

**State of California
Office of Administrative Law**

In re:
California School Finance Authority

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 4, California Code of Regulations

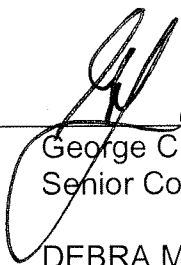
OAL File No. 2013-0208-01 S

**Amend sections: 10178, 10179, 10181,
10182, 10185, 10188**

This regulatory action amends grant requirements for the State Charter School Facilities Incentive Grants Program 2013 funding round. It clarifies eligible costs for which grant funds may be used and provides an option to hold an additional funding round if sufficient grant funds are available. If no additional round is held, then current subgrantees may receive an increase in grant funds based on rank order. It also requires an applicant for funds to agree to pay specified workers in accordance with prevailing wage requirements.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 3/21/2013.

Date: 3/21/2013



George C. Shaw
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Katrina Johantgen
Copy: Katrina Johantgen

REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

ENDORSED FILED
IN THE OFFICE OF

2013 MAR 21 PM 2:38

STD. 409 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2012-1210-01	REGULATORY ACTION NUMBER 2013-0208-01S	EMERGENCY NUMBER
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2013 FEB -8 AM 11:15
OFFICE OF
ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
California School Finance Authority

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) State Charter School Facilities Incentive Grants Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT
AMEND Sections 10178, 10179, 10181, 10182, 10185, and 10188
REPEAL
TITLE(S) 4

3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> 5100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) Government Code Section 11343.4(b)(3)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM 96660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Katrina Johantgen	TELEPHONE NUMBER (213) 620-2305	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) kjohantgen@treasurer.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2/7/13
TYPED NAME AND TITLE OF SIGNATORY Katrina Johantgen, Executive Director	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
MAR 21 2013
Office of Administrative Law

TEXT OF REGULATIONS

CALIFORNIA CODE OF REGULATIONS

Title 4, Division 15, Article 2

2004 and 2009 State Charter School Facilities Incentive Grants Programs

Section 10178. Eligible Costs.

- (a) Grant funds may be applied toward a charter school's costs of one of the following two options:
 - (1) base rent, lease, mortgage, debt service, and/or Proposition 39 pro-rata payments for existing or new facilities; or
 - (2) purchase, acquisition, design, construction, and/or renovation of a facility.
- (b) Grant funds must be used to pay current and future facilities costs, for up to a three-year period. Awards may not be used to reimburse a charter school for costs incurred prior to the date the grant is awarded. In addition to documented evidence of annual ongoing costs associated with a charter school facility, the Authority reserves the right to evaluate prior year's facilities costs to determine eligibility for the current funding round.
- (c) Grant funds may not be applied toward a school district's costs of providing a charter school with a facility.
- (d) Grant funds may not be applied toward overhead or other administrative costs of the school or any other entity, such as a school district, county office of education or charter management organization..
- ~~(de)~~ Grant funds may not be used to: 1) supplement any ~~New Construction~~ project funded through the Charter School Facilities Program; 2) make Charter School Facilities Program payments to the State; or 3) satisfy a Charter School Facilities Program recipient's local matching share.
- ~~(ef)~~ Grant funds must be expended and liquidated within the guidelines of this article and the State Charter School Facilities Incentive Grants Program.

Note: Authority cited: Sections 17179 and 17180, Education Code.

Reference: Section 17180, Education Code.

Section 10179. Maximum Grant.

- (a) Grant awards that are used toward the annual cost of rent, lease, mortgage, or debt service payments for existing or new facilities shall be based on the following:
 - (1) Per-pupil facilities aid for charter schools which shall be awarded to subgrantees in an amount of seven hundred and fifty dollars (\$750) per student based on the eligible K – 12 grade student enrollment on file with the California Department of Education, not to exceed seventy five percent (75%) of the annual eligible costs for which the applicant is applying.
 - (2) No individual grant may exceed two hundred and fifty thousand dollars (\$250,000) per year, with a maximum grant period of up to three years. The grant period shall not exceed the end of the funding period as determined by the U.S. Department of Education and referenced in Section 10185.
- (b) Grant awards that are used toward the purchase, design, construction, and renovation costs of land and facilities, shall be based on the following:

