

## TEXT OF REGULATIONS

### CALIFORNIA CODE OF REGULATIONS

#### Title 4, Division 15, Article 2

#### State Charter School Facilities Incentive Grants Programs

##### Section 10176. Definitions.

The following words and phrases shall have the meaning as described below:

- (a) "Applicant" shall mean the charter school or educational management organization applying on behalf of a charter school for a grant under this article.
- (b) "Application" shall mean a completed State Charter School Facilities Incentive Grants Program (CFDA #84.282D) online application (Form CSFA 05-01, rev. 3/2016), incorporated herein by reference, as defined and developed by the Authority and available on its website, and all other documents required to be submitted to the Authority.
- (c) "Average Daily Attendance" (ADA) shall mean the unit of attendance as reported by the California Department of Education (CDE) for the second period of the school year.
- (d) "CALPADS" shall mean the enrollment information provided through the California Longitudinal Pupil Achievement Data System (CALPADS) to the CDE.
- (e) "CBEDS Report" shall mean the enrollment information provided through the California Basic Educational Data System (CBEDS) to the CDE.
- (f) "Charter School" shall mean a school meeting the definition of a charter school in Education Code section 47600, et seq. and also meeting the federal definition of charter school as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.
- (g) "Charter School Facility Grant Program" or "SB 740 Program" shall mean the state-funded per-pupil facility grant program established pursuant to Education Code section 47614.5.
- (h) "Chartering Authority" shall mean the governing board of the school district, county board of education, or the State Board of Education, that granted a school's petition to become a charter school pursuant to Education Code section 47605.
- (i) "Classroom-Based Instruction" shall have the meaning set forth in Education Code section 47612.5(e)(1).
- (j) "Davis-Bacon and Related Acts" shall mean the following federal acts: Davis-Bacon Act - 40 U.S.C. § 3141, et seq.; Fair Labor Standards Act - 29 U.S.C. § 201, et seq.; Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.; and Copeland "Anti-Kickback" Act - 40 U.S.C. § 3145 and 18 U.S.C. § 874.
- (k) "Enrollment" shall mean the number of pupils enrolled in a school as collected and reported by the CDE for grades K-12.
- (l) "Free and Reduced-Price Meals" (FRPM) shall mean the Free/Reduced Percentage as collected by the CDE, and reported by the CDE for grades K-12.
- (m) "Grantee" shall mean the California School Finance Authority (Authority), which will serve as the administrator of the grant and will make final award and disbursement decisions.
- (n) "Locale Code" shall mean a categorical code that the U.S. Department of Education has designated to identify the population density associated with a school's physical

location. Locale codes are derived by matching a school's physical location represented by an address with U.S. Census Bureau data.

- (o) "Low-income" shall refer to the percentage of pupils deemed to be eligible for free/reduced price meals as identified in the FRPM data for the school on file at the CDE and as identified in this section.
- (p) "National Center of Education Statistics (NCES)" shall mean the primary entity within the U.S. Department of Education responsible for collecting and analyzing data related to education.
- (q) "New Construction Eligibility" shall mean the result of the calculation determined in Education Code sections 17071.75 and 17071.76.
- (r) "Nonprofit Entity" shall mean an entity that is organized and operated for an exempt purpose as set forth in Internal Revenue Code section 501(c)(3) and whose net earnings may not inure to the benefit of any private shareholder or individual, or is organized and operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, section 5110, et seq.
- (s) "Program" shall mean the State Charter School Facilities Incentive Grants Program (CFDA #84.282D).
- (t) "Proposition 39 pro-rata payment" shall mean the pro-rata share payment that a charter school makes for use of a district-held property pursuant to Education Code section 47614(b)(1).
- (u) "Smarter Balanced Assessment System" shall mean the testing criteria required under the Common Core State Standards (CCSS) for English Language Arts/Literacy (ELA) and Mathematics as reported by the CDE.
- (v) "Subgrantee" shall mean an Applicant awarded Program funds on behalf of a charter school.

