

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Agreement Regarding:)	Docket Number HSA-EOA 14/15-xxx
)	
[SITE NAME])	Environmental
[SITE ADDRESS])	Oversight Agreement
)	
Site Code Number: XXXXXX-11)	
)	Education Code
Project Proponent:)	Sections 17210, 17210.1, 17213.1
)	
[NAME])	
[ADDRESS])	
)	
_____)	

**I.
INTRODUCTION**

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this Environmental Oversight Agreement (Agreement) with the **[NAME OF PROPONENT]** (Proponent). DTSC and the Proponent are referred to collectively herein as the “Parties.”

1.2 Site. The property, which is the subject of this Agreement, (Site) is an existing school site where a project may be constructed or is a proposed school site **(Choose one)** and is located at **[SITE ADDRESS, CITY, COUNTY]**, California **[ZIP CODE]**. **[Alternate language for use when the property address information does not adequately describe the Site (e.g., if the Site is a portion of the property covered by the address of if the property does not have an address and is identified by intersections or other descriptive phrases): “The Site is an existing school site where a project may be constructed or is a proposed school site, and consists of (narrative description of Site).”]** The Site is identified by Assessor’s

Parcel Number(s)_____. A location map and a Site diagram are attached as Exhibit A and Exhibit B.

1.3 Jurisdiction. This Agreement is entered into by DTSC and the Proponent pursuant to Education Code section 17213.1. This section authorizes DTSC to enter into an enforceable agreement with the Proponent to oversee the Proponent's preparation of a Preliminary Endangerment Assessment (PEA) for the Site and other related activities, if necessary.

1.4 Purpose. The purpose of this Agreement is for the Proponent to perform a PEA under the oversight of DTSC. The definition and requirements of a PEA, for purposes of this Agreement, are those set forth in Education Code sections 17210, 17210.1 and 17213.1. The purpose of this Agreement is also for DTSC to obtain reimbursement from the Proponent for DTSC's oversight costs.

II. BACKGROUND

2.1 Ownership. The Site is owned by **[PROPERTY OWNER]**. **[If Site consists of more than one parcel, identify the owners of each parcel.]**

2.2 Current Knowledge of the Site. The Proponent submitted an application requesting to enter into this Agreement for DTSC's oversight of the preparation of a PEA for the Site.

2.3 Physical Description. **[BRIEFLY DESCRIBE SITE, SITE SIZE, AND THE GENERAL AREA, NOTING ANY DISTINGUISHING PHYSICAL FEATURES, SUCH AS SURFACE WATER BODIES, BUILDINGS, VACANT LOT, ETC.]**

2.4 Site History. **[BRIEFLY DESCRIBE THE HISTORICAL USES OF THE SITE, INCLUDING ANY HAZARDOUS MATERIALS/WASTE HANDLING, STORAGE OR DISPOSAL AREAS, IF KNOWN.]**

III. AGREEMENT

3.0 **IT IS HEREBY AGREED THAT** DTSC will provide review, oversight and approval of the PEA conducted by the Proponent in accordance with the Scope of Work contained in Exhibit C. The Proponent shall conduct the activities required under this Agreement in the manner specified herein and in accordance with the schedule specified in Exhibit D. All work shall be performed consistent with Education Code sections 17210, 17210.1 and 17213.1; Health and Safety Code section 25300 et seq., as amended; the National Contingency Plan (Code of Federal Regulations, Title 40, Part 300), as amended; and United States Environmental Protection Agency and DTSC Superfund guidance documents regarding site investigation and remediation.

3.1 Scope of Work and DTSC Oversight. DTSC shall review and provide the Proponent with written comments on all of the Proponent's deliverables as described in Exhibit C (Scope of Work) and other documents determined by DTSC to be necessary to the scope of the project or the implementation of this Agreement. DTSC shall provide oversight of field activities, including sampling, as appropriate.

3.2 Additional Activities. Additional activities may be conducted and DTSC's oversight provided by amendment to this Agreement or Exhibits attached hereto in accordance with Paragraph 3.17 of this Agreement. If DTSC expects additional oversight costs to be incurred related to these additional activities, DTSC will provide a written estimate of the additional oversight cost to the Proponent.

