

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

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RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 0 DEFINITIONS

Section 1. Authority. This chapter is promulgated pursuant to W.S. 21-15-114(a)(w).

Section 2. Purpose of Rule. This chapter is intended to provide uniform definitions for rules of the School Facilities Commission.

Section 3. Definitions.

- (a) The definitions in W.S. 21-15-109, et seq., apply to these rules.
- (b) Additional definitions include:
 - (i) “Aggrieved party” means a school district whose legal rights, duties or privileges have been harmed by an act of the Commission or Department and is entitled to a contested case proceeding as provided by law.
 - (ii) “Athletic Facilities” means gymnasiums, fields and other spaces used for providing physical education and other athletic opportunities for educational programs required by law within the facility design guidelines and statewide adequacy standards.
 - (iii) “Average Daily Membership (ADM)” as defined and published annually by the Wyoming Department of Education (WDE) annually.
 - (iv) “Certify” means to represent and warrant, under penalty of perjury, that certified matters are true, accurate and correct and are not misleading in any material way.
 - (v) “Chair” means the chair of the Commission.
 - (vi) “Commissioner” means a member of the Commission.
 - (vii) “Commission Funding”, “Project Funding” or “Funding” are revenues approved by the Commission dedicated to the remedy, or any particular aspect of a remedy.
 - (viii) “Commission-funded Remedies” or “Capital Construction Remedies” are remedies for projects identified on the Prioritized Needs Index approved by the Commission for which funding is in place.

(ix) “Component Level Projects” Component level projects, also referred to as minor capital construction projects, are projects necessary for maintenance and functionality of school buildings, which cannot be funded solely with a school district’s major maintenance funds and may pertain to a building that otherwise may be lower on the Needs Index than other buildings receiving capital construction funds.

(x) “Condition” The condition of districts facilities may determine timing of the replacement, impact on suitability functionality, of proposed reconfiguration or consolidation, and SFD allowable square footage within the district.

(xi) “Condition Score” Condition Score reflect a school building’s Backlog of Maintenance And Repair (BMAR) using an assessment tool developed in collaboration with Facility Engineering Associates (FEA) of Virginia.

(xii) “Construction Specification Institute” CSI is an organization that maintains and advances standardization of construction language as it pertains to building specifications.

(xiii) “Contested Case” means a proceeding before the Commission in which legal rights, duties or privileges of an aggrieved party are required by law to be determined through an opportunity for a hearing, in accordance with the Wyoming Administrative Procedures Act.

(xiv) “DAL – Director Authorization Letters” *Is intended to provide a record of funding authority and authorized project expenditures with the fewest number of documents and additional accounting control points within established audit requirements. Upon receipt of properly executed Master MOUs, the Director (or his designee) is authorized to issue DALs in accordance with legislative appropriations. Issuance of a DAL by the Director does not guarantee funding to a district or, that all funds authorized will ultimately be expended, nor does it guarantee that funds will continue to flow on any given project. The purpose of the DAL is simply to authorize the flow of funds. Determination of how much funding will be provided to any particular phase or aspect of a project, or to any submitted pay application, shall be monitored and controlled through the Department’s database and accounting processes. How funding flows to a project is dependent upon the Department’s pay application and accounting practices Funds authorized by a DAL unused shall be returned to the project budget for other needs or shall revert to other projects or state funding priorities, as applicable.*

(xv) “Delivery Method” Construction delivery method refers to the means of choosing an architect and contractor to build a project. Options include design-bid-build, design build, construction manager at-risk, and construction manager agent. Alternate design and construction delivery method, as defined by Wyoming Statutes, means the delivery methods described by any qualifications based procurement of design and construction services, including all procedures, actions, events, contractual relationships, obligations and forms of agreement for the successful completion of the

design and construction, alteration or repair of any public building, work, improvement, facility, structure or system other than by design, bid and build. Alternate design and construction delivery methods available to a public entity include construction manager agent, construction manager at risk or design-builder.

(xvi) “Department” means the Wyoming School Facilities Department created under 21-15-123.

(xvii) “Design Charrette” means a facilitated interactive process used by districts, and their architects and designers to better understand the educational requirements, needs, concerns, trade-offs and acceptable solutions, so that there is a much higher chance criteria and concept for the design is closer to what best identifies the district's educational needs within the project budget when the initial design is done.

(xviii) “Educational Support Facilities” means a building or facility used primarily as warehouse (for storage of equipment, materials and other district property and supplies), bus barns (Transportation facility), mechanic bays, maintenance facilities, portable buildings used as storage, warehouse leases, and all other warehouses.

(xix) “FCI” or Facility Condition Index – Assessment Methodology

The model is based on:

1. Condition assessment surveys performed on systems.
2. Generalized condition levels.
3. Limited number of systems to assess.
4. Parametric estimating based on current replacement value (CRV).
5. Industry standard costs and indexes.

(xx) “FCNI” or Facility Condition Needs Index

Composite measure of condition and upgrade needs.

FCNI =
$$\frac{\text{Cost of Deficiencies (DM)} + \text{Cost of Upgrade Needs}}{\text{Revised Current Replacement Value (CRVrev)}}$$

- Cost of Deficiencies (DM) → From condition assessment and FCI.
- Cost of Upgrade Needs → From evaluation of needs to upgrade Illumination, Technology Readiness and IAQ to current standards.
- CRVrev → Traditional CRV + Changes in building value due to upgrades.

(xxi) “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.

(xxii) “Notice” means the document served upon all parties by the Commission or its designee, stating the time, place and other pertinent material for the contested case proceeding as required by W.S. 16-3-107(a) and (b).

(xxiii) “Petition” means the formal written document filed with the Commission which initiates the contested case proceeding.

(xxiv) “Petitioner” means an aggrieved party, entitled by law to a contested case hearing and requesting such a hearing in accordance with these Rules and Regulations.

(xxv) “Presiding Officer” means the Chair of the Commission or a person designated pursuant to W.S. 16-3-112(a) and the provisions contained in this Chapter.

(xxvi) “Vice Chair” means a Commissioner designated by the chair to carry on his or her duties when the chair is unable to do so.

(xxvii) “Wyoming Administrative Procedures Act” means W.S. 16-3-101 through 16-3-115.

(xxviii) “WDE” means the Wyoming Department of Education created under W.S.21-2-104 to assist the State Superintendent of Public Instruction in the proper and efficient discharge of his duties.

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 1 GENERAL PROVISIONS

Section 1. Authority. This Chapter is promulgated pursuant to W.S. 21-15-114(a)(xv).

Section 2. Purpose of Rule. This Chapter is generally intended to govern the operations of the Commission in discharge of its duties set forth in the Act.

Section 3. Definitions.

~~_____ (a) The “Act” means W.S. 21-15-108, 21-15-109 and 21-15-111 through 21-15-121.~~

~~_____ (b) “Capital Construction” means those remedies receiving Commission funding. Capital Construction generally does not include Major Maintenance except as authorized by W.S. 21-15-109(e).~~

~~_____ (c) “Chair” means the chair of the Commission.~~

~~_____ (d) “Commission” means the School Facilities Commission (SFC), established under W.S. 21-115-113(a).~~

~~_____ (e) “Commissioner” means a member of the Commission.~~

~~_____ (f) “Department and/or WDE” means the Wyoming Department of Education created under W.S. 21-2-104 to assist the State Superintendent of Public Instruction in the proper and efficient discharge of his duties.~~

~~_____ (g) “Director” means the director of the Commission, selected and employed pursuant to W.S. 21-15-114(e) to provide administrative support to the Commission and carry out the Act under the direction of the Commission.~~

~~_____ (h) “Project” means replacement, renovation or new construction projects which increase the value of the school building or facility by improving the functioning of the building or facility or the capacity of the building or facility, or both, excluding major building and facility repair and replacement defined under W.S. 21-15-109(a)(iii) and routine maintenance and repair defined under W.S. 21-15-109(a)(vi).~~

~~_____ (i) “Project Manager” means the Commission employee assigned to assist a given District with planning effective and efficient facilities that maximize instructional opportunities for students while still allowing for reasonable building efficiencies.~~

~~_____ (j) “Property” means buildings, sites, furniture and fixtures for the district’s buildings.~~

~~_____ (k) “Real Property” means land and interests therein, leaseholds, buildings and improvements and appurtenances thereto. It includes warehouses, right-of-ways, and~~

~~easements, utility systems and parts thereof, and all other improvements permanently attached and ordinarily considered real estate.~~

~~(l) — “Vice Chair” means a Commissioner designated by the chair to carry on his or her duties when the chair is unable to do so.~~

Section 3. Department Office. The Department Office shall be located at the Hathaway Building, 5th Floor, Suite D, 2300 Capitol Avenue, Cheyenne, Wyoming 82002.

Section 4. Commission Meetings.

(a) The Commission shall meet at least once per quarter.

(b) The Commission shall meet as necessary at the time and place designated by the Department Director and the Commission.

Section 5. Reference by Incorporation.

(a) For any rule incorporated by reference in these Commission Rules:

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

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

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

(b) Each rule incorporated by reference is further identified as follows:

(i) Chapter 2 – *Uniform Rules for Contested Case Practice and Procedure*, adopted by the Office of Administrative Hearings and effective on October 17, 2014, found at <http://soswy.state.wy.us/Rules/RULES/9644.pdf>.

(ii) Chapter 3 – *School Facilities Square Foot Allotment Calculation*, adopted by the Commission October 25, 2009, found at <http://sfd.wyo.gov/commission/sfc-rules>.

(iii) Chapter 3 – *Design Guidelines*, adopted by the Commission February 19, 2015, found at <http://sfd.wyo.gov/commissions/sfc-rules>.

(iv) Chapter 3 – *Outdoor Athletic Facility Design Standards*, adopted by the Commission April 2009, found at <http://sfd.wyo.gov/commission/sfc-rules>.

(v) Chapter 3 – *School Bus Maintenance and Parking Facility Design Guidelines*, adopted by the Commission July 2013, found at <http://sfd.wyo.gov/commission/sfc-rules>.

(vi) Chapter 4 – *Facility Plans in AIM Database*, found at <http://sfd.gov>.

Section 4. Section 6. Chair.

(a) The Chair shall preside at all meetings of the Commission. The Chair shall appoint all committees and perform such duties as 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 5. Section 7. Secretary; Minutes; Books and Records.

(a) ~~The Commission shall designate a Secretary from among its members or its employees~~ School Facilities Department shall act as Secretary to the Commission. 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 at the offices of the School Facilities Department for permanent public record and shall be open for public inspection. The Secretary may certify to the correctness of any copies of such documents.

Section 6. Section 8. 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 of all Commissioners duly appointed and serving constitutes a quorum. ~~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 7. Section 9. Order of Business; Agendas.

(a) An agenda shall be prepared by the Director and approved by the Chair. The agenda shall set forth all matters 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 Director and approved by the Chair. A public comment period may be included in the agenda at the discretion of the Chair.

(b) Other than for purposes of public comment, persons desiring to have a matter brought before the Commission shall make such request through their assigned Project Manager or the Director who will work with the persons making the request to determine how and when it is appropriate that the matter be presented to the Commission.

(c) Except as provided otherwise in the Rules, any matter of procedure or conduct not specifically provided for by state law or by rules and regulations of the Commission shall be governed by Robert's Rules of Order Revised, Latest Edition.

Section 8. Section 10. Recusal.

(a) A Commissioner shall recuse himself from all proceedings relating to a matter if he has a personal or private interest in the matter. The Commissioner shall recuse himself 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 9. Public Records Practices. Section 11. Public Records Inspection.

(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 Director is the custodian of all public records of the Commission.

~~(b) The Director shall initially determine whether the requested public records are in the possession of the Commission.~~

~~(i) — If the Commission does not possess the public record, the request shall be returned to the applicant with notation of this fact and designation of the official custodian, if known.~~

~~(ii) — If the Commission possesses the public record, the Director shall determine whether the requested record is protected from disclosure by W.S. 16-4-202 and 16-4-203 or other applicable law. If the Director determines the records are not subject to disclosure, the request shall be denied and returned to the applicant with a notation of the basis upon which the record is deemed not subject to public inspection.~~

~~(c) — Public records for which the Commission is custodian shall be available for public inspection between 8 a.m. and 5 p.m. each business day. Original or official copies of records shall not be removed from the Commission office area and the review thereof may be reasonably restricted to protect the records or prevent unnecessary interference with the regular discharge of the Commission's duties.~~

~~(d) — For all public records for which the Commission is custodian, paper copies and printouts of electronically stored public records may be provided upon approved request and payment of fifty cents (\$.50) per page for the first ten (10) pages and fifteen cents (\$.15) for each additional page. In lieu of paper copies and paper printouts, the Commission staff may provide some or all of the copies in electronic form at its election.~~

(b) If a member of public requests an electronic or hard copy of public records, then that individual shall pay a fee. Such fee shall include cost of administrative time and producing a copy of the public record.

