



Prepared for  
Select Committee on School Facilities

October 20, 2021



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# Wyoming State Construction Department

Governor Mark Gordon

Jerry Vincent, Director

October 20, 2021

Members of the Select Committee on School Facilities:

Per the agenda for the Select Committee on School Facilities posted by the Legislative Service Office, the following update on the School Facilities Commission's proposed changes to rule chapters 1, 2, 3, 8, and 9 and the adoption of chapter 10 has been provided for the October 20, 2021 Select Committee on School Facilities meeting.

## Background:

- Over the course of the past year, the State Construction Department (SCD) with the assistance of the Governing Documents Committee has worked to update the Commission's rule chapters 1, 2, 3, 8, 9 and 10.
  - The Governing Documents Committee was composed of Commissioners, School District Representatives, SCD Staff, and Architectural Consultants to ensure broad stakeholder participation. Members included:
    - Commissioners: Holly Dab, Janet Anderson, and Mike Gilmore
    - School District Representatives: David Bartlett (Laramie #1), Dennis Holmes (Campbell #2), Emily Sloan (UW Lab School), Jim Copeland (Carbon #2), and Jeff Daugherty (Teton #1).
    - SCD Staff: Amber Leach, Brandon Finney, George Galida, Mel Muldrow, Paul Syverson, Tania Hytrek, and Troy Decker.
    - Architectural Consultants: Bill Small, Del McOmie, John Edwards, Ryan Small.
  - Members of the Committee met nine times from late October 2020 through late January 2021 to review the rules and propose changes. While the Committee was not always able to reach a consensus, the process did involve the consideration of all comments and suggestions.
  - The resulting rule changes were proposed by the Department, and incorporated suggestions from the district representatives and directions from the participating Commissioners.
- On February 12, 2021 the SFC opened a public form and shared it with district personnel and other stakeholders to solicit further feedback and comments on the proposed changes. Seven people responded, comments are attached.
- At the Commission's Planning Session on May 11, 2021, the Department presented its recommended changes to Chapters 1, 2, 3, and 9, and the proposed language for the new chapter 10, the Department also presented all comments it had received from districts as of that date. The Department did not present Chapter 8 as those revisions were still in progress.
- In accordance with W.S. § 21-15-114(a)(xv), the Commission engaged in prior consultation with the Select Committee on School Facilities on June 3, 2021.
- The Department initially released its recommendations for Chapter 8 to the districts and requested comments and suggestions on June 29.

- July 12-15, the Department travelled around the state holding six Listening Sessions to explain the revisions to Chapter 8 and solicit feedback. Personnel from the following school districts participated: Albany #1, Big Horn #1, Big Horn #2, Big Horn #3, Big Horn #4, Campbell #1, Converse #1, Crook #1, Fremont #1, Fremont #6, Fremont #25, Laramie #1, Laramie #2, Platte #1, Platte #2, Sweetwater #1, and Sweetwater #2, and Washakie #1.
- On July 16, 2021 the SFC opened a public form and shared it with district personnel and other stakeholders to solicit further feedback and comments on the proposed changes specific to Chapter 8, but also welcomed comments on the other chapters. Ten people responded and their comments are attached.
- During the Commission’s July 21, 2021 meeting, the Department included for the Commission’s consideration all proposed changes, which covered Chapters 1, 2, 3, 8, and 9, and the adoption of chapter 10. The Commission did not propose any changes or make any suggestions to the proposed rules at that time.
- The Department received a substantial comment from Laramie County School District #1 (LCSD1) on August 13, 2021. The impacts of which, if implemented, were presented to the Commission Chairman for consideration.
- The Department presented Chapter 8 to the Select Committee at its September 2, 2021 meeting.
  - The Select Committee provided several comments and recommendations to improve the Department’s recommended approach to Chapter 8.
  - The Department has implemented numerous changes based on the Committee’s recommendations.
- The Department returned to the School Facilities Commission on September 15, 2021, with a packet of all the proposed changes to SFC Rules Chapter 1, 2, 3, 8, and 9 and the adoption of Chapter 10.
  - The Department identified three potential courses of action for the Commission:
    1. The Commission could have approved all chapters and directed the Department to begin formal rulemaking for the entire rules packet. If the Commission selected this option, it could have chosen to move forward with either the packet it had previously seen, or the new packet with the Department’s most recent recommended changes.
    2. The Commission could have approved the proposed packet for Chapters 1, 2, 3, 9, and 10 and directed the Department to begin rulemaking on those chapters, while separating Chapter 8 for further consideration. If the Commission chose this course of action, the Commission would have had at least two options to provide the Department direction on how to handle Chapter 8.
      - a. The Commission could have either approved the Department’s proposed Chapter 8 and directed it to return to the Select Committee

- for further comments, or
- b. The Commission could have directed the Department to redraft Chapter 8 to conform to the proposed alternative methods of prioritizing projects.
3. The Commission could have declined to take action on any of the Chapters at that time, but could have directed the Department to bring back a finalized packet in November after presenting Chapter 8 to the Select Committee again in October. If the Commission chose to take this approach, the Department would request direction from the Commission on whether it desires further changes to Chapter 8 prior to taking it to the Select Committee.
- After further discussion during the September 15 meeting, the Commission moved to approve all rules chapters under consideration (Chapters 1, 2, 3, 8, 9, & 10) and direct the Department to begin formal rulemaking for the entire rules packet.
    - It was also moved that the Commission adopt a weighting of 55% for Capacity and 45% for Condition for the Consolidated Needs Score formula in Chapter 8.
    - It was also moved that the Commission adopt a weighting of 20% for Building Capacity, a weighting of 70% for Configuration Capacity, and a weighting of 10% for District Capacity for the Capacity Needs Score formula in Chapter 8.
    - Included in the motion was direction to the Department that it adjust the dates of the November SFC meeting as necessary to accommodate the notice period and that it further schedule a rules hearing during the November SFC meeting. Commissioner Gilmore seconded the motion.
    - The motion passed unanimously by a roll call vote.
  - After adoption by the Commission, the Department submitted the rule packet to the Governor's Office for permission to proceed before submitting the rules to the Secretary of State and initiating the comment period.
    - The Department received notice to proceed from the Governor's Office on October 4, and submitted the rules packet to the Secretary of State's Office to begin formal rulemaking immediately thereafter.
    - The 45-day comment period expires on November 24; the Department has scheduled a public hearing on the rules to take place in Public Meeting Room 5 at the Capitol Building for November 30, 2021.
    - The comment link for the rules is live and may be found at <https://forms.gle/KS9oQJ6ZsRBe6tLd9>
  - Attached for review are Rules Chapters 1, 2, 3, 8, 9, and 10 as adopted by the School Facilities Commission, as well as strikethrough versions denoting changes.

## 2021 Rule Change Feedback Responses

*Comments from school district personnel on SFC Rules and Regulations Chapters 1, 2, 8, 9 and 10 Collected via a google feedback form sent on February 12.*

### 1: Charlie Cauffman, Business Manager, Platte County SD1 @ 2/22/2021 13:48:57

**Chapter 1:** [Blank]

**Chapter 2:** [Blank]

**Chapter 8:** Page 8-1; Prioritizing Condition of buildings of greater than .65 to be high priority seems to be rather unachievable (without complete building neglect) as there were only one building greater than that on the last condition assessment of 2016. It seems that there needs to be a greater range and while I understand the commission is looking at a new index with that being 49% of the overall weight it should be more inclusive instead of less inclusive. If the department is looking to reduce new capital construction spending and truly wishes to go to a asset preservation than it would seem it needs to expand the funding to do so. I agree that asset preservation is a great goal, but as of yet there are still some facilities that do need resolved and some of those need capital remedies. This would seem to be counter-productive in achieving that goal at the moment.

**Chapter 9:** "Under the value engineering under section 8, on page 9-5. The way that this is stated is the the district must take all recommendations of value engineering. This reads as more of a statement of must instead of the situation being more of a partnership with the state. Shall conform insists that there is zero flexibility in the process and really demonstrates the lack of input from the client who is the district. While value engineering can be a beneficial process it can in times also be a short-sighted one as well as it would appear that the districts and state are handcuffed to what a third-party firm would suggest and really appears to leave no flexibility within their own processes. Anything and everything outside of this third-party seems to be prohibited. It would seem that the state is placing its faith in the hands of people who are not beneficiaries of the process, but who also have no skin or motivation to produce great cost savings results for both parties. This could potentially come back on the organization and be a greater liability than it is anticipating with them placing all their eggs in the proverbial one basket of a value engineer. The other problem it would open up is if they change their engineer it could potentially produce a inequity from one what firm says to the next.

This section really deems that it is the state that should know what is best and if they truly do know what is best than why do they need a third-party to tell them what is best. They would need to be the ones who run it. This section also devalues the voices of the local constituents who are the recipients of these projects. These rule changes show an

unfortunate appearance of unwillingness to work collaboratively on these projects together. It would seem that for a state that values local control and local input that these new rules do not foster that kind of atmosphere.

**Chapter 10:** This whole sections depicts that if there are any errors within the process of design that this could mean that the district pays the costs. It would seem that the department has forgotten that mistakes occur in design and would turn any and all of this into the district's problem for pointing out these items and thus the district would be on the hook for this. I do understand there are situations in which a district does go above the scope of the project and I have no qualms about those being enhancements, but it would seem that this section would punish a district merely trying to get the best product for the money put forth by the state. These rules again eliminate the elements of local control and local participation. These also call in the question of major maintenance, and if a district were to replace a system that were indeed better than the previous system, would that be an enhancement? Would the district have to start reporting these types of improvements to the department? The lack of clarity in this section leaves this open to an interpretation that could be taken in a number of different directions and leaves the department open to many questions and possible legal overtures that I am sure are unwanted, but with ambiguity it does open this possibility.

A question could also be asked that if the district found ways to save the state money in design could the district be the beneficiaries as this system points out that anything additional is on the district to pay its costs?

This premise would also be in contrast to asset preservation. As a district is trying to get the best product available and remedy that has already gone through an MCER and waiting the legislature it would seem that any change would be at the district's expense even though it is the state's remedy? So then the district has to pay from its major maintenance or other state funded dollars to potentially fix a problem with the state's remedy? This would reduce the already limited major maintenance dollars which would then cause more problems down the road. It could give greater problems in this area.

While I am a proponent of wise use of tax payer dollars and state funds it would seem that this process is punitive and doesn't give any credit to the work of those who ultimately have to live with the building and then pay to maintain it in the long run, so if a value engineering blunder were to occur and this district cannot change it then they have to waste more state funds to fix it? This seems like an even greater waste of tax payer dollars instead of working with each other to get the best remedy on the ground.

There are some great items in these rules in regards to updating the enhancements if adequacy standards change to be inclusive and while that is good, there is unfortunately way too much ambiguity to these rules that need to be explored in order to benefit both

parties, as the state does deserve greater consideration in projects. I would like to see some clarification on whether major maintenance is included on these and some other options as to enhance the relationship between the department and the districts.

**2: Ed Goetz, Business Manager, Albany County SD1 @ 2/24/2021 12:55:35**

**Chapter 1:** None

**Chapter 2:** None

**Chapter 8:** Hopefully a School Facilities Commission hearing will be held to discuss the definition of educational suitability and the weighting so that varying points of view can be heard.

**Chapter 9:** None

**Chapter 10:** The definitions included in this document cause concern due to their narrow scope and could be subject to varying interpretation depending upon the Construction Department administration: District Initiated "improvements that add square footage in excess of Square Footage Calculator whether through construction, renovation, or acquisition of additional square footage." and State Initiated Remedy "The elements and features of a state-initiated remedy are limited to those provided in the Commission's Facility Design Standards and Guidelines, and the addition of any element or feature not included in those guidelines is not considered state-initiated." These definitions seem to be too narrow and could be a concern that any modifications even for security vestibules as an example beyond the Square Footage Calculator could be considered an enhancement."

**3: Brandon Finney, Business Manager, Sheridan County SD2 @ 2/25/2021 12:51:55**

**Chapter 1:** [Blank]

**Chapter 2:** [Blank]

**Chapter 8:** [Blank]

**Chapter 9:** [Blank]

**Chapter 10:** The clause doesn't read to me in a clear and precise manner. It sounds like all items will be done as an percentage but further down the language goes into bid alternate and paid for specifically: (iii) If a district opts to go forward with a district-initiated element, it shall bid the element separately as an alternate, with the enhancements calculated as a percentage of the overall project cost, or a combination thereof.

It would be nice to have clear language on if a district can add an element if it is in the design standards, adequacy standards and budget. Current approach by the department is that this is a "District-initiated element" and therefore should be paid for by district even if the element is within the design standards, adequacy standards and budget.

**4: Robert McCray, Support Services Coordinator, Park County SD1 @ 2/25/2021 16:12:20**

**Chapter 1:** [Blank]

**Chapter 2:** [Blank]

**Chapter 8:** I believe that capacity evaluation at the building level is in the best interest of students. Moving children from their neighborhood or local school to another, maybe every year, will definitely have a detrimental impact on their educational growth. It could also separate siblings and create hardships for families who may have children in schools across town.

Capacity assessments should be separate from evaluation scores for buildings derived on suitability and/or condition. These items have much different ramifications and remediation's and should be evaluated as such. If a school is in poor condition or ranks low in suitability, the delivery of the appropriate level of education will definitely be impacted.

**Chapter 9:** It seems there is limited latitude in the Value Engineering adoption process. This basically states the the VE "recommendations" must be implemented unless waived by the director. Is there no option or possibility to veer away from a recommendation when school districts should have some basic form of local control for cultural, historic or regionally held ideas, beliefs or values without assuming all current and future costs related to those. Should recommendations become absolutely binding.

**Chapter 10:** The definition of a district initiated project is quite broad including about anything a district may wish to undertake to make their schools unique or different. If something a district wishes to do is within Design Guidelines and Adequacy Standards, this should not be considered an enhancement and therefore all funding now and into the future of that completely district responsibility.

**5: Kim Nelson, Facilities Manager, Laramie County SD2 @ 2/26/2021 9:46:47**

**Chapter 1:** Objection to the striking of "methodologies" as a subject allowing Districts to request an exception. Why is reference to FCNI being removed from the definition list?

**Chapter 2:** This re-write places too many constraints (ie roadblocks) on The District to be able to bring a dispute in front of the Commission. It appears that this process could

drag out for many months, in effect blocking whatever request the District is seeking, particularly during a capital construction process.

**Chapter 8:** The SFD proposes ranking three categories: condition, adequacy, and capacity. They would call suitability a subsection of condition (NOT true). I'm not opposed to the breakdown in CH 8 section 3 (ii) with appropriateness (suitability) of environment .50; illumination .10, air quality .25, technology .15 (adequacy). That comes to 100%, and is a baseline for an independent category score for Suitability. Condition stands alone, as does Capacity (and as defined in SF002). The Division seeks to mix the categories all together.

In SF002, they call for the Commission to rank three categories: 21-15-117 (a) as (i) Condition, (iii) Suitability, and (iv) Capacity. Suitability would include adequacy \*(illumination, IT readiness, air quality) as a subsection. Completely backwards to what the Division is pushing. SF002 language specifies capacity per building every time; it never mentions district capacity, which is the measure the Division seeks to use. It makes little sense to bus a couple students over many miles to use capacity in one building over another! We have buildings 40 miles apart – It doesn't make sense to send an elementary bus on an 80 mile round trip twice a day to utilize district capacity if a building is out of seats. Not only financially, but the best interests of students are not met with out-of-area transport.

In CH 8 section 3, (B) the scoring is questionable at best. According to the FEA Educational Building Condition Systems reference guide, any score above .50 is a failure. Anything above .25 is poor. How can they call a score of .65 to be the cutoff for high needs? The (FEA) assessments score crisis/failure at .50 (see chart). Medium needs should be at least .40, low needs at .35 (or lower). By the FEA assessment scores, .35 is still poor. The baseline for failure should not change due to lack of funding. The score is supposed to be objective, not subjective to budgets.

Ch. 8 (b) capacity is moving the mark for action to >100%. It is too late by then – remediation is at least a 3-year process. (Fund 1, design 2, and construct/renovate 3). Seems a call to action should occur at minimum 95% capacity, esp. as they are also moving the mark for utilization up to 100%.

Ch. 8 section 5 allows the Department (read Division) to utilize outside consultants to conduct studies. Districts should be allowed the same – and included in SF 002 21-5-117 (a) the “department shall ...acquire other relevant needs assessments data (in) coordination and cooperation with the districts for purposes of evaluation and prioritization.” That sounds to me like the legislators are allowing additional input from outside resources provided by the Districts to substantiate their needs.

**Chapter 9:** Section 2 (b) says the Department shall review school construction projects – even District initiated. They can't have it both ways – either everything initiated by the District is an enhancement, outside the purview of the Department, or it is under their oversight, and so may be allowable – not immediately an enhancement. The SFD does not initiate our normal MM projects – so how might Major Maintenance funding play into that?

Ch. 9 section 4 – prototypical design is being forced down everyone's throat. I know this is a big favorite of VE, but may not always make practical sense. Promoting prototypical systems makes sense, that's how you develop adequacy standards, but we do NOT all need to have cookie cutter designs. If you stray from the prototype in any way, shape, or form, it is their excuse to call it an enhancement. In 4 (c) it says the District may consider prototypes, and that is reasonable. However, this Chapter alludes to VE as the sole determining factor for design.

However, in Ch. 9 section 8 (a) it does state that the Department shall conduct a value engineering analysis “using a collaborative process to objectively consider the best approach”. I read that to mean that VE does not have either veto powers or dictatorial power. Apparently, the Division disagrees.

Section 9 (fund balance reversions) should be amended to at least 18 months. Sometimes issues come up at the 11 month walk through that were not apparent at substantial completion. Moreover, substantial completion does not always mean full owner occupation. Fund balances cannot immediately revert at 12 months post SubComp. At Pine Bluffs Elementary, 2017, a change order was initiated at about 18 months post substantial completion – the flooding issues just weren't immediately apparent. By the time we argued and fought with the civil engineers, we didn't get a final change order until nearly 22 months post occupation. We did have capital money left in the project to cover the cost of the drainage remediation.

Section 12 (a) – If standards and guidelines do not apply to existing school buildings why are we evaluating Suitability? Evolving needs are the first and foremost criteria for suitability. That should be struck.

Under 12 (d) so long as the element or component is within the budget, guidelines, and standards it doesn't matter if it was in the original design or not, nor if it is the cheapest alternative. If a district has been frugal and found means of saving \$\$, they should be able to add or upgrade components. Additionally, Design occurs so far ahead of construction, there may always be mitigating conditions that require change. This is trying to make every 'new' District request an enhancement.

**Chapter 10:** Section 1 practically screams Major Maintenance! Most renovations, replacement, repair, and improvements are district initiated and fall under MM. With this definition, we no longer appear to have control of that.

Example - Upgrades to LED lighting may not be the cheapest up front, but long term saves much more in maintenance and utilities than it costs. That type of upgrade or alternate should NOT be an enhancement.

#### Definitions

“District-initiated” :This new language infers that every element (in a project) that is not VE approved is automatically an enhancement. Value engineering would have us put VCT on every square foot of floor space, because it is cheapest. I have issues with the endless use of the term “District initiated” to determine enhancement. Every MM project is district initiated – so must we wait for the SFD to come to us to suggest replacing a failed component? Feels like a slippery slope to get to that point.

Every request a District has for a (construction) project, capital or otherwise, is not an immediate enhancement. If it falls within the standards, guidelines, and budget it should be a normal part of the building. PERIOD. If it requires additional (state) funding, then there is opportunity to consider enhancement status. Just because a District funds it, doesn't mean it exceeds standards/guidelines. The legislature, and some Commission members, have been hinting for years that Districts need to have some “skin in the game”. If Districts step up to help fund projects, they should not be penalized by automatically withholding MM to maintain those facilities.

