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December 2, 2008

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: 01-TC-28
Grossmont Union High School District
Prevailing Wage Rate

Dear Ms. Higashi:

I have received the Commission Revised Draft Staff Analysis (DSA) issued on November 12, 2008, to which I respond on behalf of the test claimant.

The threshold issue, and our assertion, is that school and community college districts are required (both statutorily and "practically compelled") to provide facilities (construct, remodel, and repair buildings) for the instruction of students. If so mandated, then the Public Contract Code mandates contracting with private construction companies, when costs are above insignificant threshold amounts, after a public bidding process. The Labor Code then mandates that the project must comply with the prevailing wage law, which includes a labor compliance program operated by the districts in certain circumstances. Reliance on state funding (and implementation of the rules that are a condition of participation) is required because local revenue raising power has proven insufficient, a finding of fact by the Legislature.[1]

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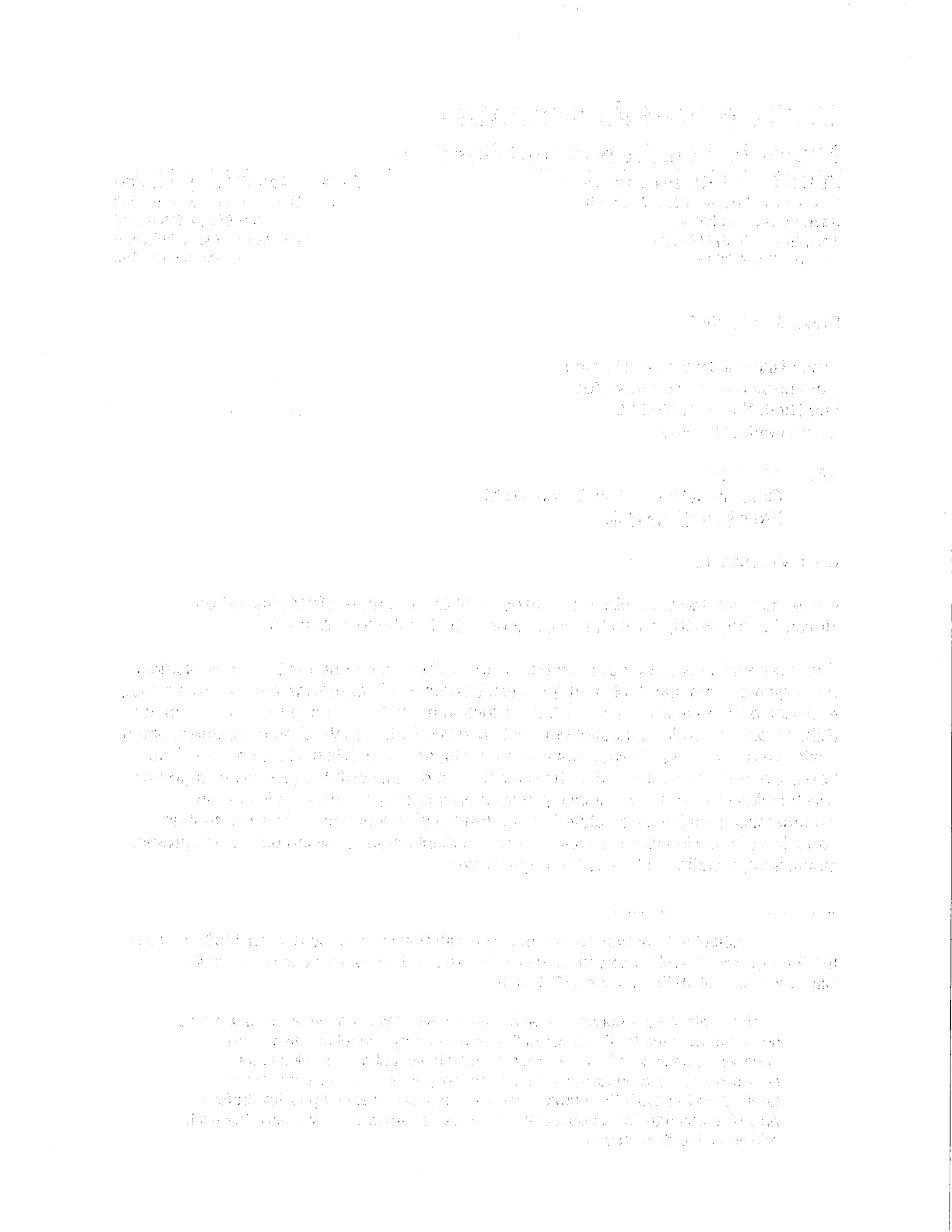
[1] Chapter 14 of Part 10, commencing with Education Code Section 17085 is entitled the "Emergency School Classroom Law of 1979" and is cited as the State Relocatable Classroom Law of 1979. Section 17086 states:

> . . .the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities. The Legislature considers that the greatest need in school construction is for classrooms for the education of public school pupils. It is the intent of the Legislature to satisfy this primary need to the greatest extent possible before providing any additional educational facilities, regardless of how desirable such additional facilities may be.



The DSA (41) finds that there is statutory compulsion for ". . . K-12 school districts and community college districts to undertake public works projects to repair and maintain facilities and property . . ." However, the DSA determines that there is no similar legal compulsion for any public works projects that do not involve repair or maintenance.

Local Districts Are Required to Construct Facilities and Use State Funds

Article IX, Section 5, of the California Constitution requires the Legislature to " . . . provide for a system of common schools by which a free school shall be kept up and supported in each district . . ." The Constitution makes public education a matter of statewide rather than local concern. (*Levi v. O'Connell* (2006) 144 Cal.App.4th 700, 706 fn.3.) The Legislature's power over the public school system is plenary, subject only to constitutional restraints. (*Wilson v. State Bd. Of Educ.* (1999) 75 Cal.App.4th 1125, 1134.) "Where the Legislature delegates the local functioning of the school system to local boards, districts or municipalities, it does so, always, with its constitutional power and responsibility for ultimate control for the common welfare in reserve." (*Id.* at p.1135 quoting *Phelps v. Prussia* (1943) 60 Cal.App.2d 732, 738.)

The Legislature has stated repeatedly that it is an obligation and function of the state to provide adequate schools sites and buildings for the public school system and has delegated this duty to local districts.[2] Indeed, there is a tremendous unmet need for

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[2] Chapter 4 of Part 10 of Division 1 of Title 1 of the Education Code sets forth the State School Building Aid Law of 1949, commencing with Education Code Section 15700. Section 15700 provides:

> The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary and adequate school sites and buildings for the pupils of the public school system, the system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.
>
> In adopting this act, the Legislature considers that the great need in school construction is for adequate classrooms for the education of the pupils of the public school system . . .To the end that school classrooms may be made available at once and to all school districts in need of such classrooms . . . (emphasis supplied)

Chapter 6 contains the State School Building Aid Law of 1952, commencing with Education Code Section 16000. Section 16001 provides:

> The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary schoolsites and buildings for the pupils of the public school system, this system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.
>
> In adopting this chapter, the Legislature considers that the great need in school construction is for classrooms for the education of the pupils of the public school

new construction and modernization. The California Department of Education estimated as of September 2007 that 16 new classrooms and 21 modernized classrooms *per day* are needed. See "School Facilities Fingertip Facts," attached. Also see attached "An overview of the State School Facility Programs (September 2007)" for a brief summary of the funding programs available to enable local school districts to

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> system . . .To the end that school classrooms may be made available at once and to all school districts in need of such classrooms . . . (emphasis supplied)

Article 9 of Chapter 6, commencing with Education Code Section 16310, is entitled School Housing Aid For Rehabilitation and Replacement of Structurally Inadequate School Facilities. Section 16312 states:

> The Legislature hereby declares that it is in the interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities inasmuch as the education of children is an obligation of the state, and the obligation carries with it a corresponding responsibility for the physical safety of children while attending school. (emphasis supplied)

Chapter 8 of Part 10 contains the Urban School Construction Aid Law of 1968, commencing with Education Code Section 16700. Section 16701 provides:

> The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid urban school districts of the state in reconstructing, modernizing, or replacing schoolsites and buildings for pupils of the public school system who are now housed in substandard schools . . .

Chapter 12 of Part 10 establishes the "Leroy F. Greene State School Building Lease-Purchase Law of 1976", commencing with Section 17000. Section 17001 states:

> (a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.(emphasis supplied)

Chapter 15 of Part 10, commencing with Section 17100, established the School District Revenue Bond Act. This Act is based on the finding of the legislature that:

> The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts. (emphasis supplied)

build facilities. Once the local districts are funded, hundreds of state statutes and regulations govern all aspects of planning and building new school facilities. Numerous helpful publications have been issued by the California Department of Education and the Office of Public School Construction. Regardless, the actual construction of the facilities is the responsibility of the local school districts to be accomplished pursuant to these state rules when utilizing state funds.

School districts are determined by geographic boundaries, and must accommodate students within their boundaries as required by the free school guarantee. Children are required to attend school by Education Code Sections 48200 et al, which set the parameters of compulsory education. Therefore, children are compelled to attend school, and school districts are compelled to enroll them and provide facilities for their instruction. Community college districts have a similar legal compulsion to accommodate students pursuant to Section 76000.

There are also specific statutory requirements for providing school facilities. Governing boards are legally required to build new school facilities when there is a vote by the district directing them to do so, as required by Education Code Section 17340. Section 17573 requires the governing board to provide a "warm, healthful place" for children to eat their lunches. Section 17576 requires that sufficient restrooms are provided. If a school facility is found to be unsafe, Education Code Sections 17367 and 81162 (pertaining to K-12 school districts and community college districts respectively) require that the governing board adopt a plan to either repair, reconstruct, *or replace* the unsafe school building.

The DSA (39) relied on a statement in *People v. Oken* for the proposition that school district governing boards have wide discretion in constructing school facilities. However, this statement must be viewed in context of the facts of that case. It concerned a private citizen attempting to require a school district to build a school building on a specific piece of property. Therefore, despite the broad language used, the holding of the court was only that a private individual could not maintain an action to dictate where or when a school must be built. The court did not even consider whether school districts were required to supply sufficient school facilities. ". . . [A] decision is not authority for what is said in the opinion but only for the points actually involved and actually decided." (*Childers v. Childers* (1946) 74 Cal.App.2d 56, 61) Thus, this case cannot be used for the proposition that there is no legal compulsion on K-12 school districts to provide adequate school facilities.

Contrary to the conclusion of the DSA (41), school districts are also practically compelled to construct new school facilities when existing facilities become inadequate. The decision to build new school facilities is *not* analogous to the decision to exercise eminent domain in *City of Merced.* In that case, the court determined that the city's choice of eminent domain *as a method to obtain property* was discretionary. It did not consider the city's determination that it needed to obtain property in the first place, only the discretionary action of choosing eminent domain as the preferred method. In *Kern High School District*, the focus of the court was on the fact that the underlying programs

were voluntary and extracurricular. The district could simply stop participating and the only consequence would be the loss of related funding.

If the decision to build new school facilities is truly voluntary, then school districts would have multiple ways of responding to the need, as in *City of Merced*, or could simply choose not to respond, as in *Kern*. If this were true, K-12 and community college school districts would be able to turn away students within their geographic boundaries once existing facilities had met their capacity. Or accommodate additional students by setting up desks on the soccer fields. Neither of these is a tenable or legal option. Therefore, K-12 and community college districts are legally and practically compelled to undertake public works projects to construct new facilities, replace existing facilities when needed, and repair and maintain current facilities.

The Legislature has not provided local districts sufficient taxing authority.[3] This has

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[3] A District's Ability to Borrow is Strictly Limited

The authority to issue local school bonds is found in Chapter 1 of Part 10 in Division 1 of Title 1 of the Education Code, commencing at Section 15100. This authority is strictly limited. Education Code Section 15100 allows a district, when in its judgment it is advisable, and upon a petition of the majority of its qualified electors requires it, to order an election and submit to the electors of the district the question of whether the bonds of the district shall be issued and sold for the purpose of raising money for the purchase of school lots, the building or purchasing of school buildings, and the making of alterations or additions to school buildings. Section 15102 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district. Section 15106 provides that unified school districts or community college districts may not exceed 2.5 percent of the taxable property of the district.

Chapter 1.5 of Part 10 sets forth the Strict Accountability in Local School Construction Bonds Act of 2000, commencing with Section 15264. ("Proposition 39 bonds") Here again, bonded indebtedness is strictly limited. Section 15266 provides that the Act is an alternative to authorizing and issuing bonds pursuant to Chapter 1 or Chapter 2 (commencing with Section 15300) when the governing board of a school district or community college district decides, pursuant to a two-thirds vote, to pursue the authorization and issuance of bonds for school facilities. Section 15268 provides that such bonded indebtedness shall not exceed 1.25 percent of the taxable property of the district and may only be issued if the tax rate levied would not exceed thirty dollars ($30) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. Section 15270 provides that a unified school district may not authorize or issue bonds that exceed 2.5 percent of the taxable property of the district and may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars ($60) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.

Chapter 2 of Part 10 sets forth the Bonds of School Facilities Improvement Districts Act, commencing with Education Code Section 15300. Here again, bonded indebtedness is strictly

been further exacerbated by Proposition 13, which eliminated the ability of local school districts to levy additional special property taxes to pay off their facility indebtedness. Proposition 13 capped the ad valorem tax rate on real property at one percent of its value, thereby reducing the income from property taxes to such an extent that it virtually eliminated this source as a means of additional bonding capacity.

The test claimant requests that the Commissioners make findings that:

-The state has delegated the duty to local school and college districts to repair, construct, and maintain school facilities.
-Since the local districts are required to bid and contract such work as public works projects, the relevant Public Contract Code and Labor Code sections adopted after 1974 are costs mandated by the state upon the local districts for which no state subvention has been provided.
-Because the Legislature has not provided local districts the taxing power to adequately fund this construction, the local districts must rely upon state funds. Therefore the statutes, state regulations, and executive orders controlling the use of these funds are costs mandated by the state upon the local districts for which no state subvention has been provided.

Based on these findings, the Commissioners should direct staff to reevaluate the test claim and prepare a new proposed statement of decision consistent with these findings.

Specific Activities Mandated

Coverage Determinations - Title 8, California Code of Regulations, Section 16001

CCR Section 16001 provides the procedures to be followed when a coverage determination is requested from the Director of Industrial Relations. The DSA (47) concludes that " . . . no activities are required of the awarding body by this regulation." This determination is based on the requirement that the awarding body "shall forward" documents it "wishes to have considered" and the conclusion that the actions are therefore discretionary. However, subsection (a)(3) commands that "[a]ll parties to the coverage determination request shall have a continuing duty to provide the Director . . . with relevant documents in their possession or control, until a determination is made." The school district, as the awarding body, is necessarily a party to any coverage

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limited. Section 15300 provides that the chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by the school facilities improvement district. Section 15330 (repealed 2007) provides that the total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the school facilities improvement district. Section 15334.5 further provides that no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106.

determination request. Therefore, the district is required by this regulation to provide all relevant documents to the Director of Industrial Relations, and the regulation does impose a mandated activity.

Ineligible Contractors and Subcontractors - Labor Code Section 1777.1 and Title 8, California Code of Regulations, Sections 16800 through 16802

The DSA (48) concludes that no activities are imposed on the awarding body by these sections because the sections outline duties of the Labor Commissioner and Division of Labor Standards Enforcement (DLSE). However, the sections also include duties imposed on awarding bodies. Title 8, CCR Section 16801(b) requires an awarding body to " . . . in accordance with Labor Code Section 1776(g), inform prime contractors of the requirements of Labor Code Section 1776, and any other requirements imposed by law, in order to assist DLSE with an investigation pursuant to Labor Code 1777.1."

Further, Title 8, CCR Section 16801(a)(2) grants a respondent to hearings conducted as a result of the DLSE investigation the power to call witnesses and issue subpoenas. If a school district, as the awarding body, receives a subpoena in connection with one of these hearings, then it must respond and any actions taken in response are mandated activities. Therefore, the requirement to inform prime contractors of the requirements of Labor Code Section 1776 and any response required by a subpoena authorized under this section are state-mandated activities under Ttile 8, CCR Section 16801.

Withhold and Retain Contract Payments to Satisfy Civil Wage and Penalty Assessments - Labor Code Section 1727

The DSA (55) states that Labor Code Section 1727 imposes a state-mandated activity where it requires awarding bodies to withhold payments or receive money withheld by the contractor from a subcontractor. However, it comes to the contrary conclusion that no activity is mandated by subsection (a) when it "*prohibits* the awarding body from disbursing the withheld money until a final order" (emphasis in original) is received. The last section of subsection (a) simply imposes a time limitation for the act of withholding the money. Therefore, Section 1727 imposes a state-mandated activity requiring awarding bodies to withhold payments or receive money withheld from a subcontractor until a final order is received.

Labor Compliance Program

The DSA (59) concludes that school districts are not mandated to implement a Labor Compliance Program (LCP) and therefore none of the activities that flow from implementation of an LCP are mandated activities. However, there are circumstances where school districts are legally compelled to initiate an LCP. One such instance occurs when school districts are participating in a design-build contract pursuant to Education Code Section 17250.10 et seq. Section 17250.30 (d) requires that "The school district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the labor code . . ." if the district has not

entered into a collective bargaining agreement that covers all contractors working on the project. Education Code Section 81704 contains an identical provision governing community college districts.

Further, school districts are practically compelled to initiate an LCP by the need to provide adequate facilities, and the substantial funds available from the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004. Pursuant to Labor Code Section 1771.7, school districts using funds derived from these acts shall initiate and enforce an LCP. As previously discussed, school districts have a duty to provide adequate facilities for instruction. As noted in the DSA (57, 58), substantial funds are provided by these acts for the purposes of building new facilities and remodeling or modernizing existing facilities. Therefore, to the extent that a school district public works project qualifies for funding from the Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 it is practically compelled to accept these funds, and is required to initiate an LCP. Under certain circumstances, school districts are either legally or practically compelled to initiate an LCP, and therefore the related activities are mandated by the state.

Hearings and Court Proceedings

The DSA (61) concludes that awarding bodies are not required ". . . to engage in any hearing activities, respond to writs of mandate, or participate in settlement meetings, unless the awarding body is voluntarily exercising enforcement authority under Labor Code section 1726 or 1771.5." However, as discussed previously, there are situations where a school district is legally or practically compelled to initiate an LCP under Section 1771.5. In those instances, the district's participation in hearings and court proceedings is mandated. Further, when the proceedings stem from actions by the joint labor-management committee, the awarding body is a necessary party to the action. As such, the awarding body must cooperate with the court or hearing officer and respond to related orders. It cannot simply choose to ignore directives of the court or an administrative body. Thus, school district participation in settlement meetings, hearing activities, and court proceedings is a mandated activity.

New Program or Higher Level of Service

The DSA concludes in several instances that some of the program requirements do not impose a new program or higher level of service because they shift responsibility from the districts to the state and constitute "a lower level of service on the part of the district." This ignores the fact that the test is on the new or increased level of services provided by the local government agency to the public, not of the *number* of all or different services before and after the mandate legislation.[4] Any duty shifted to the

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[4] According to the court in *San Diego Unified School District v. Commission on State Mandates* (33 Cal.4th 859, 878):

The statutory requirements here at issue . . . reasonably are viewed as providing

districts previously required of the state agency would be a new program for the districts, even when those duites predate 1975, which is not a consistent finding in the DSA.

Obtain Prevailing Wage Rate

Labor Code Section 1773 and CCR Sections 16202 and 16204 require an awarding body to obtain the prevailing wage rates from the Director of Industrial Relations and ensure that the correct rates are used. The DSA (65) acknowledges that this scheme differs materially from the prior version of Section 1773, which required the awarding body to ascertain and determine prevailing wage rates. Thus, the provisions of these sections satisfy the first prong of the test for a new program or higher level of service within the meaning of Article XIII B, Section 6 of the California Constitution.

Take Cognizance of and Report Suspected Violations

The DSA (74, 76) acknowledges that Labor Code Section 1726 imposes a new requirement on awarding bodies to report suspected violations, but then concludes that the requirements do not impose a new program or higher level of service because they shift responsibility from the districts to the state and constitute "a lower level of service on the part of the district." This conclusion improperly places the emphasis on the number of activities required from a local agency, rather than the service provided to the public. By shifting the investigatory and enforcement responsibilities to the state, a higher level of service is provided to the public because there is greater visibility and oversight, and the state has greater resources then the awarding bodies to pursue the investigations. Therefore, as part of a scheme providing a higher level of service to the public, the district's responsibility to report suspected violations is a reimbursable activity

Mandated Costs

Certified Payroll Records

The DSA (79) concludes that there are no costs mandated by the state for responding to a request for certified payroll records under Labor Code Section 1776 because a fee of $1 for the first page and 25 cents for each subsequent page is authorized. This determination is based on the fact that there is no evidence in the record that these fees will not be sufficient to cover the associated costs. However, there is also no evidence in the record that the fees *are* sufficient. Further, there is no guarantee that the fees will be increased to accommodate inflation, or that they will be adjusted if experience demonstrates that they are not sufficient. Finally, the rates are dependent

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> a "higher level of service" to the public under the commonly understood sense of that term: (i) the requirements are new in comparison with the preexisting scheme . . . and (ii) the requirements were intended to provide an enhanced service to the public . . .

on the number of pages requested. The act of making the redactions is also dependent on the length of the document, but the process of sending an acknowledgment, requesting the records, and providing them to the requester is not in any way correlated with the number of pages. Thus, it is quite possible that the staff time and other costs will exceed the authorized fees. There should not be a denial of increased costs on this basis. Instead, claimants should be required to deduct any fees received as offsetting revenue.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

Attachments

C: Per Mailing List Attached

DECLARATION OF SERVICE

Re: Test Claim 01-TC-28
Prevailing Wage Rate
Grossmont Union High School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant. I am 18 years of age or older and not a party to the entitled matter. My business address is 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.

On the date indicated below, I served the attached letter dated December 2, 2008, with attachments, to Paula Higashi, Executive Director, Commission on State Mandates, to the Commission mailing list dated 11/12/08 for this test claim, and to:

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

❑ **U.S. MAIL:** I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.

❑ **OTHER SERVICE:** I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

(Describe)

❑ **FACSIMILE TRANSMISSION:** On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.

❑ A copy of the transmission report issued by the transmitting machine is attached to this proof of service.

❑ **PERSONAL SERVICE:** By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 2, 2008, at Sacramento, California.

Kristin M. Smith

Commission on State Mandates

Original List Date: 7/8/2002
Last Updated: 4/26/2007
List Print Date: 11/12/2008
Claim Number: 01-TC-28
Issue: Prevailing Wage Rate

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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[No. C051722. Third Dist. Nov. 7, 2006.]

LEILA J. LEVI et al., Plaintiffs and Appellants, v. JACK O'CONNELL, as Superintendent of Public Instruction, etc., et al., Defendants and Respondents.

(Superior Court of Sacramento County, No. 04AS00459, Raymond Cadei, Judge.)

(Opinion by Cantil-Sakauye, J., with Scotland, P.J., and Morrison, J., concurring.)

COUNSEL

The Pro-Family Law Center, Richard D. Ackerman for Plaintiffs and Appellants.

Allan J. Keown for Defendants and Respondents. **[144 Cal.App.4th 703]**

OPINION

CANTIL-SAKAUYE, J.-

In this case we consider whether the California Department of Education (CDE) fn. 1 is required to pay for the college education of an extremely gifted student under the age of 16. We conclude it is not. We shall affirm the judgment of dismissal of plaintiffs' action entered following the trial court's sustaining of CDE's demurrer without leave to amend.

FACTUAL AND PROCEDURAL BACKGROUND

On February 9, 2004, Leila J. Levi (Levi) filed an original complaint against CDE on behalf of herself and as guardian ad litem for her 13-year-old son Levi M. Clancy (Clancy) (together plaintiffs). After the trial court sustained CDE's general demurrer with leave to amend, plaintiffs filed a first amended complaint. The first amended complaint alleges Clancy, born on October 12, 1990, is a highly gifted child required, as a minor under the age of 16, to attend school under the Compulsory Education Law. (Ed. Code, § 48200, et seq.) The first amended complaint alleges, "Clancy cannot attend a traditional K-12 school because the schools operated by CDE, and Clancy's local district, are ill-equipped and unsuitable for highly gifted children and will actually cause more harm to him than if he simply did not attend. Specifically, they cannot provide for his specific psycho-social and academic needs. Additionally, he has already completed a standard education within the **[144 Cal.App.4th 704]** K-12 academic system currently provided for by CDE." (Capitalization changed.)

According to the first amended complaint, Clancy started attending Santa Monica College when he was seven, passed the California High School Proficiency exam when he was nine, and began attending the University of California at Los Angeles (UCLA) when he was 13. Levi is a single mother and single income earner in her household who cannot afford to continue paying for Clancy's education at UCLA. The first amended complaint alleges CDE is constitutionally required to provide Clancy with an adequate and suitable free and equal education while he is a minor under the age of 16.

The complaint alleges three causes of action; the first for declaratory relief and/or a writ of mandate, the second for violation of the equal protection clause of California's Constitution, and the third for damages under the federal civil rights statute. (42 U.S.C.S. § 1983.) The complaint seeks a writ of mandate compelling CDE to provide Clancy with a fair, equal, and funded education suited to his personal needs, a declaratory judgment setting forth the rights and obligations of the parties to this case, general damages as well as special damages in the form of payment of the expenses associated with Clancy's education at Santa Monica College and UCLA, attorney fees, and costs of suit. The trial court sustained CDE's demurrer to all three causes of action without leave to amend and entered a judgment of dismissal.

On appeal plaintiffs challenge the trial court's sustaining of CDE's demurrer to their first cause of action for declaratory relief and/or a writ of mandate. They also claim public policy supports their position on appeal because they are asking for nothing more than what California already offers to students with special needs. They do not challenge the sustaining of CDE's demurrer to their second and third causes of action. fn. 2 In their brief on appeal, plaintiffs admit they are asking this court to establish an education voucher for Clancy's college education during his years of mandatory school attendance. We decline to do so. **[144 Cal.App.4th 705]**

DISCUSSIONI. *Standard of Review*

"On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.]" (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967; see *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) On appeal we review the legal sufficiency of the complaint de novo, "i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law. [Citation.]" (*Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790.) The question before us is whether "the plaintiff has stated a cause of action under any possible legal theory. [Citation.]" (*Aubry v. Tri-City Hospital Dist., supra*, at p. 967.)

II. Plaintiffs' Cause of Action For Declaratory Relief

While Clancy is under the age of 16 and subject to the compulsory full-time education requirements, plaintiffs claim CDE legally owes him an adequate, free and equal education providing for his specific individualized needs. If Clancy is not provided with the funding necessary to attend a university appropriate to his learning needs, plaintiffs claim they will be

forced to violate the compulsory education law. In their first cause of action, plaintiffs allege these circumstances give rise to a justiciable controversy over the parties' respective rights and duties entitling them to declaratory relief. Plaintiffs primarily rely on section 5 of article IX of the California Constitution (section 5). However, they also claim education guarantees under unspecified parts of the United States Constitution, the federal No Child Left Behind Act of 2001 (20 U.S.C. § 6301 et seq.), and the federal Individuals with Disability Education Act (IDEA). (20 U.S.C. § 1400 et seq.) Plaintiffs claim there exists a related controversy as to whether Clancy was excluded from the class of children protected by California's special education law. (Ed. Code, § 56000 et seq.)