(c) Public records inspection shall take place under the following conditions:

(i) An appointment shall be made to review the records between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding state holidays, at the Department Office.

(ii) Records inspection shall take place in the presence of Department staff, and

(iii) A member of the public may request copies upon payment of a fee.

Section 10. Signing of Contracts.

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

Section 11. Section 12. Computation of Time. In computing any time period prescribed by the Rules and Regulations of the School Facilities Commission, the day of

the act or event from which the time period begins to run shall not be included. The last day of the period so computed shall be included. Saturdays, Sundays and legal holidays are not included.

Section 12. Rules of Construction.

~~(a) — Unless the content clearly indicates otherwise, this chapter applies to all chapters.~~

~~(b) — To aid readability, words expressed using one gender include the other gender.~~

~~(c) — Definitions given at the beginning of one chapter apply to all other chapters unless otherwise indicated.~~

~~(d) — Unless the context clearly indicates otherwise, these rules and regulations shall be construed by the following:~~

~~(i) — Words and phrases shall be taken in their ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law or in the applicable industry shall be understood according to their technical import.~~

~~(ii) — Reference to the Wyoming Statutes or the abbreviation Wyo. Stat. or W.S. means the Wyoming Statutes as published from time to time and, pending reduction to published form and subject to applicable effective dates, all supplements, additions and other modifications enacted by the Legislature of the State of Wyoming. Reference to a named act or rule shall be treated correspondingly.~~

~~(e) — Reference to a particular section without indication of the chapter in which it is found refers to the applicable section in the same chapter as the reference is found.~~

~~(f) — Reference to a particular chapter without indication of the body of regulations in which it is found refers to the applicable chapter in these rules and regulations.~~

~~(g) — Use of the term “includes” or “including” means that the list of items is not exhaustive but instead is illustrative.~~

~~(h) — Reference to any particular rule (whether of practice, procedure or otherwise), section, code or act (whether statutory, regulatory or otherwise) means such rule, section, code or act as the same may be amended, re-codified, re-located or otherwise modified from time to time.~~

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 14 PROJECT MANAGEMENT

Section 1. Authority. This chapter is promulgated pursuant to W.S. 21-15-114(a)(xv), W.S. 21-15-18(c) and W.S. 21-15-123(f)(v).

Section 2. Purpose. This chapter is intended to establish a mandatory, uniform process through which all commission funded remedies shall proceed.

Section 3. Relationship Between the School Facilities (SFD) and School Districts.

(a) Directors' Authorization Letters (DALs).

(i) Funding will be released to school districts for Commission approved most cost effective remedies through DAL's. These DAL's do not guarantee funding to the school district, funding will flow to a project based on approved pay applications and other SFD accounting practices.

(b) Role of SFD Project Managers.

(i) Project managers and planning coordinators shall serve as liaisons of the SFD and Commission to school districts, design and construction professionals, and other stakeholders.

(ii) Project managers and planning coordinators shall be primarily responsible for the following non-exclusive list of duties.

(A) Involvement should be involved with facility planning;

(B) Routine monitoring of school district major maintenance expenditures;

(C) Project planning, attendance at design charrettes, assisting in development of education programming;

(D) Oversight of assigned projects and region school districts;

(E) Exercising oversight over project planning, design and construction in collaboration with school district personnel, professional designers, contractors, owner's representatives, etc.;

(F) Negotiating, approving and denying change order requests and construction change directive(s).

(G) Maintaining written/electronic records of facility plans and project modifications, decisions, communications, etc.

(H) The school district and the SFD shall coordinate to ensure that both design professional(s) and the construction contractor(s) fulfill their respective obligations and that a high quality, appropriate, and cost-effective facility remedy is designed and constructed.

Section 4. Planning Phase.

(a) Determination of Most Cost Effective Remedy.

(i) The SFD is responsible for determining the most cost effective remedy for addressing building and facility needs.

(ii) The most cost effective remedy will be determined during the planning phase of a Commission funded project.

(iii) The SFD in consultation with the affected School District, shall make a recommendation to the Commission for each Most Cost Effective Remedy. The SFD may consider the following non-exclusive list of factors in determining the most cost effective remedy.

(A) Life-cycle cost analysis.

(B) Impact on the school district's educational programming.

(C) Timeliness of addressing the need.

(D) Other non-monetary benefits (i.e. historic preservation, safety and security, etc.)

(E) Preference of affected school district and community.

(iv) The Commission shall make the final determination of what constitutes the Most Cost Effective Remedy as identified as needs.

(b) Project kick-off.

(i) Every Commission-funded remedy shall begin with a kick-off meeting(s) between the school district and SFD staff (and other as needed) which address and resolves the following non-exclusive list of issues.

(A) Student population forecasts and corresponding design square footage;

(B) Delivery method;

(C) Educational specifications - Unless otherwise determined by the SFD, every proposed remedy to be funded by the Commission shall be preceded by the development of specifications specific to that remedy;

(D) Total project cost and project budget;

(E) Sources of funding;

(F) Enhancements; and

(G) School district facility plan.

(c) Selection of Delivery Method.

(i) The SFD shall determine the appropriate delivery method for any given project, once the Most Cost Effective Remedy is determined.

(ii) A thorough written record shall be created of the basis upon which the SFD makes its decision for each remedy.

(iii) The SFD shall consider the following non-exclusive and non-prioritized list of factors to make its decision for which delivery method should be used for each Commission-funded remedy.

(A) Size and complexity of the remedy;

(B) Availability of funds;

(C) Urgency of time;

(D) Commission experience with the delivery method;

(E) Anticipated cost of the various delivery methods;

(F) Available personnel or other professionals to provide supervision and monitoring or design and/or construction; and

(G) School district desires regarding delivery method.

Section 5. Design Phase.

(a) Selection of Professional Service Provider.

(i) A thorough written record shall be maintained of the basis upon which design professionals are chosen or rejected for every Commission-funded remedy.

(ii) If contracted services are \$25,000 and greater:

(A) Qualifications-Based Selection Process. Select a design professional based on the qualifications of the professional as measured by the selection criteria. The estimated professional fee may also be used as part of the selection criteria.

(B) Selection Criteria. Consider the following criteria in selecting the professional:

- (1.) The design professional's approach and philosophy;
- (2.) The ability of the design professional's personnel;
- (3.) Past performance;
- (4.) Ability to meet time requirements;
- (5.) Location of personnel in relation to the project;
- (6.) Residency – maximize local architectural and engineering expertise;
- (7.) Current and projected workloads;
- (8.) The volume of work previously awarded to the firm by the SFD;
- (9.) The equitable distribution of contracts among qualified firms; and
- (10.) Other criteria the school district or SFD deem important.

(C) Selection Process. In determining a selection process, the SFD shall work cooperatively with the affected school district. The process should include multiple individuals from the SFD and school district.

(b) Notice to Proceed. Notice(s) to Proceed shall be required as determined by the SFD to best suit the needs of each project. The design professional shall produce a budget at each notice to proceed to ensure the project is within budget.

(c) Value Engineering. Value engineering is an essential part of ensuring that Commission-funded remedies receive the maximum value for the occupants and owners of the facilities in the most cost-effective and efficient manner possible. Value engineering shall include life cycle cost analysis of all major systems in the facility. The SFD shall determine at what stage(s) of design value engineering will occur.

(d) Selection of Professionals & Services.

(i) During the selection of all FF&E and other professional services, the design professionals, districts and SFD must consider similar products from multiple manufactures and vendors to obtain the best value and cost for the project.

(e) Owner's Representative.

(i) Owner's Representatives are individuals and/or entities contracted on a project-specific basis to assist the "Owner" in ensuring the project is managed and completed properly. The "Owner" in Wyoming school projects is the school district operating under the oversight responsibility of the SFD.

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

(iii) A fair and competitive process shall be used to obtain the services of an Owner's Representative. The school district and the SFD shall work cooperatively and collaboratively to obtain these services.

(iv) The following non-exclusive list of duties shall serve as guideposts for the duties to be established for Owner's Representatives on a case-by-case basis:

(A) Managing and coordinating administration of the project to completion.

(B) Monitoring and reporting on the project schedule and total project budget.

(C) Conducting "buildability" reviews of project designs.

(D) Monitoring and reporting on requests for information from stakeholders on the project team.

(E) Monitoring and reporting on the performance of the contractor.

(F) Providing administration of the contract between the school district and the architect.

(G) Assisting the school district in the procurement of other vendors and contractors, including execution of other contracts and agreements associated with the project.

(H) Maintaining all records and reports related to the project.

(I) Assisting with preparing of pay application and other documentation to be submitted to the SFD.

(J) Providing representation at meetings related to the project and at the construction site.

(K) Timely notifying the school districts and SFD of defective work.

(L) Submitting monthly reports on the progress of the project.

(M) Investigating and reviewing the progress and quality of the work.

(N) Protect the safety of individuals and the integrity of the project by advising the owner when to issue stop-work and other orders.

(f) CMAR Selection.

(i) A fair and competitive process shall be used to obtain a CMAR. The school district and the SFD shall work cooperatively and collaboratively to obtain these services.

(ii) The following non-exclusive list of duties shall serve as guideposts for the duties to be established for CMAR on a case-by-case basis.

(A) Proposed Fee.

(B) Ability to meet proposed schedule.

(C) Past performance.

(D) Similar projects in scope and/or cost and schedule.

(E) Current workload.

(F) Proposed project team.

(G) References.

(H) Other criteria the school district or SFD deems important.

(g) Design Build Selection.

(i) The SFD shall determine whether a design build is the appropriate delivery method for the project, is necessary, taking into account the expense, time, and ability of school and SFD staff.

(ii) A fair and competitive process shall be used to obtain a design build. The School District and the SFD shall work cooperatively and collaborative to obtain these services.

(iii) The following non-exclusive list of duties shall serve as guideposts for the duties to be established for design build on a case-by-case basis.

- (A) Proposed Fee.
- (B) Past team performance.
- (C) Ability to meet the proposed schedule.
- (D) Past performance of design build projects.
- (E) Similar projects in scope and/or cost and schedule.
- (F) Current workload.
- (G) Proposed project team.
- (H) References.
- (I) Other criteria the school district or SFD deems important.

Section 6. Construction Phase.

(a) Prequalifications.

(i) All contractors requesting to bid on a Commission funded project shall submit to the obtaining the project, no later than 30 calendar days before the bid letting:

- (A) Proof that contractor can be bonded for the type and amount of work;
- (B) Past performance;
- (C) Current projected workloads;
- (D) Similar projects in cost and scope;

(ii) Prequalification shall be obtained each time for every project that the contractor plans to bid.

(b) Pay Applications. Pay Applications should be approved and reviewed first by the design professional then approved by the School District and SFD project manager. The application shall include all of the following criteria:

- (i) Application and certificate for payment.
- (ii) Lien waivers for all subcontractors from previous application.
- (iii) Payment for stored materials should include:
 - (A) Approved schedule of values.
 - (B) Material invoice and proof of payment.
 - (C) Proof of insurance for the storage facility.

(c) Project Closeout. Absent extenuating circumstances projects shall be closed out at the end of the warranty period. Materials included in the project closeout shall include at a minimum:

- (i) Retainage Release pay application;
 - (A) SFD must sign off on this pay application and be accompanied by the completed punch list.
- (ii) All manufacturer and installer warranty documentation as required by the project specifications;
- (iii) Maintenance and Operation manuals as required by the project specifications.

Section 7. Contracts.

- (a) Approved contract forms for all project phases may be found on the Commission website.
- (b) All Commission funded remedies must use the standard Commission contracts, unless otherwise approved by the SFD and Attorney General's Office.
- (c) Minor modifications may be made to the standard Commission contracts by the SFD on a project by project basis, with the approval of the Attorney General's Office.
- (d) Major modification may be made to the standard Commission contracts by the SFD with the approval of the Attorney General's Office and the Commission.
- (e) All contracts as approved by the Commission shall be executed and routed in accordance with SFD policies and procedures.

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 2 RULES OF PRACTICE AND PROCEDURE FOR CONTESTED CASE PROCEEDINGS

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

Section 2. Purpose of Rules. This Chapter is intended to provide a uniform and understandable process for contested case proceedings and informal reviews held before or on the behalf of the Wyoming School Facilities Department (Department) and the Wyoming School Facilities Commission (Commission).

Section 3. Application of Rules. This Chapter shall apply to contested case proceedings and informal reviews authorized by Wyoming Statute and brought before the Wyoming School Facilities Commission by a properly aggrieved party.

