

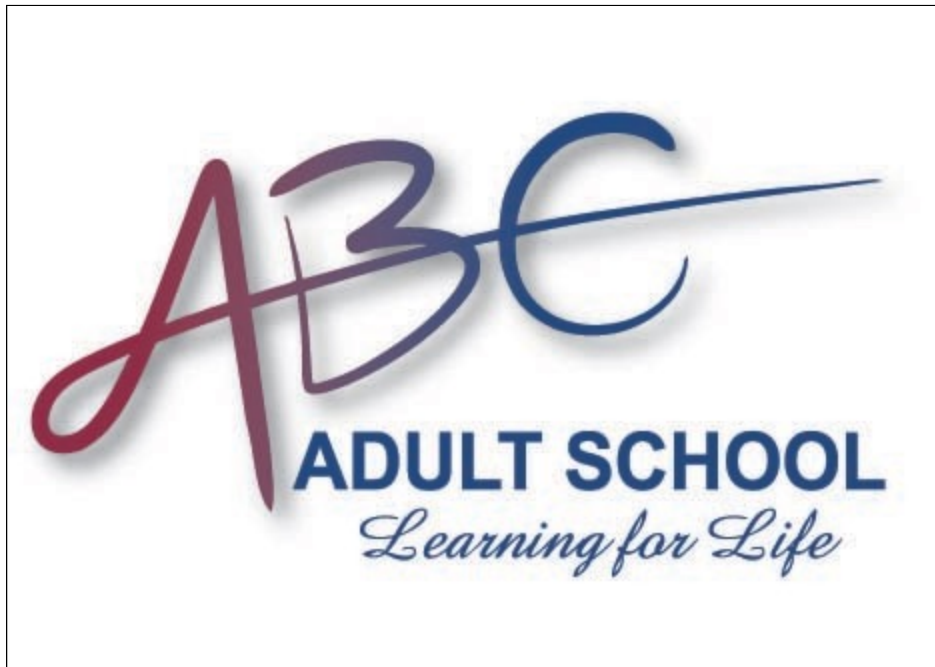
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# ABC Adult School

## Plan for Physical Plant Operation and Campus Improvement

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Revised January 2015



**FACILITIES**

Series 7000 contains policies, regulations and exhibits on facility planning, financing, evaluating existing buildings, temporary facilities, architectural and engineering services, site selection and development, developer fees, and naming of a facility.

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Concepts and Roles .....	7000	BP
	7000	AR
Planning and Design		
Facilities Master Plan .....	7110	BP
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**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**CONCEPTS AND ROLES**

The Governing Board recognizes that one of its major responsibilities is to provide healthful, safe and adequate facilities that enhance the instructional program. The Board shall endeavor to make the provision of adequate school facilities a priority in the District.

Because the schools serve as a focal point for the community, the Board shall also strive to ensure that district facilities fit harmoniously and attractively into their neighborhoods and have flexibility of design to meet future educational and community needs.

*(cf. 9000 - Role of the Board (Powers and Responsibilities))*

The Board shall strive to have a school facilities master plan in place and regularly reviewed in light of the District's educational goals. In accordance with this plan, the Board shall:

1. Approve additions or major alterations to existing buildings

*(cf. 7111 - Evaluating Existing Buildings)*

2. Determine what new buildings shall be built, when and where, and what equipment shall be purchased for them

3. Determine the method of financing that will be used

*(cf. 7210 - Facilities Financing)*

4. Select and purchase school sites for future expansion

*(cf. 7150 - Site Selection and Development)*

5. Approve the selection of architects and structural engineers

*(cf. 7140 - Architectural and Engineering Services)*

6. Award contracts for design and construction

7. Name schools and individual buildings

*(cf. 7310 - Naming of Facility)*

8. Advocate school facility needs to the community

*(cf. 7110 - Facilities Master Plan)*

*(cf. 7131 - Relations with Local Agencies)*

CONCEPTS AND ROLES (continued)

*Legal Reference:*

EDUCATION CODE

*17211-17224 General provisions (school sites)*

*17260-17268 Plans of schoolhouses*

*17280-17316 Approval of plans and supervision of construction*

*17340-17343 Building of schoolhouses*

*17350-17360 Factory-built school buildings*

*17365-17374 Fitness of buildings for occupancy; liability of board members*

*17400-17429 Leasing of school buildings*

CODE OF REGULATIONS, TITLE 5

*14000 Policy declaration*

*14001 Minimum standards*

*14010 Procedure for site acquisition*

*14030 Preliminary procedure, planning and approval of school facilities*

*14031-14032 Submissions to bureau of school facilities planning; approval*

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation**

**FACILITIES**

**CONCEPTS AND ROLES**

The Superintendent or designee shall:

1. Assess the District's short- and long-term facility needs
2. Direct the preparation and updating of the facilities master plan
3. Oversee the preparation of bids and award of contracts

*(cf. 3311 - Bids)*

4. Supervise the implementation of the District's building program in accordance with the master plan, Board policy, and state and local requirements, including collaboration with the architect and contractor on the construction of new facilities and modernization of existing facilities
5. Represent the District in official governmental interactions related to the building program

approved: 10.13.98

**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**FACILITIES MASTER PLAN**

The Superintendent or designee shall develop and maintain a master plan for district facilities. This plan shall describe the District's anticipated school facilities needs and priorities. It shall also identify funding sources and timelines for building. The plan shall be reviewed at regular intervals specified within the plan.

The plan shall be based on an assessment of the District's short- and long-term facility needs, giving consideration to:

1. Current and projected school enrollments for each grade level, based on residential housing growth patterns in accordance with city/county general plans and other demographic factors

2. The District's educational goals

*(cf. 0200 - Goals for the School District)*

3. Current and projected educational program requirements

4. Student safety and welfare

5. An evaluation of existing buildings and needs for modernization and renovation

*(cf. 7111 - Evaluating Existing Buildings)*

6. State planning standards and local zoning requirements

7. The community's social, economic and political characteristics

8. Estimated costs associated with meeting the District's facility needs

**FACILITIES MASTER PLAN (continued)**

*Legal Reference:*

EDUCATION CODE

17017.5 Approval of applications for projects

17251 CDE standards and advice

17260-17268 Plans of schoolhouses, especially:

17264 Plan requiring accommodation for child care programs

17280-17316 Approval of plans and supervision of construction

17365-17374 Fitness for occupancy

17405 Relocatable structures; lease requirements

CODE OF REGULATIONS, TITLE 5

14001 Minimum standards

14030-14037 Standards, planning and approval of school facilities

UNITED STATES CODE, TITLE 42

12101 - 12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35 New construction or alteration of existing facilities



**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation****FACILITIES****FACILITIES MASTER PLAN**

The Superintendent or designee shall ensure that staff, parents/ guardians, students, and business and community representatives are kept informed of the need for facilities construction or modernization. The Superintendent or designee shall also establish a facilities committee that shall meet at regular intervals in order to give community members opportunities to provide input into the planning process.

*(cf. 1220 - Citizen Advisory Committees)*

The Superintendent or designee shall prepare educational specifications for school design to support the educational program as determined by district goals, objectives, policies and community input. These specifications shall define: (Code of Regulations, Title 5, Section 14030)

1. The enrollment of the school and its grade level configuration
2. The emphasis in curriculum content or teaching methodology that influences the school design
3. The type, number, size, function, special characteristics of each space, and spatial relationships of the instructional area that are consistent with the educational program
4. Community functions that may affect the school design

To ensure that proposed facilities conform with all state planning standards and local zoning requirements, the Superintendent or designee shall consult architectural and engineering firms, utility companies, local governmental and planning agencies, the county office of education, the California Department of Education, the Division of the State Architect and the Office of Public School Construction. Assistance from colleges and universities, planning laboratories and private consulting firms shall be authorized when necessary to augment district staff resources.

Facilities plans shall conform with state standards as specified in the Code of Regulations, Title 5, Section 14030. These standards are briefly and partially summarized below:

1. Sites shall be arranged so that parent drop off, bus loading areas and staff parking are separated to allow students to enter and exit the school grounds safely.
2. Playgrounds and field areas shall be adequate to accommodate physical education requirements for the planned student enrollments.
3. Delivery and service areas shall be located so as to provide vehicle access without jeopardizing the safety of students and staff.
4. Site layouts shall have capability for expansion without substantial alterations to existing structures or playgrounds.
5. The placement of buildings shall be compatible with their functions and with the functions of other buildings.
6. Unless otherwise justified, classrooms at new school sites shall be not less than 960 square feet or shall provide not less than 30 square feet per student, with conduit/cablings and outlets related to planned and potential educational functions.

**FACILITIES MASTER PLAN** (continued)

7. Specialized classrooms shall be designed to reflect the function planned for that portion of the educational program, such as small-group instruction, kindergarten, and special education.
8. Laboratories shall be designed for the planned curriculum, allowing for storage, ventilation, teacher preparation areas, proper outlets and power sources, safety equipment, proper hazardous materials management, and room to move around fixed learning stations.
9. Gymnasiums and shower/locker areas shall be designed to accommodate multiple use activities in accordance with the planned enrollment, with the gymnasium secured from other parts of the campus for evening, weekend and public use purposes.
10. Auxiliary areas such as multipurpose cafeterias, administrative offices and library/media centers shall be adequately sized, allow adaptation for changing technology and communication systems, and provide security for technology and media equipment.
11. Lighting shall be designed to provide comfortable and adequate levels of illumination in each educational space.
12. Hearing conditions shall complement the educational functions by good sound control.
13. Restrooms shall be sufficient to accommodate the maximum planned enrollment and located on campus to allow for supervision.
14. Schools planned for multitrack year-round operation shall have additional space for associated storage, supplies and planning.

Plans shall also comply with the Americans with Disabilities Act and its implementing regulations which require that facilities be designed and constructed so that they are readily accessible to and usable by individuals with disabilities. (42 USC 12101 - 12213, 28 CFR 35)

Plans shall also comply with state requirements for appropriate space to accommodate before- and after-school child care programs. (Code of Regulations, Title 5, Section 14030)

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation****FACILITIES****EVALUATING EXISTING BUILDINGS**

The Superintendent or designee shall evaluate the adequacy and design of existing district facilities on an as needed basis, to determine whether they meet the needs of the instructional program, provide a healthful, safe, and well maintained environment for students and staff, and fulfill legal requirements for safety and structural soundness, accessibility to the disabled, and energy conservation.

