-13 budget adoption process.

As a best practice, LEAs should list all closed programs subject to Tier III funding requirements at a separate, regularly scheduled board meeting well in advance of the regularly scheduled board meeting to adopt the budget.

Noncompliance puts your entire Tier III entitlement at risk. Given this potentially significant penalty, it is critical to make sure that the public hearings are held and contains the required elements above.

—*Jeff Bell, Lewis Wiley, Jr., and Maureen Evans*

Guidance from VTD:

Below is the first article on this topic, which I think, has slightly more clarity. I read it to mean that there is one public hearing covering two topics, receipt of the funds and the closing of the programs. This hearing is held prior to and independent of the budget adoption meeting. Therefore, any District that has not held this hearing, I am encouraging to do so asap (i.e, in April/May before the June adoption). That's my take!

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Volume 31 For Publication Date: December 22, 2011 No. 26**

Ask SSC . . . Can You Please Provide Some Clarification on AB 189?

Q. Recently enacted legislation requires governing boards to separately act to close any Tier III categorical programs eligible for flexibility. If a board already took action to close a Tier III program in a prior year, do they need to hold another meeting to "officially" close the program? Are they required to close the same program every year at the annual public hearing?

A. Assembly Bill (AB) 189 (Chapter 606/2011), that becomes effective January 1, 2012, changes the public hearing requirement regarding the use of the Tier III funds. Specifically, the change relates to when the board meeting is held and what is to be included on the agenda. The meeting must be held prior to and independent of the meeting at which the annual budget will be adopted. AB 189 also requires a governing board to identify any program that is proposed to be closed in the agenda of the public hearing.

The requirements of AB 189 become effective January 1, 2012, which means that local educational agencies (LEAs) do not have to go back and make any retroactive adjustments for actions prior to that date. LEAs will need to hold separate public hearings for the receipt of Tier III funds as a part of the 2012-13 budget adoption process.

As a best practice, LEAs should list all closed programs subject to Tier III funding requirements just as they already list the proposed use of the funds each year.

Guidance from Nigro & Nigro, PC:

As you may be aware, the Legislature recently passed Assembly Bill (AB) 189 (Chapter 606/2012), which creates additional requirements relevant to the public hearing for Tier

III Flexibility for 2012-13. As your independent auditors, we want to be sure that you will meet those requirements because failure to comply will jeopardize your entire funding for those programs.

Beginning with 2012-13, AB 189 now requires that LEAs conduct TWO (2) separate public hearings regarding the Tier III Flex Funds. The first public hearing must be held at a **regularly scheduled** board meeting **prior to and independent of** the board meeting at which the budget is adopted. The first public hearing is to list the programs that are to be “closed” in the agenda, and if no programs are to be “closed”, then the public hearing would simply state the intended purpose of those funds. Our understanding of the word “closed” is any use of the Tier III Flexibility funds for a purpose other than their original intended purpose. Under Tier III the funds are available for “any other educational purpose.”

The second public hearing must then be held, as before AB 189, to discuss the proposed use of the funds, take testimony from the public, and then the board must either approve or disapprove the proposed use of the funds. Failure to follow these requirements will result in an audit finding and disallowance of the funds received. This hearing may be held either at the same meeting as the first hearing or separately. However, this hearing cannot take place at the same hearing related to a discussion regarding programs to be “closed.” This second hearing requirement has not changed from the prior years.

As a side note, the legislation also now permits school districts that offer adult classes in English and citizenship the ability to charge a fee for such classes through July 1, 2015.

Additional Guidance from San Diego COE

The language in AB 189 states “If the governing board intends to close a program funded by the items listed in paragraph (2) of subdivision (a), the governing board **shall identify, in the notice of the agenda of the public hearing or at another public hearing,** the program or programs proposed to be closed.”

Based on this, we are assuming that districts have two options regarding closed programs. The first option, the one most districts will choose, is the district must hold one public hearing regarding the use of Tier III funds. If any programs are to be closed, the district must list those programs in the notice of the agenda for the public hearing regarding the use of tier III funds.