On appeal, plaintiffs claim the trial court erred in concluding they had not stated a cause of action for declaratory relief because they are entitled to a judicial declaration of the educational rights of an extremely gifted child. **[144 Cal.App.4th 706]**

[1] "'The fundamental basis of declaratory relief is the existence of an actual, present controversy over a proper subject.'" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79, quoting 5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 817, p. 273.) CDE contends plaintiffs have failed to allege facts sufficient to establish an actual controversy between themselves and CDE independent of the current lawsuit. (*City of Cotati v. Cashman, supra,* at p. 80; *California Assn. of Private Special Education Schools v. Department of Education* (2006) 141 Cal.App.4th 360, 377-378; *Brownfield v. Daniel Freeman Marina Hosp.* (1989) 208 Cal.App.3d 405, 410.) We disagree. The first amended complaint alleges sufficient specific facts regarding Clancy's present educational circumstances to establish an actual, current controversy concerning CDE's constitutional and statutory obligation to fund an appropriate education, in this case a college education, for Clancy.

CDE contends plaintiffs have not sufficiently pled a cause of action for declaratory relief because there is no right on the part of plaintiffs to or corresponding duty on the part of CDE to provide the relief plaintiffs seek.

[2] "'Strictly speaking, a general demurrer is not an appropriate means of testing the merits of the controversy in a declaratory relief action because plaintiff is entitled to a declaration of his rights even if it be adverse.' [Citations.] However, 'where the issue is purely one of law, if the reviewing court agreed with the trial court's resolution of the issue it would be an idle act to reverse the judgment of dismissal for a trial on the merits. In such cases the merits of the legal controversy may be considered on an appeal from a judgment of dismissal following an order sustaining a demurrer without leave to amend and the opinion of the reviewing court will constitute the declaration of the legal rights and duties of the parties concerning the matter in controversy.' [Citations.]" (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 24.) The issue here is purely a question of law, which we resolve adversely to plaintiffs.

[3] The California Legislature has been constitutionally required to provide for a system of common schools in California since the first state Constitution was adopted in 1849. fn. 3 (Cal. Const., art IX, § 3.) Since the Constitution of 1879 this constitutional requirement has included a free school guarantee. (Cal. Const., art. IX, § 5; *Hartzell v. Connell* (1984) 35 Cal.3d 899, 906 (*Hartzell*).) Specifically, section 5 provides, "The **[144 Cal.App.4th 707]** Legislature shall provide for *a system of common schools by which a free school shall be kept up and supported in each district* at least six months in every year, after the first year in which a school has been established." (Cal. Const., art. IX, § 5, italics added.)

[4] In section 5, the use of "the term 'system' itself imports a unity of purpose as well as an entirety of operation, and the direction to the Legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools within the state." (*Kennedy v. Miller, supra,* 97 Cal. at p. 432, italics omitted.) Under section 5, the "educational system must be uniform in terms of the prescribed course of study and educational progression from grade to grade." (*Serrano v. Priest* (1971) 5 Cal.3d 584, 596, superseded by statute as stated in *Crawford v. Huntington Beach Union High School Dist.* (2002) 98 Cal.App.4th 1275, 1286; see *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 669, 673 (*Piper*).) California children have an enforceable right to attend such a school (*Piper, supra,* at p. 669) and to participate without paying fees in all of the educational activities - curricular or extracurricular - offered by such schools. (*Hartzell, supra,* 35 Cal.3d at p. 911.)

However, this still leaves the question - what are the "common schools" of the state that must be provided free under a single uniform statewide system? The early case of *Los Angeles County v. Kirk* (1905) 148 Cal. 385 (*Kirk*), provides the answer. In *Kirk* the California Supreme Court rejected a county's attempt to compel the Superintendent of Public Instruction to include the average daily attendance of kindergarten students in his apportionment of the State School Fund to the various counties. The high court held the fact that the Legislature declared a kindergarten adopted by a district to be part of the public primary schools did not operate to bring it within the uniform and mandatory system of common schools of the state. (*Id.* at pp. 390-391.) The court distinguished the public schools designated by section 6 of article IX of the California Constitution from the common schools of section 5, which it concluded were those schools of the state identified in section 6 of article IX as being exclusively supported by the State School Fund. (*Los Angeles County v. Kirk, supra,* at pp. 388-389.)

[5] Section 6 of article IX of the California Constitution has since been amended a number of times and now provides, in relevant part, "[t]he Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, ..." However, the same section now provides: "The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for **[144 Cal.App.4th 708]** the support of, and aid to, *kindergarten schools, elementary schools, secondary schools, and technical schools* . . . ." (Cal. Const., art. IX, § 6, italics added.) [6] Applying the reasoning of *Kirk, supra,* 148 Cal. 385, the common schools of California under section 5 are the schools that provide what has become known as grades K through 12. Colleges and universities are not included. That is, section 5 constitutionally provides for a single standard and uniform system of free public K-12 education. The free school guarantee of section 5 does not provide for free college education.

[7] Nor does the free school guarantee mandate K-12 education individually tailored to each student's specific and particularized needs. Section 5 requires the state to maintain a regular, standard system of public K-12 education. (*Kennedy v. Miller, supra,* 97 Cal. at p. 432; *Serrano v. Priest, supra,* 5 Cal.3d at p. 596; *Piper, supra,* 193 Cal. at pp. 669, 673.) fn. 4

Naturally, such standard system should provide a high quality education for all the students of our state. State and federal law recognizes this. The federal No Child Left Behind Act of 2001 states: "The purpose of this title [20 USCS §§ 6301 et seq.] is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments." (20 U.S.C. § 6301.) California has adopted programs to implement the requirements of the federal No Child Left Behind Act. (See, e.g., Ed. Code, §§ 52055.57, 52058.1, 52059.) California administers achievements tests (Ed. Code, §§ 60640) and a high school exit examination. (Ed. Code, § 60851.) California monitors its schools through a public school performance accountability program. (Ed. Code, § 52051 et seq.) However, plaintiffs have not cited us to, and we have not found, anything in the federal No Child Left Behind Act or the implementing California law that requires K-12 public education meet every student's particularized educational needs. fn. 5 **[144 Cal.App.4th 709]**

[8] The Legislature has declared its intent that "all *individuals with exceptional needs* have a right to participate in free appropriate public education and special educational instruction and services for these persons are needed in order to ensure the right to an appropriate educational opportunity to meet their unique needs." (Ed. Code, § 56000, italics added.) However,

the term "individuals with exceptional needs" as used in this statute is specifically defined as children who have been identified as having a disability within the meaning of "subparagraph (A) of paragraph (3) of Section 1401 of Title 20 of the United States Code [IDEA]." (Ed. Code, § 56026, subd. (a).) The term "child with a disability" is defined by the referenced section of the IDEA as a child who needs special education and related services by reason of mental retardation, hearing impairments, speech or language impairments, visual impairments, a serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities. (20 U.S.C. § 1401, subd. (3)(A).)

Plaintiffs' first amended complaint alleges Clancy is a highly gifted child who began attending college at seven, passed the high school exit exam at nine, and started attending UCLA when he was 13. It is alleged he has completed a standard education within the K-12 academic system. There are no allegations he needs special education and related services by reason of any of the disabilities or impairments listed in the IDEA. Therefore, he does not come within the provisions of the IDEA and he is not a child with exceptional needs as defined by California's special education law. (Ed. Code, § 56000 et seq.) We also note the "free appropriate public education" guaranteed by the IDEA is limited to appropriate preschool, elementary and secondary education. (20 U.S.C. § 1401, subd. (9)(C).) The IDEA does not guarantee appropriate free college education.

[9] Plaintiffs argue the mandate to provide an education suited to the specific needs and abilities of each child was recognized in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564 (*Hayes*). *Hayes* is a subvention case and the issue on appeal in *Hayes* was whether certain special education programs for children with disabilities "constituted new programs or higher levels of service mandated by the state entitling the school districts to reimbursement under section 6 of article XIII B of the California Constitution and related statutes for the cost of implementing them or whether these programs were instead mandated by the federal government for which no reimbursement is due." (*Hayes, supra,* at p. 1570.) **[144 Cal.App.4th 710]** In considering this subvention issue, this court described the legal and historical context of the federal and state statutes governing education for the disabled and noted that principles of equal protection formed a basis for their enactment. (*Id.* at pp. 1582-1592.) The opinion of this court, however, did not consider or suggest that all children have a constitutional right to an education specifically tailored to their individual needs and abilities. Such issue was not presented and obviously, cases are not authorities for propositions not considered. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620; *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 372.)

[10] In summary, Clancy does not have a right to a free college education under the California constitutional free school guarantee of section 5. fn. 6 Nor are there any applicable state or federal statutes requiring that he be provided free college education as being the appropriate education individually tailored to his particular needs as a highly gifted child. fn. 7

We agree with the trial court that plaintiffs' allegations regarding the application of the truancy law to them (Ed. Code, § 48200 et seq.) are completely speculative and inadequate to plead a justiciable controversy. The truancy laws are not being applied to Clancy. And finally, the complaint affirmatively alleges Clancy is currently attending UCLA.

III. *Plaintiffs' Cause of Action For A Writ Of Mandate*

Plaintiffs' first amended complaint designates the first cause of action as being for "declaratory relief and/or writ of mandate [.]" (Capitalization omitted.) As part of the allegations of such cause of action, plaintiffs allege the **[144 Cal.App.4th 711]** defendants have "a ministerial duty to provide an adequate, fair and equal education" to Clancy. Plaintiffs' prayer for relief requested "a writ of mandate compelling defendants to provide [Clancy] with a fair, equal, and funded education suited to his personal needs[.]"

We have concluded CDE does not have a duty to provide Clancy with a free college education as we have explained. For the same reasons, we conclude plaintiffs have not stated a cause of action for mandate and the trial court correctly sustained CDE's demurrer to such cause of action.

IV. *Public Policy As Reflected In Education Code Section 56000*

Plaintiffs final argument on appeal contends public policy supports their position because they are "asking for nothing more than what California already deems to be appropriate for students with highly specialized needs." fn. 8 (Capitalization omitted.) Plaintiffs cite Education Code section 56000, which states that individuals with exceptional needs have the right to an appropriate educational opportunity to meet their unique needs. Plaintiffs claim Clancy has unique, exceptional and special needs and that section 56000 states a philosophical framework that demands all students of the age for compulsory education be provided with a tailored education.

As we have already stated, section 56000 (educational instruction and services to individuals with exceptional needs) is limited to children with disabilities and impairments. It does not reflect any statement of public policy applicable to all students or to highly gifted students. Under the free school guarantee of the California constitution and the current statutes children have a right to a standard, free public K-12 education. Plaintiffs allege Clancy has completed such an education. Plaintiffs have not sought to compel anything besides a free college education. Clancy is not entitled to such relief.

V. *Plaintiffs' Failure To Plead Prior Presentation Of A Government Tort Claim*

As we have rejected the merits of plaintiffs' claim that Clancy is entitled to have his college education funded by CDE, we need not address CDE's **[144 Cal.App.4th 712]** contention that any claim for money damages is precluded by plaintiffs' failure to plead prior presentation of a claim with the State Board of Control (Gov. Code, § 900.2, subd. (b) - now the Victim Compensation and Government Claims Board). (See Gov. Code, § 900 et seq.)

DISPOSITION

The judgment of dismissal is affirmed. Each party shall bear their own costs on appeal. (Cal. Rules of Court, rule 27(a)(4).)

Scotland, P.J., and Morrison, J., concurred.

FN 1. Plaintiffs' action named as defendants both Jack O'Connell as the California Superintendent of Public Instruction and the California Department of Education. For convenience, we shall hereafter simply refer to defendants as CDE.

FN 2. Plaintiffs' briefs on appeal do not contain any argument regarding the second and third causes of action of the first amended complaint under appropriate headings with meaningful discussion supported by authorities. (Cal. Rules of Court, rule 14(a)(1).) If plaintiffs are making any claim regarding those causes of action, the claim has not been properly made and is rejected on that basis. (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19; *Heavenly Valley v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1346.)

FN 3. Article IX of the California Constitution makes public education a matter of statewide rather than local concern. (*Kennedy v. Miller* (1893) 97 Cal. 429, 431; *Hall v. City of Taft* (1956) 47 Cal.2d 177, 179, 181, superseded by statute on

other grounds as noted in *City of Lafayette v. East Bay Mun. Utility Dist.* (1993) 16 Cal.App.4th 1005, 1013, fn. 5.)

FN 4. We emphasize we are considering in this case plaintiffs' allegations that CDE is *required* under current law to provide Clancy with a suitable or appropriate education, which in his case amounts to a college education. We are not addressing whether CDE should or should not (within the ordinary system of K-12 education), promote a policy of addressing students' individual needs to every extent possible. We are aware there is significant debate in the field of education regarding the educational needs of gifted and highly gifted children. (See, e.g., Davidson, Genius Denied: How to Stop Wasting Our Brightest Young Minds (2004); Colangelo, A Nation Deceived: How Schools Hold Back America's Brightest Students (2004).) We are not expressing an opinion on such issues, which are matters of public policy properly addressed to the Legislature or electorate, not the courts. (*Knight v. Superior Court* (2005) 128 Cal.App.4th 14, 19, 30.)

FN 5. Plaintiffs have cited us to Education Code section 66030, claiming it states a mandate that "'public education in California strive to provide [. . .] each California[n], . . . a reasonable opportunity to develop his or her potential.'" Plaintiffs misquote the section, which actually provides: "It is the intent of the Legislature that public *higher* education in California strive to provide . . . each Californian, . . . a reasonable opportunity to develop fully his or her potential." "Public higher education" refers to California Community Colleges, California State Universities, and each campus of the University of California. (Ed. Code, § 66010, subd. (a).) Section 66030 is irrelevant to whether the Legislature must tailor its K-12 education program to provide each student with individualized education.

FN 6. Plaintiffs include vague references to unspecified provisions of the United States Constitution in their cause of action for declaratory relief, but have provided no substantive discussion on appeal of their claim, except to point us to *Hayes, supra,* 11 Cal.App.4th 1564, which we have addressed. We do not need to respond further to plaintiffs' federal constitutional references. (*People v. Turner, supra,* 8 Cal.4th at p. 214, fn. 19; *Heavenly Valley v. El Dorado Bd. of Equalization, supra,* 84 Cal.App.4th at p. 1346.)

FN 7. California does have a gifted and talented pupil program. (Ed. Code, § 52200 et seq.) The governing boards of individual school districts may "elect" to provide programs pursuant to such state law. (Ed. Code, § 52206, subd. (a).) Plaintiffs' first amended complaint does not allege there was no such program available for Clancy or that the program available was inadequate. The first amended complaint alleges only that Clancy cannot attend a "traditional" K-12 school because the schools operated by CDE and Clancy's local district are "ill-equipped and unsuitable[,]" will "cause [him] harm" and "cannot provide for his specific psycho-social and academic needs." Plaintiffs' first amended complaint does not name as a defendant Clancy's local school district.

FN 8. Plaintiffs do not make a constitutional equal protection claim in this argument and have not challenged the trial court's ruling on their second and third causes of action. (See, *ante,* fn. 2.)

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Wilson v. State Bd. of Education (1999) 75 Cal.App.4th 1125 , 89 Cal.Rptr.2d 745

[No. A084485. First Dist., Div. Four. Oct 26, 1999.]

RICHARD D. WILSON et al., Plaintiffs and Appellants, v. STATE BOARD OF EDUCATION, Defendant and Respondent; CALIFORNIA NETWORK OF EDUCATIONAL CHARTERS, Intervener and Respondent.

(Superior Court of the City and County of San Francisco, No. 995602, Raymond D. Williamson, Jr., Judge.)

(Opinion by Reardon, J., with Hanlon, P. J., and Poché, J., concurring.)

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John H. Findley and Sharon L. Browne for Pacific Legal Foundation and Pacific Research Institute as Amici Curiae on behalf of Defendant and Respondent and Intervener and Respondent.

OPINION

REARDON, J.-

"Charter schools are grounded in private-sector concepts such as competition-driven improvement ..., employee empowerment and customer focus. But they remain very much a public-sector creature, with in-bred requirements of accountability and broad-based equity. Simple in theory, complex in practice, charter schools promise academic results in return for freedom from bureaucracy." (Com. on Cal. State Gov. Organization and Economy, rep., The Charter Movement: Education Reform School by School (Mar. 1996) p. 1 (Little Hoover Report).)

Charter schools are a phenomenon of the 1990's. With the Charter Schools Act of 1992, fn. 1 California became the second state to enact charter school legislation. (RPP Internat. & U. of Minn., A Study of Charter Schools, First-Year Rep., Of. of Ed. Research & Improvements, Dept. Ed. **[75 Cal.App.4th 1130]** (1997).) Last year, the Legislature fine-tuned the program. fn. 2 Since the close of briefing, new provisions have been added. fn. 3

Troubled by what they see as a multifaceted assault on the California Constitution, appellants fn. 4 aim to halt the march of the charter school movement in California through a facial challenge to the Charter Schools Act and Assembly Bill No. 544. They have petitioned for a writ of mandate commanding the Board to refrain from (1) granting any charters under Assembly Bill No. 544 or the original legislation, and (2) expending any public funds in implementing those laws. Their petition has

been denied. On appeal appellants roll out a slate of errors. None have merit.

I. Statutory Framework

A. *The Original Enactment*

Anyone closely allied with a public school-whether a parent or family member of a student, or a teacher, administrator or classified staff member-can attest to the perils resident in the complex tangle of rules sustaining our public school system. These include the potential to sap creativity and innovation, thwart accountability and undermine the effective education of our children.

The 1992 legislation sought to disrupt entrenchment of these traits within the educational bureaucracy by encouraging the establishment of charter schools. Specifically, it permitted the founding of 100 charter schools statewide and up to 10 in any district. These schools would be free from most state laws pertaining uniquely to school districts. Each would receive a five-year revocable charter upon successful petition to the school district governing board or county board of education, signed by a specified percent of teachers. (Former §§ 47602, subd. (a), 47605, 47607, as added by Stats. 1992, ch. 781, § 1, pp. 3756-3761; fn. 5 § 47610.)

The original enactment set out six goals: (1) improving pupil learning; (2) increasing learning opportunities, especially for low-achieving students; (3) encouraging use of different and innovative teaching methods; (4) creating **[75 Cal.App.4th 1131]** new professional opportunities for teachers, including being responsible for the school site learning program; (5) providing parents and students with more choices in the public school system; and (6) holding schools accountable for measurable pupil outcomes and providing a way to change from rule-based to performance-based accountability systems. fn. 6 (Former § 47601.)

Charter schools nonetheless were-and are-subject to important restraints: (1) they must be nonsectarian in their programs, admission policies, employment practices, and all other operations (former § 47605, subd. (d) [now § 47605, subd. (d)(1)]); (2) charter schools cannot charge tuition or discriminate against any student on the basis of ethnicity, national origin, gender or disability (*ibid.*); and (3) no private school can be converted to a charter school (former [and current] § 47602, subd. (b)).

The petition to establish a charter school was, and is, a comprehensive document which must, among other items, set forth (1) a description of the educational program; (2) student outcomes and how the school intends to measure progress in meeting those outcomes; (3) the school's governing structure; (4) qualifications of employees; (5) procedures to ensure the health and safety of students and staff; (6) means of achieving racial and ethnic balance among its students that reflects the general population within the territory of the school district; (7) admission requirements, if applicable; (8) annual audit procedures; (9) procedures for suspending and expelling students; and (10) attendance alternatives for students who choose not to attend charter schools. (Former § 47605, subd. (b) [now § 47605, subd. (b)(5)].)

Under the 1992 scheme, upon receiving a duly signed charter petition and convening a public hearing on its provisions, the school district had discretion to grant or deny the charter. (Former § 47605, subd. (b).) The granting of a charter exempted the school from laws governing school districts except, at the school's option, provisions concerning participation in the state teacher's retirement system. (Former §§ 47610, 47611.) Denial of a charter could trigger procedures for reconsideration, at petitioner's request. (Former § 47605, subd. (j)(1), (3).)

Charter schools were, and are, required to meet statewide performance standards and conduct certain pupil assessments. (Former § 47605, subd. (c) [now § 47605, subd. (c)(1)].) The chartering authority could, and can, revoke a charter for various deficiencies including charter or legal violations and failure to meet student outcomes. (Former [and current] § 47607, subd. (b).) **[75 Cal.App.4th 1132]**

B. *Assembly Bill No. 544*

Assembly Bill No. 544 substantially revamped the 1992 enactment. Gone is the cap of 100 charter schools, replaced with a 1998-1999 school year cap of 250, with 100 more authorized each successive school year. (§ 47602, subd. (a).)

Gone too is the exclusive reliance on teacher signatures to start the petition process. Now, a petition is valid if signed by the number of parents/guardians equal to at least half of the estimated students, or the number of teachers equal to at least half the teachers expected to be employed. (§ 47605, subd. (a)(1).) The petition must display a statement that the signator is "meaningfully interested" in sending his or her child to, or teaching at, the charter school, as the case may be. (*Id.*, subd. (a)(3).) Petitions for the conversion of an existing public school to a charter school must be signed by at least half of the permanent status teachers currently employed at the school. (*Id.*, subd. (a)(2).)

Gone also is the broad discretion in granting or denying a charter. Now, following review of the petition and the requisite public hearing, the governing board of the district "shall not deny a petition" unless it makes written findings of fact that: (1) The charter school presents an unsound educational program; (2) petitioners are "demonstrably unlikely" to succeed in implementing the program; or (3) the petition lacks the required signatures, affirmations or descriptions of program particulars. (§ 47605, subd. (b).) If the school district nonetheless denies a petition, the petitioner can submit to the county board of education or the Board. (*Id.*, subd. (j)(1).) Additionally, petitioner can submit directly to the county board of education for a charter school that would serve pupils otherwise directly served by the county office of education. (§ 47605.5.)

As well, the amendments permit a charter school to operate as a nonprofit benefit corporation, with the school district granting the charter entitled to one representative on the board of directors. (§ 47604, subds. (a), (b).)

Now, the Board itself, upon recommendation of the Superintendent of Public Instruction (Superintendent), can take "appropriate action," including revoking the charter of any school, if it finds "[g]ross financial mismanagement" (§ 47604.5, subd. (a)); "[i]llegal or substantially improper" use of funds (*id.*, subd. (b)); or that "[s]ubstantial and sustained departure" from successful practices jeopardizes the educational development of the students (*id.*, subd. (c)).

Other new provisions include the following: (1) No funds will be given for any pupil who also attends a private school that charges his or her family **[75 Cal.App.4th 1133]** for tuition (§ 47602, subd. (b)); (2) all charter schoolteachers must hold a Commission on Teaching Credentialing certificate or equivalent (§ 47605, subd. (*l*)); (3) petitioners must provide the chartering authority with financial statements that include a proposed first-year operational budget and three-year cash-flow and financial projections (*id.*, subd. (g)); (4) charter schools must use generally accepted accounting principles in conducting the required annual financial audits, and any exceptions or deficiencies identified during the audit must be resolved to the satisfaction of the chartering authority (*id.*, subd. (b)(5)(I)).

Concerning accountability, charter schools must "promptly respond to all reasonable inquiries" from either the chartering authority or the Superintendent. (§ 47604.3.) Additionally, the chartering authority can "inspect or observe any part of the charter school at any time" (§ 47607, subd. (a)) and charge the school for supervisorial oversight (§ 47613.7, subd. (a)).

C. *Senate Bill No. 434*

Senate Bill No. 434 (1999-2000 Reg. Sess.) further refines the Charter Schools Act. Starting January 1, 2000, charter schools must (1) at a minimum, offer the same number of instructional minutes per grade level as required of all school districts (§ 47612.5, subd. (a)(1) [added by Stats. 1999, ch. 162, § 1]); and (2) maintain written contemporaneous records documenting pupil attendance and make the same available for audit and inspection (*id.*, subd. (a)(2)). As well, as a condition of apportionment of state funding, charter schools must certify that its pupils have participated in the state testing program in the same manner as all other pupils attending public schools. (*Id.*, subd. (a)(3).) Further, charter schools which provide independent study must comply with statutory requirements and implementing regulations that relate to independent study. (*Id.*, subd. (b).) And finally, in keeping with this sentiment, charter schools will be held to the same prohibition as local education agencies when it comes to extending funds or value to pupils in independent study programs (or their parents or guardians): They cannot claim state funding if the funds or other value so extended could not legally be extended to similarly situated pupils of a school district (or their parents or guardians). (§ 51747.3, subd. (a), as amended by Senate Bill No. 434 [Stats. 1999, ch. 162, § 2].)

II. Standard of Review

Appellants have provoked a facial challenge to the Charter Schools Act and the Assembly Bill No. 544 amendments. This comes with a formidable burden commensurate with the outcome of a successful assault-namely, invalidation of a legislative act. **[75 Cal.App.4th 1134]**

[1] The California Constitution fn. 7 is a limitation on the powers of the Legislature, and we construe such limits strictly. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180 [172 Cal.Rptr. 487, 624 P.2d 1215].) Thus, when scrutinizing the constitutionality of a statute, we start with the premise of *validity*, resolving all doubts in favor of the Legislature's action. (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 260 [5 Cal.Rptr.2d 545, 825 P.2d 438].) This presumption of constitutionality is particularly appropriate where, as here, the Legislature has enacted a statute with the pertinent constitutional prescriptions in mind. fn. 8 "In such a case, the statute represents a considered legislative judgment as to the appropriate reach of the constitutional provision." (*Pacific Legal Foundation v. Brown, supra*, 29 Cal.3d at p. 180.) Finally, to void a statute on its face, "petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute .... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable

constitutional prohibitions." (*Id.* at pp. 180-181, italics omitted.)

III. Discussion

A. *The Legislature Has Plenary Power Over Public Schools*

[2a] As a preamble to addressing the amalgam of constitutional objections laid out in this appeal, we emphasize that the Legislature's power over our public school system is plenary, subject only to constitutional restraints. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 180-181 [302 P.2d 574]; *California Teachers Assn.* v. *Hayes* (1992) 5 Cal.App.4th 1513, 1524 [7 Cal.Rptr.2d 699].) Since 1879 our Constitution has declared the Legislature's preeminent role in encouraging education in this state, as well as its fundamental obligation to establish a system of public schools: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Art. IX, § 1.) "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." (*Id.*, § 5.)

There can thus be no doubt that our Constitution vests the Legislature with sweeping and comprehensive powers in relation to our public schools (*Hall* **[75 Cal.App.4th 1135]** v. *City of Taft*, *supra*, "47 Cal.2d at p. 179), including broad discretion to determine the types of programs and services which further the purposes of education (*California Teachers Assn.* v. *Hayes*, *supra*, 5 Cal.App.4th at p. 1528).

[3a] Appellants first maintain that the 1998 Assembly Bill No. 544 amendments violate article IX, section 5 because they amount to abdication of *any* state control over essential educational functions, e.g., control over curriculum, textbooks, educational focus, teaching methods and operations of charter schools. This is so, they argue, because the parents and teachers who write the charters and the grantees who operate the schools now run the show with respect to all these functions.

Appellants confuse the delegation of certain educational functions with the delegation of the public education system itself. As explained in *California Teachers Assn.* v. *Board of Trustees* (1978) 82 Cal.App.3d 249, 253-254 [146 Cal.Rptr. 850], the public school system is the system of schools, which the Constitution requires the Legislature to provide-namely kindergarten, elementary, secondary and technical schools, as well as state colleges-and the administrative agencies which maintain them. (See art. IX, § 6 [delineating features of public school system].) However, the curriculum and courses of study are not constitutionally prescribed. Rather, they are *details* left to the Legislature's discretion. Indeed, they do not constitute part of the system but are merely a function of it. (*California Teachers Assn.* v. *Board of Trustees, supra*, 82 Cal.App.3d at p. 255.) The same could be said for such functions as educational focus, teaching methods, school operations, furnishing of textbooks and the like.

