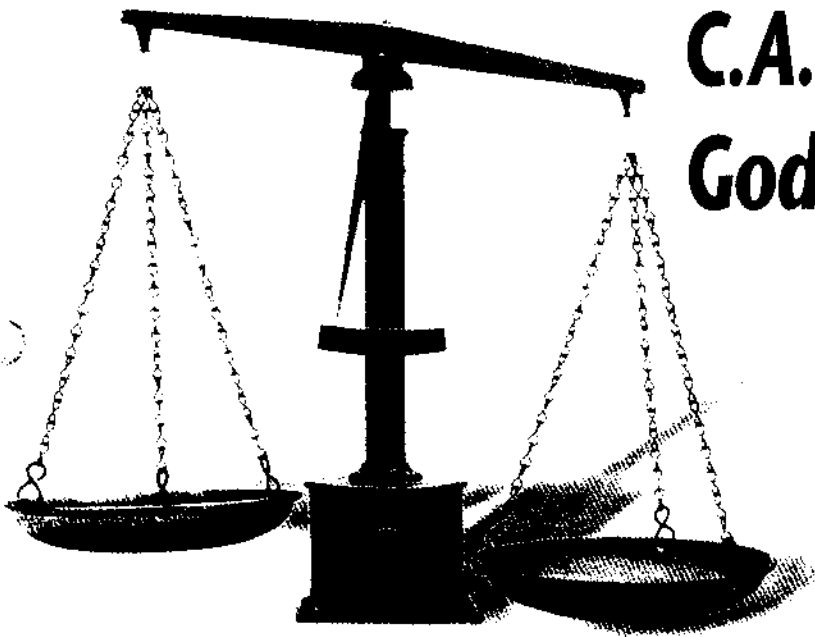




THE REGISTER Special Edition

THE NEWSLETTER OF THE COALITION FOR ADEQUATE SCHOOL HOUSING

Priority Points, The Court Case, Los Angeles USD, and the State Allocation Board



C.A.S.H. to Intervene in Godinez vs. Davis Case

The Coalition for Adequate School Housing's Board of Directors has decided to become an Intervener in the *Godinez vs. Davis* case, in order to best represent the interests of C.A.S.H. member districts.

The Board has decided to intervene for the following reasons:

- The Board is not satisfied that the current school facility funding system has been explained adequately to the Court;
- The Board believes that certain allegations made by the plaintiffs do not fairly and accurately present


the state funding program and how districts access that program;

- The Board is disturbed that the only district talking to the Court is Los Angeles Unified School District (LAUSD). The Board does not feel that LAUSD represents the majority of members of C.A.S.H., nor does it represent the interests of other C.A.S.H. members, such as small and suburban districts, or even other urban districts.
- The Board is concerned that local bond funds from LAUSD, authorizing \$900 million for

new construction, have not been accessed. Why is LAUSD demanding state funding prior to initial school projects using local funding as required by SB 50?

The Board intends to hire counsel to appear before the court. Counsel representing C.A.S.H. will be present in court when it next convenes, on Friday, October 24, 2000.

On a related issue, the C.A.S.H. Board of Directors has historically opposed priority points. See this issue of the *CASH Register* for a detailed article on priority points. C.A.S.H.'s staff has, at the request of the Board, developed a priority program proposal as an alternative to that which has been proposed by the state and LAUSD.

The purpose of creating an alternative proposal is to have available what we consider to be a more reasoned plan of action if and when it becomes clear that either the State Allocation Board or the Court insists that the law requires a priority point system to be implemented. 

By Jim Murdoch

Minute Orders from the August 24 Los Angeles Lawsuit

Following are the official minutes from the August 24 hearing of *Godinez vs. Davis*.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/24/00 HONORABLE DAVID P. YAFFE JUDGE		C. HUDSON M. LOMELI, CRT. ASST. ELECTRONIC RECORDING MONITOR		DEPT. 86 DEPUTY CLERK
HONORABLE L.	JUDGE PRO TEM NONE	Deputy Sheriff	D. CASE, CSR #8739	REPORTER
9:30 AM	BC227352 ROSANA GODINEZ VS GRAY DAVIS	Plaintiff Counsel GRETCHEN M. NELSON (X) STEPHEN R. ENGLISH (X) MOLLY MUNGER (X) Defendant Counsel HECTOR OSCAR VILLAGRA (X) CHRISTOPHER C. FOLEY (X) ROBERT B. MILLER (X)		