If the district chooses not to list the programs proposed to be closed in the notice of the agenda, they must identify the closed programs at another public hearing. If the district chooses this option, then two separate public hearings would need to be held.

Bulletin No.

May 1, 2012

TO: School District Administrators

FROM: Division of Administration and Finance

SUBJECT: Assembly Bill 189 – Change of Public Hearing Requirement for Use of Tier III Funds

Per Education Code 42605, as a condition of receiving funds for Tier III categorical programs, the governing board of a school district must hold a public hearing to discuss and approve or disapprove the proposed explicit uses of each Tier III Programs' funding. This hearing must take place regardless of whether districts opt to use funds for their original purpose or for another purpose. Previously, the hearing was allowed to take place at any time, and many districts chose to hold this hearing in conjunction with their budget adoption.

Assembly Bill (AB) 189 (Chapter 606/Statutes 2011), became effective January 1, 2012, and changed the public hearing requirement regarding the use of the Tier III funds. Specifically, the change relates to when the board meeting is held and what is to be included on the agenda. **The Tier III public hearing must now be held prior to and independent of a meeting at which the budget is adopted. AB 189 also requires a governing board to identify in the notice of the public hearing, any Tier III program that is proposed to be closed.**

As a best practice, the Tier III public hearing should be held at a separate, regularly scheduled board meeting held prior to the regularly scheduled board meeting to adopt the budget. Whenever the proposed use of the funding will result in the elimination of a program, the notice of the public hearing must list any programs proposed for elimination. Noncompliance puts your entire Tier III entitlement at risk. Given this potentially significant penalty, it is critical to make sure that the public hearings are held and contain the required elements above.

Attached for your use is a sample Resolution, sample agenda language for the public hearing, and an excel spreadsheet which lists each of the Tier III programs and can be used for the notice of public hearing. Also attached are a School Services Fiscal Report Article and a copy of the text of AB 189 for your reference.

Questions should be directed to *****.

SAMPLE AGENDA LANGUAGE

1. Public Hearing Relating to the Use of 2012/13 Tier III State Categorical Funds
Education Code §42605 grants districts flexibility in Tier III categorical programs and authorizes districts to use these funds for any educational purpose. For the 2008-09 fiscal year through the 2014-15 fiscal year, inclusive, local educational agencies that use the flexibility provision of this section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory and provisional language. As a condition of receipt of the funds, the governing board is required, at a regularly scheduled open public hearing held prior to and independent of a meeting where the governing board of the district adopts the annual budget, to take testimony from the public, identify any program that is proposed to be closed, discuss, approve or disapprove the proposed use of funding, and make explicit the purposes for which the funding will be used.
2. Proposed Use of 2012/13 Tier III State Categorical Funds
Consider approval of the proposed uses of the 2012/13 Tier III State Categorical Funds as identified on the attached list.

**RESOLUTION OF THE BOARD OF THE
_____ SCHOOL DISTRICT**

TIER III CATEGORICAL FLEXIBILITY

WHEREAS as added and amended by SBX3 4, ABX4 2, and SB 70, Education Code 42605 grants districts flexibility in "Tier III" categorical programs and authorizes districts to use these funds for "any educational purpose, to the extent permitted by federal law." For the 2008-09 fiscal year to the 2014-15 fiscal year, inclusive, local educational agencies that use the flexibility provision of this section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language.

WHEREAS as a condition of receipt of the funds, the governing board is required, at a regularly scheduled open public hearing, to take testimony from the public, discuss, and approve or disapprove the proposed use of funding and to make explicit the purposes for which the funding will be used.

WHEREAS Assembly Bill (AB) 189, became effective January 1, 2012, and requires the Tier III public hearing to be held prior to and independent of a meeting at which the budget is adopted. AB 189 also requires a governing board to identify in the notice of the public hearing, any Tier III program that is proposed to be closed.

WHEREAS attached to this resolution is a list of specific programs, the estimated funding amounts, and the proposed activities for which the funds are to be expended identified by SACS function code.

THEREFORE, BE IT RESOLVED that, following a public hearing in which public testimony was taken, discussion regarding the proposed uses of the funds took place, and programs proposed to be closed were identified, the _____ School District adopts this Resolution approving the proposed uses of the funds as shown on the attached list.