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*

*(cf. 3511 - Energy and Water Conservation)*

*(cf. 3514 - Environmental Safety)*

*(cf. 7110 - Facilities Master Plan)*

*(cf. 5116 - School Attendance boundaries)*

In the event that the Department of General Services or any licensed structural engineer or licensed architect finds and reports to the Governing Board that a district building is unsafe for use, the Superintendent or designee shall immediately obtain an estimate of the cost of repairs or reconstruction necessary to bring the building up to legal standards for structural safety. The Board shall establish a system of priorities for the repair, reconstruction or replacement of unsafe school buildings. (Education Code 17367)

**Energy Efficiency**

When evaluating existing buildings, the Superintendent or designee shall arrange for the preaudit and postaudit of school buildings by utility companies or independent energy audit firms to the extent that these services are available. Information provided by these services shall be used to determine the cost of retrofitting the buildings and the savings which may result from adding insulation, making design modifications, or using other energy-conserving devices. The District may contract with qualified businesses capable of retrofitting these buildings and may borrow funds which do not exceed the amount of energy savings to be accumulated from the improvement of the buildings. (Education Code 17651-17653)

**Report of Existing Building Capacity**

The District shall submit a one-time report of existing school capacity to the State Allocation Board. The District's, or where appropriate the attendance area's, existing school capacity shall be calculated pursuant to the formulas set forth in Education Code 17071.10-17071.40 and in 2 CCR 1859-1859.106.

**EVALUATING EXISTING BUILDINGS** (continued)

*Legal Reference:*

EDUCATION CODE

*17070.10-17076.10 Leroy F. Greene School Facilities Act of 1998 especially:*

*17071.10-17071.40 Existing school building capacity*

*17280-17316 Building approvals*

*17365-17374 Fitness for occupancy*

*17650-17653 Retrofitting school facilities for energy conservation*

GOVERNMENT CODE

*53097 Compliance with city or county ordinances*

*53097.5 Inspection of schools by city or county*

CODE OF REGULATIONS, TITLE 2

*1859-1859.106 Regulations relating to the Leroy F. Greene School Facilities Act of 1998*

*Management Resources:*

WEB SITES

*Department of General Services, Office of Public School Construction:*

*<http://www.dgs.ca.gov./opsc/>*

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation**

**FACILITIES**

**TEMPORARY FACILITIES**

**Guidelines for Placement of Portables**

In order to optimize the use of school sites where portables will best serve the needs of instructional programs and/or be least disruptive to our neighboring residents the following guidelines are established.

The following zones for portable locations should be chosen in descending order:

- Zone 1: The first consideration for portable locations will be the areas which are adjacent to the main building complex. If the space is unavailable, then move on to Zone 2.
- Zone 2: Portable placement should be considered for a location that is adjacent to the street at least a 10 feet recess from the fence line. If this space is not available then go to Zone 3.
- Zone 3: When the portable has to be located adjacent to the property wall, a fire lane of 30 feet should be maintained.

Prior to the installation of the portable, drawings for the proposed location of the portable will be provided to the site and the Board. In the event of Zone 3, site staff and neighboring residents will be notified before placement of the portable. If the portable cannot be placed by following the established guidelines above, the Board's approval will be obtained in advance.

**ABC UNIFIED SCHOOL DISTRICT**  
**Board Policy**

**FACILITIES**

**RELATIONS WITH LOCAL AGENCIES**

The Governing Board recognizes the importance of two-way communication with other local agencies in order to provide the best possible school facilities and make the best use of school construction funds. The Board shall consult and coordinate with local agencies as required by law and whenever the expertise of these agencies can assist the District in the planning, design and construction of facilities. The Board and Superintendent or designee shall also work with local agencies to ensure that they are informed about the potential impact of proposed land developments on school facilities.

Note: Education Code 35275 requires the Board to meet with local recreation and park authorities to coordinate planning, design and construction of new school facilities and school sites or major additions to existing school facilities and recreation and park facilities; see AR 7150.

*(cf. 7150 - Site Selection and Development)*

The Superintendent or designee shall monitor land development proposals within District boundaries and shall ensure that an exchange of accurate information with city/county planning staff regarding the impact of land development on the district's educational programs and facility needs is maintained.

*(cf. 7150 - Site Selection and Development)*

*(cf. 7210 - Facilities Financing)*

*(cf. 7211- Developer Fees)*

Recognizing that available funds may not suffice to eliminate overcrowding in district schools caused by new development, the Board urges the city/county to adopt in its general plan, or other appropriate planning documents, a provision which ensures that adequate school facilities will be available to the extent permitted by law.

**Impact Ordinances**

The Board shall notify the city council or county board of supervisors whenever it finds, based on clear and convincing evidence: (Government Code 65971)

1. That conditions of overcrowding exist in one or more attendance areas within the District which will impair the normal functioning of the educational programs, and the reason for the existence of those conditions
2. That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist

The above notice shall specify the mitigation measures considered by the District and shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility for school construction under applicable state law. (Government Code 65971)

**RELATIONS WITH LOCAL AGENCIES** (continued)

*Legal Reference:*

EDUCATION CODE

17280-17316 *Approval of plans and supervision of construction*

35275 *New school planning; cooperation with recreation and park authorities*

GOVERNMENT CODE

53090-53097.5 *Compliance with city or county regulations*

65300-65307 *Authority for and scope of general plans*

65850-65863.9 *Adoption of regulations, especially*

65860 *Consistency of zoning ordinances with general plan*

65970-65981 *School facilities, especially:*

65995-65997 *Developer fees*

PUBLIC RESOURCES CODE

21000-21177 *California Environmental Quality Act of 1970*

CODE OF REGULATIONS, TITLE 5

14010 *Procedure for site acquisition*

CODE OF REGULATIONS, TITLE 14

15000-15282 *Implementation of California Environmental Quality Act of 1970*

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation****FACILITIES****RELATIONS WITH LOCAL AGENCIES****City/County General Plan**

The Superintendent or designee shall monitor land development proposals within district boundaries and shall maintain procedures that ensure an exchange of accurate information with city/county planning staff regarding the impact of land development on the District's educational programs and facility needs.

Recognizing that developer fees, other local revenues and state bond funds may not suffice to provide adequate facilities in district schools caused by new development, the Board urges the city/county to adopt in its general plan or other appropriate planning documents a provision which ensures that adequate school facilities and services will be available concurrent with need.

*(cf. 7210 - Facilities Financing)*

To help the city/county determine whether a proposed development is consistent with such a general plan, the Superintendent or designee shall regularly provide the city/county with information about current and projected enrollment and school capacity. When developmental approvals are proposed, including but not limited to annexations, rezonings, general plan or specific plan amendments or approvals, the Superintendent or designee shall report to the city/county on the adequacy of developer and state monies in meeting school facility needs. If the Superintendent or designee determines that a particular proposed development project or projects will have an adverse impact on district facilities and that no funds are currently available to fully mitigate this impact, he/she shall so advise the city/county and request that approval of the project(s) be conditioned on the provision of adequate mitigation of school facility impacts.

The Superintendent or designee shall provide the city/county with:

1. Regularly updated copies of the District's master plan for facilities
2. Regularly updated records of:
  - a. Maximum capacity of each school facility, excluding portable classrooms
  - b. Maximum capacity of each school facility, including portable classrooms
  - c. Current enrollments in each facility
3. A written response to each proposed annexation, rezoning, general plan amendment, proposed specific plan, proposed community plan, environmental impact report, negative declaration, or tentative subdivision map for residential construction, including:
  - a. An estimate of student enrollment to be generated by the development at its completion and total occupancy
  - b. An estimate of student enrollment to be generated annually in terms of the developer's build-out schedule, as reported to the District by the planning staff



**RELATIONS WITH LOCAL AGENCIES** (continued)

4. A district plan for managing the growth anticipated from each development, indicating:
  - a. Which school(s) would be affected
  - b. A specific plan, with timelines, for housing the total new enrollment at completion of the development
  - c. An interim plan, with timelines, for managing the anticipated annual growth of enrollment at each affected school
  - d. Proposed conditions that would mitigate the impact of expected enrollment growth, such as alternative scheduling.

**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**ARCHITECTURAL AND ENGINEERING SERVICES**

In order to ensure safe construction and protect the investment of public funds, the Governing Board requires that a licensed and certified architect, construction manager or structural engineer be employed to design and supervise the construction of district schools and other facilities.

*(cf. 3311 - Bids)*

The Superintendent or designee shall devise a competitive process for the selection of architects and engineers on the basis of demonstrated competence and professional qualifications. The Superintendent or designee shall devise a competitive process for the selection of architects and structural engineers that is based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. For each project, he/she shall recommend specific architectural and engineering firms to the Board. The Board shall pay fair and reasonable amounts warranted by the provider's qualifications and competence. The Board need not select the lowest responsible bidder.

*(cf. 3311 - Bids)*

A separate architect contract shall be signed for each project, the contract shall include specific district requirements and procedures which must be followed by the architect. Contracts shall conform to State Allocation Board requirements.

*(cf. 3312.11 - State Allocation Board Contracts)*

The architect is chosen by means of a Request of Qualifications which includes ability to work with the Office of Public School construction and the State Allocation Board. The architect is subject to review every (3) three years. The board may also appoint additional architects of a similar caliber based on the District's needs.