Note: Authority cited: Sections 17179 and 17180, Education Code. Reference: Sections 17180, 47605 and 47612.5, Education Code.

### **Section 10177. Eligible Applicant.**

Any Applicant shall be eligible to apply for a grant if all of the following conditions are met:

- (a) An approved charter has been awarded and is in place and current at the time of application and without interruption throughout the application review and approval process.
- (b) The charter school is in good standing with its chartering authority and is in compliance with the terms of its charter at the time of application submission, and 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. Charter schools have 60 days to cure any noncompliance deficiency identified by the charter authorizer. 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 relevant deadline.
- (c) The charter school has completed at least one school year of instructional operations under its current County-District-School (CDS) Code and charter number issued by the CDE at the time of application.

- (d) If a district-dependent charter school, the school can demonstrate operational and financial autonomy from its authorizing district.
- (1) Staff will use specific criteria to assess the charter school's degree of autonomy including, but not limited to, the following:
  - a. Governance Structure (e.g., governing board or entity as described in the school's charter):
    - i. Is elected or appointed independently of the chartering authority;
    - ii. Includes less than a majority of the current employees or appointees of the chartering authority; and
    - iii. Operates as and/or is operated by a nonprofit public benefit corporation.
  - b. Operations: The charter school governing board or entity as described in the school's charter maintains control over a majority of its operations (e.g., professional development, school year calendar, disciplinary policies and procedures, curriculum, graduation requirements, etc.).
  - c. Staffing:
    - i. Teachers and staff are employees of the charter school.
    - ii. The charter school retains a majority of decision making authority of all hiring, dismissal, work rule, employee assignment, and other personnel decisions and actions.
    - iii. The charter school governing board or entity as described in the school's charter has adopted its own employment policies and procedures.
  - d. Financial Decisions: The charter school governing board or entity as described in the school's approved charter exhibits control over the development and adoption of the charter school's budget, the receipt and expenditure of funds, business management ("back-office") services, audit services, purchasing and contracting decisions, and other financial matters in general.
- (2) Staff will review operational and financial documents related to the applicant charter school to determine autonomy on a case-by-case basis. When evaluating the relationship between a charter school and its authorizing district, staff may request any or all of the following:
  - a. Audits;
  - b. County treasury reports;
  - c. Fund 09 Reports;
  - d. Governing Board structure and member lists;
  - e. District and school employee lists;
  - f. Other documents as may be determined necessary by the Authority on a case-by-case basis.
- (e) The charter school is not a current subgrantee at the time of commencement of the grant period (September of each funding year).
- (f) At least eighty percent (80%) of the instructional time offered by the charter school shall be at the school site, and the charter school shall attain an ADA rate of at least eighty percent (80%) based on the school's most recent CALPADS or CBEDS report.
- (g) The charter school is established pursuant to Education Code section 47600, et seq., and also meets the federal definition of charter school as defined in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221(i)), as amended by the No Child Left Behind Act of 2001.
- (h) The charter school admits students by public lottery in the event more students want to attend the school than the school can accommodate and this process is outlined in the school's charter agreement.

- (i) The charter school is able to demonstrate to the satisfaction of the Authority that costs are eligible pursuant to Section 10178.
- (j) The charter school is in compliance with all other programs administered by the Authority, where applicable. Where an educational management organization (EMO) or parent organization has submitted an application on behalf of a charter school, the compliance of affiliate charter schools within the EMO or parent organization is not a requirement.
- (k) The charter school shall not operate as, or be operated by, a for-profit corporation, a for-profit educational management organization, or a for-profit charter organization.