PASSED AND ADOPTED this _____ Day of May 2012 by the following vote:

Ayes:

Noes:

Abstained:

Absent:

ATTEST:

Secretary, Board of Trustees

Assembly Bill No. 189

CHAPTER 606

An act to amend Sections 42605 and 52612 of the Education Code, relating to education funding.

[Approved by Governor October 8, 2011. Filed with
Secretary of State October 8, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 189, Eng. Education funding.

(1) Existing law establishes various categorical education programs and appropriates the funding for those programs in the annual Budget Act. Existing law requires the Superintendent of Public Instruction, for the 2008–09 to 2014–15 fiscal years, inclusive, to apportion from the amounts provided in the annual Budget Act for specified categorical education programs an amount based on the same relative proportion that the local educational agency received in the 2008–09 fiscal year for those programs and authorizes school districts, for those fiscal years, to use these funds, with specified exceptions, for any educational purpose, to the extent permitted by federal law.

Existing law requires, as a condition of receipt of the above-described funds for any educational purpose, the governing board of a school district or county office of education, as appropriate, to discuss, approve, or disapprove the proposed use of funding and to make explicit the purposes for which each item of appropriation for specified categorical education programs will be used at a regularly scheduled open public hearing.

This bill would require that public hearing to be held prior to and independent of a meeting where the governing board of a school district or county office of education adopts a budget. The bill would also require the governing board to identify the program or programs to be closed before the public hearing, as specified.

(2) Existing law authorizes the governing board of a school district maintaining an adult class to require an adult enrolled in the class to pay a fee and prohibits the governing board from imposing a charge for a class in English and citizenship for foreigners or a class in an elementary subject, except as specified.

This bill would authorize the governing board of a school district to charge a fee for a class in English and citizenship until July 1, 2015.

The people of the State of California do enact as follows:

SECTION 1. Section 42605 of the Education Code is amended to read:

42605. (a) (1) Unless otherwise prohibited under federal law or otherwise specified in subdivision (e), for the 2008–09 fiscal year to the 2014–15 fiscal year, inclusive, recipients of funds from the items listed in paragraph (2) may use funding received, pursuant to subdivision (b), from any of these items listed in paragraph (2) that are contained in Section 2.00 of the annual Budget Act, for any educational purpose.

(2) Items 6110-104-0001, 6110-105-0001, 6110-108-0001, 6110-122-0001, 6110-124-0001, 6110-137-0001, 6110-144-0001, 6110-150-0001, 6110-151-0001, 6110-156-0001, 6110-181-0001, 6110-188-0001, 6110-189-0001, 6110-190-0001, 6110-193-0001, 6110-195-0001, 6110-198-0001, 6110-204-0001, 6110-208-0001, 6110-209-0001, 6110-211-0001, 6110-227-0001, 6110-228-0001, 6110-232-0001, 6110-240-0001, 6110-242-0001, 6110-243-0001, 6110-244-0001, 6110-245-0001, 6110-246-0001, 6110-247-0001, 6110-248-0001, 6110-260-0001, 6110-265-0001, 6110-266-0001, 6110-267-0001, 6110-268-0001, and 6360-101-0001 of Section 2.00.

(b) (1) For the 2009–10 fiscal year to the 2014–15 fiscal year, inclusive, the Superintendent or other administering state agency, as appropriate, shall apportion from the amounts provided in the annual Budget Act for the items enumerated in paragraph (2) of subdivision (a) an amount to recipients based on the same relative proportion that the recipient received in the 2008–09 fiscal year for the programs funded through the items enumerated in paragraph (2) of subdivision (a).

(2) This section and Section 42 of Chapter 12 of the Third Extraordinary Session of the Statutes of 2009 do not authorize a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 to redirect this funding for another purpose unless otherwise authorized in law or pursuant to an agreement between a charter school and its chartering authority. Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2014–15 fiscal year, inclusive, a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 shall continue to distribute the funds to those charter schools based on the relative proportion that the school district distributed in the 2007–08 fiscal year, and shall adjust those amounts to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a). For a charter school that began operation in the 2008–09 fiscal year, if a school district received funding on behalf of that charter school pursuant to Sections 47634.1 and 47651, the school district shall continue to distribute the funds to that charter school based on the relative proportion that the school district distributed in the 2008–09 fiscal year and shall adjust the amount of those funds to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a).

