

## **CHAPTER 26 EDUCATIONAL FACILITIES**

### **SUBCHAPTER 18 SECTION 15 GRANTS FOR REGULAR OPERATING DISTRICTS, INCLUDING COUNTY VOCATIONAL SCHOOL DISTRICTS**

#### **6A:26-18.1 Purpose**

These rules are adopted by the Commissioner of the Department of Education to implement the process for grant funding contained in amendments to the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A.18A:7G-1 et seq) enacted by P.L. 2008, c.39 (chapter 39). Chapter 39 authorizes additional funding for “Section 15 grants” to school facilities projects in regular operating districts (RODs), establishes a new method of allocation, and specifies priority categories for projects to receive funding. Specifically, Chapter 39 provides for the issuance of additional bonds in the amounts of \$1 billion for the State share of costs for school facilities projects in the RODs, \$50 million of which is allocated for the State share of costs for county vocational school district school facilities projects. Chapter 39 also changes the allocation of grant funding to the RODs, other than the county vocational school districts, for these “Section 15 grants” from a “first come first served” system to an annual allocation of grant funding based on a priority process established pursuant to paragraph (4) of subsection m. of section 5 of P.L. 2000, c.72 (N.J.S.A.18A:76-5). This priority process requires the Commissioner to establish priority project categories which shall include, but not be limited to: health and safety, overcrowding in the elementary, middle and high school grade levels, spaces necessary to provide in-district programs and services for current disabled students who are being served in out-of-district placements or in-district

programs and services for the projected disabled student population, and full-day kindergarten facilities in school districts required to provide full day preschool pursuant to section 12 of P.L. 2007, c. 260 (N.J.S.A.18A:7F-54).

Chapter 39 provides that priority will be given in the allocation of the additional \$50 million in funding to school facilities projects of county vocational school districts to those districts that did not receive State support for their school facilities projects under the original \$100 million of bonds authorized under the Act, provided that the county vocational school district demonstrates to the Commissioner the need for the school facilities project. If any funds from the additional \$50 million remain after allocation to such projects, the remaining funds shall be prioritized with the highest priority going to those county vocational school districts which received the least funding under the original \$100 million of bonds authorized under the Act to those which received the most, subject to the availability of funds. These rules are adopted by the Commissioner to implement the process of grant funding for school facilities projects in the RODs including the county vocational school districts (which are a subcategory of RODs). These rules do not apply to school facilities projects funded by State debt service aid.

#### **6A:26-18.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise or except as defined in the Act or in Chapter 39. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires:

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-1 et seq. as amended.

“Chapter 39” means the amendments to the Act contained in P.L. 2008, c.39.

“Commissioner” means the Commissioner of the Department or his or her designee.

“County vocational school district” means a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes.

“Department” means the New Jersey Department of Education.

“District” means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a school district under full State intervention pursuant to P.L.1987, c.399 (C.18A:7A-34 et al.).

“Excess costs” means the additional costs, if any, which shall be borne by the district, of a school facilities project which result from design factors that are not required to meet the facilities efficiency standards and not approved pursuant to N.J.S.A. 18A:7G-5(g) or are not authorized as community design features included in final eligible costs pursuant to N.J.S.A.18A:7G-6. Excess costs are to be distinguished from the additional costs arising out of design factors that are required to meet the facilities efficiency standards and that are either approved or authorized pursuant to N.J.S.A. 18A:7G-5 or 6.

“Final eligible costs” means for a ROD, final eligible costs as determined pursuant to N.J.S.A. 18A:7G-5(H)(1) and N.J.A.C. 6A:26-3.6.

“Final grant amount” means, with respect to a ROD, other than a county vocational school district, the final amount of a section 15 grant for a school facilities project after the Department has allocated the entire amount of section 15 grant funds available under the Act for a particular grant cycle, or in the case of a county vocational school district, after the Department has allocated the entire \$50 million available under chapter 39 for section 15 grants for school facilities projects in county vocational school districts.

“Grant cycle” means the amount of funding available in a year for section 15 grants for school facilities projects in the RODs, other than the county vocational school districts as determined by the Commissioner.

“Local share” means for a ROD receiving a section 15 grant, the total costs less the State share as determined pursuant to N.J.S.A. 18A:7G-15.

“Other allowable costs” shall have the meaning set forth in N.J.A.C. 6A:26-1.2

“Other capital project” means a project, or portions thereof, that is not eligible for State support under the Act.

“Preliminary eligible costs” means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7, which shall be deemed to include the costs of construction and other allowable costs.

“Preliminary grant amount” means the amount of a section 15 grant initially approved for a school facilities project in a ROD based on the State share prior to allocation by the Department of the amounts available for section 15 grant funding under chapter 39.