Moreover, appellants take too myopic a view of what it means for the state to retain control of our public schools, including charter schools. The Charter Schools Act represents a valid exercise of legislative discretion aimed at furthering the purposes of education. Indeed, it bears underscoring that charter schools are *strictly* creatures of statute. From how charter schools come into being, to who attends and who can teach, to how they are governed and structured, to funding, accountability and evaluation-the Legislature has plotted all aspects of their existence. Having created the charter school approach, the Legislature can refine it and expand, reduce or abolish charter schools altogether. (See §§ 47602, subd. (a)(2), 47616.5.) In the meantime the Legislature retains ultimate responsibility for all aspects of education, including charter schools. [2b] " 'Where the Legislature delegates the local functioning of the school system to local boards, districts or municipalities, it does so, always, with its constitutional power and responsibility for ultimate control for the common welfare in reserve.' " (*Phelps* v. **[75 Cal.App.4th 1136]** *Prussia* (1943) 60 Cal.App.2d 732, 738 [141 P.2d 440], quoting trial court decision.)

B. *Charter Schools Are Part of California's Public School System*

[3b] Appellants further complain that Assembly Bill No. 544 has spun off a separate system of charter public schools that has administrative and operational independence from the existing school district structure, and whose courses of instruction and textbooks may vary from those of noncharter schools. Such splintering, appellants charge, violates the article IX, section 5 mandate to the Legislature to provide a "system of common schools."

Article IX, section 6 defines "Public School System" as including "all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them."

The key terms in these provisions are "common" and "system." The concept of a "common" school is linked directly to that of a "free school," which the Constitution mandates must be "kept up and supported" in each district for a prescribed annual duration. (Art. IX, § 5.) Historically, common schools were the "primary and grammar" schools, distinguished from other instrumentalities of the public school system by virtue of being the exclusive beneficiaries of the state school fund. (*Los Angeles County v. Kirk* (1905) 148 Cal. 385, 390-391 [83 P. 250]; *Stockton School District v. Wright* (1901) 134 Cal. 64, 67 [66 P. 34]; Jones, *Chapters on the School Law of California* (1914) 2 Cal.L.Rev. 459, 460-461.)

As to the concept of a system, we note that early on in California history "the contest was between a state system and a local system of common schools." (*Mitchell v. Winnek* (1897) 117 Cal. 520, 526 [49 P. 579].) The notion of a single state system, under state control, prevailed. (See *id.* at pp. 523-526.) *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 666 [226 P. 926] presents a variation on this theme: At that time, the federal government had established "a school for the education and training of members of the Indian race" within the territorial boundaries of Big Pine School District. Alice Piper, "a female Indian child," sought admission to school in that district. (*Id.* at p. 665.) Our Supreme Court agreed that she was entitled to admission, holding that eligibility to attend the federal school did not satisfy the mandate of article IX, section 5 because the state had no control over that school. (*Piper v. Big Pine School Dist., supra*, 193 Cal. at pp. 672-673.) **[75 Cal.App.4th 1137]**

Thus the term "system" has come to import " 'unity of purpose as well as an entirety of operation, and the direction to the legislature to provide "a" system of common schools means *one* system which shall be applicable to all the common schools within the state.' " (*Serrano v. Priest* (1971) 5 Cal.3d 584, 595 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187], original italics.) This means that the educational system must "be uniform in terms of the prescribed course of study and educational progression from grade to grade." (*Id.* at p. 596.)

From this perspective it is apparent that charter schools are part of California's single, statewide public school system. First, the Legislature has explicitly found that charter schools are (1) part of the article IX "Public School System"; (2) under its jurisdiction; and (3) entitled to full funding. (§ 47615, subd. (a).) These findings are entitled to deference. (*Amwest Surety Ins. Co.* v. *Wilson* (1995) 11 Cal.4th 1243, 1252 [48 Cal.Rptr.2d 12, 906 P.2d 1112].) As well, the Legislature has directed that the Charter Schools Act "shall be liberally construed to effectuate [these] findings ...." (§ 47615, subd. (b).)

Second, the establishment of charter schools does not create a dual system of public schools, as, for example, would be the case if there were a competing local system. Rather, while loosening the apron springs of bureaucracy, the Act places charter schools within the common system of public schools, as the following provisions illustrate: Charter schools by law are free, nonsectarian and open to all students. (§ 47605, subd. (d)(1).) They cannot discriminate against students on the basis of ethnicity, national origin, gender or disability. (*Ibid.*) Further, charter schools must meet statewide standards and conduct pupil assessments applicable to pupils in noncharter public schools (*id.*, subd. (c)(1)); fn. 9 must hire credentialed teachers (*id.*, subd. (*l*)); and are subject to state and local supervision and inspection **[75 Cal.App.4th 1138]** (§§ 47605, subd. (k)(1), 47607, subd. (a)). Finally, beginning next year, charter schools must offer the minimum duration of instruction as required of all other public schools. (§ 47612.5, subd. (a)(1) [added by Stats. 1999, ch. 162, § 1].)

In sum it is clear that the Act brings charter schools within the system uniformity requirement because (1) their students will be taught by teachers meeting the same minimum requirements as all other public school teachers; (2) their education programs must be geared to meet the same state standards, including minimum duration of instruction, applicable to all public schools; and (3) student progress will be measured by the same assessments required of all public school students.

Moreover, the Act assures that charter schools will receive funding comparable to other public schools. (§§ 47612-47613.5.) In addition, it guards against the flow of funds to schools outside the system. For example, the Act prohibits the conversion of private schools to charter schools. It also bars charter schools from receiving any public funds for any pupil also attending a private school that charges the family for tuition. (§ 47602, subd. (b).)

C. Charter Schools Are Under the Exclusive Control of Officers of the Public Schools and Fall Under the Jurisdiction of the Public School System

[4] Next, appellants contend that charter schools offend constitutional provisions calling for public schools to be under the exclusive control of officers of the public school system, as well as under the jurisdiction of that system. We find no problem.

1. Article IX, Section 8

Article IX, section 8 provides in part: "No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools ...."

This section endeavors to (1) prohibit the use of public funds to support private schools, whether sectarian or not; and (2) preserve strict separation **[75 Cal.App.4th 1139]** between religion and public education. Appellants attempt to build the argument that charter schools are private, not public schools. They are convinced that under Assembly Bill No. 544, officers of public schools have no real control over the educational product delivered by charter schools because these officers cannot deny a charter petition except upon finding that the educational program is unsound, the petitioners are "demonstrably unlikely" to succeed in implementing the program, or that the petition lacks certain mandatory items. (§ 47605, subd. (b).) According to appellants, this means the charter grantees are in control, and again according to appellants, they are not officers of the public schools.

First, the terms of Assembly Bill No. 544 belie these contentions. To begin with, charter schools *are* public schools because, as explained above, charter schools are part of the public school system. fn. 10 (§ 47615, subd. (a)(1).) Further, the Legislature has specifically declared that charter schools are under "the exclusive control of the officers of the public schools" (*id.*, subd. (a)(2)) and directs us to construe the law liberally to effectuate that finding (*id.*, subd. (b)).

Second, one court construing the "exclusive control" language harkened back to early constitutional history, observing that "[t]he language of article IX, section 8, has remained unchanged since its proposal in the constitutional convention of 1878-1879 and its adoption by the People on May 7, 1879. It was approved at the convention without significant debate .... (See 3 Debates and Proceedings of the Constitutional Convention of the State of Cal. (1881).) ... The delegates were seriously concerned with assuring that public funds should only be used for support of the public school system they were creating in article IX .... Thus, in another context a delegate expressed concern about any 'opposition system of schools against the common schools of the State ....' " (*Board of Trustees v. Cory* (1978) 79 Cal.App.3d 661, 665 [145 Cal.Rptr. 136].) Obviously charter schools are not in opposition to the public school system. On the contrary, they are a part of that system. Although they have operational independence, an overarching purpose of the charter school approach is to infuse the public school system with competition in order to stimulate continuous improvement in *all* its schools. (§ 47601, subd. (g).)

Third, we wonder what level of control could be more complete than where, as here, the very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, **[75 Cal.App.4th 1140]** county boards of education, the Superintendent and the Board. The chartering authority controls the application approval process, with sole power to issue charters. (See §§ 47605, 47605.5.) Approval is not automatic, but can be denied on several grounds, including presentation of an unsound educational program. (§ 47605, subd. (b)(1).) Chartering authorities have continuing oversight and monitoring powers, with (1) the ability to demand response to inquiries concerning financial and other matters (§ 47604.3); fn. 11 (2) unlimited access to "inspect or observe any part of the charter school at any time" (§ 47607, subd. (a)(1)); and (3) the right to charge for actual costs of supervisorial oversight (§ 47613.7, subd. (a)). As well, chartering authorities can revoke a charter for, among other reasons, a material violation of the charter or violation of any law. (§ 47607, subd. (b)(1).) Short of revocation, they can demand that steps be taken to cure problems as they occur. (*Id.*, subd. (c).) The Board, upon recommendation from the Superintendent, can also revoke any charter or take other action in the face of certain grave breaches of financial, fiduciary or educational responsibilities. (§ 47604.5.) Additionally, the Board exercises continuous control over charter schools through its authority to promulgate implementing regulations. (§§ 47605, subd. (j)(4), 47613.5, subd. (b).) Finally, public funding of charter schools rests in the hands of the Superintendent. (See §§ 47612, 47613.)

Fourth, the sum of these features, which we conclude add up to the requisite constitutional control over charter schools, are in place whether a school elects to "operate as, or be operated by, a nonprofit public benefit corporation" (§ 47604, subd. (a)), or whether it remains strictly under the legal umbrella of the chartering authority. In other words, even a school operated by a nonprofit could never stray from under the wings of the chartering authority, the Board, and the Superintendent. We note too that situating the locus of control with the public school system rather than the nonprofit is not incompatible with the laws governing nonprofit public benefit corporations. Specifically, one of their enumerated powers is to "[p]articipate with others in any partnership, joint venture or other association, transaction or arrangement of any kind *whether or not such participation involves sharing or delegation of control with or to others*." (Corp. Code, § 5140, subd. (j), italics added.)

Fifth, speaking directly to appellants' repeated concern that charter grantees will be making decisions about curriculum and similar educational functions and thus the necessary control element has been abandoned, we reiterate that these functions are details left to legislative discretion. (*California Teachers Assn.* v. *Board of Trustees*, *supra*, 82 Cal.App.3d at p. 255.) With the Charter Schools Act, the Legislature has exercised its discretion to **[75 Cal.App.4th 1141]** sanction a certain degree of flexibility and operational independence, thereby giving the nod to healthy, innovative practices and experimentation. Central to its intent is the goal of stimulating continuous improvement in *all* public schools by fostering competition within the public school system itself. (See § 47601, subd. (g).) And in any event, through their powers to deny petitions and revoke charters, chartering authorities *do* exercise control over these educational functions.

Sixth, as to appellants' point that charter grantees are not officers of public schools, the law again belies this proposition. The Constitution gives the Legislature the "power, by general law, to provide for the incorporation and organization of school districts ... of every kind and class, and [to] classify such districts." (Art. IX, § 14.) Seizing this power, the Legislature has declared that "[a] charter school shall be deemed to be a 'school district' for purposes of Section 41302.5 and Sections 8 and 8.5 of Article XVI ...." fn. 12 (§ 47612, subd. (c).) Appellants argue that a charter school is not a school district "because its incorporation and organization [have] not been provided by an enactment of the Legislature ...." What is the Charter Schools Act if not an enactment of the Legislature providing for the organization of charter schools as districts for purposes of the enumerated provisions? Nothing in article IX, section 6 says that a district *classified* by the Legislature must also be *incorporated* pursuant to explicit legislative direction.

Thus, under this scheme, charter school officials are officers of public schools to the same extent as members of other boards of education of public school districts. So long as they administer charter schools according to the law and their charters, as they are presumed to do, they stand on the same constitutional footing as noncharter school board members. If they violate the law, the charter will be revoked.

2. *Article IX, Section 6*

Appellants advance similar arguments concerning the jurisdictional requirement of article IX, section 6. This section reads in part: "No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System *or placed under the* **[75 Cal.App.4th 1142]** jurisdiction of any authority other than one included within the Public School System." (Italics added.) Article IX, section 6 also provides that the public school system consists of the various levels and types of public schools and colleges as well as "the school districts and the other agencies authorized to maintain them."

School districts, county boards of education and respondent Board share several things in common: The formation of each entity is provided for in article IX (§ 7 [Board and county boards of education], §§ 14 & 16 [local school districts and their governing boards]). As such each entity is "authorized to maintain" the various schools in our public school system. (*Id.*, § 6.) Finally, each entity is a defined chartering and revoking authority under the Act (§§ 47605, subds. (b), (j), 47605.5, 47607), with supervisorial oversight over their charter schools (§§ 47604.3, 47607, 47613.7). The most direct answer to appellants' jurisdictional challenge is this: Charter schools are under the jurisdiction of chartering authorities; chartering authorities are authorities "within the Public School System," and hence no violation of article IX, section 6 can be stated.

To the extent appellants define the term "jurisdiction" more narrowly as "management and control" (citing *California Teachers Assn.* v. *Board of Trustees*, *supra*, 82 Cal.App.3d at p. 256), our analysis of article IX, section 8 fully applies. (See pt. C.1., *ante*.)

D. *The Charter Schools Act As Amended Does Not Run Afoul of Constitutional Prohibitions Against Public Appropriations in Aid of Sectarian Purposes or Institutions*

[5] Appellants' greatest misgiving is their assessment that the current scheme "requires the issuance of a school charter to every church or sect who otherwise qualifies to be a charter grantee ...." (Underscore omitted.) They reason as follows: A chartering authority cannot deny a charter, whether the proposed grantee is sectarian or not, unless it can render one of the negative findings set forth in section 47605, subdivision (b). This is so because the statute does not explicitly authorize chartering authorities to deny a petition on grounds that petitioner is a religious organization or an affiliate of a religious organization.

Moreover, appellants are dismayed that the Act does not specifically sanction charter revocation in the event a school is or becomes controlled by **[75 Cal.App.4th 1143]** a religious sect. fn. 13 Accordingly, they are adamant that churches and other sectarian groups will and must be permitted to operate and control charter schools, all in defiance of article XVI, section 5 fn. 14 and article IX, section 8 (quoted in pertinent part in pt. C.1., *ante*).

The antidote to these concerns is found in the Act itself. Charter petitioners must affirm that their school will be nonsectarian in its programs and operations. (§ 47605, subds. (b)(4), (d)(1).) A petition lacking such affirmation can be denied. (*Id.*, subd. (b)(4).) But what if the petition contained the requisite affirmation but petitioners nonetheless were controlled by a religious organization? In that event, the chartering authority could deny the petition because petitioners were "demonstrably unlikely to successfully implement the program set forth in the petition," most notably its nonsectarian premise. (*Id.*, subd. (b)(2).) Moreover, a petition for a charter school controlled by a sectarian organization would be denied under this same clause because the school would be *illegal* under article XVI, section 5. A school illegal from its inception has little chance of success. **[75 Cal.App.4th 1144]**

In addition, if a school's religious affiliation evolved *after* charter status was attained, or, if initially masked, became revealed at such later time, either situation would be immediate grounds for charter revocation. In the first instance, the school would come within the "[v]iolated any provision of law" provision of section 47607, subdivision (b)(4). In the latter instance, petitioners would have presented a facially acceptable but misleading petition, i.e., one affirming that the school would be nonsectarian in its programs and operations. (§ 47605, subds. (b)(4), (d)(1).) When that proved not to be the case, the charter would be subject to revocation because the school materially violated its charter. (§ 47607, subd. (b)(1).)

Appellants' various legal arguments are not persuasive. First, they dissect the holding of *California Teachers Assn.* v. *Riles* (1981) 29 Cal.3d 794 [176 Cal.Rptr. 300, 632 P.2d 953], a case that has no applicability to the one at hand. *Riles* involved a constitutional challenge to the statutory textbook loan program, which authorized the lending of public school textbooks to students attending private schools. There was no question that sectarian schools would benefit from the program. The only question was the *character* of the benefit provided, the state defendants arguing an indirect benefit under the "child benefit" doctrine. The high court rejected their arguments, holding that the benefit to sectarian schools themselves was neither indirect nor remote. By providing textbooks at public expense the loan program appropriated money to advance the educational function of sectarian schools, in violation of section 8 of article IX and section 5 of article XVI. (*California Teachers Assn.* v. *Riles, supra*, 29 Cal.3d at pp. 809-813.)

In contrast, charter schools must be nonsectarian. Not content with the nonsectarian provisions of the Charter Schools Act, appellants claim the law is flawed because it does not include an express nonaffiliation provision, as do the Minnesota and federal charter school laws. fn. 15 Their theory is untenable: that section 47605, subdivision (d), as worded, authorizes "public charter schools to be owned by, controlled by, affiliated with, fn. 16 or operated by, a church or religious group, provided, that it be nonsectarian in its programs, admission policies, employment practices, and all other operations." **[75 Cal.App.4th 1145]**

This construction disregards settled principles of statutory construction, such as: We presume that the Legislature operates within the borders of the Constitution when enacting legislation. (*In re Kay* (1970) 1 Cal.3d 930, 942 [83 Cal.Rptr. 686, 464 P.2d 142].) fn. 17 Unless a conflict with a provision of the Constitution is clear and unquestionable, we will uphold the statute, wherever possible interpreting it as consistent with applicable constitutional provisions, seeking to harmonize statute and Constitution. (*Arcadia Unified School Dist. v. State Dept. of Education, supra*, 2 Cal.4th at p. 260.) Finally, there is no requirement that the Legislature bar by statute what is already barred by Constitution. (See *Bowen v. Kendrick* (1988) 487 U.S. 589, 614 [108 S.Ct. 2562, 2577, 101 L.Ed.2d 520].) In this sense, a nonaffiliation provision would be redundant because nonaffiliation is already constitutionally proscribed.

E. *The Charter Schools Act Does Not Conflict With the Textbook Adoption Requirement of Article IX, Section 7.5*

[6] The broad exemption from most education laws governing school districts, which the Act extends to charter schools, embraces section 60200 concerning adoption of textbooks by the Board. Article IX, section 7.5 calls for such adoption: "The [Board] shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute."

From this appellants posit infringement of article IX, section 7.5. But how? By its terms the provision imposes a requirement *on the Board.* It does not constitute a limitation on school districts, prohibit them from choosing other books, fn. 18 or hinder the Legislature from enacting laws delineating the scope of the Board's authority (see *Engelmann v. State Bd. of Education, supra*, 2 Cal.App.4th at p. 54). "[T]he Legislature may define, limit, or condition a constitutional power or right so long as it does not unduly burden **[75 Cal.App.4th 1146]** the exercise of that power or right." (*Ibid.*) This is just what section 47610 does: By exempting charter schools from the textbook adoption (and numerous other) laws, the Legislature has limited the scope of the Board's authority with respect to the textbook selection process. However, the price for limited experimentation and operational freedom afforded to charter schools does not unduly burden the Board's exercise of its textbook selection powers. Therefore, the Act does not run afoul of article IX, section 7.5.

F. *The Act Does Not Impermissibly Delegate Legislative Powers*

[7a] Appellants' final protest concerns the effect of the unamended Charter Schools Act, should we strike Assembly Bill No. 544. They insist that the underlying enactment amounts to an unconstitutional delegation of legislative powers to the Board and other chartering authorities. Specifically, they assert that the power to issue charters has been handed over without standards or guidance as to a whole quilt of concerns: decisions about curriculum, texts, educational focus, and teaching methods; minimum qualifications of charter grantees; whether, through apt terms in the charter, to retain control over public educational functions of the charter schools; and whether to grant charters to grantees controlled by a church or religious sect. Appellants cast each of these issues as implicating "a fundamental policy decision which the Legislature [is] required to make ...."

To begin with, the Legislature has not left it up to charter authorities to decide whether to grant a charter to a grantee controlled by a religious sect. To reiterate: Article XVI, section 5 *is* the standard, and the standard is "don't do it under any circumstances."

Next, appellants misunderstand the legislative function. [8] "Essentials of the legislative function include the determination and formulation of legislative policy. 'Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others. The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the "power to fill up the details" by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect ....' " (*State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 750 [16 Cal.Rptr.2d 727], quoting *First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d 545, 549 [159 P.2d 921].)

[7b] Here, the Legislature made the fundamental policy decision to give parents, teachers and community members the opportunity to set up public schools with operational independence in order to improve student learning, **[75 Cal.App.4th 1147]** promote educational innovation and accomplish related public education goals. (§ 47601.) From there, the Legislature set limits on the number of charter schools that can exist at any particular time and their term (§§ 47602, subd. (a), 47606, subd. (a)); controlled against charter status by way of private school conversion (§ 47602, subd. (b)); and fixed standards for charter schools, as detailed in the numerous petition and operational requirements set forth in section 47605. Having set the policy and fixed standards and limits, the Legislature did its job: "In the educational setting, legislatures rarely control public school operations directly, but delegate authority which permits state, regional, and local education agencies to establish school policies and practices." (*State Bd. of Education v. Honig*, *supra*, 13 Cal.App.4th at p. 750.)

Reasonable grants of power to administrative agencies will not offend the nondelegation doctrine so long as adequate safeguards exist to protect against abuse of that power. (*State Bd. of Education v. Honig*, *supra*, 13 Cal.App.4th at p. 751.) Here, procedures are in place to safeguard the chartering authority decisionmaking process. These include procedures for review of denied petitions (§ 47605, subd. (j)) and, with the Assembly Bill No. 544 amendments, open meeting requirements (§ 47608).

Finally, while it is obvious that appellants wish for more-and more detailed-standards and guidelines, more could not be better in this situation where a primary purpose of the Act is to encourage educational innovation, experimentation and choice in order to improve learning and expand learning opportunities for all students. How can you write the score to a symphony yet to be created?

IV. Disposition

The Charter Schools Act rests on solid constitutional ground. We affirm the judgment.

Hanlon, P. J., and Poché, J., concurred.

A petition for a rehearing was denied November 24, 1999, and appellants' petition for review by the Supreme Court was denied January 25, 2000.

FN 1. The Charter Schools Act of 1992 was added by Statutes 1992, chapter 781, section 1, page 3756, and is found at part 26.8 of the Education Code, section 47600 et seq. (hereafter the Charter Schools Act or the Act).

Unless otherwise indicated, all statutory references are to the Education Code.

FN 2. Assembly Bill No. 544 (1997-1998) enacted as Statutes 1998, chapter 34, sections 1-19, amended and added new provisions to the Act.

FN 3. Senate Bill No. 434 (1998-2000 Reg. Sess.) enacted as Statutes 1999, chapter 162, sections 1, 2, effective January 1, 2000.

FN 4. Appellants are Richard D. Wilson and Fernando Ulloa, residents and taxpayers of San Francisco and Marin Counties, respectively. Respondent is the State Board of Education (Board); intervener is the California Network of Educational Charters.

FN 5. Hereafter, references to former section means those sections as added by Statutes 1992, chapter 781, section 1, pages 3756-3761.

FN 6. Assembly Bill No. 544 (1997-1998 Reg. Sess.) adds a seventh goal: "Provide vigorous competition within the public school system to stimulate continual improvements in all public schools." (§ 47601, subd. (g).)

FN 7. All references to constitutions and articles are to the California Constitution.

FN 8. Note, for example, that the Legislature has specifically found and declared that "Charter schools are part of the Public School System, as defined in Article IX" (§ 47615, subd. (a)(1)) and are "under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools" (*id.*, subd. (a)(2)) "for purposes of Section 8 of Article IX ...." (§ 47612, subd. (b).)

FN 9. Specifically, section 47605, subdivision (c)(1) states: "Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools."

Section 60605, subdivision (a)(1)(A) directs the Board, according to various time frames, to "adopt statewide academically rigorous content standards ... in the core curriculum areas of reading, writing, and mathmematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system." By November 1, 1998, the Board was to adopt content standards for history/social science and science. The adoption of statewide performance standards and pupil assessments in these areas follow on a later time frame. (*Id.*, subd. (a)(1)(B).)

Section 60605, subdivision (c)(1) and (2) calls on the Board to adopt an assessment instrument and to require each district to administer the statewide assessment to all pupils in specified grades and in specified subject areas.

It is highly significant to appellants' dual system argument that these very same academic content and performance standards adopted by the Board pursuant to section 60605 are model standards, which means that school districts may use them as a guideline in developing district standards. (See § 60618.) Thus, school districts have discretion when it comes to standards, just as charter schools do. All schools, however, must participate in the mandatory statewide assessments, which ensures a constitutional level of cohesion within the curriculum and course of study at each grade level in all schools. Section 47612.5, subdivision (a)(3) (added by Stats. 1999, ch. 162, § 1) conditions state funding on certification that charter school pupils participated in the state testing program in the same manner as all other public school students.

FN 10. Because charter schools are public schools and serve to further public education goals, contrary to appellants' additional assertion, their funding does not offend the public purpose doctrine. (See *City of Los Angeles* v. *Lewis* (1917) 175 Cal. 777, 779-780 [167 P. 390].)

FN 11. The Superintendent can likewise prompt inquiry. (§ 47604.3.)

FN 12. Article XVI, section 8 gives priority funding status to support of the public school system and public institutions of higher education and also sets minimum amounts of funding. Section 8.5 of article XVI provides for allocation of property tax revenues to public schools. Section 41302.5 states that for purposes of these two constitutional sections, the term " 'school districts' shall include county boards of education, county superintendents of schools, and direct elementary and secondary level instructional services provided by the state ...."

FN 13. To demonstrate their concern, appellants refer us to the discussion in the Little Hoover Report about an independent study, home-based charter school where, "[a]t the request of parents, the school was purchasing textbooks published by organizations with religious affiliations." (Little Hoover Rep., *supra*, at p. 57.) Appellants are appalled that the school's charter was not revoked. This is not the whole story. According to the report, the school changed its policy after the county education office informally told school officials "that such purchases could be viewed as violating the anti-sectarian provisions of the charter law." (*Ibid.*)

On a related note, appellants also cite the existence of 40 home-based charter schools, assuming, without factual basis, that "[b]y definition, the home-based teacher is a good Christian, Jew, Muslim, Buddhist, or what have you, who inculcates the parents' religion to the pupil, in the course of the home-based teaching." This is a speculative attack on home-based independent study programs in general, which exist *apart* from the charter school movement. While the Little Hoover Report gives some credence to concerns about funnelling public funds to parents to subsidize religious training, it also notes: "Unfortunately, [this concern is] just as possible in independent study programs that are not run by charter schools, Department of Education officials acknowledge. [¶] The department points out that there is no special program with earmarked funding; independent study is a teaching 'modality' rather than a specific program. A district that chooses to have such a program receives per-pupil funding equal to that it receives for a student who it houses in a classroom under full-time

teacher supervision." (Little Hoover Rep., *supra*, at p. 58.) And in any event, starting next year charter schools will be explicitly barred from receiving state funds if they pay for religious materials or anything else in connection with a home or independent study program that could not legally be purchased for the education of noncharter public school students. (See § 51747.3, subd. (a).)

FN 14. Article XVI, section 5 reads in relevant part: "Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever ...."