(3) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2014–15 fiscal year, inclusive, the Superintendent shall apportion from the

amounts appropriated by Item 6110-211-0001 of Section 2.00 of the annual Budget Act an amount to a charter school in accordance with the per-pupil methodology prescribed in subdivision (c) of Section 47634.1.

(4) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2014–15 fiscal year, inclusive, the Superintendent shall apportion from the amounts provided in the annual Budget Act an amount to a school district, charter school, and county office of education based on the same relative proportion that the local educational agency received in the 2007–08 fiscal year for the programs funded through the following items contained in Section 2.00 of the annual Budget Act: 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-190-0001, Schedule (3) of 6110-193-0001, 6110-198-0001, 6110-232-0001, and Schedule (2) of 6110-240-0001.

(5) For purposes of paragraph (4), if a direct-funded charter school began operation in the 2008–09 fiscal year, the amount that the charter school was entitled to receive from the items enumerated in paragraph (4) for the 2008–09 fiscal year, as certified by the Superintendent in March 2009, is deemed to have been received in the 2007–08 fiscal year.

(c) (1) This section does not obligate the state to refund or repay reductions made pursuant to this section. A decision by a school district to reduce funding pursuant to this section for a state-mandated local program shall constitute a waiver of the subvention of funds that the school district is otherwise entitled to pursuant to Section 6 of Article XIII B of the California Constitution on the amount so reduced.

(2) (A) As a condition of receipt of funds, the governing board of the school district or board of the county office of education, as appropriate, at a regularly scheduled open public hearing shall take testimony from the public, discuss, approve or disapprove the proposed use of funding, and make explicit for each of the budget items in paragraph (2) of subdivision (a) the purposes for which the funds will be used.

(B) The regularly scheduled open public hearing held pursuant to subparagraph (A) shall be held prior to and independent of a meeting where the governing board of the school district or governing board of the county office of education adopts a budget. If the governing board intends to close a program funded by the items listed in paragraph (2) of subdivision (a), the governing board shall identify, in the notice of the agenda of the public hearing or at another public hearing, the program or programs proposed to be closed.

(3) Using the Standardized Account Code Structure reporting process, a local educational agency shall report expenditures of funds pursuant to the authority of this section by using the appropriate function codes to indicate the activities for which these funds are expended. The department shall collect and provide this information to the Department of Finance and the appropriate policy and budget committees of the Legislature by April 15, 2010, and annually thereafter on April 15 until, and including, April 15, 2016.

(d) For the 2008–09 fiscal year to the 2014–15 fiscal year, inclusive, local educational agencies that use the flexibility provision of this section

shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language, associated with the items enumerated in subdivision (a).

(e) Notwithstanding subdivision (d), the following requirements shall continue to apply:

(1) For Item 6110-105-0001 of Section 2.00 of the annual Budget Act, the amount authorized for flexibility shall exclude the funding provided to fund remedial educational services pursuant to Provision 4. For Item 6110-156-0001 of Section 2.00 of the annual Budget Act, the amount authorized for flexibility shall exclude the funding provided for instruction of CalWORKs-eligible students pursuant to Schedules (2) and (3) and Provisions 2 and 4.

(2) (A) Any instructional materials purchased by a local educational agency shall be the materials adopted by the state board for kindergarten and grades 1 to 8, inclusive, and for grades 9 to 12, inclusive, the materials purchased shall be aligned with state standards as defined by Section 60605, and shall also meet the reporting and sufficiency requirements contained in Section 60119.

(B) For purposes of this section, “sufficiency” means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119 and that all pupils within the local educational agency who are enrolled in the same course shall have identical textbooks and instructional materials, as specified in Section 1240.3.