“Priority project categories” means the categories specified in N.J.A.C. 6A:26-18.3.

“Regular operating school district” or “ROD” means any district other than an SDA district.

“SDA district” means a district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year.

“School facilities project” shall have its meaning as set forth in the Act.

“Section 15 grant” means a grant of funds to be made pursuant to section 15 of P.L. 2000, c.72 as amended.

“State debt service aid” means for school bonds issued for school facilities projects approved by the Commissioner on or after July 18, 2000 by RODs, the amount of State aid determined pursuant to N.J.S.A. 18A:7G-10.

“State share” means the State’s proportionate share of the final eligible costs of a school facilities project as determined pursuant to N.J.S.A. 18A:7G-15 as amended by chapter 39.

“State support” means the State share or State debt service aid.

**6A:26-18.3 Eligibility for section 15 grants for RODS, not including county vocational school districts**

(a) This subchapter establishes the procedures and requirements governing the eligibility determination for a section 15 grant. Any ROD applying for a section 15 grant shall at a minimum conform with the requirements of this subchapter, as applicable.

(b) Any determination of eligibility for a section 15 grant shall be subject to the availability of funds.

(c) If the school facilities project, or a portion of the school facilities project is eligible for State support, the ROD may request State debt service aid pursuant to N.J.S.A. 18A:7G-9 in lieu of a section 15 grant.

(d) All of the following conditions shall apply regarding eligibility for a section 15 grant:

1. A ROD must have an approved long-range facilities plan, pursuant to N.J.A.C. 6A:26-2.1(b).
2. The school facilities project has been approved pursuant to N.J.A.C. 6A:26-3.3 and has no excess costs.
3. A school facilities project or other capital project for which a construction contract has been awarded is not eligible for a section 15 grant pursuant to this subchapter.

4. A school facilities project or other capital project for which the local share has already been approved pursuant to N.J.A.C. 6A:26-3.7 is not eligible for a section 15 grant pursuant to this subchapter.

5. The proposed school facilities project must fall within one or more of the priority project categories described below.

(A) Level 1. These are school facilities projects that address the most critical operational building needs, including health and safety issues, and program mandates. These projects must consist of one or more of the following:

i. upgrades to essential building systems;

ii. repair or replacement of a building skin element;

iii. fire or life safety building code issues;

iv. upgrades consistent with the Americans with Disabilities Act;

v. hazardous materials abatement;

vi. security and communication systems;

vii. site drainage to correct existing conditions;

viii. upgrades to existing elementary school playgrounds as per N.J.A.C. 6A:26-3.2(a)5;

ix. renovated or up to a maximum of six new early childhood classrooms; or

x. special population needs.

(B) Level 2. These are school facilities projects that address the rehabilitation of existing buildings, the easing of overcrowding, and/or improving the quality of existing instructional spaces. These projects must consist of one or more of the following:

- i. repair or replacement of existing building systems and components not included in Level 1;
- ii. existing site upgrades excluding upgrades to athletic fields or tracks; or
- iii. renovation or new construction of capacity generating classrooms to address overcrowding or a substandard condition.

(C) Level 3. These are school facilities projects that are either new construction or rehabilitation that also qualifies as reconstruction. For purposes of this subsection, “reconstruction” means reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3. Reconstruction and/or new construction projects will be evaluated based upon the following attributes: district-wide unhoused students and overcrowding, early childhood program accommodations, compliance with the facilities efficiency standards, use of temporary or leased facilities, building age, project scope, and prior section 15 funding.

(e) If the school facilities project fits into more than one of the priority project categories, the entire school facilities project shall be deemed to fall within the lowest of

the priority project categories for which it qualifies.

(f) If a ROD submits more than one application for a section 15 grant for a school facilities project that includes new construction, all of such applications for section 15 grants must not have any excess costs. If one or more of the applications has excess costs, none of the applications shall qualify for a section 15 grant.

(g) A ROD is eligible to receive a section 15 grant for a school facilities project involving the replacement of a building system that was all or part of a school facilities project that previously received State support, provided the building system to be replaced has approached or exceeded its life expectancy. The district shall provide documentation concerning the life expectancy of the building system, which may include, but not be limited to, the original installation date or the building system manufacturer's warranty.

(h) A ROD may request, on a form supplied by the Department, a determination as to the eligibility of a school facilities project for a grant and a determination of the preliminary grant amount. Upon allocation by the Commissioner of section 15 grants as set forth in this subchapter, the Department shall notify the ROD of the final grant amount.

(i) RODs may take one of the following actions, as applicable, for a school facilities project which has been submitted to the Department for approval or have received approval from the Department prior to the effective date of this subchapter:

1. A ROD that has submitted an application for approval of a school facilities project to the Office of School Facilities but has not yet received project approval may submit an application for a section 15 grant pursuant to this subchapter in

accordance with the grant deadlines set forth in this subchapter.

