

**State of California
Office of Administrative Law**

In re:
California School Finance Authority

Regulatory Action:

Title 04, California Code of Regulations

Adopt sections:

Amend sections: 10170.3, 10170.8, 10170.9,
10170.10, 10170.14

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2017-0329-01

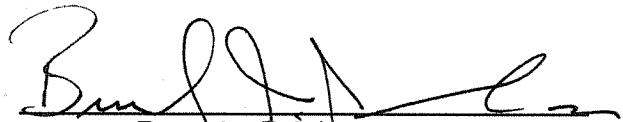
OAL Matter Type: Emergency (E)

This emergency rulemaking action by the California School Finance Authority (Authority) implements regulations to govern administration of the Charter School Facility Grant Program, under which the Authority administers approximately \$112,000,000 in general fund assistance to charter schools for facilities rent and lease costs.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 4/10/2017 and will expire on 10/10/2017. The Certificate of Compliance for this action is due no later than 10/9/2017.

Date: April 10, 2017


Beverly J. Johnson
Deputy Director

For: Debra M. Cornez
Director

Original: Katrina Johantgen
Copy: Katrina Johantgen

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

EMERGENCY

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-0329-01E
For use by Office of Administrative Law (OAL) only		2017 MAR 29 A 11: 03	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY California School Finance Authority			AGENCY FILE NUMBER (if any)

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

APR 10 2017
1:38 PM

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

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 Disapproved/Withdrawn		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California School Facility Grant Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND 10170.3, 10170.8, 10170.9, 10170.10 and 10170.14 REPEAL
TITLE(S) 4	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

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

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

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

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

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 3/20/17
TYPED NAME AND TITLE OF SIGNATORY Katrina Johantgen, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 10 2017

Office of Administrative Law

TEXT OF REGULATIONS
CALIFORNIA CODE OF REGULATIONS
Title 4, Division 15, Article 1.5
Charter School Facility Grant Program

Section 10170.3. Eligible Applicant.

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

- (a) The Application is submitted by or on behalf of a Charter School.
- (b) An approved charter has been awarded, is in place, and is current at the time of Application.
- (c) In the case of a First Year Charter School, a charter petition has been submitted for approval to the Chartering Authority and evidence, such as a copy of the charter petition, is submitted that the school anticipates beginning operations in the Fiscal Year for which an Application is submitted.
- (d) The Charter School meets one of the following criteria:
 - (1) Fifty-five percent (55%) or more of the student enrollment at the charter school site is eligible for prior year FRPM; or
 - (2) The charter school site for which grant funds are requested is physically located in the attendance area of a public elementary school in which fifty-five percent (55%) or more of the pupil enrollment is eligible for prior year FRPM and the school site gives a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter school site is located, as determined by the local school district.
 - (3) First Year Charter Schools not operational in the prior year shall be eligible in the current year if the school meets the FRPM Eligibility requirements based on current year data.
 - (4) In the 2015-2016 fiscal year, the Authority may conduct an additional funding round.
 - (5) In all subsequent funding rounds, all schools shall adhere to application dates outlined in section 10170.5.
- (e) The Charter School, educational management organization, or charter management organization is not in default with the requirement of all other programs administered by the Authority.
- (f) The charter school is in good standing with its chartering authority and is in compliance with the terms of its charter at the time of application submission, and without interruption throughout the term of the grant. The Authority will rely on information from the chartering authority regarding the school's good standing and compliance with the terms of its charter. Charter schools may appeal any response by the chartering authority's staff directly to the chartering authority's governing board. It shall be the charter school's responsibility, and not the Authority's, to ensure that the good standing and compliance response letter is received by the stated deadline.
 - (1) Requests for good standing will be sent out to the chartering authority as follows:
 - (a) Upon receipt of the Application;
 - (b) In February, prior to the disbursement of the second apportionment as described in section 10170.9(d); and
 - (c) In June, prior to the disbursement of the Final apportionment as described in Section 10170.9(e).

Note: Authority cited: Section 47614.5, Education Code.
Reference: Section 47614.5, Education Code.

Section 10170.8. Final Fiscal Year Entitlement Calculation.

- (a) By the second apportionment as described in section 10170.9, Grantees shall provide final and actual rent or lease costs for the Fiscal Year.
- (b) The Authority shall obtain from the Department final average daily attendance figures and FRPM Eligibility for each Grantee.
- (c) Pursuant to section 10170.9(e), the Authority shall consider invoices for additional facility costs as submitted pursuant to section 10170.6(d). Reimbursement for additional eligible costs submitted by invoice shall be limited to the criteria set forth in section 10170.4(d)-(a)(2).
- (d) Based on the information provided pursuant to subdivisions (a) - (c), the Authority shall verify program eligibility and calculate each Grantee's Final Fiscal Year Entitlement, pursuant to section 10170.4(d).