(3) For Item 6110-195-0001 of Section 2.00 of the annual Budget Act, the item shall exclude moneys that are required to fund awards for teachers that have previously met the requirements necessary to obtain these awards, until the award is paid in full.

(4) For Item 6110-266-0001 of Section 2.00 of the annual Budget Act, a county office of education shall conduct at least one site visit to each of the required schoolsites pursuant to Section 1240 and shall fulfill all of the duties set forth in Sections 1240 and 44258.9.

(5) For Item 6110-198-0001 of Section 2.00 of the annual Budget Act, a school district or county office of education that operates the child care component of the Cal-SAFE program shall comply with paragraphs (5) and (6) of subdivision (c) of Section 54746.

(f) This section does not invalidate any state law pertaining to teacher credentialing requirements or the functions that require credentials.

SEC. 2. Section 52612 of the Education Code is amended to read:

52612. (a) Except as specified in this section, the governing board of the school district maintaining the class may require an adult enrolled in a class for adults to pay a fee for the class. Except as specified in Section 52613, the governing board of a school district shall not impose a charge of any kind for a class in English and citizenship or a class in an elementary subject. A fee charge shall not be made for a class designated by the governing board as a class for which high school credit is granted when the class is taken by a person who does not hold a high school diploma. The total of the fees required and revenues derived from average daily attendance

shall not exceed the estimated cost of all such classes maintained, including the reserves authorized by Section 52501.5.

(b) All textbooks and classroom materials furnished without charge under this section may also be offered for sale at the school bookstore.

(c) Notwithstanding subdivision (a), the governing board of a school district may charge a fee for a class in English and citizenship until July 1, 2015.

NOTICE OF PUBLIC HEARING

_____ SCHOOL DISTRICT

Date: _____, 2012

Time: _____

Location: _____

Purpose:

A public hearing will be held for the purpose of taking testimony from the public, discussing the proposed receipt and use of the Tier III categorical funds, identifying closed programs, and approve or disapprove the proposed use of funding from the 39 programs identified in E.C. 42605.

Budget Item	Resource Code	Program Description	Available Funding	Function Code - Use of Funding	Active	Partial	Closed
6110-144-0001	7325	Staff Development: Administrator Training	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-156-0001	6390	Adult Education Program	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-240-0001	0000	Advanced Placement Fee Waiver Program	\$ -	1000-2999 Instruction and Instruction-Related Services			
6360-101-0001	6260/6262/6263	Alternative Credentialing	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-150-0001	7210	American Indian Early Childhood Education	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-151-0001	7015	American Indian Education Centers	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-265-0001	6760	Arts & Music Block Grant	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-204-0001	7055	California High School Exit Exam	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-198-0001	6091/6092	Cal-SAFE (California School Age Families Education)	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-208-0001	7810	Center for Civic Education	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-267-0001	7276	Certificated Staff Mentoring Program	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-211-0001	0000	Charter School Categorical Block Grants	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-232-0001	1200	Class Size Reduction, Grade Nine	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-190-0001	2430	Community Day Schools	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-227-0001	6285	Community-based English Tutoring Program	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-266-0001	7385	County Office Oversight (Williams Settlement)	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-188-0001	6205	Deferred Maintenance Apportionment	\$ -	8000-8999 Plant Services			
6110-181-0001	7110	Education Technology	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-124-0001	7140	Gifted and Talented Education	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-123-0001	7258/7268	High Priority School Grant Program	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-189-0001	7156	Instructional Materials Realignment	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-240-0001	7286	International Baccalaureate Diploma Program	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-137-0001	7294/7296	Staff Development: Math & Reading/ English Learner	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-108-0001	7080	Supplemental School Counseling	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-195-0001	6267	National Board for Professional Teaching Standards Certification	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-268-0001	0000	Oral Health Assessment Program	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-260-0001	6258	Physical Education Teacher Incentive Grants	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-193-0001	7271/7275/7295	Peer Assistance & Review/ Staff Development	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-245-0001	7393	Professional Development Block Grant	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-243-0001	7390	Pupil Retention Block Grant	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-105-0001	6350	Regional Occupational Centers and Programs (ROC/Ps)	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-247-0001	7395	School & Library Improvement Block Grant	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-248-0001	7391	School Community Violence Prevention Program	\$ -	8000-8999 Plant Services			
6110-228-0001	6405	School Safety & Violence Prevention, Gr. 8-12	\$ -	8000-8999 Plant Services			
6110-122-0001	7370	Specialized Secondary Programs	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-242-0001	7360	Student Organizations Voc Ed (CA Association of Student Councils)	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-104-0001	0000	Remedial Supplemental Instruction	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-246-0001	7394	Targeted Instructional Improvement Block Grant	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-244-0001	7392	Teacher Credentialing Block Grant	\$ -	1000-2999 Instruction and Instruction-Related Services			
6110-209-0001	0000	Teacher Dismissal Apportionments	\$ -	1000-2999 Instruction and Instruction-Related Services			
Total Tier III Funding			\$ -				