FN 15. Section 124D.10, subdivision 8(c) of the Minnesota State Laws provides in part that the sponsor of a charter school "*may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or a religious institution.*" (Italics added.) The federal act similarly provides in part that a charter school is a public school which, among other traits, "*is not affiliated with a sectarian school or religious institution ....*" (20 U.S.C. § 8066(1)(E), italics added.)

FN 16. Appellants do not explain the concept of "affiliation" nor does that term or concept appear in the relevant constitutional provisions. The verb "affiliate" means "to bring or receive into close connection as a member or branch[;] to associate as a member." (Webster's New Collegiate Dict. (9th ed. 1984) p. 61, col. 2.) Common sense tells us that for purposes of article XVI, section 5, a school that associated itself as a member or branch of a religious sect would, in fact, be controlled by the operative "religious creed, church, or sectarian denomination."

FN 17. One strong indicator of validity is this: With Assembly Bill No. 544 the Legislature has permitted charter schools to elect to operate as, or be operated by, a nonprofit public benefit corporation. (§ 47604, subd. (a).) It is significant that the statute does not, for example, refer more broadly to corporations organized under the Nonprofit Corporation Law. (See Corp. Code, § 5000 et seq.) In addition to nonprofit public benefit corporations, such corporations would include nonprofit *religious* corporations. (See *id.*, § 5046.) Thus, the *only* private entity that can operate a charter school is a nonprofit public benefit corporation. A church or other religious corporation could never operate a charter school outright.

FN 18. Under the code itself a school district can select nonadopted textbooks, but only if it establishes to the Board's satisfaction "that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district ...." (§ 60200, subd. (g); *Engelmann v. State Bd. of Education* (1991) 2 Cal.App.4th 47, 52 [3 Cal.Rptr.2d 264].)

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People v. Oken, 159 Cal.App.2d 456

[Civ. No. 22496. Second Dist., Div. Three. Apr. 17, 1958.]

THE PEOPLE, Plaintiff, v. HARRY OKEN et al., Defendants; TONY ALARCON, Appellant; EL MONTE SCHOOL DISTRICT et al., Respondents.

COUNSEL

Alexander Ruiz and Manuel Ruiz, Jr., for Appellant.

Harold W. Kennedy, County Counsel (Los Angeles), and Edwin P. Martin, Deputy County Counsel, for Respondents.

OPINION

PATROSSO, J. pro tem. fn. *

This is an appeal by cross-complainant Tony Alarcon from an order striking his third amended cross-complaint as against the cross-defendants El Monte School District and county of Los Angeles. [1] While an order striking a pleading is not ordinarily appealable, the rule is otherwise where, as here, the cross-complaint is directed against cross-defendants not otherwise parties to the action. (Trask v. Moore (1944), 24 Cal.2d 365, 373 [149 P.2d 854].)

The action in which the cross-complaint was filed is one instituted on behalf of the People of the State of California by **[159 Cal.App.2d 458]** the district attorney of Los Angeles County against numerous defendants, including cross- defendant, alleged to be the owners or occupants of properties within an area comprising some 24 acres located in the county of Los Angeles and commonly known as "Hick's Camp," to abate a public nuisance alleged to exist upon the properties located therein by reason of the maintenance thereon of dilapidated buildings and unsanitary conditions therein more particularly described.

A demurrer having been sustained with leave to amend to the original cross-complaint, appellant filed a second amended cross-complaint containing four separate causes of action. Demurrers interposed by the respondents to the latter complaint were sustained without leave to amend as to the first, second and fourth cause of action thereof. Thereafter appellant filed a third amended cross-complaint which was stricken upon motion of the respondents as hereinbefore stated.

The third amended cross-complaint, as is likewise true of its predecessors, is in many respects a remarkable document. It purports to incorporate therein by reference, the first, second and fourth causes of action of the second amended cross-complaint to which, as previously stated, demurrers had been sustained without leave to amend. It then alleges that the action is brought by the appellant "on behalf of apprximately [sic] 35 persons similarly situated, named defendants, in the second amended complaint of nuisance on file herein, and also as agent for the State of California, and the person in charge of the public uses hereinafter set forth and requested." It then alleges that the El Monte School District and numerous individually named cross-defendants claim an interest in the property described in Exhibit "A," attached to the cross-complaint, which apparently comprises a portion of the property described in plaintiff's complaint, whereon are located the conditions which are sought to be abated as a public nuisance. It further alleges "that the public interest and necessity require that the said property be acquired by cross complainant as agent of the State of California, as provided in section 1001 of the

California Civil Code. That cross complainant, Tony Alarcon, is a person, competent and qualified to acquire the real property and improvements thereon, described herein, as agent of the State and/or person in charge of the uses hereinafter set forth. That cross complainant seeks to take and condemn private property, to wit: Real Estate and improvements, for the public uses hereinafter **[159 Cal.App.2d 459]** set forth. That the plaintiff and cross defendants, El Monte School District, Ernest Roll, District Attorney for Los Angeles County and the County of Los Angeles, are public bodies within the purview of subsection 21 of the section 1238 of the California Code of Civil Procedure, ... to wit: To demolish, clear, abate or remove buildings from the area known as 'Hicks Camp' and herein described in exhibit 'A,' for the reason that the same are detrimental to the health, safety and morals of the people, and because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings predominating in said area. That the public interest and necessity require the construction by the El Monte School District of a school building and also the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land hereinabove described. In conjunction therewith, said public interest and necessity require, that buildings, dwellings and structures within said tract of land be demolished, cleared, abated and/or removed, in the interest of the health, safety and morals of the people, because of dilapidation, overcrowding, faulty arrangement or design, or lack of ventilation or sanitary facilities of the dwellings therein, in a manner that will be most compatible with the greatest public good and the least private injury. ... That there is grave danger of the creation of a public nuisance, unless the public uses herein referred to are provided for and the public interest and necessity stated above be adjuticated [sic]."

The cross-complaint closes with a prayer that the cross-defendants be required to set forth the nature, character, extent and value of their several estates or interest in the parcels of real property sought to be condemned and the severance damage, if any, accruing thereto; that the value of each separate interest or estate sought to be condemned and the severance damages, if any, be ascertained, and that upon payment to the defendants entitled to compensation of the several amounts so ascertained, the court make and enter a final order of condemnation, "conveying to cross complainant, as agent for the state, the properties for the public use above set forth."

We have ignored the allegations contained in the first, second and fourth causes of action, contained in the second amended cross-complaint, which were attempted to be incorporated **[159 Cal.App.2d 460]** by reference in the third amended cross-complaint in view of the fact that the demurrers interposed to these causes of action had, as noted, been sustained without leave to amend. [2] The attempted incorporation of these counts in the third amended cross-complaint without leave of the court is ineffective and they may not be treated as a part of the pleading in the case. (39 Cal.Jur.2d p. 339.) Moreover, without here undertaking to set forth in detail the voluminous allegations of said counts, we are completely satisfied that the trial court properly sustained the demurrers thereto without leave to amend. Each of these three causes of action seemingly undertakes to state a cause of action for monetary and injunctive relief against the respondents upon some undiscernible theory for damages which the cross-complainant and others similarly situated allegedly will sustain if the plaintiff prevails in its action to abate the nuisances alleged to exist upon the properties owned by them.

[3] From the allegations of appellant's pleadings which we have above summarized in some detail, it would appear that the relief which he seeks thereby as against the respondents is a judgment declaring that the public interest and necessity require the construction by the respondent El Monte School District of a school building and "the acquisition and appropriation by said school district of a site upon which said building may be erected within that certain tract of land" in the cross-complaint described. We know of no law, and none has been called to our attention, which authorizes a private citizen to maintain such an action. Where, when or how, if at all, a school district shall construct school buildings is a matter within the sole competency of its governing board to determine. (Montebello Unified School Dist. v. Keay (1942), 55 Cal.App.2d 839, 843-844 [131 P.2d 384].)

If, however, the third amended cross-complaint be construed as one whereby appellant as a private citizen seeks to acquire property for the purpose of constructing and operating a public school, it is likewise unauthorized by law. Section 1001 of the Civil Code, upon which appellant assertedly seeks to predicate his action, while authorizing any person, as "an agent of the State" or as "a person in charge of such use" to acquire private property under the power of eminent domain for any of the public uses provided in section 1238 of the Code of Civil Procedure is wholly without application. [4] A private person seeking to exercise the right of eminent domain must not only allege that he proposes to devote the **[159 Cal.App.2d 461]** property sought to be acquired to one of the public uses provided in section 1238, but it must likewise be made to appear that he is authorized to devote the property to the public use in question, or otherwise stated, that he is a person authorized to administer or have "charge of such use." (Beveridge v. Lewis (1902), 137 Cal. 619, 621 [67 P. 1040, 70 P. 1083, 92 Am.St.Rep, 188, 58 L.R.A. 581].) [5] While appellant alleges by way of conclusion that he "is a person, competent and qualified to acquire the real property" described in his pleading "as agent of the State and/or person in charge of the uses" therein set forth, the allegation must be disregarded, because we judicially know it is untrue. (Wilson v. Loew's Inc. (1956), 142 Cal.App.2d 183, 187-188 [298 P.2d 152].) [6] "The constitution declares that the legislature shall provide 'for a system of common schools,' or, as expressed elsewhere in the organic law, 'a public school system.' " (23 Cal.Jur. p. 18; Cal. Const.,

art. IX, §§ 5-6.) "By these two sections, the constitution makes the school system a matter of state care and supervision. The term 'system' itself imports a unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools. And this duty to provide for the education of the children of the state, so far as the state has, by the adoption of the constitution, undertaken it, cannot be delegated to any agency." (23 Cal.Jur. 21-22.) As said in Piper v. Big Pine School Dist., 193 Cal. 664, 669 [226 P. 926]:

"It is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the constitution. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of state."

From the allegations of the cross-complaint, it affirmatively appears that "(i)n this case it is the school district, acting through its governing board, that is the agent of the State in charge of the use for which the land was sought." (Montebello Unified School Dist. v. Keay, supra.)

[7] The third amended cross-complaint wholly fails to state a cause of action and is patently frivolous and sham. **[159 Cal.App.2d 462]** It was therefore properly stricken by the trial court. [8] As said by this court in Neal v. Bank of America (1949), 93 Cal.App.2d 678, 682-683 [209 P.2d 825]:

"It may be conceded that there is no statutory provision for striking complaints from the files, as there is in respect to sham or frivolous answers. (Code Civ. Proc., § 453.) However, the courts have inherent power, by summary means, to prevent frustration, abuse, or disregard of their processes. (41 Am.Jur. §§ 346, 347, p. 527; anno., 13 Am.St.Rep. 640.) ... In Santa Barbara County v. Janssens, 44 Cal.App. 318 [186 P. 372], it was held that an order striking an amended cross-complaint from the files was within the jurisdiction of the trial court, and presumably correct in the absence of error disclosed by the record. The fundamental principle running through the cases is that a court is not required to tolerate a purported amended complaint which fails to amend the previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration. ... It cannot be doubted that the court had jurisdiction to strike plaintiff's amended complaint on the ground that it was frivolous and a sham and the order clearly was not an abuse of discretion."

The order appealed from is affirmed.

Shinn, P. J., and Wood (Parker), J., concurred.

FN *. Assigned by Chairman of Judicial Council.

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Childers v. Childers, 74 Cal.App.2d 56

[Civ. No. 15214. Second Dist., Div. Two. Apr. 17, 1946.]

WILMA FLORA CHILDERS, Respondent, v. JOHN E. CHILDERS, Appellant.

COUNSEL

Courtney A. Teel for Appellant.

Harvey W. Guthrie for Respondent.

OPINION

WILSON, J.

At the conclusion of the trial of this action, which was had before the court without a jury, findings of fact and conclusions of law were waived by both parties, whereupon an interlocutory judgment of divorce was awarded to plaintiff. Defendant has appealed on the judgment roll and a transcript of the evidence introduced at the trial. The only point raised is that the evidence is insufficient to sustain the findings that must be implied in support of the judgment. **[74 Cal.App.2d 59]**

1. Assumptions and implications when findings are waived. [1] Since findings of fact and conclusions of law were waived every intendment is in favor of the judgment. It will be assumed that the trial court found every fact essential to the support of the judgment, and findings will be implied in favor of the successful litigant upon all of the issues raised by the pleadings. (Gray v. Gray, 185 Cal. 598, 599 [197 P. 945]; Miller v. Pacific Freight Lines, 40 Cal.App.2d 451, 453 [104 P.2d 1069]; Green v. Darling, 73 Cal.App. 700, 703 [239 P. 70]; Jensen v. Burton, 117 Cal.App. 66, 68 [3 P.2d 324].) [2] But since a transcript of the evidence is before this court the assumption goes no further, and we are not required to and we do not indulge in an assumption as to the sufficiency of the evidence to support the implied findings. The question will be determined from an examination of the evidence itself.

In two cases entitled Gordon v. Mount, 125 Cal.App. 701, 708 [13 P.2d 932], and Bekins Van Lines, Inc. v. Johnson, 21 Cal.2d 135, 137 [130 P.2d 421], it is said that where findings of fact and conclusions of law are waived "it is presumed fn. * that every fact essential to the support of the judgment was proved and found by the court." It is the word "proved" that gives rise to this discussion. In each of said cases the entire evidence was before the reviewing court; it was discussed and held to be sufficient to sustain the judgments in the respective cases. Since the evidence was adequate, it was not necessary to assume that sufficient facts were proved to support the implied findings or to sustain the judgment. The opinion in the Gordon case cites Gray v. Gray, supra, and the Bekins case cites the Gray and Gordon cases and Miller v. Pacific Freight Lines, supra, as authorities for the statement above quoted. The Gray case, in stating that upon the waiver of findings the presumption arises that the trial court found all facts necessary to support the judgment, cites Antonelle v. New City Hall Commrs., 92 Cal. 228 [28 P. 270], and Bruce v. Bruce, 16 Cal.App. 353 [116 P. 994]. **[74 Cal.App.2d 60]** In the Antonelle case findings were waived and the appeal was on the pleadings and judgment. In the Bruce case findings were waived and the evidence was not furnished to the appellate court. The Miller case states the same presumption as that in the Gray case and cites three cases: Stewart v. Langer, 9 Cal.App.2d 60, 61 [48 P.2d 758]; High v. Bond, 107 Cal.App. 153, 154 [290 P. 145], and Benjamin Moore & Co. v. O'Grady, 9 Cal.App.2d 695, 698 [50 P.2d 847]. In each of said three cases the evidence was taken up on appeal and the only presumption stated was that the trial court made all findings necessary to support the

judgment. There was no reference to a presumption of evidence to sustain the implied findings. In both the Gray and Miller cases the only point raised was the sufficiency of the evidence to support the implied findings, and in each case the court discussed the evidence at length and held that it was sufficient. Neither the Gray nor the Miller case holds that any fact will be presumed to have been proved. Such a statement would have been uncalled for in view of the fact that the evidence in each case was found sufficient.

It thus appears that whatever was said in the Gordon and Bekins cases concerning a presumption of proof when the evidence was before the court was not only dictum but it has no foundation either in the decisions cited therein or in the cases which are referred to in the Gray and Miller opinions. None of the cases sustain the dictum.

[3] It is where findings are waived and a transcript of the evidence is not furnished to the appellate court that it will be assumed that the evidence supports such implied findings as are necessary to sustain the judgment. (Credit Bureau v. Horeth, 60 Cal.App.2d 47, 49 [139 P.2d 962]; Whitney v. Redfern, 41 Cal.App.2d 409, 413 [106 P.2d 919]; Cuthbert Burrel Co. v. Shirley, 64 Cal.App.2d 52, 54 [148 P.2d 85]; Harmon v. De Turk, 176 Cal. 758, 761 [169 P. 680].)

In 24 California Jurisprudence, page 956, section 194, and in other reference works, we find a repetition of the same presumption as that hereinbefore quoted from Gordon v. Mount and Bekins Van Lines, Inc. v. Johnson. No distinction is made between the cases there cited in which the evidence was before the appellate court and those in which it was not. An examination of the citations will demonstrate that they support the text only when the evidence is not brought up on appeal, but have no relevancy when the appellate court has **[74 Cal.App.2d 61]** the evidence before it. We have already pointed out that in Gray v. Gray the evidence was taken up on appeal and no assumption was indulged as to whether it supported the implied findings, and that in Harmon v. De Turk, Antonelle v. New City Hall Commrs., and Bruce v. Bruce, the appeals were on the judgment roll alone and both findings and evidence were assumed in support of the judgment. Likewise Green v. Darling, 73 Cal.App.700 [239 P. 70], was appealed on the judgment roll alone. There was no mention of the sufficiency of the evidence. In each of the cases of Ibbetson v. Ibbetson, 52 Cal.App. 699 [199 P. 872], and Jensen v. Burton, 117 Cal.App. 66 [3 P.2d 324], implied findings necessary to sustain the judgment were held to be supported by the evidence which is set out in the opinions. In Dee v. Dee, 34 Cal.App. 658 [168 P. 588], findings were waived, the evidence was conflicting, and it was assumed that the court found all of the facts necessary to sustain the judgment. In Kritzer v. Tracy Engineering Co., 16 Cal.App. 287 [116 P. 700], the appeal was upon the judgment roll but there were no findings. Whether there was an actual waiver of findings was disputed. The court said that since every intendment is in support of a judgment it would be presumed that findings were waived.

The confusion seems to have arisen through the inadvertent addition of the words "proved and" in the Gordon case, with the erroneous citation of the Gray case which is not authority therefor, and the repetition of the same words in the Bekins case, which cites the Gordon case as authority. No assumption as to the evidence was necessary in either of those cases, because, as hereinbefore stated, it was in the record.

[4] The doctrine of stare decisis does not require us to follow those cases to the extent of assuming what facts were proved when the evidence is before us. It is a fundamental rule of that doctrine that a decision is not authority for what is said in the opinion but only for the points actually involved and actually decided. (Norris v. Moody, 84 Cal. 143, 149 [24 P. 37]; Hart v. Burnett, 15 Cal. 530, 598.) [5] The rule of stare decisis is a rule of public policy. For the preservation of harmony and for the stabilization of the law the courts will ordinarily follow precedents when the same points arise in subsequent litigation, although they will not persist in an absurdity or perpetuate a manifest error. [6] There is no kinship between stare decisis and obiter dictum. Whatever **[74 Cal.App.2d 62]** may be said in an opinion that is not necessary to a determination of the question involved is to be regarded as mere dictum. (Cardenas v. Miller, 108 Cal. 250, 252 [39 P. 783, 41 P. 472, 49 Am.St.Rep. 84].) [7] The statement of a principle not necessary to the decision will not be regarded either as a part of the decision or as a precedent that is required by the rule of stare decisis to be followed (Brown v. Brown, 83 Cal.App. 74, 81 [256 P. 595]; Hills v. Superior Court, 207 Cal. 666, 670 [279 P. 805, 65 A.L.R. 266]; Laguna L. & W. Co. v. Greenwood, 92 Cal.App. 570, 574 [268 P. 699]; Harris v. Industrial Acc. Com., 204 Cal. 432, 438 [268 P. 902]), no matter how often repeated. (W. B. Samuels & Co. v. Nelson County, 204 Ky. 490 [264 S.W. 1098, 1099].) [8] Expression of dictum is not binding on a court inferior to that which rendered the decision. (City of Mountain View v. Farmers' Telephone Exch. Co., 294 Mo. 623 [243 S.W. 153, 157]; Travelers' Ins. Co. v. Lancaster, (Tex.Civ.App.) 71 S.W.2d 318, 320; Arthur C. Harvey Co. v. Malley, 61 F.2d 365, 366; affirmed 288 U.S. 415 [53 S.Ct. 426, 77 L.Ed. 866].)

[9] When it is claimed on appeal that the evidence does not sustain the findings or judgment, there are two methods of ascertaining the answer: (1) To examine the evidence if it is in the record, and (2) to assume its sufficiency if it is not. The court will apply one or the other of these methods but it will not resort to an assumption of evidence when the transcript is present. We may assume something to be true when there is no evidence one way or the other on the subject; but when there is positive evidence of the existence of a fact the judgment must be based on the evidence and there is no room for an

assumption. There can be no assumption or presumption that a fact does not exist in the face of uncontroverted evidence to the contrary. The only reason for the affirmance of the judgment in this action is the sufficiency of the evidence, not an assumption as to what took place at the trial and not shown by the transcript.

2. Sufficiency of the evidence to sustain the implied findings. [10] In support of the judgment findings must be implied that the charges of cruelty made by respondent were true, that she was entitled to permanent support in the amount awarded by the court, and that appellant had the ability to pay the same.

[11] The evidence as to cruelty is sufficient to sustain the implied finding thereon. Respondent testified that appellant attempted **[74 Cal.App.2d 63]** for a long period of time to keep their marriage secret; he introduced her under her maiden name; when they visited friends he asked her to remove her rings which were evidence that they were married; he never took her to places of amusement; he struck her several times and on two or three occasions grabbed her around the neck and choked her. Respondent's sister furnished corroboration for the latter acts of cruelty. Such evidence is sufficient to support the implied findings of appellant's cruelties. He offered nothing to the contrary, his testimony having been limited to their property and its value.

[12] The parties had been married less than a year when the complaint was filed. After the commencement of the action a child was born of the marriage who was eight months old at the time of the trial. In view of the age of the child and the necessity for its mother's constant attention to it, the implied finding of the necessity for the award of permanent support to respondent in the sum of $100 per month will not be disturbed.

[13] The implied finding of appellant's ability to pay the amount awarded is sustained by the evidence. He was permanently employed in the United States Post Office Department; his annual income was shown to be approximately $3,600 from salary and rentals; during the marriage he had given respondent about $100 per month; in the year preceding the trial he had sold property (title to which he had taken in the name of his cousin) for about the sum of $1,000 above the purchase price after paying expenses of sale. After deductions for taxes and for his own living expenses he was still able to pay the amount required by the judgment. The amount awarded was not unreasonable.

Judgment affirmed.

Moore, P. J., concurred.

McCOMB, J.

I concur in the judgment for the reason stated: that the evidence is sufficient to sustain the implied findings. But I do not subscribe to the conclusion reached in the main opinion under the healing (1) Assumptions and implications when findings are waived.

In spite of the language in certain earlier decisions to the contrary, it is my opinion that the Supreme Court has now established the law in California to be that where findings of **[74 Cal.App.2d 64]** fact and conclusions of law are waived by the parties, on an appeal from the judgment an appellate court will presume that every fact essential to the support of the judgment was (1) proved and (2) found by the trial court.

In Gordon v. Mount (1932), 125 Cal.App. 701 [13 P.2d 932], Mr. Justice Plummer speaking for the District Court of Appeal at page 708 says: "Where findings are waived it is presumed that every fact essential to the support of the judgment was proved and found by the court. (Gray v. Gray, 185 Cal. 598 [197 P. 945]; 24 Cal.Jur., p. 956, and the cases there cited.)

"In support of the judgment, there being no findings in this case, we must hold that the court, notwithstanding the record shows want of probable cause and lack of reliance upon advice of counsel that the testimony introduced in the cause did not justify the charge of malice, and the existence of malice being a question of fact, we are bound by the judgment of the trial court." (Italics added.)

In Bekins Van Lines, Inc. v. Johnson, 21 Cal.2d 135 [130 P.2d 421], Gordon v. Mount, supra, is cited with approval, the Supreme Court saying at page 136 et seq.: "After the trial judge had ordered the judgment, findings of fact and conclusions of law were waived by written stipulation of counsel. On this state of the record every intendment is in favor of the judgment, and it is presumed that every fact essential to the support of the judgment was proved and found by the court. (Gray v. Gray, 185 Cal. 598 [197 P. 945]; Miller v. Pacific Freight Lines, 40 Cal.App.2d 451 [104 P.2d 1069]; Gordon v. Mount, 125 Cal.App. 701 [13 P.2d 932]; 24 Cal.Jur. p. 956, and cases there cited.) The applicable rule requires the assumption that the proof showed and that the court found and concluded that the services out of which the disputed tax

arose were so much a part of the business of the plaintiff, were so customarily rendered in that connection, and so directly contributed to the transportation which was the plaintiff's principal business, that money derived therefrom must be regarded as part of the 'gross receipts from operations of said operator' and taxable as such." (Italics added.)

In Ibbetson v. Ibbetson, 52 Cal.App. 699 at 702 [199 P. 872], the court says: "Findings having been waived, the presumption is that every fact essential to the support of the judgment was proved and found by the court and that accordingly the court found that there was no community property." (Italics added.) **[74 Cal.App.2d 65]** It is apparent that the legal profession had understood the rule to be as just stated, for in 24 California Jurisprudence, at page 956, appears this statement: "Where findings are waived, it is presumed that every fact essential to the support of the judgment was proved and found by the court." (Italics added.)

Again, in 2 Bancroft's Code Practice and Remedies the rule is stated as follows: "Even in those jurisdictions wherein the court is required to make findings although not requested, findings may be waived, and if waived it is presumed in support of the judgment that every material fact was proved and found." (Italics added.) See, also, Vogel v. Marsh, 120 Cal.App. 99 at 100 [7 P.2d 756]; Gordon v. Mount, supra, at 709, and Jensen v. Burton, 117 Cal.App. 66 at 68 et seq. [3 P.2d 324]. fn. *

Such a rule appears to be fair and in consonance with the simplified pleading in this state. Should a litigant desire to question the sufficiency of the evidence he should request findings so that the trial court and opposing counsel may know that on appeal the sufficiency of the evidence to sustain the findings may be attacked; and in the event sufficient evidence has not been introduced to support a material finding of fact opposing counsel may request, or the trial court may direct, that the case be reopened and the parties given an opportunity to produce evidence to support a material finding, if they are in a position to do so. In any event, the Supreme Court of the state has stated that where findings of fact are waived the presumption is that every fact was proved and found by the court. Hence this court is bound by the decision of the Supreme Court until such time as that court may disapprove or overrule its decision as set forth above. (Estate of Mickelson, 37 Cal.App.2d 450 at 453 [99 P.2d 687]; Sawyer v. Sterling Realty Co., 41 Cal.App.2d 715 at 724 [107 P.2d 449]; Chrisman v. Culinary Workers Local, 46 Cal.App.2d 129 at 132 [115 P.2d 553].) **[74 Cal.App.2d 66]**

The law is established in California that where two independent reasons are given for a decision neither one is to be considered mere dictum, since there is no more reason for calling one ground the real basis of the decision than the other. The ruling on both grounds is the judgment of the court and each is of equal validity. (California Employment Stab. Com. v. Municipal Court, 62 Cal.App.2d 781 at 787 [145 P.2d 361], and cases therein cited.) Under this rule the statement of the Supreme Court in Bekins Van Lines Inc. v. Johnson, supra, was an independent reason for the decision and hence not dictum.

The result, therefore, in my opinion is that this court is bound by the decision of the Supreme Court, and that since the parties waived findings of fact and conclusions of law defendant may not urge before this court the insufficiency of the evidence to support the judgment.

FN *. The terms "presume" and "presumption" are deemed to have been used in the cases cited herein synonymously with "assume" and "assumption" and do not import presumptions defined in the Code of Civil Procedure. In practical effect it would be more accurate to say that the absence of findings or of evidence, or of both, from the record on appeal is a waiver of the right of the appellant to question their sufficiency.

FN *. The use of the words "presumed" and "presumption" in the cited cases is unfortunate and has had a tendency to cause confusion in the decisions. The true legal concept may be expressed accurately thus: When findings of fact and conclusions of law are waived, on appeal appellant will be deemed to have waived the right to urge either that (1) the evidence is insufficient to support implied findings of fact or, (2) the implied findings do not sustain the judgment.

