

## DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director

455 Golden Gate Avenue, 10<sup>th</sup> Floor

San Francisco, CA 94102

Tel: (415) 703-5050 Fax: (415) 703-5058

MAILING ADDRESS:

P. O. Box 420603

San Francisco, CA 94142-0603



March 9, 2010

El Monte Union High School District  
3537 Johnson Avenue  
El Monte, California 91731

Attn.: Nick J. Salerno, Superintendent  
Anthony Michael Ortega, Assistant Superintendent of Business

RE: Application for Approval of Labor Compliance Program  
LCP ID No. 2003.00305

Dear Superintendent Salerno and Assistant Superintendent Ortega:

The Department has completed its review of El Monte Union High School District's labor compliance program (LCP) application. We are concerned that the application indicates that the District intends to contract independently with a third party for labor compliance monitoring and enforcement rather than undertaking those responsibilities on its own. The experience of district personnel listed on the application appears limited to overseeing contracts for LCP services rather than conducting any monitoring or enforcement activities of their own which are required by an approved LCP.

A school district may contract with an approved third party LCP in order to comply with any state statute that currently requires the district to have or contract for a labor compliance program as a condition for using state bond funding or design-build contracting authority. It is not necessary to be separately approved as a labor compliance program under section 16425 if you are using this contracting-out option.

If the district is seeking approval in order to operate its own LCP and avoid paying a fee to this Department once the provisions of Stats. 2009, Chapter 7 [SBX2-9] go into effect, you should be aware that relevant statutes all state that "This fee shall not be waived for an awarding body that contracts with a third party to initiate and enforce labor compliance programs on the awarding body's projects." (Education Code §81704(d) (3) [design-build contracting by community college districts]; Labor Code §1771.55(c) [all projects requiring fee]; Labor Code §1771.75(a) [projects funded by Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004]; and others)) Consequently, the LCP structure contemplated in your application would not enable your district to avoid paying the fee on projects that become subject to the new fee-based monitoring and enforcement system that is being established pursuant to SBX2-9.

RE: Application for Approval of Labor Compliance Program  
LCP ID No. 2003.00305

March 9, 2010

Page: 2

The Department is currently in the process of adopting regulations to implement SBX2-9. These proposals and related explanatory documents are posted on the Department's website at <http://www.dir.ca.gov/LaborComplianceRegulations/LCP-SBX2-9.htm>. We anticipate that the proposals will be finalized and the new system will go into effect within the next several months.

If you have further information concerning the proposed operation of the district's LCP, please forward that information to us so we may review your application for compliance with the statutory and regulatory requirements. If you have any questions, please contact Victor Osorio, Program Analyst, at 415-703-5054.

Sincerely,



*Wance S. Steffen, Special Assistant  
to the Director of Industrial Relations*

cc: Regional Manager, Division of Labor Standards Enforcement