~~Section 4. Definitions.~~

~~For purposes of contested cases brought before the Wyoming School Facilities Commission under these rules, the following definitions shall apply:~~

~~(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) “Contested Case” means a proceeding before the Commission in which the legal rights, duties or privileges of a party are required by law to be determined by an opportunity for a hearing, in accordance with the Wyoming Administrative Procedures Act.~~

~~(c) “District” means the school district seeking an informal review before the Department or Commission.~~

~~(d) “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.~~

~~(e) “Notice” means the document served upon all parties by the Commission or its designee, stating the time, place and other pertinent material for the contested case proceeding as required by W.S. 16-3-107(a) and (b).~~

~~(f) —“Petition” means the formal written document filed with the Commission which initiates the contested case proceeding.~~

~~(g) —“Petitioner” means an aggrieved party, entitled by law to a contested case hearing and requesting such a hearing in accordance with these Rules and Regulations.~~

~~(h) —“Presiding Officer” means the Chair of the Commission or a person designated pursuant to W.S. 16-3-112(a) and the provisions contained in this Chapter.~~

~~——(i) —“Wyoming Administrative Procedures Act” means W.S. 16-3-101 through 16-3-115.~~

~~Section 5. Informal Review Proceedings.~~

~~(a) In accordance with W.S. 21-15-116(f), districts may request informal review before the Department or the Commission before pursuing a contested case review. The time period for filing a petition pursuant to Section 6(c) shall be tolled for the period of time from the date of that request until the conclusion of the informal review.~~

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

~~(i) The decision of the Commission or the Department the district would like reviewed;~~

~~(ii) A brief explanation of why the decision should be reviewed;~~

~~(iii) Any additional facts the District would like to be considered;~~

~~(iv) The legal authority upon which it is believed a decision was made in error.~~

~~(c) A decision or action of 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 the Department shall be held either at the Department’s Cheyenne office, or, if agreeable to the District, via WEN 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.~~

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

~~——(i) Department staff will present the information and basis for its decision or action;~~

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

~~—— (iii) The Director shall issue his decision at the conclusion of the informal review, or as soon thereafter as reasonably practicable. The director shall confirm his decision in writing and outline the basis for that decision.~~

~~(f) If, following the Department's review, the District is still unsatisfied with the actions of the Department it may request an informal review before the Commission.~~

~~(g) Informal reviews before the Commission shall be limited to the information presented during the Department's review. The Department shall be forwarded an opportunity to review any new information germane to the issue before that information is presented to the Commission.~~

~~(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 at the conclusion of the informal review or as soon thereafter as reasonably practicable. The chairman shall follow up the decision in writing and outline the basis for that decision.~~

~~Section 6.~~Section 4. Service and Timing of Petition.

(a) A properly aggrieved party may file a petition with the Commission requesting a contested case proceeding. The petition shall be in accordance with the provisions contained in this chapter and the Rules and Regulations of the Wyoming Office of Administration Hearings related to contested case proceedings – Refer to Chapter 1 Section 5,(b).

(b) The Petition shall be served on the Commission and other necessary parties. Service shall be made to the Wyoming School Facilities Commission, ~~1103 Old Town Lane, Ste. 1~~Hathaway Building, 5th Floor, Suite D, Cheyenne, Wyoming 82002.

Service can be made in person, by mail or received by facsimile, 307-777-8674, 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.

(c) The petition 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 7.~~Section 5. Petition Contents and Requirements.

(a) To initiate a contested case proceeding the petitioner shall prepare and file with the Commission a petition which includes the following in accordance with the Office of Administrative Hearings.

(i) ~~The name, telephone number, fax number, if available, and mailing address of the petitioner 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 petition is based, including particular reference to statutory sections, contract provisions and/or rules, regulations, policies and orders involved;~~

~~(iii) A copy of the decision and/or relevant material which relates to the decision at issue;~~

(iv) The specific relief sought; and,

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

~~Section 8. Notice of Hearing.~~

(a) ~~In all contested case proceedings, the petitioner shall be afforded an opportunity for a hearing after notice served by the Commission personally or by mail.~~

(b) ~~The notice shall be in accordance with W.S. 16-3-107 and shall contain the following:~~

(i) ~~The time, place, and nature of the hearing;~~

(ii) ~~The legal authority and jurisdiction under which the hearing is to be held;~~

- ~~(iii) The particular sections of the statutes and rules involved; and,~~
- ~~(iv) A short and plain statement of the matters asserted.~~
- (e) ~~The notice shall be served upon each petitioner at least thirty (30) days prior to the date set for the hearing.~~

~~Section 9.~~Section 6. General Procedure.

- (a) The Commission shall:
 - (i) Examine the petition, notify the petitioner of any apparent errors or omissions, and request any additional information deemed necessary;
 - (ii) Dismiss any petition not timely filed, except in instances where the Commission determines good cause has been shown and an exception is necessary;
 - (iii) Assign the contested case a docket number and schedule the commencement of contested case proceedings in accordance with the Wyoming Administrative Procedures Act;
 - (iv) Establish a separate file for each docketed contested case in which all papers, pleadings, documents, transcripts, evidence and exhibits pertaining thereto shall be filed. All items contained in this file shall contain the assigned docket number;
 - (v) Upon docketing, take appropriate action towards the ultimate decision, which may include but is not limited to, scheduling informal conferences, pretrial hearings, motion hearings, settlement conferences and the contested case evidentiary hearing.
- (b) Each party may be ordered to file with the presiding officer and serve upon the other parties a preliminary statement or joint preliminary statement. The parties shall be afforded at least thirty (30) days for the preparation and filing of any preliminary statement. Unless otherwise ordered, the statement shall set forth:
 - ~~(i) A brief summary of the contentions of the party;~~
 - ~~(ii) Significant facts about which there is no genuine issue (these may be admissions by stipulation);~~
 - ~~(iii) Contested issues of fact remaining for decision;~~

~~(iv) Contested issues of law to be determined at the hearing. The parties may include memorandums of law on significant legal issues the parties wish to call to the attention of the presiding officer;~~

~~(v) The names, addresses, and a brief description of the testimony of each witness the party intends to present at the hearing;~~

~~(vi) A list and copies of all exhibits to be introduced. This does not foreclose the ability to introduce exhibits which become available at a later date; and,~~

~~(vii) Estimated time required for the hearing.~~

(c) The taking of depositions and discovery shall be available to the parties in accordance with the provisions of Rules 26 and 28 through 37 (excepting 37(b)(1) and (2)(D) there from) of the Wyoming Rule of Civil Procedure. The mandatory disclosure provisions of Rule 26 of the Wyoming Rules of Civil Procedure are applicable to contested case proceedings before the Commission. The Petitioner shall make such disclosure within thirty (30) days after service by Petitioner, of its disclosure unless other time periods are established by stipulation or order.

(d) Upon application the presiding officer shall issue a subpoena requiring the appearance of witnesses for the purpose of taking evidence or requiring the production of any books, papers or other documents relevant or material to inquiry in accordance with W.S. 16-3-107(d).

(e) Motions shall be in writing and state the grounds and the relief sought. Prior to filing a motion for dismissal, default, or compliance with discovery procedures the moving party shall make reasonable good faith efforts to discuss the content and purpose of the motion, such efforts should be documented in writing and attached to the motion. Response to a motion shall be made within fifteen (15) days of service of the motion. All motions and responses shall be filed with the Commission and served upon all parties.

(f) All parties shall be permitted to file a brief with the presiding officer.

(g) Oral argument shall be allowed at the discretion of the presiding officer.

(h) Except to the extent authorized by law, a party or that party's attorney shall not communicate, directly or indirectly, in connection with any issue of fact or law with the presiding officer concerning any pending case, except upon notice and opportunity for all parties to participate. ~~Should ex parte communications occur, the presiding officer shall advise all parties of the communication as soon as possible thereafter, and if requested, allow any party an opportunity to respond.~~

~~(i) The record of the contested case shall include: _____~~

~~(i) All formal and informal notices, pleadings, motions and intermediate rulings;~~

~~(ii) Evidence received or considered including matters officially noticed;~~

~~(iii) Questions and offers of proof, objections and rulings thereon;~~

~~(iv) Any proposed findings and exceptions thereto;~~

~~(v) Any opinion, findings, decision or order of the Commission and any report by the presiding officer of the hearing.~~

~~(i)~~(i) Proceedings, including all testimony, shall be reported verbatim stenographically or by any other appropriate means determined by the Commission or the presiding officer.

~~Section 10. Expedited Contested Case.~~

~~(a) Upon request of the parties, made prior to the date set for evidentiary hearing, any case may be heard as an expedited case.~~

~~(b) Expedited cases will be decided on written argument, evidence and stipulations submitted by the parties. Oral argument may be presented upon the request of any party.~~

~~(c) The hearing officer has discretion to require an evidentiary hearing in any case in which it appears that facts material to a decision in the case cannot be properly determined without an evidentiary hearing.~~

~~Section 11.~~Section 7. Decisions and Final Agency Action.

(a) The Commission shall make and enter a written decision and order containing findings of fact and conclusions of law stated separately.

(b) The findings of fact shall be based exclusively on the evidence and matters officially noticed. Technical or scientific facts within the Commission's specialized knowledge may be considered in making a final determination.

(c) Findings of fact shall be made on all material issues and ultimate facts.

(d) The written decision shall be filed with the Commission and will, without further action, become the decision and order as a result of the hearing.

(e) All written decisions and orders shall be served upon all parties upon formal execution by the Commission.

(f) If the Commission acts as the presiding officer over the contested case proceeding, it shall have sixty (60) days from the end of the hearing to issue a written decision and order. If a presiding officer is appointed by the Commission, the Commission shall have thirty (30) days from receipt of the recommended decision and proposed order to enter a final decision in accordance with this Section.

(g) In the event a recommended decision is rendered by a designee, all parties shall be afforded a reasonable opportunity to file exceptions thereto which shall be deemed a part of the record.

(i) The decision rendered in accordance with this Section shall serve as the final decision of the Commission and shall be subject to judicial review in accordance with W.S. 16-3-114.

(h) All contested case proceedings before the Commission shall be referred to the Office of Administrative Hearings. Proceedings will be conducted in accordance with the Rules and Regulations of the Office of Administrative Hearings (OAH), Refer to Chapter 1, Section 5(b).

~~Section 12. Designation and Authority of a Presiding Officer.~~

~~(a) The Commission may designate a presiding officer by assigning a contested case proceeding to an employee of the Commission or an employee of another agency designated by the Commission, which includes the office of Administrative Hearings, to act as presiding officer in accordance with W.S. 16-3-112.~~

~~(b) The functions of all those presiding over contested cases shall be conducted in an impartial manner and in accordance with the Rules and Regulations of the Commission.~~

~~(c) Presiding officers shall have the full authority to administer oaths and affirmations; issue subpoenas; rule upon offers of proof and receive relevant evidence; take or cause depositions to be taken in accordance with the provisions of the Wyoming Administrative Procedures Act and the rules of the Commission; regulate the course of the hearing; hold conferences for the settlement or simplification of the issues; make recommended decision when directed to do so by the Commission; and take any other action authorized by this Chapter, which are consistent with the Wyoming Administrative Procedures Act and Wyoming law.~~

~~(d) — The presiding officer may, at any time while a contested case is pending, recuse himself from presiding over the contested case by filing written notice of recusal with the Commission and serving on all parties. From and after the date the written notice of recusal is entered, that presiding officer shall not participate in resolution of the contested case.~~

~~(e) — If a presiding officer is appointed, he shall upon request of the Commission submit a written recommended decision and order containing proposed findings of fact and conclusions of law.~~

~~(f) — The recommended decision and proposed order shall be submitted to the Commission no later than thirty (30) days after the end of the contested case hearing.~~

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 3 UNIFORM ADEQUACY STANDARDS

Section 1. Authority. This Chapter is promulgated pursuant to W.S. 21-15-114(a)(xv) and 21-15-115(a).

Section 2. Purpose of Rule. This chapter is intended to establish and maintain uniform statewide standards for the adequacy of public school buildings and facilities capable of delivering the educational programs provided by laws and state standards.