NATURE OF PROCEEDINGS:

ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION
(Cont'd from 7/20/00)

Appearances Cont'd. (Attorneys for Intervenors)

IRA L. GOTTLIEB (X)
KEVIN S. REED (X)
MICHAEL J. STRUMWASSER (X)
STEVEN K. URY (X)

Matter comes on for hearing and is argued

- Having read and considered the briefs and declarations submitted by the parties, the court makes the following order
1. The duty of the State Allocation Board under Education Code Section 17072.25 is to develop a mechanism to rank approved applications for funding for new school construction. The legislative purpose for imposing that duty upon the Board is to insure that the bond issue funds go to the competing school districts on the basis of their priority as determined by the Board, and not simply on a first come first served basis, insofar as it is reasonable and practical to accomplish that goal.
 2. The Board is neither required nor permitted by the statute to defer implementing its ranking mechanism after the time that it becomes aware that the funds available from the bond issue will not be sufficient to fund all projects that the Board will approve pursuant to Education Code Section 17072.20(c)
 3. The Board may adopt a finite time limit within which it will apportion all of the available funds due eligible school districts. June 30, 2002, is not an unreasonable time limit, whether or not such time limit accommodates the schedule of LAUSD, or any other school district, presenting projects to the Board. If the Board adopts such a time limit, the competing school districts will have to modify their schedules to comply with it; the Board need not adopt a time limit to accommodate the schedule of LAUSD or any other school district
 4. Once the Board adopts such a time limit, its duty under the statute is to apportion bond funds by a method which will fund new construction projects according to their priority, as determined by the Board, to the maximum extent that it is practical to do so. The legislature has manifested its intention that the funds be allocated on that basis, not on a first come first served basis, even if the result is to slow down the allocation of funds, provided that the allocation can be completed within the time limit adopted by the Board.
 5. Evidence presented to the court by the declaration of Richard Bark makes a prima facie showing that Regulation 1859.42(b) is void because it does not accurately or fairly estimate the number of unhoused pupils that are anticipated as a result of dwelling units proposed pursuant to tentative subdivision maps, as required by Education Code Section 17071.75(a). The State Allocation Board is therefore ordered to show cause why such regulation should not be held invalid, and why the Board should not be ordered to adopt a regulation that eliminates overlap and upward bias in supplementing the use of the Cohort Survival Enrollment Projection system required by Education Code Section 17071.75(a)

Hearing on the Order to Show Cause is set for October 24, 2000 in this department.

The Board is to Show Cause in writing, and submit a program to implement its ranking of projects in accordance with the foregoing, on or before October 6, 2000.

Petitioners and intervenors may file and serve objections to said program on or before October 26, 2000.

The Board may file and serve its reply to said objections on or before October 19, 2000.

All submissions by the parties are to be served by hand-delivery or FAX.

Notice is waived.

One Example of the Priority Point Calculations

- Unified School District
- K-12 Enrollment 14,150
- Based on 1999/2000 Enrollment/Capacity/Projected Enrollment Information
- (SB 50 Regulation Section 1859.91)

A. Maximum of 100 points for both of the following:

1. 6 points for every percent of current unhousted pupils
Estimated percent of current unhousted = 11 %
 $11 \times 6 = 66$

2. 4 points for each percent of projected unhousted pupils
Estimated percent of projected unhousted = 19%
 $19 \times 4 = 76$

B. Maximum of 100 points for both of the following:

1. One point for each 100 current unhousted pupils
Estimated current unhousted pupils = 1,665
 $1,665 / 100 = 16$

2. One point for each 200 projected unhousted pupils
Estimated projected unhousted pupils = 3,032
 $3,032 / 200 = 15$

The District qualifies for the maximum for both A and B above totaling 131 points.

The District qualifies for six additional points if the new construction project utilizes stock plans.

