



# Monterey County Office of Education

Leadership, Support, and Service to Prepare All Students for Success

Dr. Nancy Kotowski  
County Superintendent of Schools

District Advisory and Financial Services  
Finance and Business Services

Bulletin No. 13-037

**DATE:** March 27, 2013  
**TO:** Assistant Superintendents, Chief Business Officials  
**FROM:**  Karen Hennessy, Director, District Advisory and Financial Services  
**SUBJECT:** Public Hearing Requirement for Use of Tier III Funds

Per Education Code 42605, as a condition of receiving funds for Tier III categorical programs, the governing board of a school district must hold a public hearing to discuss and approve or disapprove the proposed explicit uses of each Tier III Programs' funding. This hearing must take place regardless of whether districts opt to use funds for their original purpose or for another purpose. Previously, the hearing was allowed to take place at any time, and many districts chose to hold this hearing in conjunction with their budget adoption. Even though Governor Jerry Brown has proposed a school finance reform model that would eliminate existing categorical programs and flexibility provisions, local educational agencies (LEAs) should follow the provisions of current law until they are actually changed.

Assembly Bill (AB) 189 (Chapter 606/Statutes 2011), became effective January 1, 2012, and changed the public hearing requirement regarding the use of the Tier III funds. **The Tier III public hearing must be held prior to and independent of a meeting at which the budget is adopted. AB 189 also requires a governing board to identify in the notice of the public hearing, any Tier III program that is proposed to be closed.**

As a best practice, the Tier III public hearing should be held at a separate, regularly scheduled board meeting held prior to the regularly scheduled board meeting to adopt the budget. Whenever the proposed use of the funding will result in the elimination of a program, the notice of the public hearing must list any programs proposed for elimination. Noncompliance puts your entire Tier III entitlement at risk. Given this potentially significant penalty, it is critical to make sure that the public hearings are held and contain the required elements above.

Attached for your use is a sample Resolution and sample agenda language for the public hearing.

Should you have any questions or need additional guidance please contact either myself at 831-755-0376 or your district fiscal analyst.

Attachments (2)

## SAMPLE AGENDA LANGUAGE

### 1. Public Hearing Relating to the Use of 2013/14 Tier III State Categorical Funds

Education Code §42605 grants districts flexibility in Tier III categorical programs and authorizes districts to use these funds for any educational purpose. For the 2008-09 fiscal year through the 2014-15 fiscal year, inclusive, local educational agencies that use the flexibility provision of this section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory and provisional language. As a condition of receipt of the funds, the governing board is required, at a regularly scheduled open public hearing held prior to and independent of a meeting where the governing board of the district adopts the annual budget, to take testimony from the public, identify any program that is proposed to be closed, discuss, approve or disapprove the proposed use of funding, and make explicit the purposes for which the funding will be used.

### 2. Proposed Use of 2013/14 Tier III State Categorical Funds

Consider approval of the proposed uses of the 2013/14 Tier III State Categorical Funds as identified on the attached list.

**RESOLUTION OF THE BOARD OF THE  
\_\_\_\_\_ SCHOOL DISTRICT**

**TIER III CATEGORICAL FLEXIBILITY**

WHEREAS as added and amended by SBX3 4, ABX4 2, and SB 70, Education Code 42605 grants districts flexibility in “Tier III” categorical programs and authorizes districts to use these funds for “any educational purpose, to the extent permitted by federal law.” For the 2008-09 fiscal year to the 2014-15 fiscal year, inclusive, local educational agencies that use the flexibility provision of this section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language.

WHEREAS as a condition of receipt of the funds, the governing board is required, at a regularly scheduled open public hearing, to take testimony from the public, discuss, and approve or disapprove the proposed use of funding and to make explicit the purposes for which the funding will be used.

WHEREAS Assembly Bill (AB) 189, became effective January 1, 2012, and requires the Tier III public hearing to be held prior to and independent of a meeting at which the budget is adopted. AB 189 also requires a governing board to identify in the notice of the public hearing, any Tier III program that is proposed to be closed.

WHEREAS attached to this resolution is a list of specific programs, the estimated funding amounts, and the proposed activities for which the funds are to be expended identified by SACS function code.

THEREFORE, BE IT RESOLVED that, following a public hearing in which public testimony was taken, discussion regarding the proposed uses of the funds took place, and programs proposed to be closed were identified, the \_\_\_\_\_ School District adopts this Resolution approving the proposed uses of the funds as shown on the attached list.

PASSED AND ADOPTED this \_\_\_\_\_ Day of May 2013 by the following vote:

Ayes:

Noes:

Abstained:

Absent:

ATTEST:

\_\_\_\_\_  
Secretary, Board of Trustees