The Superintendent or designee shall ensure that:

1. Projects entail maximum participation by small business firms as defined pursuant to Government Code 14837 (Government Code 4526)
2. Practices which might result in unlawful activity such as rebates, kickbacks, or other unlawful consideration are prohibited (Government Code 4526)
3. District employees are prohibited from participating in the selection process when they have a relationship with a person or business entity seeking a contract which would subject the employee to the prohibition of Government Code 87100 (Government Code 4526)

*(cf. 9270 - Conflict of Interest)*

4. Current statements of prospective contractors' qualifications and performance data are evaluated in detail
5. Alternative approaches for furnishing the services are discussed with at least three firms

**ARCHITECTURAL AND ENGINEERING SERVICES** (continued)

6. At least three firms deemed to be the most highly qualified to provide the required services are selected in accordance with established criteria and recommended in order of preference

*(cf. 3312.11 - State Allocation Board )*

*Legal Reference:*

EDUCATION CODE

17070.50 Conditions for apportionment

17280-17316 Approvals, especially:

17302 Persons qualified to prepare plans, specifications and estimates and supervise construction

17316 Contract provision re school district property

17371 Limitation on liability of governing board

GOVERNMENT CODE

4525-4529.5 Contracts with private architects, engineering, land surveying, and construction project management firms

14837 Definition of small business

87100 Public officials; financial interest

PUBLIC CONTRACT CODE

20111 School district contracts

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation**

**FACILITIES**

**ARCHITECTURAL AND ENGINEERING SERVICES**

The Governing Board shall engage the services of a licensed architect(s) holding a valid certificate or engineer(s) holding a valid certificate for the preparation of plans, specifications or estimates for any construction project, through a signed contract. (Education Code 17302)

*(cf. 3312 - Contracts)*

Contractors for any architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be selected, at fair and reasonable prices, on the basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. The schedules established by the Office of Public School Construction shall serve as guidelines. (Government Code 4526)

The Superintendent or designee shall ensure that the selection process for projects receiving state funding: (Government Code 4526)

1. Ensures that projects entail maximum participation by small business firms as defined pursuant to Government Code
2. Prohibits practices which might result in unlawful activity such as rebates, kickbacks, or other unlawful consideration
3. Prohibits district employees from participating in the selection process when they have a relationship with a person or business entity seeking a contract which would subject the employee to the prohibition of Government Code 87100

*(cf. 9270 - Conflict of Interest)*

The selection process may also include: (Government Code 4527)

1. Detailed evaluations of current statements of prospective contractors' qualifications and performance data
2. Discussion of alternative approaches for furnishing the services with at least three firms
3. Selection of at least three firms deemed to be the most highly qualified to provide the required services, in accordance with established criteria and recommended in order of preference

Contracts shall specify that all plans, specifications and estimates prepared by the contractor shall become the property of the District. (Education Code 17316)

**ARCHITECTURAL AND ENGINEERING SERVICES** (continued)

The architect, construction manager or engineer shall conduct inspections to determine the dates of changes and final completion. The contractor shall furnish the ABC District all final inspection certificates and or permit releases.

*Legal Reference:*

Education Code

*39151 Reports required for architects, engineers and inspectors; information required*

*39153 Inspection by department of general services appointed inspector*

**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**SITE SELECTION AND DEVELOPMENT**

The Governing Board believes that an adequate school site should serve the District's educational needs in accordance with the District's master plan and also show potential for contributing to other community needs. The Board will solicit community input whenever a school site is to be selected.

*(cf. 7110 - Facilities Master Plan)*

The Superintendent or designee shall establish a site selection process which complies with law and ensures that the best possible sites are acquired and developed at the least expense.

*(cf. 7140 - Architectural and Engineering Services)  
(cf. 7210 - Facilities Financing)*

Before acquiring property for a new school or an addition to an existing school site, the Board shall evaluate the property at a public hearing using state site selection standards. (Education Code 17211)

*Legal Reference:*

EDUCATION CODE

17006 *Definition of self-certifying district*

17024 *Prior written approval of CDE for selection of school site or construction of building*

17070.10-17076.10 *Leroy F. Greene School Facilities Act of 1998 especially:*

35271 *Power to acquire and construct on adjacent property*

35275 *New school planning and design, re consultation with local recreation and park authorities*

17211-17218 *General provisions (school sites), especially:*

17251 *Powers concerning buildings and building sites*

17268 *Compliance before construction*

17565-17592 *Board duties re management and control of school property*

CODE OF CIVIL PROCEDURE

1263.710-1263.770 *Remediation of hazardous substances on property to be acquired by school districts.*

GOVERNMENT CODE

65402 *Acquisition or disposition of property*

65995-65997 *Developer fees*

66455.9 *Written notices of proposed public school site within development; investigation and report; conditions for acquisition*

PUBLIC RESOURCES CODE

21000-21178 *Implementation of Environmental Quality Act, especially:*

CODE OF REGULATIONS, TITLE 5

14001-14037 *Minimum standards*

CODE OF REGULATIONS, TITLE 14

15000-15209 *Review and evaluation of EIRs and negative declarations*

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation**

**FACILITIES**

**SITE SELECTION AND DEVELOPMENT**

As part of the district's site selection process, the Superintendent or designee shall:

1. Meet with appropriate local government recreation and park authorities to review all possible methods of coordinating the planning, design, and construction of new school facilities and school sites or major additions to existing school facilities and recreation and park facilities in the community. (Education Code 35275)

*(cf. 7131 - Relations with Local Agencies)*

2. Notify the appropriate local planning agency and request its report and recommendations regarding the proposed site's conformity with the adopted general plan. (Government Code 65402, Public Resources Code 21151.2)
3. Have the site investigated by competent personnel with regard to population trends, transportation, water supply, waste disposal facilities, utilities, traffic hazards, surface drainage conditions and other factors affecting initial and operating costs. This investigation shall include geological and soil engineering studies to preclude locating the school on terrain that may be potentially hazardous. (Education Code 17212-17212.5)
4. Prepare an environmental impact report or negative declaration which complies with the California Environmental Quality Act (CEQA) and includes findings related to hazardous substances, solid wastes and hazardous air emissions. (Public Resources Code 21000-21178, Education Code 17213)
5. If the proposed site is within two miles of the center line of an airport runway or proposed runway, notify and follow the recommendations of the State Department of Transportation, Division of Aeronautics. (Education Code 17251)
6. If the proposed site is in an area designated in a city, county, or city and county general plan for agricultural use and zoned for agricultural production, ensure that the Governing Board has determined all of the following: (Education Code 39006)
  - a. That the District has notified and consulted with the city, county, or city and county within which the prospective site is to be located
  - b. That the Board has evaluated the final site selection based on all factors affecting the public interest and not limited to selection on the basis of the cost of the land
  - c. That the District shall attempt to minimize any public health and safety issues resulting from the neighboring agricultural uses that may affect students and employees at the site
7. Ensure that the site meets state standards for school site selection as specified in the Code of Regulations, Title 5, Section 14010, unless the District has satisfactorily demonstrated to the Superintendent of Public Instruction that circumstances can be mitigated without compromising a safe and supportive school environment. These standards address but are not limited to the following: (Code of Regulations, Title 5, Section 14010)

**SITE SELECTION AND DEVELOPMENT** (continued)

- a. Acreage and enrollment for a new school site and, if acreage is insufficient, demonstration of how students will be provided an adequate educational program, including physical education
- b. Distance from power line and railroad track easements and from roads or freeways that may cause safety and/or sound-level problems
- c. Avoidance of safety hazards including earthquake faults, flood areas, landslides, and above-ground water or fuel storage tanks
- d. Length-to-width ratio of the site to allow safe supervision of buildings, parking areas and playfields and enable students to meet the District's passing times to classes
- e. Traffic patterns and accessibility from roads
- f. Compatibility of existing or proposed zoning of surrounding properties
- g. Location within the proposed attendance area to encourage student walking and avoid extensive busing
- h. Joint use of parks, libraries, museums and other public services
- i. Convenience of location for public services, including fire and police protection, public transit and trash disposal
- j. Environmental factors of light, wind, noise, aesthetics and air pollution
- k. Potential cost and delay issues, such as the distance of utilities to the site and other land development needs, relocation costs and legal fees, landscaping and maintenance costs, the existence of endangered or protected wildlife habitats, etc.

**Environmental Impact Investigation**

The following actions shall be taken in order to ensure compliance with the California Environmental Quality Act:

1. Each proposed project shall be evaluated to determine whether it:
  - a. Is categorically exempt from the California Environmental Quality Act
  - b. Is the appropriate subject of a negative declaration
  - c. May have a significant effect on the environment that makes an environmental impact report (EIR) necessary
2. If the project is categorically exempt from the California Environmental Quality Act, a notice of exemption shall be filed pursuant to Public Resources Code 21152.
3. The Superintendent or designee shall consult with the city or county and with the local air quality district in order to identify any facilities within a quarter mile of the proposed site, which might produce hazardous air emissions or handle hazardous or acutely hazardous materials, substances or waste. (Education Code 17213)



**SITE SELECTION AND DEVELOPMENT** (continued)

Following this consultation, the Board shall make one of the following written findings: (Education Code 17213)

- a. That no such facilities exist
  - b. That although such facilities exist, one of the following conditions applies:
    - (1) The health risks from the facilities do not and will not actually or potentially endanger the health of students or staff.
    - (2) Corrective measures required under an existing order by another appropriate jurisdiction will, before the school is occupied, mitigate all chronic or accidental hazardous air emissions to levels that will not actually or potentially endanger the health of students or staff.
4. The Superintendent or designee shall determine that the proposed site is not any of the following: (Education Code 17213)
- a. The site of a current or former hazardous waste or solid waste disposal site unless, if the site was a former solid waste disposal site, the Board concludes that the wastes have been removed
  - b. A hazardous substance release site identified by the State Department of Health Services and currently listed for removal or remedial action
  - c. A site which contains one or more pipelines, under or above ground, carrying hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line used only to supply natural gas to the school or neighborhood
5. Information resulting from the investigations in items #3 and #4 above shall be included in the negative declaration or EIR.
6. If the initial study has identified potentially significant effects on the environment, a mitigated negative declaration shall be filed. The mitigated negative declaration must show that: (Public Resources Code 21064.5)
- a. Revisions in the proposal before the negative declaration is released would mitigate the effect so that no significant effect on the environment would occur.
  - b. There is no record that the revised project would have a significant effect on the environment.
7. If it is determined that the project does not require the preparation of a draft EIR, a negative declaration and the initial study shall be filed with the Office of Planning and Research (state clearinghouse) and with the county clerk. (Public Resources Code 21152; Code of Regulations, Title 14, Section 15205-15206).

Copies of the negative declaration and the initial study shall also be made available to local planning agencies, other interested persons, and to the general public.

- a. The Board shall not approve a project until at least 30 days have passed for review and comment of the proposed negative declaration or the draft EIR. This review period shall be extended as necessary for review by the state clearinghouse. (Public Resources Code 21091)

**SITE SELECTION AND DEVELOPMENT** (continued)

When the District is preparing a negative declaration, public notice of that fact shall be provided pursuant to Public Resources Code 21092. The notice shall briefly describe the proposed project and its location, the address where copies of the negative declaration and all documents referenced therein are available for review, the time period when comments will be received, and the date, time and place of any related public meetings or hearings. (Public Resources Code 21092)

The above notice shall be either published in a newspaper of general circulation in the area(s) affected by the notice, posted on or off site in the area where the project is to be located, or mailed directly to the owners and occupants of contiguous property shown on the latest equalized assessment role. (Public Resources Code 21092)

The notice shall also be posted in the office of the county clerk and mailed to all persons who have requested it. It shall remain posted for 20 days unless otherwise required by law to be posted for 30 days. (Public Resources Code 21092.3)

The request for a mailed notice shall be renewed annually. Except for notices sent to public agencies, the District shall charge a fee which is reasonably related to the cost of providing the notice.

