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ORIGINAL

8 Attorneys for the Department of General Services and the State Allocation Board

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10 **CALIFORNIA OFFICE OF ADMINISTRATIVE LAW**
11 **IN THE COUNTY OF SACRAMENTO**

12 **In re:**
13
14 **STATE ALLOCATION BOARD,**
15
16 **Respondent**
17
18 **Title 2, California Code of Regulations**
19 **Section 1859.2 and 1859.21**

OAL File No. Priority Review:
2012-1

DECLARATION OF DAVID
ZIAN IN RESPONSE TO THE
OFFICE OF ADMINISTRATIVE
LAW'S (OAL) ORDER TO
SHOW CAUSE

20 I, David Zian, declare as follows:

21 1. I am employed with the Department of General Services (DGS), Office of
22 Public School Construction (OPSC) from January, 1987 up through the present.

23 2. In 1987, I worked as an Analyst for the OPSC. In 1996, I was promoted to
24 Manager II and in 1999 I was promoted to Manager III. Currently, I am Chief of Special
25 Projects with the OPSC.

26 3. I have personal knowledge of these facts, and would so competently
27 testify if called as a witness to this proceeding.

28 4. On August 27, 1998, the Governor approved Senate Bill No. 50 (SB 50)
entitled the Leroy F. Greene School Facilities Act of 1998, codified in Chapter 12.5 of
the Education Code. SB 50 replaced the former K-12 public school facility program
called the Lease Purchase Program (LPP) and created a new school facility program
called the School Facility Program (SFP).

1 5. SB 50 mandated the State Allocation Board (SAB) to have the SFP up
2 and running by November 4, 1998.

3 6. The SFP allowed school districts to receive modernization and new
4 construction funding based on multiplying the number of pupils from a previously
5 calculated eligibility bank by the standard per pupil grants. [Education Code section
6 17074.10 for modernization or Education Code section 17072.10 for new construction.]

7 **The Sixty Percent (60%) Requirement**

8 7. During the early implementation period of the SFP, several districts
9 requested modernization grant funding that was well in excess of the scope of the
10 project and had very little hard cost modernization work. OPSC's review of the districts'
11 modernization scope of work showed that the districts would be getting millions of
12 dollars in funding even though the districts' scope of work only demonstrated that lower
13 cost maintenance type work would be done. This did not appear to be the intent of the
14 SFP. Moreover, the OPSC believed that these minimal scope modernization projects
15 should not be processed for funding in their present form as these projects created two
16 significant program integrity issues: (i) circumvention of the SFP requirement to have
17 modernization/construction plans approved by the Department of General Services
18 specifically, the Division of State Architect (DSA) [Education Code section 17072.30]; (ii)
19 line-jumping in front of other districts with full scope projects since these limited scope
20 projects required little or no DSA review time. It was not uncommon during this time
21 period for school districts with full scope projects to stand in line for up to six months
22 securing DSA review and approval.

23 8. As the program was new, SB 50 authorized the SAB to establish and
24 publish any procedures and policies in connection with the administration of the SFP.
25 [Education Code section 17070.35, subdivision (b).]

26 9. In light of that mandate and aforementioned program integrity issues, the
27 OPSC determined that for purposes of program integrity and adherence to the law,
28 minimum hard cost thresholds needed to be set. The sixty percent commensurate

1 requirement for hard construction costs (not soft costs) was within industry standard
2 ranges and set a minimum threshold for what constitutes a viable modernization project.

3 10. Further, in determining the sixty percent threshold, hard and soft costs
4 needed to be reviewed and analyzed. The OPSC reviewed over three hundred (300+)
5 bids that were submitted under the LPP. These bids represented total approved hard
6 construction costs and soft costs submitted by school districts for funding under the
7 LPP.

8 11. In doing this analysis, the OPSC determined that all Modernization
9 projects had in excess of sixty percent of the total costs directly attributable to
10 modernization/construction (hard costs) and the remainder attributable to indirect
11 construction costs (soft costs).

12 12. With these findings, the OPSC took the agenda to the State Allocation
13 Board Implementation Committee (Imp Committee). The Imp Committee was
14 comprised of different stakeholders including representatives from several school
15 districts as well as the OPSC.

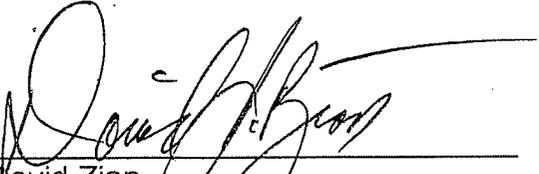
16 13. The Imp Committee agreed to define "viable SFP project" as a project
17 having at least sixty percent (60%) of its costs as hard construction costs. Thus, after
18 the requirement was established, school districts submitting SFP funding applications
19 would only be eligible if they met the minimum hard cost thresholds (60 percent).

20 **Exclusion from the Cost Estimate**

21 14. To determine whether a project met the sixty percent (60%) threshold and was
22 a viable project, certain costs, i.e. planning, tests, inspection, furniture and equipment,
23 were excluded from the calculation. These costs were deemed to be soft costs not
24 indirectly attributable to the actual modernization or construction of a building.

25
26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true.

1 Executed this 4th day of September, 2012, at West Sacramento California by:

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4 David Zian
5 Chief of Special Projects
6 DGS – Office of Public School Construction

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