



# CAPITOL ADVISORS GROUP, LLC

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## **OPSC Stakeholder Meeting - Defining Historical Buildings**

Last week, the Office of Public School Construction (OPSC) hosted a stakeholder meeting to discuss potential criteria for a definition of a “historical building.” OPSC solicited feedback on a definition that would allow OPSC staff to make an administrative determination of whether a building is “historical” when processing funding requests. A proposed change would not go into effect unless it is included in future amendments to the School Facility Program (SFP) regulations for the Facility Hardship Program and Seismic Mitigation Program.

### **Background**

School districts are eligible for facility hardship funding to replace or construct new facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities is a threat to the health and safety of the pupils. *See* Education Code § 17075.10; SFP Regulation § 1859.82. To qualify for replacement funding, the district submits a cost/benefit analysis to OPSC indicating that the costs to rehabilitate the facilities and remain in the classroom exceed 50 percent of the Current Replacement Cost. If the costs do not exceed 50 percent, certain other grants are available to the district.

Recently, the State Allocation Board (SAB) heard appeals from districts seeking replacement funding to rehabilitate historic facilities. The districts did not intend to demolish and replace the buildings, even though, under the law, rehabilitation costs would exceed 50 percent of the replacement cost. Instead, the districts sought to use the funding to rehabilitate the buildings due to their historical significance. The SAB agreed with their “historical building” rationale, approved those specific requests, and directed OPSC to develop regulatory language to administratively address future replacement funding requests pertaining to historical buildings.

Because the relevant Education Code and SFP regulatory provisions apply to both the Facility Hardship Program and the Seismic Mitigation Program, any proposed changes to the definition of “historical building” will apply to both programs.

### **Discussion and tentative proposal**

There was agreement among participants on several criteria for defining a historical building, although there was disagreement on some of the details.

### 1. Registered historical buildings

All parties agreed that a building on a national, state, county, or city historical registry would qualify for these purposes.

### 2. Non-registered buildings validated under CEQA

The California Environment Quality Act (CEQA) requires that buildings that are at least 50 years old be evaluated for historical significance. To do so, districts engage the services of an expert to identify historical structures, even if they are not currently registered (e.g., a historic preservation consultant or architectural historian). If the building is of historical significance, CEQA requires the district to address the structure in a Negative Declaration or a Full Environment Impact Report. The district governing board must then adopt the expert's findings.

OPSC stakeholders suggested that a school district's resolution, arising from existing requirements under CEQA, would be sufficient to demonstrate a building's historical significance.

### 3. Non-registered buildings supported by a governing board resolution

There are instances in which a district's governing board self-certifies that a non-registered building qualifies as historically significant. Stakeholders discussed potential criteria for self-certification.

- **Public comment.** There are occasions when the community advocates for the retention of an existing structure because it has some historical significance. This is often based on These include that their ancestors attended the school or some other historical event may have occurred at the site. OPSC expressed concerns over this option as it would be difficult to determine if there are objective criteria for the qualification of buildings, and therefore provide opportunities for unjustifiable funding from the state.
- **Expert testimony.** The board resolution could be supported by testimony from someone qualified to evaluate a building for its historical significance. An expert may include a historic preservation consultant or architectural historian. This option seemed acceptable to OPSC and it was expanded to include any industry expert in the field of identifying historical buildings.
- **“Industry” expert.** Other facility hardship applications only require an industry expert provide evidence of a health and safety concern. Under this scenario, the same structure could be defined as an historical building. OPSC and others, however, asserted that a third-party should have the requisite expertise to make such a determination. A local historical society, for example, may not be qualified to make such a finding. OPSC suggested that non-expert testimony relating to historical significance may be considered as persuasive but otherwise non-determinative.

It appears OPSC will continue accepting stakeholder input before presenting its proposed regulations to the SAB. Stay tuned.