2. If a ROD wants to submit an application for a section 15 grant pursuant to this subchapter for a project that has previously been reviewed pursuant to N.J.A.C. 6A:26-3.12 as an “other capital” project, the ROD must withdraw the prior application from the Office of School Facilities and resubmit a new project application to the Office of School Facilities.

3. If a ROD wants to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project which previously was approved for State debt service aid and has accepted the preliminary eligible costs as the final eligible costs prior to the effective date of this subchapter, the ROD must withdraw the prior application from the Office of School Facilities and resubmit a new project application to the Office of School Facilities.

4. If a ROD wants to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project which previously was approved for State debt service aid but has not accepted the preliminary eligible costs as the final eligible costs prior to the effective date of this subchapter, the ROD may request that the school facilities project be considered for a section 15 grant instead of State debt service aid.

5. If a school facilities project is cancelled pursuant to this subsection and an application for a section 15 grant for such project is then submitted, the school facilities project must meet the eligibility requirements and deadlines set forth in this subchapter.

6. Any submission of a ROD for a section 15 grant pursuant to the provisions of this section must include a resolution from the school board of the district requesting the cancellation of the prior application and submission of a new application for a section 15 grant for the specified school facilities project.

**6A:26-18.4 Funding options for school facilities project in RODs, other than county vocational school districts, which are not awarded a section 15 grant**

(a) If the school facilities project met the criteria for inclusion in one of the three priority project categories but was not awarded funding in a grant cycle, the ROD may resubmit an application for a section 15 grant for the school facilities project in a subsequent grant cycle.

(b) If the school facilities project did not fall into one of the three priority project categories or contained work that prevented its placement in a higher priority project category, and was not awarded funding, the ROD may revise and resubmit an application for a section 15 grant for the school facilities project in a subsequent grant cycle.

(c) If a ROD does not obtain a section 15 grant for the school facilities project and also does not want State debt service aid, the ROD may instruct the Office of School Facilities to consider its application for the school facilities project to be one for an “other capital” project and fully fund the project without State support.

**6A:26-18.5 Deadlines for submission of Section 15 grant applications for RODs, not including county vocational school districts.**

- (a) The Commissioner shall determine each year the amount of funds allocated to section 15 grants for such year, and shall notify the RODS regarding the amount of funds allocated for such year, and the date on which the Commissioner shall begin to receive applications for section 15 grant funding.
- (b) Applications for section 15 grants shall be submitted by the district no later than ninety (90) days from the date upon which the Commissioner indicates applications may be filed.
- (c) Within any grant cycle, awards of section 15 grants shall be awarded first to school facilities projects which fall within Level 1. If the total amount of section 15 grants approved in any grant cycle for school facilities projects in Level 1 is less than the amount of the annual allocation, awards of section 15 grants shall be awarded to school facilities projects which fall within Level 2. If the total amount of section 15 grants approved in any grant cycle for school facilities projects in level 2 is less than the amount of the annual allocation, awards of section 15 grants shall be awarded to school facilities projects which fall within Level 3. After such determinations if the total amount of section 15 grants approved in any grant cycle is less than the amount allocated by the Commissioner for such grant cycle, the amount remaining shall be added to the allocation for the next grant cycle.
- (d) A ROD must obtain the local share pursuant to N.J.A.C. 6A: 26-3.7 within 180

days of notification by the Department of the final grant award. If the local share is not obtained within such time period, the award of a section 15 grant will be rescinded. The ROD may resubmit a grant application for reconsideration in a future grant cycle.

(e) Any changes to a school facilities project after notification of the final grant amount shall be submitted to the Department for its approval and the school facilities project must meet the eligibility requirements in order to continue to be eligible for the section 15 grant.

**6A:26-18.6 Section 15 grants for county vocational school district school facilities projects**

(a) A county vocational school district interested in applying for a section 15 grant for a school facilities project shall notify the Department, in writing, no later than December 31, 2008. A county vocational school district may request, on a form supplied by the Department, a preliminary determination concerning the eligibility of the school facilities project for a grant. Applications for a section 15 grant must be received by the Department no later than June 30, 2009. If the application for approval of a school facilities project is complete and approved pursuant to N.J.A.C. 6A:26-3.3, the Department will issue preliminary project approval to the county vocational school district, including a determination of the preliminary grant amount, no later than September 30, 2009. If the county vocational school district by resolution of its Board of Education indicates its acceptance of the preliminary eligible costs as the final eligible costs, the county vocational school district shall notify the Department whereupon the Department will issue final project approval to the district including the determination of

the preliminary grant amount no later than October 30, 2009.