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

### **Section 10178. Eligible Costs.**

- (a) Grant funds must be applied toward a charter school's costs of one of the following two options:
  - (1) Base rent, debt service, or Proposition 39 pro-rata payments for existing or new facilities.
    - (A) Projects for base rent receiving funds from the Charter School Facility Grant Program for the same site are ineligible to receive funds under this grant; or
  - (2) Purchase, construction, or renovation of a facility.
    - (A) Projects for renovation receiving funds from the Charter School Facility Grant Program for the same site are ineligible to receive funds under this grant.
- (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 commencement of the grant period. 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.
- (e) Grant funds may not be used to: ~~1) supplement any project funded through the Charter School Facilities Program (CSFP); 2) make Charter School Facilities Program (CSFP) payments to the State; or 3) satisfy a CSFP recipient's local matching share.~~
- (f) Grant funds must be expended and liquidated within the guidelines of this article and the Program.
- ~~(g) If a charter school applies for both the Program and the Charter School Facility Grant Program (CSFGP) for reimbursement of expenses incurred during the same fiscal year, the charter school shall only be eligible for the portion of expenses that is not reimbursable under the CSFGP. Where a charter school has multiple school sites, and the charter school applies for reimbursement for costs associated with a site for which reimbursement is not requested under the CSFGP, the charter school shall be eligible for such costs provided that they conform to the requirements set forth in Sections 10178 (a) – (f).~~

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, 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 fifty dollars (\$750) per student based on the eligible K - 12 grade student enrollment on file with the CDE, not to exceed seventy five percent (75%) of the annual eligible costs for the current year if available, or, based on prior year data if current year data is not available.
  - (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, construction, or 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 CDE, not to exceed seventy five percent (75%) of the total eligible project 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) If a charter school is determined to be eligible for an award under the Charter School Facility Grant Program (CSFGP) during the period of eligibility as a Program subgrantee following any specific funding round based on the same eligible lease costs, the following shall apply:
  - ~~(1) If the maximum grant award for the CSFGP is determined by 75% of eligible lease costs, no award shall be issued under the Program.~~
  - ~~(2) If the applicant's annual CSFGP award is based on the Average Daily Attendance (ADA) cap as defined in CSFGP Regulations Section 10170.2(e), the award shall be the lesser of: 1) the remaining portion of 75% facility costs not awarded by CSFGP or 2) \$750 multiplied by difference between enrollment and ADA.~~~~
- ~~(d) If a charter school is determined to be eligible for an award under the CSFGP during the period of eligibility as a Program subgrantee following any specific funding round based on eligible renovation costs for a specific school site, no award shall be issued under the Program for that school site.~~
- (e) 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. The Authority may, at its sole discretion, reduce grant awards to reflect changes in the subgrantee's enrollment, lease costs, or other circumstances.
- (f) Grant funds 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.

- (g) 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 10180. Application Submission.**

- (a) Application for grant funds shall be made on an online form prescribed by the Authority, and will be available as described below. The Authority will accept applications during the application periods described. One original application package must be received by the Authority during regular business hours by the final filing date. Applications received after the final filing date for each funding round will not be accepted for review and will be returned to the applicant. For organizations with more than one charter school, a separate application is required for each charter school applying for a grant.
- (b) If the application is not complete at the time of submission, the applicant will be notified of any deficiencies and asked to supply the missing information and/or documentation. Failure to provide the required additional information and/or documentation within the timeframe prescribed by and to the satisfaction of the Authority will result in the applicant being deemed ineligible.
- (c) The application and deadline dates for each funding round will be posted on the Authority's website in March of each year. Grant award determinations will be made no later than August 31st of each fiscal year.

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

### **Section 10181. Content of Application.**

Applications and all supporting documentation shall be submitted to the Authority via the online application system and shall include, but not be limited to the items listed in (a)-(j) below. Applications may not be submitted by email or facsimile.