Chapter 1, General Provisions, Section 10 currently allows the Commission to “grant exceptions... on a case-by-case basis”. Ch. 3, Section 3, Enhancements and Adequacy Standards, states that for elements having “a positive demonstrable effect upon delivery of the educational program... the Commission shall make a determination whether and how such... should be incorporated into the statewide adequacy standards”. This new definition seeks to thwart that authority.

#### **6: Daniel Selleroli, Facility Director, Sweetwater County SD1 @ 2/26/2021 13:18:20**

**Chapter 1:** Will Charrettes no longer required? Will the FCNI be eliminated? Section 5 Commissioners will no longer be able to attend via Phone or other means? why?

**Chapter 2:** [Blank]

**Chapter 8:** By considering condition scores of .55 - .65 as medium needs, we will be right back to where we started, (building conditions) prior to the SFD.

**Chapter 9:** Why are we eliminating section 11?

**Chapter 10:** I do not agree with the District-initiated Definition. Remove and redefine; "any design features or components contrary to the recommendations of value engineering... "

**7: Deanna Harger, Facilities Director, Teton County SD1 @ 2/26/2021 17:08:48**

**Chapter 1:** No Comments

**Chapter 2:** No Comments

**Chapter 8:** • TCSD #1 does not support utilizing an aggregated score to determine the priority of remediation. Combing and weighting the four indices into one score may result in prioritizing a school with a low condition score over a school with serious capacity issues despite the fact that both condition may require remedy.

- TCSD #1 supports prioritizing each factor individually and then, if warranted, complete a MCER study to obtain prioritized remedies.
- TCSD #1 does not support changing the Life Cycle Planning for Education Facilities from 0.50 to 0.65. Maintaining building components in a facility that has less than 5 to 10 years' of useful life is not a good use of Major Maintenance funds.
- Section 3B Capacity: TCSD #1 does not support moving the baseline for high capacity to exceeding 100%. The process to determine and implement remediation typically takes around three years. Therefore, a lower baseline of 95% should trigger the initial call to action.
- Capacity: TCSD #1 recommends the SFC consider both district wide and building level capacity when prioritizing capacity issues

**Chapter 9:** •Value Engineering: TCSD #1 supports incorporating Value Engineering into the process to achieve the best value for the District and the State but requests that both life-cycle and maintenance costs be included in the evaluation. In many instances a less expensive piece of equipment or building component does not represent the best value. In addition, suitability and the goals of the design should be considered when evaluating VE options.

- Section 12A: TCSD #1 recommends that the current Design Standards should be applied to existing buildings in order to consider suitability with current education standards as part of the project.
- Section 12D: TCSD #1 recommends giving the Districts flexibility in selecting individual design elements or components when managing project budgets rather than including the requirement for architects to specify the most cost effective component.

This flexibility creates an opportunity to achieve the best overall value for the project and potentially a better product.

**Chapter 10:** •Section 2A: TCSD #1 recommends the SCD fund third party certification of energy efficient and sustainable design and construction practices. Requiring a third party certify the design and construction practices can reduce the overall cost of projects and ongoing maintenance of the building which presents good value. In addition, although many energy efficient components have higher up front cost they should not be considered upgrades or enhancements because they offer cost saving over multiple years making them good value.

• Section 3A: TCSD #1 recommends changing the language so that after the SCD has reviewed and approved the project design no element may be retroactively identified as a district-initiated component of a state-initiated project. Passing both the responsibility and risk of identifying all elements that exceed Facility Design Standards and Guidelines onto the District beyond design approval is unreasonable.

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*Second Feedback-Form Comments from school district personnel on SFC Rules and Regulations Chapters 1, 2, 3, 8, 9 and 10 Collected via a google feedback form sent on July 16.*

**1: Kim Nelson, Facilities Manager, Laramie County SD2 @ 7/9/2021 13:02:01**

**Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 95% building, 3% configuration, 2% district

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: I firmly believe the Commission, Department, and Division have a responsibility to address suitability and adequacy as based on design standards, in spite of the legislature's obvious reluctance to do so. I would rank Suitability 51%, capacity 44%, condition 5%. I doubt there are any truly poor condition educational buildings requiring immediate need, that wouldn't first qualify based on suitability and adequacy. Note that in Section 4, you still claim to evaluate adequacy, but then limit it to capacity and condition, and we all know that does NOT truly address adequacy. Deletion of Appendix C is a dereliction of duty in

my opinion. The Commission is charged with providing a true report to the legislature, regardless of what that report or recommendation might cost. It is solely the responsibility of the legislature to address how to fund the needs identified. The Commission should never base its recommendations on budget.

Ch 8 Comments: Without the formula to look at, it is nearly impossible to judge other components of this chapter. I have grave concerns with using ADM vs enrollment, but that is another philosophical discussion.

*Comments were given on remaining chapters on an earlier feedback form*

**2: Matt Davidson, Superintendent, Big Horn County SD1 @ 7/14/2021 14:14:17**

**Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 60% Building Capacity + 35% Grade Configuration Capacity + 5% District Capacity = 100% Capacity Need Score

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: 30% Capacity / 70% Condition

*No further comments given on remaining chapters*

**3: Linda Evans, Business Manager, Fremont County SD6 @ 7/15/2021 10:58:16**

**Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 33.3% building capacity + 33.3% grade configuration + 33.3% district capacity

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: 50% Capacity / 50% Condition

Comments: What is “standard” for school districts should be updated at least every 3-5 years with a formula for size of districts and equivalent to others based on the size of the district/buildings; i.e., air conditioned gyms, football fields, Pre-school rooms, auditoriums, etc.

### **Chapter 1: General Provisions**

Comments: Is there a definition for a combined Middle/High School, grades 6 - 12? K-12 schools? Section 5 ? What is a quorum and how many members must be present to have a quorum and how many votes are required for something to be approved?

### **Chapter 2: Rules of Practice and Procedure for Contested Case Proceedings**

Comments: none

### **Chapter 3: Uniform Adequacy Standards**

Comments: none

### **Chapter 9: Implementation of Remedies and Project Management**

Comments: Enhancements??? Will these no longer be able to be done with district funds? Are they addressed somewhere else?

### **Chapter 10: District-Initiated Elements, District-Initiated Projects, and Local Enhancements**

Comments: none

## **4: Troy L. Zickefoose, Superintendent, Fremont County SD6 @ 7/15/2021 11:36:03**

### **Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 30% Building capacity, 70% District Capacity

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: 10% Capacity / 90% Condition

Comments: Campbell I, paragraph 119 states, “The constitution requires the legislature to create and maintain a system providing an equal opportunity to a quality education.” When does an enhancement become a standard? Campbell II, paragraph 123, “We again affirm that the state bears the burden of funding and providing constitutionally adequate facilities to school districts that provide an equal opportunity for a quality education.” What is adequate and equal? Campbell IV, paragraph 125 states, “We agree that reasonable access to substantially similar activities and their facilities determines the equity and adequacy of student activity facilities.” At what point do items, such as turf playing fields, become an “equity and adequacy” consideration when approximately half of the high schools in Wyoming have turf football fields and half do not. I would argue that it is becoming an equity and adequacy issue. Having turf fields for student activities, events and physical education has become the norm across the nation for safety and long-term maintenance cost reasons. Thank you for the opportunity to share my concerns.

### **Chapter 1: General Provisions**

Comments: The removal of the informal review by the Commission will make any sort of review process nearly impossible for small districts who don’t have high dollar attorneys on retainer. Not asking for equal, but again equity would be nice.

### **Chapter 2: Rules of Practice and Procedure for Contested Case Proceedings**

Comments: none

### **Chapter 3: Uniform Adequacy Standards**

Comments: I thought Campbell spoke of adequacy, equity and suitability. What happened to suitability? I must have missed something.

### **Chapter 9: Implementation of Remedies and Project Management**

Comments: none

### **Chapter 10: District-Initiated Elements, District-Initiated Projects, and Local Enhancements**

Comments: Norming or standardizing items that are commonplace, such as turf, is the only way to ensure equity and adequacy. It would be appropriate or “suitable” to consider

such items in 2021 that may not have met the threshold in 1995, 2001, or 2008. Times change and with those changes so do norms. Things once deemed to be world-class or innovative are now expected standards, “. . . by identifying the “proper” educational package each Wyoming student is entitled to have whether she lives in Laramie or in Sundance.” Both of which have turf fields.

**5: Jason Jolly, Facilities Director, Big Horn County SD2 @ 7/15/2021 11:59:08**

**Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 50%, 30%, 20%

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: 40% Capacity / 60% Condition

Comments: So far it appears to be a well thought out plan. District input is very important, especially with all the differences between the districts. All too often the smaller Districts don't have the political clout that some of the larger Districts have so having an opportunity to have an opinion be heard and count is refreshing.

*Further comments given on remaining chapters: “ok”*

**6: Dennis Holmes, Associate Superintendent for Instructional Support, Campbell County SD2 @ 7/15/2021 15:42:39**

**Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: Building capacity should be calculated as a stand alone at 100%

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: The composite score can be calculated at 50/50 as long as Capacity is building related and at 100% and Condition is calculated independently at 100%. Each value needs to be able to distinguish a possible remedy for either Capacity or Condition or a combination of both.

Comments: Remedies should be considered in either situations involving capacity or condition and should be set up so that one variable does not cancel out the other. If a school is over capacity, a remedy should be considered, if a FCI score suggests a remedy, then it should be considered... Project budgets should be done cooperatively with SFD and districts.

### **Chapter 1: General Provisions**

Comments: Review all definitions to make sure they are all included.

### **Chapter 2: Rules of Practice and Procedure for Contested Case Proceedings**

Comments: No concerns

### **Chapter 3: Uniform Adequacy Standards**

Comments: Address scoring for old buildings, vague standards... Is adequate minimum or maximum?

### **Chapter 9: Implementation of Remedies and Project Management**

Comments: No VE beyond 35% design...

### **Chapter 10: District-Initiated Elements, District-Initiated Projects, and Local Enhancements**

Comments: Omit this chapter

**7: Joe Forcella, Maintenance Director, Big Horn County SD3 @ 7/16/2021 9:50:18**

### **Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 30 building capacity + 50 configuration + 20 district capacity

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: 30% Capacity / 70% Condition

Comments: In our smaller districts we see a more stable enrollment. By using the method of weighting condition over capacity better fits our needs as a district. Smaller districts like ours depend on a solid major maintenance budget to keep our building in great state of repair.

*No further comments given on remaining chapters*

**8: Doug Hamel, Maintenance Supervisor, Sweetwater County SD2 @ 7/19/2021 10:32:58**

**Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 40/40/20

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: 30% Capacity / 70% Condition

Comments: [none]

*No further comments given on remaining chapters*

**9: Ted May, Maintenance Supervisor, Fremont County SD25 @ 7/20/2021 15:24:56**

**Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: 100%Building, 0%Grade, 0%District

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: 90% Capacity / 10% Condition

Comments: We recommend FCI calculated more frequently, as the last one was done 5 years ago. Also, a 3 years rolling average for enrollment would create a more leveled calculation instead of highs and lows. We, as a district, would prefer to weight our building conditions. However, the formulas used in the index calculation force us to weight the capacity significantly higher than we'd prefer. We have 70 year old building, Ashgrove Elementary, at a .25 condition, which gives no incentive to weight toward condition. Finally, the spreadsheet has different calculations depending on which row. Some had a 15% increase for projected enrollment. Some has 20%. Some had none.

*No further comments given on remaining chapters*

**10: Jeff Daughterty, Planning and Construction Administrator, Laramie County SD1 @ 8/2/2021 12:27:00**

### **Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets**

Question: Totaling 100%, what percentages would you give to the individual factors of the Capacity Need Score? eg: 40% Building Capacity + 40% Grade Configuration Capacity + 20% District Capacity = 100% Capacity Need Score

Response: District recommends curating these separately then evaluating them collectively after the Facility Planning Process

Question: For calculating the composite score, what percentage ratio do you think would properly weigh the two factors? Capacity / Condition

Response: The composite score should not be a combined ratio of condition and capacity. By combining the scores, a specific issue will be masked. The Composite ranking should be derived by investigating the actual needs of each elevated score. See comments below.

Comments: The composite score should not be a combined ratio of condition and capacity. By combining the scores, a specific issue will be masked. The Composite ranking should be derived by investigating the actual needs of each elevated score. See comments below.

## **Chapter 1: General Provisions**

Comments: The definition of Design Charette: The district understands that holding a charette is still an option available to districts. We are advised that only the “definition” of the term is being removed. Can staff confirm this?

Definition of Elementary School – “kindergarten through sixth grade”: This is a narrow definition that the SFC may want to allow more flexibility with - given elementary configurations vary by district.

Definition of “Rural school” – “does not bus students into the metropolitan area.”: The district recommends adding “for core instruction” to the end of that sentence to allow for the bussing of students into town on a weekly basis to engage in art, music, and PE.

Section 10 – Exceptions – The proposed language appears to limit a District’s ability to seek an exception to guidelines, standards or methodologies. It may be helpful to allow the SFC to hear requests pertaining to any section of rule.

## **Chapter 2: Rules of Practice and Procedure for Contested Case Proceedings**

Comments: Section 3 (b) (iii) Any additional facts the district would like to be considered – language is struck. The District does not understand the basis for this change. Being allowed to present additional information during the informal review proceedings may bring light to unknown facts may prove helpful and could lead to a timely resolution.

## **Chapter 3: Uniform Adequacy Standards**

Comments: While the current adequacy standards do enumerate certain requirements such as a school needing to provide a lab space, they lack a certain degree of detail that would be helpful in applying them as standards.

Bringing old buildings to a similar standard over time. This objective is set forth in statute and the Campbell cases however, there does not appear to be a process to do so within the rules.

## **Chapter 9: Implementation of Remedies and Project Management**

Comments: The proposed language for VE at 10% and 35% is appropriate. Performing VE at later stages is difficult and often requires redesign.

A key concern for the district is the language that holds that any recommendation of the value engineer that is not waived by the director becomes the financial obligation of the district - similar to an enhancement but not identical. The goal of the district is to limit the potential for future frustration and project delays for both the district and the department. The department staff intend to contact the State’s Value Engineer to

determine whether this language is helpful. Staff may report their findings to the commission soon. The district recommends the VE waiver by the director be struck.

### **Chapter 10: District-Initiated Elements, District-Initiated Projects, and Local Enhancements**

Comments: 21-15-111 (a) (iii) is clear, simple, and easily implemented by districts. Simply stated, it sets forth that any construction effort brought by a district that exceeds the adequacy standards will constitute an enhancement. Additionally, the Statute is aligned to the Campbell cases. To avoid future frustrations, the district recommends removing the district-initiated element, design feature, etc language and simply align the rule to State Statute. If the department desires to further regulate design elements, a productive approach might be to amend the adequacy standards or design guidelines or specifications.

## Chapter 1

### General Provisions

**Section 1. Authority.** This Chapter is promulgated pursuant to Wyoming Statute 21-15-114(a)(xv).

**Section 2. Definitions.** As used in these rules and all project agreements entered into by the Department:

(a) “Adequate” means a building, room, or other educational space is both sufficient and appropriate, as those terms are defined in this section.

(b) “Anticipated Hard Bid” means the funding limit of the total amount of proposals or bids to achieve capital construction work or the Work, on and off-site, unless identified otherwise in the budget worksheet including prime bids, multiple prime bids, allowances, alternates and other costs of the Work.

(c) “Appropriate” means a building, room, or other educational space that has the necessary infrastructure, storage, fixtures, and critical adjacencies to be compatible with the delivery of the required educational program.

(d) “Bidding Contingency” means the funding amount identified by the Owner and design professionals within the Anticipated Hard Bid to accommodate market variances or estimating errors.

(e) “Budget Worksheet” means the total funding structure of State Funds for a School Facilities Division capital construction project. The worksheet represents all project funds available through the State Construction Department for a project.

(f) “Closed” means any educational building or facility that is not currently being used and is capable of being reopened.

(g) “Cohort Survival Calculation” means the rate of progression for each grade (K through 11) to the next grade (1 through 12) using the ten-year average for each grade progression.

(h) “Component Level Recommendations” means recommendations by the Commission to implement remedies to address educational building and facility condition by repairing or replacing components when it is determined by the Commission that it is not feasible for districts to do so solely with major maintenance funds.

(i) “Construction Contingency” means funding identified to address unanticipated or unknown costs identified subsequent to the proposal or bidding process to achieve the Work. Construction Contingency is not a bidding contingency.

(j) “Contractor” means any person who is a party to a contract with the Commission or a district to accomplish the Work of any Commission approved remedy.

(k) “Critical adjacency” refers to an educational, administrative, educational support, or facility support space within an educational building that must be located near another space in order to be functional as intended.

(l) “Department” means the State Construction Department.

(m) “Design Charrette” means an interactive and collaborative process where participants (school district, architects and others) work in a focused and sustained effort to develop the basis for a feasible building design that meets the educational, budgetary and schedule goals for the project.

(n) “Design Contingency” means funding identified to address unanticipated costs associated with services provided by design professionals.

(o) “Design Professional” means the architect or other professional contracted with the district to design a remedy.

(p) “District” means any school district established pursuant to the laws of Wyoming excluding community colleges and community college districts.

(q) “District-initiated” refers to any renovation, construction, replacement, repair or other improvement of or to any school building or facility that is not a State-initiated remedy or major maintenance included in the district’s facility plan. This includes, but is not limited to, a district’s decision to include in a State-initiated remedy any design features or components contrary to the recommendations of value engineering performed in accordance with the Commission’s Facility Design Standards and Guidelines unless waived by the Department or excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, in excess of the Commission’s Facility Design Standards and Guidelines unless excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, or that add square footage in excess of Square Footage Calculator whether through construction, renovation, or acquisition of additional square footage.

(r) “District-initiated element” means any component, design feature, or square footage that is district-initiated and occurs in conjunction with a State-initiated remedy.

(s) “District-initiated project” means any project that is district-initiated and occurs independent of a legislative appropriation or Commission funding.

(t) “Educational specifications or “Ed-specs” means those specifications used to define the programmatic, educational and functional goals of the educational facility.

(u) “Elementary school” means any school with a grade configuration of kindergarten through sixth grade, or any combination thereof.

(v) “Facility Condition Assessment” (FCA) means the systematic process of collecting measured data, or making observations relative to the physical condition of a building or facility or one or more of its components or group(s) of components and recording the results.

(w) “Facility Condition Index” (FCI) means a numerical rating or building condition score based on measured data or assessment of physical components or systems. The condition of a building is expressed as a ratio of the Cost to Repair Deficiencies, or “Deferred Maintenance” (DM) divided by the Current Replacement Value (CRV) of the building. The formula is:

$$FCI = \frac{\sum DM}{\sum CRV}$$

(x) “High school” means any school with a grade configuration of ninth or tenth grade through twelfth grade.

(y) “Informal Review” means the opportunity afforded a school district under W.S. 21-15-116(f) to consult with the Department regarding an action of the Department prior to filing a request for a contested case proceeding before the Commission.

(z) “Kick-off Meeting” means a meeting(s) between personnel of the Department and personnel of the district, in addition to such other persons as may be necessary to accomplish project planning.

(aa) “Leased Facilities” means any land, building or equipment or other capital asset that has been leased by or to a district.

(bb) “Major Maintenance” is a common reference term that means “Major building and facility repair and replacement” as that term is defined in W.S. § 21-15-109(a)(iii).

(cc) “Middle school” means any stand-alone school or campus with any grade configuration that includes both seventh and eighth grade, but does not include the full range of grades down to kindergarten or up to twelfth grade. Districts may use an alternative descriptor such as “junior high school.”

(dd) “Most Cost Effective Remedy” means the most cost effective method of remediation as that phrase is used in W.S. 21-15-117(b).

(ee) “Mothballed building or facility” is any district building or facility which is closed and not operational, has the potential to be re-opened, is not being replaced under a district’s facility plan approved by the Commission, is not determined surplus within the district’s facility plan, and is maintained in good condition, for a maximum of three (3) years without additional approval from the Commission. Mothball status can be renewed by Commission approval after the initial three (3) years.