IRS Considers Clarifying Definition of “Governmental Plan”

Potential Consequences for California Public Charter Schools

Background

The Internal Revenue Code treats governmental pension plans differently from private sector pension plans. In some cases, governmental plans are carved out altogether from federal tax rules applicable to private sector plans; in other cases, such rules are tailored to reflect the unique circumstances of governmental plans and the state or local government sector they serve.

To help clarify which governmental plans are eligible for the special tax rules, the Internal Revenue Service has issued an advance notice of proposed rulemaking to solicit feedback as it develops proposed regulations to define the term “governmental plan” under Internal Revenue Code section 414(d). The forthcoming proposed regulations are likely to list multiple facts and circumstances tests—categorized as main factors and other factors—as the means to determine whether an entity is an agency or an instrumentality of a state or political subdivision and thus eligible to have its employees participate in a governmental plan. At this point, the IRS has yet to officially propose these regulations. An official proposal constitutes one of the first steps in a multi-step federal process that includes a public comment period; further review, analysis and incorporation of the comments; and publication of the final regulations in the Federal Registrar. The official process can span the course of a year or longer.

CalSTRS has been monitoring the development of the IRS proposal and recently became aware that public charter schools in California operated by nonprofit organizations probably would not be considered agencies or instrumentalities of the state or a political subdivision. Ultimately, this would compel CalSTRS to prohibit the participation of charter schools in its benefit programs so that the CalSTRS programs do not lose their governmental plan status.

Below is a brief summary of the main factors and other factors the IRS is considering to determine whether employees of an entity are eligible to participate in a governmental plan, and how California public charter school employees might fare when tested against them.

Main Factors

The IRS is considering the following main facts and circumstances to determine whether an entity's employees are eligible to participate in a governmental plan:

- A. The entity's governing board or body is controlled by a state or political subdivision.
- B. The members of the entity's governing board or body are publicly nominated or elected.
- C. A state or political subdivision has fiscal responsibility for the general debts and other liabilities of the entity, including the responsibility for the funding of benefits under the entity's employee benefits plans.
- D. The entity's employees are treated in the same manner as employees of the state or political subdivision for purposes other than providing employee benefits.
- E. The entity is designated the authority to exercise sovereign powers, which generally means the power of taxation, eminent domain or police power.

Question

Do California public charter schools pass the main facts and circumstances tests?

Answer

Most California public charter schools likely would not pass these main tests, primarily because the presence of a nonprofit operator introduces a layer of oversight and management separate from that of the school district which eventually leads to ineligibility under these tests. For example, a nonprofit corporation typically has and selects its own board and members without public nomination or election, thus disqualifying the school under tests A and B. Also, nonprofit-run charter schools tend to operate outside the fiscal responsibility of the school district and are solely liable for their debts, so these schools fail test C. These governance and fiscal responsibility tests are likely to be viewed as key by the IRS when it issues the proposed regulations.

A nonprofit-run charter school *may* pass test D because its teachers are typically required to have a California teaching credential and are subject to California's education labor relations laws that govern unions and bargaining. However, charter school teachers are exempt from the laws that govern tenure, evaluation and dismissal, which reduces the likelihood that a charter school will pass test D. Finally, charter schools lack the authority to exercise sovereign powers that are exclusively reserved for school districts, and therefore charter schools cannot satisfy test E.