- b. Upon the close of the review period, the Board shall determine whether the project is the appropriate subject of a negative declaration at a special or regularly scheduled meeting.
    - (1) The Board may affirm the decision that the project is the appropriate subject of a negative declaration and subsequently proceed according to #8(g).
    - (2) If the Board determines that the project is not the appropriate subject of a negative declaration, it will proceed in accordance with #8.
8. If the project may have a significant effect on the environment, an EIR shall be prepared. (Public Resources Code 21080, 21153)
- a. Upon completion, the draft EIR shall be filed in accordance with Code of Regulations, Title 14, Section 15206. The notice of completion and draft EIR shall also be made available to local planning agencies, appropriate state agencies, other interested parties, and to the general public.
  - b. The public review period for the draft EIR shall be no less than 45 days. This review period shall be extended as necessary for review by the state clearinghouse. (Public Resources Code 21091)
  - c. When the District is preparing an EIR, public notice shall be provided pursuant to Public Resources Code 21092. The notice shall briefly describe the proposed project and its location, any significant effects on the environment anticipated as a result of the project, the address where copies of the draft EIR and all documents referenced therein are available for review, the time period when comments will be received, and the date, time and place of any related public meetings or hearings. (Public Resources Code 21092)

**SITE SELECTION AND DEVELOPMENT (continued)**

The above notice shall be either published in a newspaper of general circulation in the area(s) affected by the notice, posted on or off site in the area where the project is to be located, or mailed directly to the owners and occupants of contiguous property shown on the latest equalized assessment role. (Public Resources Code 21092)

The notice also shall be posted in the office of the county clerk and mailed to all persons who have requested it. It shall remain posted for 30 days. (Public Resources Code 21092.3)

The request for a mailed notice shall be renewed annually, and a fee may be charged as described in item #7(a) above.

- d. After filing the notice of completion, the District shall consult with, and obtain comments from, any bordering cities or counties and any public agency which has jurisdiction over the project. The district also may consult with any other person who has special expertise with respect to any environmental impact involved. (Public Resources Code 21153)
  - e. Before the final EIR is prepared, the community shall be given the opportunity to comment on the draft.
  - f. The final EIR shall be adopted by the Board prior to the Board's decision to proceed with the project.
  - g. The notice of determination shall be filed with the county clerk and the Office of Planning and Research.
9. If mitigation measures are required as part of either making a negative declaration or completing an EIR, the Board shall adopt a reporting and monitoring program. The reporting or monitoring program shall be designed to ensure compliance with the mitigation measure during project implementation. (Public Resources Code 21081.6)

## ABC UNIFIED SCHOOL DISTRICT Board Policy

### FACILITIES

#### CHARTER SCHOOL FACILITIES

Upon request by a charter school operating within the District, the Governing Board shall provide facilities in accordance with law, Board policy, and administrative regulation.

(cf. 0420.4 - Charter Schools)

(cf. 7110 - Facilities Master Plan)

A charter school must be operating in the District as defined in Education Code 47614 before it submits a request for facilities. A new or proposed charter school operating within the District is eligible to request facilities for a particular fiscal year only if it submits its charter petition before November 1 of the fiscal year preceding the year for which facilities are requested. A new charter school is entitled to be allocated and/or provided access to facilities only if it receives approval of the petition before March 15 of the fiscal year preceding the year for which facilities are requested. (5 CCR 11969.9)

The Superintendent or designee shall ensure that requests received are evaluated and processed in accordance with law, Board policy, and administrative regulation.

If the District's preliminary proposal or final notification of space does not accommodate the charter school at a single school site, the Board shall consider the offer, make a specific finding that the District cannot accommodate the charter school's students at a single school site, and adopt a written statement of reasons explaining the finding. (5 CCR 11969.2)

#### Legal Reference:

##### *EDUCATION CODE*

*17070.10-17080 Leroy F. Greene School Facilities Act of 1998, including:*

*17078.52-17078.66 Charter schools facility funding; state bond proceeds*

*17280-17317 Field Act*

*46600 Interdistrict attendance agreements*

*47600-47616.5 Charter Schools Act of 1992, as amended*

*48204 Residency requirements for school attendance*

##### *GOVERNMENT CODE*

*53094 Authority to render zoning ordinance inapplicable*

*53097.3 Charter school ordinances*

##### *CODE OF REGULATIONS, TITLE 2*

*1859.2 Definitions*

*1859.31 Classroom inventory*

*1859.160-1859.171 Charter school facilities program, new construction*

##### *CODE OF REGULATIONS, TITLE 5*

*11969.1-11969.10 Charter school facilities*

##### *COURT DECISIONS*

*Ridgecrest Charter School v. Sierra Sands Unified School District, (2005) 130 Cal.App.4th 986*

*Sequoia Union High School District v. Aurora Charter High School (2003) 112 Cal.App.4th 185*

##### *ATTORNEY GENERAL OPINIONS*

*80 Ops.Cal.Atty.Gen. 52 (1997)*

*Management Resources:*

**CHARTER SCHOOL FACILITIES**

*CSBA PUBLICATIONS*

*Charter Schools: A Manual for Governance Teams, rev. 2008*

*WEB SITES*

*CSBA: <http://www.csba.org>*

*California Department of Education, Charter Schools Office: <http://www.cde.ca.gov/sp/cs>*

*Coalition for Adequate School Housing: <http://www.cashnet.org>*

*Office of Public School Construction: <http://www.opsc.dgs.ca.gov>*

*7/08*

*Policy*

## ABC UNIFIED SCHOOL DISTRICT Administrative Regulation

### FACILITIES

#### CHARTER SCHOOL FACILITIES

##### Definitions

Average daily classroom attendance (ADA) or classroom ADA is ADA for classroom-based apportionment as used in Education Code 47612.5. (5 CCR 11969.2)

In-district classroom ADA is classroom ADA attributable to in-district students. In-district students are those charter school students who are entitled to attend a district school. Students eligible to attend district schools based on an interdistrict attendance agreement or parent/guardian employment shall be considered students of the District where they reside. (5 CCR 11969.2)

(*cf.* 5111.1 - District Residency)

(*cf.* 5117 - Interdistrict Attendance)

The District may allow a charter school to include nonclassroom ADA in the ADA calculation only: (5 CCR 11969.2)

1. To the extent of the instructional time that the students generating the nonclassroom-based ADA are actually in the classroom and/or under the direct supervision of and control of a charter school employee; or
2. If the District and charter school agree upon the time(s) that the facilities devoted to students generating the nonclassroom-based ADA will be used

An eligible charter school operating in the District is one that is either currently providing public education to in-district students or has identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year, regardless of whether the District is or is proposed to be the chartering entity and whether or not the charter school has a facility inside the District's boundaries. (Education Code 47614; 5 CCR 11969.2)

Furnished and equipped means the facilities include reasonably equivalent furnishing necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools established under 5 CCR 11969.3(a) and that the facilities have equipment that is reasonably equivalent to the comparison group schools. Equipment means property that does not lose its identity when removed from its location and is not changed materially or consumed immediately (e.g., within one year). Equipment has relatively permanent value and its purchase increases the total value of the District's physical properties. Examples include furniture, vehicles, machinery, motion picture film, videotape, furnishings that are not an integral part of the building or building system, and certain intangible assets such as major software programs. Furnishings and equipment acquired for a school site with nondistrict resources are excluded when determining reasonable equivalence. (5 CCR 11969.2)

**CHARTER SCHOOL FACILITIES** (continued)**Determination of Reasonably Equivalent Facilities**

The District shall provide facilities to a charter school sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the District. (Education Code 47614; 5 CCR 11969.3)

**Reasonably equivalent conditions shall be determined on the basis of:** (5 CCR 11969.3)

1. A comparison group of district schools with similar grade levels, selected in accordance with 5 CCR 11969.3 (5 CCR 11969.3)

If a charter school's grade-level configuration is different from the configuration of the District's schools, the District is not obligated to pay for the modification of a school site to accommodate the charter school's configuration. (5 CCR 11969.3)

For high schools, the comparison group shall be the District-operated schools with similar grade levels that serve students living in the high school attendance area, as defined in Education Code 17070.15(b), in which the largest number of students of the charter school reside. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested. (5 CCR 11969.3)

2. Capacity, in accordance with 5 CCR 11969.3, including equivalency of the ratio of teaching stations (classrooms) to ADA as those provided to district students attending comparison group schools, as well as a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space. District ADA shall be determined using projections for the fiscal year and grade levels for which facilities are requested. (5 CCR 11969.3)

The number of teaching stations shall be determined using the classroom inventory prepared pursuant to 2 CCR 1859.31, adjusted to exclude classrooms identified as interim housing. Interim housing means the rental or lease of classrooms used to house students temporarily displaced as a result of the modernization of classroom facilities, as defined in 2 CCR 1859.2, and classrooms used as emergency housing for schools vacated due to structural deficiencies or natural disasters. (5 CCR 11969.3)

The District shall allocate and/or provide access to nonteaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of nonteaching station space in the comparison group schools. Nonteaching station space is all of the space that is not identified as teaching station space or specialized classroom space and includes, but is not limited to, administrative, kitchen, multipurpose room, and play area space. (5 CCR 11969.3)

3. Condition of facilities, as determined by assessing such factors as age of facilities (from last modernization), quality of materials, and state of maintenance, including: (5 CCR 11969.3)
  - a. School site size
  - b. Condition of interior and exterior surfaces
  - c. Condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes

**CHARTER SCHOOL FACILITIES** (continued)

- d. Availability and condition of technology infrastructure
- e. Condition of the facility as a safe learning environment, including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use
- f. Condition of the facility's furnishing and equipment
- g. Condition of athletic fields and/or play area space

(*cf. 7111 - Evaluating Existing Buildings*)

If a charter school was established through the conversion of an existing public school, the condition of the facility previously used by the District shall be considered to be reasonably equivalent for the first year the charter school uses the facility. (5 CCR 11969.3)

**Request and Provision of Facilities: Timelines and Procedures**

The following procedures shall apply to a charter school's request for and the District's provision of facilities:

1. On or before November 1, a charter school shall submit a written request for facilities to the Superintendent or designee for the next fiscal year. The request shall include: (Education Code 47614; 5 CCR 11969.9)
  - a. Reasonable projections of in-district and total ADA and in-district and total classroom ADA, based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year
 

Projections of in-district ADA, in-district classroom ADA, and the number of in-district students shall be broken down by grade level and by the District school that the student would otherwise attend.
  - b. A description of the methodology for the projections
  - c. If relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in ADA), documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the District to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy
  - d. The charter school's operational calendar
  - e. Information regarding the District's school site and/or general geographic area in which the charter school wishes to locate
  - f. Information on the charter school's educational program, if any, that is relevant to assignment of facilities

In submitting a facilities request, the charter school shall use a form specified by the District. The charter school shall distribute, or otherwise make available for review, the written request to interested parties, including, but not limited to, parents/guardians and school staff.