Key Players in Priority Point Issue

Judge David P. Yaffe, presiding over *Godínez vs. Davis* case

Bill Lockyer, Attorney General of the State of California

Christopher Foley, Deputy Attorney General
Manuel M. Medeiros, Senior Assistant Attorney General
Andrea Lynn Hoch, Supervising Deputy Attorney General
Daniel G. Stone
Robert B. Miller

English, Munger & Rice
Attorneys for the Plaintiffs
Stephen R. English
Molly Munger
Constance Rice

Mexican American Legal Defense and Educational Fund
Attorneys for the Plaintiffs
Thomas A. Saenz
Hector O. Villagra

Asian Pacific American Legal Center
Attorneys for the Plaintiffs
Stewart Kwoh
Julie Su

Gretchen M. Nelson
Attorney for the Plaintiffs

State Allocation Board
Chair Annette Porini, representing Department of Finance
Karen McGagin, representing Department of General Services
Duwayne Brooks, representing Superintendent of Public Instruction
Senator Dede Alpert
Senator Jack O'Connell

Assembly Member Marco Antonio Firebaugh
Assembly Member Darrell Steinberg
Staff: Bruce Hancock, Assistant Executive Officer

Office of Public School Construction
Luisa Park, Interim Executive Officer
Phil Shearer, Chief of Operations

Los Angeles Unified
Fabian Nuñez
Lynn Roberts

Coalition for Adequate School Housing
C.A.S.H. Board of Directors
Dave Doomey, Chair

C.A.S.H. Small School Districts Committee
Chair, Gary Mekel, Superintendent, Burton School District

C.A.S.H. Urban School Facilities Network
Co-chair: Mike Vail, Executive Director, Vista Unified School District
Co-chair: Lettie Boggs, Assistant Superintendent, Facilities and Operations, Anaheim City Schools

C.A.S.H. Staff
James Murdoch
Thomas G. Duffy
Ian Padilla

C.A.S.H. Legal Advisor to the Board
Stephen L. Hartsell

C.A.S.H. Counsel as Intervener
Gregory Bergman

California Building Industry Association
Richard Lyon

C.A.S.H. Develops Alternative Proposal

C.A.S.H. staff, per the direction of the C.A.S.H. Board of Directors, developed an alternative priority point proposal that was presented to the Implementation Committee on September 5 and to the State Allocation Board on September 27. The following memo includes the major elements of C.A.S.H.'s alternative proposal.

MEMORANDUM

To: Luisa Park, Interim Executive Officer, OPSC
Bruce Hancock, Assistant Executive Officer, SAB

From: Thomas G. Duffy, Ed.D.

Subject: **REVISIONS AND CLARIFICATIONS**
To the Alternative Priority Program Proposal for Consideration by the State Allocation Board

On Tuesday, September 5, 2000, C.A.S.H. sponsored a meeting with a group of members to discuss the issue of priority points. The meeting's purpose was to develop a balanced priority program proposal, which would meet some of the concerns addressed by Judge David P. Yaffe, without disadvantaging districts not part of the *Godinez* suit. In essence, the objective was to craft a reasonable policy proposal for the Implementation Committee which addressed the statutory requirements dealing with priorities while focusing on funding needs of the majority of districts within the state.

The meeting was held in Sacramento, at the Office of Public School Construction, 1130 K Street, 4th Floor, between 9:00 a.m. and 12:00 Noon, and included the following C.A.S.H. members. Tom Duffy and Bruce Hancock co-chaired the meeting.

Alex Murdoch	Paul Woods	Joel Kirschenstein
Kathleen Moore Baratta	Kristen Schreder	Mike Williams
Nick Cammarota	Richard Lyon	Ron Bennett
Ron Pregmon	Stacy Selmants	

The meeting produced a policy recommendation for the Implementation Committee, which was presented at the meeting held on September 13, 2000. In the intervening period the proposal has been revised and clarified and is presented below.

It is important to underscore that the Coalition for Adequate School Housing has prepared the following proposal based upon the interpretation of AB 562 by the Board's Legal Counsel. This was done notwithstanding the fact that C.A.S.H.'s Legal Advisor and member school attorneys of the C.A.S.H. Legal Advisory Committee disagrees with the Board's counsel. It is CASH's view, therefore, that the first "trigger" of AB 562 has not been activated. C.A.S.H. is firm in the belief that AB 562 was intended to address new construction funding only, and that the inclusion of the lack of modernization funding in any calculation emanating from the language of the first "trigger" in Education Code Section 17072.25 was unintended and is illogical. It is premature for the Board to implement a priority funding program with more than \$1 billion remaining of new construction funds. In that C.A.S.H. believes that the Board will choose to follow the advice of its legal counsel, C.A.S.H. offers the following proposal based upon that advice.