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EDUCATION CODE
SECTION 15100-15111

15100. Except as otherwise provided by law, the governing board of any school district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district or community college district, order an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:

(a) The purchasing of school lots.

(b) The building or purchasing of school buildings.

(c) The making of alterations or additions to the school building or buildings other than as may be necessary for current maintenance, operation, or repairs.

(d) The repairing, restoring, or rebuilding of any school building damaged, injured, or destroyed by fire or other public calamity.

(e) The supplying of school buildings and grounds with furniture, equipment, or necessary apparatus of a permanent nature.

(f) The permanent improvement of the school grounds.

(g) The refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or of state school building aid loans.

(h) The carrying out of the projects or purposes authorized in Section 17577 or 81613.

(i) The purchase of schoolbuses the useful life of which is at least 20 years.

(j) The demolition or razing of any school building with the intent to replace it with another school building, whether in the same location or in any other location.

Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes, be united and voted upon as one single proposition.

15100.5. Except as otherwise provided by law, the governing board of the Peralta Community College District may, when in its judgment it is advisable, order the county superintendent of schools to call an election to be conducted pursuant to this chapter and submit to the electors of the district the question of whether the proceeds of previously authorized but unissued bonds of the district may be used for a purpose or purposes in addition to the purposes for which the previously approved bonds were authorized by the electors.

The governing board may, by order entered into its minutes, call for an election to expand the purposes of prior authorized but unissued bonds either as a single proposition on the ballot or combined with the question of issuing new bonds of the district for any purpose or purposes permitted by law.

If two-thirds of the votes cast on the question of expanding the purposes for which the proceeds of previously authorized but unissued bonds of the district may be used, or the combined question of expanding the purposes for which the proceeds of previously authorized but unissued bonds of the district and issuing newly authorized bonds of the district, are in favor of the proposition, the district may use the proceeds of the previously authorized but unissued bonds for the expanded purposes and may issue newly

authorized bonds, as the case may be.

15101. Notwithstanding any other law, an election may not be held pursuant to this chapter within 45 days before a statewide election or within 45 days after a statewide election unless conducted at the same time as the statewide election, subject to Part 3 (commencing with Section 10400) of Division 10 of the Elections Code, or on an established election date pursuant to Section 1000 or 1500 of the Elections Code.

15101.75. (a) This chapter shall apply to bond elections for and the issuance of bonds for school facilities improvement districts created pursuant to Chapter 2 (commencing with Section 15300) to the extent that this chapter does not conflict with Chapter 2. In the event of a conflict, the provisions of Chapter 2 shall supersede the provisions of this chapter, but only to the extent of the conflict.

(b) A bond adopted by the voters pursuant to this part prior to January 1, 2008, shall be governed by this part as it read on December 31, 2007.

15102. The total amount of bonds issued pursuant to this chapter and Chapter 1.5 (commencing with Section 15264) shall not exceed 1.25 percent of the taxable property of the school district or community college district, or the school facilities improvement district, if applicable, as shown by the last equalized assessment of the county or counties in which the district is located. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

15103. Notwithstanding any other provision of law, for the purpose of computing the limit on the amount of bonds which may be issued by a district pursuant to the provisions of this chapter, the taxable property of the district shall be determined upon the basis that the district's assessed value has not been reduced by the exemption of the assessed value of business inventories in the district or reduced by the homeowner's property tax exemption.

15105. For the purpose of the provisions of Sections 15102 and 15106 which require that the valuation as shown on the last equalized assessment roll be modified pursuant to Section 41201 or 84201, the "current year" as used in Section 41201 or 84201 shall be deemed to be the latest fiscal year for which there exists a last equalized county assessment roll as ascertained in accordance with Chapter 3 (commencing with Section 2050) of Part 3 of Division 1 of the Revenue and Taxation Code, and the term "two immediately preceding years" shall be deemed to be the two fiscal years immediately preceding the

fiscal year for which the last equalized county assessment roll exists. Whenever in any year it becomes necessary to determine the modification under Sections 15102 and 15106, at a time between the date when the assessment roll for that year becomes the last equalized county assessment roll ascertained under Chapter 3 and the date when the factor for the current year is certified and becomes available, the factor for the current year shall be deemed to be 1.00.

15106. A unified school district or community college district may issue bonds that, in aggregation with bonds issued pursuant to Section 15270, shall not exceed 2.5 percent of the taxable property of the school district or community college district, or the school facilities improvement district, if applicable, as shown by the last equalized assessment of the county or counties in which the district is located.

In computing the outstanding bonded indebtedness of a unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(a) For the purposes of the State School Building Aid Law of 1952 (Chapter 6 (commencing with Section 16000)) with respect to applications for apportionments and apportionments filed or made prior to September 15, 1961, and to the repayment thereof, Chapter 4 (commencing with Section 15700), inclusive, only, a unified school district shall be considered to have a bonding capacity in the amount permitted by law for an elementary school district and a bonding capacity in the amount permitted by law for a high school district.

(b) For purposes of this section, the taxable property of a district for a fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts or community college districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district or community college district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15102.

15107. In computing the limitation of indebtedness of a school district, community college district, or school facilities improvement district of any kind or class up to this time or in the future formed or organized, hereinafter in this section referred to as the "bonding district," the outstanding indebtedness of any previously existing district all or any part of which forms a component part of the bonding district and the outstanding

indebtedness of any district for which any territory that has become a part of the bonding district is liable shall be excluded and shall not be deemed, for the purposes of computing the limitation of indebtedness under Section 15102 or 15106, to constitute outstanding indebtedness of the bonding district, except to the extent that the outstanding indebtedness has been expressly assumed by the bonding district by vote of not less than two-thirds of the electors of the bonding district voting at an election at which the proposition of assuming the indebtedness is voted upon. Nothing contained in this section shall operate to release any property from liability for taxes to pay the principal and interest of indebtedness incurred by any component district or for which any territory that has become a part of the bonding district is liable and in which the taxable property is located at the time of the incurring of the indebtedness. It is the intent of the Legislature to provide in this section a special method of computing the limitation of indebtedness of school districts or community college districts irrespective of liability of the area embraced within the school districts for the payment of any bonded indebtedness. This section does not authorize the issuance of bonds in excess of the limits expressed in Section 15334.5.

15108. For the purpose of determining the limitation of indebtedness of a school district, community college district, or school facilities improvement district of any kind or class under Section 15102 or 15106, that portion of the bonded indebtedness of the district for which another district or territory in another district is liable shall be excluded and shall not be deemed to constitute outstanding bonded indebtedness of the district.

15109. Where an elementary school district and a high school district with a combined average daily attendance of 300,000 or more are governed by the same governing board, and the pupils in grades seven and eight in the districts are in attendance at high schools maintained by the high school district, the governing board, by resolution filed with the county auditor, may provide that the bond issuance limitations determined under Section 15102 shall be adjusted by reducing the bond issuance limitation of the elementary school district by 1 percent of its total and by augmenting the bond issuance limitation for the high school district by the amount by which that of the elementary district was reduced.

15110. An action to determine the validity of bonds and of the ordering of the improvement or acquisition may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. In such action, all findings, conclusions and determinations of the legislative body which conducted the proceedings shall be conclusive in the absence of actual fraud.

15111. The governing board of each school district or community college district shall, within 30 days after the end of each fiscal year, submit to the county superintendent of schools who has jurisdiction over the school district or community college district a report containing the following information, concerning any election held pursuant to Sections 4152, 15120, 15121, and 16058 for the approval of the issuance of bonds or the assumption of any bonded

indebtedness or other indebtedness:

(1) The total amount of the bond issue, bonded indebtedness or other indebtedness involved.

(2) The percentage of registered electors of the district who voted at the election.

(3) The results of the election, with the percentage of votes cast for and against the proposition involved.

EDUCATION CODE
SECTION 15264-15276

15264. It is the intent of the Legislature that all of the following are realized:

(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIIIA of the California Constitution, are in strict conformity with the law.

(b) Taxpayers directly participate in the oversight of bond expenditures.

(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.

(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures.

15266. (a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district, community college district, or a school facilities improvement district may decide, pursuant to a two-thirds vote and subject to Section 15100 to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIIIA of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district, community college district, or a school facilities improvement district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election at which all of the electors of the school district, community college district, or school facilities improvement district, as appropriate, are entitled to vote, or a statewide special election.

(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIIIA of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.

15268. The total amount of bonds issued, including bonds issued pursuant to Chapter 1 (commencing with Section 15100), shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of

the California Constitution in the case of indebtedness incurred by a school district pursuant to this chapter, at a single election, would not exceed thirty dollars ($30) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIIIA of the California Constitution. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

15270. (a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars ($60) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIIIA of the California Constitution.

(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, would not exceed twenty-five dollars ($25) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIIIA of the California Constitution.

(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.

(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987-88 fiscal year

by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987-88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987-88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.

(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10, and includes bonds of a school facilities improvement district the repayment of which is provided for by this chapter and Chapter 2 (commencing with Section 15300).

15271. The governing board of a school district or community college district may proceed pursuant to this chapter on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district and act on behalf of the school facilities district as provided pursuant to Chapter 2 (commencing with Section 15300).

15272. In addition to the ballot requirements of Section 15122 and the ballot provisions of this code applicable to governing board member elections, for bond measures pursuant to this chapter, the ballot shall also be printed with a statement that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes.

15274. If it appears from the certificate of election results that 55 percent of the votes cast on the proposition of issuing bonds pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution are in favor of issuing bonds, the governing board shall cause an entry of that fact to be made upon its minutes. The governing board shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

15276. Notwithstanding any other provision of law, a county board of education may not order an election to determine whether bonds may be issued under this article to raise funds for a county office of education.

EDUCATION CODE
SECTION 15300-15303

15300. This chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district, for the conduct of a bond election within a school facilities improvement district, and for the issuance of general obligation bonds by a school district or community college district for a school facilities improvement district.

15301. (a) A school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of a school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance school facilities and purposes authorized pursuant to Section 15100. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this part would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Pt. 1, Div. 2, Title 5, Gov. C.). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district.

(d) The governing body of a school district or community college district that proceeds under this chapter shall comply with the filing requirements established by Section 54902 of the Government Code. A plat or map that is filed pursuant to this subdivision shall specifically identify property, located within the school district or community college district, that is not located within the improvement district established by the school district or community college district pursuant to this chapter.

15303. (a) This chapter shall not be operative in a county or counties until the board of supervisors of the county in which the county superintendent of schools having jurisdiction over the school district or community college district in which the school facilities improvement district is located, and the board of supervisors of any county in which the school facilities improvement district is located, by resolution adopted by a majority vote of each affected board of supervisors, makes this chapter applicable in the county or counties.

(b) A board of supervisors adopting a resolution pursuant to subdivision (a) shall file that resolution with the California Debt and Investment Advisory Commission established pursuant to Section 8855 of the Government Code.

Application

Resolution by board of supervisors required to make chapter applicable in county, see Education Code § 15303.

Historical and Statutory Notes

Construction of act, added by Stats.1997, c. 893 (S.B.161), as restatement of existing provisions, not resulting in new or additional costs to local agencies, see Historical and Statutory Notes under Education Code § 15100.5.

Former § 15327, added by Stats.1994, c. 1005 (A.B.3747), § 1, amended by Stats.1996, c. 1072 (S.B.1544), § 9; Stats.1997, c. 17 (S.B. 947), § 22, relating to the rights, powers, duties and responsibilities of the governing board was repealed by Stats.1997, c. 893 (S.B. 161) § 21. See this section.

Stats.1996, c. 277 (S.B.1562), provided for the repeal of § 15327 in old Part 10 and the addition of a similar section of this number, operative Jan. 1, 1998. Stats.1996, c. 1072 (S.B.1544), amended § 15327 in old Part 10. Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 15100.

Derivation: Former § 15327, added by Stats. 1994, c. 1005, § 1, amended by Stats.1996, c. 1072, § 9; Stats.1997, c. 17, § 22.

Cross References

Governing board, defined, see Education Code § 78.

Article 3

FINANCING THE BONDS

Section

Article 3 was added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.

Application

Resolution by board of supervisors required to make chapter applicable in county, see Education Code § 15303.

§ 15330. Amount of bonds; limitation; calculation of taxable property

The total amount of bonds issued shall not exceed 1.25 percent of the taxable property of the school facilities improvement district as shown by the last equalized assessment of the county or counties in which the school facilities improvement district is located. For purposes of this section, the taxable

property of a school facilities improvement district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property located within the school facilities improvement district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property located within the school facilities improvement district for the fiscal year by the gross assessed value of all unitary and operating nonunitary property located within the county in which the school facilities improvement district is located for the fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

Application

Resolution by board of supervisors required to make chapter applicable in county, see Education Code § 15303.

Historical and Statutory Notes

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 15100.

Former § 15330, added by Stats.1994, c. 1005 (A.B.3747), § 1, relating to amount of bonds, was repealed by Stats.1996, c. 277 (S.B. 1562), § 1, operative Jan. 1, 1998. See this section.

Derivation: Former § 15330, added by Stats. 1994, c. 1005, § 1.

Library References

Schools ⇐97(3).
Westlaw Topic No. 345.

C.J.S. Schools and School Districts §§ 525 to 526.

§ 15331. Taxable property determination; assessed value not reduced

Notwithstanding any other law, for the purpose of computing the limit on the amount of bonds that may be issued by a school facilities improvement district pursuant to the provisions of this chapter, the taxable property of the school facilities improvement district shall be determined upon the basis that the school facilities improvement district's assessed value has not been reduced by the exemption of the assessed value of business inventories in the school facilities improvement district or reduced by the homeowner's property tax exemption.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998.)

Application

Resolution by board of supervisors required to make chapter applicable in county, see Education Code § 15303.

Historical and Statutory Notes

Subordination of legislation by Stats.1996, c. 277 (S.B.1562), to other 1996 legislation, severability of provisions, and nonsubstantive nature of changes made by that Act, see Historical and Statutory Notes under Education Code § 15100.

Former § 15331, added by Stats.1994, c. 1005 (A.B.3747), § 1, relating to determination of taxable property of school facilities improvement district, was repealed by Stats.1996, c. 277

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§ 15321. Notice of hearing

Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation published in each affected county, pursuant to Section 6066 of the Government Code, the first publication shall be at least 14 days prior to the time fixed for the hearing. * * * No notice other than that required by this section need be given.

(Added by Stats.1996, c. 277 (S.B.1562), § 2, operative Jan. 1, 1998. Amended by Stats.2007, c. 670 (A.B.373), § 12.)

§ 15323. Adoption of resolution proposing modifications

At the hearing, the governing board of the school district or community college district may adopt a resolution proposing modifications, consistent with Section 15302, of the purpose stated in the resolution of intention. A resolution proposing modifications shall describe the proposed modifications, state the change, if any, in the estimated cost of carrying out the purpose, and shall fix a time and place for the hearing by the governing board.

(Added by Stats.1997, c. 893 (S.B.161), § 16. Amended by Stats.2007, c. 670 (A.B.373), § 13.)

§ 15326.5. Amendment of previously adopted resolution

The governing board may amend a previously adopted resolution ordering the formation of a school facilities improvement district to change or add to the purposes for which the school facilities improvement district is formed and the projects to be financed and to increase or decrease the amount of bonds that may be issued for those purposes. Bonds may be issued only for the purposes stated in, and in an amount not exceeding the amount stated in, a proposition submitted to and approved by the voters of the school facilities improvement district.

(Added by Stats.2007, c. 670 (A.B.373), § 14.)

Article 3

FINANCING THE BONDS

§ 15330. Repealed by Stats.2007, c. 670 (A.B.373), § 15

Historical and Statutory Notes

2007 Legislation

The repealed section, added by Stats.1996, c. 277 (S.B. 1562), § 2, operative Jan. 1, 1998, derived from former § 15330, added by Stats.1994, c. 1005, § 1, related to the amount of bonds, limitation, and calculation of taxable property.

§ 15331. Repealed by Stats.2007, c. 670 (A.B.373), § 16

Historical and Statutory Notes

2007 Legislation

The repealed section, added by Stats.1996, c. 277 (S.B. 1562), § 2, operative Jan. 1, 1998, derived from former § 15331, added by Stats.1994, c. 1005, § 1, related to taxable property determination, and assessed value not reduced.

§ 15332. Repealed by Stats.2007, c. 670 (A.B.373), § 17

Historical and Statutory Notes

2007 Legislation

The repealed section, added by Stats.1996, c. 277 (S.B. 1562), § 2, operative Jan. 1, 1998, derived from former § 15332, added by Stats.1994, c. 1005, § 1, related to location of a school facilities improvement district in a unified school district, amount of bonds, limitation, outstanding bonded indebtedness, and calculation of taxable property.

EDUCATION CODE
SECTION 15334.5

15334.5. Notwithstanding any other provision of law, no bonded indebtedness may be incurred pursuant to this part in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district or of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106. No bonded indebtedness may be incurred pursuant to this part in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district to exceed the limitation of indebtedness specified in Sections 15102 and 15106.

EDUCATION CODE
SECTION 15700-15754

15700. The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary and adequate school sites and buildings for the pupils of the public school system, the system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

In adopting this act, the Legislature considers that the great need in school construction is for adequate classrooms for the education of the pupils of the public school system. It is the intent of the Legislature to first satisfy this primary need to the greatest extent possible before providing additional educational facilities, regardless of how desirable such additional facilities may be. To the end that school classrooms may be made available at once and to all school districts in need of such classrooms, provisions for other needed school facilities is necessarily subordinated.

15701. As used in this chapter:

(a) "Board" means the State Allocation Board.

(b) "Director" means the Director of Education for kindergarten and grades 1 to 12, inclusive.

(c) "Project" means the purposes for which a school district has applied for an apportionment under this chapter.

(d) "Grade level maintained by a district" means either of the following:

(1) The kindergarten, if any, and grades 1 to 6, inclusive, or grades 1 to 8, inclusive, maintained by an elementary school district or a unified school district.

(2) Grades 7 to 12, inclusive, grades 9 to 12, inclusive, or grades 7 to 10, inclusive, maintained by a high school district or unified school district.

(e) "Apportionment" means an apportionment made under this chapter unless the context otherwise requires.

15702. The Director of General Services shall administer this chapter and shall provide any assistance to the board that it may require.

15703. The State Allocation Board is continued in existence for the purposes of this chapter. The members of the board and the Members of the Legislature meeting with the board in an advisory capacity shall receive no compensation for their services under this chapter but shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties hereunder, to be paid out of the Public School Building Loan Fund.

15704. The board by the adoption of rules shall give priority in allocating funds to districts to those districts where the children will benefit most from additional schoolhouse facilities. This

EDUCATION CODE
SECTION 16000-16105

16000. This chapter may be cited as the State School Building Aid Law of 1952.

16001. The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid school districts of the state in providing necessary schoolsites and buildings for the pupils of the public school system, this system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

In adopting this chapter, the Legislature considers that the great need in school construction is for classrooms for the education of the pupils of the public school system. It is the intent of the Legislature to first satisfy this primary need to the greatest extent possible before providing additional educational facilities, regardless of how desirable such additional facilities may be. To the end that school classrooms may be made available at once and to all school districts in need of such classrooms, provisions for other needed school facilities is necessarily subordinated.

16002. As used in this chapter:

(a) "Board" means the State Allocation Board.

(b) "Director" means the Director of Education for kindergarten and grades 1 to 12, inclusive.

(c) Notwithstanding any other law, the term "project" shall be deemed to include any or all of the purposes for which a school district has applied for apportionments under this chapter, pursuant to any regulations that the State Allocation Board may adopt.

(d) "Grade level maintained by a district" means any of the following:

(1) The kindergarten, if any, and grades 1 to 6, inclusive, or grades 1 to 8, inclusive, maintained by an elementary school district or a unified school district.

(2) Grades 7 to 12, inclusive, grades 9 to 12, inclusive, or grades 7 to 10, inclusive, maintained by a high school district or unified school district.

However, not more than one grade level shall be claimed by any district under any one of the paragraphs of this subdivision.

(e) "Apportionment" means an apportionment made under this chapter unless the context otherwise requires. The term "apportionment" in Sections 16091, 16097, 16099, 16100, 16104, 16105, and any other section in this chapter where the context justifies, shall be deemed to include funds of a school district required by the board to be contributed toward the purposes thereof. It is hereby declared that this construction is not intended as a change in the present law but rather as a declaration of existing law.

16002.5. For the purposes of this chapter, the term "basic bond requirement," means 5 percent of the assessed valuation of taxable property of the district for each grade level maintained by a district, as shown by the last equalized assessment of the county or

EDUCATION CODE
SECTION 16310-16344

16310. Not to exceed forty million dollars ($40,000,000) of the proceeds of the sale of bonds authorized by the State School Building Aid Bond Law of 1966 may be expended pursuant to this article.

16311. Not to exceed two hundred fifty million dollars ($250,000,000) of the proceeds of the sale of bonds authorized by the School Building Aid and Earthquake Reconstruction and Replacement Bond Law of 1972 may be expended pursuant to this article.

16312. The Legislature hereby declares that it is in the interest of the state and the people thereof to provide assistance to school districts in rehabilitating or replacing structurally unsafe school facilities inasmuch as the education of children is an obligation of the state, and the obligation carries with it a corresponding responsibility for the physical safety of children while attending school.

16313. It is the intent of the Legislature in enacting this article to provide a means through repayable state loans for school districts not otherwise eligible for assistance under this chapter (consisting principally of school districts in the urban centers of the state), to house their pupils in facilities that are structurally safe.

16314. The following terms, as used in this article, shall have the following meanings, unless the State Allocation Board finds a different meaning is essential for properly carrying out the purposes of this article, or finds that a different meaning clearly appears from the context:

(a) "Board" means the State Allocation Board as defined in Article 1 (commencing with Section 16000) of this chapter.

(b) "Director" means the Director of Education.

(c) "District" means an elementary, high school, or unified school district.

(d) "Project" means the purposes for which a district has applied for assistance in the rehabilitation or replacement of unsafe school facilities at a given attendance center.

(e) "Apportionment" means an apportionment made under this article, and unless the context otherwise requires, it shall be deemed to include funds of a district required by the board to be contributed toward the cost of a project.

(f) "Attendance center" means a school maintained or to be maintained at a given location within a district.

16315. The State Allocation Board shall administer this article.

EDUCATION CODE
SECTION 16700-16734

16700. This chapter may be cited as the "Urban School Construction Aid Law of 1968."

16701. The Legislature hereby declares that it is in the interest of the state and of the people thereof for the state to aid urban school districts of the state in reconstructing, modernizing, or replacing schoolsites and buildings for pupils of the public school system who are now housed in substandard schools constructed prior to 1943.

16702. As used in this chapter:
(a) "Board" means the State Allocation Board.
(b) "Director" means the Director of Education.
(c) "Project" means the purpose or purposes for which a school district has applied for an apportionment or apportionments.
(d) "Apportionment" means an apportionment made under this chapter unless the context otherwise requires.
(e) "Urban district" means any school district, the boundaries of which are substantially identical to or which encompass the boundaries of a city having a population in 1960 of not less than 50,000 persons.

16703. The Director of General Services shall administer this chapter and shall provide any assistance to the board that it may require.

16704. The State Allocation Board is continued in existence for the purposes of this chapter. The members of the board and the Members of the Legislature meeting with the board shall receive no compensation for their services under this chapter but shall be reimbursed for their actual and necessary expenses incurred in connection with the performance of their duties hereunder, to be paid out of the Urban School Construction Aid Fund.

16705. The board by the adoption of rules shall give priority in allocating funds to urban districts to those districts where the children will benefit most from schoolhouse facilities. This priority shall be based upon the age of existing buildings and the acuteness of overcrowding at the school or schools where the construction or reconstruction will occur, the density of population in the attendance areas affected, or any other factors that will insure that the greatest need will be served.

16706. In addition to any other powers and duties that are granted the board by this chapter, the board shall:

EDUCATION CODE
SECTION 17000-17009.5

17000. This chapter may be cited as the "Leroy F. Greene State School Building Lease-Purchase Law of 1976."

17001. (a) The Legislature hereby declares that it is in the interest of the state and the people thereof for the state to reconstruct, remodel, or replace existing school buildings that are educationally inadequate or that do not meet present-day structural safety requirements, and to acquire new schoolsites and buildings for the purpose of making them available to local school districts for the pupils of the public school system, that system being a matter of general concern inasmuch as the education of the children of the state is an obligation and function of the state.

(b) In order to expedite the elimination of the use of nonconforming school buildings that are used or designed to be used for instructional purposes or intended to be entered by pupils, the State Allocation Board may establish criteria that considers special circumstances under which funds may be allocated for the reconstruction of nonconforming buildings. The funds allocated in accordance with this section shall not exceed 75 percent of the cost of facility replacement.

(c) It is the intent of the Legislature that all construction projects be designed and constructed to maximize the use of educational technology, as set forth in subdivision (b) of Section 17002.

17002. The following terms wherever used or referred to in this chapter, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) "Apportionment" means a reservation of funds necessary to finance the cost of any project approved by the board for lease to an applicant school district.

(b) "Board" means the State Allocation Board.

(c) "Cost of project" includes, but is not limited to, the cost of all real estate property rights, and easements acquired, and the cost of developing the site and streets and utilities immediately adjacent thereto, the cost of construction, reconstruction, or modernization of buildings and the furnishing and equipping, including the purchase of educational technology hardware, of those buildings, the supporting wiring and cabling, and the technological modernization of existing buildings to support that hardware, the cost of plans, specifications, surveys, and estimates of costs, and other expenses that are necessary or incidental to the financing of the project. For purposes of this section, "educational technology hardware" includes, but is not limited to, computers, telephones, televisions, and video cassette recorders.

(d) (1) "Good repair" means the facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to a school facility inspection and evaluation instrument developed by the Office of Public School Construction and approved by the board or a local evaluation instrument that meets the same criteria. Until the school facility inspection and evaluation instrument is approved by the board, "good repair" means the facility is maintained in a manner that assures that it is clean, safe, and

EDUCATION CODE
SECTION 17085-17096

17085. This chapter may be cited as the State Relocatable Classroom Law of 1979.

17086. In adopting this chapter, the Legislature recognizes that the ad valorem tax is no longer available as a source of revenue for the construction of necessary school facilities. The Legislature considers that the greatest need in school construction is for classrooms for the education of public school pupils. It is the intent of the Legislature to satisfy this primary need to the greatest extent possible before providing any additional educational facilities, regardless of how desirable such additional facilities may be.

17087. As used in this chapter:

(a) "Board" means the State Allocation Board.

(b) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(c) "Lessee" means a school district or county superintendent of schools to whom the board has leased a portable classroom pursuant to this chapter.

(d) "State School Building Aid Fund" means that fund established pursuant to Section 16096.

17088. In addition to any other powers and duties as are granted the board by this chapter, other statutes, or the State Constitution, the board has the power to do each of the following:

(a) Establish any qualifications not in conflict with other provisions of this chapter, as it deems will best serve the purposes of this chapter, for determining the eligibility of school districts and county superintendents of schools to lease portable classrooms under this chapter.

(b) Establish any procedures and policies in connection with the administration of this chapter as it deems necessary.

(c) Adopt any rules and regulations for the administration of this chapter requiring such procedure, forms, and information, as it may deem necessary.

(d) Have constructed, furnished, equipped, or otherwise require whatever work is necessary to place, portable classrooms on schoolsites where needed.