- (1) Per-pupil facilities aid for charter schools which shall be awarded to subgrantees in an amount of one thousand dollars (\$1,000) per student based on the eligible K – 12 grade student enrollment on file with the California Department of Education, not to exceed seventy five percent (75%) of the annual eligible costs for which the applicant is applying.
- (2) No individual grant may exceed five hundred thousand dollars (\$500,000) per year, with a maximum grant period of up to three years. The grant period shall not exceed the end of the funding period as determined by the U.S. Department of Education and referenced in Section 10185.
- (c) Grant awards, for up to a three-year period, will be reserved and apportioned from funds available in the year that the subgrantee is awarded funding.
- (d) (1) Grant funds from the first five funding rounds that become available may be awarded to an alternate applicant from the fifth funding round only, and may not be combined with any funds available for subsequent funding rounds.
 (2) Grant funds from the 2009 Grant (Funding Rounds 6 – 10) that become available may be awarded to an alternate applicant from the most recent funding round until the next funding round commences, at which time any funds that become available will be combined with the available funds for the new funding round. If sufficient grant funds become available following the award date of the final funding round (i.e. the tenth funding round), the Authority may choose to hold another funding round. If the Authority does not hold another funding round and all eligible alternate applicants have been exhausted, then grant awards to current subgrantees may be increased based on currently available fiscal year data as eligible under Section 10179. In the event increased awards are provided to current, eligible subgrantees, the increased awards will be granted in rank order as established for the most recent funding round under Section 10183 (c).
- (e) An organization comprised of more than one charter school may apply for more than one grant by submitting a separate application for each charter school.

Note: Authority cited: Sections 17179 and 17180, Education Code.
 Reference: Section 17180, Education Code.

Section 10181. Content of Application.

Completed applications and all attachments shall be submitted in duplicate to the Authority and shall include, but not be limited to, all of the following items.

- (a) Application (CSFA Form 05-01).
- (b) Description of how an award of grant funds for facilities will be used.
- (c) Copy of current charter agreement, and verification of the expiration date.
- (d) Evidence that the school is organized under section 501(c)(3) of the Internal Revenue Code, or is a nonprofit public benefit corporation pursuant to California Corporations Code section 5110, et seq., if applicable.
- (e) Copy of lease contract, rental agreement or other documentation verifying required payments and evidence that the term matches or exceeds the anticipated grant term.
- (f) A completed Legal Status Questionnaire submitted in the form set forth in CSFA 05-01.
- (g) For construction/renovation or purchase projects only, a detailed description of the project, including timelines, anticipated costs, bids, and other funding sources.
- (h) For construction/renovation or purchase projects only, proof of site control for a minimum of the grant period. Such proof may consist of (1) a current title report issued no more than 90 days prior to application showing ownership of the site; or (2) a valid, current, enforceable

contingent purchase and sale agreement or option agreement between the Applicant and the owner of the subject property, including evidence that all extensions are in place to keep the agreement current through the grant award date.

- (i) For construction/renovation or purchase projects only, evidence of the applicable discretionary use permits and approvals from federal, state or local planning agencies for the proposed project.
- (j) Agreement and Certification. The applicant shall agree and certify under penalty of perjury to the following terms and conditions as a requirement of receiving any grant funds. The agreement and certification shall be executed by the charter school's executive director, principal, chair of the board, or another authorized individual and shall be included in the application.
 - (1) Applicant may be required to return all or a portion of the grant funds including any investment earnings if the applicant fails to use the funds as approved. In cases where the grant will fund architect, design, or engineering fees or land acquisition costs as part of a construction project, the applicant may be required to return all grant funds and any investment earnings if the Authority cannot determine the associated larger construction project has been completed, based on timelines provided within the application. Grant funds shall only be used by the subgrantee in the manner described in the application, unless the Authority approves a change in writing pursuant to section 10186.
 - (2) Applicant agrees that any laborers and mechanics employed by contractors or subcontractors on the project(s) assisted with these federal funds must be paid in accordance with prevailing wage requirements in the Davis-Bacon Act (40 USCA section 3142, et seq.).
 - (3) ~~(2)~~ The applicant's project and financial records are subject to audit and inspection by the Authority and the Bureau of State Audits.
 - (4) ~~(3)~~ Applicant has either disclosed all legal information as required in the Legal Status Questionnaire, or has no legal information to disclose.
 - (5) ~~(4)~~ Applicant will notify the Authority in writing at the time of project completion with evidence of completion included.
 - (6) ~~(5)~~ Applicant will provide all documents and information required by law and meet all necessary requirements prior to the release of any funds.
 - (7) ~~(6)~~ Applicant is required to immediately notify the Authority of any material change to the charter school's enrollment, student performance, charter status, or financial condition.
 - (8) ~~(7)~~ For all construction/renovation or purchase projects, a copy of the executed construction contracts and all required permits must be submitted no later than one year from the award date and prior to any disbursements.
- (k) Verification the charter school is in good standing with its chartering authority and in compliance with the terms of its charter at the time of application submission and without interruption throughout the term of the grant, must be provided directly from the chartering authority on a form provided by the Authority. Charter schools may appeal any response by the chartering authority's staff directly to the chartering authority governing board. It shall be the charter school's responsibility, and not the Authority's, to ensure that the good standing and compliance response letter is received by the stated deadline.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Section 17180, Education Code.