3.3 Agreement Managers. **[UNIT CHIEF, SCHOOLS UNIT, OFFICE, BROWNFIELDS AND ENVIRONMENTAL RESTORATION PROGRAM,]** is designated by DTSC as its Manager for this Agreement. **[PROPONENT'S PROJECT MANAGER]** is designated by the Proponent as its Manager for this Agreement. Each Party to this Agreement shall provide at least 10 days advance written notice to the other of any change in its designated Manager.

3.4 Notices and Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent by regular mail to the respective Agreement Managers at the following addresses:

(a) To DTSC:

**[UNIT CHIEF]
[SCHOOLS UNIT – OFFICE]
BROWNFIELDS ENVIRONMENTAL RESTORATION PROGRAM
ATTN: [PROJECT MANAGER]
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
[ADDRESS]**

(b) To the Proponent:

**[NAME, TITLE]
[COMPANY]
[ADDRESS]**

For all documents required to be given to DTSC, the Proponent shall submit one hard (paper) copy and one electronic copy in Adobe Portable Document Format (PDF), as specified in Exhibit E. All submittals shall include applicable signatures and certification stamps.

3.5 DTSC Review and Approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment,

DTSC may (a) return comments to the Proponent with recommended changes and a date by which the Proponent shall submit to DTSC a revised document incorporating the recommended changes; or (b) modify the document as deemed necessary and approve the document as modified. Any modifications, comments or other directives issued pursuant to this Paragraph are incorporated into this Agreement.

3.6 Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to the Proponent in writing by DTSC's Agreement Manager or his/her designee. Confirmation of a designation shall be provided in writing by DTSC to validate any approvals or decisions made by the designee of DTSC's Agreement Manager. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve the Proponent of the obligations to obtain such written approvals.

3.7 Stop Work Order. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, DTSC may order the Proponent to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment. In the event that DTSC determines that any activities (whether or not pursued in compliance with this Agreement) are proceeding without DTSC's authorization, DTSC may order the Proponent to stop further implementation of this Agreement or activities for such a period of time needed to obtain DTSC's authorization, if such authorization is appropriate. Any deadline in this Agreement directly affected by

a Stop Work Order under this Paragraph shall be extended for the term of the Stop Work Order.

3.8 Payment. The Proponent shall pay (1) all costs incurred by DTSC for preparation of this Agreement and review of documents submitted prior to the effective date of the Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and in providing oversight of field activities. An estimate of DTSC's oversight costs is attached as Exhibit F. It is understood by the Parties that Exhibit F is an estimate and cannot be relied upon as the final cost figure. DTSC will bill the Proponent quarterly. The Proponent shall make payment within 30 days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by the Proponent.

3.8.1 In anticipation of services to be rendered, the Proponent shall make an advance payment of **[DOLLAR AMOUNT]** to DTSC. That payment shall be made no later than 10 days after this Agreement is fully executed. If the Proponent's advance payment does not cover all costs payable to DTSC under this Agreement, the Proponent shall pay the additional costs within 30 days of receipt of a billing from DTSC.

3.8.2 If any billing is not paid by the Proponent within 60 days after it is sent, DTSC will commence calculating interest from the date of the billing, at the same rate of return earned on investment in the Surplus Money Investment Fund pursuant to Government Code section 16475 and Health and Safety Code section 25360.1.

3.8.3 All payments made by the Proponent pursuant to this Agreement shall be by a warrant or check made payable to the "Department of Toxic Substances Control,"

and bearing on its face the project code for the Site (Site Code Number XXXXXX) and the Docket Number (Docket Number **HSA-EOA 13/14-XXX**) of this Agreement.

Payments shall be sent to:

Department of Toxic Substances Control
Attn: Accounting
1001 "I" Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the warrant or check shall be sent concurrently to DTSC's Agreement Manager. The Proponent requests future DTSC billings to be submitted to:

[NAME, TITLE]
[COMPANY]
[ADDRESS]

3.8.4 If the advance payment exceeds DTSC's actual oversight costs, DTSC will provide an accounting for expenses and refund the difference within 120 days after termination of this Agreement in accordance with Paragraph 3.18. In no other case shall the Proponent be entitled to a refund from DTSC or to assert a claim against DTSC for any amount paid or expended under this Agreement.