**CHARTER SCHOOL FACILITIES** (continued)

2. On or before December 1, the District shall review the charter school's projections of in-district and total ADA and in-district and total classroom ADA, express any objections in writing, and state the projections the District considers reasonable. If the District does not express any objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge and the District shall base its offer of facilities on those projections. (5 CCR 11969.9)
3. On or before January 2, the charter school shall respond to any objections expressed by the District and to the District's attendance projections provided pursuant to item #2 above. The charter school shall reaffirm or modify its previous projections as necessary to respond to the information received from the District pursuant to item #2. If the charter school does not respond by January 2, the District's projections provided pursuant to item #2 are no longer subject to challenge and the District shall base its offer of facilities on those projections. (5 CCR 11969.9)
4. On or before February 1, the District shall prepare a written preliminary proposal regarding the space to be allocated to the charter school and/or to which the charter school is to be provided access. At a minimum, the preliminary proposal shall include: (5 CCR 11969.9)
  - a. The projections of in-district classroom ADA on which the proposal is based
  - b. The specific location(s) of the space
  - c. All conditions pertaining to the space, including a draft of any proposed agreement pertaining to the charter school's use of the space
  - d. The projected pro rata share amount and a description of the methodology used to determine that amount
  - e. A list and description of the comparison group schools used in developing the District's preliminary proposal and a description of the difference between the preliminary proposal and the charter school's request submitted pursuant to item #1 above

In evaluating and accommodating the charter school's request, the charter school's in-district students shall be given the same consideration as students in the District's schools, subject to the requirement that the facilities provided must be contiguous. (5 CCR 11969.2)

Contiguous facilities are those facilities contained on a school site or immediately adjacent to a school site. If the in-district classroom ADA of the charter school cannot be accommodated on any single school site, contiguous facilities also include facilities located at more than one site, provided that the District minimizes the number of sites assigned and considers student safety. (5 CCR 11969.2)

If none of the District-operated schools has grade levels similar to the charter school, then a contiguous facility shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school. The District shall not be obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration. (5 CCR 11969.3)

**CHARTER SCHOOL FACILITIES** (continued)

5. On or before March 1, the charter school shall respond in writing to the District's preliminary proposal made pursuant to item #4 above and shall express any concerns, including addressing differences between the preliminary proposal and the charter school's request, and/or make a counter proposal. (5 CCR 11969.9)
6. On or before April 1, having reviewed any concerns and/or counter proposals made by the charter school pursuant to item #5 above, the District shall submit, in writing, a final notification of the space offered to the charter school. The notification shall include a response to the charter school's concerns and/or counter proposal, if any. The final notification shall specifically identify: (5 CCR 11969.9)
  - a. The teaching stations, specialized classroom spaces, and nonteaching station spaces offered for the exclusive use of the charter school and the teaching stations, specialized classroom spaces, and nonteaching spaces to which the charter school is to be provided access on a shared basis with district-operated programs
  - b. Arrangements for sharing any shared space
  - c. The assumptions of in-district classroom ADA for the charter school upon which the allocation is based, and if the assumptions are different than those submitted by the charter school pursuant to item #3 above, a written explanation of the reasons for the differences
  - d. The specific location(s) of the space
  - e. All conditions pertaining to the space
  - f. The pro rata share amount
  - g. The payment schedule for the pro rata amount, which shall take into account the timing of revenues from the state and from local property taxes
7. By May 1 or within 30 days after the District notification pursuant to item #6 above, whichever is later, the charter school shall notify the District in writing whether or not it intends to occupy the offered space. (5 CCR 11969.9)

The charter school's notification may be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the District that it intends to occupy the offered space, the charter school is committed to paying the pro rata share amount as identified. If the charter school does not notify the District by this deadline that it intends to occupy the offered space, then the space shall remain available for district programs and the charter school shall not be entitled to use facilities of the District in the following fiscal year. (5 CCR 11969.9)

8. The District and charter school shall negotiate an agreement regarding the use of and payment for the space. In addition, the District shall provide a draft of any proposed agreement pertaining to the charter school's use of the space in conjunction with the preliminary offer, as detailed in item #4 above. (5 CCR 11969.9)
  - a. At a minimum, the agreement shall contain the information included in the District's final notification, as listed in item #6 above.

**CHARTER SCHOOL FACILITIES** (continued)

- b. The charter school shall maintain general liability insurance naming the District as an additional insured in order to indemnify the District for any damage and losses. The District shall maintain first party property insurance for the facilities allocated to the charter school.

(*cf.* 3530 - *Risk Management/Insurance*)

- c. The charter school shall comply with Board policies regarding the operations and maintenance of school facilities, furnishings, and equipment.
  - d. A reciprocal hold-harmless/indemnification provision shall be established between the District and the charter school.
  - e. The District shall be responsible for any modifications necessary to maintain the facility in accordance with Education Code 47610(d) or 47610.5.
9. The space allocated to the charter school by the District, or the space to which the District provides the charter school access, shall be furnished, equipped, and available for occupancy at least 10 working days prior to the first day of instruction of the charter school. For good cause, the District may reduce the period of availability to a period of not less than seven working days. (5 CCR 11969.9)

Space allocated for use by the charter school, subject to sharing arrangements, shall be available for the charter school's entire school year regardless of the District's instructional year or class schedule. The charter school shall not sublet or use the facilities for purposes other than those that are consistent with Board policies and District practices without permission of the Superintendent or designee. (5 CCR 11969.5)

(*cf.* 1330 - *Use of School Facilities*)

- 10. Facilities, furnishings, and equipment provided to a charter school by the District shall remain the property of the District. The District shall be responsible for projects eligible to be included in the District's deferred maintenance plan and the replacement of district-provided furnishings and equipment in accordance with district schedules and practices. The ongoing operations and maintenance of facilities, furnishings, and equipment shall be the responsibility of the charter school. (Education Code 47614; 5 CCR 11969.4)

**Charges for Facilities Costs**

The District shall not be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter schools. The District may charge the charter school for a pro-rata share of the District's facilities costs for the charter school's use of the facilities in accordance with 5 CCR 11969.7. (Education Code 47614)

General fund means the main operating fund of the District which is used to account for all activities except those that are required to be accounted for in another fund. (5 CCR 11969.2)

Unrestricted revenues are those funds whose uses are not subject to specific constraints and that may be used for any purposes not prohibited by law. Restricted revenues are those funds received from external sources that are legally restricted or that are restricted by the donor to specific purposes. Programs funded by a combination of restricted and unrestricted sources will be accounted for and reported as restricted. Funds or activities that are not restricted or designated by the donor, but rather by the Governing Board, shall be accounted for and reported as unrestricted. (5 CCR 11969.2)

**CHARTER SCHOOL FACILITIES** (continued)

Facilities costs are those activities concerned with keeping the physical plant open, comfortable, and safe for use and keeping the grounds, buildings, and equipment in working condition and a satisfactory state of repair. These include the activities of maintaining safety in buildings, on the grounds, and in the vicinity of schools, as well as plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases. (5 CCR [11969.2](#))

The charter school shall report actual in-district and total ADA and classroom ADA to the District every time that the charter school reports ADA for apportionment purposes. If the charter school generates less ADA than projected, the charter school shall reimburse the District for the over-allocated space as set forth in 5 CCR [11969.8](#), unless the District agrees, in response to the notification by the charter school of over-allocation, to exercise its sole discretion to use the over-allocated space for district programs. (Education Code [47614](#); 5 CCR [11969.8](#), [11969.9](#))

**Additional Provisions for Charter School Established at an Existing School Site**

The following provisions apply only to a charter school established at an existing school site pursuant to Education Code [47605\(a\)\(2\)](#), [52055.5](#), [52055.55](#), or [52055.650](#) that operated at the site in its first year pursuant to 5 CCR [11969.3\(c\)\(2\)](#). (5 CCR [11969.3](#))

1. The school site, as identified in the school's charter, shall be made available to the charter school for its second year of operation and thereafter upon annual request for facilities from the District pursuant to Education Code [47614](#) and this administrative regulation. (5 CCR [11969.3](#))

The District may charge the charter school the pro-rata costs for the site pursuant to 5 CCR [11969.7](#) and the District shall be entitled to receive reimbursement for over-allocated space from the charter school pursuant to 5 CCR [11969.8](#). (5 CCR [11969.3](#))

If, by February 1 of its first year of operation, a charter school notifies the District that it will have over-allocated space in the following fiscal year, the space identified is not subject to reimbursement for over-allocation space pursuant to 5 CCR [11969.8](#) in the following year or thereafter. The District may occupy all or a portion of the space identified. (5 CCR [11969.3](#))

A charter school that wants to recover space surrendered to the District shall apply to the District and the District shall evaluate the application in accordance with law and this administrative regulation. (5 CCR [11969.3](#))

2. If, as a result of a material revision of the charter, either the location of the charter school is changed or the District approves the operation of additional sites by the charter school, then the charter school may request, and the District shall provide, facilities in accordance with the revised charter, law, and this administrative regulation. (5 CCR [11969.3](#))
  - a. If the charter school was established pursuant to Education Code [47605\(a\)\(2\)](#), the District shall change the school's attendance area only if the State Board of Education (SBE) grants a waiver of the requirement in Education Code [47605\(d\)\(1\)](#) that the charter school continuously give admission preference to students residing in the former attendance area of the school site. (5 CCR [11969.3](#))
  - b. If the charter school was established pursuant to Education Code [52055.5](#), [52055.55](#), or [52055.650](#), the District shall relocate the school or change the school's attendance area only if the SBE grants a waiver of the provision of statute binding the school to the existing site. (5 CCR [11969.3](#))