Section 10182. Evaluation Criteria.

Preference points will be calculated for all eligible applications. An application shall receive preference points based on the total of (a), (b), (c), (d), (e), and (f), up to a maximum of 150 points, as follows:

- (a) **Low Income:** Up to 60 points based on the percentage of pupils at the charter school meeting the definition of low-income. Preference points assigned shall be based on data collected and posted by the California Department of Education on its website. The following sliding scale will be used to determine the number of preference points:

Percentage Receiving Free/Reduced Lunch	Preference Points Assigned
NA or unestablished	0
1-15%	2
16-25%	4
26-30%	8
31-35%	10
36-40%	14
41-45%	18
46-50%	22
51-55%	26
56-60%	28
61-65%	30
66-70%	34
71-75%	38
76-80%	42
81-85%	46
86-87%	50
88-89%	54
90%	55
91%	55.5
92%	56
93%	56.5
94%	57
95%	57.5
96%	58
97%	58.5
98%	59
99%	59.5
100%	60

- (b) **Overcrowded School Site:** If the applicant charter school is physically located within the driving distance of any public school as designated in the table below for which the public school is either 1) eligible for funding under the Overcrowding Relief Grant based on the current list qualified by the most current CBEDS, or 2) meets the criteria for the Critically Overcrowded School program based on the most current CBEDS, as identified for either program by the California Department of Education, the applicant will receive 10 preference points. The driving distance will be determined by the Locale Code assigned by the U.S. Department of Education, and found on the National Center for Education Statistics (NCES) website. If no data is available on the NCES website for the applicant charter school, no

points will be awarded under this category. The following table will be used to determine the maximum driving distance to receive preference points in this category:

Locale Code	Maximum Driving Distance in Miles
City/Urban	3
Suburban	10
Town/Rural	15

- (c) Nonprofit Entity: If the charter school or entity operating the charter school meets the definition of a nonprofit entity as defined in this article, the applicant will receive 20 preference points.
- (d) Student Performance: If the charter school meets its Academic Performance Index (API) Growth Target for either Schoolwide or Subgroups for the most recent year, the applicant will receive 20 preference points. Preference points will be based on data provided by the California Department of Education.
- (e) School Choice: If the charter school is providing a school choice option in a community of greatest need, it may receive up to 20 points through the following two opportunities. The charter school may receive 10 points pursuant to subsection (e)(1) and 10 preference points pursuant to subsection (e)(2). The charter school may receive 10 points from each subsection (e)(1) and subsection (e)(2), or from either of the subsections, for a maximum of 20 preference points.
 - (1) Adequate Yearly Progress: If the applicant charter school is physically located within the driving distance as found in the table in subsection (b) of any traditional public school (serving the same grade levels as the applicant charter school) for which CDE has calculated AYP criteria and indicates the traditional school did not meet all AYP criteria for the most recent year, and the applicant charter school did meet all AYP criteria for the most recent year, the applicant charter school will receive 10 preference points. Verification of AYP data shall be based on data provided by the California Department of Education. The driving distance will be determined by the Locale Code assigned by the U.S. Department of Education, and found on the NCES website. If no data is available on the NCES website for the applicant charter school, no points will be awarded under this category.
 - (2) Academic Performance Index Growth Target: If the applicant charter school is physically located within the driving distance as found in the table in subsection (b) of any traditional public school (serving the same grade levels as the applicant charter school) for which the API Growth Target has been calculated, however, the traditional school did not meet its API Growth Target for Both Schoolwide and Subgroups for the most recent year, and the applicant charter school did meet its API Growth Target for Both Schoolwide and Subgroups for the most recent year, the applicant charter school will receive 10 preference points. Verification of API Growth Target data shall be based on data provided by the California Department of Education. The driving distance will be determined by the Locale Code assigned by the U.S. Department of Education, and found on the NCES website. If no data is available on the NCES website for the applicant charter school, no points will be awarded under this category.
- (f) First-Time Award Competitive Priority: If an applicant charter school has not previously received an award under the ~~2004~~ State Charter School Facilities Incentive Grants Program (~~Rounds 1-5~~), the applicant charter school shall receive an additional 20 preference points.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Sections 17078.56 and 17180, Education Code.