Other Factors

The IRS is considering a second tier of other facts and circumstances to determine whether an entity's employees are eligible to participate in a governmental plan:

- A. The entity's operations are controlled by a state or political subdivision.
- B. The entity is directly funded through tax revenues or other public sources.
- C. The entity is created by a state government or political subdivision pursuant to a specific enabling statute that prescribes the purposes, powers and manners in which the entity is to be established and operated.
- D. The entity is treated as a governmental entity for federal employment tax or income tax purposes, such as the authority to issue tax-exempt bonds.
- E. The entity is determined to be an agency or instrumentality of a state or political subdivision for purposes of state laws; for example, the entity is subject to open meetings laws or the requirement to maintain public records that apply only to governmental entities, or the state attorney general represents the entity in court under state statute that only permits representation of state entities.
- F. The entity is determined to be an agency or instrumentality of a state or political subdivision by a state or federal court.
- G. A state or political subdivision has the ownership interest in the entity and no private interests are involved.
- H. The entity serves a governmental purpose.

Question

Do California public charter schools pass the other facts and circumstances tests?

Answer

Generally, most California public charter schools may pass tests B, C and H. On the other hand, the presence of a nonprofit organization serving as the school operator may make tests A and G difficult to pass. The ability of a charter school to pass test D is difficult to determine and will depend on how the IRS applies this test to a conduit financing arrangement. For example, a charter school may participate in a bond offering through a conduit issuer—such as the California School Finance Authority—and receive the proceeds of the bond offering, but not receive the federal tax exemption granted to the issuer. With regard to test E, while school districts strongly encourage charter schools to comply with open meetings laws and public records laws, these laws do not apply to nonprofit boards operating charter schools, therefore charter schools do not pass this test. Finally, the ability to pass test F may or may not occur in isolated situations.

Question

How does passing/not passing the other facts and circumstances tests rank against passing/not passing the main facts and circumstances tests?

Answer

The answer is not entirely clear at this point. The IRS has not yet determined the ultimate weight and rank of main factors versus other facts and circumstances. However, if the bulk of the main factors are not met, it may be difficult to overcome that failure by successfully fulfilling the other facts and circumstances. For example, the IRS is likely to view governance, control and fiscal responsibility factors as key. This weight and ranking of the factors may be clarified following the public comment period and public hearing.

Question

What happens if a charter school does not meet the test for its employees to participate in a governmental plan?

Answer

Under current federal law, the inclusion of ineligible employees in a governmental plan could disqualify the plan from favorable tax treatment, subjecting CalSTRS and CalSTRS members to current taxation of plan earnings. The IRS does not indicate whether the remedy to correct any errors with respect to the participation of ineligible employees is to:

1. Permit existing ineligible employees to continue to accrue benefits under the plan, but prohibit any such employees from becoming members in the future;
2. Permit the ultimate payment of benefits already accrued by ineligible employees, but prohibit the accrual of future benefits for such existing or any subsequent ineligible employees; or
3. Prohibit the payment of any benefits for service performed as ineligible employees. As a result, it is unclear at this time what the consequences would be if the regulations were implemented in their current form and charter school employees were determined to be ineligible to participate in CalSTRS benefit programs.

What's Next

To help guide development of the impending proposed regulations, the IRS is accepting written comments from the public until June 18, 2012. Oral comments from the public can be made at a public hearing in Washington, D.C. on July 9, 2012. Town Hall meetings are also planned by the IRS to garner feedback, one of which will be in Oakland—the only session planned in California—on March 15, 2012, and will be attended by CalSTRS.

CalSTRS will communicate its concern about the charter school issue to the IRS through comments developed collaboratively with the National Association of State Retirement Administrators and the National Council on Teacher Retirement. The comments submitted by NASRA and NCTR will also include input from other state plans, many of which have identified similar issues with their public charter schools.





