

NEW JERSEY ADMINISTRATIVE CODE
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TITLE 19. OTHER AGENCIES
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
CHAPTER 33. P.L. 2000, C.72, SECTION 6 DEMONSTRATION PROJECTS

N.J.A.C. 19:33 (2015)

Title 19, Chapter 33 -- Chapter Notes

CHAPTER AUTHORITY:

P.L. 2000, c. 72, specifically § 6 and 26; and P.L. 2007, c. 137, specifically § 21.

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2008 d.343, effective November 17, 2008.

See: *40 N.J.R. 1814(b)*, *40 N.J.R. 6653(b)*.

CHAPTER EXPIRATION DATE:

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, expires on November 17, 2015. See: *43 N.J.R. 1203(a)*.

CHAPTER HISTORICAL NOTE:

Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, was adopted as special new rules by R.2002 d.9, effective December 11, 2001 (to expire December 11, 2002). See: *34 N.J.R. 307(a)*.

Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, was readopted as R.2003 d.124, effective February 18, 2003. See: *34 N.J.R. 3495(a)*, *35 N.J.R. 1425(b)*. Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, expired on February 18, 2008.

Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, was adopted as new rules by R.2008 d.343, effective November 17, 2008. See: Source and Effective Date.

NOTES:

Chapter Notes

§ 19:33-1.1 Purpose and applicability of rules

(a) These rules are promulgated by the New Jersey Schools Development Authority ("the Authority") to implement Section 6 of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, *N.J.S.A. 18A:7G-6*, as amended by P.L. 2007, c. 137, ("the Act"). Section 6 of the Act establishes the program and process whereby the Authority reviewed and recommended six school facilities projects with community design features that were selected by the

Treasurer to be demonstration projects. The Authority has entered into grant agreements with redevelopment entities and SDA districts that govern the terms and conditions of the funding and undertaking of such projects.

(b) Any school district that had a school facilities project with community design features designated as a demonstration project shall at a minimum comply with the requirements of this chapter, as applicable.

§ 19:33-1.2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"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 by P.L. 2007, c. 137, or successor statutory authority.

"Authority," "Development Authority" or "SDA" means the New Jersey Schools Development Authority, an entity which undertakes and funds school facilities projects under the Act and which is an entity formed pursuant to P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation.

"Chief Executive Officer" means the Chief Executive Officer of the Authority.

"Commissioner" means the Commissioner of the New Jersey Department of Education or his or her designee.

"Community design feature" means any area, rooms, equipment, recreational area or playground included in a demonstration project which is to be used in common by students of the district and by residents of the community.

"Consultant" means a consultant, including a design consultant, engaged by the redevelopment entity for a demonstration project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services.

"Contracted party" means a consultant, contractor, and their subconsultants and subcontractors and any other party providing material or services to the redevelopment entity in connection with a demonstration project.

"Corporation" means the New Jersey Schools Construction Corporation, the predecessor to the Authority, abolished by P.L. 2007, c. 137, which was the entity formed by the New Jersey Economic Development Authority pursuant to *N.J.S.A. 34:1B-159* to carry out the New Jersey Economic Development Authority's responsibilities under the Act, except the power to incur indebtedness.

"Demonstration project" means a school facilities project selected by the State Treasurer for construction by a redevelopment entity pursuant to section 6 of the Act (*N.J.S.A. 18A:7G-6*) and this chapter.

"Department" means the New Jersey Department of Education.

"Division of Criminal Justice, Bureau of Fiscal Oversight/SDA" or "Bureau of Fiscal Oversight/SDA" means the unit which is the successor to the Unit of Fiscal Integrity within the Office of the Attorney General created by *N.J.S.A. 18A:7G-43*.

"Educational adequacy" means, for purposes of a demonstration project, the suitability of a facility for the provision of instruction that will enable students to achieve the Core Curriculum Content Standards and encompass the standards established in the facilities efficiency standards combined with the requirements of *N.J.A.C. 6A:26*.

"Final eligible costs" means, for a demonstration project, the final eligible costs of the project as determined by the Commissioner and reviewed by the Authority which may include the cost of community design features determined by the Commissioner to be an integral part of the school facility and which do not exceed the facilities efficiency standards and any additional spaces approved by the Commissioner pursuant to *N.J.S.A. 18A:7G-5*, and which were reviewed by the Authority and approved by the State Treasurer pursuant to *N.J.S.A. 18A:7G-6*.

"Grant" means the funds to be provided to the school district by the Authority to pay for the State share of a demonstration project pursuant to this chapter.

"Grant agreement" means the grant agreement among the Authority, school district, and redevelopment entity setting forth the contractual terms and conditions under which the Authority funds the State share.

