

**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**

**401 Major Capital Improvement Programs**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 **DE Admin. Code** 401 Major Capital Improvement Programs to reflect current practice and for clarifications. The amendments include, but are not limited to: 1) definitions, 2) changes to align to the Planning Land Use Service (PLUS) review process, 3) clarification of processes the local school district must take in regard to interaction with other State, Local and Municipal regulatory agencies, 4) recording of capital assets, 5) clarification on the Certificate of Necessity process and transfer of funds between projects within a Certificate of Necessity, and 6) addition of playground construction requirements.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 5, 2010, in the form hereto attached as *Exhibit "A"*. The Department did not receive comments on the proposed amendments.

**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 reflect current practice and for clarifications.

**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 March 18, 2010. 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 18<sup>th</sup> day of March 2010.

**DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 18<sup>th</sup> day of March 2010

## 401 Major Capital Improvement Programs

### 1.0 **Purpose and Definitions**

- 1.01 Major Capital Improvement Programs are projects having a cost of \$500,000 or more.
- 1.1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.
- 1.1.2 Projects may be considered together to form a single Major Capital Improvement Project. However, the consolidated major capital project should be a consolidation of projects at 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 capital construction program identified; 2.) 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 meets building codes and is fit for human occupancy.

**“Change Orders”**: Documents which 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 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.

**“Final Construction Plans”**: Plans that show the complete 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 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.

## 2.0 Procedures for Approval of a Site for School Construction

- 2.1 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. ~~All prospective sites shall be reviewed at one time.~~
- 2.2 ~~The Department of Education will~~ local school board shall forward all prospective sites to the Office of State Planning Coordination for ~~the preapplication consideration and comment through Planning Land use Service (PLUS) review process. The Department of Education will review the responses of the other agencies in order to rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.~~
- 2.3 The acquisition of lands for school construction shall comply with 29 Del.C. §7525.

## 3.0 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.
  - 3.1.1 Educational Specifications shall be approved by the local school board and forwarded to the Department of Education for informational purposes. ~~The Department will require a minimum of ten (10) working days for completion of the review and approval process may provide comments on Educational Specifications at its discretion.~~
- 3.2 All Schematic Design Plans shall be approved by the local school board and the Department of Education. ~~Schematic Design Plans should be sent to the county or city planning office for information purposes only.~~ The Department of Education requires one set of Schematic Design Plans.
- 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.
- 3.5 The local school district must involve ~~the following groups~~ all applicable State, Local and Municipal regulatory agencies in reviewing Final Construction Drawings prior to the ~~final approval~~ start of construction. Copies of all ~~local and state~~ applicable State, Local and Municipal agency approvals shall be ~~submitted to the Department of Education for final approval.~~ maintained in the local school district construction files. Required State agency approvals include but may not be limited to:
  - 3.5.1 Fire Marshal to review the plans for fire safety.
  - 3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.
  - 3.5.3 Division of Facilities Management, Chief of Engineering and Operations for compliance with building codes.
  - 3.5.4 ~~Division of Highways~~ Delaware Department of Transportation for review of the Site Plan showing entrances and exits as well as required transportation infrastructure improvements.
  - 3.5.5 Architectural Accessibility Board ~~for access for persons with disabilities.~~
  - 3.5.6 Department of Natural Resources and Environmental Control for wastewater, storm water management and erosion control.
- 3.6 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.

## 4.0 Certificates of Necessity

- 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.
- 4.2 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.
- 4.3 Projects proposing the construction of a new building Facility or for an addition to an existing building Facility shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new building Facility or for an addition to an existing building Facility shall not be transferred between projects or to projects in a separate Certificate of Necessity.
- 4.4 Additions to existing buildings Facilities that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when ~~the~~ such multiple project Certificate is issued, it shall identify each building Facility in the program and describe the work to be done ~~in~~ at that building Facility including the dollar amount for that work. Funds may be transferred between projects issued under ~~this~~ the same Certificate of Necessity in accordance with 8.0 below.
- 4.5 The Office of ~~School Plant Planning~~ Education Facilities Planning, Construction and Operations will complete the final Certificates of Necessity and forward the Certificate of Necessity to the local school district superintendent for his/her signature.
- 4.6 A copy of the final Certificate of Necessity will be returned to the district within ten working days following final approval by the Department of Education.

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

- 5.1 The local school district shall submit to the Department of Education and the ~~State Budget Director~~ 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 ~~State Budget 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 building Facility as complete, 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 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.
- 5.34 The local school district shall notify the Department of Education, the State Auditor, and the ~~State Budget Director, Office of Management and Budget~~ upon approval of the Certificate of Occupancy.
- 5.45 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 ~~f~~Facility, new school or replacement school.

## 6.0 Purchase Orders

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

## 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, ~~faults or~~ address unforeseen circumstances which arise during the construction process, and improve upon designs based on project progress.
- 7.2 All Change Orders must be agreed upon by the architect, the local school district and the contractor and shall be forwarded to the Department of Education.

- 7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; local school board of education minutes identifying and approving the changes; completed AIA document G701, and correspondence which gives a breakdown in materials mark up and other expenses.

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

- 8.1 The transfer of funds between projects during the bidding and construction process shall ~~have the be~~ only by written approval of request by the district to the Department of Education. Acceptability of the transfer of funds will meet the following criteria:
- 8.1.1 No project may have ~~more than 10%~~ 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 ~~more than 10%~~ 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.

## **9.0 Educational Technology**

All school ~~buildings~~ facilities being constructed or renovated under the Major Capital Improvement Program shall include, wiring for technology that meets the ~~state standards~~ current Department of Technology and Information Wiring Standards and is appropriate to the ~~building~~ 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.

## **~~10.0 Air Conditioning~~**

~~All school buildings with Certificates of Necessity for new school construction and major renovation and rehabilitation shall require the inclusion of air conditioning unless otherwise waived by the Secretary of Education.~~

## **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.

## **11.0 Administration of the New School**

The principle 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)**