(ff) “Nonstudent-related buildings and facilities” means any building or facility that is

either an “office building” or a “warehouse building,” as those terms are defined in W.S. 21-15-109(a)(iv) and (a)(viii).

(gg) “Payable-Leased Facilities” are those facilities which are used by the district to provide the approved educational programs as prescribed by W.S. 21-15-109(c)(i)(B). These facilities shall be included in the district’s gross square footage totals.

(hh) “Permanent Modular Building” means a pre-built, factory constructed and assembled educational building or facility that is transported in an assembled condition to the location on which the building or facility is to be situated that is placed on a permanent foundation, and that is expected to be used by the district for its designed lifetime.

(ii) “Primarily used” means more than fifty percent (50%) of a school building or facility is used in connection with educational programs, district administrative functions, or storage of equipment, materials, and other district property.

(jj) “Project Audit” means a contract compliance audit by an independent auditing expertise of project budgets and expenditures undertaken in accordance with W.S. 21-15-123(f)(v)(J).

(kk) “Project budget” means the amount of legislative funding allocated to a specific remedy. The project budget for any specific remedy shall be an amount determined by the Commission to be sufficient to fund the total project cost of the remedy. Funds allocated to a specific remedy remain State funds and are not an entitlement of any district.

(ll) “Rural school” means a school located outside the main metropolitan area in which the district is located and from which the district does not bus students into the metropolitan area for core instruction.

(mm) “Separate Account” means an individual account held by the district for depositing and expending major building and facility repair funds. These funds shall not be commingled with any other funds or accounts.

(nn) “State-initiated remedy” means any renovation, construction, replacement, repair, or other improvement of or to any school building or facility initiated by the legislature through an appropriation or the Commission through a funding decision, including major building and facility repair and replacement undertaken pursuant to a district’s facility plan. The elements and features of a state-initiated remedy are limited to those provided in the Commission’s Facility Design Standards and Guidelines, and the addition of any element or feature not included in those guidelines is not considered state-initiated.

(oo) “Sufficient” means that a building, room, or other educational space is of such a size that it has enough space to enable delivery of the required educational program.

(pp) “Surplus building” means a building that is not within the commission’s adequacy standards due to a renovation, construction, replacement, repair, or other improvement of or to

any school building or facility initiated by a school district, an approved construction or renovation project, or by changes in school population.

(qq) “Temporary building” and “modular building” are defined interchangeably with “portable building” as that term is defined in W.S. 21-15-109(a)(v).

(rr) “Total project cost” means all project costs, including but not limited to: land acquisition, site preparation, design, construction, contingencies, FF&E, special studies (e.g. traffic, lighting), surveys, environmental assessments, geotechnical investigations, demolition, commissioning, owner’s representative fees, testing and inspections, plan review, and building permit/occupancy fees.

(ss) “Work” means the achievement of the work of a project including equipment, material and labor specified in a construction agreement.

### **Section 3. Chair.**

(a) The Chair shall preside at all meetings of the Commission. The Chair shall appoint all committees and perform such duties as the statute, rule or the Commission specifies.

(b) In the absence of the Chair at any meeting of the Commission, the Vice-Chair shall serve as Acting Chair of the meeting. If both the Chair and Vice-Chair are absent or otherwise unable to preside over the meeting or perform a specified duty, the Chair shall designate a commissioner to serve as Acting Chair for the meeting or task.

### **Section 4. Secretary; Minutes; Books and Records.**

(a) The Administrator of the School Facilities Division shall function as Secretary to the Commission, and the Department shall administratively implement the Commission’s rules. The Secretary for the Commission shall conduct and care for all the correspondence of the Commission and keep and maintain the minutes of all the meetings of the Commission and the books and records of the Commission. The Secretary shall provide notice of the time and place of all meetings of the Commission, including an agenda of items to be discussed, to each Commissioner.

(b) All orders and final decisions of the Commission, the minutes of all its sessions, meetings and proceedings, and the Commission’s rules shall be kept by the Secretary for permanent public record and shall be open for public inspection at the office of the Department, listed on the Department’s website. The Secretary may certify to the correctness of any copies of such documents.

### **Section 5. Meetings.**

(a) The Commission shall meet at least quarterly and at other times as necessary to transact its business.

(b) Meetings and hearings shall be separate functions.

**Section 6. Order of Business; Agendas.**

(a) An agenda shall be prepared by the Secretary and approved by the Chair. The agenda shall set forth the matters scheduled to come before the Commission at the meeting and indicate for each matter whether it requires action to be taken by the Commission at the meeting. Before each meeting of the Commission, the Secretary shall circulate to all Commissioners the agenda so prepared by the Secretary and approved by the Chair.

(b) Any Commission member may direct the Secretary to include an agenda item for the Commission's consideration.

(c) Other than for purposes of public comment, persons desiring to have a matter brought before the Commission shall make their requests through the Department. Department staff shall work with the Secretary and the persons making the request to determine how and when it is appropriate that the matter be presented to the Commission. The Secretary shall consult with the chairman of the Commission when making this determination.

**Section 7. Recusal.**

(a) A Commissioner shall recuse himself from all proceedings relating to a matter if he or she has a personal or private interest in the matter. The Commissioner shall recuse him or herself by serving a written or verbal notice of recusal upon the Chair, who shall notify all other Commissioners and any parties involved in the matter. On and after the date of recusal, the recused Commissioner shall not participate in any deliberations, decisions or other actions of the Commission relating to the matter.

(b) A recused Commissioner may attend hearings and other proceedings related to a recused matter as a member of the public. The Commissioner may also attend any Commission meeting at which topics relating to the matter arise and participate in the deliberations, decisions and other actions of the Commission on topics unrelated to the matter upon which recusal has occurred.

**Section 8. Signing of Contracts.** Contracts, agreements, memoranda of understandings and other documents of the Commission may be signed by the Chair, or by a designee of the chair. The Secretary shall sign only those contracts, agreements, memoranda of understanding or other documents of the Commission for which the Commission has delegated its authority to the Secretary. The Secretary may further designate a member of the staff to sign on his or her behalf.

**Section 9. Public Records Practices.**

(a) All requests for public records from the Commission shall be in writing and processed according to this Section. For purposes of the Wyoming Public Records Act, the Secretary is the custodian of all public records of the Commission.

(b) The Commission incorporates by reference the following uniform rule:

(i) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, found at: <https://rules.wyo.gov>;

(ii) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(iii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (b)(i); and

(iv) The incorporated rule is maintained at the Department's Cheyenne office and is available for public inspection and copying at cost at the same location.

## Chapter 1

### General Provisions

**Section 1. Authority.** -This Chapter is promulgated pursuant to Wyoming Statute 21-15-114(a)(xv).

**Section 2. Definitions.** As used in these rules and all project agreements entered into by the Department:

(a) ~~“Aggrieved party” means a school district whose legal rights, duties or privileges have been harmed by an act of the Commission and which is entitled to a contested case proceeding as provided by law.~~

(b) ~~“Capital Construction” means those remedies receiving legislative funding. Capital Construction does not include major building and facility repair (major maintenance) funding.~~

(a) “Adequate” means a building, room, or other educational space is both sufficient and appropriate, as those terms are defined in this section.

(b) “Anticipated Hard Bid” means the funding limit of the total amount of proposals or bids to achieve capital construction work or the Work, on and off-site, unless identified otherwise in the budget worksheet including prime bids, multiple prime bids, allowances, alternates and other costs of the Work.

(c) “Appropriate” means a building, room, or other educational space that has the necessary infrastructure, storage, fixtures, and critical adjacencies to be compatible with the delivery of the required educational program.

(d) “Bidding Contingency” means the funding amount identified by the Owner and design professionals within the Anticipated Hard Bid to accommodate market variances or estimating errors.

(e) “Budget Worksheet” means the total funding structure of State Funds for a School Facilities Division capital construction project. The worksheet represents all project funds available through the State Construction Department for a project.

(f) “Closed” means any school educational building or facility that is not currently being used and is capable of being reopened.

(g) “Cohort Survival Calculation” means the rate of progression for each grade (K through 11) to the next grade (1 through 12) using the ten-year average for each grade progression.

(eh) “Component Level Recommendations” means recommendations by the Commission to implement remedies to address ~~school~~educational building and facility condition by repairing or replacing components when it is determined by the Commission that it is not feasible for districts to do so solely with major maintenance funds.

(i) “Construction Contingency” means funding identified to address unanticipated or unknown costs identified subsequent to the proposal or bidding process to achieve the Work. Construction Contingency is not a bidding contingency.

(fj) “Contractor” means any person who is a party to a contract with the Commission or a district to ~~construct, erect, alter, install or repair~~accomplish the Work of any Commission approved remedy.

(k) “Critical adjacency” refers to an educational, administrative, educational support, or facility support space within an educational building that must be located near another space in order to be functional as intended.

(gl) “Department” means the State Construction Department.

(hm) “Design Charrette” means an interactive and collaborative process where participants (school district, architects and others) work in a focused and sustained effort to develop the basis for a feasible building design that meets the educational, budgetary and schedule goals for the project.

(n) “Design Contingency” means funding identified to address unanticipated costs associated with services provided by design professionals.

(to) “Design Professionals” means the architect or other professional contracted with the district to design a remedy.

(p) “District” means any school district established pursuant to the laws of Wyoming excluding community colleges and community college districts.

(q) “District-initiated” refers to any renovation, construction, replacement, repair or other improvement of or to any school building or facility that is not a State-initiated remedy or major maintenance included in the district’s facility plan. This includes, but is not limited to, a district’s decision to include in a State-initiated remedy any design features or components contrary to the recommendations of value engineering performed in accordance with the Commission’s Facility Design Standards and Guidelines unless waived by the Department or excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, in excess of the Commission’s Facility Design Standards and Guidelines unless excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, or that add square footage in excess of Square Footage Calculator whether through construction, renovation, or acquisition of additional square footage.

(r) “District-initiated element” means any component, design feature, or square footage that is district-initiated and occurs in conjunction with a State-initiated remedy.

(s) “District-initiated project” means any project that is district-initiated and occurs independent of a legislative appropriation or Commission funding.

(jt) “Educational specifications or “Ed-specs” means those specifications used to define the programmatic, educational and functional goals of the educational facility.

(u) “Elementary school” means any school with a grade configuration of kindergarten through sixth grade, or any combination thereof.

(kv) “Facility Condition Assessment” (FCA) means the systematic process of collecting measured data, or making observations relative to the physical condition of a building or facility or one or more of its components or group(s) of components and recording the results.

(lw) “Facility Condition Index” (FCI) means a numerical rating or building condition score based on measured data or assessment of physical components or systems. The condition of a building is expressed as a ratio of the Cost to Repair Deficiencies, or “Deferred Maintenance” (DM) divided by the Current Replacement Value (CRV) of the building. The formula is:

$$FCI = \frac{\sum DM}{\sum CRV}$$

~~(m) “Facility Condition Needs Index” (FCNI) means a numerical rating or score assigned to a building represented by the FCI measured components and additional data comprised of technology readiness (TECH), illumination (ILLUM), and indoor air quality (IAQ). The FCNI is expressed as a ratio of the Cost to Repair Deficiencies or “Deferred Maintenance” (DM) plus the cost of the three additional systems divided by the Current Replacement Value (CRV) of the building plus the cost of the building improvements associated with the three systems. The formula is:~~

~~$$FCNI = \frac{\sum DM + DM_{ILLUM} + DM_{TECH} + DM_{IAQ}}{\sum CRV + CRV_{ILLUM} + CRV_{TECH} + CRV_{IAQ}}$$~~

(x) “High school” means any school with a grade configuration of ninth or tenth grade through twelfth grade.

(ny) “Informal Review” means the opportunity afforded a school district under W.S. 21-15-116(f) to consult with the Department ~~or Commission~~ regarding an action of the Department ~~or Commission~~ prior to ~~seeking administrative review~~ filing a request for a contested case proceeding before the Commission.

(oz) “Kick-off Meeting” means a meeting(s) between personnel of the Department and personnel of the district, in addition to such other persons as may be necessary to accomplish project planning.

(paa) “Leased Facilities” means any land, building or equipment or other capital asset that has been leased by or to a district.

(bb) “Major Maintenance” is a common reference term that means “Major building

and facility repair and replacement” as that term is defined in W.S. § 21-15-109(a)(iii).

(cc) “Middle school” means any stand-alone school or campus with any grade configuration that includes both seventh and eighth grade, but does not include the full range of grades down to kindergarten or up to twelfth grade. Districts may use an alternative descriptor such as “junior high school.”

(dd) “Most Cost Effective Remedy” means the most cost effective method of remediation as that phrase is used in W.S. 21-15-117(b).

(~~eee~~) “Mothballed building or facility” is any district building or facility which is closed and not operational, has the potential to be re-opened, is not being replaced under a district’s facility plan approved by the Commission, is not determined surplus within the district’s facility plan, and is maintained in good condition, for a maximum of three (3) years without additional approval from the Commission. Mothball status can be renewed by Commission approval after the initial three (3) years.

(ff) “Nonstudent-related buildings and facilities” means any building or facility that is either an “office building” or a “warehouse building,” as those terms are defined in W.S. 21-15-109(a)(iv) and (a)(viii).

(~~ggg~~) “Payable-Leased Facilities” are those facilities which are used by the district to provide the approved educational programs as prescribed by W.S. 21-15-109(c)(i)(B). -These facilities shall be included in the district’s gross square footage totals.

(~~shh~~) “Permanent Modular Building” means a pre-built, factory constructed and assembled school educational building or facility that is transported in an assembled condition to the location on which the building or facility is to be situated that is placed on a permanent foundation, and that is expected to be used by the district for its designed lifetime.

(ii) “Primarily used” means more than fifty percent (50%) of a school building or facility is used in connection with educational programs, district administrative functions, or storage of equipment, materials, and other district property.

(jj) “Project Audit” means a contract compliance audit by an independent auditing expertise of project budgets and expenditures undertaken in accordance with W.S. 21-15-123(f)(v)(J).

(~~kkk~~) “Project budget” means the amount of legislative funding allocated to a specific remedy. The project budget for any specific remedy shall be an amount determined by the Commission to be sufficient to fund the total project cost of the remedy. -Funds allocated to a specific remedy remain State funds and are not an entitlement of any district.

(ll) “Rural school” means a school located outside the main metropolitan area in which the district is located and from which the district does not bus students into the metropolitan area for core instruction.

(~~mm~~) “Separate Account” means an individual account held by the district for depositing and expending major building and facility repair funds. -These funds shall not be commingled with any other funds or accounts.

(nn) “State-initiated remedy” means any renovation, construction, replacement, repair, or other improvement of or to any school building or facility initiated by the legislature through an appropriation or the Commission through a funding decision, including major building and facility repair and replacement undertaken pursuant to a district’s facility plan. The elements and features of a state-initiated remedy are limited to those provided in the Commission’s Facility Design Standards and Guidelines, and the addition of any element or feature not included in those guidelines is not considered state-initiated.

(oo) “Sufficient” means that a building, room, or other educational space is of such a size that it has enough space to enable delivery of the required educational program.

(pp) “Surplus building” means a building that is not within the commission’s adequacy standards due to a renovation, construction, replacement, repair, or other improvement of or to any school building or facility initiated by a school district, an approved construction or renovation project, or by changes in school population.

(qq) “Temporary building” and “modular building” are defined interchangeably with “portable building” as that term is defined in W.S. 21-15-109(a)(v).

(~~rr~~) “Total project cost” means all project costs, including but not limited to: land acquisition, site preparation, design, construction, contingencies, FF&E, special studies (e.g. traffic, lighting), surveys, environmental assessments, geotechnical investigations, demolition, commissioning, owner’s representative fees, testing and inspections, plan review, and building permit/occupancy fees.

(ss) “Work” means the achievement of the work of a project including equipment, material and labor specified in a construction agreement.

### **Section 3. Chair.**

(a) The Chair shall preside at all meetings of the Commission.- The Chair shall appoint all committees and perform such duties as the statute, rule or the Commission specifies.

(b) In the absence of the Chair at any meeting of the Commission, the Vice-Chair shall serve as Acting Chair of the meeting. -If both the Chair and Vice-Chair are absent or otherwise unable to preside over the meeting or perform a specified duty, the Chair shall designate a commissioner to serve as Acting Chair for the meeting or task.

### **Section 4. Secretary; Minutes; Books and Records.**

(a) The Administrator of the School Facilities Division shall function as Secretary to the Commission, and the Department shall administratively implement the Commission’s rules.

The Secretary for the Commission shall conduct and care for all the correspondence of the Commission and keep and maintain the minutes of all the meetings of the Commission and the books and records of the Commission. -The Secretary shall provide notice of the time and place of all meetings of the Commission, including an agenda of items to be discussed, to each Commissioner.

(b) All orders and final decisions of the Commission, the minutes of all its sessions, meetings and proceedings, and the Commission's rules shall be kept by the Secretary for permanent public record and shall be open for public inspection at the office of the Department, ~~700 West 21<sup>st</sup> Street, Cheyenne, WY 82002.~~ listed on the Department's website. The Secretary may certify to the correctness of any copies of such documents.

#### **Section 5. Meetings; Attendance by Telecommunication; Quorum.**

(a) The Commission shall meet at least quarterly and at other times as necessary to transact its business.

~~(b) Meetings of the Commission are open to the public, except for those meetings or portions of a meeting that may be conducted in executive session pursuant to W.S. 16-4-405.~~

~~(c) Commissioners may attend meetings using telephonic or other means of telecommunication.~~

~~(d) Meetings and hearings shall be separate functions.~~

~~(e) A majority vote of the members of the Commission present at a meeting shall be required for approval of any actions of the Commission.~~

#### **Section 6. Order of Business; Agendas.**

(a) An agenda shall be prepared by the Secretary and approved by the Chair. -The agenda shall set forth ~~all the~~ the matters scheduled to come before the Commission at the meeting and indicate for each matter whether it requires action to be taken by the Commission at the meeting. -Before each meeting of the Commission, the Secretary shall circulate to all Commissioners the agenda so prepared by the Secretary and approved by the Chair. ~~-A public comment period may be included in the agenda at the discretion of the Chair.~~

(b) Any Commission member may direct the Secretary to include an agenda item for the Commission's consideration.

(c) Other than for purposes of public comment, persons desiring to have a matter brought before the Commission shall make such request their requests through the Department who will. Department staff shall work with the Secretary and the persons making the request to determine how and when it is appropriate that the matter be presented to the Commission. The Secretary shall consult with the chairman of the Commission when making this determination.

## **Section 7      Recusal.**

(a) A Commissioner shall recuse himself from all proceedings relating to a matter if he or she has a personal or private interest in the matter. -The Commissioner shall recuse ~~himself~~ him or herself by serving a written or verbal notice of recusal upon the Chair, who shall notify all other Commissioners and any parties involved in the matter. On and after the date of recusal, the recused Commissioner shall not participate in any deliberations, decisions or other actions of the Commission relating to the matter.

(b) A recused Commissioner may attend hearings and other proceedings related to a recused matter as a member of the public. -The Commissioner may also attend any Commission meeting at which topics relating to the matter arise and participate in the deliberations, decisions and other actions of the Commission on topics unrelated to the matter upon which recusal has occurred.

**Section 8.      Signing of Contracts.**- Contracts, agreements, memoranda of understandings and other documents of the Commission may be signed by the Chair, or by a designee of the chair. The Secretary shall sign only those contracts, agreements, memoranda of understanding or other documents of the Commission for which the Commission has delegated its authority to the Secretary. The Secretary may further designate a member of the staff to sign on his or her behalf.

## **Section 9.      Public Records Practices.**

(a) All requests for public records from the Commission shall be in writing and processed according to this Section. For purposes of the Wyoming Public Records Act, the Secretary is the custodian of all public records of the Commission.

(b) The Commission incorporates by reference the following uniform rule:

(i) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, found at: <https://rules.wyo.gov>;

(ii) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(iii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (b)(i); and

(iv) The incorporated rule is maintained at the Department's Cheyenne office and is available for public inspection and copying at cost at the same location.