"Local share" means, in the case of a demonstration project, the total costs less the State share as determined pursuant to *N.J.S.A. 18A:7G-5* and *18A:7G-6*.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to *N.J.S.A. 18A:7G-4* and *N.J.A.C. 6A:26-2*.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in P.L. 2000, c. 72, § 7, which shall be deemed to include the costs of construction and other allowable costs.

"Redevelopment entity" means a redevelopment entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the "Local Redevelopment and Housing Law," P.L. 1992, c.79 (*N.J.S.A. 40A:12A-1* et seq.).

"School 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 (*N.J.S.A. 18A:7A-34* et seq.).

"School facilities project" means as defined in P.L. 2000, c. 72 prior to August 6, 2007, the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings, and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction in order to meet the housing needs of unhoused students, or rehabilitation for the purpose of keeping a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

"State share" means in the case of a demonstration project, the State's proportionate share of the final eligible costs of the project as determined pursuant to *N.J.S.A. 18A:7G-5*, *N.J.S.A. 18A:7G-6*, and this chapter.

§ 19:33-1.3 Disclosure and publicity

(a) All applications and submissions received by the Authority shall constitute public records of the Authority, and the Authority shall make them available to persons who request their release to the extent required by State law.

(b) Press releases and other public dissemination of information by the school district or the redevelopment entity concerning the demonstration project shall acknowledge Authority financial assistance.

§ 19:33-1.4 Access and record retention

(a) The Authority, the Department, the New Jersey Department of Community Affairs, the Bureau of Fiscal Oversight/SDA within the Office of the Attorney General, the New Jersey Department of Labor and Workforce Development, and their duly authorized agents may, at their discretion and cost, investigate, audit, examine and inspect the activities, documents, records and accounts (pertaining to the demonstration project) of the district, the redevelopment entity, and all other parties involved in the demonstration project.

(b) The school district or the redevelopment entity shall keep those records and accounts and shall require all contracted parties to keep those records and account for the demonstration project as necessary in order to evidence com-

pliance with the Act, the grant agreement, and all applicable regulations and requirements. Such records shall be retained for 10 years following completion of the demonstration project and any additional period required for the resolution of litigation, claims or audit findings.

§ 19:33-3.1 Funding in the form of a grant

(a) The Authority shall provide funding for the State's share of the final eligible costs of a school facilities project to be constructed as part of a demonstration project pursuant to a grant agreement between the Authority, the redevelopment entity and the school district which shall in addition to other terms and conditions, set forth the terms for the disbursement of the State share and provide for the monitoring of construction by the Authority.

(b) Upon designation of the project as a demonstration project and determination by the Division of final eligible costs for the demonstration project, the school district as conditions of grant eligibility shall:

1. Obtain approval of the local share, if any, of the school facilities project designated as the demonstration project in accordance with *N.J.A.C. 6A:26-3.7*; and
2. Evidence the availability of school bonds or other funds to the Authority for expenditure as local share.

(c) Upon evidencing to the Authority satisfaction of the conditions of eligibility stated in (b) above, the school district shall be eligible to receive a grant to fund the demonstration project.

§ 19:33-3.2 No assignment of grant agreement or grant by the school district

Neither the school district nor the redevelopment entity shall assign the grant agreement or its right to receive disbursements of the grant, except that the redevelopment entity may assign the grant agreement to another redevelopment entity upon approval of the Authority and the State Treasurer at their sole discretion. The Authority may, at any time and in its sole option, assign the grant agreement to another instrumentality of the State.

§ 19:33-3.3 Administration and performance of grant agreements

The school district and the redevelopment entity are responsible for the administration and success of the demonstration project, and the provision of the grant by the Authority shall not in any way be deemed to imply that the Authority shall have any responsibility for the administration or success of the demonstration project. Moneys awarded pursuant to this chapter shall be used in conformance with the Act, this chapter and the provisions of the grant agreement to achieve the grant objectives and to insure that the purposes set forth in the Act are fully executed.

§ 19:33-3.4 Fraud and debarment

(a) The school district and the redevelopment entity shall administer funds pursuant to this chapter, the grant agreement and any contracts entered into in connection with the demonstration project free from bribery, graft and corrupt practices. The district and the redevelopment Authority have the primary responsibility for the prevention and prosecution of such conduct. Upon knowledge of any allegation or evidence of such conduct, the school district or the redevelopment entity shall immediately notify the Authority and the Bureau of Fiscal Oversight/SDA within the Office of the Attorney General in writing.

