

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 401

FINAL

REGULATORY IMPLEMENTING ORDER

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)

401 Major Capital Improvement Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend Title 14 of the Delaware Administrative Code by amending 14 **DE Admin. Code** 401 Major Capital Improvement Programs.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on August 1, 2014, in the form hereto attached as Exhibit "A". Comments were received from the Director of Administrative Services of the Woodbridge School District related to 1.) the definition of Facility, 2.) a clearly defined deadline for consideration of Certificate of Necessity, 3.) provisions related to Certificate of Occupancy and 4.) clarification that the local school board is to consider and act on change orders. The Department considered the comments and made changes accordingly.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 401 Major Capital Improvement Programs in order to eliminate the Voluntary School Assessment Section from this regulation and establish a separate regulation for it. Minor changes were made to the remaining provisions of the regulation to correct grammatical errors, eliminate duplicate provisions, and provide clarity.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 401 Major Capital Improvement Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 401 Major Capital Improvement Programs attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 401 Major Capital Improvement Programs hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 401 Major Capital Improvement Programs amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 401 Major Capital Improvement Programs in the Administrative Code of Regulations for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 18, 2014. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of September 2014.

Department of Education

Mark T. Murphy, Secretary of Education

Approved this 18th day of September 2014

401 Major Capital Improvement Programs

1.0 Purpose and Definitions

- 1.1 Major Capital Improvement Programs are projects having a cost of ~~\$500,000~~ \$750,000 or more.
- 1.1.1 The Secretary of Education ~~shall~~ may annually review the current cost per square foot for construction and make ~~needed~~ necessary adjustments as required.
- 1.1.2 Projects may be considered together to form a single Major ~~Capital~~ Capital Improvement Project. However, the ~~consolidated~~ consolidation of major capital projects ~~should be a consolidation of projects at for one location.~~
- 1.1.3 Major Capital Improvement projects shall use standard bid and contract documents as developed by the Office of Management and Budget, Division of Facilities Management.
- 1.1.3.1 Districts may enhance the standard bid and contract documents with additional contractual or project specific requirements as long as the enhancements do not diminish and are not in conflict with the provisions of the standard documents.
- 1.1.3.2 The Department of Education, in consultation with the Office of Management and Budget, Division of Facilities Management shall approve any modifications or changes to the provisions of the standard bid and contract documents before a school district may use or enhance the modified documents.

1.2 Definitions

“Certificate of Necessity”: A document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project. The Certificate of Necessity authorizes the school district to: ~~1.) Hold a referendum for the Major eCapital construction Improvement pProgram identified;~~ 2.) A and authorizes the school district to sell bonds to pay the local portion of the capital program in the event of a successful referendum; ~~and 3.) Levy and collect local taxes to service the debt on the capital bonds sold.~~

“Certificate of Occupancy”: A document issued by a local code enforcement official/office attesting that a ~~[Facility Facility]~~ meets building codes and is fit for human occupancy.

“Change Orders”: Documents ~~which~~ that change the construction contract and are negotiated between the owner and contractor in order to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.

“Design Development Plans”: Design documents that denote mechanical functions, placement of windows and doors, pedestrian traffic circulation both interior and exterior, utilities, service areas and structure. Design development documents are at a 40% to 60% completion stage.

“Educational Specifications”: A document which explains how the educational spaces relate to the educational programs as well as the requirements of an educational ~~[Facility Facility]~~ to house and implement the educational philosophy and institutional program.

~~**“Facility”**: Long lived capital assets to include but not limited to school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office buildings and all other buildings and capital assets associated with the operation and management of a school district and/or school system.~~

[“Facility”: Long lived capital assets to include but not limited to school buildings; athletic buildings; athletic fields and appurtenances; playgrounds; maintenance, operations and storage structures; office buildings and all other buildings and capital assets associated with the operation and management of a school district or school system.]

“Final Construction Plans”: Plans that show the complete ~~[Facility Facility]~~ design including mechanical, electrical, water, sewer, site plans, storm water conveyance and structural systems, complete bid documents and specifications.