3.8.5 If the Proponent disputes a DTSC billing, or any part thereof, the Proponent shall notify DTSC's assigned project manager and attempt to informally resolve the dispute with DTSC's project manager and unit chief. If the Proponent desires to formally request dispute resolution with regard to the billing, the Proponent shall file a request for dispute resolution in writing within 45 days of the date of the billing in dispute. The written request shall describe all issues in dispute and shall set forth the reasons for the dispute, both factual and legal. If the dispute pertains only to a portion of the costs included in the billing, the Proponent shall pay all costs which are undisputed. The filing of a notice of dispute pursuant to this Paragraph shall not stay

the accrual of interest on any unpaid costs pending resolution of the dispute. The written request shall be sent to:

Chief, Collections and Resolution Unit
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806
(916) 322-0481

A copy of the written request for dispute resolution shall also be sent to DTSC's Agreement Manager. A decision on the billing dispute will be rendered by the Special Assistant for Cost Recovery and Reimbursement Policy or other DTSC designee.

3.9 Condition Precedent. It is expressly understood and agreed that DTSC's receipt of the advance payment described in Paragraph 3.8.1 is a condition precedent to DTSC's obligation to provide oversight, review, comment, and/or approval pursuant to this Agreement.

3.10 Record Retention. DTSC shall retain all cost records associated with the work performed under this Agreement for such time periods as may be required by applicable State law. The Proponent may request to inspect all documents which support DTSC's cost determination in accordance with the Public Records Act, Government Code section 6250 et seq.

3.11 Project Coordinator. The work performed by and on behalf of the Proponent pursuant to this Agreement shall be under the direction and supervision of a project coordinator which shall be a qualified environmental assessor as specified in Education Code section 17210(b) with at least three (3) years experience in conducting PEAs. The Proponent shall submit: a) the name and address of the project coordinator; and b) in order to demonstrate the qualifications of an environmental assessor, the resume of the project coordinator. The Proponent shall notify DTSC within 10 business

days of any change in the identity of the project coordinator. All engineering and geological work shall be conducted in conformance with applicable State law, including but not limited to, Business and Professions Code sections 6735 and 7835.

3.12 Access. The Proponent shall provide and/or use best efforts to obtain access to the Site and offsite areas to which access is necessary to implement this Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this Paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. The Proponent shall give its permission, to the extent it has authority to give such permission, to DTSC and its authorized representatives to enter and move freely at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of the Proponent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by the Proponent.

3.13 Sampling, Data and Document Availability. When requested by DTSC, the Proponent shall make available to DTSC, and shall provide copies of, all data and information concerning the presence, if any, of hazardous materials at the Site, including electronic data, technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement. The required information or data about the Site may include information that is publicly available or that is within the Proponent's possession or control.

3.14 Notification of Field Activities. The Proponent shall inform DTSC at least seven (7) days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take splits of any samples collected by the Proponent pursuant to this Agreement. DTSC and the Proponent will agree to the most appropriate method of collecting the split samples.

3.15 Notification of Environmental Condition. The Proponent shall notify DTSC's Agreement Manager immediately upon learning of any condition posing an immediate threat to public health or safety or the environment. Within seven (7) days of the onset of such a condition, the Proponent shall furnish a report to DTSC, signed by the Proponent's Agreement Manager, setting forth the events which occurred and the measures taken in the response thereto.

3.16 Preservation of Documentation. The Proponent shall maintain a central repository of the data, reports, and other documents prepared pursuant to this Agreement. All such data, reports and other documents shall be preserved by the Proponent for a minimum of six (6) years after the conclusion of all activities under this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, the Proponent shall comply with that request, deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. The Proponent shall notify DTSC in writing at least 90 days prior to destroying any documents prepared pursuant to this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six-year period, the related records shall be retained until the completion and resolution of all issues arising therefrom or until the end of the six-year period, whichever is later.

3.17 Amendments. This Agreement may be amended or modified solely upon written consent of all Parties. Such amendments or modifications may be proposed by any Party and shall be effective the third business day following the day the last Party signing the amendment or modification sends its notification of signing to the other Party. The Parties may agree to a different effective date.

3.18 Termination. Each Party to this Agreement reserves the right unilaterally to terminate this Agreement for any reason. Termination may be accomplished by giving a 30-day advance written notice of the election to terminate this Agreement to the other Party. In the event that this Agreement is terminated, the Proponent shall be responsible for DTSC's costs incurred in the implementation and administration of this Agreement through the effective date of termination. DTSC will submit a final billing within 120 days from the effective date of termination.