(b) The redevelopment entity and its consultants or contractors shall not enter into a contract for work on a demonstration project with any person or firm which has been debarred, suspended or disqualified from State, Authority or Federal government contracting.

§ 19:33-3.5 Noncompliance and termination

(a) In the event that the Authority determines that either the school district or the redevelopment entity is not in compliance with any provision of the Act, any condition of the grant agreement, or any condition of this chapter, it will notify the school district and the redevelopment entity of the noncompliance in writing, and, if the noncompliance is not corrected within the time period specified in the notice, in addition to any other remedies as may be provided by law or by the grant agreement, the Authority may suspend grant funds, withhold grant funds, and/or terminate the grant agreement.

(b) The parties to the grant agreement may also terminate the grant agreement, on a date and under conditions the parties shall agree upon, when all three parties agree that the continuation of the demonstration project would not produce beneficial results commensurate with the further expenditure of funds.

§ 19:33-3.6 Appeals

(a) Appeals arising from decisions of the Authority may be requested in writing, and an opportunity given for any informal hearing on the papers, in person or via telephone with Authority staff. Such written request for an informal hearing must be made within 30 days of the receipt of the Authority decision.

(b) In the event of an adverse decision after an informal hearing under (a) above, or if a district determines not to seek an informal hearing, and providing further that the dispute or controversy is a contested case, as defined in *N.J.S.A. 52:14B-2(b)*, a district may request, within 90 days of the written decision resulting from the informal hearing or the determination of the Authority if an informal hearing is not sought, a formal hearing.

(c) Upon filing of the initial pleading in a contested case, the Authority shall transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq. and *52:14F-1* et seq., and the Uniform Administrative Procedures Rules, *N.J.A.C. 1:1*.

(d) Every determination of a dispute or controversy arising from this chapter by the Authority, constituting final agency action by the Board, shall be embodied in a written decision which shall set forth findings of fact and conclusions of law pursuant to the applicable rules of the Office of Administrative Law.

§ 19:33-4.1 Amount of the grant

The grant shall be in the amount of the State share and may be reduced if the amount certified by the school district as the total eligible costs of the demonstration project prior to final completion and final disbursement is less than the final eligible costs.

§ 19:33-4.2 Cost overruns

Cost overruns of the demonstration project shall be the responsibility of the school district or the redevelopment entity, as appropriate, and shall not be the responsibility of the Authority or the State. The grant shall in no case exceed the amount of the State share, and the award of the grant shall not commit the Authority or the State to award any continuation or supplemental funds to cover cost overruns of the demonstration project. There shall be no grant modification increasing the grant amount. Increased costs resulting from changes in the scope of the demonstration project shall be the sole responsibility of the school district.

§ 19:33-4.3 Requests for disbursements

The school district shall submit written requests for disbursements to the Authority requesting that grant monies be paid by the Authority to the school district at various stages of the demonstration project. Funds may be disbursed only after the Authority has received from the school district a certification showing that there will be sufficient funds to complete the demonstration project.

§ 19:33-4.4 Schedule of disbursements

Disbursement of grant funds shall be made at intervals as work progresses and expenses are incurred by the school district and approved by the Authority for payment. Total disbursements shall not exceed the grant amount and in any case shall not exceed the State share. No disbursement of the grant shall be made until the Authority receives all documentation required for that disbursement, including all forms and information required by the Authority and completed in a manner satisfactory to the Authority.

§ 19:33-5.1 Undertaking the demonstration project

The redevelopment entity shall design and construct the demonstration project pursuant to the final plans and specifications and as approved by the Department pursuant to *N.J.S.A. 18A:7G-5*. Any changes in the demonstration project which may impact educational adequacy (the number, size, configuration, location or use of educational spaces) shall be reviewed and approved by the Department as required under *N.J.A.C. 6A:26-5* prior to such changes being made. If during construction of the demonstration project, the school district and the redevelopment entity determine that a change in the construction contract is required, the school district shall comply with the requirements for approval of a request for a change order pursuant to *N.J.A.C. 6A:26-4.9*. The school district shall promptly notify the Authority in writing of events or proposed changes in the scope of the demonstration project, the schedule for completion and/or any other significant changed conditions concerning the demonstration project.

§ 19:33-5.2 Maintenance of school facilities project

Upon completion of a demonstration project by a redevelopment entity, the school district shall submit to the Commissioner a plan to provide for the maintenance of the project and shall enter into a contract with the Authority which provides for that maintenance by the school district. The school district shall provide for the maintenance of the demonstration project at the funding levels prescribed by *N.J.A.C. 6A:26A* as part of the district's five-year comprehensive maintenance plan, filed with the New Jersey Department of Education.