It is recommended that the State Allocation Board incorporate the following Board action into its direction to the Executive Officer in addressing the issue of the Priority Funding Program.

- A. Explain the law in common terms regarding the two triggers required by AB 562, which amended Education Code Section 17072.25 that address the initiation of use of priority points. Estimate the date of the initiation of the use of priority points in clear, unambiguous language.
- B. Establish a priority program that accomplishes the following through Board action. Unanimous action by the Board would underscore the commitment of each member to the Priority Funding Program.

The total of funds remaining for new construction is to be reviewed by the State Allocation Board on a quarterly basis, beginning October 2000.

In order to establish that a minimum of \$300 million will be available for apportionments to new construction projects at the end of the Proposition 1A funding cycle in 2002, it is recommended that the Board subtract that amount from the total funds available at the time that the Board takes action to initiate priority points. This reserve allows the Board to support and meet the intent of Education

Code Section 100415(b), which states that the bond funds will be available for approximately four years, and will therefore ensure expenditure of new construction funds in the final year of the cycle.

The net funds available to the Board for apportionment are then divided by the number of months between the date of that Board meeting, such as January 2001, and a future Board meeting, such as June 2002. The resulting quotient becomes the total of funds available for apportionment each month by the SAB. This number multiplied by 3 months yields a product of \$150 million, which represents the quarterly amount of funds available (EXAMPLE: \$1.2 billion minus \$300 million = \$900 million divided by 18 months = \$50 million available for expenditure each month multiplied by 3 = \$150 million per quarter).

Each quarter, projects that are eligible for funding are brought to the Board in priority order with the projects with the highest number of points being funded first and thereafter, in descending order. The projects are funded to the extent that funds from the \$150 million will last. Projects that are not funded are placed on an approved/unfunded list and will be considered for funding the next quarter by the Board, along with all other projects that are eligible for funding in that quarter in priority point order.

In the circumstance in any quarterly cycle of the funds remaining being insufficient to fully fund the next project on the priority order list, that project would be approved as unfunded. Partial funding of projects is prohibited by Board regulation. That project would then be placed on the following quarterly list of eligible projects for consideration at its level of priority. If the project remains unfunded it would continue to be placed upon each succeeding quarter's lists of eligible projects for priority consideration until funded, or would remain unfunded for reasons of lower priority as the new construction funds are fully depleted in the 2000-2002 funding cycle. Funds which are not apportioned in any quarter due to this circumstance would be added to the succeeding quarter's funds available for apportionment to priority projects in that quarter.

At the meeting of the Board in January 2002, at the scheduled quarterly review, it is recommended that the Board review the availability of funds and consider the need for taking specific action to begin apportioning funds to projects from the \$300 million reserve if the total state funds necessary for funding all prior unfunded approved priority projects, and projects in house, exceed the total state funds in the new construction fund, to be expended from the quarterly funds available and the \$300 million reserve. If the Board finds that it need not take this action it would reconsider the matter at the next quarterly review at the April meeting of the Board. If funds from the \$300 million set-aside continue to be available at the end of that quarter, June 26, 2002, the Board will apportion the remaining funds from the \$300 million reserve to DSA approved projects submitted to and approved by OPSC according to priority order and date order to the extent that funds are available.

The Priority Funding Proposal described above specifically avoids the use of a priority point threshold. Such has been proposed and is rejected due to the arbitrary nature of a threshold. Priority point thresholds were used in the early and mid 1980's in order to ration funds in the old Lease Purchase Program and were later abandoned. Thresholds were seen as artificial, not accurately indicating the needs of the diverse grouping of school districts within the State, thereby withholding funds from many needy districts. Priority point thresholds were also a deterrent in establishing the need for state wide bond elections in that unexpended state bond funds created a perception that there was no need for a future state bond.