3.19 Exhibits. All exhibits identified in and attached to this Agreement are incorporated herein by this reference.

3.20 Time Periods. Unless otherwise specified, time periods begin from the effective date of this Agreement and "days" means calendar days. "Business days" means all calendar days that are not weekends or official State holidays.

3.21 Proponent Liabilities. The terms and conditions of this Agreement constitute requirements issued or adopted by DTSC for purposes of Health and Safety Code section 25187. Nothing in this Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a result of the Proponent's past, current, or future operations. The Proponent shall not be deemed to be an operator of the Site under State or federal law solely by reason of conducting the PEA subject to DTSC oversight in compliance with this Agreement.

3.22 Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by the Proponent or its agents in carrying out the activities pursuant to this Agreement.

3.23 Third-Party Actions. In the event that the Proponent is or becomes a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Proponent shall notify DTSC in writing within 10 days after service of the complaint in the third-party action. The Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

3.24 Reservation of Rights. DTSC and the Proponent reserve the following rights.

(a) DTSC reserves its right to pursue cost recovery under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, Health and Safety Code section 25360 et seq., or any other applicable provision of the law.

(b) Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law or equity to protect public health and safety or the environment and recovering the costs thereof.

(c) Nothing in this Agreement shall constitute or be construed as a waiver of the Proponent's rights, (including any covenant not to sue or release) with respect to any claim, cause of action, or demand in law or equity that the Proponent may have against any "person", as defined in section 101(21) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or Health and Safety Code section 25319, that is not a signatory to this Agreement.

(d) Nothing in this Agreement is intended or shall be construed to limit the rights of any of the Parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site.

(e) By entering into this Agreement, the Proponent does not admit to any fact, fault or liability under any statute or regulation.

3.25 Compliance with Applicable Laws. Nothing in this Agreement shall relieve the Proponent from complying with all applicable federal, State and local laws, regulations and requirements. The Proponent shall carry out this Agreement in compliance with all applicable requirements, including, but not limited to, requirements to obtain permits and to assure worker safety.

3.26 California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

3.27 Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.

3.28 Parties Bound. This Agreement applies to and is binding upon the Proponent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, administrators, successors and assignees, including but not limited to individuals, partners and subsidiary, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. No change in the ownership or corporate or business status of any signatory, or of the facility or Site shall alter any signatory's responsibilities under this Agreement.

3.29 Effective Date. The effective date of this Agreement is the date when this Agreement is fully executed.

3.30 Representative Authority. Each undersigned representative of the Parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Parties to this Agreement.

3.31 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

_____ Date: _____
[UNIT CHIEF]
[SCHOOLS UNIT – OFFICE]
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control

_____ Date: _____
[PROPONENT NAME, TITLE]
SCHOOL DISTRICT

EXHIBITS

A - SITE LOCATION MAP

B - SITE DIAGRAM

C - SCOPE OF WORK

D - PROJECT SCHEDULE

E - GUIDELINES FOR SUBMITTING DOCUMENTS IN ADOBE PORTABLE
DOCUMENT FORMAT

F - COST ESTIMATE

EXHIBIT C

SCOPE OF WORK

The following Tasks will be completed as part of this Agreement. If circumstances warrant, the Proponent, with DTSC's prior written concurrence, may streamline certain tasks.

TASK 1. Submittal of Existing Data

The Proponent shall submit to DTSC, if relevant and available, all background information, sample analysis results, environmental assessment reports, and any other information pertinent to the hazardous materials management and/or release, characterization and cleanup of the Site not previously submitted as part of the Phase I Environmental Assessment (Phase I) and/or Phase I Addendum reviewed by DTSC. DTSC will review the information, and, in coordination with the Proponent, identify areas and compounds of concern, and determine the additional activities, if any, required to complete the investigation/remediation of the Site.

TASK 2. Scoping Meeting

DTSC's project manager will schedule a scoping meeting with the Proponent and the project coordinator within 15 days of Agreement execution. During the scoping meeting, the project coordinator shall present the proposed scope of work, including a summary of the historical and current onsite land uses, the uses of the adjacent properties, potential areas and compounds of concern, proposed sampling strategy and analytical methods, and timeframe for completion of each task. DTSC will provide recommendations, as needed, and request workplans or reports, as appropriate.

