



Education Law Center

Standing Up for Public School Children

By Electronic Transmission

December 17, 2010

Leonard Colner
Office of School Facilities
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Re: DOE's Proposed Regulations Regarding SDA District
Management of School Facilities Projects
PRN 2010-248

Dear Mr. Colner:

Education Law Center ("ELC") is the legal representative for the class of school children in the SDA school districts and, as such, has the responsibility to ensure the effective and timely delivery of school facilities projects in these districts. On behalf of these school children, we submit these comments to your agency's proposed new rules on "Management of a School Facilities Project by a Schools Development Authority (SDA) District," N.J.A.C. 6A:26-19.

As you know, the DOE has been obligated by Section 13(e) of Educational Facilities Construction and Financing Act ("EFCFA") to adopt "rules and regulations by which the commissioner shall determine whether an SDA district is eligible to be considered by the development authority to manage a school facilities project or projects." N.J.S.A. 18A:7G-13(e)(1). This section of the EFCFA was added by amendment effective January 13, 2008 in order to foster the active participation of local districts and stakeholders in the school facilities program.

The factors established by EFCFA to determine a district's eligibility to be considered for management of its school facilities projects are: the district's fiscal integrity and operations; the district's performance in each of the five key components of school district effectiveness under the New Jersey Quality Single Accountability Continuum (NJQSAC); and other relevant factors. Id.

For several reasons, the DOE's proposed regulations are inconsistent with the specific directives and the intent of the Legislature in amending the EFCFA to authorize SDA districts to directly undertake management of school facilities. First, while the proposed regulations require SDA districts to attain "high performing" designation under QSAC (scoring 80 or above in all five key components of school district effectiveness), the statute clearly does not mandate imposition of a fixed, absolute level of performance in all five QSAC areas in order to qualify for project management. Indeed, the statute only requires DOE to "consider" the district's performance under the various QSAC components in determining the districts' eligibility for project management.

Moreover, the practical effect of this absolute mandate is to unfairly and unreasonably preclude districts that score below 80 in the Instruction and Program area of QSAC. This issue concerns student and school academic performance, and is unrelated to the ability to manage school facilities projects. For example, according to the most recent QSAC reports issued by the DOE, there are eight districts--Perth Amboy, East Orange, Orange, Bridgeton, Millville, Long Branch, Neptune and Salem--that are considered high performing in Operations, Fiscal Management, Personnel and Governance, but are still ineligible to manage school facility projects because they scored below 80 in Instruction and Program. Because the QSAC questions related to Instruction and Program have no connection to the capacity of a district to manage a project and also because of the unique difficulty these districts face in raising student achievement levels given the extremely disadvantaged population they serve, this requirement should be eliminated.

Second, under the proposed regulations, even if a district achieves the overall designation of high performing under QSAC, it will fail to qualify if it does not also receive the maximum number of points on specific QSAC subsections and questions. Once again, the statute directs the DOE to "consider" QSAC performance in making a determination regarding individual district eligibility, not to fix levels of performance as an absolute bar to qualification. In this instance, the application of the DOE proposal leads to patently absurd results. For example, Union City and Phillipsburg both scored over 80 in all five QSAC performance areas and received the maximum number of points on all of the required subsections except one. Each district scored only two points below the maximum in section B of Fiscal Management. Under the proposed regulations, those two points disqualify them from even being considered for

eligibility to manage school facility projects. DOE should analyze the totality of a district's record and scores, rather than disqualify them based on a very small number of points in one or two questions or subsections.

Third, the proposed regulations also fail to provide an appeal mechanism for determinations of ineligibility, nor due process protections for rescinding eligibility. Given the importance of the issue and a district's direct interest in managing its own school facility projects for the benefit of the students it serves, it is critical that they have the ability to challenge DOE eligibility determinations.

Fourth, Section (e)(3) of the statute requires that districts that are deemed to lack the capacity to manage school facility projects be provided with training and technical assistance. However, the proposed regulations have no provision for any type of assistance to address any concerns regarding district qualification that the DOE may have. Any district that fails to qualify in any QSAC area should be provided with direct and immediate technical assistance from DOE to identify areas of weakness specifically related to school facility management and to develop strategies to meet the eligibility criteria as quickly as possible.

Finally, the proposed regulations contain no timeline for the DOE to make determinations of eligibility and subsequent appeals of those decisions. Such timelines are essential to ensure that applications are processed and decided in an expeditious manner. Because information on QSAC scores is easily and readily available to the DOE, it should take no more than 14 days to make an initial determination of eligibility.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, written in a professional style.

David G. Sciarra, Esq.

cc: Melissa T. Dutton, DAG
Stephen R. Buckingham, Esq.