“Schematic Design Plans”: Documents that present a proposed ~~[Facility Facility]~~ in its earliest stages denoting the approximate size and relationship of areas to each other. Detailed utilities or mechanical functions are not typically shown at this stage.

“Signed and Sealed Plans”: Plans that have the architect's and/or engineer's professional seal and signature affixed.

13 DE Reg. 1300 (04/01/10)

42.0 Certificates of Necessity

- 2.1 Districts shall submit local school board approved projects to the Department of Education by August 31 [of each fiscal year] in order to be considered for a Certificate of Necessity [and capital funding in the following fiscal year].
- 4.1 ~~The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.~~
- 42.2 ~~Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum and shall be issued only at the written request of the local school district. The Certificate of Necessity shall be quoted in the advertisement for the referendum.~~
- 42.3 ~~Projects proposing the construction of a new [Facility Facility] or for an addition to an existing [Facility Facility] shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new [Facility Facility] or for an addition to an existing [Facility Facility] shall not be transferred between projects or to projects in a separate Certificate of Necessity.~~
- 42.4 ~~Additions to existing [Facilities Facilities] that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when such a multiple project Certificate is issued, it shall identify each [Facility Facility] in the program and describe the work to be done at that [Facility Facility] including the dollar amount for that work. Funds may be transferred between projects issued under the same Certificate of Necessity in accordance with 8.0 below.~~
- 42.5 ~~The Office of Education Facilities Planning, Construction and Operations~~ The Department of Education will complete the final Certificates of Necessity and forward the Certificate of Necessity to the local school district superintendent for his/her signature.
- 42.6 A copy of the final Certificate of Necessity will be returned to the district within ten (10) working days following final approval by the Department of Education.

13 DE Reg. 1300 (04/01/10)

23.0 Procedures for Approval of a Site for School Construction

- 23.1 Local school districts shall notify the Department of Education by letter to schedule a site review when they propose to purchase a site for school purposes; or when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation.
- 23.2 The local school board shall forward all prospective sites to the Office of State Planning Coordination for consideration and comment through Planning Land use Service (PLUS) review process.
- 23.3 The acquisition of lands for school construction shall comply with 29 Del.C. §7525.

13 DE Reg. 1300 (04/01/10)

34.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings

- 3.1 ~~Educational Specifications are defined as a document which presents to an architect what is required of an educational Facility to house and implement the educational philosophy and institutional program in an effective way.~~
- 3.1.14.1 ~~Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. The Department may provide comments on Educational Specifications at its discretion.~~
- 34.2 ~~All Schematic Design Plans, Design Development Plans and Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Schematic Design Plans each, including a signed and sealed Final Construction Drawings and specifications.~~
- 3.3 ~~All Design Development Plans shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Design Development Plans.~~
- 3.4 ~~All Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one set of signed and sealed Final Construction Drawings and specifications.~~
- 3.54.3 The local school district must involve all applicable State, Local and Municipal regulatory agencies in reviewing Final Construction Drawings prior to the start of construction. Copies of all applicable State, Local and Municipal agency approvals shall be maintained in the local school district construction files. Required State agency approvals include but may not be limited to:
- 3.5.44.3.1 ~~Fire Marshal to review the plans for fire safety.~~
- 3.5.24.3.2 ~~Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.~~

~~3.5.34.3.3~~ Division of Facilities Management, ~~Chief of Engineering and Operations~~ for compliance with building codes.

~~3.5.44.3.4~~ Delaware Department of Transportation for review of the Site Plan showing entrances and exits as well as required transportation infrastructure improvements.

~~3.5.54.3.5~~ Architectural Accessibility Board to ensure that the build[ing] environment is safely accessible to, and usable by all persons.

~~3.5.64.3.6~~ Department of Natural Resources and Environmental Control for wastewater, storm water management and erosion control.

~~3.64.4~~ Exemptions: Major Capitol Projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission to the Department of Education.