(e) Own, have maintained, and lease portable classrooms to qualifying school districts and county superintendents of schools.

(f) From any moneys in the State School Building Aid Fund available for purposes of this chapter, the board shall make available to the Director of General Services such amounts as it determines necessary to provide the assistance, pursuant to this chapter, required by Section 15504 of the Government Code.

(g) Notwithstanding any other provision of law, from any funds available to the board, the board may, no later than January 15 of any year, make available to the Director of General Services up to thirty-five million dollars ($35,000,000) for expenditure in the subsequent school year. It is the intent of the Legislature that

EDUCATION CODE
SECTION 17100

17100. The Legislature hereby finds and declares that the State School Building Lease-Purchase Fund, pursuant to Section 17008, and the proceeds from the sale or lease of surplus school property are the two sources available to school districts to finance the construction of school facilities to relieve overcrowding. However, these sources are still insufficient to meet the construction needs statewide of school districts.

EDUCATION CODE
SECTION 17340-17343

17340. The governing board of any school district may, and when directed by a vote of the district shall, build and maintain a schoolhouse.

17342. The governing board of any school district, whenever in its judgment it is desirable to do so, may establish additional schools in the district.

17343. The governing board of any school district may purchase property and construct and equip buildings in an area after the legal action has been taken that will result in annexation of the area to the school district, but before the annexation has become effective.

EDUCATION CODE
SECTION 17365-17374

17365. The Legislature finds and declares as follows:

(a) By an urgency act (Stats. 1933, Ch. 59), the Legislature at the 1933 General Session established reasonable minimum standards for the design and construction of new school buildings, as now defined in Section 17283. Although it was not required that then existing school buildings incorporate these standards, it was intended by the Legislature that in the intervening years continuous progress would be made in the repair, reconstruction or replacement of such school buildings.

(b) Progress toward this end has been outstanding since 1971 as a result of state funds being made available for rehabilitating or replacing structurally unsafe school facilities.

17366. It is the intent of the Legislature to reexamine the progress under this article from time to time. To enable it to do so, and to expedite the provision of safe educational facilities for California schoolchildren, the Legislature intends that the governing board of each school district adopt a plan for the orderly repair, reconstruction, or replacement of school buildings not repaired, reconstructed, or replaced in accordance with this article.

17367. The governing board of any school district which has in use for school purposes any school buildings which were not constructed under approved plans and the supervision and inspection requirements of Article 3 (commencing with Section 17280) of this chapter shall have such buildings examined pursuant to this section and shall have completed on or before January 1, 1970, the examination, reporting and estimate requirements of this section and Section 39223.

Whenever an examination of the structural condition of any school building of a school district has been made by the Department of General Services, or by any licensed structural engineer or licensed architect for the governing board of the school district, or under the authorization of law, and a report of the examination, including the findings and recommendations of the agency or person making the examination, has been made to the governing board of the district, and the report shows that the building is unsafe for use, the governing board of the district shall immediately have prepared an estimate of the cost necessary to make such repairs to the building or buildings as are necessary, or, if necessary, to reconstruct or replace the building so that the building when repaired or reconstructed, or any building erected to replace it, shall meet such standards of structural safety as are established in accordance with law. The estimate shall be based on current costs and may include other costs to reflect modern educational needs. Also an estimate of the cost of replacement based on the standards established by the State Allocation Board for area per pupil and cost per square foot, shall be made and reported.

The report required by this section shall include a statement that each of the buildings examined is safe or unsafe for school use. For the purpose of this statement the sole consideration shall be protection of life and the prevention of personal injury at a level

of safety equivalent to that established by Article 3 (commencing with Section 17280) of this chapter and the rules and regulations adopted thereunder, disregarding, insofar as possible, such building damage not jeopardizing life which would be expected from one disturbance of nature of the intensity used for design purposes in said rules and regulations.

The governing board, utilizing the information acquired from the examination and report developed pursuant to this section, shall establish a system of priorities for the repair, reconstruction, or replacement of unsafe school buildings.

17368. "School building" as used in this article shall be limited to any physical structure capable of being occupied by pupils, but shall exclude, (a) any bleacher or grandstand with less than six rows of seats, (b) any building which is used exclusively for warehouse, storage, garage, or districtwide administrative office purposes, into which pupils are not required to enter, and buildings utilized by adult schools for off-campus, voluntary adult education courses or registered apprentice courses, (c) any swimming pool, or (d) any yard or lighting poles or flagpoles or playground equipment which does not exceed 35 feet in height.

"School building" as used in this article excludes any building owned or occupied by a unified school district, high school district, or a county superintendent of schools which is used exclusively for adult education purposes.

If any building so excluded was not constructed in accordance with Article 3 (commencing with Section 17280) of this chapter and was not repaired, reconstructed, or replaced in accordance with this article, there shall be posted in a conspicuous place on such building a public notice stating that such building does not meet the structural standards imposed by law for earthquake safety.

17369. "School building" as used in this article excludes any building operated by an official or board of a public entity for purposes other than educational, notwithstanding any educational use thereof incidental to the other primary purpose.

For purposes of this section, a public entity includes, but is not limited to, a city, city and county, county, or special district, but does not include a school district or county superintendent of schools.

17370. Except as provided in Section 17371, nothing in this article shall be construed as relieving any member of the governing board of a school district of any liability for injury to persons or damage to property imposed by law.

17371. No member of the governing board of a school district shall be held personally liable for injury to persons or damage to property resulting from the fact that a school building was not constructed under the requirements of Article 3 (commencing with Section 17280) of this chapter, if such governing board complies with the provisions of this article. Such limit on liability shall commence when such governing board initiates action to comply with the provisions of Section 17367.

A licensed structural engineer or licensed architect employed by a governing board to examine any school building under this article shall not be held personally liable for injury to persons or damage

EDUCATION CODE
SECTION 17565-17592.5

17565. The governing board of any school district shall furnish, repair, insure against fire, and in its discretion rent the school property of its districts. The governing board may also insure the property against other perils. The insurance shall be written in any admitted insurer, or in any nonadmitted insurer to the extent and subject to the conditions prescribed in Section 1763 of the Insurance Code. Insurance on property of a district may be, in the discretion of the governing board, of the deductible type of coverage. By deductible type of coverage is meant a form of insurance under which the insurance becomes operative when the loss and damage exceeds an amount stipulated in the policy or policies.

The governing board, in their notice of bid for any school district construction, may indicate that it may elect to assume the cost of fire insurance by adding the coverage to the district's existing policy and in that event bids made on the construction shall be made in the alternative, with and without the fire insurance coverage included, and the governing board shall make its election as to who shall secure and pay for the insurance at the time of accepting the bid.

17566. (a) The governing board of any school district, by resolution, may establish a fund or funds for losses, and payments, including, but not limited to, health and welfare benefits for its employees as defined by Section 53200 of the Government Code, school district property, any liability, and workers' compensation, in the county treasury for the purpose of covering the deductible amount under deductible types of insurance policies, losses or payments arising from self-insurance programs, or losses or payments due to noninsured perils. In the fund or funds shall be placed those sums, to be provided in the budget of the school district, that will create an amount that, together with investments made from the fund or funds, will be sufficient in the judgment of the governing board to protect the school district from those losses or to provide for payments on the deductible amount under deductible types of insurance policies, losses or payments arising from self-insurance programs, or losses or payments due to noninsured perils. Nothing in this section shall be construed to prohibit the governing board from providing protection against those losses or liability for the payment of claims partly by means of the fund or funds and partly by means of insurance written by acceptable insurers as provided in Section 17565.

The fund or funds shall be considered as separate and apart from all other funds of the school district, and the balance therein shall not be considered to be part of the working cash of the school district in compiling annual budgets.

Warrants may be drawn on or transfers made from the fund or funds so created only to reimburse or indemnify the school district for losses as herein specified, and for the payment of claims, administrative costs, and related services, and to provide for deductible insurance amounts and purchase of excess insurance. The warrants or transfers shall be within the purpose of the fund or funds as established by resolution of the governing board.

The cash placed in the fund or funds may be invested and reinvested by the county treasurer, with the advice and consent of

the governing board of the school district, in securities that are legal investments for surplus county funds in this state. The income derived from the investments, together with interest earned on uninvested funds, shall be considered revenue of, and be deposited in, the fund. The cost of contracts or services authorized by this section are appropriate charges against the respective fund.

The governing board may contract for investigative, administrative, and claims adjustment services relating to claims. The contract may provide that the contracting firm may reject, settle, compromise, and approve claims against the district, or its officers or employees, within the limits and for amounts that the governing board may specify, and may provide that the contracting firm may execute and issue checks in payment of those claims, which checks shall be payable only from a trust account that may be established by the governing board. Funds in the trust account established by the board pursuant to this section shall not exceed a sum that is sufficient, as determined by the governing board to provide for the settlement of claims for a 30-day period. The rejection or settlement and approval of a claim by the contracting firm in accordance with the terms of the contract shall have the same effect as would the rejection or settlement and approval of the claim by the governing board.

The contract may also provide that the contracting firm may employ legal counsel, subject to terms and limitations that the board may prescribe, to advise the contracting firm concerning the legality and advisability of rejecting, settling, compromising, and paying claims referred to the contracting firm by the board for investigation and adjustment, or to represent the board in litigation concerning the claims. The compensation and expenses of the attorney for services rendered to the board shall be an appropriate charge against the appropriate fund.

The contract provided for in this section may contain other terms and conditions that the governing board may consider necessary or desirable to effectuate the board's self-insured programs.

In lieu of, or in addition to, contracting for the services described in this section, the governing board may authorize an employee or employees to perform any or all of the services and functions for which the board may contract under the provisions of this section.

(b) As used in this section:

(1) "Firm" includes a person, corporation, or other legal entity, including a county superintendent of schools.

(2) "Governing boards" includes governing boards of school districts and county superintendents of schools.

(3) "School district" includes a county superintendent of schools who may participate in or administer insurance or self-insurance programs for the county office of education or for one or more school districts.

(c) A county superintendent of schools may participate in or administer insurance for one or more school districts pursuant to this section or for one or more community college districts pursuant to Section 81602, for any combination of school districts and community college districts pursuant to this section and Section 81602.

(d) Prior to funding health and welfare benefits pursuant to this section, the school district shall secure the services of an actuary who is a member of the American Academy of Actuaries to provide actuarial evaluations of the future annual costs of those benefits. The future annual costs as determined by the actuary shall be made public at a public meeting at least two weeks prior to the commencement of funding health and welfare benefits pursuant to this section.

(e) Upon commencing the funding of health and welfare benefits

pursuant to this section, the school district shall secure the services of an actuary as described in subdivision (d) to complete, every three years, an actuarial evaluation of the annual costs of those benefits. A copy of the results of that evaluation shall be submitted by the district to the county superintendent of schools.

17567. Nothing in this code shall be construed to prohibit two or more school districts from exercising, through a joint powers agreement made pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the powers prescribed in Section 17566 in accordance with the terms and conditions set forth in that section and in Section 17565.

17568. In districts situated within or partly within cities having a population of over five hundred thousand (500,000) as determined by the 1920 federal census any board of education may establish a fund in the county treasury for the purpose of covering fire losses to school property in lieu of carrying fire insurance in admitted insurers as provided in Section 17565. In the fund shall be placed sums, to be provided in the budget of the district, as will create an amount which, together with investments made from the fund, will be sufficient in the judgment of the board of education upon the advice of competent actuaries to protect the board of education against losses by fire on all or any part of the school property within its jurisdiction. Nothing contained herein shall be construed as prohibiting the board of education from providing protection against fire losses partly by means of the fund and partly by means of fire insurance written by admitted insurers as provided in Section 17565.

The fund shall be considered as separate and apart from all other funds of the district and the balance therein shall not be considered as being part of the working cash of the district in compiling annual budgets or fixing annual tax rates.

Warrants shall be drawn on, or transfers made from, the fund so created only to reimburse or indemnify the school district for losses as herein specified, and for the payment of claims, administrative costs, related services, and to provide for deductible insurance amounts and the purchase of excess insurance. The warrants or transfers shall be within the purpose of the fund as established by resolution of the governing board.

The cash placed in the fund may be invested and reinvested by the county treasurer with the advice and consent of the board of education in securities which are legal investments for surplus county funds in this state. The income derived from such investments together with interest earned on uninvested funds shall be considered revenue of and be deposited in the fund.

The county treasurer shall make quarterly reports to the board of education as to the condition of the fund, using as a basis for the report the cost or market value, whichever may be the lower, of the securities held as investments plus the cash in the fund.

17569. The governing board of any school district may grade, pave, construct sewers, or otherwise improve streets and other public places in front of real property owned or controlled by it, and also may construct in immediate proximity to any school or site owned or controlled by the district, pedestrian tunnels, overpasses,

footbridges, sewers and water pipes when required for school or administrative purposes, may acquire property, easements and rights-of-way for such purpose, and may appropriate money to pay the cost and expense of the improvements, whether made by the board under contract executed by the board, or under contracts made in pursuance of any of the general laws of the state respecting street improvements, or under other contracts made in pursuance of the charter of any county or municipality.

17570. Any provision to the contrary notwithstanding, the governing board of any school district, other than a city school district with over 50,000 pupils in average daily attendance during the preceding fiscal year, may construct pedestrian walks, footbridges, and pedestrian tunnels when required for the safety of pupils attending the schools of the district, may acquire easements and rights-of-way for those purposes, and may appropriate money to acquire such easements and rights-of-way and to pay the cost and expense of the improvements, whether made by the board under contract executed by the board, or under contracts made in pursuance of any of the general laws of the state respecting street improvements, or under other contracts made in pursuance of the charter of any county or municipality. Pedestrian walks, footbridges, and pedestrian tunnels shall be constructed, and such easements or rights-of-way for those purposes shall be acquired, within one mile of the school for the pupils of which the walks, bridges, and tunnels are necessary.

17571. The governing board of any school district may install and maintain a lighting system in any underpass in the vicinity of a schoolhouse.

17572. The governing board of any school district may appropriate money to pay assessments, for the improvement of streets or other public places, levied against any real property owned by, or under the control of the board, when the property is included within an assessment district formed in pursuance of any general law of the state or under the charter of any municipality. The assessments may be paid out of any funds belonging to the school district, except funds derived from the sale of bonds or required by law to be used for teachers' salaries.

17573. The governing board of every school district shall provide a warm, healthful place in which children who bring their own lunches to school may eat the lunches.

17574. The governing board of a school district may construct a mobilehome site on the grounds of any district facility or facilities maintained by the district, including all necessary appurtenances and fixtures, and may pay the cost of utilities, insurance, and necessary services, for the purpose of enabling a responsible person or persons to install and occupy a mobilehome on such site. Such person or persons, who need not be classified as employees of the district, shall, in return for being permitted to install and occupy a mobilehome on the district facility site on terms and conditions acceptable to the governing board, agree to maintain any surveillance

over the facility grounds as the school district governing board requires, and to report to district authorities illegal or suspicious activities that are observed.

17575. The governing board of any school district, when leasing a building for housing of school district employees, may lease such building for any period they deem necessary.

17576. The governing board of every school district shall provide, as an integral part of each school building, or as part of at least one building of a group of separate buildings, sufficient patent flush water closets for the use of the pupils. In school districts where the water supply is inadequate, chemical water closets may be substituted for patent flush water closets by the board.

This section shall apply to all buildings existing on September 19, 1947, or constructed after such date.

17577. In addition to the other powers granted the governing board of each school district may provide sewers and drains adequate to treat and/or dispose of sewage and drainage on or away from each school property. For this purpose it may construct adequate systems or acquire adequate disposal rights in systems constructed or to be constructed by others for these purposes without regard to their proximity. The cost thereof may be paid from the building fund, including any bond moneys therein.

17578. The governing board of each district maintaining a high school shall provide for the annual cleaning, sterilizing, and necessary repair of football equipment of their respective schools pursuant to Sections 17579 and 17580.

17579. All football equipment actually worn by pupils shall be cleaned and sterilized at least once a year. Football equipment used in spring training shall be cleaned and sterilized before it is used in the succeeding fall term.

17580. Any contract with a dealer or craftsman for the repair of football equipment belonging to the district or the state college shall specifically state or describe the materials to be used by the dealer or craftsman in repairing such equipment.

17581. (a) The Legislature finds and declares that the quality of protective equipment worn by participants in high school interscholastic football is a significant factor in the occurrence of injuries to such participants and that it is therefore necessary to insure minimum standards of quality for the equipment in order to prevent unnecessary injuries to such participants.

(b) No football helmets shall be worn by participants in high school interscholastic football unless the equipment has been certified for use by the National Operating Committee on Standards

EDUCATION CODE
SECTION 48200-48208

48200. Each person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) shall attend the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school or continuation school or classes and for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located.

Unless otherwise provided for in this code, a pupil shall not be enrolled for less than the minimum schoolday established by law.

48200.5. Notwithstanding Section 48200, any resident of the City of Carson who is the parent or legal guardian of a person subject to compulsory education may enroll that person in either the school district in which the residency of the parent or guardian is located or in the Los Angeles Unified School District pursuant to the terms of an agreement permitting those transfers that is mutually adopted by the Compton Unified School District and the Los Angeles Unified School District.

48200.7. (a) The State Department of Education shall identify the three lowest performing elementary schools in the Compton Unified School District for purposes of extending the school year for pupils enrolled in kindergarten or grades 1 and 2 and for those pupils in any of grades 3 to 5, inclusive, who are performing in mathematics or English language arts two or more grade levels below the grade in which those pupils are enrolled as determined under subdivision (d).

(b) Beginning with the 1998-99 school year, the Compton Unified School District may identify schools of the district, in addition to those identified pursuant to subdivision (a), that are among the lowest performing schools in the district, and may provide extended school year instruction pursuant to Section 41601.1 to any pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, in a school identified pursuant to this subdivision who is performing in mathematics or English language arts at a grade level that is two or more grade levels below the grade in which that pupil is enrolled as determined pursuant to subdivision (d).

(c) Notwithstanding subdivision (b) of this section and Section 41601.1, the amount of funding claimed by the district for extended year instruction shall not in any year exceed twice the amount claimed pursuant to this section in the 1997-98 fiscal year as adjusted each year by the inflation adjustment determined pursuant to Section 42238.1.

(d) The determination that a pupil is performing two or more grade levels below the grade in which that pupil is enrolled shall be based on any combination of the following:

(1) The California Achievement Test-Form E.

(2) The Spanish assessment of basic education.

(3) Proficiency tests required for graduation.

(4) District criterion reference tests based on state curriculum guides.

(5) The STAR test.

(e) The Compton Unified School District shall test all pupils in kindergarten and grades 1 to 12, inclusive, in its lowest performing schools identified pursuant to subdivisions (a) and (b) prior to those pupils beginning an extended school year program under this section. At the end of the school year the school district shall again test the pupils in kindergarten and grades 1 to 12, inclusive, to determine the grade level at which those pupils are performing.

(f) The department shall approve each of the following areas in each elementary school identified as high-priority pursuant to subdivision (a):

(1) Curricula.

(2) Testing instruments.

(3) Schoolday length.

(4) Teacher selection, teacher mentoring, and staff development processes.

(g) The department shall review teacher compensation, including salary and benefits, in each elementary school identified as high-priority pursuant to subdivision (a).

(h) The department shall collect data as to each of the following items for each school in subdivisions (a) and (b):

(1) Instructional materials used by, and made available to, the school.

(2) Teacher capacity.

(3) Any other baseline data deemed necessary by the department.

(i) Instruction provided to pupils subject to this section during schooldays in excess of schooldays offered to other pupils shall be devoted to instruction in basic skills in mathematics and English language arts.

(j) In conjunction with the Legislative Analyst, the department shall contract for an independent evaluation to determine the effectiveness of the extended school year curriculum, instructional program, and materials provided pursuant to this section and funded pursuant to Section 41601.1 in improving pupil academic outcomes. Testing and data collection conducted pursuant to this section shall be administered under the oversight of the independent evaluator, who shall be provided with copies of all test results. Results of the evaluation shall be reported on or before January 1, 2002, to the Superintendent of Public Instruction, the Legislative Analyst, the Director of Finance, and the appropriate policy and fiscal committees of the Legislature. The Compton Unified School District shall be responsible for all costs incurred pursuant to this subdivision.

(k) A percentage of funding appropriated for purposes of this section, in an amount to be determined by the Superintendent of Public Instruction, shall be used for purposes of testing and data collecting pursuant to this section.

48200.8. Subsequent to the evaluation required pursuant to subdivision (j) of Section 48200.7, the State Department of Education, in consultation with the Legislative Analyst, shall contract, as necessary, for a second independent evaluation, or as determined by the department with concurrence by the Legislative Analyst may extend the original contract authorized in subdivision

(j) of Section 48200.7, to conclusively determine the effectiveness of the extended school year curriculum, instructional program, and materials in improving pupil academic outcomes provided pursuant to that section. The subsequent evaluation and data collection necessary to incorporate results of the program through the 2001-02 school year and subsequent summer period shall be funded through funds authorized pursuant to Section 41601.1, as determined by the Superintendent of Public Instruction, to ensure the Compton Unified School district shall be responsible for all costs incurred pursuant to this section. Testing and data collection conducted pursuant to this section shall be administered under the oversight of the independent evaluator, who shall be provided with copies of all test results. Results of the evaluation shall be reported on or before January 1, 2003, to the Superintendent of Public Instruction, the Legislative Analyst, the Director of Finance, and the appropriate policy and fiscal committees of the Legislature.

48201. (a) Except for pupils exempt from compulsory school attendance under Section 48231, any parent, guardian, or other person having control or charge of any minor between the ages of 6 and 16 years who removes the minor from any city, city and county, or school district before the completion of the current school term, shall enroll the minor in a public full-time day school of the city, city and county, or school district to which the minor is removed.

(b) (1) Upon a pupil's transfer from one school district to another, the school district into which the pupil is transferring shall request that the school district in which the pupil was last enrolled provide any records that the district maintains in its ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district. Upon receipt of this information, the receiving school district shall inform any teacher of the pupil that the pupil was suspended from school or expelled from the school district and shall inform the teacher of the act that resulted in that action.

(2) A school district, or school district officer or employee, is not civilly or criminally liable for providing information under this subdivision unless it is proven that the information was false and that the district or district officer or employee knew or should have known that the information was false or the information was provided with a reckless disregard for its truth or falsity.

(3) Any information received by a teacher pursuant to this subdivision shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.

48202. The county board of education of each county may establish, by resolution, the following regulation requiring the reporting of various types of severance of attendance of or by any pupil subject to the compulsory education laws of California or of any one or more of the types of severance enumerated in subdivision (a) below and may require such reporting of any or all of the private and public schools of the county:

(a) The administration of each private school and public school district of the county shall, upon the severance of attendance by any pupil subject to the compulsory education laws of California, whether by expulsion, exclusion, exemption, transfer, suspension beyond 10 schooldays, or other reasons, report such severance to the county superintendent of schools in the jurisdiction. The report

shall include names, ages, last known address and the reason for each such severance.

(b) It shall be the duty of the county superintendent of such county to examine such reports and draw to the attention of the county board of education and local district board of education any cases in which the interests of the child or the welfare of the state may need further examination.

(c) After preliminary study of available information in cases so referred to it, the county board of education may, on its own action, hold hearings on such cases in the manner provided in Sections 48915 through 48920 and with the same powers of final decision as therein provided.

48203. (a) The superintendent of a school district and the principal of a private school in each county shall, upon the severance of attendance or the denial of admission of any child who is an individual with exceptional needs, as that term is defined in Section 56026, or who is a qualified handicapped person, as that term is defined in regulations promulgated by the United States Department of Education pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), but who is otherwise subject to the compulsory education laws of California, report the severance, expulsion, exclusion, exemption, transfer, or suspension beyond 10 schooldays to the county superintendent of schools. The report shall include names, ages, last known address, and the reason for the severance, expulsion, exclusion, exemption, transfer, or suspension.

(b) It is the duty of the county superintendent to examine those reports and draw to the attention of the county board of education and governing board of a school district any cases in which the interests of the child or the welfare of the state may need further examination.

(c) After a preliminary study of available information in cases referred to it, the county board of education may, on its own action, hold hearings on those cases in the manner provided in Section 48914 and with the same powers of final decision as therein provided.

48204. (a) Notwithstanding Section 48200, a pupil complies with the residency requirements for school attendance in a school district, if he or she is any of the following:

(1) (A) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(B) An agency placing a pupil in a home or institution described in subparagraph (A) shall provide evidence to the school that the placement or commitment is pursuant to law.

(2) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in

the home of the caregiver.

(5) A pupil residing in a state hospital located within the boundaries of that school district.

(b) A school district may deem a pupil to have complied with the residency requirements for school attendance in the district if at least one parent or the legal guardian of the pupil is physically employed within the boundaries of that district.

(1) This subdivision does not require the school district within which at least one parent or the legal guardian of a pupil is employed to admit the pupil to its schools. A school district shall not, however, refuse to admit a pupil under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the parents or the legal guardian of the pupil is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the court-ordered or voluntary desegregation plan of the district.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) The governing board of a school district that prohibits the transfer of a pupil pursuant to paragraph (1), (2), or (3) is encouraged to identify, and communicate in writing to the parents or the legal guardian of the pupil, the specific reasons for that determination and is encouraged to ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision is calculated pursuant to Section 46607.

(6) Unless approved by the sending school district, this subdivision does not authorize a net transfer of pupils out of a school district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in a fiscal year in excess of the following amounts:

(A) For a school district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For a school district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever amount is greater.

(C) For a school district with an average daily attendance of 2,501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever amount is greater.

(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district the boundaries of which include the location where at least one parent or the legal guardian of a pupil is physically employed, the pupil does not have to reapply in the next school year to attend a school within that district and the district governing board shall allow the pupil to attend school through grade 12 in that district if the parent or legal guardian so chooses and if at least one parent or the legal guardian of the pupil continues to be physically employed by an employer situated within the attendance boundaries of the district, subject to paragraphs (1) to (6), inclusive.

(c) This section shall become inoperative on July 1, 2012, and as

of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

48204. Notwithstanding Section 48200, a pupil complies with the residency requirements for school attendance in a school district, if he or she is:

(a) (1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(2) An agency placing a pupil in the home or institution described in paragraph (1) shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult is a sufficient basis for a determination that the pupil lives in the home of the caregiver, unless the school district determines from actual facts that the pupil is not living in the home of the caregiver.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) This section shall become operative on July 1, 2012.

48204.5. (a) The Legislature finds that school districts that are adjacent to the international border, because of their geographic position, face unique circumstances in conducting the verification of a pupil's residency.

(b) The Legislature declares that international border school districts may need to employ certain efforts to verify residency.

48204.6. (a) Any school district that is adjacent to an international border may accept a wide range of documents and representations from the parent or guardian of a pupil as reasonable evidence that the pupil meets the residency requirements for school attendance in the school district as set forth in Section 48204. Reasonable evidence of residency may be established by documentation, including, but not limited to, any of the following documentation:

(1) Property tax payment receipts.

(2) Rent payment receipts.

(3) Utility service payment receipts.

(4) Declaration of residency executed by the parent or guardian of the pupil.

(b) If any employee of a school district that is adjacent to an international border reasonably believes that the parent or guardian of a pupil has provided false or unreliable evidence of residency, the school district shall make reasonable efforts to determine that the pupil actually meets the residency requirements set forth in

Section 48204.

48205. (a) Notwithstanding Section 48200, a pupil shall be excused from school when the absence is:

(1) Due to his or her illness.