**CHARTER SCHOOL FACILITIES** (continued)

- c. If the District decides to change the charter school's attendance areas as provided in #2(a) or 2(b) above, and if the decision occurs between November 1 and June 30 and becomes operative in the forthcoming fiscal year, then the space allocated to the charter school is not subject to reimbursement for over-allocated space pursuant to 5 CCR 11969.8 in the forthcoming fiscal year. (5 CCR 11969.3)

**Mediation of Disputes**

If a dispute arises between the District and a charter school pursuant to Education Code 47614 or 5 CCR 11969.1-11969.10 both parties may agree to settle the dispute using mediation. Mediation consists of the following steps: (5 CCR 11969.10)

1. If both parties agree to mediation, the initiating party shall select a mediator, subject to the agreement of the responding party. If the parties are unable to agree on a mediator, the initiating party shall request the CDE to appoint a mediator within seven days to assist the parties in resolving the dispute. The mediator shall meet with the parties as quickly as possible.
2. Within seven days of the selection or appointment of the mediator, the party initiating the dispute resolution process shall send a notice to the responding party and the mediator. The notice shall include the following information:
  - a. Name, address, and phone numbers of designated representatives of the parties
  - b. A statement of the facts of the dispute, including information regarding the parties' attempts to resolve the dispute
  - c. The specific sections of the statute or regulations that are in dispute
  - d. The specific resolution sought by the initiating party
3. Within seven days of receiving the notice, the responding party shall file a written response.
4. The mediation shall be entirely informal in nature. Each party shall share copies of exhibits upon which its case is based with the other party. The relevant facts shall be elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses.
5. Any agreement reached by the parties shall be in writing and shall not set a precedent for any other case.
6. The mediation shall be terminated if the District and the charter school fail to meet within the specified timelines, have not reached an agreement within 15 days from the first meeting held by the mediator, or if the mediator declares an impasse.
7. The costs of the mediation shall be divided equally between the parties and paid promptly.

## ABC UNIFIED SCHOOL DISTRICT Board Policy

### FACILITIES

#### FACILITIES FINANCING

When it is determined that school facilities must be built or expanded to accommodate an increased or projected increased enrollment, the Governing Board shall consider appropriate methods of financing for the purchase of school sites and the construction of buildings. In addition, financing may be needed when safety considerations and educational program improvements require the replacement, reconstruction or modernization of existing facilities.

The Superintendent or designee shall research funding alternatives and recommend to the Board the method that would best serve district needs as identified in the District's master plan for school facilities.

*(cf. 7110 - Facilities Master Plan)*

The following list describes some of the facilities financing options available to school districts. These funding alternatives may include, but not be limited to:

1. Levying developer fees pursuant to Education Code 17620 and Government Code 65995-65998

*(cf. 7211- Developer Fees)*

2. Forming a community facilities district pursuant to Government Code 53311-53368.3, the Mello-Roos Community Facilities Act

*(cf. 7212 - Mello-Roos Districts)*

3. Forming a school facilities improvement district pursuant to Education Code 15300-15425

*(cf. 7213 - School Facilities Improvement Districts)*

4. Issuing voter-approved general obligation bonds
5. Imposing a qualified parcel tax pursuant to Government Code 50079
6. Using lease revenues for capital outlay purposes from surplus school property

#### *Legal Reference:*

##### EDUCATION CODE

*15100-17059.2 School bonds, especially:*

*15122.5 Ballot statement*

*15300-15425 School facilities improvement districts*

*17000-17059.2 State School Building Lease-Purchase Law of 1976*

*17060-17066 Joint venture school facilities construction projects*

*17070.10-17076.10 Leroy F. Greene School Facilities Act of 1998*

*17085-17095 State Relocatable Classroom Law of 1979*

*17582 District deferred maintenance fund*

*17620-17626 Levies against development projects by school districts*

*17621 Procedures for levying fees*

**FACILITIES FINANCING** (continued)GOVERNMENT CODE6061 *One time notice*6066 *Two weeks' notice*50075-50077 *Voter-approved special taxes*50079 *School districts; qualified special taxes*53175-53187 *Integrated Financing District Act*53311-53368.3 *Mello-Roos Community Facilities Act of 1982*53753 *Assessment notice and hearing requirements*53753.5 *Exemptions*54954.1 *Mailed notice to property owners*54954.6 *New or increased tax or assessment; public meetings and hearings; notice*65864-65867 *Development agreements*65970-65980.1 *School facilities development project*65995-65998 *Payment of fees against a development project*66000-66008 *Fees for development projects*66016-66018 .5 *Development project fees*66020-66025 *Protests and audits*HEALTH AND SAFETY CODE33445.5 *Overcrowding of schools resulting from redevelopment*33446 *School construction by redevelopment agency*CONSTITUTION OF THE STATE OF CALIFORNIA*Article 13D, Section 1-6 Assessment and property related fee reform*UNCODIFIED STATUTES17696-17696.98 *Greene-Hughes School Building Lease-Purchase Bond Law (1986)**Nollan v. California Coastal Commission (1987) 107 S.Ct. 3141**Dolan v. City of Tigard (1994) 114 S. Ct. 2309**Mira Development Corporation v. City of San Diego (1988) 205 Cal.App.3d 1201, 252 Cal.Rptr. 825**Garrick Development Co. v. Hayward Unified School District (1992) 3 Cal.App.4th 320, 4 Cal.Rptr.2d 897**Canyon North Co. v. Conejo Valley Unified School District (1993) 19 Cal.App.4th 243, 23 Cal.Rptr.2d 495**Loyola Marymount University v. Los Angeles Unified School District (1996) 45 Cal.App.4th 1256**Ehrlich v. City of Culver City (1996) 12 Cal.4th 854**79 Ops.Cal.Atty.Gen. 149 (1996)**Management Resources:*WEB SITES*Department of General Services, Office of Public School Construction:**<http://www.dgs.ca.gov/opsc/>*

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation****FACILITIES****FACILITIES FINANCING****Developer Fees**

Before levying developer fees, the Governing Board shall schedule a public hearing. Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition and school construction shall be available to the public at least 10 days before the hearing. Notice of the hearing shall be given as required by law. (Government Code 66016)

At the above hearing, if warranted, the Board shall adopt a resolution for the levying of developer fees. (Government Code 66016) This resolution shall set forth:

1. The purpose of the fee and the public improvement that the fee will be used to finance (Government Code 66006)
2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001
3. The District's determination of one of the following conditions which allow collection of the fees at the time when building permits are issued: (Government Code 66007)
  - a. That the fees are to reimburse the District for previous expenditures
  - b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated and the District has adopted a proposed construction schedule or plan

The District shall send a copy of any resolution adopting or increasing developer fees to the city and county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area subject to the fee. (Education Code 17621)

In cooperation with local governmental agencies issuing building permits, the Superintendent or designee shall establish a means by which all of the following shall be accomplished:

1. The project applicant shall receive a written statement of the amount of the fees and notification that the 90-day approval period during which the applicant may protest has begun. (Government Code 66020)
2. The Superintendent or designee shall receive and retain acknowledgment that the above notification was received.
3. Before a permit is issued, the Board shall certify that the fee has been paid or that the District has determined that the fee does not apply to the development project. (Education Code 17620)

Fees may be revised in accordance with the increase legally allowed for inflation as determined every two years by the State Allocation Board. (Government Code 65995)

Developer fees shall be deposited, invested, accounted for and expended pursuant to Government Code 66006. Developer fees shall be deposited in a separate capital facilities account, except for temporary investments allowed by law, and shall be used only for the purpose for which they were collected. Interest income earned by the capital facilities account



**FACILITIES FINANCING (continued)**

shall also be deposited in that account and used only for the purpose for which the fee was originally collected. (Government Code 66006)

For each separate account so established, the Superintendent or designee shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year: (Government Code 66006)

1. A brief description of the type of fee in the account or fund
2. The amount of the fee
3. The beginning and ending balance of the account or fund
4. The amount of the fees collected and the interest earned
5. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees
6. An identification of an approximate date by which the construction of the public improvement will commence if the District determines that sufficient funds have been collected to complete financing on an incomplete public improvement
7. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan
8. The amount of refunds made pursuant to Government Code 66001(e) and any allocations made pursuant to Government Code 66001(f)

The Board shall review the above information at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public. Fifteen-day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)

In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: (Government Code 66001)

1. Identify the purpose to which the fee is to be put
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged
3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified
4. Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund

When sufficient funds have been collected to complete the financing of public improvements but such improvements remain incomplete, the District shall, within 180 days of the date that a determination of sufficient funding was made, either identify an approximate date by which construction will begin or refund the unexpended revenues in accordance with Government Code 66001. (Government Code 66001)

**FACILITIES FINANCING (continued)****Appeals Process for Protests by Developers**

Developers of residential, commercial and industrial projects who claim that the developer fee has been inappropriately levied shall use the following procedures:

1. The developer shall submit his/her request for exemption in writing to the Superintendent or designee within 10 days from the time the fees are due.
2. Within 45 days from filing the request for exemption, the developer shall provide evidence demonstrating that his/her development will have no impact upon the District. Evidence shall include, but not be limited to:
  - a. Evidence showing the estimated number of students that will be generated by the project. Such evidence shall include, but not be limited to, the number of students generated by other similar development, if appropriate, within the District on a first- and fifth-year basis, taking into consideration both primary and secondary generations. Primary generations are the growth of population and students due directly to the construction project. Secondary generations are the growth of population and students occurring because of the population increases in the primary category.
  - b. Evidence that the construction project will continue to be used for its current purpose for five or more years rather than being converted to a use that may generate a higher population increase
  - c. An analysis of the cost of needed district facilities as related to the generation of all revenues including developer fees available to reconstruct and construct facilities on a first- and fifth-year basis
3. If the Superintendent or designee determines it appropriate, he/she may request that the evidence submitted by the developer be reviewed by an independent expert to determine its validity. In addition, he/she may request that additional research and analysis be conducted by the independent expert. This work shall be completed within 45 days after the developer submits his/her evidence. The cost of the analysis shall be paid by the developer and deducted from his/her paid developer fees prior to the Board hearing.
4. Upon receiving all prepared data, including the independent expert's analysis if requested, the Superintendent or designee shall submit the data, the request for exemption and his/her recommendation to the Board at its next regular meeting.
5. At its meeting, the Board shall conduct a hearing, consider all submitted evidence and recommendations and take action to approve or deny the petition of exemption.
6. The Board reserves the right to modify the amount of the levy if it determines such action is appropriate.