Note: Authority cited: Section 47614.5, Education Code.

Reference: Section 47614.5, Education Code.

Section 10170.9. Apportionment of Grant Funds.

- (a) Prior to making any awards for Fiscal Year grants, the Authority shall first determine whether any Grantees that received awards in the Prior Year are entitled to reimbursement for unreimbursed eligible costs for that year. Such costs shall be the first funding priority prior to the Authority disbursing apportionment of current Fiscal Year grants to Grantees and shall be determined by the Authority based on the Final Fiscal Year Entitlement calculation made for each Grantee for the Prior Year. Reimbursements for Prior Year costs shall be made by the Authority to Prior Year Grantees within 60 days of the Authority providing notice.
- (b) The first apportionment of 50% of the Estimated Annual Entitlement, following disbursements required pursuant to subdivision (a), shall be disbursed to each Grantee by August 31 of the Fiscal Year for which the grant is requested, or 30 days after enactment of the annual Budget Act, whichever is later.
- (c) For a Grantee that submitted an Application pursuant to section 10170.5(b), the first apportionment of 50% of the Estimated Annual Entitlement shall be made within 30 days after the Authority determines eligibility and the Estimated Annual Entitlement.
- (d) No later than March 1 of each Fiscal Year, the Authority shall provide to each Grantee a second disbursement of 75% of the Estimated Annual Entitlement less the initial disbursement and less any adjustments due to receipt of the executed rent or lease agreement for the designated Fiscal Year.
- (e) No later than 30 days after the end of each Fiscal Year or 30 days after receiving the data and documentation needed to compute the Charter School's total annual entitlement, whichever is later, the Authority shall provide to each Grantee a third disbursement of 100 percent of the Final Fiscal Year Entitlement less the first two disbursements and adjusted for any changes to the FRPM Eligibility data, ADA, and executed rental or leases agreements for the designated Fiscal Year. If reimbursement of invoices considered eligible pursuant to section 10170.4(a)(2) is requested, these costs will be incorporated into this final disbursement.
- (f) If insufficient funds remain available from the Fiscal Year's appropriation, the Authority shall determine the pro rata share to which each Grantee is entitled and disburse such amounts to each Grantee. The Authority shall calculate each Grantee's pro-rated award based upon the previous year's ADA and previous year's rent/lease costs unless current year's rent/lease costs are available at the time of submission. For Charter Schools that do not have Prior Year enrollment data, the Authority shall calculate the pro-rated award pursuant to section 10170.7 (f)

- (g) If a Grantee's Final Fiscal Year Entitlement is less than the amount disbursed to the Grantee through the first two apportionments the Authority shall provide the Grantee with notice and require that the Grantee reimburse the Authority for the excess within 60 days of the Grantee's receipt of such notice.
- (h) Prior to disbursement of funds for costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites, and common area maintenance, the Grantee shall complete an ~~2016-17 Facility Invoice Expenditure Report~~ updated March 2017, incorporated by reference, provided by the Authority. ~~Grantee shall also as well as~~ submit supporting invoices, work orders, or other evidence of completed work to the Authority. Upon presentation of such evidence of actual costs incurred, such costs shall be reimbursed as a portion of the final apportionment. Such evidence shall be provided to the Authority no later than July 15 of the applicable Fiscal Year.
- (i) At any time during each Fiscal Year the Authority reserves the right to:
 - (1) Adjust each Grantee's Estimated Annual Entitlement on a pro rata basis based on the number of approved Grantees, the total amount of Estimated Annual Entitlements, and the amount of funds available;
 - (2) Adjust Estimated Annual Entitlements for individual Grantees based on the Authority's receipt of updated data from the Grantee or the Department; and
 - (3) If final data for FRPM Eligibility provided by the Department establishes that the Grantee is not eligible for the program pursuant to section 10170.3(d), request reimbursement of grant funds already disbursed to the Grantee consistent with subdivision (e).

Note: Authority cited: Section 47614.5, Education Code.
Reference: Section 47614.5, Education Code.

Section 10170.10. Notification of Grantee; Appeal Process.