## **~~Section 10. — Exceptions.~~**

~~The Commission may grant exceptions to guidelines, standards, or methodologies on a case by case basis. The Department shall create a thorough written record supporting the granting~~

~~or denial of every exception request. The Commission shall at a minimum consider the reasons why the exception is being requested, the nature of the request, any cost implications of the request, and whether alternative means exist to accomplish the purposes of the request. Exception requests shall be initially presented to the Department for its consideration and recommendation to the Commission.~~

## Chapter 2

### Rules of Practice and Procedure for Contested Case Proceedings; Exception Requests

**Section 1. Authority.** This Chapter is promulgated by the Commission under the authority of Wyoming Statutes 16-3-102(a)(i), 16-3-102(d), 21-15-114(a)(xv), 21-15-116(e) and 21-15-116(f).

**Section 2. Application of Rules.** This Chapter shall apply to district requests for exceptions from the Commission, contested case proceedings brought before the Commission, and informal reviews authorized by Wyoming Statutes brought before the Department by a district.

#### **Section 3. Exception Requests.**

- (a) The Commission may grant exceptions on a case-by-case basis to the following:
- (i) Building capacity based on a most cost effective remedy study;
  - (ii) Budget recommendations;
  - (iii) Allowable square footage calculator;
  - (iv) A determination of the Department rejecting a request to use a non-Commission-approved contract as described in Chapter 9 Section 7(a)(ii);
  - (v) A determination of the Department rejecting a request for a value engineering waiver as described in Chapter 9 Section 8(a)(i); and
  - (vi) Specific requirements of the Design Standards and Guidelines.
- (b) A district making an exception request shall include documentation explaining the exception request. Such documentation should include, at a minimum:
- (i) The precise nature of the exception requested;
  - (ii) The justification for the exception request; and
  - (iii) Necessary supporting documentation as identified by the Department.
- (c) The Department shall create a thorough written record supporting the granting or denial of every exception request. Exception requests shall be initially presented to the Department for its review. The Department shall then present the request to the Commission with a recommendation at the next meeting for which the submission of additional Commission matters is timely.

(d) The Commission shall at a minimum consider the reasons why the exception is being requested, the nature of the request, any cost implications of the request, whether granting the request comports with the Commission's statutory duties and authority, and whether alternative means exist to accomplish the purposes of the request.

#### **Section 4. Informal Review Proceedings.**

(a) Districts shall request an informal review before the Department Director before pursuing a contested case review. The time period for filing a formal request shall begin when the district receives a decision from the Department Director with respect to the informal review.

(b) A district requesting an informal review shall do so, in writing, to the Director of the Department. The request shall contain:

- (i) The decision of the Department the district would like reviewed;
- (ii) An explanation of why the decision should be reviewed;
- (iii) Any additional facts the district would like to be considered; and
- (iv) The legal authority upon which it is believed a decision was made in error.

(c) The Department may reject any request that lacks any of the required elements listed under Section 3(b) of this chapter. Such rejection does not constitute a final administrative decision of the Department and is not a prejudicial decision with respect to the district's right to re-file its request for informal review.

(d) The Director shall issue a written decision, in consultation with the Department's advising attorneys, laying forth the factual and legal basis for his or her decision.

(e) If, following the Department's review, the district is still unsatisfied with the actions of the Department, it may file a request for a contested case hearing before the Commission.

#### **Section 5. Contested Case Proceedings.**

(a) A district aggrieved by a final administrative action taken by the Department after an informal review conducted under Section 3 of this chapter may file a timely request for a contested case proceeding. The request shall be in accordance with the provisions contained in this Section.

(b) To initiate a contested case proceeding, a district shall prepare and file with the Commission a request which includes the following:

- (i) The name, telephone number, email, and mailing address of the district

and the same information for the representing attorney, if applicable;

(ii) A statement, in ordinary and concise language, of the facts and of the errors alleged to have been committed and issues upon which the request is based, including particular references to statutory sections, contract provisions or rules, regulations, policies, and orders involved;

(iii) A copy of the Director's decision and relevant material which relates to the decision at issue;

(iv) The specific relief sought; and

(v) The signature of the district and the representing attorney, if applicable.

(c) The request shall be served on the Commission and other necessary parties. Service shall be made to the Wyoming School Facilities Commission, care of the Department, at the location listed on the Department's website. Service can be made in person, by mail or received by facsimile, 307-777-8711, during regular business hours. Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(d) Contested case proceedings before the Commission shall be limited to the issues the district identified during the Department's informal review.

(e) The request shall be filed with the Commission within forty-five (45) days of the date of the final administrative decision at issue, or of the date of mailing of the final administrative decision as evidenced by a postmark, whichever is later.

**Section 6. Incorporation by Reference.** The Commission incorporates by reference the following uniform rule:

(a) Chapter 2 – Contested Case Proceedings adopted by the Office of Administrative Hearings and effective on July 20, 2017, found at <https://rules.wyo.gov>;

(i) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(ii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rule is maintained at the Department office and is available for public inspection and copying at cost at the same location.

**Section 7. Final Decision.** At the request of the Commission, the hearing officer shall make a recommended decision to the Commission. The Commission shall issue the final

decision, which shall constitute final agency action.

## Chapter 2

### **Rules of Practice and Procedure for Contested Case Proceedings; Exception Requests**

**Section 1. Authority.**- This Chapter is promulgated by the Commission under the authority of Wyoming Statutes ~~16-3-102(a)(i)-(f)~~, 16-3-102(d), 21-15-114(a)(xv), 21-15-116(e) and 21-15-116(f).

**Section 2. Application of Rules.** -This Chapter shall apply to district requests for exceptions from the Commission, contested case proceedings brought before the Commission, and informal reviews authorized by Wyoming Statutes ~~and brought before the Commission Department by a properly aggrieved party~~district.

#### **Section 3. Exception Requests.**

- (a) The Commission may grant exceptions on a case-by-case basis to the following:
- (i) Building capacity based on a most cost effective remedy study;
  - (ii) Budget recommendations;
  - (iii) Allowable square footage calculator;
  - (iv) A determination of the Department rejecting a request to use a non-Commission-approved contract as described in Chapter 9 Section 7(a)(ii);
  - (v) A determination of the Department rejecting a request for a value engineering waiver as described in Chapter 9 Section 8(a)(i); and
  - (vi) Specific requirements of the Design Standards and Guidelines.
- (b) A district making an exception request shall include documentation explaining the exception request. Such documentation should include, at a minimum:
- (i) The precise nature of the exception requested;
  - (ii) The justification for the exception request; and
  - (iii) Necessary supporting documentation as identified by the Department.
- (c) The Department shall create a thorough written record supporting the granting or denial of every exception request. Exception requests shall be initially presented to the Department for its review. The Department shall then present the request to the Commission with a recommendation at the next meeting for which the submission of additional Commission matters is timely.

(d) The Commission shall at a minimum consider the reasons why the exception is being requested, the nature of the request, any cost implications of the request, whether granting the request comports with the Commission's statutory duties and authority, and whether alternative means exist to accomplish the purposes of the request.

#### **Section 4. Informal Review Proceedings.**

(a) ~~Districts may~~shall request an informal review before the Department ~~or the Commission~~Director before pursuing a contested case review. ~~The time period for filing a formal request shall be tolled for~~begin when the period of time~~district receives a decision from the date of that request until the conclusion of~~Department Director with respect to the informal review.

(b) A district requesting an informal review shall do so, in writing, to the Director of the Department. The request shall contain:

- (i) The decision of the ~~Commission or the~~ Department the district would like reviewed;
- (ii) ~~A brief~~An explanation of why the decision should be reviewed;
- (iii) Any additional facts the district would like to be considered; and
- (iv) The legal authority upon which it is believed a decision was made in error.

(c) ~~A decision or action of the~~The Department ~~shall be reviewed in the first instance by the Director. If the district is unsatisfied by the Director's review, it may ask that the decision be reviewed by the Commission.~~

~~(d) Informal reviews before reject any request that lacks any of the required elements listed under Section 3(b) of this chapter. Such rejection does not constitute a final administrative decision of the Department shall be held either at the Department's Cheyenne office, or, if agreeable and is not a prejudicial decision with respect to the district, via video or teleconference. The review shall be scheduled at the earliest convenience of the district and the Department, but in no event later than thirty (30) days after the request is made unless otherwise agreed~~district's right to by both parties in writing.

~~(e) — Informal reviews before the Department shall proceed as follows:~~

~~(i) — Department staff will present the information and basis re-file its request for its decision or action; informal review.~~

~~(ii) — The district will present any additional facts and authority upon which it believes the Department acted in error; and~~

~~(iii)(d) The Director shall issue his a written decision as soon thereafter as reasonably practicable. The Director shall confirm his decision, in writing consultation with the Department's advising attorneys, laying forth the factual and outline the legal basis for that his or her decision.~~

~~(fe) If, following the Department's review, the district is still unsatisfied with the actions of the Department, it may file a request an informal review for a contested case hearing before the Commission.~~

~~(g) — Informal reviews before the Commission shall be limited to the information presented during the Department's review.~~

~~(h) — Informal reviews before the Commission shall be scheduled by the Commission.~~

~~(i) — If possible, the review shall be scheduled for the next regularly scheduled Commission meeting.~~

~~(ii) — If the next regularly scheduled Commission meeting is not available, or, if the district and the Commission agree the next regularly scheduled meeting of the Commission is not practical, the Commission may call an emergency meeting to address the informal review.~~

~~(iii) — The time allotted to the district's presentation will not exceed one (1) hour, unless otherwise agreed to by the district and Commission.~~

~~(i) — The Commission shall issue its decision as soon thereafter as reasonably practicable. The Chair shall follow up the decision in writing and outline the basis for that decision.~~

#### **Section 45. - Contested Case Proceedings.**

(a) A ~~properly~~ district aggrieved party by a final administrative action taken by the Department after an informal review conducted under Section 3 of this chapter may file a timely request for a hearing with the Commission requesting a contested case proceeding. -The request shall be in accordance with the provisions contained in this ~~Chapter~~ Section.

(b) To initiate a contested case proceeding, a district shall prepare and file with the Commission a request which includes the following:

(i) The name, telephone number, email, and mailing address of the district and the same information for the representing attorney, if applicable;

(ii) A statement, in ordinary and concise language, of the facts and of the errors alleged to have been committed and issues upon which the request is based, including particular references to statutory sections, contract provisions or rules, regulations, policies, and orders involved;

(iii) A copy of the Director's decision and relevant material which relates to the decision at issue;

(iv) The specific relief sought; and

(v) The signature of the district and the representing attorney, if applicable.

(c) The request shall be served on the Commission and other necessary parties. Service shall be made to the Wyoming School Facilities Commission, ~~e/o State Construction Department, School Facilities Division, 700 West 21st Street, Cheyenne, Wyoming 82002.~~ care of the Department, at the location listed on the Department's website. Service can be made in person, by mail or received by facsimile, 307-777-8711, during regular business hours. -Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(d) Contested case proceedings before the Commission shall be limited to the issues the district identified during the Department's informal review.

(e) The request shall be filed with the Commission within forty-five (45) days of the date of the final administrative decision at issue, or of the date of mailing of the final administrative decision as evidenced by a postmark, whichever is later. ~~The Commission may grant an exception in circumstances where good cause is shown.~~

#### **Section 5. Formal Request Contents and Requirements.**

~~(a) To initiate a contested case proceeding the aggrieved party shall prepare and file with the Commission a request which includes the following:~~

~~(i) The name, telephone number, fax number, if available, and mailing address of the aggrieved party and the same information for the representing attorney, if applicable;~~

~~(iii) A copy of the (v) The signature of the aggrieved party and the representing attorney, if applicable.~~

**Section 6. Incorporation by Reference.** The Commission incorporates by reference the following uniform rule:

(a) Chapter 2 – Contested Case Proceedings adopted by the Office of Administrative

Hearings and effective on July 20, 2017, found at <https://rules.wyo.gov>;

(i) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(ii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rule is maintained at the Department office and is available for public inspection and copying at cost at the same location.

**Section 7. Final Decision.**- At the request of the Commission, the hearing officer shall make a recommended decision to the Commission. The Commission shall issue the final decision-, which shall constitute final agency action.

## Chapter 3

### Uniform Adequacy Standards

**Section 1. Authority.** This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), (ix) and 21-15-115.

**Section 2. Applicability.** This Chapter applies to all buildings and facilities subject to the Commission's rules and regulations. The Wyoming statewide adequacy standards establish uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools.

**Section 3. Safety of the Educational Environment.** School buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Code compliance includes the completion of system improvements or site improvements that are mandated in writing by an authority having jurisdiction for the continued use of a school building or facility. School buildings shall comply with all lawful environmental regulations promulgated by the Wyoming Department of Environmental Quality, the Wyoming Environmental Quality Council, the federal Environmental Protection Agency, and any other governmental entity with jurisdiction over the building. An existing school building may be deemed adequate with respect to this provision if it complies with the International Existing Building Code.

#### **Section 4. Building Site Requirements.**

(a) Size requirements. For schools that intend to organize and operate more than one of the following school types on a single site, the higher of the site sizes serves as the applicable requirement. Sites larger than those in the following requirements are permissible but exceed these adequacy standards. If an alternative school shares a site with another school, the alternative school students shall contribute toward the site size calculation for the combined school site.

(i) For elementary schools, an adequate site size is up to four (4) acres, plus an additional acre for each one hundred (100) students.

(ii) For middle schools, an adequate site size is up to ten (10) acres, plus an additional acre for each one hundred (100) students.

(iii) For senior high schools, an adequate site size is up to twenty (20) acres, plus an additional acre for each one hundred (100) students.

(b) Many schools pre-date the Commission's authority to promulgate adequacy standards. Existing school sites smaller than the minimum size sites in subsection (a) of this section that pre-date the original adoption of these standards are deemed adequate with respect to this subsection unless the Commission determines otherwise.

(c) Sites shall:

- (i) Have play areas that are relatively flat and level;
- (ii) Have a playground(s) for grades K-6 accessible to students;
- (iii) Have access to parking for staff, students, and visitors that enables the school to deliver the required statewide educational program;
- (iv) Have separate areas for bus loading and unloading and student pickup and dropoff;
- (v) Be accessible to emergency vehicles;
- (vi) Have positive water drainage away from the building such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare; and
- (vii) Have exterior lighting at entrance(s), parking area(s), bus loading and unloading area(s), and student pickup and dropoff area(s).

**Section 5. Building Performance Standards.** A building shall:

- (a) Have an FCI score between 0.0 and 0.65;
- (b) Have exterior finishes that repel wind, snow, ice, and water intrusion;
- (c) Have roofing with positive water drainage;
- (d) Be structurally sound. A school building shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress;
- (e) Be deemed adequate with respect to this subsection if the building systems are capable of maintaining an acceptable level of room comfort as determined by the Classroom Temperature Psychometric Chart adopted by the Commission and effective on August 27, 2020; and
- (f) Utilize one (1) or more of the following energy efficiency features:
  - (i) Energy-efficient lighting;
  - (ii) Light level control;
  - (iii) Occupancy sensors;
  - (iv) Multiple pane windows; and
  - (v) HVAC setback control.

**Section 6. Special Needs Students.** School buildings and facilities shall be deemed adequate with regard to this section if the building or facility meets the special needs of

students enrolled in the school as identified in their individualized education plans. If a special needs student enrolls in a district and the educational buildings and facilities that correspond to that student's needs are not adequate for the education and use of that student, the district shall notify the Department. The Department shall work with the Commission to develop a remedy to comply with the student's individualized education plan.

**Section 7. Building and Facility Accessibility.** The Department shall assess existing educational buildings and facilities with respect to accessibility and special needs requirements. The Department shall deem any building or facility that complies with local accessibility codes and is capable of complying with the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Accessibility Guidelines as being adequate with respect to accessibility.

**Section 8. Adequacy of Educational Space for Required Programs.**

Educational buildings shall provide adequate educational space. Educational space shall be deemed adequate if a district is able to provide the educational programs required by Wyoming Statute § 21-1-101. If a district is unable to provide the required programs because its educational space is inadequate, it shall immediately notify the Department and provide a detailed report explaining how the current space is not adequate for the delivery of the required educational programming. In the event the Department receives such a report, it shall make recommendations to the Commission evaluating the deficiency and suggesting remedies to alleviate the situation. The Department may satisfy its obligation under this section by utilizing the assessment of the adequacy of existing school buildings and facilities in developing its recommendation to the Commission.

(a) Instructional spaces shall be sufficient for the required educational programs. Temporary educational space shall not be considered in evaluating Subsections (b) through (e) of this Section.

(b) Elementary school buildings shall provide the following educational spaces:

(i) General classrooms.

(ii) Space for specific curriculum. Buildings shall have space adequate to deliver the required educational program for the following subjects at the elementary school level, whether in general classrooms or specialized spaces:

(A) Art;

(B) Music;

(C) Science; and

(D) Other parts of the required state educational program necessitating specialized instructional space.

(ii) Physical education spaces. Physical education space shall include:

(A) A gymnasium or multipurpose space; and

(B) A playfield and playground.

(c) Middle school and high school buildings shall provide the following types of educational spaces:

(i) General classrooms;

(ii) Science classrooms. Science classrooms shall:

(A) Have adequate lab space to deliver the required educational program;

(B) Have adequate infrastructure to support the equipment necessary to deliver the required educational program; and

(C) Be equipped with code required safety equipment.

(iii) Fine and performing arts spaces. Fine and performing art spaces shall include adequate space capable of being used to deliver the required Fine and Performing Arts Standards.

(iv) Career and technical education (CTE) space. Middle and high schools shall have adequate space to deliver the required CTE standards.

(d) Middle schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A playfield. Standard playfields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface; and

(iii) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(e) High schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A soccer or football field; and

(A) Standard soccer or football fields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface;

(B) The field may have football goal posts and/or fixed soccer goals;

(C) A basic scoreboard capable of tracking score, time, and period; and

(D) Additional features such as bleachers, upgraded scoreboards, concession stands, and field houses are allowed but exceed these adequacy standards.

(iii) Track and field facilities;

(A) High schools designated 3A and 4A in track and field may have up to eight (8) lanes with running surface width of thirty feet (30');

(B) High schools designated 1A and 2A in track and field may have up to six (6) lanes with running surface width of twenty-three feet (23');

(C) Allowable surfaces include synthetic impermeable textured surfaces, dirt, cinder, or asphalt;

(D) One of the "D" areas of the track infield may have a surface matching the athletic track; and

(E) Facilities to conduct field events are not mandatory, but, when present, may include the items listed in this subparagraph without exceeding these adequacy standards. To the extent a district opts to include field event facilities, those facilities should be located in an appropriate area on the available site, use appropriate surfaces for the intended use, and be constructed consistent with National High School Field Standards. Districts may build facilities in excess of those allowable under this subparagraph, however those facilities exceed these adequacy standards. The allowable facilities include one (1) of each of the following:

(I) Two-way long jump;

(II) Triple jump runway with a landing pit at each end;

(III) Shot put pad;

(IV) Discus pad with cage;

(V) Pole vault runway and/or vaulting box;

(VI) Landing area; and

(VII) High jump approach and landing area.

(iv) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(f) All school buildings shall provide or have access to infrastructure, fixtures, and storage necessary to deliver the required educational program. “Infrastructure” does not include furniture or other furnishings.

(i) Educational spaces shall have the infrastructure and fixtures necessary for the normal activities of the required educational programs offered in the room and appropriate storage for classroom materials or access to appropriate storage.