Proposed Exemptions to the Priority Funding Program should include:

- Individual, stand-alone projects for severely handicapped students served by school districts and projects for severe and non-severe students served by county superintendents;
- Facility Hardship projects due to health and student safety concerns;
- Projects received by Office of Public School Construction prior to the date that the priority program commences.

It is recommended further that the Board recognize the need to review the mechanism for calculating priority points prior to implementing the Priority Funding Program and direct the Implementation Committee to review this mechanism immediately. This recommendation is being made in the belief that small districts are disadvantaged by the current mechanism due to their size.

Conclusions and Summary

It is recommended that the Board take action to establish the Priority Funding Program and to include in that Program the following priority components, guidelines and safeguards:

- A reserve of \$300 million for expenditure in 2002 in the first or second quarter, but not later than June 26, 2002
- A quarterly distribution of funds to priority districts, beginning with those having the highest number of priority points
- Hardship funding for facility hardships at 100%
- A quarterly review by the Board of the Priority Funding Program and the funds remaining and to provide public notice at the time that apportionments may no longer be made by the Board due to insufficient funds
- An appeals process 

By Jim Murdoch and Tom Duffly

Calculation of Priority Points

Article 10. Fund Release and Priority Points

Section 159.90. Fund Release Process,

With the exception of an apportionment made pursuant to Section 1859.81.1 (c), the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the *Fund Release Authorization*, Form SAB 50-05 (Revised 07/00), which is incorporated by reference. A district must submit the *Fund Release Authorization*, Form SAB 50-05 (Revised 07/00), within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction or Modernization Adjusted Grant shall be rescinded without further Board action, and the pupils housed in the project will be added back to the districts baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859,81.1 (c) to the district within 30 calendar days of the apportionment.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.30, 17074-15 and 17076. 10, Education Code.

Section 1859.9. Implementation of Priority Points Cue to Insufficient State Funds.

The OPSC shall report to the Board on a monthly basis the status of funds available for New Construction Grants and the aggregate amount of SFP New Construction Grant requests that have been received but not yet funded. The Board shall declare that State funds are insufficient for New Construction Grants when the SFP grant requests that are ready for Apportionment exceed the funds available for that purpose. This declaration will implement the priority point system and the Board shall approve new construction projects and apportion funds based on the highest priority points assigned to projects. This declaration shall serve as the mechanism for the Board to make the appropriate notifications as required, pursuant to Government Code Section 65995.7(a).

All New Construction Grant requests shall be funded in date order received until such time that the Board declares that the available funds for construction are insufficient to finance the grant requests ready for Apportionment. When this occurs, the Board shall fund those projects with the highest number of priority points first. When one or more projects have the same number of priority points assigned, the projects will then be funded by the date order the applications for funding were received by the OPSC.

Section 189-9.0.2. Priority Points For New Construction Projects.

The priority points allowed for a project shall be based on the following computations rounded to the nearest whole number. The computation shall be on a districtwide or the HSAA basis utilizing CBEDS enrollment data reported on the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 01/00), in effect at the time the districts application for funding was submitted to the OPSC for the project. A project may receive a maximum of 220 points based on the total of (a), (b) and (c):

- (a) A maximum of 100 points for both of the following:
 - (1) Six points for each percent of current unhoused pupils.
 - (2) Four points for each percent of projected unhoused pupils.
- (b) A maximum of 100 points for both of the following:
 - (1) One point for each 100 currently unhoused pupils.
 - (2) One point for each 200 projected unhoused pupils.
- (c) A maximum of 20 points for the following:
 - (1) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 2,501. 1
 - (2) Six points for a County Superintendent of Schools' project.
 - (3) Six points for a facility hardship project that meets the requirements of Sections 1859.82(a) and (b).
 - (4) Six points for a project that used 'stock plans' pursuant to Education Code Section 17070.33(b)(6).
 - (5) Six points if the district's CBEDS enrollment at the time of application submittal to the OPSC for funding is less than 301.

Note: Authority cited: Sections 17070.35 and 17077-25. Education Code.

Reference: Sections 17072.25 and 17070.33. Education Code.

C.A.S.H. and Small District Priority Points

By Gary Mekeel

The Coalition for Adequate School Housing (C.A.S.H.) has endorsed recalculating priority points for smaller school districts. Currently, the question of priority points and how to allocate the remaining Proposition 1A new construction funds is being considered by the State Allocation Board (SAB) and Judge Yaffe's District Court.