Section 10185. Obligation and Expenditure of Grant Funds.

Grant funds shall be used for the immediate needs of the designated project. Grant funds must be obligated and expended by the dates specified in the grant agreement. The funding period will be no more than three years, which means that all funds must be obligated no more than three years from when a grant is awarded and all funds must be liquidated no more than three years and 90 days from when the grant was awarded by the Authority.

The end of the funding period for the first five funding rounds is designated as September 30, ~~2012~~ 2013 by the U.S. Department of Education. The end of the funding period for the subsequent funding rounds (six through ten) shall be determined by the U.S. Department of Education and is currently targeted as September 30, 2017. No extensions of the funding period will be considered or allowed unless approved in writing by the U.S. Department of Education. Grants to subgrantees that are made within three years of the end of the funding period will be awarded based on the amount of time remaining in the funding period.

Subgrantees that receive an award for purchase, construction, or renovation shall provide verification that the approved project has been initiated within six months of the award date and shall annually provide sufficient documentation to approve disbursements equal to each year's award. Subgrantee also shall provide semi-annual progress reports to the Authority.

If Authority staff determines at its discretion that the subgrantee does not demonstrate timeliness, readiness, or feasibility in providing verification of continued eligibility for each disbursement, the Subgrantee will not be eligible for disbursement of Grant funds.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Section 17180, Education Code.

Section 10188. Release of Funds.

- (a) No grant funds shall be released until the grant agreement and supporting attachments have been provided and it has been determined by the Executive Director that the charter school continuously meets the requirements of the grant program.
- (b) Applicants will be afforded two options for disbursement of grant funds, depending on the use of the grant award. Under the first option, charter schools shall apply monthly disbursements of grant funds toward the eligible monthly costs of rent, lease, mortgage or debt service payments over a three-year period, if such costs are sufficiently documented to the Executive Director's satisfaction. Under the second disbursement option, charter schools have the choice of applying grant funds (equal to a three-year award) toward the costs of acquiring a facility or land and constructing and/or renovating a facility, if such costs are sufficiently documented to the Executive Director's satisfaction. Charter schools requesting the second option will be required to demonstrate a commitment toward the acquisition of a facility at the time of application. Such commitment may include, but not be limited to, verification of the charter school's possession of an option to purchase land and/or detailed project plans and drawings.
- (c) Grant fund awards shall be released on the dates listed in the grant agreement.

- (d) All disbursements of Grant fund awards shall be processed according to the schedule established by the Authority.
- (e) All subgrantees shall submit documentation of continued eligibility on a semi-annual basis during the months of February and August.
 - (1) Documentation of continued eligibility shall include, but not be limited to, copies of the current charter and current leases(s); verification of any changes to the subgrantee's name, project, project location, or facility costs; executed amendments to the grant agreement, when appropriate; and verification and/or status of pending or threatened legal issues or investigations.
 - (2) Documentation of continued eligibility shall require verification the subgrantee charter school is continuously in good standing with its chartering authority and continuously in compliance with the terms of its charter without interruption throughout the term of the grant. The Authority will rely on information from the chartering authority regarding the school's good standing and compliance with the terms of its charter. Charter schools may appeal any response by the chartering authority's staff directly to the chartering authority's governing board. It shall be the charter school's responsibility, and not the Authority's, to ensure that the good standing and compliance response letter is received by the stated deadline.
 - (3) Documentation of continued eligibility must be received and approved by the Authority on or before February 28 and August 31 of each year in order for the Authority to release a disbursement.
 - (4) Failure to meet the February 28 or August 31 deadline shall result in the subgrantee being declared ineligible to receive the first monthly disbursement of the respective semi-annual disbursement period. The forfeited funds cannot be disbursed retroactively and will immediately revert back to the Authority.
 - (5) If the required documentation is not received and approved by the Authority within 30 calendar days following the February 28 and August 31 deadline, the subgrantee shall be declared ineligible to receive the remaining five monthly disbursements for the respective semi-annual disbursement period. The forfeited funds cannot be distributed retroactively and will immediately revert back to the Authority.
 - (6) Failure to meet the semi-annual deadlines consecutively and provide documentation within 30 calendar days from each deadline shall result in the subgrantee being declared ineligible to receive all remaining disbursements under the grant program. The forfeited funds will immediately revert back to the Authority.
- (f) Subgrantees applying grant funds toward the costs of acquiring land and purchasing, constructing, or renovating a facility must also provide all documentation verifying eligible costs annually, as described in Section 10185.

Note: Authority cited: Sections 17179 and 17180, Education Code.
Reference: Section 17180, Education Code.