(ii) Administrative, educational support, and facility support spaces in educational buildings shall have the minimum infrastructure and fixtures required for the necessary functions performed within. The following spaces, if present, should have the minimum infrastructure and fixtures needed to perform their necessary functions:

(A) Administrative offices;

(B) Student health, counseling and educational support space for the delivery of student health, counseling, and testing programs. The student health or nurse’s suite may have space to isolate sick students. It shall include secure storage for records, medications, and supplies, and a working communications system. The student health or nurse’s suite shall have a connected accessible restroom;

(C) Faculty workspace or teachers’ lounge, which may have more than one function, and may include a break area with a kitchenette;

(D) Network distribution space, which shall be accessible, securable, well-ventilated, temperature-controlled to accommodate routers, switches, servers and other devices to support school technology operational needs;

(E) Technology support space(s), which shall be sufficient to store and/or service user devices;

(F) Library, media, and research center, which shall have internet connectivity and fixtures, equipment, technology, and other resources necessary to provide the statewide educational program;

- (G) Maintenance or janitorial space, which may include janitorial sinks;
- (H) Assembly space, circulation space, and entry vestibules; and
- (I) Enough space, equipment, and storage necessary to provide regular meals to students during the school day.

(g) School buildings shall have plumbing fixtures in the minimum number as shown below in the chart adapted from the 2018 International Building Code.

Water Closets		Lavatories	
Male	Female	Male	Female
1 per 50		1 per 50	

(h) Alternate delivery methods. Notwithstanding Section 7(b)-(g) of this chapter, if a school district chooses to use an alternate delivery method for instruction, any space used for the alternate method shall be considered adequate so long as the district can deliver the required state educational program.

(i) For schools that intend to organize and operate more than one of the preceding school types on a single site or within a single building, each portion of the school shall meet the minimum standards for the grade levels served.

(j) Rural schools. Notwithstanding Section 7(b)-(f) of this chapter, rural schools are not required to have any of the spaces identified above provided that they have sufficient general classrooms.

**Section 9. Capacity and Square Footage Requirements.**

(a) Because the Commission has determined that incorporation of the full text of its methodologies would be cumbersome or inefficient, the following methodologies are incorporated by reference in these Commission rules.

(i) Enrollment Projection Methodology adopted by the Commission and effective on August 27, 2020;

(ii) Capacity Calculation Methodology, adopted by the Commission and effective on August 27, 2020; and

(iii) Maximum Allowable Educational Building Square Footage Methodology, adopted by the Commission and effective on August 27, 2020.

(b) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section. All incorporated methodologies may be viewed free of charge at the Commission’s website (<https://stateconstruction.wyo.gov/school-facilities/commission#h.p benv01wD6NZO>) and are

maintained at the State Construction Department at 700 West 21st Street in Cheyenne, WY, where they are available for public inspection and copying, at cost.

- (c) A district-initiated project or element exceeds these adequacy standards if:
  - (i) It results in square footage in excess of the amount calculated under paragraph (a)(iii) of this section;
  - (ii) It increases the capacity of a building or facility which had a pre-project capacity score of less than one hundred percent (100%) as calculated under paragraph (a)(ii) of this section; or
  - (iii) The project results in a ratio of district non-educational to educational square footage, as calculated in W.S. § 21-15-109(c)(vii)(A), that exceeds twenty-one to seventy-nine (21:79).

**Section 10. Technological Capacity Criteria.** Any school building or facility capable of being utilized to provide the required educational program under the state education technology plan is deemed adequate with respect to this section. An educational building or facility shall have technology infrastructure to support all aspects of the educational, operational, and administrative processes, with access to internet connectivity and telecommunications services.

**Section 11. Adequacy Standards for Alternative Schools.**

(a) Net educational space, at minimum, shall equal sixty-seven (67) sq. ft. per student. Because of the diversity of teaching strategies and the selective use of instructional areas, no designated type or size of space usage shall be mandatory, however the district must have access to sufficient space to deliver the required educational program.

(b) For alternative schools on an independent site, the educational facilities shall comply with the following provisions in this Chapter: §§ 3; 4(c)(iii), (iv), (vi), (vii); 5; 6; 7; 9; and 10.

**Section 12. Site Security.** Security features included in the Facility Design Guidelines do not exceed these adequacy standards. School buildings shall have:

- (a) The following locking systems and hardware:
  - (i) Locks on the inside of classroom doors;
  - (ii) Exterior door locks; and
  - (iii) Door keying systems;
- (b) The following access control features:
  - (i) A single point of entry for visitors;

- (ii) A secured vestibule;
- (iii) Main entry control systems; and
- (iv) A visitor management system;
- (c) The following communications systems:
  - (i) Two-way communication; and
  - (ii) Mass notification systems;
- (d) The following site and perimeter features:
  - (i) Site landscaping;
  - (ii) Site vehicle barricades;
  - (iii) A secure site perimeter to protect students from hazards and to discourage unauthorized access to the campus;
  - (iv) Clearly marked loading, unloading, drop-off zones, and fire zones;
  - (v) Security signage; and
  - (vi) Site lighting;
- (e) Video surveillance at the following locations, with recording capability in place:
  - (i) Main entry and other building entrances, with both front and back views of approach; and
  - (ii) Key exterior and interior areas, including but not limited to:
    - (A) The area outside restrooms, locker rooms, counseling offices, and administrative offices,
    - (B) Bus drop-off and pick up areas;
    - (C) Stairwells;
    - (D) Main hallways;
    - (E) Cafeteria;
    - (F) The entrance to gymnasium and athletic fields;
    - (G) Parking lots; and

- (H) Library;
- (f) The following egress and refuge features:
  - (i) Classroom doors constructed of durable material; and
  - (ii) The ability to lockdown the following areas:
    - (A) All classrooms;
    - (B) Main entrances;
    - (C) Library; and
    - (D) Gymnasium.

**Section 13. Nonstudent-related buildings and facilities.** All nonstudent-related buildings and facilities shall comply with the following provisions in this Chapter: §§ 3, 4(c)(v) and (vi), 5, 7, and 10, as applicable. Any building or facility other than a student-related or nonstudent-related building or facility exceeds these adequacy standards.

## Chapter 3

### Uniform Adequacy Standards

**Section 1. Authority.** This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), (ix) and 21-15-115.

**Section 2. Applicability.** This Chapter applies to all buildings and facilities subject to the Commission's rules and regulations. The Wyoming statewide adequacy standards establish uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools.

**Section 3. Safety of the Educational Environment.** School buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Code compliance includes the completion of system improvements or site improvements that are mandated in writing by an authority having jurisdiction for the continued use of a school building or facility. School buildings shall comply with all lawful environmental regulations promulgated by the Wyoming Department of Environmental Quality, the Wyoming Environmental Quality Council, the federal Environmental Protection Agency, and any other governmental entity with jurisdiction over the building. An existing school building may be deemed adequate with respect to this provision if it complies with the International Existing Building Code.

#### **Section 4. Building Site Requirements.**

(a) Size requirements. For schools that intend to organize and operate more than one of the following school types on a single site, the higher of the site sizes serves as the applicable requirement. Sites larger than those in the following requirements are permissible but exceed these adequacy standards. If an alternative school shares a site with another school, the alternative school students shall contribute toward the site size calculation for the combined school site.

(i) For elementary schools, an adequate site size is up to four (4) acres, plus an additional acre for each one hundred (100) students.

(ii) For middle schools, an adequate site size is up to ten (10) acres, plus an additional acre for each one hundred (100) students.

(iii) For senior high schools, an adequate site size is up to twenty (20) acres, plus an additional acre for each one hundred (100) students.

(b) Many schools pre-date the Commission's authority to promulgate adequacy standards. Existing school sites smaller than the minimum size sites in subsection (a) of this section that pre-date the original adoption of these standards are deemed adequate with respect to this subsection unless the Commission determines otherwise.

(c) Sites shall:

- (i) Have play areas that are relatively flat and level;
- (ii) Have a playground(s) for grades K-6 accessible to students;
- (iii) Have access to parking for staff, students, and visitors that enables the school to deliver the required statewide educational program;
- (iv) Have separate areas for bus loading and unloading and student pickup and dropoff;
- (v) Be accessible to emergency vehicles;
- (vi) Have positive water drainage away from the building such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare; and
- (vii) Have exterior lighting at entrance(s), parking area(s), bus loading and unloading area(s), and student pickup and dropoff area(s).

**Section 5. Building Performance Standards.** A building shall:

- (a) Have an FCI score between 0.0 and 0.65;
- (b) Have exterior finishes that repel wind, snow, ice, and water intrusion;
- (c) Have roofing with positive water drainage;
- (d) Be structurally sound. A school building shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress;
- (e) Be deemed adequate with respect to this subsection if the building systems are capable of maintaining an acceptable level of room comfort as determined by the Classroom Temperature Psychometric Chart adopted by the Commission and effective on August 27, 2020; and
- (f) Utilize one (1) or more of the following energy efficiency features:
  - (i) Energy-efficient lighting;
  - (ii) Light level control;
  - (iii) Occupancy sensors;
  - (iv) Multiple pane windows; and
  - (v) HVAC setback control.

**Section 6. Special Needs Students.** School buildings and facilities shall be deemed adequate with regard to this section if the building or facility meets the special needs of

students enrolled in the school as identified in their individualized education plans. If a special needs student enrolls in a district and the educational buildings and facilities that correspond to that student's needs are not adequate for the education and use of that student, the district shall notify the Department. The Department shall work with the Commission to develop a remedy to comply with the student's individualized education plan.

**Section 7. Building and Facility Accessibility.** The Department shall assess existing educational buildings and facilities with respect to accessibility and special needs requirements. The Department shall deem any building or facility that complies with local accessibility codes and is capable of complying with the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Accessibility Guidelines as being adequate with respect to accessibility.

**Section 8. Adequacy of Educational Space for Required Programs.**

Educational buildings shall provide adequate educational space. Educational space shall be deemed adequate if a district is able to provide the educational programs required by Wyoming Statute § 21-1-101. If a district is unable to provide the required programs because its educational space is inadequate, it shall immediately notify the Department and provide a detailed report explaining how the current space is not adequate for the delivery of the required educational programming. In the event the Department receives such a report, it shall make recommendations to the Commission evaluating the deficiency and suggesting remedies to alleviate the situation. The Department may satisfy its obligation under this section by utilizing the assessment of the adequacy of existing school buildings and facilities in developing its recommendation to the Commission.

(a) Instructional spaces shall be sufficient for the required educational programs. Temporary educational space shall not be considered in evaluating Subsections (b) through (e) of this Section.

(b) Elementary school buildings shall provide the following educational spaces:

(i) General classrooms.

(ii) Space for specific curriculum. Buildings shall have space adequate to deliver the required educational program for the following subjects at the elementary school level, whether in general classrooms or specialized spaces:

(A) Art;

(B) Music;

(C) Science; and

(D) Other parts of the required state educational program necessitating specialized instructional space.

(ii) Physical education spaces. Physical education space shall include:

(A) A gymnasium or multipurpose space; and

(B) A playfield and playground.

(c) Middle school and high school buildings shall provide the following types of educational spaces:

(i) General classrooms;

(ii) Science classrooms. Science classrooms shall:

(A) Have adequate lab space to deliver the required educational program;

(B) Have adequate infrastructure to support the equipment necessary to deliver the required educational program; and

(C) Be equipped with code required safety equipment.

(iii) Fine and performing arts spaces. Fine and performing art spaces shall include adequate space capable of being used to deliver the required Fine and Performing Arts Standards.

(iv) Career and technical education (CTE) space. Middle and high schools shall have adequate space to deliver the required CTE standards.

(d) Middle schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A playfield. Standard playfields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface; and

(iii) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(e) High schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A soccer or football field; and

(A) Standard soccer or football fields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface;

(B) The field may have football goal posts and/or fixed soccer goals;

(C) A basic scoreboard capable of tracking score, time, and period; and

(D) Additional features such as bleachers, upgraded scoreboards, concession stands, and field houses are allowed but exceed these adequacy standards.

(iii) Track and field facilities;

(A) High schools designated 3A and 4A in track and field may have up to eight (8) lanes with running surface width of thirty feet (30');

(B) High schools designated 1A and 2A in track and field may have up to six (6) lanes with running surface width of twenty-three feet (23');

(C) Allowable surfaces include synthetic impermeable textured surfaces, dirt, cinder, or asphalt;

(D) One of the "D" areas of the track infield may have a surface matching the athletic track; and

(E) Facilities to conduct field events are not mandatory, but, when present, may include the items listed in this subparagraph without exceeding these adequacy standards. To the extent a district opts to include field event facilities, those facilities should be located in an appropriate area on the available site, use appropriate surfaces for the intended use, and be constructed consistent with National High School Field Standards. Districts may build facilities in excess of those allowable under this subparagraph, however those facilities exceed these adequacy standards. The allowable facilities include one (1) of each of the following:

(I) Two-way long jump;

(II) Triple jump runway with a landing pit at each end;

(III) Shot put pad;

(IV) Discus pad with cage;

(V) Pole vault runway and/or vaulting box;

(VI) Landing area; and

(VII) High jump approach and landing area.

(iv) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(f) All school buildings shall provide or have access to infrastructure, fixtures, and storage necessary to deliver the required educational program. “Infrastructure” does not include furniture or other furnishings.

(i) Educational spaces shall have the infrastructure and fixtures necessary for the normal activities of the required educational programs offered in the room and appropriate storage for classroom materials or access to appropriate storage.

(ii) Administrative, educational support, and facility support spaces in educational buildings shall have the minimum infrastructure and fixtures required for the necessary functions performed within. The following spaces, if present, should have the minimum infrastructure and fixtures needed to perform their necessary functions:

(A) Administrative offices;

(B) Student health, counseling and educational support space for the delivery of student health, counseling, and testing programs. The student health or nurse’s suite may have space to isolate sick students. It shall include secure storage for records, medications, and supplies, and a working communications system. The student health or nurse’s suite shall have a connected accessible restroom;

(C) Faculty workspace or teachers’ lounge, which may have more than one function, and may include a break area with a kitchenette;

(D) Network distribution space, which shall be accessible, securable, well-ventilated, temperature-controlled to accommodate routers, switches, servers and other devices to support school technology operational needs;

(E) Technology support space(s), which shall be sufficient to store and/or service user devices;

(F) Library, media, and research center, which shall have internet connectivity and fixtures, equipment, technology, and other resources necessary to provide the statewide educational program;

- (G) Maintenance or janitorial space, which may include janitorial sinks;
- (H) Assembly space, circulation space, and entry vestibules; and
- (I) Enough space, equipment, and storage necessary to provide regular meals to students during the school day.

(g) School buildings shall have plumbing fixtures in the minimum number as shown below in the chart adapted from the 2018 International Building Code.

Water Closets		Lavatories	
Male	Female	Male	Female
1 per 50		1 per 50	

(h) Alternate delivery methods. Notwithstanding Section 7(b)-(g) of this chapter, if a school district chooses to use an alternate delivery method for instruction, any space used for the alternate method shall be considered adequate so long as the district can deliver the required state educational program.

(i) For schools that intend to organize and operate more than one of the preceding school types on a single site or within a single building, each portion of the school shall meet the minimum standards for the grade levels served.

(j) Rural schools. Notwithstanding Section 7(b)-(f) of this chapter, rural schools are not required to have any of the spaces identified above provided that they have sufficient general classrooms.

**Section 9. Capacity and Square Footage Requirements.**

(a) Because the Commission has determined that incorporation of the full text of its methodologies would be cumbersome or inefficient, the following methodologies are incorporated by reference in these Commission rules.

(i) Enrollment Projection Methodology adopted by the Commission and effective on August 27, 2020;

(ii) Capacity Calculation Methodology, adopted by the Commission and effective on August 27, 2020; and

(iii) Maximum Allowable Educational Building Square Footage Methodology, adopted by the Commission and effective on August 27, 2020.

(b) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (b) of this section. All incorporated methodologies may be viewed free of charge at the Commission’s website ([https://stateconstruction.wyo.gov/school-facilities/commission#h.p\\_benv01wD6NZO](https://stateconstruction.wyo.gov/school-facilities/commission#h.p_benv01wD6NZO)) and are

maintained at the State Construction Department at 700 West 21st Street in Cheyenne, WY, where they are available for public inspection and copying, at cost.

(c) A district-initiated project or element exceeds these adequacy standards if:

(i) It results in square footage in excess of the amount calculated under paragraph (a)(iii) of this section;

(ii) It increases the capacity of a building or facility which had a pre-project capacity score of less than one hundred percent (100%) as calculated under paragraph (a)(ii) of this section; or

(iii) The project results in a ratio of district non-educational to educational square footage, as calculated in W.S. § 21-15-109(c)(vii)(A), that exceeds twenty-one to seventy-nine (21:79).

**Section 10. Technological Capacity Criteria.** Any school building or facility capable of being utilized to provide the required educational program under the state education technology plan is deemed adequate with respect to this section. An educational building or facility shall have technology infrastructure to support all aspects of the educational, operational, and administrative processes, with access to internet connectivity and telecommunications services.

**Section 11. Adequacy Standards for Alternative Schools.**

(a) Net educational space, at minimum, shall equal sixty-seven (67) sq. ft. per student. Because of the diversity of teaching strategies and the selective use of instructional areas, no designated type or size of space usage shall be mandatory, however the district must have access to sufficient space to deliver the required educational program.

(b) For alternative schools on an independent site, the educational facilities shall comply with the following provisions in this Chapter: §§ 3; 4(c)(iii), (iv), (vi), (vii); 5; 6; 7; 9; and 10.

**Section 12. Site Security.** Security features included in the Facility Design Guidelines do not exceed these adequacy standards. School buildings shall have:

(a) The following locking systems and hardware:

(i) Locks on the inside of classroom doors;

(ii) Exterior door locks; and

(iii) Door keying systems;

(b) The following access control features:

(i) A single point of entry for visitors;

- (ii) A secured vestibule;
- (iii) Main entry control systems; and
- (iv) A visitor management system;
- (c) The following communications systems:
  - (i) Two-way communication; and
  - (ii) Mass notification systems;
- (d) The following site and perimeter features:
  - (i) Site landscaping;
  - (ii) Site vehicle barricades;
  - (iii) A secure site perimeter to protect students from hazards and to discourage unauthorized access to the campus;
  - (iv) Clearly marked loading, unloading, drop-off zones, and fire zones;
  - (v) Security signage; and
  - (vi) Site lighting;
- (e) Video surveillance at the following locations, with recording capability in place:
  - (i) Main entry and other building entrances, with both front and back views of approach; and
  - (ii) Key exterior and interior areas, including but not limited to:
    - (A) The area outside restrooms, locker rooms, counseling offices, and administrative offices,
    - (B) Bus drop-off and pick up areas;
    - (C) Stairwells;
    - (D) Main hallways;
    - (E) Cafeteria;
    - (F) The entrance to gymnasium and athletic fields;
    - (G) Parking lots; and

- (H) Library;
- (f) The following egress and refuge features:
  - (i) Classroom doors constructed of durable material; and
  - (ii) The ability to lockdown the following areas:
    - (A) All classrooms;
    - (B) Main entrances;
    - (C) Library; and
    - (D) Gymnasium.

**Section 13. Nonstudent-related buildings and facilities.** All nonstudent-related buildings and facilities shall comply with the following provisions in this Chapter: §§ 3, 4(c)(v) and (vi), 5, 7, and 10, as applicable. Any building or facility other than a student-related or nonstudent-related building or facility exceeds these adequacy standards.

**Section 14. Definitions.**—As used in this chapter:

(a) —“Adequate” means a building, room, or other educational space is both sufficient and appropriate, as those terms are defined in this section.

(b) —“Appropriate” means a building, room, or other educational space that has the necessary infrastructure, storage, fixtures, and critical adjacencies to be compatible with the delivery of the required educational program.

(c) —“Critical adjacency” refers to an educational, administrative, educational support, or facility support space within an educational building that must be located near another space in order to be functional as intended.

(d) —“Elementary school” means any school with a grade configuration of kindergarten through fifth or sixth grade. A sixth grade class that is part of an elementary school shall be treated as an elementary grade for purposes of these rules, unless the grade configuration of the school is kindergarten through seventh grade or higher, in which case the standards applicable to the higher grade level control.