(2) Due to quarantine under the direction of a county or city health officer.

(3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.

(4) For the purpose of attending the funeral services of a member of his or her immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.

(5) For the purpose of jury duty in the manner provided for by law.

(6) Due to the illness or medical appointment during school hours of a child of whom the pupil is the custodial parent.

(7) For justifiable personal reasons, including, but not limited to, an appearance in court, attendance at a funeral service, observance of a holiday or ceremony of his or her religion, attendance at religious retreats, attendance at an employment conference, or attendance at an educational conference on the legislative or judicial process offered by a nonprofit organization when the pupil's absence is requested in writing by the parent or guardian and approved by the principal or a designated representative pursuant to uniform standards established by the governing board.

(8) For the purpose of serving as a member of a precinct board for an election pursuant to Section 12302 of the Elections Code.

(b) A pupil absent from school under this section shall be allowed to complete all assignments and tests missed during the absence that can be reasonably provided and, upon satisfactory completion within a reasonable period of time, shall be given full credit therefor. The teacher of the class from which a pupil is absent shall determine which tests and assignments shall be reasonably equivalent to, but not necessarily identical to, the tests and assignments that the pupil missed during the absence.

(c) For purposes of this section, attendance at religious retreats shall not exceed four hours per semester.

(d) Absences pursuant to this section are deemed to be absences in computing average daily attendance and shall not generate state apportionment payments.

(e) "Immediate family," as used in this section, has the same meaning as that set forth in Section 45194, except that references therein to "employee" shall be deemed to be references to "pupil."

48206.3. (a) Except for those pupils receiving individual instruction provided pursuant to Section 48206.5, a pupil with a temporary disability which makes attendance in the regular day classes or alternative education program in which the pupil is enrolled impossible or inadvisable shall receive individual instruction provided by the district in which the pupil is deemed to reside.

(b) For purposes of this section and Sections 48206.5, 48207, and 48208, the following terms have the following meanings:

(1) "Individual instruction" means instruction provided to an individual pupil in the pupil's home, in a hospital or other residential health facility, excluding state hospitals, or under other circumstances prescribed by regulations adopted for that purpose by the State Board of Education.

(2) "Temporary disability" means a physical, mental, or emotional disability incurred while a pupil is enrolled in regular day classes or an alternative education program, and after which the pupil can reasonably be expected to return to regular day classes or the alternative education program without special intervention. A temporary disability shall not include a disability for which a pupil is identified as an individual with exceptional needs pursuant to Section 56026.

(c) (1) For purposes of computing average daily attendance pursuant to Section 42238.5, each clock hour of teaching time devoted to individual instruction shall count as one day of attendance.

(2) No pupil shall be credited with more than five days of attendance per calendar week, or more than the total number of calendar days that regular classes are maintained by the district in any fiscal year.

(d) Notice of the availability of individualized instruction shall be given pursuant to Section 48980.

48206.5. Any school district which, prior to January 1, 1986, maintained a program to provide individual instruction to pupils enrolled in regular day classes or an alternative education program offered by the district who have a temporary disability may continue the program as it existed prior to January 1, 1986.

48207. Notwithstanding Section 48200, a pupil with a temporary disability who is in a hospital or other residential health facility, excluding a state hospital, which is located outside of the school district in which the pupil's parent or guardian resides shall be deemed to have complied with the residency requirements for school attendance in the school district in which the hospital is located.

48208. (a) It shall be the primary responsibility of the parent or guardian of a pupil with a temporary disability to notify the school district in which the pupil is deemed to reside pursuant to Section 48207 of the pupil's presence in a qualifying hospital.

(b) Upon receipt of notification pursuant to subdivision (a), a school district shall do all of the following:

(1) Within five working days of receipt of the notification, determine whether the pupil will be able to receive individualized instruction, and, if the determination is positive, when the individualized instruction may commence. Individualized instruction shall commence no later than five working days after the positive determination has been rendered.

(2) Provide the pupil with individualized instruction pursuant to Section 48206.3. The school district may enter into an agreement with the school district in which the pupil previously attended regular day classes or an alternative education program, to have the school district the pupil previously attended provide the pupil with individualized instruction pursuant to Section 48206.3.

(3) Within five working days of the commencement of individualized instruction, provide the school district in which the pupil previously attended regular day classes or an alternative education program with written notice that the pupil shall not be counted by that district for purposes of computing average daily attendance pursuant to Section 42238.5, effective the date on which individualized instruction commenced.

EDUCATION CODE
SECTION 76000-76002

76000. The governing board of a community college district shall admit to the community college any California resident, and may admit any nonresident, possessing a high school diploma or the equivalent thereof.

The governing board may admit to the community college any apprentice, as defined in Section 3077 of the Labor Code, who, in the judgment of the governing board, is capable of profiting from the instruction offered.

The governing board may by rule determine whether there shall be admitted to the community college any other person who is over 18 years of age and who, in the judgment of the board, is capable of profiting from the instruction offered. If the governing board determines to admit other persons, those persons shall be admitted as provisional students and thereafter shall be required to comply with the rules and regulations prescribed by the board of governors pertaining to the scholastic achievement and other standards to be met by provisional or probationary students, as a condition to being readmitted in any succeeding semester. This paragraph shall not apply to persons in attendance in special classes and programs established for adults pursuant to Section 78401 or to any persons attending on a part-time basis only.

76001. (a) The governing board of a community college district may admit to any community college under its jurisdiction as a special part-time or full-time student in any session or term any student who is eligible to attend community college pursuant to Section 48800 or 48800.5.

(b) If the governing board denies a request for a special part-time or full-time enrollment at a community college for a pupil who is identified as highly gifted, the board shall record its findings and the reasons for denial of the request in writing within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) The attendance of a pupil at a community college as a special part-time or full-time student pursuant to this section is authorized attendance, for which the community college shall be credited or reimbursed pursuant to Sections 48802 and 76002. Credit for courses completed shall be at the level determined to be appropriate by the school district and community college district governing boards.

(d) For purposes of this section, a special part-time student may enroll in up to, and including, 11 units per semester, or the equivalent thereof, at the community college.

(e) The governing board of a community college district shall assign a low enrollment priority to special part-time or full-time students described in subdivision (a) in order to ensure that these students do not displace regularly admitted students.

76002. (a) For the purposes of receiving state apportionments, a community college district may include high school pupils who attend a community college within the district pursuant to Sections 48800 and 76001 in the district's report of full-time equivalent students (FTES) only if those pupils are enrolled in community college classes

that meet all of the following criteria:

(1) The class is open to the general public.

(2) (A) The class is advertised as open to the general public in one or more of the following:

(i) The college catalog.

(ii) The regular schedule of classes.

(iii) An addenda to the college catalog or regular schedule of classes.

(B) If a decision to offer a class on a high school campus is made after the publication of the regular schedule of classes, and the class is solely advertised to the general public through electronic media, the class shall be so advertised for a minimum of 30 continuous days prior to the first meeting of the class.

(3) If the class is offered at a high school campus, the class may not be held during the time the campus is closed to the general public, as defined by the governing board of the school district during a regularly scheduled board meeting.

(4) If the class is a physical education class, no more than 10 percent of its enrollment may be comprised of special part-time or full-time students. A community college district may not receive state apportionments for special part-time and full-time students enrolled in physical education courses in excess of 5 percent of the district's total reported full-time equivalent enrollment of special part-time and full-time students.

(b) The governing board of a community college district may restrict the admission or enrollment of a special part-time or full-time student during any session based on any of the following criteria:

(1) Age.

(2) Completion of a specified grade level.

(3) Demonstrated eligibility for instruction using assessment methods and procedures established pursuant to Chapter 2 (commencing with Section 78210) of Part 48 and regulations adopted by the Board of Governors of the California Community Colleges.

(c) The Chancellor of the California Community Colleges shall prepare and submit to the Department of Finance and the Legislature, on or before March 1, 2004, and March 1 of each year thereafter, a report on the amount of FTES claimed by each community college district for special part-time and special full-time students for the preceding academic year in each of the following class categories:

(1) Noncredit.

(2) Nondegree-applicable.

(3) Degree-applicable, excluding physical education.

(4) Degree-applicable physical education.

(d) The Board of Governors of the California Community Colleges shall adopt rules and regulations to implement this section.

EDUCATION CODE
SECTION 81160-81179

81160. (a) The provisions of this article do not apply to an offsite building during the time the building is used wholly or in part for community college purposes if the building is neither owned by a community college district nor leased by a community college district under a lease containing an option to purchase the building.

For the purposes of this section, an "offsite building" is a building which is situated on land which is neither owned by a community college district nor leased by a community college district under a lease containing an option to purchase the land.

(b) "School building" as used in this article excludes any building which is used for community college district administrative buildings located on a site separate from the community college campuses of the district, and into which students are not required to enter.

(c) "School building" as used in this article shall be limited to any physical structure capable of being occupied by pupils, but shall exclude, (1) any bleacher or grandstand with less than six rows of seats, (2) any building which is used exclusively for warehouse, storage, garage, or districtwide administrative office purposes, into which pupils are not required to enter, and off-campus buildings utilized by adult schools or community colleges for voluntary adult education courses or registered apprentice courses, (3) any swimming pool, or (4) any yard or lighting poles or flagpoles or playground equipment which does not exceed 35 feet in height.

If any building so excluded was not constructed in accordance with Article 7 (commencing with Section 81130) of this chapter and was not repaired, reconstructed, or replaced in accordance with this article, there shall be posted in a conspicuous place on the building a public notice stating that the building does not meet the structural standards imposed by law for earthquake safety.

81161. It is the intent of the Legislature to re-examine the progress under this article from time to time. To enable it to do so, and to expedite the provision of safe educational facilities for California community college students, the Legislature intends that the governing board of each community college district adopt a plan for the orderly repair, reconstruction, or replacement of school buildings not repaired, reconstructed, or replaced in accordance with this article.

81162. Whenever an examination of the structural condition of any school building of a community college district has been made by the Department of General Services, by any licensed structural engineer or licensed architect for the governing board of the district, or under the authorization of law, and a report of the examination, including the findings and recommendations of the agency or person making the examination, has been made to the governing board of the district, and the report shows that the building is unsafe for use, the governing board of the district immediately shall have prepared an estimate of the cost necessary to make repairs to the building or buildings that are necessary, or, if necessary, to reconstruct or replace the building so that the building when repaired or

reconstructed, or any building erected to replace it, shall meet those standards of structural safety that are established in accordance with law. The estimate shall be based on current costs and may include other costs to reflect modern educational needs. Also, an estimate of the cost of replacement based on the standards established by the State Allocation Board for area per student and cost per square foot shall be made and reported.

The report required by this section shall include a statement that each of the buildings examined is safe or unsafe for school use. For the purpose of this statement, the sole consideration shall be protection of life and the prevention of personal injury at a level of safety equivalent to that established by Article 7 (commencing with Section 81130) of this chapter and the rules and regulations adopted thereunder, disregarding, insofar as possible, building damage not jeopardizing life that would be expected from one disturbance of nature of the intensity used for design purposes in those rules and regulations.

The governing board, utilizing the information acquired from the examination and report developed pursuant to this section, shall establish a system of priorities for the repair, reconstruction, or replacement of unsafe school buildings.

81177. (a) No member of the governing board of a community college district shall be held personally liable for injury to persons or damage to property resulting from the fact that a school building was not constructed under the requirements of Article 7 (commencing with Section 81130), if the governing board complies with this article.

A licensed structural engineer or licensed architect, employed by a governing board to examine any school building under this article, shall not be held personally liable for injury to persons or damage to property as a result of the structural inadequacy and failure of a building, if he or she has exercised normal professional diligence in carrying out his or her functions under Article 7 (commencing with Section 81130) and this article.

(b) Except as provided in subdivision (a), nothing in this article shall be construed as relieving any member of the governing board of a community college district of any liability for injury to persons or damage to property imposed by law.

81179. Notwithstanding any other provision of this article or Chapter 4 (commencing with Section 81800), whenever a community college district does not have funds available to repair, reconstruct, or replace the school buildings referred to in this article or Section 16320, the community college district shall apply for the funds as may be necessary to accomplish the repair, reconstruction, or replacement pursuant to Chapter 4. The community college district shall also accept the funds as are disbursed to the district pursuant to Chapter 4, whether or not the funds constitute the maximum amount applied for, and shall repay the funds in accordance with Chapter 4.

Other Attachments

California Constitution Article 9 - Education

School Facilities Fingertip Facts

An overview of the State School Facility Programs (Sept. 2007) California

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 2. A Superintendent of Public Instruction shall be elected by the qualified electors of the State at each gubernatorial election. The Superintendent of Public Instruction shall enter upon the duties of the office on the first Monday after the first day of January next succeeding each gubernatorial election. No Superintendent of Public Instruction may serve more than 2 terms.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 2.1. The State Board of Education, on nomination of the Superintendent of Public Instruction, shall appoint one Deputy Superintendent of Public Instruction and three Associate Superintendents of Public Instruction who shall be exempt from state civil service and whose terms of office shall be four years.

This section shall not be construed as prohibiting the appointment, in accordance with law, of additional Associate Superintendents of Public Instruction subject to state civil service.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 3. A Superintendent of Schools for each county may be elected by the qualified electors thereof at each gubernatorial election or may be appointed by the county board of education, and the manner of the selection shall be determined by a majority vote of the electors of the county voting on the question; provided, that two or more counties may, by an election conducted pursuant to Section 3.2 of this article, unite for the purpose of electing or appointing one joint superintendent for the counties so uniting.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 3.1. (a) Notwithstanding any provision of this Constitution to the contrary, the Legislature shall prescribe the qualifications required of county superintendents of schools, and for these purposes shall classify the several counties in the State.

(b) Notwithstanding any provision of this Constitution to the contrary, the county board of education or joint county board of education, as the case may be, shall fix the salary of the county superintendent of schools or the joint county superintendent of schools, respectively.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 3.2. Notwithstanding any provision of this Constitution to the contrary, any two or more chartered counties, or nonchartered counties, or any combination thereof, may, by a majority vote of the electors of each such county voting on the proposition at an election called for that purpose in each such county, establish one joint board of education and one joint county superintendent of schools for the counties so uniting. A joint county board of education and a joint county superintendent of schools shall be governed by the general statutes and shall not be governed by the provisions of any county charter.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 3.3. Except as provided in Section 3.2 of this article, it shall be competent to provide in any charter framed for a county under any provision of this Constitution, or by the amendment of any such charter, for the election of the members of the county board of education of such county and for their qualifications and terms of office.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 6. Each person, other than a substitute employee, employed by a school district as a teacher or in any other position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than twenty-four hundred dollars ($2,400) for a person serving full time, as defined by law.

The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System

shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System.

The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.

The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400).

Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 61/2. Nothing in this constitution contained shall forbid the formation of districts for school purposes situate in more than one county or the issuance of bonds by such districts under such general laws as have been or may hereafter be prescribed by the legislature; and the officers mentioned in such laws shall be authorized to levy and assess such taxes and perform all such other acts as may be prescribed therein for the purpose of paying such bonds and carrying out the other powers conferred upon such districts; provided, that all such bonds shall be issued subject to the limitations prescribed in section eighteen of article eleven hereof.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 7. The Legislature shall provide for the appointment or election of the State Board of Education and a board of education in each county or for the election of a joint county board of education for two or more counties.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 7.5. The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 9. (a) The University of California shall constitute a public trust, to be administered by the existing corporation known as "The Regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. Said corporation shall be in form a board composed of seven ex officio members, which shall be: the Governor, the Lieutenant Governor, the Speaker of the Assembly, the Superintendent of Public Instruction, the president and the vice president of the alumni association of the university and the acting president of the university, and 18 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring; provided, however that the present appointive members shall hold office until the expiration of their present terms.

(b) The terms of the members appointed prior to November 5, 1974, shall be 16 years; the terms of two appointive members to expire as heretofore on March 1st of every even-numbered calendar year, and two members shall be appointed for terms commencing on March 1, 1976, and on March 1 of each year thereafter; provided that no such appointments shall be made for terms to commence on March 1, 1979, or on March 1 of each fourth year thereafter, to the end that no appointment to the regents for a newly commencing term shall be made during the first year of any gubernatorial term of office. The terms of the members appointed for terms commencing on and after March 1, 1976, shall be 12 years. During the period of transition until the time when the appointive membership is comprised exclusively of persons serving for terms of 12 years, the total number of appointive members may exceed the numbers specified in the preceeding paragraph.

In case of any vacancy, the term of office of the appointee to fill such vacancy, who shall be appointed by the Governor and approved by the Senate, a majority of the membership concurring,

shall be for the balance of the term for which such vacancy exists.

(c) The members of the board may, in their discretion, following procedures established by them and after consultation with representatives of faculty and students of the university, including appropriate officers of the academic senate and student governments, appoint to the board either or both of the following persons as members with all rights of participation: a member of the faculty at a campus of the university or of another institution of higher education; a person enrolled as a student at a campus of the university for each regular academic term during his service as a member of the board. Any person so appointed shall serve for not less than one year commencing on July 1.

(d) Regents shall be able persons broadly reflective of the economic, cultural, and social diversity of the State, including ethnic minorities and women. However, it is not intended that formulas or specific ratios be applied in the selection of regents.

(e) In the selection of the Regents, the Governor shall consult an advisory committee composed as follows: The Speaker of the Assembly and two public members appointed by the Speaker, the President Pro Tempore of the Senate and two public members appointed by the Rules Committee of the Senate, two public members appointed by the Governor, the chairman of the regents of the university, an alumnus of the university chosen by the alumni association of the university, a student of the university chosen by the Council of Student Body Presidents, and a member of the faculty of the university chosen by the academic senate of the university. Public members shall serve for four years, except that one each of the initially appointed members selected by the Speaker of the Assembly, the President Pro Tempore of the Senate, and the Governor shall be appointed to serve for two years; student, alumni, and faculty members shall serve for one year and may not be regents of the university at the time of their service on the advisory committee.

(f) The Regents of the University of California shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct; provided, however, that sales of university real property shall be subject to such competitive bidding procedures as may be provided by statute. Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise. The Regents shall receive all funds derived from the sale of lands pursuant to the act of Congress of July 2, 1862, and any subsequent acts amendatory thereof. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of race, religion, ethnic heritage, or sex.

(g) Meetings of the Regents of the University of California shall be public, with exceptions and notice requirements as may be provided by statute.

SEC. 14. The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts.

The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

CALIFORNIA CONSTITUTION
ARTICLE 9 EDUCATION

SEC. 16. (a) It shall be competent, in all charters framed under the authority given by Section 5 of Article XI, to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for the manner in which, the times at which, and the terms for which the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards.

(b) Notwithstanding Section 3 of Article XI, when the boundaries of a school district or community college district extend beyond the limits of a city whose charter provides for any or all of the foregoing with respect to the members of its board of education, no charter amendment effecting a change in the manner in which, the times at which, or the terms for which the members of the board of education shall be elected or appointed, for their qualifications, compensation, or removal, or for the number which shall constitute such board, shall be adopted unless it is submitted to and approved by a majority of all the qualified electors of the school district or community college district voting on the question. Any such amendment, and any portion of a proposed charter or a revised charter which would establish or change any of the foregoing provisions respecting a board of education, shall be submitted to the electors of the school district or community college district as one or more separate questions. The failure of any such separate question to be approved shall have the result of continuing in effect the applicable existing law with respect to that board of education.

School Facilities Fingertip Facts

See also School Facility

I. **Public K-12 Projected Enrollment 2007-12 (5 years)** See also:
California Public K-12 Enrollment and High school Graduate Projection by County - 2007 Series
(XLS; Outside Source)
(Department of Finance Demographic Unit)
Based on Department of Finance October 2007 estimates of graded enrollment

Grade Level	2007-08	2012-13	Five Year Change	Change Per Year
K-6	3,269,393	3,356,656	87,263	17,453
7-8	976,081	919,320	-56,761	-11,352
9-12	1,997,542	1,902,995	-94,547	-18,909
TOTAL	6,243,016	6,178,971	-64,045	-12,808

II. **Statewide New Construction and Modernization Classroom Need**
Based on eligibility documents on file with the Office of Public School Construction (OPSC) as of September 26, 2007 and projects for which only a design apportionment has been made, the five-year need for new classrooms and the modernization of existing classrooms is:

New Construction Five-Year Need

Grade Level	Projected unhoused students	Classrooms needed 2007-2012*	Classrooms needed per year	Classrooms needed per day
K-6	308,024	12,321	2,464	7
7-8	87,705	3,248	650	2
9-12	268,402	13,645	2,729	7
TOTAL	664,131	29,214	5,843	16

Modernization Five-Year Need

Grade Level	Students in classrooms over 25 years old	Classrooms to be modernized 2007-2012*	Classrooms to be modernized per year	Classrooms to be modernized per day
K-6	507,070	20,283	4,057	11
7-8	190,248	7,046	1,409	4
9-12	305,948	11,331	2,266	6
TOTAL	1,003,266	38,660	7,732	21

*Based on 25 students per K-6 classroom and 27 students per 7-12 classroom.

III. **Statewide New Construction and Modernization Funding Need**
The state share of funding, including district financial hardship costs, for approved but unfunded projects and for projects for which eligibility documents have been filed with the Office of Public School Construction as of September 26, 2007 is:

State Share	5 Year Need	Per Year
New Construction (50% state share)	$ 8.7 billion	$1.74 billion
Modernization (60% state share)	$ 3.5 billion	$0.7 billion
TOTAL (Rounded)	**$12.2 billion**	**$2.44 billion**

IV. **State K-12 General Obligation Bond History**

Year	Dollars
1982	$500 M
1984	$450 M

1986	$800 M
1988 (June)	$800 M
1988 (Nov.)	$800 M
1990 (June)	$800 M
1990 (Nov.)	$800 M
1992 (June)	$1.9 B
1992 (Nov.)	$900 M
1994 (June)	$1.0 B (failed by 0.4%)
1996 (March)	$2.03 B
1998 (Nov.)	$6.7 B (for 4 years)
2002 (Nov.)	$11.4 B
2004 (March)	$10.0 B
2006 (Nov.)	$7.33 B

Million (M); Billion (B)

V. **Public School Data 2006-07. See also:** Dataquest and Student Demographics.

Number of Districts 1,052

Number	Type of District
560	Elementary Districts
330	Unified Districts
87	High School Districts
75	County Offices, California Youth Authority, and State Special Schools

Number of Public Schools 9,674

Number	Type of School
5,714	Elementary Schools
1,289	Middle/Jr. High Schools
1,182	High School Schools
1,489	Continuation (Cont.), Alternative (Alt.), etc.

Number of Classrooms: **299,503**

Classrooms over 25 years old: **215,642 (72%)**

Number of Charter Schools: **584**

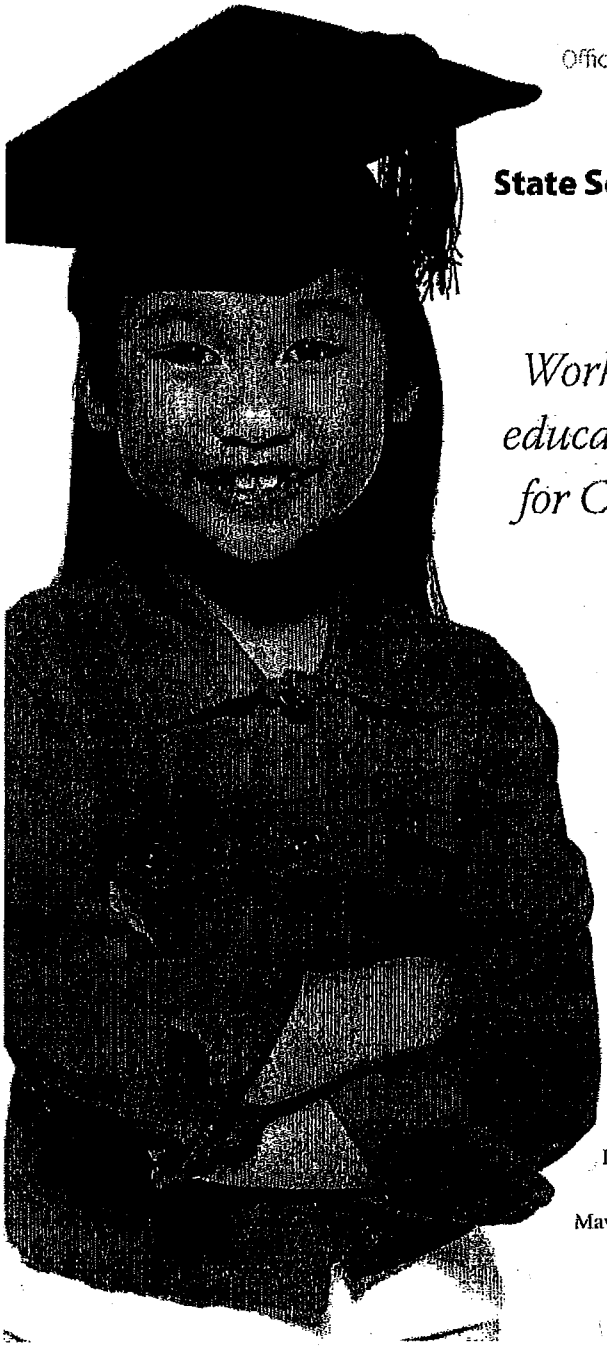
Charter School Enrollment: **222,266 (3.53% of K-12 enrollment)**

VI. **Year-Round Education (YRE) 2006-07. See also** Multitrack Year-Round Education
140 districts use YRE. 64 districts use Multitrack (MTYRE) and 104 use Single Track (STYRE) (some districts use both calendars)

Calendar	Elementary MTYRE	Elementary STYRE	Middle MTYRE	Middle STYRE	High School MTYRE	High School STYRE	Cont. High, Alt., etc. MTYRE	Cont. High, Alt., etc. STYRE	Total MTYRE	Total STYRE
Schools	496	502	40	87	25	69	17	53	578	711
Enrollment	411,344	295,229	68,901	71,767	75,522	51,416	14,202	12,344	569,969	430,756

Two districts use the MTYRE Concept 6 calendar: Los Angeles Unified and Lodi Unified. Of the MTYRE data cited above, Concept 6 consists of:

	Elementary	Middle	High	Cont. High, Alt., etc.	TOTAL



State Allocation Board
Office of Public School Construction

An overview of the

State School Facility Programs

Working to improve the educational environment for California's children

An overview of the
State School Facility Programs

State Allocation Board
Office of Public School Construction

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Printed by the Office of Public School Construction

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Contents

Charts and Tables

State Allocation Board

The State Allocation Board (SAB) is responsible for determining the allocation of State resources (proceeds from General Obligation Bond Issues and other designated State funds) used for the construction, modernization and maintenance of local public school facilities. The SAB is also charged with the responsibility for the administration of the State School Facility Program, the State Relocatable Classroom Program and the Deferred Maintenance Program. The SAB is the policy level body for the programs administered by the Office of Public School Construction (OPSC).

The SAB is comprised of the Director of Finance (the traditional chair), the Director of the Department of General Services, the Superintendent of Public Instruction, three members of the Senate, three members of the Assembly, and one appointee by the Governor.