~~Section 3. Definitions.~~

~~(a) “Average Daily Membership (ADM)” as defined and published by the Wyoming Department of Education (WDE) annually.~~

~~(b) “Educational Building” means a school building or facility primarily used for providing the educational programs offered by a district in compliance with law which is owned by the district or leased by the district, including a school building or facility used for operating a charter school established under W.S. 21-3-301 through 21-3-314.~~

~~(c) “Energy Consumption Analysis” means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment and components, and the external energy load imposed on a major facility by climatic conditions of its location. The energy consumption projections shall take into account daily and seasonal variations in energy system output during normal operations.~~

~~(d) “Life Cycle Cost Analysis (LCCA)” means the sum of present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs, and disposal costs over the life time of a project or product. LCCA is an economic method project evaluation in which all costs arising from owning, operating, maintaining, and disposing of the project are considered important to the decision.~~

~~(e) “Local Enhancements to School Buildings and Facilities” or “Local Enhancements” means any renovation, construction, replacement, repair or other improvement of or to any school building or facility initiated by a school district which is designed to bring the building or facility to a condition exceeding the statewide building adequacy standards outlined in this Chapter.~~

~~(f) “Office Building” means a school building or facility primarily used in connection with or for the purpose of district administrative functions, the major purpose or use of which is not dedicated to the provision of educational programs offered by the~~

~~district in accordance with law. Office buildings include: teacherages, portable buildings used as an office, leased offices, and all other offices.~~

~~—— (g) —— “Permanent Modular Building” means a school building or facility that is transported to and assembled at the location on which the building or facility is situated that is placed on a permanent foundation, and that is expected to be used by the district for its designed lifetime.~~

~~—— (h) —— “Portable Building” means any pre-built, factory constructed and assembled school building or facility which is transported in an assembled condition to the location on which the building or facility is to be situated and which is acquired and used by the district for temporary purposes only.~~

~~—— (i) —— “Remedy” or “Remediation” means a course of action addressing identified building and facility needs consisting of building or facility construction, replacement, renovation, repair or any combination thereof.~~

~~—— (j) —— “Required Educational Program” means the common core of knowledge and skills, as specified by W.S. 21-9-101(b) in concert with the uniform state educational program and uniform student content and performance standards established by the WDE rules and regulations, in addition to those programs authorized by the model or funded by federal funds.~~

~~—— (k) —— “School Buildings and Facilities” means the physical structures and the land upon which the structures are situated, which are primarily used in connection with or for the purpose of providing the educational programs offered by a school district in compliance with law.~~

~~—— (l) —— “Teacherage” means housing provided by and owned by a school district for use as living quarters of a teacher or other school district employee.~~

~~—— (m) —— “Educational Support Facilities” means a school building or facility used primarily as a warehouse (for storage of equipment, materials and other district property and supplies), bus barns (Transportation facility), mechanic bays, maintenance facilities, portable buildings used as storage, warehouse leases, and all other warehouses.~~

~~—— (n) —— “Athletic Facilities” means gymnasiums, fields and other spaces used for providing physical education and other athletic opportunities to students for the educational programs required by law and within the facility design guidelines and the statewide adequacy standards.~~

Section 4. Facility Design Guidelines.

~~—— (a) —— These guidelines have been developed to ensure the equity and adequacy of school facilities throughout the state while still allowing for significant local input into the design of schools.~~

~~—— (b) —— In collaboration with the districts, the SFC shall determine the allowable square footage for every existing and contemplated public school building and facility in the state. Calculation of the allowable square footage shall be in accordance with the~~

~~Guideline Graphs of Total Square Footage by Grade Level (Appendix “A”) following this chapter and the rules adopted by the Commission.~~

~~**Section 5.**~~**Section 3. Exceptions.** ~~In accordance with the holding of the Wyoming Supreme Court in *Campbell County School District v. State*, 2008 WY 2, 181 P.3d 43 (Wyo. 2008), the~~ The Commission may grant exceptions to these guidelines on a case by case basis when the exception supports the intent of these guidelines and Wyoming law.

(a) ~~Exceptions shall only be granted upon consideration of the following non-exclusive list of factors, and the~~ The Commission 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 request, the nature of the request, any cost implications of the request, whether alternatives means exist to accomplish the purposes of the request, and whether the intent of the guidelines, standards, policies and rules and regulations of the Commission are furthered by the request. Exception requests shall be initially presented to the Department for its consideration and recommendation to the Commission.~~

~~_____ (i) Whether the educational program required by law is capable of being delivered within the footprint of total square footage provided by Appendix “A” to this chapter;~~

~~_____ (ii) Whether the proposed design reduces building and facility needs in the most efficient and cost effective manner in order to deliver quality educational services;~~

~~_____ (iii) Whether all value engineering recommendations have been followed;~~

~~_____ (iv) Whether the district’s facility plan has been followed;~~

~~_____ (v) Whether the facility, and the educational program proposed to be delivered within that facility, is endorsed by the Wyoming Department of Education as educationally appropriate;~~

~~_____ (vi) Whether other facilities, owned and/or funded by the district or otherwise, may be used to provide part of the required educational program;~~

~~_____ (vii) Whether, and to what extent, the exception request includes a request to fund facility space for an enhancement as defined by these rules and Wyoming law.~~

~~_____ (b) The district may request an exception from the Commission if it is determined the allowable square footage provided by these guidelines is not adequate for~~

~~the district's required educational program. The process for requesting an exception shall be as follows:~~

~~_____ (i) The district shall present in writing to its Commission Project Manager the basis of its request, together with all documentation related to the request;~~

~~_____ (ii) If approved by the Director, the district's request shall be placed on the agenda at the soonest available Commission meeting where the request may be fully considered;~~

~~_____ (iii) The district shall present to the Commission the reasons for the exception request, particularly addressing the factors identified in paragraph (a), above, including why the district cannot provide its educational program within the square footage allowed by the guidelines.~~

~~**Section 6.**~~**Section 4. Uniform Statewide Adequacy Standards.** The Commission adopts the following uniform statewide adequacy standards for school buildings and facilities. ~~Recognizing that many Wyoming schools were constructed prior to the adoption of these standards, and that a long term process is in place to bring all school facilities in the State of Wyoming into compliance with these adequacy standards, these standards shall control how school facility remediation shall be implemented.~~

~~_____ (a) **Submittals.** The Commission shall review all school construction projects for compliance with these standards and guidelines. This review shall be ongoing once the appropriate remedy is determined by the Commission.~~

~~_____ (b) **Needs Index and Prioritization.**~~

~~_____ (i) The Commission shall comprehensively assess the adequacy of existing school buildings and facilities and of future space requirements within the state in accordance with W.S. 21-15-115(b).~~

~~_____ (ii) Assessment of the adequacy of buildings, facilities and space requirements shall be by use of scoring tools that take into consideration the condition, the capacity and the educational suitability of every facility.~~

~~_____ (iii) Facility condition shall be scored by a tool which uses a nationally recognized Facility Condition Index as approved by the Commission. The existing tool, embodied in the Maximus database program of the Commission, is incorporated herein by reference due to its voluminous size. This database and the condition scoring tool shall not be modified except in accordance with the Wyoming Administrative Procedures Act.~~

~~_____ (iv) Facility and district capacity shall be scored in accordance with section 6(f) of this Chapter. Existing capacity scores, as prepared for the Commission by outside consultants, are incorporated herein by reference due to the voluminous size of the document. Current scores may be found on the website of the Commission. Current~~

~~condition scores shall not be modified until a new capacity scoring tool is adopted in accordance with the Wyoming Administrative Procedures Act and these rules and regulations.~~

~~—————(v) Existing suitability scores, as prepared for the Commission by outside consultants, are incorporated herein by reference due to the voluminous size of the document. Current scores may be found on the website of the Commission.~~

~~—————(vi) At least annually, a new prioritized needs index shall be developed by the Commission and that needs index shall be the basis upon which Commission-funded remedies shall be determined. Calculation of the relative weights of the three scoring tools for purposes of developing the needs index shall be 50% weighting to facility condition, 40% weighting to facility capacity, and 10% weighting to educational suitability. Exceptions to the prioritized needs index may be granted on a case by case basis by the Commission for extraordinary circumstances and in accordance with Section 5 of this chapter.~~

~~—————(c) **Choice of Remedy.**—————~~

~~—————(i) The Facility Design Guidelines found in Appendix “A” of these Rules and Regulations, as well as the Uniform Statewide Adequacy Standards found in this section of the Rules and Regulations, shall be applied to all Commission funded remedies.~~

~~—————(ii) In choosing the appropriate remedy, the Commission shall consider renovation, replacement or discontinuation of facilities in a manner which ensures adequate, efficient and cost effective school buildings and facilities in accordance with W.S. 21-15-114(a)(vii).~~

~~—————(iii) Care should be exercised to determine on a case-by-case basis that every remedy funded by the Commission is providing appropriate space for the applicable educational program.~~

~~—————(iv) At least annually, but more often if needed, the Commission shall establish, in accordance with W.S. 21-15-117, a schedule for building and facility remediation. The schedule shall prioritize funded remedies on a statewide basis in accordance with these rules and W.S. 21-15-117 and shall clearly identify each funded remedy, its sources and amounts of funding, the cost per square foot used in providing the project budget, and those remedies which are prioritized, but not yet funded. The schedule for building and facility remediation shall be posted on the Commission website.~~

~~—————(v) Project budgets assigned to approved remedies shall be based upon the following cost per square foot guidelines in addition to other requirements within these rules and regulations:~~

~~_____ (A) The commission shall determine the cost per square foot on a regular basis within Wyoming utilizing the R.S. Means construction index with the applicable inflationary adjustments, as well as Commission generated data on actual school construction costs;~~

~~_____ (B) In assigning project budgets, the Commission shall take into consideration the most efficient and cost-effective approach in order to deliver quality educational services, and address building and facility need.~~

(a) **Square Footage Allotments.** Square Footage allotments for school remedies shall be subject to the calculations of the square footage calculator of the School Facilities Department. Refer to Chapter 1- General Provisions.

(b) **Facility Design Guidelines.** The Facility Design Guidelines and the other guidelines standards and methodologies adopted by the Commission are mandatory and shall govern development of the design of any school facility remedy. Refer to Chapter 1 Section 5,(b).

~~_____ (d) **Site Guidelines.**~~

~~_____ (i) The Commission recognizes that many Wyoming schools pre-date the adoption of these standards. School sites which pre-date the original adoption of these standards in 2003 may be larger or smaller than the following recommended sizes. School sites smaller than these recommendations are presumed to be adequately sited unless otherwise demonstrated. Efforts should be undertaken in developing facility plans and remedies to reduce the excess acreage of sites which exceed these recommendations:~~

~~_____ (ii) The following are recommended school site sizes:~~

Elementary schools	4 useable acres with an additional acre for each 100 students
Middle schools	10 useable acres with an additional acre for each 100 students
High schools	20 useable acres with an additional acre for each 100 students

~~_____ (iii) Sites will provide outdoor activity areas that have safe and appropriate surfaces for physical activities.~~

~~_____ (iv) Sites shall accommodate the separation of bus, car and pedestrian traffic.~~

~~_____ (v) High school sites may accommodate additional vehicle parking for ¼ of the student design capacity, or local code requirements.~~

~~_____ (vi) Sites may accommodate vehicle parking for all staff, itinerant staff, and additional spaces to accommodate a minimum of 25% of the seating capacity of the gym or the assembly area, whichever is larger.~~

~~_____ (vii) Site analysis shall include a comprehensive review and evaluation of site soil conditions, traffic patterns, utilities and site topography. The Commission may adopt by rule further specific requirements for school facility sites in accordance with W.S. 21-15-114(a)(xii).~~

~~_____ (viii) Requests for land acquisition should originate with a request by each district to the Project Manager assigned to the district. The School Facilities Commission will determine the need for the land acquisition using the following information:~~

~~_____ (A) Define/Confirm the need~~

~~_____ (I) Near term capacity issue driven by ADM~~

~~_____ (II) Long term capacity driven by economic and demographic projections~~

~~_____ (III) Need driven by FCI on current buildings~~

~~_____ (IV) Long term strategic objective based upon any of the above factors including suitability, health and safety~~

~~_____ (B) Examine current district land inventory~~

~~_____ (I) If replacement school, is current site suitable~~

~~_____ (II) Does the district own any other land which is suitable~~

~~_____ (III) If new land required consider:~~

~~_____ (1.) Land swap~~

~~_____ (2.) Community owned land~~

~~_____ (3.) Land available in conjunction with development~~

~~Once it is determined that land acquisition is necessary, the Commission in consultation with the district will conduct the following (in no particular order):~~

~~(C) Due diligence Investigation~~

~~(I) Obtain title commitment~~

~~(II) Obtain legal description of property~~

~~(III) Obtain two (2) land appraisals (using the average of two if within 5% of each other, otherwise a 3rd appraisal will be obtained and the average of the two (2) closest appraisals will be used)~~

~~(IV) Conduct site survey to include property description, utility locations and capacities, topography~~

~~(V) Conduct Phase I environmental assessment~~

~~(VI) Investigate annexation and zoning issues~~

~~(VII) Investigate local design requirements~~

~~(VIII) Obtain preliminary and final plat, if necessary~~

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

~~All phases of the land acquisition process shall be kept confidential. Neither the district nor the Commission will divulge information on proposed land acquisitions until such time as all due diligence has been completed and the Commission has negotiated the land purchase price.~~

~~(e) **Projected Enrollment.**~~

~~The allowable square footage of Commission-funded remedies shall be determined by enrollment projections for both the individual school and the district as a whole, developed in accordance with the rules adopted by the Commission. Enrollment projections shall be consistent, systematic and research-based in accordance with W.S. 21-15-114(a)(iv).~~