(e) —“High school” means any school with a grade configuration of ninth or tenth grade through twelfth grade.

(f) —“Middle school” means any school with any grade configuration of the sixth through ninth grades that includes both seventh and eighth grade, and is inclusive of schools denoted as “junior high schools” by districts. A sixth grade class that is part of a middle school shall be treated as a middle school grade for purposes of these rules.

~~(g) —“Nonstudent related buildings and facilities” means any building or facility that is either an “office building” or a “warehouse building,” as those terms are defined in W.S. 21-15-109(a)(iv) and (a)(viii).~~

~~(h) —“Rural school” means a school located outside the main metropolitan area in which the district is located and from which the district does not bus students into the metropolitan area.~~

~~(i) —“Sufficient” means that a building, room, or other educational space is of such a size that it has enough space to enable delivery of the required educational program.~~

## Chapter 8

### Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets

**Section 1. Authority.** This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv); 21-15-117(a); 21-15-119(a), (c); 21-15-121(a); and 28-11-301(c)(iv).

**Section 2. Inventory.** The Department shall prepare and maintain an inventory of district-owned school buildings and facilities.

**Section 3. Assessment of Building and Facility Needs.** The Department shall develop and the Commission shall approve as a policy a comprehensive facility assessment guide. This guide shall include an assessment that measures and quantifies educational building condition and capacity needs on a statewide basis. The Department shall use this guide in the assessment of buildings and facilities under W.S. 21-15-117(a) and the results of this assessment shall be used in the development of the three schedules described in Section 4 of this Chapter.

**Section 4. Prioritization of Building Remediation.** The Commission shall annually evaluate the adequacy of the State's school buildings and facilities and make appropriation recommendations to the Legislature for funding based upon three schedules provided by the Department: condition, capacity, and a consolidated schedule. The consolidated schedule shall prioritize building and facility needs from the most critical to the least critical. These three schedules shall be calculated as described in this section.

(a) Capacity schedule. The capacity schedule shall be prioritized based on projected capacity calculated in accordance with this subsection.

(i) The Department shall calculate building capacity and enrollment projections based on the Commission's methodologies incorporated by reference in Chapter 3 of these Rules.

(ii) For the purposes of projections, the construction time for capital remedies shall be presumed to be three (3) years, and the Department shall project enrollments over a five (5) year projection period beginning upon the presumed completion of a construction period, in accordance with W.S. 21-15-117(a)(iii).

(iii) The Department shall use the projected enrollments by configuration to calculate an expected rate of change and apply that rate of change to each building in that configuration. This projected enrollment shall be the basis for prioritization under this subsection.

(iv) The Commission may direct the Department to adjust projections in accordance with the Commission's enrollment projection methodology.

(v) Capacity ranking. District capacity needs shall be ranked in the following manner on the capacity schedule:

(A) Districts with projected capacity exceeding 100% shall be deemed to have a high capacity need.

(B) Districts with a projected capacity between 100% and 90% shall be deemed to have a medium capacity need. When a school reaches a medium capacity need, or higher, the Department shall work with the district to determine the type of remedy most likely to resolve the capacity need in a timely and cost-effective manner.

(C) Districts with a projected capacity below 90% shall be deemed to have a low capacity need.

(b) Condition schedule. The condition schedule shall be prioritized based on FCI score. District condition needs shall be ranked in the following manner on the condition schedule:

(i) Schools with an FCI score exceeding 0.65 shall be deemed to have a high condition need.

(ii) Schools with an FCI score between 0.55 and 0.65 shall be deemed to have a medium condition need. When a school reaches a medium condition need, or higher, the Department shall work with the district to determine the type of remedy most likely to resolve the condition need in a timely and cost-effective manner.

(iii) Schools with an FCI score below 0.55 shall be deemed to have a low condition need.

(c) Prioritization of the consolidated schedule shall be based on the Composite Need Score calculated in accordance with this subsection.

(i) The Composite Need Score shall be calculated using the following formula:

$$\text{Composite Need Score} = (\text{Capacity Need Score} \times 0.55) + (\text{FCI} \times 0.45)$$

(ii) Capacity Needs Score and shall be calculated pursuant to this paragraph.

(A) “SPC” means School Projected Capacity and shall be calculated by dividing a school’s projected enrollment by its projected capacity, which shall account for remedies anticipated to be completed within the projection period. A SPC of greater than 1.4 shall be rounded down to 1.4.

(B) “CPC” means Configuration Projected Capacity and shall be calculated by dividing a configuration’s projected enrollment by its projected capacity, which shall account for remedies anticipated to be completed within the projection period. A CPC of greater than 1.4 shall be rounded down to 1.4.

(C) “DPC” means District Projected Capacity and shall be calculated by dividing a district’s projected enrollment by its projected capacity, which shall account for remedies anticipated to be completed within the projection period. A DPC of greater than 1.4 shall be rounded down to 1.4.

(D) “W<sup>S</sup>” means Weighting Factor for SPC and shall be .2.

(E) “W<sup>C</sup>” means Weighting Factor for CPC and shall be .7.

(F) “W<sup>D</sup>” means Weighting Factor for DPC and shall be .1.

(G) The Capacity Needs Score shall be calculated using the following formula:

$$\text{Capacity Needs Score} = W^S \frac{\text{SPC}}{1.4} + W^C \frac{\text{CPC}}{1.4} + W^D \frac{\text{DPC}}{1.4}$$

(d) The Commission may periodically review and verify needs assessment data and building and facility ratings for condition and capacity to ensure the assessments provide timely and uniform data in accordance with W.S. 21-15-117(a).

#### **Section 5. Budget Recommendations.**

(a) The Department shall prepare budgets based on the consolidated remediation schedule. Each budget shall include, but is not limited to, land, project planning, design, construction, and on-site and off-site infrastructure.

(b) The Commission may, by majority vote, adjust the rankings on the consolidated remediation schedule for each budget period to ensure that the schedule ranks buildings from most critical to least critical needs, as provided in this subsection.

(i) Any Commissioner may propose a change to the consolidated schedule by providing notice to the Department at least ten (10) business days in advance of a scheduled Commission meeting. Upon receipt of notice from a Commissioner pursuant to this paragraph, the Department shall provide the notice to all districts potentially affected by the proposed change.

(ii) For any decision to adjust the rankings, the Commission shall make specific findings on the record regarding the relative need of all projects whose ranking is affected.

(iii) No changes shall be made to the ranking of the consolidated remediation schedule for a budget period after the Commission’s May meeting, absent a showing of an emergency.

(c) Using accepted accounting standards and the principles outlined above the

Commission shall, not later than September 1 of each year, prepare and submit to the Governor and the Select Committee on School Facilities, a proposed budget, the prioritized list of projects proposed for funding, the amount of funding allocated to each project, the assessments conducted by the Commission of condition and capacity, and the annual building status report specified under W.S. 21-15-121.

**Section 6. Identification and Determination of the Most Cost Effective Remedy.**

(a) The Department shall consider various criteria in making a recommendation to the Commission regarding the most cost effective remedy of identified school building and facility needs to deliver quality educational services and to meet adequacy standards.

(i) Facility Design Standards and Guidelines, methodologies, procedures and policies of the Commission shall be considered by the Department, in consultation with the district, and appropriate data and facts shall be reported, which may be presented as a formal study identifying possible remedies to assist the Commission. The Department may utilize outside consultants to conduct studies.

(ii) The Department shall consider the following non-exclusive list of factors in making a recommendation concerning the most cost effective remedy, in addition to other factors it considers applicable under the circumstances:

- (A) The district facility plan;
- (B) Any available non-construction alternatives, including grade reconfiguration and non-capital remedies;
- (C) The availability of major building and facility repair and replacement funds;
- (D) District enrollment projections;
- (E) The educational building or facility's design capacity and square footage;
- (F) Immediacy of the need for a remedy;
- (G) Compliance with statewide adequacy standards as outlined in Chapter 3 of these Rules;
- (H) The prescribed statewide educational program;
- (I) Total project cost and estimated budget for all determined remedies to address the identified need in comparison to the benefit expected to be derived from each remedy; and

(J) Site, utilities, pavements, and other physical data and characteristics that may impact a proposed method of remediation, including availability of existing school sites or district-owned land or the need to acquire land.

(b) The Commission may make a determination of the most cost effective remedy following the Department's recommendation by majority vote of the Commission. The Commission may take notice of studies commissioned by districts or the Department, but such an action shall not bind the Commission to approve the recommendations of the study or to include them in the Commission's recommendations to the Legislature.

(c) The Commission may change its recommendation for the most cost effective remedy at any time.

## Chapter 8

### Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets

**Section 1. Authority.** This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv); 21-15-117(a)(i); 21-15-119(a), (c); 21-15-121(a); and 28-11-301(c)(iv).

**Section 2. ~~Inventory; Assignment of Building Condition.~~** ~~The Commission Department shall prepare and maintain an inventory of district-owned school buildings and facilities. Each structure in the inventory, as identified by the Department, shall be scored, as applicable, in the categories of building condition and capacity in accordance with these rules and regulations. These scores shall be used to establish a state-wide composite facilities index (CFI), which shall then be used in conjunction with district facility plans for the Department to make recommendations to the Commission in developing a prioritization schedule for school building and facility remediation.~~

**Section 3. Assessment of Building and Facility Needs.** The Department shall develop and the Commission shall approve as a policy a comprehensive facility assessment guide. This guide shall include an assessment that measures and quantifies educational building condition and capacity needs on a statewide basis. The Department shall use this guide in the assessment of buildings and facilities under W.S. 21-15-117(a) and the results of this assessment shall be used in the development of the three schedules described in Section 4 of this Chapter.

**Section 4. Prioritization of Building Remediation.** In prioritizing projects for the schedule of remedies and submission to the Legislature for funding, the highest needs shall be addressed first. Buildings shall be ranked from highest need to lowest need as follows: The Commission shall annually evaluate the adequacy of the State's school buildings and facilities and make appropriation recommendations to the Legislature for funding based upon three schedules provided by the Department: condition, capacity, and a consolidated schedule. The consolidated schedule shall prioritize building and facility needs from the most critical to the least critical. These three schedules shall be calculated as described in this section.

(a) Capacity ~~Prioritization~~ schedule. The capacity schedule shall be prioritized based on projected capacity calculated in accordance with this subsection.

(i) The Department shall calculate building capacity and enrollment projections based on the Commission's methodologies incorporated by reference in Chapter 3 of these Rules.

(ii) For the purposes of projections, the construction time for capital remedies shall be presumed to be three (3) years, and the Department shall project enrollments over a five (5) year projection period beginning upon the presumed completion of a construction period, in accordance with W.S. 21-15-117(a)(iii).

(iii) The Department shall use the projected enrollments by configuration to calculate an expected rate of change and apply that rate of change to each building in that

configuration. This projected enrollment shall be the basis for prioritization under this subsection.

(iv) The Commission may direct the Department to adjust projections in accordance with the Commission's enrollment projection methodology.

(v) Capacity ranking. District capacity needs shall be ranked in the following manner on the capacity schedule:

(A) Districts with projected capacity exceeding 100% shall be deemed to have a (high capacity need) shall be determined to be in need of immediate attention and shall take precedence before capacity needs.

(iiB) Districts with a projected capacity between 100% and 950% shall be deemed to have a (medium capacity need) may be considered for funding only after high capacity school needs have been addressed. When a school reaches a medium capacity need, or higher, the Department shall work with the district to determine the type of remedy most likely to resolve the capacity need in a timely and cost-effective manner.

(iiiC) Districts with a projected capacity below-between 950% shall be deemed to have a and 90% (low capacity need) may be considered for planning funding.

(b) Condition Prioritization schedule. The condition schedule shall be prioritized based on FCI score. District condition needs shall be ranked in the following manner on the condition schedule:

(i) Schools with an FCI score exceeding 0.65 shall be deemed to have a (high condition need) shall take precedence before other condition needs and may be forwarded for capital construction funding based on the determination of the most cost effective remedy.

(ii) Schools with an FCI score between 0.55 and 0.65 shall be deemed to have a (medium condition need) may be forwarded for consideration for planning funds and possible capital construction funding after high condition school needs have been addressed. When a school reaches a medium condition need, or higher, the Department shall work with the district to determine the type of remedy most likely to resolve the condition need in a timely and cost-effective manner.

(iii) Schools with an FCI score below 0.55 shall be deemed to have a (low condition need) may be forwarded for consideration for planning funds and possible capital construction funding after high condition school needs have been addressed.

(c) Educational suitability is addressed through routine maintenance, major maintenance, or capital construction projects funded by the Legislature. Prioritization of the consolidated schedule shall be based on the Composite Need Score calculated in accordance with this subsection.

(i) The Composite Need Score shall be calculated using the following formula:

$$\text{Composite Need Score} = (\text{Capacity Need Score} \times 0.55) + (\text{FCI} \times 0.45)$$

(ii) Capacity Needs Score and shall be calculated pursuant to this paragraph.

(A) "SPC" means School Projected Capacity and shall be calculated by dividing a school's projected enrollment by its projected capacity, which shall account for remedies anticipated to be completed within the projection period. A SPC of greater than 1.4 shall be rounded down to 1.4.

(B) "CPC" means Configuration Projected Capacity and shall be calculated by dividing a configuration's projected enrollment by its projected capacity, which shall account for remedies anticipated to be completed within the projection period. A CPC of greater than 1.4 shall be rounded down to 1.4.

(C) "DPC" means District Projected Capacity and shall be calculated by dividing a district's projected enrollment by its projected capacity, which shall account for remedies anticipated to be completed within the projection period. A DPC of greater than 1.4 shall be rounded down to 1.4.

(D) "W<sup>S</sup>" means Weighting Factor for SPC and shall be .2.

(E) "W<sup>C</sup>" means Weighting Factor for CPC and shall be .7.

(F) "W<sup>D</sup>" means Weighting Factor for DPC and shall be .1.

(G) The Capacity Needs Score shall be calculated using the following formula:

$$\text{Capacity Needs Score} = W^S \frac{\text{SPC}}{1.4} + W^C \frac{\text{CPC}}{1.4} + W^D \frac{\text{DPC}}{1.4}$$

~~(d) An updated method of calculating suitability has been adopted by the Commission and may be found in the "Educational Suitability Score Report" prepared by the Commission and attached hereto as Appendix C.~~

~~(e) The Commission may periodically review and verify needs assessment data and building and facility ratings for condition, and capacity and suitability to ensure the assessments provide timely and uniform data in accordance with W.S. 21-15-1157(ba).~~

~~(f) At least biennially, a new prioritized needs index shall be developed by Commission and that needs index shall be the basis upon which legislatively funded remedies~~

shall be determined. Calculation of the relative weights of the three scoring tools for purposes of developing that needs index shall be 50% weighting to facility condition, 35% weighting to facility capacity, and 15% weighting to educational suitability.

#### **Section 45. Project Budgets Recommendations.**

(a) ~~Budgets for prioritized projects shall be established as follows:~~

~~\_\_\_\_\_ (i) \_\_\_\_\_ The Department shall prepare budgets based on the schedule of school building and facility consolidated remediation schedule. Each budget shall include, but is not limited to, land, project planning, design, construction, and on-site and off-site infrastructure.~~

~~(b) (ii) \_\_\_\_\_ The Commission ~~shall develop a~~ may, by majority vote, adjust the rankings on the consolidated remediation schedule for school building and facility remediation for each budget period to ensure that the schedule ranks buildings from most critical to least critical needs, as provided in this subsection.~~

~~\_\_\_\_\_ (i) \_\_\_\_\_ Any Commissioner may propose a change to the consolidated schedule by providing notice to the Department at least ten (10) business days in advance of a scheduled Commission meeting. Upon receipt of notice from a Commissioner pursuant to this paragraph, the Department shall provide the notice to all districts potentially affected by the proposed change.~~

~~\_\_\_\_\_ (ii) \_\_\_\_\_ For any decision to adjust the rankings, the Commission shall make specific findings on the record regarding the relative need of all projects whose ranking is affected. The schedule shall identify the remedies attached to each need for funding to include planning, design, and construction projects by category as follows: capacity, condition, and other needs determined by the Commission.~~

~~\_\_\_\_\_ (iii) \_\_\_\_\_ No changes shall be made to the ranking of the consolidated remediation schedule for a budget period after the Commission's May meeting, absent a showing of an emergency situation requiring a change.~~

(c) ~~(iii) \_\_\_\_\_ Using accepted accounting standards and the principles outlined above the Commission shall, not later than September 1 of each year, prepare and submit to the Governor and the Select Committee on School Facilities, a proposed budget, the prioritized list of projects proposed for funding, the amount of funding allocated to each project, the assessments conducted by the Commission of condition, and capacity and suitability, and the annual building status report specified under W.S. 21-15-121.~~

#### **Section 56. Identification and Determination of the Most Cost Effective Remedy.**

(a) ~~The Commission-Department shall considers various criteria ~~to identify and determine~~ in making a recommendation to the Commission regarding the most cost effective remedy of identified school building and facility needs to deliver quality educational services and~~

to meet adequacy standards.

(i) Facility Design Standards and Guidelines, methodologies, procedures and policies of the Commission shall be considered by the Department, in consultation with the district, and appropriate data and facts shall be reported, which may be presented as a formal study identifying possible remedies to assist the Commission. The Department may utilize outside consultants to conduct studies.

(ii) ~~The Commission~~ Department shall consider the following non-exclusive list of factors in ~~determining~~ making a recommendation concerning the most cost effective remedy, in addition to other factors it considers applicable under the circumstances:

- (A) The district facility plan;
- (B) Any available non-construction alternatives, including grade reconfiguration and non-capital remedies;
- (C) The availability of major building and facility repair and replacement funds;
- (D) District enrollment projections;
- (E) The educational building or facility's design capacity and square footage;
- (F) Immediacy of the need for a remedy;
- (G) Compliance with statewide adequacy standards as outlined in Chapter 3 of these Rules;
- (H) The prescribed statewide educational program;
- (I) Total project cost and estimated budget for all determined remedies to address the identified need in comparison to the benefit expected to be derived from each remedy; and
- (J) Site, utilities, pavements, and other physical data and characteristics that may impact a proposed method of remediation, including availability of existing school sites or district-owned land or the need to acquire land.

(b) The Commission may make a determination of the most cost effective remedy following the Department's recommendation by majority vote of the Commission. The Commission may take notice of studies commissioned by districts or the Department, but such an action shall not bind the Commission to approve the recommendations of the study or to include them in the Commission's recommendations to the Legislature.

(c) The Commission may change its recommendation for the most cost effective remedy at any time.

~~APPENDIX C:~~

~~Education Suitability Score Report~~ [the entire appendix has been omitted for the sake of length but is proposed for deletion in its entirety]

## Chapter 9

### Implementation of Remedies and Project Management

**Section 1. Authority.** This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), 21-15-117, 21-15-118(c) and 21-15-123(f)(v).

#### **Section 2. Relationship Between the State Construction Department and School Districts.**

(a) Master Memoranda of Understanding (MOU's) and Project Agreements shall be developed to establish the working relationship between the Department and the district.

(i) Master MOUs. The Master MOU defines the duties and responsibilities of the Department and the district for non-capital construction functions, including, but not limited to, major building and facility repair and replacement, facility planning, condition assessments, and annual reporting.

(ii) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. No work or disbursement of funds shall proceed on projects until a Project Agreement is executed between the Department and the district. Districts shall not expend any appropriated project funds until authorized by the Director.

(b) Departmental Review. The Department shall review school construction projects for compliance with uniform statewide adequacy standards. This review shall be ongoing throughout the planning, budgeting, design, and construction process.

**Section 3. Program Planning.** Upon determination of the most cost effective remedy, the Department shall develop a detailed scope of the work and estimated budget for the remedy in consultation with the district. The scope of the work and estimated budget shall form the basis of any future budget request. A request to change the scope of the work shall be presented to the Commission along with all financial implications and justification for the change. If approved by the Commission, the Department shall amend the scope of work and estimated budget.