- (a) Online application (CSFA Form 05-01, revised 3/2016).
- (b) Description of how an award of grant funds for facilities will be used.
- (c) Copy of a current, valid 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 a current, valid, fully executed 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 (LSQ) 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 a six-month timelines which demonstrates project readiness, 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 contractors or subcontractors on the project(s) assisted with these federal funds must be in compliance with Davis-Bacon and Related Acts. (40 U.S.C. § 3141, et seq.; 29 U.S.C. § 201, et seq.; 40 U.S.C. § 3701, et seq.; 40 U.S.C. § 3145; and 18 U.S.C. § 874). This section applies to the entire project, even when this grant funding is used to only fund a portion of the project and the other portions are paid for with other funding sources.
  - (3) The applicant's project and financial records are subject to audit and inspection by the Authority and the California State Auditor.
  - (4) Applicant has either disclosed all legal information as required in the LSQ, or has no legal information to disclose.
  - (5) Applicant will notify the Authority in writing at the time of project completion and will include evidence of project completion to the satisfaction of the Authority.
  - (6) Applicant will provide all documents and information required by law and meets all necessary requirements prior to the release of any funds.
  - (7) Applicant will immediately notify the Authority of any material change to the charter school's location, enrollment, student performance, charter status, or financial condition.
  - (8) For all construction, renovation, or purchase projects, a copy of the executed construction contracts and all required permits must be submitted to the Authority no later than one year from the award date and prior to any disbursements. Failure to comply shall result in the subgrantee being declared ineligible under the Program and the forfeited funds will immediately revert back to the Authority.

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 eligible for FRPM. Preference points assigned shall be based on data collected and reported by the CDE for grades K-12. The following sliding scale will be used to determine the number of preference points:

Percentage Eligible for Free and Reduced-Price Meals	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 CALPADS or CBEDS, or 2) meets the



criteria for the Critically Overcrowded School program based on the most current CALPADS or CBEDS, as identified for either program by the CDE, 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:

<b>Locale Code</b>	<b>Maximum Driving Distance in Miles</b>
<b>City/Urban</b>	3
<b>Suburban</b>	10
<b>Town/Rural</b>	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 application will receive 20 preference points.
- (d) Student Performance: If 60% of the charter school's students meet or exceed either the Smarter Balanced Assessment - English Language Arts/Literacy standard or the Smarter Balanced Assessment - Mathematics standard for the most recent year, to the extent data is available for all grades, the applicant will receive 20 preference points. Preference points will be based on data provided by the CDE.
- (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 options. The charter school may receive 10 points pursuant to subsection (e)(1) and 10 preference points pursuant to subsection (e)(2), to the extent data is available from CDE for all grades.
  - (1) Smarter Balanced Assessment - English Language Arts / Literacy standard: 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 a minimum of 50 percent of the same or similar grade levels assessed (grades 3 – 8 and 11) as the applicant charter school}~~ for which CDE has calculated Smarter Balanced Assessment - English Language Arts/Literacy standard data and a higher percentage of the applicant charter school's students met or exceeded the Smarter Balanced Assessment - English Language Arts/Literacy standard than did the traditional school's students for the most recent year, the applicant charter school will receive 10 preference points. Verification of Smarter Balanced Assessment - English Language Arts/Literacy standard data shall be based on data provided by the CDE. 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 or CDE website for the applicant charter school, no points will be awarded under this category.
  - (2) Smarter Balanced Assessment - Mathematics Standard: 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 a minimum of 50 percent of the same or similar grade levels assessed (grades 3 – 8 and 11) as the applicant charter school}~~ for which CDE has calculated Smarter Balanced

Assessment - Mathematics standard data and a higher percentage of the applicant charter school's students met or exceeded the Smarter Balanced Assessment - Mathematics standard than did the traditional public school's students for the most recent year, the applicant charter school will receive 10 preference points. Verification of Smarter Balanced Assessment - Mathematics standard data shall be based on data provided by the CDE. 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 or CDE 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 Program, the applicant charter school shall receive an additional 20 preference points.