(b) A county vocational school district school facilities project shall be eligible for a section 15 grant provided that there are no excess costs and the project and falls within either the Level 1 or Level 2 priority project categories described as follows:

1. Level 1 county vocational school district school facilities projects

i. Level 1 county vocational school district school facilities projects are projects that address the most critical operational building needs, including health and safety issues. These projects must consist of one or more of the following:

(1) Capital maintenance projects (maintenance intended to extend the useful life of a school facility, including upgrades and replacement of building systems, such as structure, enclosure, mechanical, plumbing and electrical systems, and can be considered to constitute or be part of a school facilities project);

(2) Projects that address handicapped accessibility (including site and building access, toilet room renovations or program expansion or educational adequacy for special population needs);

(3) Building code issues; or

(4) Technology infrastructure (for classroom instruction in accordance with the Department's Technology Plan not including equipment).

2. Level 2 county vocational school district school facilities projects

i. Level 2 county vocational school district school facilities projects must consist of one or more of the following:

(1) Upgrades to existing vocational instructional space to meet certification requirements;

(2) Renovations to existing vocational instructional space to support new programs approved by the Office of Career and Technical Education; or

(3) Additions for existing vocational instructional space to meet industry certification standards.

ii. Level 2 projects will be evaluated based upon attributes that include, but are not limited to, the following:

(1) Industry certification requirements or standards;

(2) Gap analysis between existing facilities and industry requirements or standards;

(3) Enrollment or anticipated enrollment;

(4) Priority of the related career cluster in the State and local approved Carl D. Perkins for Career and Technical Education five-year plan; and

(5) Labor market demand.

(c) Section 15 grants shall be allocated to school facilities projects in the county vocational school districts which first fall within Level 1 and then Level 2 in the following order of priority until the entire allocation has been awarded:

1. County vocational school districts that received no State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for

the State share of county vocational school district school facilities projects. If the total amount requested by county vocational school districts in this category exceeds the amount available, the preliminary grant amounts approved will be adjusted on a pro rata basis calculated by multiplying the eligible State share by the ratio of the available funds divided by the total eligible State share. The Department may notify the districts of the final grant awards in this category prior to the determinations of final grant awards in the following categories.

2. County vocational school districts that received less than \$1,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. The Department may notify the districts of the final grant awards in this category prior to the determinations of final grant awards in the following categories.

3. County vocational school districts that received greater than \$1,000,000 but less than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. The Department may notify the districts of the final grant awards in this category prior to the determinations of final grant awards in the following categories.

4. County vocational school districts that received greater than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects.

5. If the entire \$50 million available for school facilities projects in county vocational school districts has not been allocated pursuant to subparagraphs (1) through (4) of this subsection, additional allocations will be made based on the same order of funding indicated in subparagraphs (1) through (4) of this subsection and based on the total of new funding received from the allocation and funding received from the original allocation.

(d) If a school facilities project has been previously approved by the Department and the county vocational school district would like it to be considered for section 15 grant funding, one of the following options, based on the type of project approval, may be selected:

1. If the project was approved as an “other capital” project, the district must cancel the project application and resubmit a new project application to the Department in accordance with the grant deadlines noted above.

2. If the project was approved for State debt service aid, two options are available.

(A) If the district has accepted the preliminary eligible costs as the final eligible costs, the district must cancel the project and submit a new project application to the Department.

(B) If the district has not accepted the preliminary eligible costs as the final eligible costs, the district may request the school facilities project to be considered for a section 15 grant.

3. All cancellation requests and resubmissions must include a resolution from the county board of chosen freeholders requesting the cancellation and resubmission of the specified project and must meet the grant application deadlines noted above.
- (e) If a county vocational school district elects to cancel a project and apply for a section 15 grant, the school facilities project must meet the eligibility requirements listed in N.J.A.C. 6A:26-18.3.
- (h) If a school facilities project in a county vocational school district does not receive section 15 grant funding, the county vocational school district shall have one of the options listed below, depending upon the type of school facilities project.
1. If the proposed school facilities project is not included in Level 1 or Level 2 project priority categories per (b) above, the county vocational school district can revise and resubmit the school facilities project. The resubmission must be completed no later than August 1, 2009.
  2. If the school facilities project has eligible costs for State support, the county vocational school district can request State debt service aid instead of a section 15 grant pursuant to N.J.S.A.18A:7G-9.
  3. If the county vocational school district does not want State debt service aid, it can revise and resubmit an application for an “other capital” project pursuant to N.J.A.C.6A:26-3.1(b) and fully fund the project without State support.

## Federal Standards Statement

The adopted new rules are promulgated under the authority of section 11 of P.L. 2008,  
c.39. There are no Federal standards or requirements applicable to these rules.