#### **Section 4. Prototypical Designs.**

(a) To further the concept of value-added projects, the Commission encourages using prototypical designs and prototypical components. When appropriate and feasible to meet the needs of a district, prototypes may shorten design time, simplify value engineering, decrease costs, and increase construction efficiency.

(b) The Department shall maintain a database of school floor plans that districts may consider for re-use.

(c) School districts may consider the use of prototype designs (past designs) from the Department database or other designs that may be available from architects. The district may utilize the services of a design consultant to determine whether prototype designs may be appropriate or whether modifications of prototype plans are feasible to meet the needs of the district.

### **Section 5. Determination of Delivery Method.**

(a) Projects shall be designed and constructed using the design-bid-build delivery method unless extenuating circumstances exist that necessitate the adoption of an alternate method. District requests for the Commission to approve an alternate design and construction delivery method shall explain the reason(s) an alternate project delivery method is preferable to the design-bid-build delivery method.

(b) The Commission shall consider the following non-exclusive and non-prioritized list of factors in making a determination to allow alternate design and construction delivery methods:

- (i) Size and complexity of the remedy;
- (ii) Budget and availability of funds;
- (iii) Urgency of time;
- (iv) Past experience with the delivery method;
- (v) Anticipated cost of the possible various delivery methods;
- (vi) Market conditions, including access to and availability of personnel to provide design or construction services; and
- (vii) District input and recommendations regarding delivery method.

### **Section 6. Site Analysis and Land Acquisition.**

(a) Requests for land acquisition may originate with a request by a district to the Department or as a Department recommendation. The Commission shall determine if there is a need based on capacity, condition, health, safety, determination of the most cost effective remedy, or the best interests of the State.

(i) Many Wyoming schools pre-date the adoption of current standards. School sites which pre-date the original adoption of standards in 2003 may be larger or smaller

than the recommended sizes. School sites smaller than these recommendations are presumed to be adequately sited unless the Commission determines otherwise.

(b) If the Commission determines a need exists, the Commission shall:

(i) Examine availability of current district land;

(ii) If a replacement building or facility renovation or addition, determine if the current site is appropriate;

(iii) If new land is required, consider land swaps and acquisition of publicly-owned land or land in conjunction with a development prior to considering other private land.

(c) If the Commission determines that land acquisition is necessary, the district in consultation with the Department shall conduct an analysis of potential sites or land. Prior to initiating non-confidential site analysis activities the district in consultation with the Department shall obtain a proposed purchase agreement fixing the purchase price and other conditions of purchase, subject to site analysis and due diligence investigation results that are acceptable to the district and Department. Site analysis shall be conducted in accordance and comply with the Commission rules and design guidelines and shall be approved by the Commission. Prior to acquisition the district in consultation with the Department shall conduct a due diligence investigation, which includes the following:

(i) Legal description of property;

(ii) Title commitment;

(iii) Two (2) land appraisals (using the average of two if within five percent (5%) of each other, otherwise a third appraisal will be obtained and the average of the two (2) closest appraisals will be used);

(iv) Site survey to include soil conditions, traffic patterns, utilities and site topography;

(v) Phase 1 environmental assessment;

(vi) Annexation and zoning issues;

(vii) Local development requirements; and

(viii) Preliminary and final plat.

(d) The Commission may grant a waiver to any of the above due diligence requirements for good cause.

(e) All phases of the land acquisition process may be kept confidential to the extent permissible by law and in accordance with this subsection. Neither the district nor the Commission shall divulge information on proposed land acquisitions prior to such time as all due

diligence has been completed and the land purchase price has been negotiated, unless both the Commission and the district consent to the disclosure or law requires such disclosure.

## **Section 7. Services and Contracts.**

### **(a) General.**

(i) Districts shall use Commission contracts for capital projects, unless otherwise approved by the Commission and Attorney General's Office.

(ii) Modifications to Commission contracts, including adjustments to further stipulate services and reflect the scope of the particular project, on a project-by-project basis may be submitted to the Department for review and approval in consultation with the Attorney General's Office. Major modifications, as determined by the Department, or alternatives to Commission contracts require approval by the Department, Attorney General's Office, and the Commission.

(iii) Contracts shall be executed by the district and other parties and routed to the Department for its review and approval as to form.

(iv) Contracts modified and executed without the necessary approvals shall not be eligible for State funding.

### **(b) Owner's Representative.**

(i) Owner's representatives are individuals or entities contracted on a project-specific basis to assist the district and State in ensuring the project is managed and completed in accordance with the contracts related to the project.

(ii) The Department shall determine whether an Owner's Representative is necessary, taking into consideration the expense, time, and ability of district and departmental staff.

## **Section 8. Value Engineering.**

(a) Value engineering is a process to achieve the best balance of cost-to-value in projects for districts and the State. In addition to value engineering required by design or construction contracts, the Department shall conduct a value engineering analysis using a collaborative process to objectively consider the best approach to design and construct projects in accordance with Section 12(d) of this Chapter. Value engineering shall include life cycle cost analysis of all major systems in the facility.

(i) Value engineering review shall occur at the schematic design phase (10% Design and the design documents phase (35% Design) or as otherwise determined by the Department. The design of the facility shall conform to value engineering recommendations

before it proceeds into the next phase of development unless waived in writing by the Director or by action of the Commission pursuant to Chapter 2 § 3(a)(v) of these Rules.

(ii) Value engineering strategies learned on previous projects shall be considered for subsequent projects.

**Section 9. Project Closeout.** Absent extenuating circumstances, fund balances remaining from project budgets that are unencumbered or unobligated are subject to reversion no later than one year after the date of Substantial Completion.

**Section 10. On-site or Off-site Infrastructure.**

(a) On-site or off-site infrastructure includes streets, sidewalks, traffic signals, bike and walk paths, electric, gas, water, sewage systems, storm systems, telephone, data, and other facilities approved by the Commission.

(i) On-site infrastructure solely attributable to the needs of the project and of the capacity required to serve the school facility remedy in accordance with the Commission's design guidelines shall be included in the cost per square foot budget for the building.

(ii) The Department shall budget for the cost of the development of on-site or off-site infrastructure solely attributable to the needs of the project and additional infrastructure costs attributable to shared use.

(b) Requests for on-site or off-site infrastructure to be shared with others shall be made by the district in writing and shall include a full description of the project, including the cost of the proposed infrastructure, the functional capacity properly attributable to the needs of the project, contemplated excess functional capacity, and a dedicated source of repayment.

(i) Requests shall be presented to the Department during the initial planning and budgeting for the proposed project. The Department shall make a determination whether further information, such as design engineering or cost data, is required before the request is presented to the Commission for its consideration as part of its budget recommendation. The district shall notify the affected municipality or local governmental entity of the request and of the time and location at which it will be considered by the Commission.

(ii) Requests will only address infrastructure needed for the school building and facility.

(iii) The Department, in consultation with the Attorney General's Office, shall determine if a contractual agreement is required for cost-sharing, repayment, or operation agreement(s) with the affected parties. Cost-sharing or repayment agreements shall include provisions for reimbursement of departmental expenditures for functional capacity beyond the capacity properly attributable to the needs of the project to be repaid to the Department over time with interest. Amounts repaid shall be deposited by the Department into the school capital construction account.

(iv) The functional capacity needs of school buildings and facilities shall take precedence over the needs of others.

(c) If extensions to municipal or other Department-approved utilities are not available or are cost prohibitive, then on-site systems may be constructed.

(d) The district shall notify the affected municipality or other local governmental entity in writing of Commission action taken related to on-site or off-site infrastructure and reasons for the action.

### **Section 11. Changes to Budgeted Funding.**

(a) In accordance with W.S. 21-15-119(c) and W.S. 28-11-301(c)(iv), budgets for prioritized projects may be adjusted by the Commission and transfers between project phases may be made by the Department.

(b) In the event that any particular project budget is or appears to be insufficient to fully fund that project remedy, the following non-exclusive and non-prioritized list of factors shall be considered by the Department in recommending whether, and how, that project will be allowed to proceed with legislative funding:

(i) Verify value engineering recommendations have been followed;

(ii) Verify aspects of the design of the project to identify cost savings which may be generated within the project. In this regard, all parties shall reexamine earlier assumptions in the search for viable, cost-effective and efficient design changes;

(iii) Verify the scheduling, or phasing, of the project to determine if budgeted funds will be required and cost-savings or cost-deferrals may be obtained by that scheduling. Decision-making shall take into account the funding cycles of the Legislature and the uncertainty of future funding.

(c) If these non-prioritized factors are insufficient to achieve project costs within the project budget, including adjustment for inflation, the Commission shall consider the following additional factors:

(i) Change of delivery method;

(ii) Other sources of funding, including funding held by the Commission;

(iii) Delayed start date of the project; and

(iv) Complete or partial re-planning or re-design of the project.

### **Section 12. Facility Design Standards and Guidelines.**

(a) The Commission's Facility Design Standards and Guidelines do not apply to existing school buildings and facilities and shall not be used for evaluating the adequacy of any existing school building or facility.

(b) For all Projects, as defined in W.S. 21-15-111(a)(iv), appropriated by the legislature or funded by the Commission, the Department shall include in the Project Agreement the most recent version of the Commission's applicable Facility Design Standards and Guidelines. The Department shall require that the Facility Design Standards and Guidelines incorporated in the Project Agreement govern the expenditure of state funds for that project for the duration of that project.

(c) In accordance with W.S. 21-15-114(a)(vii), the Commission shall adopt Facility Design Standards and Guidelines for the following types of school buildings and facilities:

- (i) Educational Buildings;
- (ii) Outdoor Physical Education Facilities; and
- (iii) School Bus Maintenance and Parking Facilities.

(d) The Department shall include in the Project Agreement a provision requiring that when the Facility Design Standards and Guidelines are not specific on the type, quantity, or quality of a design element or component, the architect shall select the most efficient and cost effective type, quantity, or quality of the element or component, subject to approval by the Department. The provision shall further provide that if a district opts for an element or component exceeding that approved by the Department, such element or component shall be considered district-initiated and shall not be funded out of the capital construction budget.

(e) The Department shall include in the Project Agreement a requirement that, in the event the legislature funds a project of a type that is not covered by the Commission's existing Facility Design Standards and Guidelines, the architect shall work with the Department to ensure that the design is adequate, efficient and cost effective and shall utilize the Commission's existing Facility Design Standards and Guidelines in doing so to the extent those Guidelines are applicable.

(f) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. Prior to the beginning of any Project, as defined in W.S. 21-15-111(a)(iv), the Department and district shall sign a Project Agreement that enumerates what portion of the work is state funded. No work or disbursement of funds shall proceed on Projects until a Project Agreement is executed between the Department and the district. Districts shall not be reimbursed and the Department shall not pay for any work done on any portion of the project prior to the Director's authorization. Furthermore, the Department shall not pay for or reimburse any district for expenses incurred prior to the execution of the Project Agreement and a commission-approved contract with the professional service provider or contractor, with the exception of reasonable owner's overhead expenses.

(g) Districts shall provide to the Department, prior to the commencement of any capital construction project as that term is defined in W.S. 9-2-3001(b)(ii), an opportunity to review the final design, drawings and plans of the project. This review shall include, but is not limited to, consideration of whether the design, drawings and plans of the proposed project utilizes energy efficient best practice techniques and processes. This provision applies to any capital construction project for which the state is required to expend state funds to fully or partially pay for operations, routine maintenance or major maintenance expenses, including state-initiated remedies that include district-initiated elements and district-initiated projects.

(h) The Commission shall incorporate reasonable community and district input and participation for conforming an aesthetic design within the community when a new school building or facility is designed. The Commission shall defer to the reasonable aesthetic design choices of the district, provided that those design choices do not bring the building or facility to a condition exceeding the Commission's relevant adequacy standards.

## Chapter 9

### Implementation of Remedies and Project Management

**Section 1. Authority.**- This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), 21-15-117, 21-15-118(c) and 21-15-123(f)(v).

#### **Section 2. Relationship Between the State Construction Department and School Districts.**

(a) Master Memoranda of Understanding (MOU's) and Project Agreements shall be developed to establish the working relationship between the Department and the district.

(i) Master MOUs. The Master MOU defines the duties and responsibilities of the Department and the district for non-capital construction functions, including, but not limited to, major building and facility repair and replacement, facility planning, condition assessments, and annual reporting.

(ii) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. No work or disbursement of funds shall proceed on projects until a Project Agreement is executed between the Department and the district. Districts shall not expend any appropriated project funds until authorized by the Director.

(b) Departmental Review. The Department shall review school construction projects for compliance with uniform statewide adequacy standards. This review shall be ongoing throughout the planning, budgeting, design, and construction process.

**Section 3. Program Planning.** -Upon determination of the most cost effective remedy, the Department shall develop a detailed scope of the work and estimated budget for the remedy in consultation with the district. The scope of the work and estimated budget shall form the basis of any future budget request. A request to change the scope of the work shall be presented to the Commission along with all financial implications and justification for the change. If approved by the Commission, the Department shall amend the scope of work and estimated budget.

#### **Section 4. Prototypical Designs.**

(a) To further the concept of value-added projects, the Commission encourages using prototypical designs and prototypical components. When appropriate and feasible to meet the needs of a district, prototypes may shorten design time, simplify value engineering, decrease costs, and increase construction efficiency.

(b) The Department shall maintain a database of school floor plans that districts may consider for re-use.

(c) School districts may consider the use of prototype designs (past designs) from the Department database or other designs that may be available from architects. The district may utilize the services of a design consultant to determine whether prototype designs may be appropriate or whether modifications of prototype plans are feasible to meet the needs of the district.

### **Section 5. Determination of Delivery Method.**

(a) Projects shall be designed and constructed using the design-bid-build delivery method unless extenuating circumstances exist that necessitate the adoption of an alternate method. District requests for the Commission to approve an alternate design and construction delivery method shall explain the reason(s) an alternate project delivery method is preferable to the design-bid-build delivery method.

(b) The Commission shall consider the following non-exclusive and non-prioritized list of factors in making a determination to allow alternate design and construction delivery methods:

- (i) Size and complexity of the remedy;
- (ii) Budget and availability of funds;
- (iii) Urgency of time;
- (iv) Past experience with the delivery method;
- (v) Anticipated cost of the possible various delivery methods;
- (vi) Market conditions, including access to and availability of personnel to provide design or construction services; and
- (vii) District input and recommendations regarding delivery method.

### **Section 6. Site Analysis and Land Acquisition.**

(a) Requests for land acquisition may originate with a request by a district to the Department or as a Department recommendation. The Commission shall determine if there is a need based on capacity, condition, health, safety, determination of the most cost effective remedy, or the best interests of the State.

(i) Many Wyoming schools pre-date the adoption of current standards. School sites which pre-date the original adoption of standards in 2003 may be larger or smaller

than the recommended sizes. -School sites smaller than these recommendations are presumed to be adequately sited unless the Commission determines otherwise.

(b) If the Commission determines a need exists, the Commission shall:

(i) Examine availability of current district land;

(ii) If a replacement building or facility renovation or addition, determine if the current site is appropriate;

(iii) If new land is required, consider land swaps and acquisition of publicly-owned land or land in conjunction with a development prior to considering other private land.

(c) If the Commission determines that land acquisition is necessary, the district in consultation with the Department shall conduct an analysis of potential sites or land. Prior to initiating non-confidential site analysis activities the district in consultation with the Department shall obtain a proposed purchase agreement fixing the purchase price and other conditions of purchase, subject to site analysis and due diligence investigation results that are acceptable to the district and Department. Site analysis shall be conducted in accordance and comply with the Commission rules and design guidelines and shall be approved by the Commission. Prior to acquisition the district in consultation with the Department shall conduct a due diligence investigation, which includes the following:

(i) Legal description of property;

(ii) Title commitment;

(iii) Two (2) land appraisals (using the average of two if within five percent (5%) of each other, otherwise a third<sup>(3<sup>rd</sup>)</sup> appraisal will be obtained and the average of the two (2) closest appraisals will be used);

(iv) Site survey to include soil conditions, traffic patterns, utilities and site topography;

(v) Phase 1 environmental assessment;

(vi) Annexation and zoning issues;

(vii) Local development requirements; and

(viii) Preliminary and final plat.

(d) The Commission may grant a waiver to any of the above due diligence requirements for good cause.

(e) All phases of the land acquisition process ~~shall~~may be kept confidential to the

extent permissible by law and in accordance with this subsection. Neither the district nor the Commission ~~will~~shall divulge information on proposed land acquisitions ~~until~~prior to such time as all due diligence has been completed and the land purchase price has been negotiated, unless both the Commission and the district consent to the disclosure or law requires such disclosure.

## **Section 7. Services and Contracts.**

### **(a) General.**

(i) Districts shall use Commission contracts for capital projects, unless otherwise approved by the Commission and Attorney General's Office.

(ii) Modifications to Commission contracts, including adjustments to further stipulate services and reflect the scope of the particular project, on a project-by-project basis may be submitted to the Department for review and approval in consultation with the Attorney General's Office. Major modifications, as determined by the Department, or alternatives to Commission contracts require approval by the Department, Attorney General's Office, and the Commission.

(iii) Contracts shall be executed by the district and other parties and routed to the Department for its review and approval as to form.

(iv) Contracts modified and executed without the necessary approvals shall not be eligible for State funding.

### **(b) Owner's Representative.**

(i) Owner's representatives are individuals or entities contracted on a project-specific basis to assist the district and State in ensuring the project is managed and completed in accordance with the contracts related to the project.

(ii) The Department shall determine whether an Owner's Representative is necessary, taking into consideration the expense, time, and ability of district and departmental staff.

## **Section 8. Value Engineering.**

(a) Value engineering is a process to achieve the best balance of cost-to-value in projects for districts and the State. In addition to value engineering required by design or construction contracts, the Department shall conduct a value engineering analysis using a collaborative process to objectively consider the best approach to design and construct projects in accordance with Section 12(d) of this Chapter. Value engineering shall include life cycle cost analysis of all major systems in the facility.

(i) Value engineering review shall occur at the schematic design phase (10% Design) and the design documents phase (35% Design) or as otherwise determined by the

Department. The design of the facility shall conform to value engineering recommendations before it proceeds into the next phase of development unless waived in writing by the Director or by action of the Commission pursuant to Chapter 2 § 3(a)(v) of these Rules.

~~(ii) The Department shall consider the recommendations of value engineering in assessment of enhancements. Any aspect of a design which does not conform to value engineering recommendations approved by the Department and proceeds without approval will be deemed an enhancement and will be the sole financial responsibility of the district.~~

(iii) Value engineering strategies learned on previous projects shall be considered for subsequent projects.

**Section 9. Project Closeout.** Absent extenuating circumstances, fund balances remaining from project budgets that are unencumbered or unobligated are subject to reversion no later than one year after the date of Substantial Completion.

**Section 10. On-site or Off-site Infrastructure.**

(a) On-site or off-site infrastructure includes streets, sidewalks, traffic signals, bike ~~and~~ walk paths, electric, gas, water, sewage systems, storm systems, telephone, data, and other facilities approved by the Commission.

(i) On-site infrastructure solely attributable to the needs of the project and of the capacity required to serve the school facility remedy in accordance with the Commission's design guidelines shall be included in the cost per square foot budget for the building.

(ii) The Department shall budget for the cost of the development of on-site or off-site infrastructure solely attributable to the needs of the project and additional infrastructure costs attributable to shared use.

(b) Requests for on-site or off-site infrastructure to be shared with others shall be made by the district in writing and shall include a full description of the project, including the cost of the proposed infrastructure, the functional capacity properly attributable to the needs of the project, contemplated excess functional capacity, and a dedicated source of repayment.

(i) Requests shall be presented to the Department during the initial planning and budgeting for the proposed project. The Department shall make a determination whether further information, such as design engineering or cost data, is required before the request is presented to the Commission for its consideration as part of its budget recommendation. The district shall notify the affected municipality or local governmental entity of the request and of the time and location at which it will be considered by the Commission.

(ii) Requests will only address infrastructure needed for the school building and facility.