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

### **Section 10183. Award Methodology.**

- (a) In each funding round, staff shall rank the applications based on the scores received, with the highest score based on preference points ranking first. In the event that more than one application has the same overall score, the application with the highest percentage in the low-income category will receive a higher ranking. If more than one application has the same overall score as well as the same low-income percentage, the application with the highest points in the overcrowded school district category will receive a higher ranking. If application of the tiebreaker described above results in more than one application still having the same ranking, applications with the earliest mailing time will be given preference. Applications that are hand-delivered and do not have a mailing time will be given preference in this situation based on the time received by the Authority.
- (b) If the application is not complete at the time of submission, the applicant will be notified of the deficiencies and asked to submit the missing information. Failure to provide the required additional information will result in the applicant being deemed ineligible.
- (c) For each funding round, the Authority shall make an initial award for each application, taking into account the ranking of all applications, the total amount of funds requested and the total amount of funds available. In the event total funds requested exceed total funds available, the Authority shall allocate funds beginning with the application scoring the highest ranking, and then proceed with the next highest rank until all funds have been awarded.

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

### **Section 10184. Approval of Grant and Notification of Subgrantee.**

Allocations approved by the Authority at a regularly scheduled board meeting shall be awarded as grants to subgrantees. Subgrantees will be notified in writing of the amount of the grant and the disbursement schedule within seven (7) business days of the board meeting.

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

### **Section 10185. Obligation and Expenditure of Grant Funds.**

- (a) 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 (3) years, which means that all funds must be obligated no more than three (3) years from when a grant is awarded and all funds must be liquidated no more than three (3) years and 90 days from when the grant was awarded by the Authority. The grant is deemed awarded and the grant period begins on the date stated in the Grant Agreement.
- (b) The end of the funding periods for the first five (5) funding rounds is designated by the U.S. Department of Education:
  - (1) The end of the funding period for funding rounds one (1) through five (5) was designated as September 30, 2013.
  - (2) The end of the funding period for funding rounds six (6) through ten (10) was designated as September 30, 2017.
  - (3) The end of the funding period for funding rounds 11-15 is currently targeted as September 30, 2019.
- (c) 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 (3) years of the end of the funding period will be awarded based on the amount of time remaining in the funding period.
- (d) Within one year of the grant award date, subgrantees that receive an award for purchase, construction, or renovation shall provide, in form and substance satisfactory to the Authority, any and all documents necessary to establish that the approved project has been initiated. Such subgrantees shall also provide the Authority with semi-annual progress reports and shall annually provide sufficient documentation, as determined by the Authority, to approve disbursements equal to one-third of the total award. Failure to draw down an amount equal to one-third of the total award annually will result in the loss of one-third of the total award, less any funds previously distributed in the applicable year. Funds will immediately revert to the Authority.
  - (1) In extraordinary circumstances and on a case-by case basis, the Authority may approve extensions to the one-third draw down requirement and allow subgrantees an additional time to draw down funds. Subgrantees will be required to submit a request for the extension in writing, including a statement of need to be evaluated by Authority. In no circumstances shall the extension be granted beyond the three-year grant term.
- (e) 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.
- (f) Subgrantees who fail to respond to inquiries and/or requests from Authority staff may be declared ineligible to continue participation in the Program. Should the Authority, at its sole discretion, deem a subgrantee nonresponsive, it shall be given 90 days to cure all outstanding issues to the satisfaction of the Authority. If all issues are not resolved to the full satisfaction of the Authority within this time, the subgrantee may be declared

ineligible to receive all remaining disbursements under the Program and the forfeited funds will immediately revert back to the Authority.

- (g) For lease or Proposition 39 subgrantees only, the Authority may increase an award in any year of the three (3) year grant term should the subgrantee's lease costs go up and additional funding become available.