**School Facilities Improvement District**

Upon determining that a school facilities improvement district is necessary, the Board shall adopt a resolution of intention that states all of the following: (Education Code 15320)

1. The Board's intention to form the proposed school facilities improvement district
2. The purpose for which the proposed district is to be formed, consistent with the requirements of Education Code 15302

**FACILITIES FINANCING (continued)**

3. The estimated cost of the school facilities improvement project
4. That any taxes levied for financing general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district
5. That a map showing the exterior boundaries of the proposed district is on file with the Board and available for public inspection, and that these boundaries meet the requirements of Education Code 15301
6. The time and place for a Board hearing on the formation of the proposed district
7. That any interested persons, including all persons owning lands in the District or in the proposed school facilities improvement district, may appear and be heard at the above hearing

Notice of the hearing shall be given by publishing a copy of the resolution of intention in a newspaper of general circulation pursuant to Government Code 6066, starting at least 14 days before the hearing. The resolution shall also be posted in three public places within the proposed school facilities improvement district for at least 14 days before the hearing. (Education Code 15321)

The Board shall hold the above hearing as specified in its resolution and may, at the hearing, adopt a resolution proposing modifications of its above-stated purposes consistent with Education Code 15302. A resolution proposing modification shall describe the proposed modifications, state any change in the estimated cost of carrying out the purpose, and fix a time and place for a related Board hearing. (Education Code 15322, 15323)

At least 14 days before the above hearing, the Board shall publish the resolution proposing modifications one time in the same newspaper in which the resolution of intention was published. (Education Code 15324)

When hearings are concluded, the Board may, by resolution, order the formation of a school facilities improvement district. The resolution shall state the estimated cost of carrying out described purposes and shall number and designate the improvement district as specified in Education Code 15326. (Education Code 15326)

The Superintendent or designee shall establish procedures consistent with Education Code 15330-15425 governing the financing of bonds, bond elections and the issuance and sale of bonds.

**General Obligation Bonds**

Whenever the District calls an election regarding the issuance of general obligation bonds to fund a facilities project, all or part of which will require matching funds from the state, the sample ballot shall contain the statement specified in Education Code 15122.5; this statement shall inform voters that the project proposal assumes that the District will receive matching funds from the state and that passage of the bond measure is therefore not a guarantee that the project will be completed. (Education Code 15122.5)

**ABC UNIFIED SCHOOL DISTRICT  
Exhibit****FACILITIES****FACILITIES FINANCING****State School Building Lease-Purchase Law of 1976**

Under Education Code 17000-17059.2, the State Allocation Board is authorized to provide project funding for the construction, reconstruction or modernization of school buildings. Eligible districts may use funding under this law to acquire and convert existing building space for school facility purposes.

**Developer Fees**

Education Code 17620 authorizes Governing Boards to levy developer fees to fund new construction or reconstruction of school facilities. These fees apply to residential, commercial and industrial construction within the District. Under the authority of Government Code 65970-65980.1, cities or counties may levy developer fees to be used to finance interim facilities (temporary classrooms and restrooms) which will be used for five years or less. In total, developer fees may not exceed limits specified in Government Code 65995. Cities and counties may not issue building permits unless the appropriate school board certifies that developer fees have been paid.

**General Obligation Bonds**

Uncodified Statutes 17696-17696.98 authorize local governments to issue voter-approved general obligation bonds for capital outlay. Two-thirds voter approval is required for passage of local general obligation bond measures. Such bond measures place financial responsibility on all property owners in the school district, rather than only on those developing new homes or businesses.

**Mello-Roos Taxes and Bonds**

Under the Mello-Roos Community Facilities Act of 1982 (Government Code 53311-53368.3), a school district may establish a "community facilities district" for the area which such facilities would serve. To finance school construction, the community facilities district may issue bonds and may levy a special tax on land within the community facilities district to repay the bonds. The cost of the school facilities may be financed in whole or in part with the proceeds of the bonds. School facilities also may be financed solely from the proceeds of annual special taxes on a "pay-as-you-go" basis.

The special tax and bonds must be approved by two-thirds of the community facilities district voters. When fewer than 12 registered voters live within the community facilities district, the landowners must approve the special tax, each having one vote per acre.

**School Facilities Improvement District**

Education Code 15300-15425 authorizes any school district, with the approval of the County Board of Supervisors, to form a school facilities improvement district. School facilities improvement districts can propose a bond issue which requires approval by two-thirds of its resident voters. The Board must determine that the overall cost of financing these bonds would be less than the overall cost of other financing options; this determination is not necessary if the District includes a Mello-Roos district and if the new school facilities improvement district will include all of the territory within district boundaries that is not included in the existing Mello-Roos district.

## **FACILITIES FINANCING (continued)**

### **Integrated Financing District**

By creating an integrated financing district, Boards can levy an assessment on land which is contingent upon the development of the land. This assessment can be made payable at the time when the project is approved. It can be used in combination with the noncontingent special tax under Mello-Roos, provided the total of both assessments is proportionate to the amount of benefit anticipated for each parcel. To establish this assessment, school boards must hold a public hearing and act upon all protests. If more than half of the property owners protest, the assessment proposal must be withdrawn for a year. (Government Code 53175-53187)

### **Landscaping and Lighting Assessment Districts**

Proposition 218, passed by the voters in November, 1996, affects a school district's ability to use Landscaping and Lighting Assessment Districts to fund facility improvements. As codified by SB 919 (Ch. 38, Statutes of 1997), Prop. 218 requires districts to review existing assessments to first determine if they meet the following conditions: (Government Code 53753.5)

1. The assessment was imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems, or vector control.
2. At the time, the assessment was imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment or by a majority of the voters.
3. The proceeds of the assessment are used exclusively to repay bond indebtedness.

If an assessment does not meet one of the above conditions, then the school district must either eliminate the assessment or bring it into compliance with the election and assessment requirements specified in Prop. 218. These requirements include notice, election and hearings by the District, as well as a determination as to whether property owners receive a "special benefit" as defined by Prop. 218. (Government Code 53753, California Constitution, Article 13D, Section 4)

Under the Landscaping and Lighting Act of 1972 (Streets and Highways Code 22500-22679), an assessment may be used only to fund the purchase, installation, construction and/or maintenance and servicing of landscaping, public lighting facilities, park or recreational improvements, and land for park, recreational or open-space purposes.

### **Parcel Taxes**

Government Code 50079 authorizes a school district, with two-thirds voter approval, to impose a qualified special tax that applies equally and uniformly to the taxpayers of all real property within the District, regardless of the value of the property. The District must comply with notice and public hearing procedures specified in Government Code 50077, and taxpayers 65 years of age or older may be exempted from the tax.

### **Surplus Property**

School surplus property may be another funding source for school construction, particularly in the use of lease revenues for capital outlay purposes. Districts should be aware that (1) they are subject to nonuse payments if a facility is not used for educational purposes for five years, (2) they are required to investigate cooperative agreements with other contiguous districts with respect to housing students before applying for state funds, and (3) they may not receive state funding for school construction if they have surplus school sites. If a surplus site is sold and the proceeds used by the school district, the District is prohibited for five years from applying to the State Allocation Board for additional funds.

**FACILITIES FINANCING** (continued)**City- or County-Imposed Mitigation Requirements**

In *Mira Development Corporation v. City of San Diego* (205 Cal.App.3d 1201, 1988), the court, after distinguishing between zoning and development projects, concluded that the city was not restricted by the terms of Government Code 65996 and therefore, could deny an application that implicated a zoning decision based on the lack of school facilities. If the decision pertained solely to a development project, however, with no legislative entitlements being sought, then Government Code 65996 may impose limitations on the manner in which a city may act in approving or denying the approval of a project on the basis of the adequacy of school facilities.

Some cities and counties subsequently adopted ordinances which require developers in certain areas to contribute a certain amount over and above the developer fees levied by the school district as a condition of obtaining a permit to develop their land. As an alternative, cities and counties may require participation by developers in Mello-Roos financing districts as a condition to development approval.

**Redevelopment Projects**

Health and Safety Code 33000-33071 authorizes cities and the unincorporated parts of counties to establish a redevelopment agency (RDA). Redevelopment is funded by property tax revenues within the redevelopment area that exceed the revenues being received at the time the redevelopment plan was adopted.

Because new housing created by redevelopment projects may generate an increase in school enrollment, K-12 schools affected by redevelopment projects receive, for facilities or capital outlay, a percentage of the tax increment generated over the life of a redevelopment project. For the same purpose, county offices of education also receive a percentage of the tax increment.

Before 1993 redevelopment reform law established the above entitlement, many school districts negotiated mitigation agreements with RDAs. These agreements were prompted by statutes that gave school districts the right to accept title to school buildings financed by RDAs or to seek RDA funds to mitigate their increased costs. The 1993 reform law does not affect these existing mitigation agreements.

**Transactions and Use Taxes**

Revenue and Taxation Code 7288.1-7288.6 authorizes a local public finance authority established by a county, the county office of education, and a majority of the school and community college districts in the county to propose a transactions and use tax of 1/4 or 1/2 cent on all taxable sales in the county. The tax must be approved by two-thirds of the voters. Tax proceeds may be used for drug abuse prevention, crime prevention, health care services, and public education. Allocation among those uses is determined by the authority's board, half of whom are county supervisors and half of whom are school Board members.

**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**DEVELOPER FEES**

In order to finance the construction or reconstruction of school facilities needed to accommodate students coming from new development, the Governing Board may establish, levy and collect developer fees on residential, commercial and industrial construction within the District, subject to restrictions specified by law and administrative regulation.