Gary S. Thomas, Ed.D., Superintendent

San Bernardino County Superintendent of Schools

DATE: April 17, 2012

TO: Chief Business Officials, Directors of Fiscal Services, Personnel Administrators, Charter School Administrators and Payroll Personnel

**SUBJECT: IRS Considers Clarifying Definition of “Governmental Plan”,
Potentially Impacting California Public Charter Schools Pension Plans**

The Internal Revenue Code treats governmental pension plans differently from private sector pension plans. In some cases, governmental plans have been exempted from federal tax rules applicable to private sector plans, and in other cases special rules specific to governmental plans have been established, reflecting the unique circumstances of the state or local government sector the plan serves.

In an effort to help clarify which governmental plans are eligible for the special tax rules, the Internal Revenue Service is in the process of developing proposed regulations to define the term “governmental plan” under Internal Revenue Code Section 414(d) and has issued an advance notice of the proposed rulemaking to solicit feedback. It is expected that the proposed regulations are likely to list multiple facts and circumstances tests as the means to determine whether an entity is an agency or an instrumentality of a state or political subdivision and thus eligible to have its employees participate in a governmental plan.

Both CalSTRS and CalPERS have been monitoring the development of the IRS proposal and recently became aware that public charter schools in California operating as nonprofit organizations under 501(c)(3) would probably not be considered agencies or instrumentalities of the state or a political subdivision. Ultimately, this would compel both CalSTRS and CalPERS to prohibit the participation of those charter schools in its benefit programs so that the programs do not lose their governmental plan status. This probably will not affect those charters operating as district or COE dependent charters if their employees are paid through the district’s payroll and reported as employees of the district.

CalSTRS has issued a Fact Sheet regarding the advance notice of proposed regulations (see attached). CalPERS has yet to release an official announcement, but today we received correspondence from a CalPERS representative informing us that CalPERS is now requesting that new charter schools submit their entire charter school agreement, in addition to the school board meeting minutes approving the charter school and charter school contact information. CalPERS will review those documents to determine whether or not they will accept the charter, in an effort to protect CalPERS’ tax qualified status.

We will keep everyone apprised of any new developments as they occur. If you have any questions, please contact Suzanne Retherford at (909)777-0705.

Sincerely,

Gary Thomas, Ed.D.
County Superintendent of Schools

Signed Melissa L. Anderson

Melissa L. Anderson, Chief
District Financial Services

MLA:SR:kb

Attachment – CalSTRS Fact Sheet

IRS Considers Clarifying Definition of “Governmental Plan”

Potential Consequences for California Public Charter Schools

Background

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- E. The entity is designated the authority to exercise sovereign powers, which generally means the power of taxation, eminent domain or police power.

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Answer

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November 16, 2011

Dear Chief Executive Officers:

You received a letter from us on August 2, 2011 about a Government Compensation in California (GCC) website, a cutting edge venture to increase government transparency and accountability. This website is a one-stop repository for salary, pension, and other key compensation data for all state and local officials and employees.

The California Community Colleges have earned and must continue to earn the public confidence that it provides education in an effective and cost-efficient manner. In this vein, we ask you, as well as your peers, to work closely with the State Controller's Office to collect and deliver this information for each of your employees, as well as the members of your board of trustees.

The GCC program is a statewide initiative sponsored by the State Controller's Office. To date, the GCC program has already successfully obtained and posted compensation data for more than 1.2 million positions on the State Controller's Office website at sco.ca.gov. So far, compensation information has been posted for cities, counties, special districts, all state departments, and the California State University. The next phase of the program will extend to the University of California and K-12 schools, as well as the California Community Colleges.

We are pleased to provide the Government Compensation in California (GCC) program for Calendar Year 2011 for the California Community Colleges to report to the State Controller's Office (SCO). The electronic spreadsheet template used to produce your report and all reporting filing instructions are available on the SCO website at:

http://www.sco.ca.gov/ard_locinstr_govcomp_edu.html

Please submit your report by **April 30, 2012**.

The files created per the specifications above will need to be submitted to the following ftp address:

<ftp://ed43mhda:Tr57suh9xb@ftp.sco.ca.gov>

For questions about the GCC program, please contact us at LGRsupport@sco.ca.gov or (916) 445-5153.

cc: Chief Business Officers
Chief Information Systems Officers