~~(i) **Declining Enrollment.** Where the school district's past and projected enrollments show a declining population trend, allowable square footage shall not exceed the cohort survival calculation on the date of anticipated occupancy of the facility.~~

~~————— (ii) **Stable Enrollment.** Where the school district’s past and projected enrollments show a stable or randomly increasing and decreasing population trend, allowable square footage shall be based on the average of a five year cohort survival calculation as approved by the Commission.~~

~~————— (iii) **Increasing Enrollment.** Where the school district’s past and projected enrollments show an increasing population trend, allowable square footage shall be based on a five year cohort survival calculation as approved by the Commission.~~

~~————— (iv) **Best Available Data.** Projected enrollments shall be determined by use of the best available data which is reliable, and should include cohort survival rates as well as snapshot enrollment and ADM calculations provided by the Wyoming Department of Education. In certain situations, other data may need to be considered to most accurately predict population trends. In all cases, only reliable data should be used and documentation shall be maintained of the basis upon which projected enrollment was calculated for all Commission funded remedies. The Commission shall approve use of any data other than cohort survival data to project student populations.~~

~~————— (f) **Capacity.** —————~~

~~————— (i) **Design Capacity.** New facilities and significantly renovated facilities shall have a design capacity as determined by application of the facility design guidelines. No Commission funded remedy shall be allowed which does not provide appropriate space for the student population contemplated (using subsection (e) of this chapter) by the applicable Facility Design Guideline or that guideline as modified by an exception.~~

~~————— (ii) **Existing Capacity.** The student capacity of existing facilities shall be determined by consideration of the number of teaching stations, the number of student stations per teaching station and the desire to maintain low student teacher ratios across the state. The Commission may by rule further refine the methodology for determining the capacity of existing facilities. —————~~

~~————— (g) **Functionality of Educational Space.** ————— Recognizing that students may be educated in a variety of manners, all school buildings and facilities shall strive to provide the most functional space reasonably possible for required educational programs. The Commission may adopt by rule further specific requirements for functionality in accordance with W.S. §21-15-115(a)(v).~~

~~(h)(c) **Classroom and Other Spaces.** The Facility Design Guidelines Uniform Adequacy Standards do not prescribe the size of the various spaces which may be included in the design of any particular school facility. The Design Guidelines provide a “footprint” of allowable square footage within which a facility is to be designed. The design process is intended to shall seek out the most efficient and effective manner of allocating classroom and other spaces within the footprint of allowable square footage while still providing the appropriate capacity to the school as calculated by the~~

~~square footage calculator. Only if the educational program cannot be delivered within that footprint is the exception process described in this chapter to be used.~~

~~_____ (i) **Co-curricular and Extracurricular Spaces.** _____ The design of any remedy funded by the Commission may include co-curricular and extracurricular spaces; but such designs shall ensure that substantially similar activities will be provided to similarly situated students across the state.~~

~~(j)(d) **On-and Off-site Infrastructure.** The Department shall only provide funding for on- and off-site infrastructure properly attributable to the needs of the school.~~

~~_____ (i) Requests for off-site infrastructure funds must come from affected school district(s) and shall, at a minimum, include the following in writing:~~

~~_____ (A) A full description of the school facility project, including the cost of the proposed infrastructure, its nature and capacity;~~

~~_____ (B) All reasons why the expenditures for the off-site infrastructure are necessary;~~

~~_____ (C) Any contemplated excess capacity as well as its cost and all terms for repayment for the cost; and,~~

~~_____ (D) Any other facts material to a determination of whether to expend these funds.~~

~~_____ (ii) Such requests shall be first presented to the School Facilities Commission Project Manager(s) assigned to the affected school district(s). The Project Manager(s) shall then present the request to the Director who shall make a determination whether further information is required, and whether the request shall be presented to the Commission for its consideration and decision. The Director shall notify the affected municipality or local governmental entity of the staff recommendation and of the time and location at which the Commission will consider the proposal.~~

~~_____ (iii) When considering such requests, the Commission shall work with the affected municipalities or other local governmental entity to reach a reasonable resolution of the excess capacity issues related to off-site infrastructure. The Commission will further coordinate with the Wyoming Association of Municipalities in order to maintain consistent application of this policy. Such requests will address the infrastructure needs of the school facility only; this policy is not intended to meet the development needs of the municipality or other local governmental entity.~~

~~_____ (iv) Funding of traffic lights or roundabouts will be in proportion to traffic volume resulting from the construction of the district facility on-site or off-site as determined in a traffic study conducted by a qualified traffic engineer.~~

~~_____ (v) The Director shall notify the affected municipality or other local governmental entity in writing, of the SFC action taken and reasons for the action.~~

~~_____ (vi) Projects eligible for this funding shall be prioritized in a manner consistent with the statewide prioritization process.~~

~~_____ (vii) No funds shall be expended without Commission approval and full compliance with this rule, footnote 7 to Section 027 of Section 3, 2007 HEA1 (the 2007 Budget Bill), and footnote 1 to Section 027, 2008 SEA0023 (the 2008 Budget Bill).~~

~~_____ (k) **Safety and Security.** Every Commission-funded remedy shall provide for the safety and security of the occupants of the facility.~~

~~_____ (l) **Sustainability, Energy Efficiency and Lighting.** Every Commission-funded remedy shall, at a minimum, analyze the life-cycle costs of maintenance and capital construction decisions upon the following criteria, in addition to other criteria being considered:~~

~~_____ (i) Energy Efficiency~~

~~_____ (ii) Sustainable Materials (recycled materials, chemical-free wall and floor coverings)~~

~~_____ (iii) Preventative Maintenance~~

~~_____ (iv) Waste Reduction~~

~~_____ (v) Indoor Air Quality~~

~~_____ (vi) Day Lighting~~

~~_____ (vii) Acoustics~~

~~_____ (m) **Value Engineering.** Value engineering is an essential part of ensuring that Commission-funded remedies receive the maximum value for the occupants and owners of the facilities in the most cost-effective and efficient manner possible. Unless waived by the Commission pursuant to W.S. 21-15-118(a)(ii)(B), all Commission-funded remedies shall be value engineered and value engineering shall be ongoing once the appropriate remedy is determined by the Commission. Value engineering shall include life-cycle cost analysis of all major systems in the facility.~~

~~_____ (n) **Codes.** All school facilities shall comply with all applicable local, state and federal building codes, laws and regulations.~~

~~_____ (o) **Functional Buildings.** All Commission-funded remedies should ensure that the design meets the expectations of the occupants and that the facility is built~~

as it was designed. Modern schools are complex buildings. Ensuring that all building systems are working properly and that the school staff knows how to operate and maintain them is critical.

———(p)——— **Acoustics.** If not controlled to appropriate levels, noise from loud ventilation systems, outdoor sources, and neighboring rooms can significantly impede communication among teachers and students. Classrooms should have unoccupied background noise levels reduced as much as is reasonably possible.

———(q)——— **Technology.** The Commission shall ensure that all facilities are capable of providing a modern and appropriate level of technology to the students and staff within the facility.

———(r)——— **Accessibility.** All school buildings and facilities shall provide appropriate accessibility to all persons, including persons with disabilities, and shall comply with all Federal and state laws and requirements regarding accessibility.

———(s)——— **Prototypes.** The Commission shall develop prototypes for Commission-funded remedies, which may include specific components and/or features of a school building as well as complete structures. The Commission shall ensure that such prototypes shall be used in developing Commission-funded remedies. All prototypes developed by the Commission shall be adopted in rule.

———(t)——— **Life Cycle Cost Analysis.** A life cycle cost analysis shall be completed for each school project. The analysis shall compare initial and life cycle costs for all major systems in the building. The major systems shall include, but are not limited to:

- (i)——— Structural
- (ii)——— Exterior skin
- (iii)——— Roof
- (iv)——— Flooring
- (v)——— HVAC
- (vi)——— Lighting

———(u)——— **On-site infrastructure.** The following on-site infrastructure may be funded by the SFC as part of the project budget:

(i)——— In the event a new or improved road is required, up to fifty percent (50%) of the cost of the road adjacent to the school property and up to one hundred percent (100%) of the sidewalk to be built adjacent to the school property may be included in the capital construction budget.

~~(ii) Up to fifty percent (50%) of infrastructure costs of utilities associated with construction or improvement of roads adjacent to school properties not to exceed one hundred percent (100%) of the capacity needed for the school building may be included in the capital construction budget.~~

~~(v) **Furniture, Fixtures and Equipment (FF&E).** The Commission will fund either 4.2% of the cost of construction for a school that is being replaced (assuming that some of the Districts existing FF&E is in reusable condition), or 6.3% of the cost of construction for new schools (where there is no existing FF&E to consider for re-use), for FF&E. This is intended to cover items that have no permanent connection to the structure of the building or utility, such as desks, chairs, tables, office furniture, cafeteria tables, audio visual equipment, specialized items to equip art, music, science, technical education rooms, special education rooms, and physical education space. Grounds and landscaping equipment, floor cleaners and waxers, vacuums, snow blowers, and such related items may be acceptable FF&E expenditures, pending an inventory and assessment of all re-usable or non-reusable FF&E, conducted jointly by the District and Commission. All requested FF&E expenditures shall be reviewed and approved by the Commission taking into consideration similar funding provided in the WDE block grant and other project-specific circumstances. No FF&E item shall be funded unless it is listed on the most current R.S. Means list for furniture, fixtures and equipment.~~

~~(w)(e) **Tracks.** Unless waived by the Commission for good cause, including the requirement that similarly situated students shall be provided the opportunity to participate in similar activities, t Tracks shall be designed and constructed in accordance with the Commission's standard track design guidelines. Refer to the track standards in Chapter 1-Section 5,(b). for Wyoming schools track and field, football and soccer facilities.~~

~~(x) **Auditoriums.** An auditorium is an important part of a high school design. Working within the footprint of allowable square footage, high school designs should incorporate an auditorium appropriate for the school's student population.~~

~~(y)(f) **Swimming Pools.** The Commission does not fund new swimming pools, however, existing swimming pools may be maintained through district funds or ten percent (10%) major maintenance funds, as long as all other major maintenance needs have been appropriately satisfied.~~

Section 7-Section 5. Local Enhancements.

~~(a) Local enhancements, as defined in Wyoming law and in these rules and regulations, are features and aspects of school facilities which are not funded by the Commission and do not receive funding for major maintenance from the Commission. to school facility remedies shall first be presented to the Commission for acknowledgement on forms provided by the Department and can be found on the School Facilities website.~~

~~(b) Regarding new construction, local enhancements may occur in the following non-exclusive ways. When local enhancements occur in conjunction with state-funded school facility 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 State-funded portion of the project.~~

~~————— (i) ——— Inclusion of a design feature which exceeds the facility design guidelines and/or fails to comply with the uniform statewide adequacy standards. Examples could include a gymnasium or auditorium designed larger than needed for the population of the school;~~

~~————— (ii) ——— Inclusion of square footage in a facility which exceeds the total square footage allowed by the facility design guidelines; or,~~

~~————— (iii) ——— Inclusion of design features or aspects which are not in compliance with the recommendations of value engineering.~~

~~————— (b) ——— Costs of facility enhancements shall be identified by the Commission as follows:~~

~~————— (i) ——— When the enhancement can be bid as an added or alternative item which includes all design and construction costs attributable to the enhancement, the district shall bear all costs associated with the addition or alternate;~~

~~————— (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 unless otherwise agreed upon by the Commission and the district in accordance with these rules and Wyoming law. The district shall be responsible for all costs associated with the enhanced square footage;~~

~~————— (iii) ——— When the enhancement is the result of a design preference, the difference shall be computed as a percentage unless otherwise agreed upon by the Commission and the district in accordance with these rules and Wyoming law. The district shall be responsible for all costs associated with the enhanced design and its construction.~~

~~————— (iv) ——— The Commission shall consider the recommendations of value engineering in arriving at the costs of all enhancements and its conclusions shall be included in the required written agreement between the district and the Commission.~~

~~(c) All costs associated with LEED design certification and commissioning will be considered an enhancement and must be paid for by the district. The Department may require that the enhancements be bid separately, that the enhancements be calculated as a percentage of the overall project cost, or other appropriate methods as may become available.~~

(d) ~~The Commission establishes the following criteria and procedures for the identification of local enhancements to school buildings and facilities which are in excess of state building adequacy standards and to determine whether and how any local enhancements should be incorporated into the statewide adequacy standards, in accordance with W.S. 21-15-114(a)(ix).~~ The Department shall consider the recommendations of value engineering in determining the appropriate allocation of costs of a project between enhancement(s) and state-funded portion of the project.