TASK 3. Preliminary Endangerment Assessment (PEA)

The Proponent shall conduct a PEA to determine whether a release or threatened release of hazardous materials exists at the Site, or whether naturally occurring hazardous materials are present, which pose a threat to children's health, children's learning abilities, public health or the environment. The PEA shall be conducted in accordance with the DTSC guidance manual for evaluating hazardous substance release sites, titled: "Preliminary Endangerment Assessment Guidance Manual," State of California, Environmental Protection Agency, Department of Toxic Substances Control (January 1994; revised June 1999).

Documents or activities which will be required as part of the PEA include:

- 3.1 PEA Workplan: The PEA Workplan shall include a sampling plan designed to determine the presence of contamination or naturally occurring hazardous materials at the Site, and, if present, the type and extent of the materials or contamination; a Health and Safety (HAS) Plan addressing health and safety issues and safe work practices (as described in Task 4); a Quality Assurance/Quality Control (QA/QC) Plan to produce data of known quality (as described in Task 5); and implementation schedule. DTSC will review and comment or approve the PEA Work Plan.
- 3.2 PEA Fieldwork Notice: The Proponent shall provide a PEA Fieldwork Notice to residents in the immediate area of the proposed school Site, utilizing a format developed by DTSC, prior to the commencement of PEA fieldwork pursuant to Education Code section 17210.1(b).
- 3.3 Implementation of Approved PEA Workplan: The Proponent shall begin implementation of the approved PEA Workplan in accordance with the approved implementation schedule. DTSC shall provide oversight and approval of PEA Workplan implementation, as appropriate.
- 3.4 Draft PEA Report: The draft PEA Report shall document whether a release has occurred or a threatened release exists, or whether naturally occurring hazardous materials are present, the threat the Site poses to children's health, children's learning abilities, public health and the environment, and whether further action is necessary. DTSC will review the draft PEA Report and provide written comments to the Proponent. The Proponent shall revise the PEA Report accordingly.
- 3.5 PEA Public Review Requirements: The Proponent shall comply with the public review requirements set forth in Education Code section 17213.1(a)(6) for the draft PEA Report. Comments pertaining to the draft PEA Report shall be submitted to DTSC within 14 days of the close of the required public review period and public hearing. The Proponent shall incorporate public comments received, as applicable, and finalize the PEA Report.
- 3.6 Final PEA Report: After consideration of all comments received on the PEA Report, DTSC will approve or disapprove the final PEA Report.

TASK 4. Health and Safety (HAS) Plan

The Proponent shall submit a Site-specific HAS Plan in accordance with California Code of Regulations, title 8, section 5192 and DTSC guidance, which covers all measures, including contingency plans, which shall be taken during field activities to protect the health and safety of the workers at the Site and the general public from exposure to hazardous waste, substances or materials. The HAS Plan should describe the specific personnel, procedures and equipment to be utilized.

TASK 5. Quality Assurance/Quality Control (QA/QC) Plan

All sampling and analysis conducted by the Proponent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by the Proponent and approved by DTSC. The QA/QC Plan shall describe:

- (a) The procedures for the collection, identification, preservation and transport of samples;
- (b) The calibration and maintenance of instruments;
- (c) The processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
- (d) How the data obtained pursuant to this Agreement will be managed and preserved in accordance with Paragraph 3.16, Preservation of Documentation, of this Agreement.

EXHIBIT D

PROJECT SCHEDULE

TASK	TIMELINE
Proponent to submit advance payment	Within 10 days of Agreement execution
Proponent to submit existing data and reports	Within 15 days of Agreement execution
A scoping meeting to plan and coordinate project activities	Within 15 days of Agreement execution
Proponent to submit PEA Workplan	Within 30 days of Agreement execution
DTSC to review and comment or approve PEA Workplan	Within 30 days of receipt of PEA Workplan
Proponent to mail out PEA Fieldwork Notice to residents nearby the Site	7-14 days prior to commencement of PEA fieldwork
Proponent to implement PEA Workplan	As outlined in PEA Workplan
Proponent to submit PEA Report	As outlined in PEA Workplan
Proponent to hold a public review period and a public hearing for PEA report	In compliance with California Education Code section 17213.1(a)(6)
DTSC to review, comment and approve or disapprove PEA Report	In compliance with California Education Code section 17213.1(a)(6)