13 DE Reg. 1300 (04/01/10)

5.0 Notification, Start of Construction, and Completion of Construction, and Certificate of Occupancy

5.1 The local school district shall submit to the Department of Education and the ~~Director~~, Office of Management and Budget a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The local school district shall notify the Department of Education, ~~the Director~~, Office of Management and Budget and ~~the~~ Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the **[Facility Facility]** as complete. Completion means that the following have occurred: punch-list items are resolved, release of liens has been received and funds held in retainage have been released.

5.3 The local school district shall record capital assets (buildings) in accordance with the State of Delaware ~~Capital Asset Budget and Accounting~~ Manual which requires capital assets (buildings) to be recorded when the asset is ready for its intended use. As an example, the capital asset (building) should be recorded when it has received an occupancy certificate or the building is ready for its intended use.

5.4 The local school district shall notify the Department of Education, ~~the~~ State Auditor, and ~~the Director~~, Office of Management and Budget upon approval of **[the Certificate of]** Occupancy.

5.5 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation, addition to an existing **[Facility Facility]**, new school or replacement school.

13 DE Reg. 1300 (04/01/10)

6.0 Purchase Orders

All purchase orders for any Major Capitol Improvement Project shall be approved by both the Department of Education and ~~the Assistant Chief of Fiscal & Policy Analysis for Capital Projects~~ Office of Management and Budget prior to submission to the Division of Accounting.

13 DE Reg. 1300 (04/01/10)

7.0 Change Orders

~~7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.~~

~~7.21~~ All Change Orders must be agreed upon by the architect, ~~the~~ local school district **[board district]** and the contractor, and shall be forwarded to the Department of Education.

~~7.21.1~~ Submission of a Change Order must include the following documents: ~~Completed~~ A completed purchase order as applicable **[and in accordance with the local school board approved change order approval and authorization process and procedure]**; local school board of education minutes identifying and approving the changes; completed **[and in accordance with the local school board approved change order approval and authorization process and procedure]** AIA document G701, and correspondence which gives a breakdown in materials mark-up and other expenses.

13 DE Reg. 1300 (04/01/10)

8.0 Percentage of Funds Transferable Between Projects within a Certificate of Necessity

8.1 School districts may request ~~The~~ transfer of funds between projects during the bidding and construction process ~~shall be only by written request by the district in writing~~ to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:

- 8.1.1 No project may have any portion of its funding moved to another project without the approval of the Secretary of the Department of Education, ~~the~~ Director of the Office of Management and Budget and ~~the~~ Controller General.
- 8.1.2 No project may have any funding added to its initial funding without the approval of the Secretary of the Department of Education, ~~the~~ Director of the Office of Management and Budget and ~~the~~ Controller General.
- 8.1.3 No transfer of funds shall be executed between projects authorized through and by separate Certificates of Necessity.

13 DE Reg. 1300 (04/01/10)

9.0 Educational Technology

All school facilities being constructed or renovated under the Major Capital Improvement Program shall include wiring for technology that meets the current Department of Technology and Information Wiring Standards and is appropriate to the grade level and educational requirements of the Facility type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds when no other technology funds are available.

13 DE Reg. 1300 (04/01/10)

10.0 Playground Construction:

Effective July 1, 2010, all playgrounds constructed or renovated pursuant to a major capital improvement project shall comply with the most current editions of: ~~the~~ American Society of Testing Materials (ASTM) Designation F-1487 and ~~the~~ Consumer Products Safety Commission (CPSC) Publication Number 325.

13 DE Reg. 1300 (04/01/10)

11.0 Administration of the New School

~~[The principle principal An]~~ administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary and benefits may be paid from Major Capital Improvement Programs.

12.0 Voluntary School Assessment

~~12.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del.C. §103(c) relating to land use planning and education, shall be applied exclusively to offsetting the required local share of major capital construction costs.~~

~~12.1.1 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.~~

2 DE Reg. 1380 (2/1/99)

4 DE Reg. 1252 (2/1/01)

4 De Reg. 1949 (6/1/01)

6 DE Reg. 1669 (6/1/03)

8 DE Reg. 1295 (3/1/05)

13 DE Reg. 1300 (04/01/10)

18 DE Reg. 300 (10/01/14) (Final)