(1) Increases to awards will be calculated and awarded based on the subgrantee's preference points at the time the award was made and based on the Evaluation Criteria cited in Section 10182. Subgrantees with the highest preference points for lease or Proposition 39 awards will be re-evaluated to determine the eligibility of the increased costs and the continued applicability of the preference points.

Subgrantees may receive additional funds, up to the increased lease amount, until all newly available funding has been allocated.

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

### **Section 10186. Approval of Grant Use Change.**

The Authority may, on a case-by-case basis, consider a change in the use of the grant funds if the subgrantee demonstrates, to the Authority's satisfaction, that the change is consistent with the Program, and this Article.

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

### **Section 10187. Grant Agreements.**

The terms and conditions of a grant shall be set forth in a grant agreement, which shall include, but not be limited to, all of the following terms and conditions:

- (a) The dates by which the grant funds must be legally obligated, expended and liquidated.
- (b) A provision that any unspent grant funds and any unspent investment earnings on such grant funds shall revert to the Authority.
- (c) Agreement to comply with this Article and federal requirements pertaining to the Program.
- (d) Agreement that the subgrantee will defend, indemnify, and hold harmless the Authority and the state, and all officers, trustees, agents, and employees of the same, from and against any and all claims, losses, costs, damages, or liability of any kind or nature, whether direct or indirect, arising from or relating to the grant and the project or the Program.
- (e) Agreement that the grant shall only be used for projects as described in the subgrantee's application and approved by the Authority.
- (f) Any audit provisions as required by the Authority and/or the U.S. Department of Education.
- (g) The charter school shall continuously maintain its good standing with the chartering authority and its compliance with the terms of the charter. The Authority reserves the right to contact the chartering authority directly seeking written verification that the school is in good standing and in compliance with the terms of its charter.
- (h) Applicants are required to notify the Authority within 30 days of any material changes to the charter school, including changes to the school name; facility address and lease

terms; enrollment charter status and charter authorizer; nonprofit status; financial condition; or scope of the project that occurs between the time of application and the time of completing the project and submitting the final performance report.

- (i) Current enrollment based on CALPADS or CBEDS is to be reported to the Authority within 30 days of the end of each Academic Year, until the time at which project completion and the final performance report is submitted.
- (j) In the event that the charter school is not in compliance with its charter authorizer or the charter is not in good standing, not renewed, or revoked at any time during the grant period, the subgrantee will advise the Authority within 30 days of notification of such action, including providing the Authority with a copy of the document provided by the chartering entity notifying the charter school of such action.
- (k) All subgrantees are required to submit two copies of a final performance report within 60 days after the expiration or termination of grant support.
- (l) The format of all performance reports will be provided by the Authority and will include information requested by the U.S. Department of Education.
- (m) Any other provisions required by the Authority and/or the U.S. Department of Education.

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 Authority that the charter school continuously meets the requirements of the grant program.

Applicants shall be afforded three options for disbursement of grant funds, depending on the use of the grant award:

- (1) Option One: Base Rent/Debt Service/Proposition 39 pro-rata payments. Under the first option, charter schools shall apply monthly disbursements of grant funds toward the eligible monthly costs of rent or debt service payments over a three-year period, if such costs are sufficiently documented to the Authority's satisfaction.
  - (A) Grant fund awards shall be released on the dates listed in the grant agreement.
  - (B) All disbursements of Grant fund awards shall be processed according to the schedule established by the Authority.
  - (C) All subgrantees shall submit documentation of continued eligibility on a semi-annual basis during the months of February and August.
  - (D) Documentation of continued eligibility shall include, but not be limited to, copies of the current charter and current lease(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.
  - (E) 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 relevant deadline.

