

DEPARTMENT OF EDUCATION
Statutory Authority: 14 Delaware Code, Section 122(e) (14 Del.C. §122(e))
14 DE Admin. Code 401

REGULATORY IMPLEMENTING ORDER

401 Major Capitol Improvement Program

I. Summary Of The Evidence And Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 401 Major Capitol Improvement Program by adding the phrase “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” to line two of 2.1, and removing the phrase “It is preferable that at least four (4) sites be considered” at the end of 2.1. The phrase “and the State Budget Office” is also being added to 2.2 in line two along with the updated title of the Office of State Planning. These amendments reflect the changes required by Senate Bill 305 which amended 14 **Del.C.** §1714. The regulation is exempt from the Administrative Procedures Act 29 **Del.C.** 100113(b)(5) because the amendments are required by changes in the **Delaware Code**. The Regulation is being published as a final regulation.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 401 in order to bring the Regulation in line with 14 **Del.C.** §1714.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 401. Therefore, pursuant to 14 **Del.C.** §1714, 14 **DE Admin. Code** 401 attached hereto as *Exhibit “B”* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 401 is hereby amended and 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 amended hereby shall be in the form attached hereto as *Exhibit “B”*, and said regulation shall be cited as 14 **DE Admin. Code** 401 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 February 15, 2005. 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 15 day of February 2005.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

401 Major Capital Improvement Programs

1.0 Major Capital Improvement Programs are projects having a cost of \$500,000, or more.

1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.

1.2 Projects may be considered together to form a single Major Capitol Improvement Project. However, the consolidated major capital project should be a consolidation of projects at one location.

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. ~~It is preferable to have more than one site to be considered in the case of purchase.~~

2.2 The Department of Education will forward all prospective sites to the ~~Office of State Planning~~ Office of State Planning Coordination and the State Budget Office for the pre-application 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.

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 the Department of Education. The Department will require a minimum of ten (10) working days for completion of the review and approval process.

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 Final Construction Drawings.

3.5 The local school district must involve the following groups in reviewing Final Construction Drawings prior to the final approval. Copies of all local and state agency approvals shall be submitted to the Department of Education for final approval.

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 & Operations for compliance with building codes.

3.5.4 Division of Highways for review of the Site Plan showing entrances and exits.

3.5.5 Architectural Accessibility Board for access for persons with disabilities.

3.5.6 Department of Natural Resources and Environmental Control for wastewater 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 or for an addition to an existing building shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new building or for an addition to an existing building shall not be transferred between projects or to projects in a separate Certificate of Necessity.

4.4 Additions to existing buildings that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when the Certificate is issued, it shall identify each building in the program and describe the work to be done in that building including the dollar amount for that work. Funds may be transferred between projects issued under this Certificate of Necessity.

4.5 The Office of School Plant Planning will complete the final Certificates of Necessity and forward the Certificate of Necessity to the 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 school district shall submit to the Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The school district shall notify the Department of Education, the State Budget Director 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 as complete.

5.3 The school district shall notify the Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

5.4 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, new school or replacement school.

6.0 Purchase Orders.

All purchase orders for any Major Capital Improvement Project shall be approved by both the Department of Education and the Director of Capital Budget and Special 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 of unforeseen circumstances which arise during the construction process.

7.2 All Change Orders must be agreed upon by the architect, the 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 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 Transferrable Between Projects within a Certificate of Necessity

8.1 The transfer of funds between projects during the bidding and construction process shall have the written approval of 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% of its funding moved to another project.

8.1.2 No project may have more than 10% added to its initial funding.

9.0 Educational Technology.

All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, wiring for technology that meets the state standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

10.0 Air Conditioning.

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

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/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)