(iii) The Department, in consultation with the Attorney General's Office, shall determine if a contractual agreement is required for cost-sharing, repayment, or operation agreement(s) with the affected parties. Cost-sharing or repayment agreements shall include provisions for reimbursement of departmental expenditures for functional capacity beyond the capacity properly attributable to the needs of the project to be repaid to the Department over time with interest. Amounts repaid shall be deposited by the Department into the school capital construction account.

(iv) The functional capacity needs of school buildings and facilities shall take precedence over the needs of others.

(c) If extensions to municipal or other Department-approved utilities are not available or are cost prohibitive, then on-site systems may be constructed.

(d) The district shall notify the affected municipality or other local governmental entity in writing of Commission action taken related to on-site or off-site infrastructure and reasons for the action.

#### **Section 11. Local Enhancements.**

~~(a) Identifying Enhancements. The district's intent to pursue enhancements shall be brought to the attention of the Department by the district during facility planning or as early as feasible prior to design. Preliminary information shall indicate the nature, scope, cost and schedule of the enhancement. Enhancements shall be identified as:~~

~~(i) Inclusion of a design feature(s) which exceeds or fails to comply with the statewide adequacy standards or is not in compliance with recommendations of value engineering.~~

~~(ii) Inclusion of additional square footage of school building and facilities which exceeds the total square footage allowed by statewide adequacy standards.~~

~~(b) Enhancement Acknowledgement. The district shall request Commission acknowledgment of enhancements to any school building and facility during project or enhancement planning on a form provided by the Department. This documentation shall identify dedicated sources of funding for the enhancement(s), the contractual arrangements and the means intended to account for the costs of the enhancement(s) separate from any Commission funded remedy. If the enhancement is associated with a legislatively funded remedy, planning and design of the enhancement(s) shall be identified in the most cost effective remedy if an enhancement is contemplated at that time. The Department will include the information in the project agreement. The district's acknowledgment request shall establish the anticipated impact to the design and construction schedule and cost to the legislatively funded remedy. As the project progresses and information changes, the district shall update the enhancement acknowledgement, which the Department shall then present to the Commission.~~

~~(c) Enhancement Cost Allocation. When local enhancements occur in conjunction with legislatively funded remedies and the cost of those local enhancements become part of a comprehensive school project, the Department shall determine the appropriate method of allocating costs between the enhancement(s) and the legislatively funded portion of the project. The cost of the enhancement shall include all design and other consultant costs and construction costs attributable to the enhancement. The district shall bear all costs associated with the enhancement. The Department may require that the enhancements be bid separately as an alternate, that the enhancements be calculated as a percentage of the overall project cost, or a combination thereof, as follows:~~

~~(i) — When the enhancement is the result of a design preference, it shall be bid as an alternate, the alternate shall include all costs attributable to the enhancement plus all costs for modifications to the legislatively funded portion of the project that are attributable to the enhancement. Examples include, but are not limited to, additional building height, finishes, or features;~~

~~(ii) — When the enhancement is the result of additional square footage, the difference between the allowable square footage and the project total square footage shall be computed as a percentage. Project costs will be attributed on the basis of the percentage as identified, or as subsequently revised in the event of a change in the square footage. When changes affect the project that result in additional costs, the costs shall be shared based on this percentage.~~

~~(d) — Costs associated with leadership in energy and environmental design (LEED) design certification and commissioning will be considered an enhancement and shall be funded by the district.~~

#### **Section 12. — Changes to Budgeted Funding.**

(a) In accordance with W.S. 21-15-119(c) and W.S. 28-11-301(c)(iv), budgets for prioritized projects may be adjusted by the Commission and transfers between project phases may be made by the Department.

(b) In the event that any particular project budget is or appears to be insufficient to fully fund that project remedy, the following non-exclusive and non-prioritized list of factors shall be considered by the Department in recommending whether, and how, that project will be allowed to proceed with legislative funding:

(i) Verify value engineering recommendations have been followed;

(ii) Verify aspects of the design of the project to identify cost savings which may be generated within the project. In this regard, all parties shall reexamine earlier assumptions in the search for viable, cost-effective and efficient design changes;

(iii) Verify the scheduling, or phasing, of the project to determine if budgeted funds will be required and cost-savings or cost-deferrals may be obtained by that scheduling.

Decision-making shall take into account the funding cycles of the Legislature and the uncertainty of future funding.

(c) If these non-prioritized factors are insufficient to achieve project costs within the project budget, including adjustment for inflation, the Commission shall consider the following additional factors:

- (i) Change of delivery method;
- (ii) Other sources of funding, including funding held by the Commission;
- (iii) Delayed start date of the project; and
- (iv) Complete or partial re-planning or re-design of the project.

**Section 12. Facility Design Standards and Guidelines.**

(a) The Commission's Facility Design Standards and Guidelines do not apply to existing school buildings and facilities and shall not be used for evaluating the adequacy of any existing school building or facility.

(b) For all Projects, as defined in W.S. 21-15-111(a)(iv), appropriated by the legislature or funded by the Commission, the Department shall include in the Project Agreement the most recent version of the Commission's applicable Facility Design Standards and Guidelines. The Department shall require that the Facility Design Standards and Guidelines incorporated in the Project Agreement govern the expenditure of state funds for that project for the duration of that project.

(c) In accordance with W.S. 21-15-114(a)(vii), the Commission shall adopt Facility Design Standards and Guidelines for the following types of school buildings and facilities:

- (i) Educational Buildings;
- (ii) Outdoor Physical Education Facilities; and
- (iii) School Bus Maintenance and Parking Facilities.

(d) The Department shall include in the Project Agreement a provision requiring that when the Facility Design Standards and Guidelines are not specific on the type, quantity, or quality of a design element or component, the architect shall select the most efficient and cost effective type, quantity, or quality of the element or component, subject to approval by the Department. The provision shall further provide that if a district opts for an element or component exceeding that approved by the Department, such element or component shall be considered district-initiated and shall not be funded out of the capital construction budget.

(e) The Department shall include in the Project Agreement a requirement that, in the event the legislature funds a project of a type that is not covered by the Commission's existing Facility Design Standards and Guidelines, the architect shall work with the Department to ensure

that the design is adequate, efficient and cost effective and shall utilize the Commission's existing Facility Design Standards and Guidelines in doing so to the extent those Guidelines are applicable.

(f) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. Prior to the beginning of any Project, as defined in W.S. 21-15-111(a)(iv), the Department and district shall sign a Project Agreement that enumerates what portion of the work is state funded. No work or disbursement of funds shall proceed on Projects until a Project Agreement is executed between the Department and the district. Districts shall not be reimbursed and the Department shall not pay for any work done on any portion of the project prior to the Director's authorization. Furthermore, the Department shall not pay for or reimburse any district for expenses incurred prior to the execution of the Project Agreement and a commission-approved contract with the professional service provider or contractor, with the exception of reasonable owner's overhead expenses.

(g) Districts shall provide to the Department, prior to the commencement of any capital construction project as that term is defined in W.S. 9-2-3001(b)(ii), an opportunity to review the final design, drawings and plans of the project. This review shall include, but is not limited to, consideration of whether the design, drawings and plans of the proposed project utilizes energy efficient best practice techniques and processes. This provision applies to any capital construction project for which the state is required to expend state funds to fully or partially pay for operations, routine maintenance or major maintenance expenses, including state-initiated remedies that include district-initiated elements and district-initiated projects.

(h) The Commission shall incorporate reasonable community and district input and participation for conforming an aesthetic design within the community when a new school building or facility is designed. The Commission shall defer to the reasonable aesthetic design choices of the district, provided that those design choices do not bring the building or facility to a condition exceeding the Commission's relevant adequacy standards.

## Chapter 10

### **District-Initiated Elements, District-Initiated Projects, and Local Enhancements**

**Section 1. Applicability.** This Chapter applies to all district-initiated projects and elements at the time of the renovation, construction, replacement, repair, or other improvement of or to any school building or facility.

**Section 2. State responsibility to pay for district-initiated elements and projects; identification of district-initiated projects as local enhancements.**

(a) State capital construction funds shall not be spent on district-initiated elements or projects. Costs associated with obtaining leadership in energy and environmental design (LEED) design certification and commissioning the school building or facility in accordance with that certification shall be considered district-initiated elements.

(b) A district may opt, at any time, to implement a district-initiated project. A district-initiated project shall be considered a local enhancement to the extent that, when completed, the building or element exceeds the Commission's relevant adequacy standards, whether for a design feature(s) or additional square footage. Regardless of any present or future recognition of the district-initiated element or project as not exceeding the Commission's adequacy standards, neither the State, the Department, nor the Commission shall reimburse the district the cost of a district-initiated element or project.

(c) The Department shall maintain a record identifying all local enhancements.

**Section 3. Cost allocation between State-initiated remedies and district-initiated elements.**

(a) If a district intends to include a district-initiated element in the design of a state-initiated remedy, the district shall notify the Department prior to design. Preliminary information shall indicate the nature, scope, cost and schedule of the district-initiated element. The district bears the responsibility for consulting the Commission's adequacy standards and the Facility Design Standards and Guidelines and identifying elements that exceed those documents. The Department shall make reasonable efforts to help the district identify any design elements in excess of the relevant guidelines or standards through the value engineering process and the notice to proceed. Notwithstanding this requirement, the district is ultimately responsible for the identification of district-initiated elements, and a design element shall not be considered state-initiated merely because the district fails to identify it as district-initiated, regardless whether the Department has reviewed or approved the plans. The Commission shall consider any reasonable aesthetic design requests made by the district in accordance with Chapter 9, Section 12(h) of these Rules. The funding and construction of the district-initiated element shall proceed as follows:

(i) The Department shall determine the appropriate method of allocating costs between the district-initiated element and the legislatively-funded portion of the project.

(ii) The district shall bear all costs of the district-initiated element, including all design and other consultant costs and construction costs attributable to the element. In no event shall state funds be spent on purchasing, constructing, installing, or furnishing a district-initiated element.

(iii) If a district opts to go forward with a district-initiated element, it shall bid the element separately as an alternate, with the enhancements calculated as a percentage of the overall project cost, or a combination thereof. The allocation for costs associated with a local enhancement shall be identified and split on a percentage basis as follows:

(A) When the district-initiated element is the result of the inclusion of a design feature(s) which exceeds or fails to comply with the Facility Design Standards and Guidelines or is not in compliance with the recommendations of value engineering made subject to Chapter 9, Section 8, it shall be bid as a construction alternate. The construction alternate shall include all costs attributable to the district-initiated element plus all costs for modifications to the legislatively-funded portion of the project that are attributable to the district-initiated element.

(B) When the district-initiated element results in the inclusion of additional square footage of school building and facilities such that the school building or facility exceed the total square footage allowed by the Commission's adequacy standards, the difference between the allowable square footage and the project total square footage shall be computed as a percentage. Project costs will be attributed on the basis of the percentage as identified, or as subsequently revised in the event of a change in the square footage. When changes affect the entire project and result in additional costs, the costs shall be shared based on this percentage.

(b) At the conclusion of a project that consists of or includes a district-initiated element(s), the Department shall evaluate the district-initiated element(s) with the Commission's Adequacy Standards under Chapter 3 of these Rules. The Department shall identify any district-initiated element that exceeds the Adequacy Standards as a local enhancement, designate it as such, and exclude the identified local enhancement from its calculation of district square footage for the purpose of calculating major maintenance payments.

(c) A district-initiated element shall be considered to exceed the Commission's adequacy standards unless the district petitions the Commission under Section 4 of this Chapter.

(d) The Department shall maintain a record of local enhancements made by school districts. These records shall include a list detailing the size and nature of building design features incorporated into capital construction projects as a result of past local enhancements. The list shall be reviewed by the Commission when acting in accordance with W.S. 21-15-115(c). The Department shall no less than once every four (4) years undertake efforts to ascertain whether national or regional research exists as to whether or not any of the enhancement categories identified in the list specified under this paragraph have a positive demonstrable effect upon delivery of education.

(e) If the Department's research conducted pursuant to subsection (d) of this Section indicates that a category of enhancement may have a positive demonstrable effect upon delivery of education, the Department shall gather available evidence and present that evidence along

with a recommendation to the Commission. The Department may consult with the Wyoming Department of Education, districts, and other stakeholders to consider whether any particular type of local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program. Following presentation and analysis of available evidence provided to the Department, the Commission shall determine whether the identified local enhancements or category of local enhancements have a positive demonstrable statewide effect upon the delivery of the educational program. If the Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

**Section 4. District petitions to the Commission for acknowledgment that a local enhancement no longer exceeds the Commission's adequacy standards or that a local enhancement should be incorporated into the Commission's adequacy standards.**

(a) A space or facility deemed a local enhancement shall remain a local enhancement until such time the Commission acknowledges that the space or facility fits within the Commission's adequacy standards, subject to the following provisions.

(i) During facility planning, the Department shall work with districts to determine whether any enhancement designations should be removed because:

(A) The identified local enhancement no longer exceeds the Commission's adequacy standards;

(B) The district claims the local enhancement in question has a positive demonstrable effect upon delivery of the prescribed state educational program on a statewide basis and the district has evidence tending to show that that assertion is correct; or

(C) The Commission's methodologies change or the district's student population has grown to an extent such that enhanced square footage no longer exceeds the educational square footage allocated to the district under Chapter 3, Section 8 of these Rules.

(ii) At the completion of the facility planning process, the Department shall present to the Commission a list of local enhancements that should no longer be designated enhancements. If the Commission approves the list, the Department shall remove the enhancement designation from all included elements, square footage, or buildings, but maintain the record for historical reports to the Legislature.

(b) Any district claiming that a local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program may petition the Commission for a review of the status of that type of local enhancement. The district shall provide evidence of that positive demonstrable effect to the Department in the form of statistical analysis that establishes a causative effect between the identified local enhancement and any purported positive demonstrable effect.

(c) Following presentation and analysis of the district's evidence under subsection (b) of this Section, the Commission shall determine whether the identified local enhancement has a positive demonstrable statewide effect upon the delivery of the educational program. If the Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

(d) In no event shall the State, the Department, or the Commission reimburse a district the cost of the element, square footage, building, or facility when the Commission removes the enhancement designation.

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(b) A district may opt, at any time, to implement a district-initiated project. A district-initiated project shall be considered a local enhancement to the extent that, when completed, the building or element exceeds the Commission's relevant adequacy standards, whether for a design feature(s) or additional square footage. Regardless of any present or future recognition of the district-initiated element or project as not exceeding the Commission's adequacy standards, neither the State, the Department, nor the Commission shall reimburse the district the cost of a district-initiated element or project.

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(a) If a district intends to include a district-initiated element in the design of a state-initiated remedy, the district shall notify the Department prior to design. Preliminary information shall indicate the nature, scope, cost and schedule of the district-initiated element. The district bears the responsibility for consulting the Commission's adequacy standards and the Facility Design Standards and Guidelines and identifying elements that exceed those documents. The Department shall make reasonable efforts to help the district identify any design elements in excess of the relevant guidelines or standards through the value engineering process and the notice to proceed. Notwithstanding this requirement, the district is ultimately responsible for the identification of district-initiated elements, and a design element shall not be considered state-initiated merely because the district fails to identify it as district-initiated, regardless whether the Department has reviewed or approved the plans. The Commission shall consider any reasonable aesthetic design requests made by the district in accordance with Chapter 9, Section 12(h) of these Rules. The funding and construction of the district-initiated element shall proceed as follows:

(i) The Department shall determine the appropriate method of allocating costs between the district-initiated element and the legislatively-funded portion of the project.

(ii) The district shall bear all costs of the district-initiated element, including all design and other consultant costs and construction costs attributable to the element. In no event shall state funds be spent on purchasing, constructing, installing, or furnishing a district-initiated element.

(iii) If a district opts to go forward with a district-initiated element, it shall bid the element separately as an alternate, with the enhancements calculated as a percentage of the overall project cost, or a combination thereof. The allocation for costs associated with a local enhancement shall be identified and split on a percentage basis as follows:

(A) When the district-initiated element is the result of the inclusion of a design feature(s) which exceeds or fails to comply with the Facility Design Standards and Guidelines or is not in compliance with the recommendations of value engineering made subject to Chapter 9, Section 8, it shall be bid as a construction alternate. The construction alternate shall include all costs attributable to the district-initiated element plus all costs for modifications to the legislatively-funded portion of the project that are attributable to the district-initiated element.

(B) When the district-initiated element results in the inclusion of additional square footage of school building and facilities such that the school building or facility exceed the total square footage allowed by the Commission's adequacy standards, the difference between the allowable square footage and the project total square footage shall be computed as a percentage. Project costs will be attributed on the basis of the percentage as identified, or as subsequently revised in the event of a change in the square footage. When changes affect the entire project and result in additional costs, the costs shall be shared based on this percentage.

(b) At the conclusion of a project that consists of or includes a district-initiated element(s), the Department shall evaluate the district-initiated element(s) with the Commission's Adequacy Standards under Chapter 3 of these Rules. The Department shall identify any district-initiated element that exceeds the Adequacy Standards as a local enhancement, designate it as such, and exclude the identified local enhancement from its calculation of district square footage for the purpose of calculating major maintenance payments.

(c) A district-initiated element shall be considered to exceed the Commission's adequacy standards unless the district petitions the Commission under Section 4 of this Chapter.

(d) The Department shall maintain a record of local enhancements made by school districts. These records shall include a list detailing the size and nature of building design features incorporated into capital construction projects as a result of past local enhancements. The list shall be reviewed by the Commission when acting in accordance with W.S. 21-15-115(c). The Department shall no less than once every four (4) years undertake efforts to ascertain whether national or regional research exists as to whether or not any of the enhancement categories identified in the list specified under this paragraph have a positive demonstrable effect upon delivery of education.

(e) If the Department's research conducted pursuant to subsection (d) of this Section indicates that a category of enhancement may have a positive demonstrable effect upon delivery of education, the Department shall gather available evidence and present that evidence along

with a recommendation to the Commission. The Department may consult with the Wyoming Department of Education, districts, and other stakeholders to consider whether any particular type of local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program. Following presentation and analysis of available evidence provided to the Department, the Commission shall determine whether the identified local enhancements or category of local enhancements have a positive demonstrable statewide effect upon the delivery of the educational program. If the Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

**Section 4. District petitions to the Commission for acknowledgment that a local enhancement no longer exceeds the Commission's adequacy standards or that a local enhancement should be incorporated into the Commission's adequacy standards.**

(a) A space or facility deemed a local enhancement shall remain a local enhancement until such time the Commission acknowledges that the space or facility fits within the Commission's adequacy standards, subject to the following provisions.

(i) During facility planning, the Department shall work with districts to determine whether any enhancement designations should be removed because:

(A) The identified local enhancement no longer exceeds the Commission's adequacy standards;

(B) The district claims the local enhancement in question has a positive demonstrable effect upon delivery of the prescribed state educational program on a statewide basis and the district has evidence tending to show that that assertion is correct; or

(C) The Commission's methodologies change or the district's student population has grown to an extent such that enhanced square footage no longer exceeds the educational square footage allocated to the district under Chapter 3, Section 8 of these Rules.

(ii) At the completion of the facility planning process, the Department shall present to the Commission a list of local enhancements that should no longer be designated enhancements. If the Commission approves the list, the Department shall remove the enhancement designation from all included elements, square footage, or buildings, but maintain the record for historical reports to the Legislature.

(b) Any district claiming that a local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program may petition the Commission for a review of the status of that type of local enhancement. The district shall provide evidence of that positive demonstrable effect to the Department in the form of statistical analysis that establishes a causative effect between the identified local enhancement and any purported positive demonstrable effect.

(c) Following presentation and analysis of the district's evidence under subsection (b) of this Section, the Commission shall determine whether the identified local enhancement has a positive demonstrable statewide effect upon the delivery of the educational program. If the Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

(d) In no event shall the State, the Department, or the Commission reimburse a district the cost of the element, square footage, building, or facility when the Commission removes the enhancement designation.