~~_____ (i) The Commission shall maintain a database from which all local enhancements may be identified.~~

~~_____ (ii) The Commission shall coordinate with the Wyoming Department of Education to determine if any local enhancements have a demonstrable effect upon student achievement.~~

~~_____ (iii) The Commission shall further coordinate with such other agencies and individuals as may be necessary to determine whether any local enhancements have a demonstrable effect upon delivery of a thorough and efficient system of public schools.~~

~~_____ (iv) If the Commission determines that any local enhancements have had either a demonstrable effect upon student achievement or a demonstrable effect upon delivery of a thorough and efficient system of public schools, the Commission shall make a determination whether and how such local enhancements should be incorporated into the statewide standards and such findings shall be reported to the Wyoming legislature for legislative guidance.~~

(e) ~~No enhancement to any school facility otherwise being funded by the Commission shall be allowed to proceed in the absence of a written agreement between the district and the Commission which identifies a dedicated source of funding for the enhancement, the mechanism by which construction of the enhancement will proceed and payment submittals be approved, and which establishes that construction and funding of the enhancement will neither impair nor impede construction of the base facility. The Department shall maintain a database from which all local enhancements may be identified.~~

(f) The Department shall required all enhancements be preceded by a written agreement with the affected school district which identifies a dedicated source of funding for the enhancement(s), establishes the means by which costs shall be allocated between the enhancement(s) and the state-funded portion of the project, and a determination by the Department that the enhancement will neither impair nor impede construction of the base facility.

~~APPENDIX A:~~
~~Guideline Graphs of Total Square Footage by Grade Level~~

~~Figure A 1: Elementary School Total Square Footage Guideline Graph~~

~~Figure A 2: Middle School Total Square Footage Guideline Graph~~

~~Figure A 3: High School Total Square Footage Guideline Graph~~

~~Figure A 4: K-8 School Total Square Footage Guideline Graph~~

~~Figure A 5: 6-12 Secondary School Total Square Footage Guideline Graph~~

~~Figure A 6: K-12 School Total Square Footage Guideline Graph~~

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Figure A-1: Elementary School Total Square Footage Guideline Graph