The C.A.S.H. Small School District Committee requested that the full organization support its efforts to have priority points recalculated for smaller districts. This request was supported by the full C.A.S.H. Board of Directors and is now part of the advocacy of C.A.S.H. before the District Court and the SAB.

The current method of calculating priority points provides points for three circumstances. The first circumstance is priority points based upon the percent of students in the district who are unhoused. The second is the number of students within the district who are unhoused. The third is a special needs category. SB 50 provides that 10% of the priority points can be awarded for special needs. This special needs category has included adjustments for small districts.

Although the current priority point system includes additional points for adjustments for small districts within the special needs category, this adjustment is not sufficient to balance the disadvantages created for small districts. Small districts are disadvantaged because the number of unhoused pupils used in the calculation gives more weight to larger districts than to small districts, simply because large districts have larger number of unhoused pupils. The disadvantage is further compounded because of a cap on points which offsets high rates of growth for small districts.

The C.A.S.H. Board, as well as many C.A.S.H. members, strongly advocate

that this priority point system be changed in order to be less harmful to smaller school districts with fewer than 10,000 students. The C.A.S.H. Board is particularly sensitive for those districts with fewer than 5,000 students who might not be able to be funded under a priority point system. The rationing of Proposition 1A new construction funds under priority points could result in only those districts with priority points with greater than 150 or 160 being funded at any time. If this occurs, most of the districts below 10,000 and all of the districts below 5,000 students would not be able to compete for an allocation from the remaining Proposition 1A funds.

The C.A.S.H. Small School District Committee and the Small School

Districts' Association have jointly been working on alternative priority point proposals in order to make the current system more equitable. The Staff of the Office of Public School Construction and staff to the SAB also have indicated their interest and desire to change the priority point system in order to make it more equitable for smaller school districts.

The C.A.S.H. Small School District Committee members and I want to thank all members of C.A.S.H. and the C.A.S.H. Board who have been supportive of our concerns about priority points. ☐

Gary Mekeel is Chair of C.A.S.H. Small School Districts Facility Network, a member of the C.A.S.H. Board of Directors, and the Superintendent of the Burton School District in Tulare County.

C.A.S.H. Urban School Facilities Network— Perspectives on Priority Points

At our monthly meetings, the members of the C.A.S.H. Urban School Facilities Subcommittee have identified and discussed the unique challenges associated with school construction in urban environments.

On many points the committee was able to reach consensus, and on others the committee was not. However, the committee did agree that site acquisition challenges slowed down the complex and lengthy application process, causing concern that State funds will not be available to complete projects. Some of these challenges include:

- Condemning residential housing
- Multiple parcel acquisitions
- Toxic remediation
- Availability of Hardship funds

The recent discussions over Priority Points have further complicated the issue. Nevertheless, the committee did

express concern over several issues related to Priority Points including:

- Changing the rules of the game midstream
- Jeopardizing voter confidence in approving future bonds
- Jeopardizing CASH member districts with projects that are ready to go

The C.A.S.H. Urban School Facilities Subcommittee will continue to develop methods of improving the site acquisition in urban environments, and anticipates completed recommendations will be available in January. These recommendations could be used for either administrative or legislative solutions. ☐

Lettie Boggs is the Assistant Superintendent of Facilities and Operations with Anaheim City School District, Co-Chair of the C.A.S.H. Urban School Facilities Network, and a member of the C.A.S.H. Board of Directors

C.A.S.H. MEETINGS, CONFERENCES & WORKSHOPS

March 5-8, 2001

Monday – Thursday

C.A.S.H. 22nd Annual Conference

Doubletree Hotel, 2001 Point West Way

Sacramento, CA

Red Lion Hotel, 1401 Arden Way

Sacramento, CA

February 25-28, 2002

Monday – Thursday

C.A.S.H. 23rd Annual Conference

Sacramento Convention Center

Sacramento, CA

Monthly C.A.S.H. meetings are held from 11:00 a.m. to Noon in Sacramento. The monthly meetings are always scheduled to coincide with the monthly meetings of the State Allocation Board to enable C.A.S.H. members to attend the SAB's afternoon session. Both SAB meetings and General membership meetings are subject to change.



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