**Appeals Process for Protests by Developers**

The Superintendent or designee shall establish an appeals process for the handling of protests by developers. (Education Code 17621)

*Legal Reference:*

EDUCATION CODE

*17070.10-17076.10 Leroy F. Greene School Facilities Act of 1998*

*17582 District deferred maintenance fund*

*17620-17626 Levies against development projects by school districts*

GOVERNMENT CODE

*6061 One time notice*

*6066 Two weeks' notice*

*65864-65867 Development agreements*

*65995-65998 Payment of fees against a development project*

*66000-66008 Fees for development projects*

*66016-66018.5 Development project fees*

*66020-66025 Protests and audits*

CODE OF REGULATIONS, TITLE 2

*1859-1859.106 School facility program*

COURT DECISIONS

*Dolan v. City of Tigard (1994) 114 S.Ct. 2309*

*Management Resources:*

WEB SITES

*Department of General Services, Office of Public School Construction:  
<http://www.dgs.ca.gov/opsc/>*

**ABC UNIFIED SCHOOL DISTRICT  
Administrative Regulation****FACILITIES****DEVELOPER FEES****Level 1 Funding**

Before taking action to impose developer fees, the Governing Board shall: (Government Code 66001)

1. Identify the purpose of the fee and the use to which the fee will be put
2. Determine a reasonable relationship between the fee's use and the type of development project for which the fee is imposed
3. Determine a reasonable relationship between the need for the public facility and the type of development project for which the fee is imposed
4. Determine a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributed to the development for which the fee is imposed

**Level 1 Funding: Notice and Hearing Requirements**

Before levying developer fees, the Board shall schedule a public hearing. Information on the anticipated amount of fees, other available funds and funding sources, and the estimated cost of planning, land acquisition and school construction shall be made available to the public at least 10 days before the hearing. Notice of the hearing shall be given as required by law. (Government Code 66016)

At the hearing, if warranted, the Board shall adopt a resolution for the levying of the developer fees. (Government Code 66016) The resolution shall set forth:

1. The purpose of the fee and the public improvement(s) that the fee will be used to finance (Government Code 66006)
2. The Board's findings of reasonable relationship which justify the fees pursuant to Government Code 66001
3. The District's determination of either of the following conditions which allow collection of the fees at the time when building permits are issued: (Government Code 66007)
  - a. That the fees are to reimburse the District for previous expenditures, or
  - b. That the fees shall be collected for public improvements or facilities for which an account has been established, funds have been appropriated and the District has adopted a proposed construction schedule or plan

**Level 2 Funding**

In order to impose residential construction fees within the limits of Government Code 65995.5, the Board shall: (Government Code 65995.5)

1. Make a timely application to the State Allocation Board for funding
2. Conduct and adopt a school facility needs analysis pursuant to Government Code 65995.6



**DEVELOPER FEES** (continued)

The needs analysis shall determine the need for school facilities for unhoused students that are attributable to projected enrollment growth from the development of new residential units over the next five years. The needs analysis shall: (Government Code 65995.6)

- a. Project the number of unhoused elementary, middle and high school students generated by new residential units, in each category of students enrolled in the District. This projection shall be based on a historical generation rate from the prior five years.
- b. Calculate the existing school building capacity pursuant to Government Code 17071.10-17071.40.

In addition, when determining the funds necessary to meet its facility needs, the Board shall do each of the following: (Government Code 65995.6)

- a. Identify and consider any surplus property owned by the District that can be used as a school site or that is available for sale to finance school facilities
  - b. Identify and consider the extent to which projected enrollment growth may be accommodated by excess capacity in existing facilities
  - c. Identify and consider local sources other than fees, charges, dedications or other requirements imposed on residential construction available to finance the construction or reconstruction of school facilities needed to accommodate any growth in enrollment attributable to the construction of new residential units
3. Satisfy at least one of the requirements set forth in Government Code 65995.5(b)(3)(A-D), and on and after January 1, 2000, satisfy at least two requirements set forth in that section

**Level 2 Funding: Notice and Hearing Requirements**

The Board shall adopt the school facility needs analysis by resolution at a public hearing. (Government Code 65995.6)

This analysis may not be adopted until the analysis, in its final form, has been made available to the public for a period of not less than 30 days. Prior to its adoption, the public shall have the opportunity to review and comment on the analysis and the Board shall respond to written comments it receives regarding the analysis. (Government Code 65995.6)

During the period of public review, the analysis shall be provided to the local agency responsible for land use planning for its review and comment. (Government Code 65995.6)

No less than 30 days prior to the hearing, notice of the time and place of the hearing, including the location and procedure for viewing or requesting a copy of the proposed analysis, shall be published in at least one newspaper of general circulation within the jurisdiction of the District. If there is no paper of general circulation, the notice shall be posted in at least three conspicuous places within the District's jurisdiction not less than 30 days prior to the hearing. (Government Code 65995.6)

In addition, the Board shall mail a copy of the needs analysis not less than 30 days prior to the hearing to any person who has made a written request if the written request was made 45 days prior to the hearing. The Board may charge a fee reasonably related to the cost of providing these materials. (Government Code 65995.6)

**DEVELOPER FEES** (continued)

The school facility needs analysis may be revised at any time. The revision is subject to the same conditions and requirements applicable to the adoption of the analysis. (Government Code 65995.6)

The fees authorized by Government Code 65995.5 (Level 2) and Government Code 65995.7 (Level 3) shall be adopted by resolution as part of the adoption or revision of the school facilities needs analysis. The fees shall take effect immediately upon adoption of the resolution and may not be effective for more than one year. (Government Code 65995.6)

**Level 3 Funding**

If the State Allocation Board is no longer making apportionments for new construction and the District qualifies for Level 2 funding pursuant to Government Code 65995.5, the Board may assess a fee on residential construction pursuant to the requirements of Government Code 65995.7.

Pursuant to Government Code 65995.7, the notice and hearing requirements for Level 3 funding shall be the same as the notice and hearing requirements for Level 2 funding as specified above.

**All Developer Funding Fees: Additional Requirements**

The District shall send a copy of any resolution adopting or increasing developer fees to the city and county, accompanied by all relevant supporting documentation and a map indicating the boundaries of the area subject to the fee. (Education Code 17621)

In cooperation with local governmental agencies issuing building permits, the Superintendent or designee shall establish a means by which all of the following shall be accomplished:

1. The project applicant shall receive a written statement of the amount of the fees and notification that the 90-day approval period during which the applicant may protest has begun. (Government Code 66020)
2. The Superintendent or designee shall receive and retain acknowledgment that the above notification was received.
3. Before a permit is issued and upon the payment of the applicable fee or requirement, the Board shall immediately certify that the fee has been paid or that the District has determined that the fee does not apply to the development project. (Education Code 17620)

Developer fees shall be deposited, invested, accounted for and expended pursuant to Government Code 66006. Developer fees shall be deposited in a separate capital facilities account, except for temporary investments allowed by law, and shall be used only for the purpose for which they were collected. Interest income earned by the capital facilities account shall also be deposited in that account and used only for the purpose for which the fee was originally collected. (Government Code 66006)

For each separate account so established, the Superintendent or designee shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year: (Government Code 66006)

1. A brief description of the type of fee in the account or fund
2. The amount of the fee
3. The beginning and ending balance of the account or fund

**DEVELOPER FEES** (continued)

4. The amount of the fees collected and the interest earned
5. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees
6. An identification of an approximate date by which the construction of the public Improvement will commence if the District determines that sufficient funds have been collected to complete financing on an incomplete public improvement
7. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan
8. The amount of refunds made pursuant to Government Code 66001(e) and any allocations made pursuant to Government Code 66001(f)

The Board shall review the above information at the first regularly scheduled public Board meeting which occurs 15 days after the information is made available to the public.

Fifteen-day prior notice of this meeting shall be mailed to any parties filing a written request pursuant to Government Code 66006. (Government Code 66006)

In addition to discharging its public disclosure duties regarding the levying of developer fees, the Board shall, for the fifth fiscal year after the first deposit into the account or fund and every five years thereafter, make all of the following findings with respect to the portion of the account or fund that remains unexpended, whether committed or uncommitted: (Government Code 66001)

1. Identify the purpose to which the fee is to be put<sup>2</sup>. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged
3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements originally identified
4. Designate the approximate dates on which the funding referred to in item #3 is expected to be deposited into the appropriate account or fund

When sufficient funds have been collected to complete the financing of public improvements but such improvements remain incomplete, the District shall, within 180 days of the date that a determination of sufficient funding was made, either identify an approximate date by which construction will begin or refund the unexpended revenues in accordance with Government Code 66001. (Government Code 66001)

**Appeals Process for Protests by Developers**

Developers of residential, commercial and industrial projects who claim that the developer fee has been inappropriately levied shall use the following procedures: (Government Code 66020)

1. The developer shall tender any required payment in full or provide satisfactory evidence of arrangements to pay the fee when due or ensure performance of the conditions necessary to meet the requirements of the imposition.
2. The developer shall serve written notice to the Board. This notice shall include:
  - a. A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

**DEVELOPER FEES** (continued)

- b. A statement informing the Board of the factual elements of the dispute and the legal theory forming the basis for the protest.
3. The protest shall be filed at the time of approval or conditional approval of the development or within 90 days after the date of the imposition of the fees.
4. The developer may file an action to attack, review, set aside, void or annul the imposition of the fees imposed on the development project within 180 days of delivery of the notice

**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**INSPECTION OF COMPLETED PROJECTS**

Completed projects shall be inspected in accordance with the approved plans resulting from architectural services. Administrative staff inspections shall include those conducted by the building principal, the Assistant Superintendent-Business, and the foreman of the respective trades employed by the school district. Recommendations shall be made for the acceptance of the building to the governing board by the Assistant Superintendent-Business

*Legal Reference:*

EDUCATION CODE

*39151 Reports required for architects, engineers and inspectors; information required*

*39153 Inspection by department of general services and appointed inspector*

**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**NAMING OF FACILITY**

The Governing Board shall name schools or individual buildings in recognition of:

1. Individuals, living or deceased, who have made outstanding contributions to the county or community
2. Individuals, living or deceased, who have made contributions of state, national or worldwide significance
3. The geographic area in which the school or building is located

The Board encourages community participation in the process of selecting names. A citizen advisory committee shall be appointed to review name suggestions and submit recommendations for the Board's consideration.

*(cf. 1220 - Citizen Advisory Committees)*

The renaming of existing schools or major facilities shall occur only under extraordinary circumstances and after thorough study.

**Memorials**

Upon request, the Board shall consider naming buildings, parts of buildings or athletic fields in honor of the contributions of students, staff members and community members who have been deceased for at least one year.

*Legal Reference:*

EDUCATION CODE

*35160 Authority of governing boards*

**ABC UNIFIED SCHOOL DISTRICT  
Board Policy**

**FACILITIES**

**ASSEMBLING AND PRESERVING IMPORTANT DOCUMENTS**

All documents pertaining to the planning and construction of the facility shall be preserved in the office of the Assistant Superintendent-Business. "As Built" plans shall be filed with the Assistant Superintendent-Business and a copy made for Maintenance and Operations. Subsequent changes to any buildings shall be entered on the original plans and filed with the Assistant Superintendent-Business.

*Legal Reference:*

EDUCATION CODE:

*39119 Contract provision required making plans, specifications and estimates property of the school district*