- (F) Documentation of continued eligibility shall require submission of a completed LSQ (as may be amended from time to time) disclosing information relating to any legal or regulatory proceedings or investigations in which the subgrantee or its parent/subsidiary/affiliate is or has been a party and which might have a material impact on the financial or educational viability of the charter school. The responses to the LSQ and all supporting documents related to the responses will be reviewed by Authority staff and legal counsel prior to authorizing additional disbursements of grant funds.
  - (G) 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.
  - (H) 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.
  - (I) 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.
  - (J) 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.
- (2) Option Two: Construction/Renovation. Under the second disbursement option, charter schools shall have the choice of applying grant funds (equal to a three-year award) toward the costs of constructing or renovating a facility, if such costs are sufficiently documented to the Authority's satisfaction. Charter schools requesting the second option will be required to demonstrate project readiness at the time of application. Such project readiness may include, but not be limited to proof of site control for the term of the grant and detailed project plans and drawings.
- (A) Processing Disbursements:
    - 1. Requests for disbursement shall be processed when the Authority, in its sole discretion, determines that the invoices and supporting documents are complete.
    - 2. Repeated failure by the subgrantee to timely respond to Authority staff's request for additional documentation or information related

to disbursement requests may result in subgrantee being found ineligible to receive grant funds as described in Section 10185.

- (B) Subgrantees are required to draw down an amount equal to one-third of their total award within the first year of the grant term. Failure to draw down an amount equal to one-third of the total award annually will result in the loss of one-third of the total award, less any funds previously distributed in the applicable year. Funds will immediately revert to the Authority.
  - (1) In extraordinary circumstances and on a case-by case basis, the Authority may approve extensions to the one-third draw down requirement and allow subgrantees additional time to draw down funds. Subgrantees will be required to submit a request for the extension including a statement of need to be evaluated by Authority. In no circumstances shall the extension be granted beyond the three-year grant term.
- (C) All subgrantees shall submit documentation of continued eligibility on a semi-annual basis during the months of February and August.
- (D) Documentation of continued eligibility shall include, but not be limited to, copies of the current charter and current lease(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.
- (E) 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 relevant deadline.
- (F) Documentation of continued eligibility shall require submission of a completed LSQ (as may be amended from time to time) disclosing information relating to any legal or regulatory proceedings or investigations in which the subgrantee or its parent/subsidiary/affiliate is or has been a party and which might have a material impact on the financial or educational viability of the charter school. The responses to the LSQ and all supporting documents related to the responses will be reviewed by Authority staff and legal counsel prior to authorizing additional disbursements of grant funds.
- (G) 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.
- (H) 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.

- (I) 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.
  - (J) 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.
- (3) Option Three: Purchase. Under the third disbursement option, charter schools shall have the choice of applying grant funds (equal to a three-year award) toward the costs of acquiring a facility or land, if such costs are sufficiently documented to the Authority's satisfaction. Charter schools requesting the third 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.
- (A) Processing Disbursements:
- 1. Requests for disbursement shall be processed when the Authority, in its sole discretion, determines that the invoices and supporting documents are complete.
  - 2. Repeated failure by the subgrantee to timely respond to Authority staff's request for additional documentation or information related to disbursement requests may result in subgrantee being found ineligible to receive grant funds as described in Section 10185.
- (B) Subgrantees are required to draw down an amount equal to one-third of their total award within the first year of the grant term. Failure to draw down an amount equal to one-third of the total award annually will result in the loss of one-third of the total award, less any funds previously distributed in the applicable year. Funds will immediately revert to the Authority.
- (1) In extraordinary circumstances and on a case-by case basis, the Authority may approve extensions to the one-third draw down requirement and allow subgrantees additional time to draw down funds. Subgrantees will be required to submit a request for the extension in writing, including a statement of need to be evaluated by Authority. In no circumstances shall the extension be granted beyond the three-year grant term.
- (C) All subgrantees shall submit documentation of continued eligibility on a semi-annual basis during the months of February and August.
- (D) 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.
- (E) 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 relevant deadline.
- (F) Documentation of continued eligibility shall require submission of a completed LSQ (as may be amended from time to time) disclosing information relating to any legal or regulatory proceedings or investigations in which the subgrantee or its parent/subsidiary/affiliate is or has been a party and which might have a material impact on the financial or educational viability of the charter school. The responses to the LSQ and all supporting documents related to the responses will be reviewed by Authority staff and legal counsel prior to authorizing additional disbursements of grant funds.
  - (G) 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.
  - (H) 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.
  - (I) 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.
  - (J) 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.
- (b) 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.