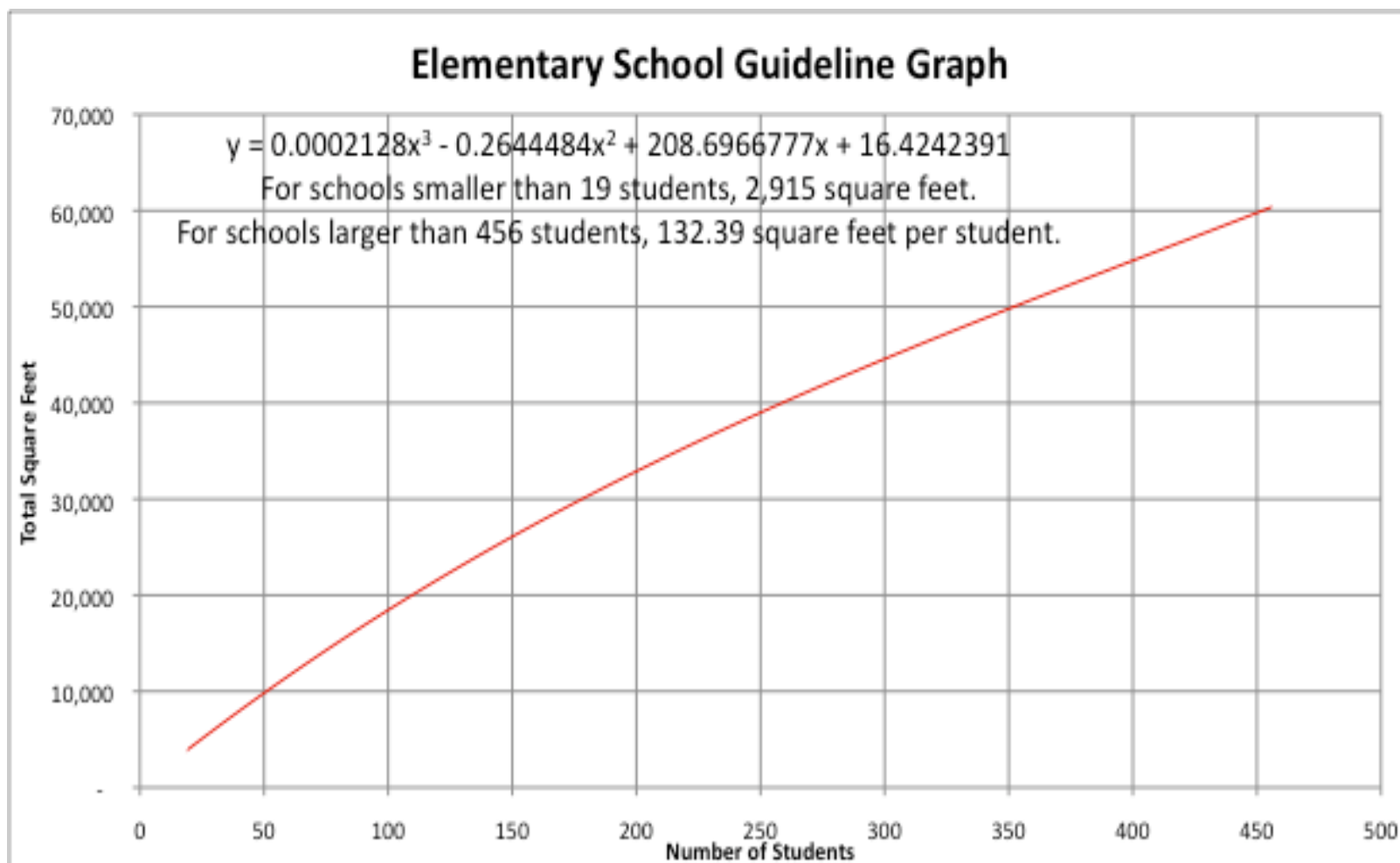


Figure A-2: Middle School Total Square Footage Guideline Graph

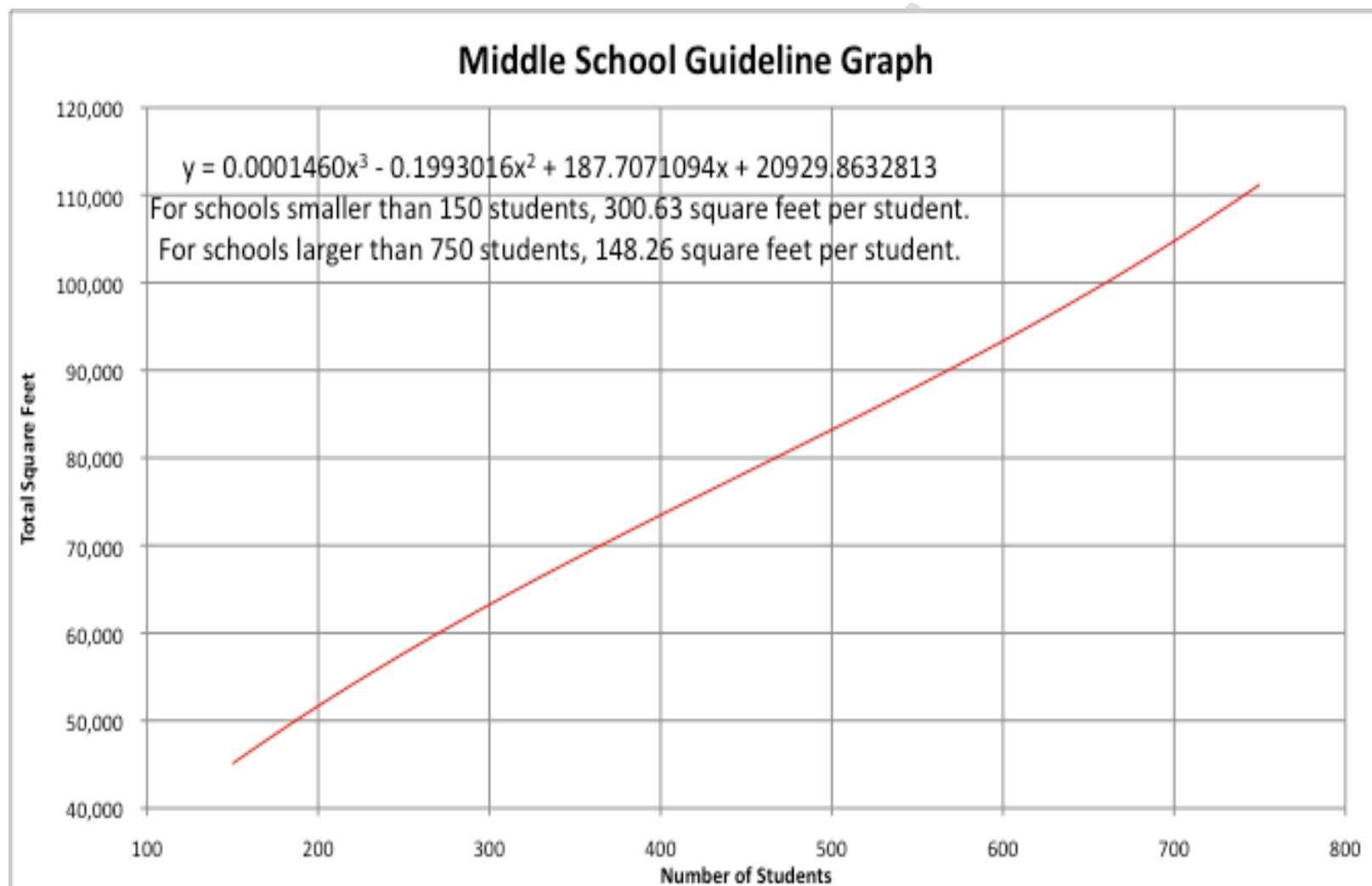


Figure A-3: High School Total Square Footage Guideline Graph

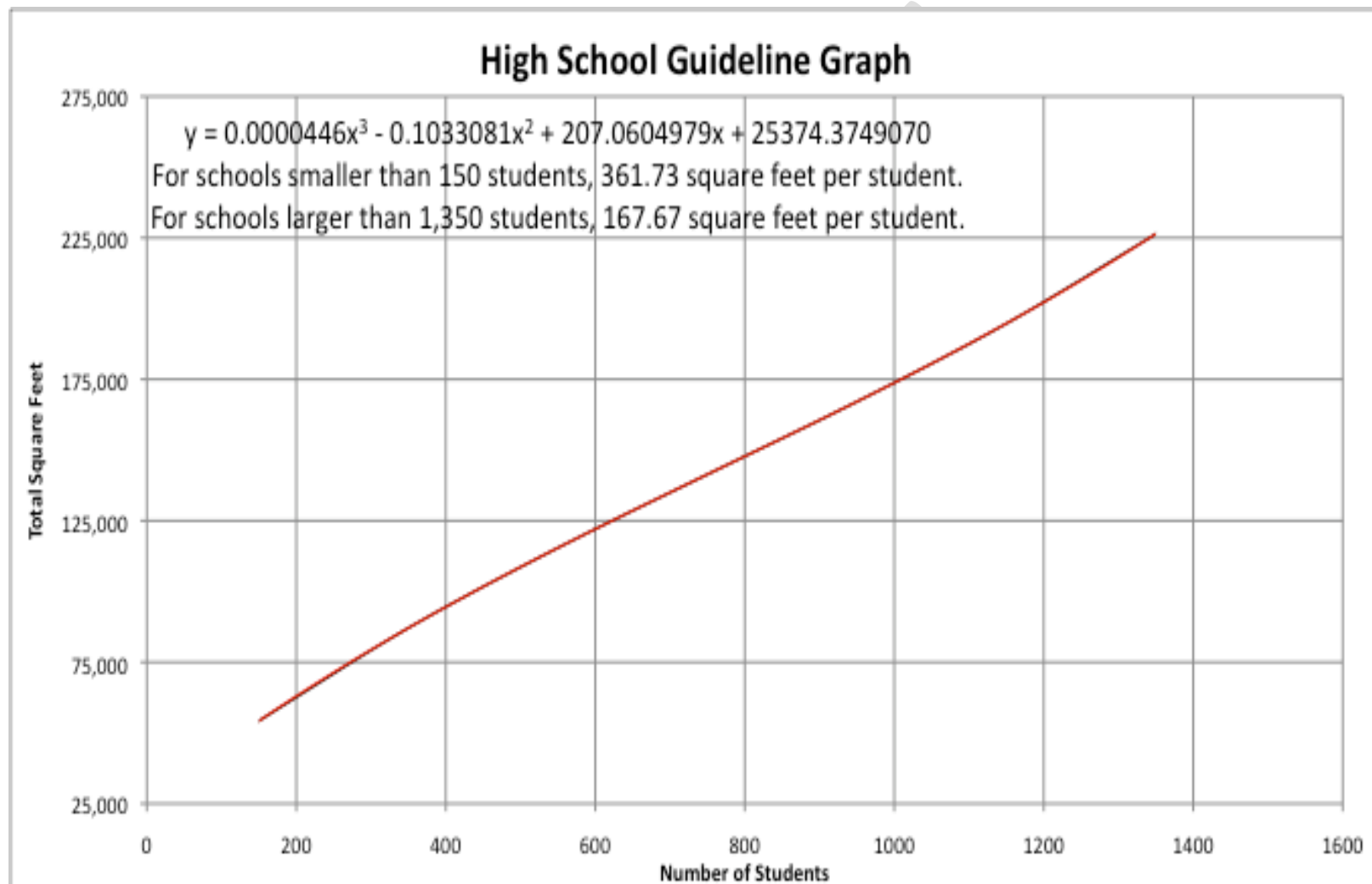


Figure A-4: K-8 School Total Square Footage Guideline Graph

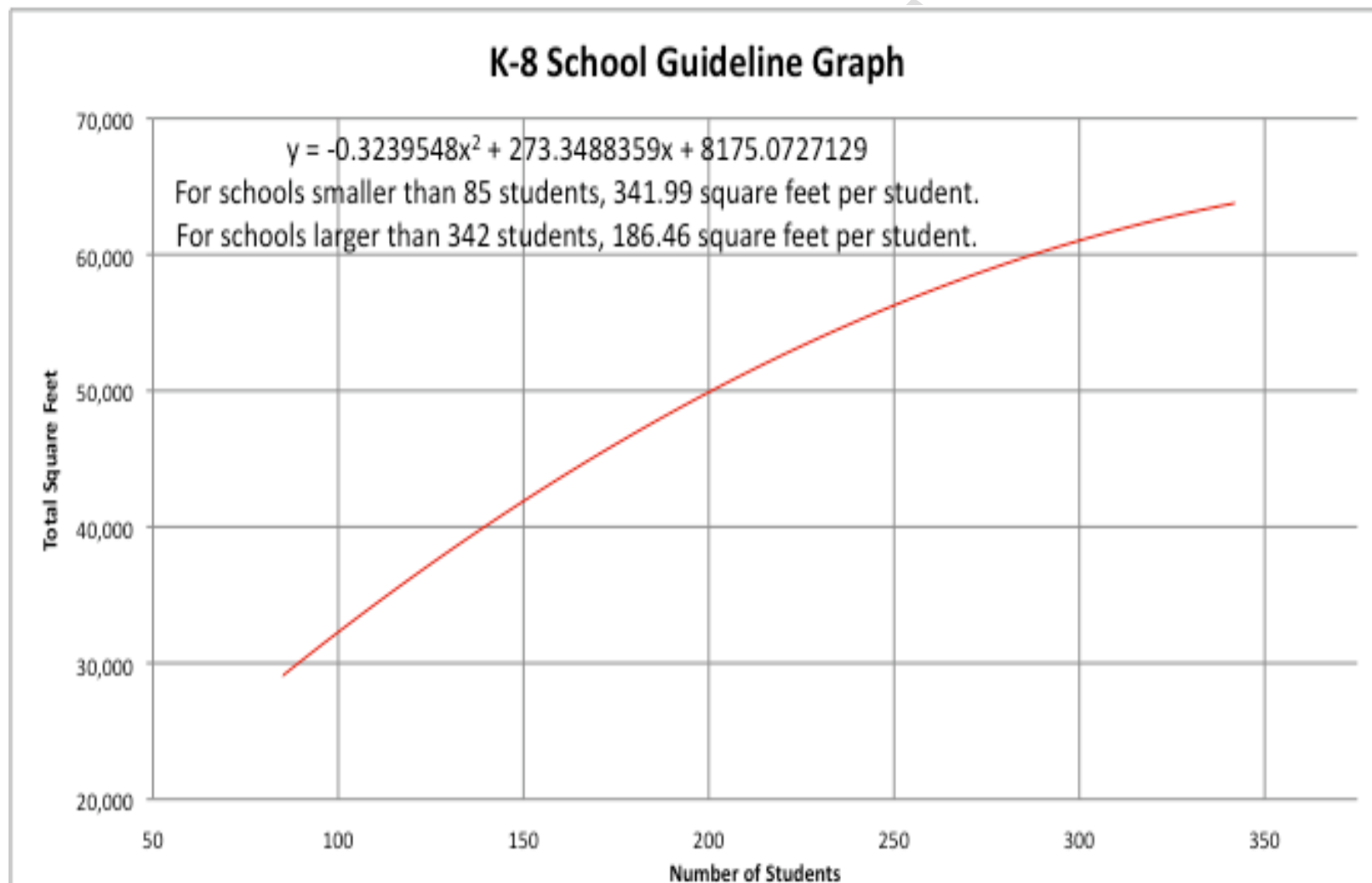


Figure A-5: 6-12 Secondary School Total Square Footage Guideline Graph

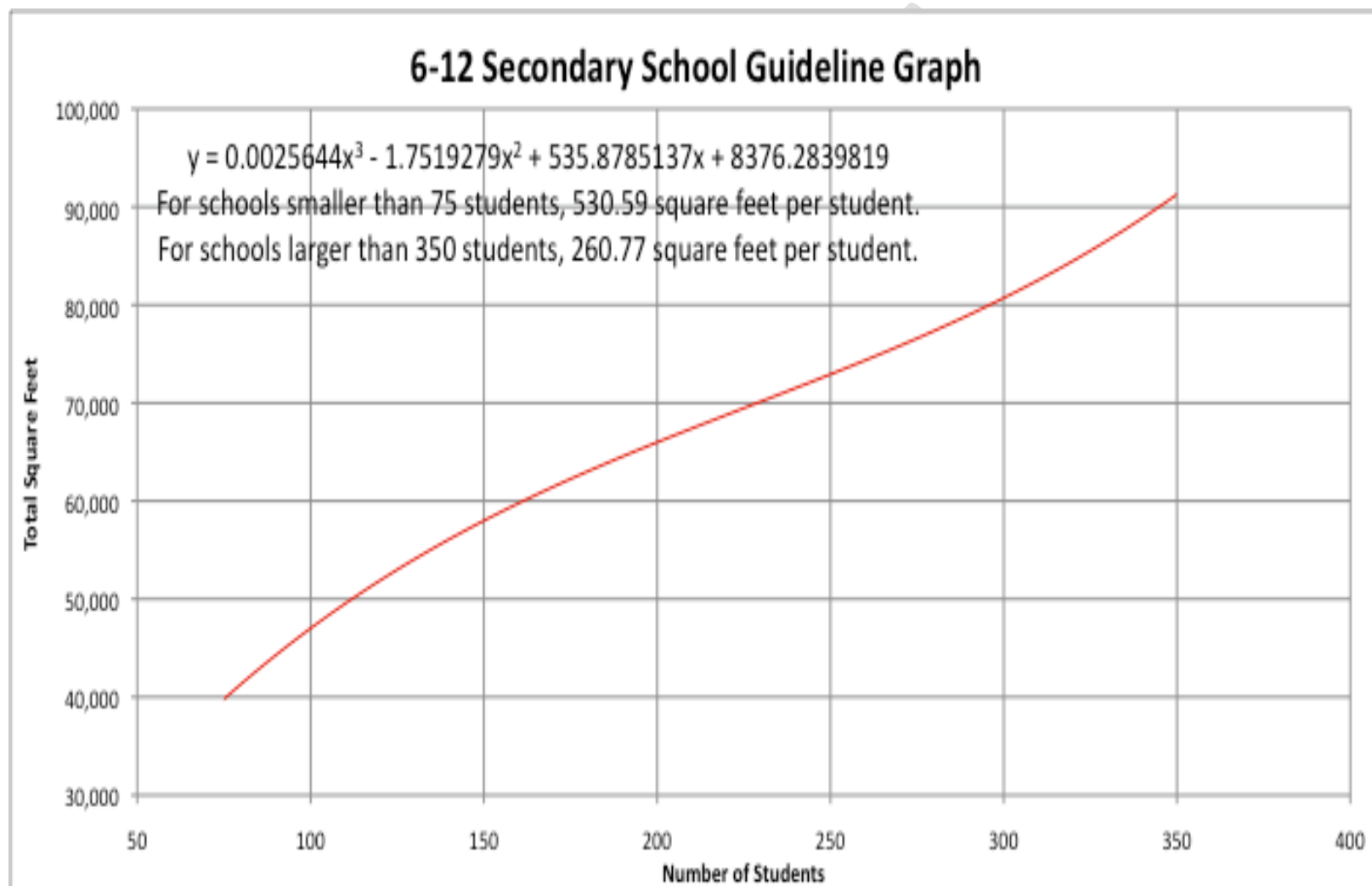
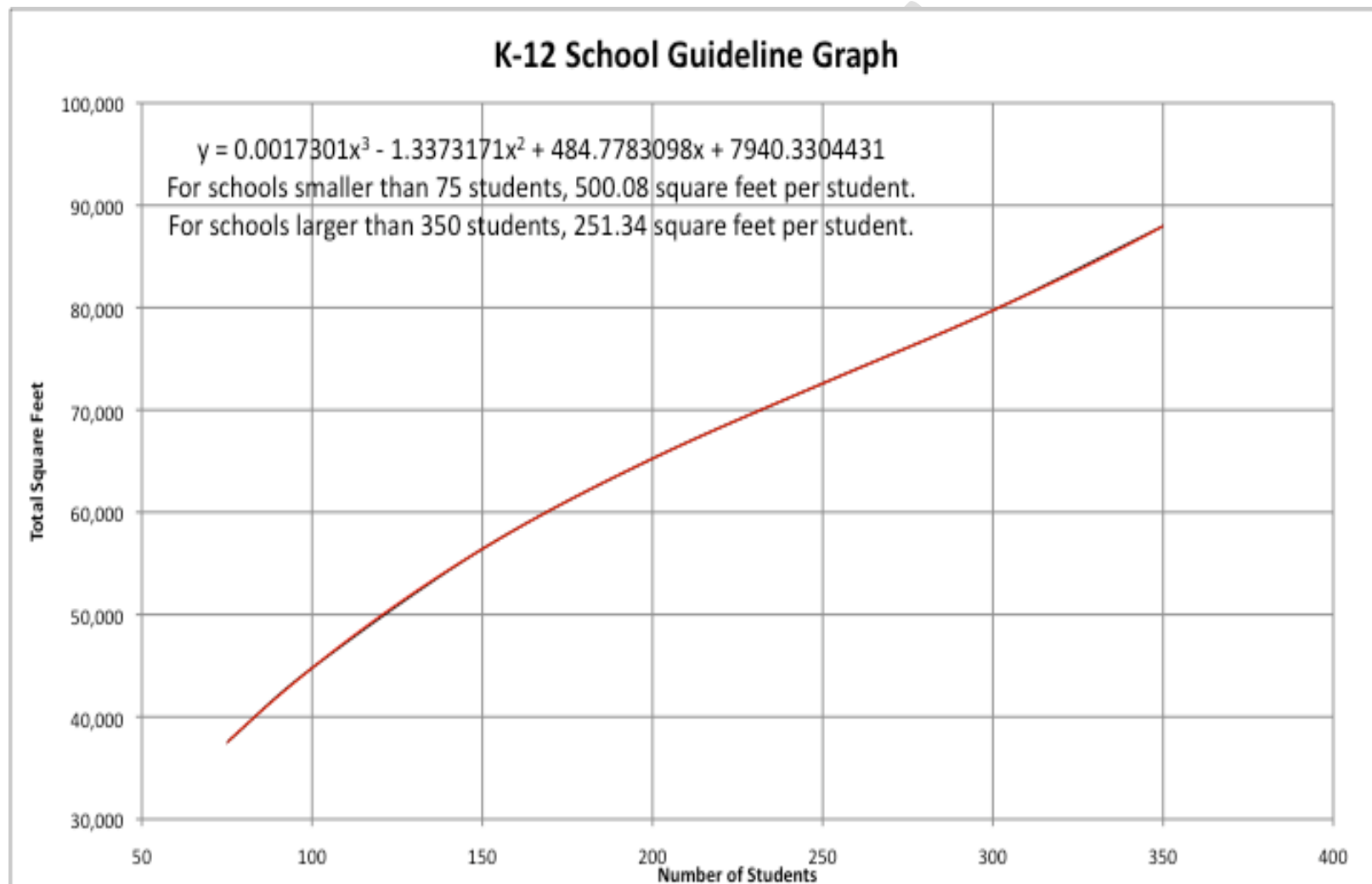


Figure A-6: K-12 School Total Square Footage Guideline Graph



RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 4 FACILITY PLANS-PLANNING

Section 1. Authority. This chapter is promulgated pursuant to W.S. 21-15-114(a)(xv) and W.S. 21-15-116.

Section 2. Purpose of Rule. This Chapter is intended to aid in the development of long range comprehensive school building and facility plans for each school district which address district-wide building and facility needs.

Section 3. Facility Plan.