State Allocation Board Members

Michael Genest
Director, Department of Finance

Will Bush
Director,
Department of General Services

Jack O'Connell
State Superintendent of Public Instruction

Rosario Girard
Governor's Appointee

SENATE MEMBERS

Joe Simitian
Eleventh Senate District

Jack Scott
Twenty-Seventh Senate District

Bob Margett
Twenty-Ninth Senate District

ASSEMBLY MEMBERS

Gene Mullin
Nineteenth Assembly District

Jean Fuller
Thirty-Second Assembly District

Kevin de León
Forty-Fifth Assembly District

SAB EXECUTIVE OFFICERS

Rob Cook
Executive Officer

Lori Morgan
Deputy Executive Officer

Mavonne Garrity
Assistant Executive Officer

State Allocation Board Meetings

State Allocation Board

The SAB meets monthly to apportion funds to the school districts, act on appeals, and adopt policies and regulations as they pertain to the programs administered by the SAB. The SAB usually meets on Wednesdays at the State Capitol—at 4:00 p.m. when the State Legislature is in session and at 2:00 p.m. when the State Legislature is out on recess. Due to scheduling changes within the Legislature, some of the SAB meetings may be cancelled or changed with short notice. Meeting dates and locations, cancellation notices, and agenda topics are published on the OPSC Web site at HTTP://WWW.OPSC.DGS.CA.GOV. Please check there for latest meeting dates, times and locations.

SAB MEETING SCHEDULE

- Wednesday, January 24, 2007
- Wednesday, February 28, 2007
- Wednesday, March 28, 2007
- Wednesday, April 25, 2007
- Wednesday, May 23, 2007
- Wednesday, June 27, 2007
- Wednesday, July 25, 2007
- Wednesday, August 22, 2007
- Wednesday, September 26, 2007
- Wednesday, October 24, 2007
- November – No meeting
- December – To be determined

Implementation Committee

The Implementation Committee is an informal advisory body established by the OPSC to provide input as OPSC develops its recommendations for the Board for policy and legislation implementation. The committee membership is comprised of organizations representing the school facilities community.

Meetings are held at either the Legislative Office Building at 1020 N Street in Room 100 or at the East End Complex at 1500 Capitol Avenue in Rooms 72.149B and 72.151A. Both locations are in Sacramento. Meeting times are from 9:30 a.m. to 3:30 p.m. with a one-hour lunch break. Meeting dates, times and locations, meeting notices and agenda topics are published on the OPSC Web site. Please check the OPSC Web site for the latest dates, times and locations as they are subject to change.

IMPLEMENTATION COMMITTEE MEETING SCHEDULE

- Friday, January 5, 2007
- Friday, February 2, 2007
- Friday, March 2, 2007
- Thursday, April 5, 2007
- Friday, May 4, 2007
- Friday, June 1, 2007
- Friday, July 6, 2007
- Friday, August 3, 2007
- Friday, September 7, 2007
- Friday, October 5, 2007
- Friday, November 2, 2007
- Friday, December 7, 2007

Office of Public School Construction

The OPSC, as staff to the SAB implements and administers the School Facility Program (SFP) and other programs of the SAB. The OPSC is also charged with the responsibility of verifying that all applicant school districts meet specific criteria based on the type of funding which is being requested. The OPSC also prepares recommendations for the SAB's review and approval.

It is also incumbent on the OPSC staff to prepare regulations, policies and procedures which carry out the mandates of the SAB, and to work with school districts to assist them throughout the application process. The OPSC is responsible for ensuring that funds are disbursed properly and in accordance with the decisions made by the SAB.

The OPSC prepares the SAB meetings agendas. These agendas keep the Board members, school districts, staff, and other interested parties apprised of all actions taken by the SAB. The agenda serves as the underlying source document used by the State Controller's Office for the appropriate release of funds. The agenda further provides a "historical record" of all SAB decisions, and is used by school districts, facilities planners, architects, consultants and others wishing to track the progress of specific projects and/or availability of funds.

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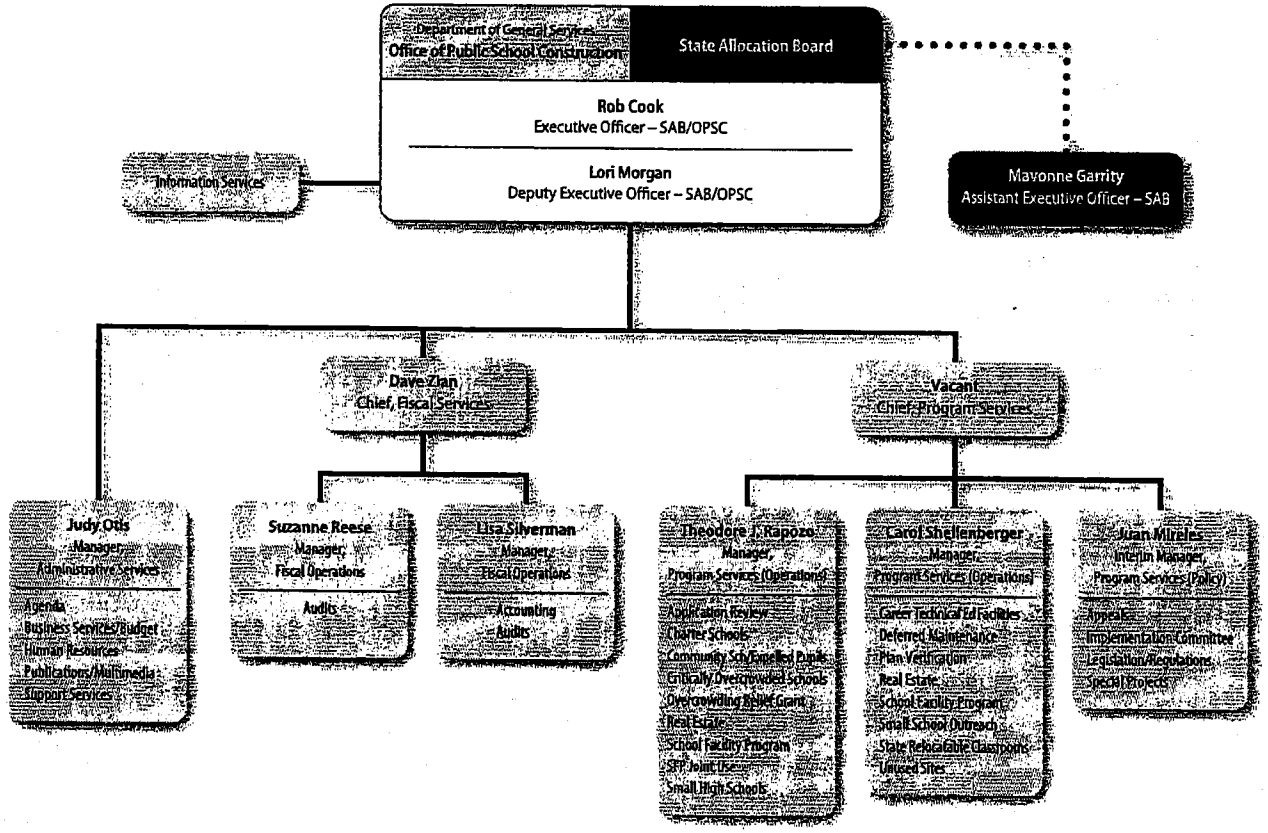
Organization Chart



School Facility Program

Funds for the School Facility Program (SFP) may be from any funding source made available to the SAB. This includes proceeds from the sale of State General Obligation Bonds and the State General Fund. In addition, districts are required to provide a portion of the cost of a project from funds available to the school district. This may include, among other sources, local general obligation bonds, developer fees, general fund, etc.

The New Construction Grant

The New Construction Grant provides State funds on a 50/50 State and local sharing basis for public school capital facility projects in accordance with statute. Eligibility for State funding is based on a district's need to house pupils and is determined by criteria set in law.

Education Code, Section 17072.10 establishes the "new construction grant" per unhoused pupil for new construction projects. The annual adjustment to the grant, based on the change in the Class B Construction Cost Index, is approved by the SAB each January. The current adjusted grants are available on the OPSC Web site at HTTP://WWW.DOCUMENTS.DGS.CA.GOV/OPSC/RESOURCES/SFP_GRANT_ADJ.PDF.

This "new construction grant" amount is intended to provide the State's share for all necessary project costs, with the exception of site acquisition, utilities, off-site, service-site, and general-site development that may qualify for additional project funding. The necessary project costs include, but are not limited to, funding for design, the construction of the building, education technology, tests, inspections and furniture/equipment.

The Modernization Grant

The Modernization Grant provides State funds on a 60/40 basis for improvements to educationally enhance school facilities. Projects eligible under this program include such modifications as air conditioning, plumbing, lighting, and electrical systems. Site acquisition may not be included in modernization applications.

Education Code, Section 17074.10 establishes the "modernization grant" for each pupil to be housed in buildings to be modernized. The annual adjustment to the grant, based on the change in the Class B Construction Cost Index, is approved by the SAB each January. The current adjusted grants are available on the OPSC Web site at HTTP://WWW.DOCUMENTS.DGS.CA.GOV/OPSC/RESOURCES/SFP_GRANT_ADJ.PDF.

The "modernization grant" amount is intended to provide the State's share for all necessary project costs. The necessary project costs include, but are not limited to, funding for design, the modernization of the building, education technology, tests, inspections and furniture/equipment.

Charter School Facility Program

This program is intended to provide a charter school with funding to construct new facilities. To qualify for funding a charter must be deemed financially sound by the California School Finance Authority and meet the eligibility criteria outlined in law. A charter or school district filing on behalf of a charter under this program may receive a reservation of funding, by submitting a preliminary application, prior to receiving the necessary approvals from other State entities. Once those approvals are received the preliminary apportionment may be converted to a final apportionment and the funds previously set aside by the SAB may be released.

Most recently, new legislation made significant changes further expanding and providing flexibility for the Charter School Facility Program, and when Proposition 1D was approved by the voters in the November general election, provided an additional $500 million.

Critically Overcrowded School Facilities Program

The Critically Overcrowded School Facilities Program (COS) allows school districts with qualifying critically overcrowded school facilities to apply for a preliminary apportionment for new construction projects to relieve overcrowding. The preliminary apportionment serves as a reservation of funds and must be converted within a four-year period to a final apportionment that meets all the SFP New Construction program laws and regulations required for such an apportionment.

Education Facilities Bond Breakdowns

PROGRAM	BOND 2002 $13,050,000,000	BOND 2004 $12,300,000,000	BOND 2006 $10,416,000,000
New Construction	$ 3,350,000,000 [1]	$ 4,960,000,000	$ 1,900,000,000 [4,5]
Modernization	1,400,000,000 [2]	2,250,000,000	3,300,000,000 [4]
Charter Schools	100,000,000	300,000,000	500,000,000
Career Technical Education	—	—	500,000,000
Overcrowding Relief	—	—	1,000,000,000
High Performance Schools	—	—	100,000,000
New Construction Backlog	2,900,000,000	—	—
Modernization Backlog	1,900,000,000	—	—
Critically Overcrowded Schools	1,700,000,000	2,440,000,000	—
Joint Use	50,000,000	50,000,000	29,000,000
TOTALS	$11,200,000,000	$10,000,000,000	$7,329,000,000

[1] $42 million – energy efficiency.
[2] $5.8 million – energy efficiency.
[3] $20 million total – energy efficiency set aside for new construction and modernization.
[4] No more than $200,000,000 of the sum of the appropriations for new construction and modernization shall be used to fund the smaller learning communities and small high schools.
[5] Up to 50% percent ($199.5 million) shall be available for purposes of seismic repair, construction, or replacement, pursuant to Section 17075.10.

A school district must have both SFP new construction eligibility and one or more schools on the California Department of Education's (CDE) COS Source School List. In order to have a school qualify for inclusion on the CDE Source School List, the school site utilizing the 2001–2002 California Basic Enrollment Data System (CBEDS) enrollment must have a pupil density greater than 115 pupils per acre for K–6 and 90 pupils per acre for 7–12.

Applications for a COS preliminary apportionment were accepted through June 30, 2004.

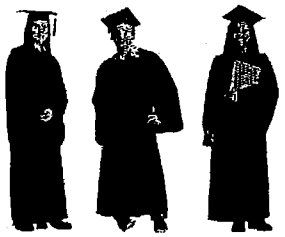
If the requests for preliminary apportionments exceeds the funds available, projects will be ranked by the highest density levels relative to the CDE standard and funded from the highest to the lowest density.

School Facility Joint-Use Program

Under the SFP a method to fund certain types of joint-use projects has been implemented. There are two types of joint-use projects, both types include specific project eligibility.

- A Type I must be part of an SFP new construction project that will either increase the size, create extra costs, or both beyond that necessary for school use of the multi-purpose room, gymnasium, childcare facility, library, or teacher education.
- A Type II may be part of a modernization or may be a stand alone project located at a school that does not have the type of facility or the existing facility is inadequate. The project proposes to reconfigure existing school buildings, construct new school buildings, or both to provide for a multi-purpose room, gymnasium, childcare facility, library, teacher education facility, or pupil academic achievement facility.

The state and local contribution to a joint-use project is 50/50. The joint-use partner must match a minimum 25 percent of the eligible project costs. If the district has passed a bond which specifies that the monies are to be used specifically for the purposes of the joint-use project, then the district can opt to pay up to the full 50 percent local share of eligible costs. Anything beyond the eligible project cost are the responsibility of the joint-use partner and/or the district.



Career Technical Education Facilities Program

Career Technical Education provides a program of study that involves a multiyear sequence of courses that integrates core academic knowledge with technical and occupational knowledge to provide students with a pathway to postsecondary education and careers. Proposition 1D provides $500 million for the purpose of constructing new facilities or reconfiguring existing facilities for career technical education purposes. This will enhance the educational opportunities for pupils in order to provide them with the skills and knowledge necessary for the high-demand technical careers of today and tomorrow.

Overcrowding Relief Grant

Proposition 1D establishes the Overcrowding Relief Grant (ORG) and provides up to $1 billion for this purpose. The ORG is intended to provide funding for the creation of additional open space via the reduction of portable classrooms on overcrowded sites by replacing those facilities with permanent classrooms at the existing site or the construction of new schools or classrooms at other sites.

High Performance Incentive Grant

This grant provides additional incentive grant funding to augment new construction and modernization projects for the use of designs and materials that promote the efficient use of energy and water, the maximum use of natural lighting and indoor air quality, the use of recycled materials and materials that emit a minimum of toxic substances, the use of acoustics conducive to teaching and learning, and other characteristics of high performance schools. Proposition 1D provides $100 million to encourage school districts to build educationally and environmentally superior schools.

The high performance incentive grant is based upon the High Performance Rating Criteria (HPRC) point system of the Collaborative for High Performance Schools (CHPS). efficient.

Small High School Program

Assembly Bill 1465, Chapter 894, Statutes of 2004 (Chan) created a pilot program within the SFP that provided districts access to $20 million for the purpose of constructing new small high schools and $5 million for the reconfiguration of existing high schools into two or more smaller high schools that would foster academic achievement and success in a small high school environment. The small high school program commenced on January 1, 2006 and remains in effect until January 1, 2008. Proposition 1D does not make any changes to the existing pilot program although it provides up to $200 million for new construction and modernization (reconfiguration) for these purposes.

Seismic Mitigation

Proposition 1D provides up to $199.5 million for seismic mitigation of the most vulnerable school facilities that meet certain criteria that pose an unacceptable risk of injury to its occupants in the event of a seismic occurrence. These funds will be used to repair, reconstruct, or replace qualifying school facilities.

Labor Compliance Program Grant

Significant labor code changes have occurred that impact the SFP. Assembly Bill 1506 added Section 1771.7 to the Labor Code that requires a district to make a certification that a labor compliance program (LCP), that has been approved by the Department of Industrial Relations (DIR), for the project apportioned under the SFP has been initiated and enforced if both of the following conditions exists:

- the district has a project which received an apportionment from the funding provided in Proposition 47 or Proposition 55; and
- the construction phase of the project commences on or after April 1, 2003, as signified by the date of the Notice to Proceed.

Additional information including a guidebook and model LCPs are available for viewing on the DIR Web site at HTTP://WWW.DIR.CA.GOV. Projects funded solely from Proposition 1D are not subject to these provisions.

Facility Hardship Grant

To be eligible for a facility hardship grant the district must demonstrate that one of two conditions exists: facilities must be replaced due to an imminent health and safety threat, or existing facilities have been lost to fire, flood, earthquake or other disaster.

To address these unusual situations, the SAB has developed a facility hardship grant. The purpose of the grant is to assist districts with funding where it has been determined that the district has a critical need for pupil housing because the condition of the facilities, or the lack of facilities, presents an imminent threat to the health and safety of the pupils.

Financial Hardship

Financial Hardship assistance is available for those districts that cannot provide all or part of their share of a school facility project. Education Code, Section 17075.10 and California Code of Regulations, Section 1859.81 require a district to have made all reasonable efforts to impose all levels of local debt capacity and development fees prior to requesting financial assistance.

School Facility Program Construction Process

The process of constructing or modernizing a school building originates with and is the responsibility of the individual school district. The school district determines the type and size of the school building utilizing criteria set forth from the CDE. The size is also determined by the number of students to be housed in the facility and consideration of health and safety issues designated by the appropriate state agencies. The school district should encourage and incorporate participation from the local community for input into the site location and design features. The school district usually utilizes community information workshops to generate community input and support. Dedication by the district and support from the community are as important as the site selection approval and acquisition process that may take one or more years.

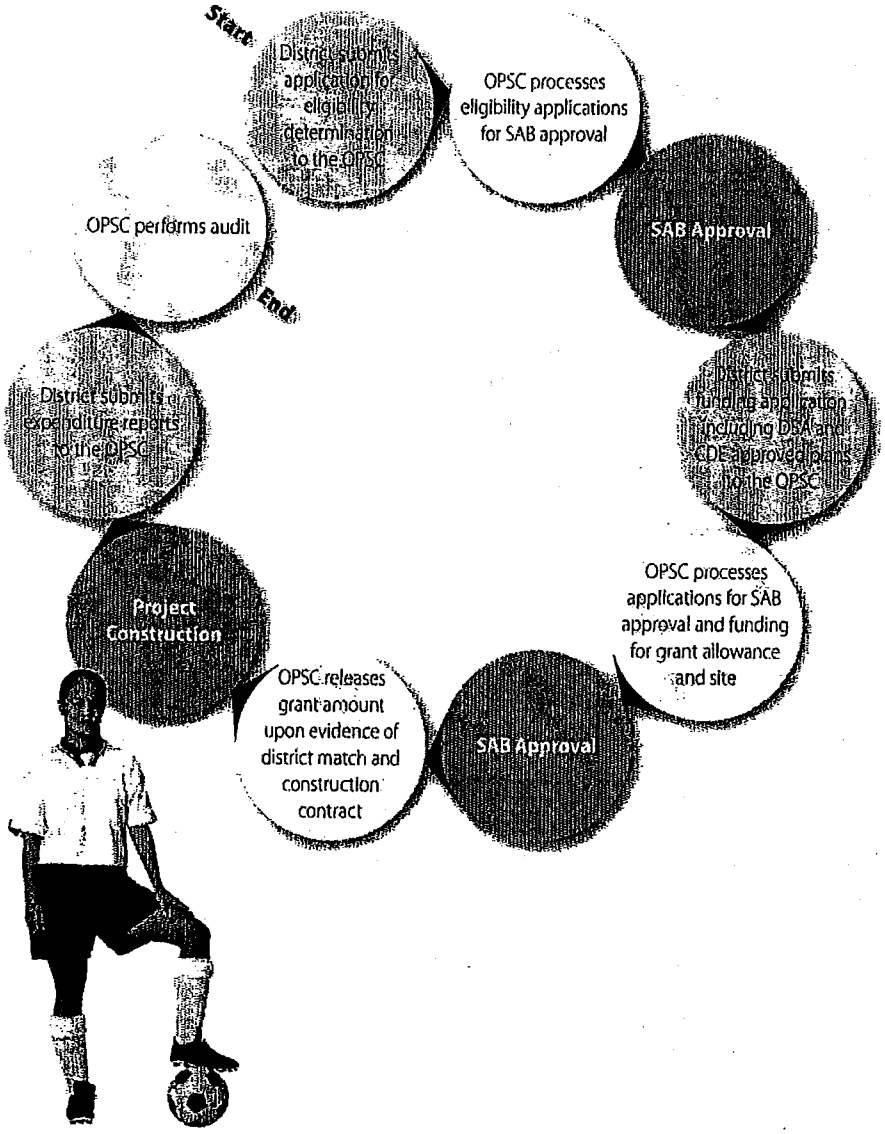
In the meantime, the school district should have passed a local bond or secured alternative funding for its share of the project. Without this funding, the school district cannot meet the 50 percent funding requirement for new construction project or the 40 percent funding requirement for modernization projects.

A district may submit an application to the OPSC for eligibility determination prior to commencing the project design. The OPSC will make every effort to process the eligibility application for SAB approval within 90 days. The district may proceed with the hiring of an architect for the development of plans and specifications for the school. Once the plans and specifications are completed by the architect, they are forwarded to the DSA for processing. In order for the district to request project funding, the district is required to verify that they have their 50/40 percent share of the project cost, stamped DSA plans, and approval of the site and plans by the CDE. In the event the district is unable to share in the cost of the project, the district can pursue financial assistance through the Financial Hardship provisions. Once the completed funding application is received, the OPSC will make every effort to process the application within 90–120 days and will present it to the SAB for an apportionment.

With all approvals and funding in place, the actual construction time on an average school of 2,000 students, takes approximately two years. Total design development and construction time from concept to occupancy is between 2 to 4 years. However, portable school construction projects can be completed within 9 to 15 months from concept to occupancy.

State School Building Funding Process

New Construction and Modernization



Other Programs Administered by the State Allocation Board

Emergency Repair Program

Senate Bill 6, Chapter 899, Statutes of 2004 (Alpert) established the Emergency Repair Program (ERP). The funding is available to schools identified by the CDE as ranked in deciles one, two, or three based on the Academic Performance Index (API).

This program provides funding to a Local Educational Agency (LEA) for the cost of repairing building systems or structural components that pose a health and safety threat to students and staff at eligible school sites. Grants can be requested in advance or after a project is under way or completed. The same schools that are eligible for School Facilities Needs Assessment Grant Program (SFNAGP) funding are eligible for ERP funding. Funds will be made available annually through the Budget Act and the program will operate until $800 million has been apportioned.

School Facilities Needs Assessment Grant Program

Senate Bill 6, Chapter 899, Statutes of 2004 (Alpert) established the SFNAGP. The funding was provided to schools identified by the CDE as ranked in deciles one, two, or three based on the 2003 API, and that were newly constructed prior to January 1, 2000. The program requires LEAs to perform a one-time comprehensive assessment of the facilities for each eligible school site and provides $10 per pupil, or a minimum of $7500 to accomplish this.

State Relocatable Classroom Program

The State Relocatable Classroom Program (SRCP) was designed to meet classroom needs for those districts impacted by excessive growth or unforeseen classroom emergencies. On October 26, 2005, the SAB adopted the Phase-Out Plan for the SRCP. The report was brought forth for the SAB's consideration due to the increasing size of the SRCP and the general condition of an aging fleet. The plan outlines a process for immediate disposal of all State Relocatable Classrooms and permits school districts and other entities to purchase the relocatables. Only those relocatables found to be in good repair can be used to house students. Effective December 1, 2005, the SAB will no longer accept applications to lease a relocatable.

For more information on the phase-out of the SRCP, visit the OPSC Web site.

» Note the SAB has a Disabled Veteran Business Enterprise policy which is applicable to the State Relocatable Classroom Program.

Deferred Maintenance Program

The State School Deferred Maintenance Program provides State matching funds, on a dollar-for-dollar basis, to assist school districts with expenditures for major repair or replacement of existing school building components. Typically, this includes plumbing, heating, air conditioning, electrical systems, roofing, interior/exterior painting, floor systems, etc. Funds are also provided for critical hardship projects if the work must be completed within one year.

Funding for this program is generated from the amount of school district repayments under the State School Building Aid program that exceed the amount necessary to service the indebtedness on State General Obligation Bonds sold and loaned to the districts for that program and from certain State School Site Utilization Funds. Additional funds may be appropriated from the State General Fund.

Additional Information

For additional information regarding the State School Facility Programs, refer to the following program manuals which are available on the OPSC Web site.

- School Facility Program Handbook
- Deferred Maintenance Program Handbook
- State Relocatable Classroom Program Handbook
- Unused Sites Program Handbook

Also available on the OPSC website for additional reading and information:

- Architect's Submittal Guidelines
- Substantial Progress and Expenditure Audit Guide
- Cost Reduction Guidelines
- Cookbook for Energy Conservation Measures
- Disabled Veteran Business Enterprise Information and Forms Package
- Best Practices
- Program Forms

Summary of Bond Allocations

Amounts are in Millions of Dollars

	MAR 1998	NOV 1998	NOV 2002	MAR 2004	NOV 2006	TOTAL
New Construction	$ 1,127.8	$ 2,900.0	$ 6,250.0[1]	$ 4,960.0[3]	$ 1,900.0[4,5]	$17,137.8
Modernization	705.0	2,100.0	3,300.0[2]	2,250.0	3,300.0[4]	$11,655.0
Charter Schools	0.0	0.0	100.0	300.0	500.0	$ 900.0
Career Technical Education	0.0	0.0	0.0	0.0	500.0	$ 500.0
Overcrowding Relief	0.0	0.0	0.0	0.0	1,000.0	$ 1,000.0
High Performance Schools	0.0	0.0	0.0	0.0	100.0	$ 100.0
Hardship	0.0	1,000.0	0.0	0.0	0.0	$ 1,000.0
Class-Size Reduction	0.0	700.0	0.0	0.0	0.0	$ 700.0
Critically Overcrowded Schools	0.0	0.0	1,700.0	2,440.0	0.0	$ 4,140.0
Joint-Use	0.0	0.0	50.0	50.0	29.0	$ 129.0
Ed-Tech Counties	45.0	0.0	0.0	0.0	0.0	$ 45.0
Air-Conditioning	26.8	0.0	0.0	0.0	0.0	$ 26.8
State Relocatables	28.0	0.0	0.0	0.0	0.0	$ 28.0
Northridge Earthquake	13.4	0.0	0.0	0.0	0.0	$ 13.4
60/40	40.0	0.0	0.0	0.0	0.0	$ 40.0
Roofs	30.0	0.0	0.0	0.0	0.0	$ 30.0
Joint Use (EC Section 17052)	25.0	0.0	0.0	0.0	0.0	$ 25.0
Child Care	5.0	0.0	0.0	0.0	0.0	$ 5.0
Contingency Reserve	19.0	0.0	0.0	0.0	0.0	$ 19.0
Total Bond Funds	$ 2,065.0	$ 6,700.0	$ 11,400.0	$ 10,000.0	$ 7,329.0	$37,494.0

[1] $16.2 million – energy efficiency.

[2] $5.8 million – energy efficiency.

[3] $20 million total – energy efficiency set aside for new construction and modernization.

[4] No more than $200,000,000 of the sum of the appropriations for new construction and modernization shall be used to fund the smaller learning communities and small high schools.

[5] Up to 10% percent (199.5 million) shall be available for purposes of seismic repair, construction, or replacement, pursuant to Section 17075.10

Summary of Deferred Maintenance Allocations

Amounts are in Millions of Dollars

	1998–99	2000–01	2001–02	2002–03	2003–04	TOTAL
Excess Repayments	$ 25.7	$ 20.7	$ 18.1	$ 15.6	$ 16.0	$ 96.1
Other Legislation	143.7	176.1	176.3	208.0	76.8	$ 780.9
Total	$ 169.4	$ 196.8	$ 194.4	$ 223.6	$ 92.8	$ 877.0