### **Section 10189. Completion of Grant Funded Construction Project.**

- (a) The subgrantee shall certify to the Authority that the project is complete and, to the extent not already provided to the Authority, provide supporting documentation as follows:
  - (1) Construction and renovation projects require, prior to final disbursement, documentation including, but not limited to, copies of the certificate of occupancy, final payment certification by the architect, final payment request from the

contractor and corresponding copies of cancelled checks. If the subgrantee does not provide copies of cancelled checks, the subgrantee shall provide wire transfers, electronic fund transfers, or other evidence acceptable to the Authority in lieu of copies of cancelled checks.

- (2) Real property acquisition projects require a copy of the final closing statement with certification by the title company, to be received by the Authority within 60 days of the disbursement of grant funds.
- (b) If the subgrantee fails to complete the project within the project period, the Authority may require remedies, including forfeiture and return of all grant funds and any accrued interest thereon to the Authority.
- (c) The Authority reserves the right to conduct site visits to any charter school facility or project receiving a grant pursuant to this Article.
- (d) The Authority or Authority staff may seek third party verification regarding any and all applicable costs associated with the facility/project receiving a grant pursuant to this Article.

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

#### **Section 10190. Audits and Conflicts of Interest.**

- (a) The Authority and/or the Bureau of State Audits may conduct or require periodic audits to ensure subgrantees are using grant funds consistent with the requirements and the terms of the Program, the State Charter School Facilities Incentive Grant, and this article as approved. Subgrantees shall retain all documentation and financial data necessary to substantiate the purposes for which the grant funds were spent for a period of three years after the certification of completion of the project has been submitted or three years after the end of the funding period, whichever is longer.
- (b) Subgrantees must avoid apparent and actual conflicts of interest when administering grants from the U.S. Department of Education. Department regulations at 34 CFR 75.525(a) prohibit a person from participating in an administrative decision regarding a project if (a) the decision is likely to benefit that person or his or her immediate family members; and (b) the person is a public official or has a family or business relationship with the subgrantee. Section 75.525(b) provides further that a subgrantee may not permit any person participating in a project to use his or her position for a purpose that is - or gives the appearance of being - motivated by a desire for a private or financial gain for that person or for others.
- (c) When using federal funds to enter into a contract, a State or local entity receiving a grant must comply with 34 CFR 80.36. These standards require federal grant subgrantees to develop written procurement procedures and to conduct all procurement transactions in a manner that provides, to the maximum extent possible, open and free competition. No employee, officer, or agent of the subgrantee may participate in the selection, award, or administration of any contract supported by federal funds if a real or apparent conflict of interest exists.
- (d) When these funds are used for construction-related activities, such as constructing a school building, renovating an existing owned school facility, or making leasehold improvements, contractors or subcontractors on the projects assisted with these federal funds must be in compliance with Davis-Bacon and Related Acts. (40 U.S.C. § 3141, et

seq.; 29 U.S.C. § 201, et seq.; 40 U.S.C. § 3701, et seq.; 40 U.S.C. § 3145; and 18 U.S.C. § 874.)

- (e) The Authority reserves the right to conduct site visits to any charter school facility or project receiving a grant pursuant to this Article.

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

**Section 10191. Funding Contingency.**

- (a) This grant program is contingent upon the receipt of funds in each budget period as scheduled by the U.S. Department of Education.
- (b) Continuing apportionments to subgrantees will be contingent upon the subgrantee's eligibility to receive such apportionments.

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