- (a) The Authority will provide notice to each Applicant of Authority staff's eligibility determination and ~~Estimated Annual Entitlement award~~ calculation pursuant to sections 10170.7 and 10170.8.
- (b) An Applicant shall have 30 calendar days from receipt of the Authority's notice to request reconsideration of eligibility or the ~~Estimated Annual Entitlement award~~ calculation by Authority staff.
- (c) Authority staff shall have 30 calendar days to review an Applicant's request for reconsideration and provide a final staff decision.
- (d) If the Applicant is unsatisfied with Authority staff's final decision, the Applicant shall have 30 calendar days following receipt of notice of the decision to notify the Authority that the Applicant wishes to appeal the matter to the Authority board.
- (e) Upon receipt of an appeal notice from an Applicant, the matter will be considered by the Authority board at the next regularly scheduled Authority meeting.
- (f) If an eligibility determination or ~~Estimated Annual Entitlement award~~ calculation is modified by Authority staff or the Authority Board, changes in apportionments will be processed and distributed to the Applicant within 30 days.

Note: Authority cited: Section 47614.5, Education Code.
Reference: Section 47614.5, Education Code.

10170.14. Conflicts of Interest.

- (a) For purposes of this section, the following definitions shall apply:
 - (1) "Affiliate" shall mean a shareholder, partner, member, officer or board member of, or person who directly or indirectly controls, a Corporate Entity.
 - (2) "Corporate Entity" shall mean any type of organization or legal entity other than an individual, including a corporation, partnership, limited liability company or unincorporated association.
 - (3) "Related Party" shall mean:
 - (A) School Official or a spouse, domestic partner, or dependent child of a School Official; or (B) A Corporate Entity if a School Official or a spouse, domestic partner, or child of a School Official is an Affiliate of the Corporate Entity, except that a non-profit Corporate Entity formed exclusively for the purpose of managing or providing support to the Applicant or Charter School or to a group of related charter schools, and any direct or indirect wholly-owned subsidiary of any such Corporate Entity, shall not be considered a Related Party.
 - (C) "School Official" shall mean a board, member, officer, or employee of an Applicant or the Charter School.
- (b) Grantees must avoid actual conflicts of interest when applying for or receiving grants from the Authority.
- (c) ~~Beginning with the 2014-15, g~~Grant funds may not be used by an Applicant or Charter School to pay for any lease or rental or service agreement with a Related Party, unless all of the following conditions are satisfied:
 - (1) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, abstains from voting, or participating in the discussion of the governing board of the Charter School, regarding approval of the lease, rental agreement, or any amendment thereto;
 - (2) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, abstains from voting, or participating in the discussion of the governing board of the Charter School, regarding the decision to apply for a grant to cover costs associated with the lease or rental agreement, as well as abstaining from participating in the Application for grant funds or administration of the Charter School's receipt of grant funds;
 - (3) The Related Party, and, in the case of a Corporate Entity, any School Official who is an Affiliate of the Corporate Entity, discloses its interest in the lease or rental agreement to the governing board of the Charter School;
 - (4) The amount of the lease or rent is at or below market rate based on an independent appraisal paid for by the Applicant or Charter School or the governing board in approving the lease or rental agreement or amendments thereto has made a finding that the agreement is reasonable under the circumstances; and
 - (5) The lease or rental agreement is not signed by the Related Party, or in the case of a Corporate Entity, by any School Official who is an Affiliate of the Corporate Entity, on behalf of the Applicant or Charter School.
- (d) Nothing in this section is intended to supercede Government Code section 1090, the Political Reform Act (commencing with Government Code section 81000), or any other conflicts of interest laws that may be applicable to the Applicant or Charter School's participation in the program.

Note: Authority cited: Section 47614.5, Education Code. Reference: Section 47614.5, Education Code.

**Charter School Facility Grant Program
2016-17 Facility Invoice Expenditure Report**

To request final reimbursement for additional fiscal year **2016-17** facility expenditures
(Education Code Section 47614.5)

SECTION 1. CHARTER SCHOOL INFORMATION:

Charter School Name: _____
County-District-School (CDS) Code: _____
Charter School Number: _____
Contact Person Name/Title: _____ -
Phone Number: _____ -
E-mail Address: _____ 0

SECTION 2. 2016-17 TOTAL EXPENDITURES CLAIMED FOR REIMBURSEMENT

I hereby certify that to the best of my knowledge and belief, categories A through E below, report the actual amount of expenditures incurred during fiscal year 2016-17 and are not representative of facility's lease rent costs. Each expenditure in the report is accompanied by an evidence of expenditure and payment including but not limited to, copies of invoices, canceled checks, bank statements. I understand the information provided on this report is subject to audit. Pursuant to Program Regulations Section 10170.14 (c), I certify there are no Related Parties between the school and the vendors for which we are requesting reimbursement.

	<u>Expenditure Amount</u>
A. Remodeling	\$ -
B. Deferred Maintenance	\$ -
C. Installation	\$ -
D. Materials	\$ -
E. Maintaining/Repairing Common Areas	\$ -
Total:	\$ -

Signature of Principal, CEO, or Lead Administrator

Date

Print or Type Name