~~(a) In coordination with the applicable district, the Department shall develop long range comprehensive school building and facility plans for each school district which address district wide building and facility needs. All facility plans and any modifications thereto require Commission approval in accordance with W.S. 21-15-116(d). Each plan shall describe with specificity the current and projected future use of each facility, a description of any perceived need for new or replacement facilities, a generalized description of the major maintenance needs of each facility and a description of how the plan will guide future funding requests and expenditures in order to achieve compliance with the adequacy standards of the Commission and other applicable Wyoming law in the most efficient and cost efficient manner to deliver quality educational services and address building and facility need.~~

~~_____ (b) Facility plans shall be reviewed periodically by the District and the Department.~~

~~_____ (c) Facility plans are not a definitive guide to facility or district remedies and may be subject to further consideration which may, or may not, ultimately be approved by the Commission. Facility plans are to be used as a tool to guide the NI (needs index) prioritization of remedies periodically established by the Commission in accordance with these Rules and Regulations.~~

~~(d) All facility plans shall contain information consistent with that required in W.S. 21-15-116, including but not necessarily limited to the following:~~

~~_____ (i) A full description of the District's long term goals and strategies related to its facilities, including disposition of facilities and modification of grade configurations and school boundaries;~~

~~_____ (ii) An inventory of all existing facilities including any charter school facilities in the district and the current status (closing/reopening, need for rural school, alternative schools, etc.) of each facility, including grade configuration and current year student enrollment, if applicable;~~

~~_____ (iii) A full description of all anticipated new, replacement or renovated~~

~~facilities perceived to be a need of the district over the next ten (10) years with a thorough explanation of the reasons supporting the perceived need for the new, replacement, or renovated facility;~~

~~_____ (iv) A full major maintenance plan and description of the impact of prior years expenditures on maintenance or renovation of facilities on the district's long-term goals and strategies, including non-construction alternatives.~~

~~_____ (v) An inventory of all real property owned by the district along with an explanation of the current and future use of the property. District owned property shall be considered, and if possible, used for all construction projects prior to new property purchases being considered or approved;~~

~~_____ (vi) Identification of all local enhancements and source of funding to maintain, specific to the building and location within the building, and community facilities which are capable of supporting any aspect of the district's long term goals and strategies, including any current use of such facilities;~~

~~_____ (vii) Student enrollment projections for the district and/or each facility within the district in accordance with W.S. 21-15-116(a) and these rules and regulations;~~

~~_____ (viii) Projections for acquisition of land in accordance with the district's long term goals and strategies and the subsections of this rule;~~

~~_____ (ix) A proposed cost estimate for the facility remedies proposed in the facility plan;~~

~~_____ (x) Identification of all leased spaces and their use, including the identity of the lessee/lessor; and a copy of the signed and fully executed lease agreement;~~

~~_____ (xi) Cross reference to any appropriate additional source of relevant information, including computer databases maintained by the Department or District;~~

(a) The Department shall schedule yearly facility plan review meetings with each school district. Yearly facility plan review meetings shall be conducted in accordance with Facility Plan review formats provided from time to time by the Department. Districts shall participate and supply all needed information to complete the plan.

(b) Facilities plans can be located in the AIM database maintained by the Department. Refer to Chapter 1, Section 5(b).

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 5 EMERGENCY FUNDING PROCEDURES

Section 1. Authority. This chapter is promulgated pursuant to W.S. 21-15-114(a)(xv) and W.S. 21-15-120(a).

Section 2. Purpose of Rule. This Chapter is intended to provide procedures to determine when an emergency exists with respect to the adequacy of school buildings and facilities.

Section 3. Availability of Funds. Basis for Declaration of Emergency.

(a) Emergency funding for temporary remedies may be available under the following circumstances:

(i) ~~The Commission, in consultation with the District determines that the situation immediately~~ The situation immediately and substantially affects the ability of the district to provide the educational programs required by law and that no other reasonable alternative exists to address the situation other than emergency funding; or,

(ii) ~~The Commission determines~~ A situation exists statewide which could substantially affect the ability of the one or more districts to provide the educational programs required by law, and that no other reasonable alternative exists to address the situation other than emergency funding.

Section 4. Application.

(a) Applications for emergency funding to the Department must, at a minimum include:

(i) A detailed description of the circumstances giving rise to the emergency, including the expected duration of the emergency;

~~(ii) The location of all structures affected by the emergency and, if the emergency affects only a portion of a structure, a detailed description of the affected portion;~~

~~(iii)~~(ii) The district's proposed remedy to cure the emergency, including all alternatives considered;

~~(iv)~~(iii) An estimate of the cost of the proposed remedy, including estimates of alternative remedies considered;

~~(v)~~(iv) Bids or estimates received from contractors to address the emergency;

~~(vi)~~(v) Such other reasonable documentation and information the Commission may require.

~~(b) — The district's superintendent shall certify in writing that no other funds are available to affect the remedy and that the information disclosed in the application is true, correct and complete.~~

~~(e)(b) The remedy adopted by the Commission shall be the most cost-effective, temporary means of restoring the adequacy of the district's school buildings and facilities such that it is able to provide required educational programs. means of addressing the emergency.~~

Section 5. Disbursement of Funds.

~~(a) — The district shall contract for the commission approved remedy.~~

~~(b) — The district shall submit written funding requests, accompanied by supporting invoices and other documentation reasonably required by the commission. Upon approval of the funding request as complying with the contract and this chapter, funds shall be disbursed.~~

~~(c) — Disbursements shall not be made for any unauthorized expenses.~~

Section 5. Adequate Insurance. School districts are required to maintain adequate and appropriate insurance coverage on their facilities. Insurance proceed shall be applied to all applicable emergencies before emergency funding under this chapter is made available.

RULES AND REGULATIONS OF THE SCHOOL FACILITIES COMMISSION

CHAPTER 6 SQUARE FOOTAGE GUIDELINES FOR MAJOR MAINTENANCE PAYMENTS

Section 1. Authority. This chapter is promulgated pursuant to W.S. 21-15-114(a)(xv) and W.S. 21-15-109(c)(i).

Section 2. Purpose of Rule. The purpose of this rule is to prescribe guidelines by which square footage will be computed for purposes of calculating major maintenance payments.

~~Section 3. Definitions.~~

~~(a) “Certify” means to represent and warrant, under penalty of perjury, that the certified matters are true, accurate and correct and are not misleading in any material way.~~

~~(b) “Closed” means in the context of an educational building, the building is not used and is not intended to be used for educational purposes.~~

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

~~(d) “Major Maintenance” or “Major Building and Facility Repair and Replacement” means the repair or replacement of complete or major portions of school building and facility systems at irregular intervals which is required to continue the use of the building or facility at its original capacity for its original intended use and is typically accomplished by contractors due to the personnel demand to accomplish the work in a timely manner, the level of sophistication of the work or the need for warranted work.~~

~~(e) “Mothballed” is the spare footage of any district building or facility which is closed and not operational, is not being replaced under a district’s facility plan approved by the commission under W.S. 21-15-116, and is not determined surplus as a closed building within the district’s facility plan. (The district building or facility must be in good condition and may remain as a mothballed building for a maximum of three (3) years).~~

~~(f) “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.~~

~~(g) “Routine Maintenance and Repair” means activities necessary to keep a school building or facility in safe and good working order so that it may be used at its original or designed capacity for its originally intended purposes, including janitorial, grounds keeping and maintenance tasks done on a routine basis and typically~~

~~accomplished by district personnel with exceptions for any routine tasks accomplished by contractors such as elevator or other specialized equipment or building system maintenance.~~

~~———— (h) ——— “Separate Account” means an individual account for depositing to, and expending from, major maintenance funds. These funds shall not be co-mingled with any other funds or accounts.~~

Section 4. Section 3. Maintenance. Each district in consultation with its assigned Project Manager shall maintain the total square footage of each building within the district and report maintenance during facility planning.

Section 5. Section 4. Calculation.

(a) Actual square footage of buildings shall be calculated using the exterior building face dimensions of enclosed space at each floor level. Areas not to be included in square footage calculations include:

- (i) Crawl spaces;
- (ii) Pipe tunnels;
- (iii) Roof overhangs;
- (iv) Walkways, and other non-enclosed facilities.

(b) The total square footage of structures shall be calculated by using any one of the following measurement methods:

- (i) On-site measurements of the structure;
- (ii) Dimensions taken from as-built floor plans where complete information is available; or
- (iii) Computer-aided drawing (CAD) utilizing as-built floor plans.

(c) Each floor of multi-floored structures shall be calculated separately, and calculations for all floors shall be combined for the total area of the entire structure, including the gross square footage area of basements.

(d) The major category (i.e. educational, office, or warehouse) designated for gross square footage within each building or facility shall be determined based upon the major use of the building.

(e) The total square footage of structures in the district shall be separately set out for each major category (i.e. educational, office or warehouse) using the following sub-categories:

- (i) Educational
 - (A) Standard educational space

- (B) Educational portables
- (C) Educational non-portables
- (D) Qualified educational leases per W.S. 21-15-109(c)(i)(B)
- (E) Other non-qualified educational leases
- (F) Mothballed
- (ii) Office
 - (A) Portable building used as an office
 - (B) Leased offices
 - (C) All other offices
- (iii) Warehouse
 - (A) Bus barn (transportation facility)
 - (B) Portable building used as storage
 - (C) Warehouse leases
 - (D) All other warehouses

(f) **Mothballed Buildings.** For buildings which are mothballed with the intent to reopen as an educational space, ten percent (10%) of the normally allocated major maintenance funds for the building will be allotted for a maximum of three (3) years. At the end of the three (3) years, the district shall determine if the building is still a needed educational building or if the district will close the building and remove it from their inventory, at which time no additional major maintenance funds will be expended. Funding must be requested by the district on Form SFC-706.

~~(g) **Mechanical space.** When calculating the overall building square footage for a new building, addition or major remodel (for the purposes of determining the allowable gross square footage), if the mechanical space complies with the definitions outlined below, then it is not required to be included in the gross square footage calculations for the new construction.~~

~~Section 502 – International Building Code, 2006 Edition~~

~~Equipment Platform — An unoccupied, elevated platform used exclusively for mechanical systems or individual process equipment, including the associated elevated walkway, stairs and ladders necessary to access the platform. (See also Section 505.5).~~

~~Section 1502 — International Building Code, 2006 Edition~~

~~Penthouse — An enclosed, unoccupied structure above the roof of a building, other than a tank, tower, spire, dome copula or bulkhead, occupying not more than 1/3 of the roof area. (See also Section 1509.2)~~

~~Also, for the type of construction, allowable size and height of a tower or spire shall be as outlined in Sections 1509.5, 1509.5.1 and 1509.5.2.~~

~~—— (h) — **Leased Facility Space.** The Commission may approve “qualifying” leased facility square footage for inclusion in major maintenance calculations when the following criteria are satisfied:~~

- ~~—— (i) — Commission approval is obtained per W.S. 21-15-109(c)(1)(A);~~
- ~~—— (ii) — Facility must be surplus or closed per W.S. 21-15-109(c)(iv);~~
- ~~—— (iii) — Square footage is not being used for delivery of required educational program;~~
- ~~—— (iv) — Square footage is being used for one of three approved programs:~~
 - ~~—— (A) — Certified child care per W.S. 14-4-101 *et seq.*~~
 - ~~—— (B) — Developmental preschool receiving state aid.~~
 - ~~—— (C) — BOCES program per W.S. 21-20-101 *et seq.*~~
- ~~—— (v) — District incorporates use of this closed or surplus space into its facility plan;~~
- ~~—— (vi) — District reports any fees received for use of this closed or surplus space as a local resource per W.S. 21-13-310(a)(xv);~~
- ~~—— (vii) — District limits lease agreement to one year subject to early termination if necessary for provision of district educational programs.~~

~~Section 6.~~**Section 5. Computations and Adjustments.** The Commission shall adjust the total district gross square footage by excluding or reducing the gross square footage of newly constructed buildings and facilities using the following percentages:

Year 1	0%
Year 2	10%
Year 3	10%
Year 4	40%
Year 5	60%
Year 6	80%
Year 7 and after	100%

~~Section 7. Salaries.~~ Approval must be received from the Commission prior to Districts paying salaried personnel with major maintenance funds, as authorized by W.S. 21-15-109(e). In order to request approval, the District must provide the Commission the following information:

- ~~(i) Amount identified as salary;~~
- ~~(ii) Position title;~~
- ~~(iii) Detailed description and scope of duties relating to major maintenance projects.~~

~~Section 8. 8% and 10% Expenditures.~~ Subject to Commission approval and in accordance with W.S. 21-15-109(f), a district may expend up to 10% of its annual major maintenance distribution on major building and facility repair and replacement needs not specified in the districts facility plan, including district enhancements. These proposed expenditures shall not be approved by the Commission unless the districts major maintenance needs identified in its facility plan (in compliance with W.S. 21-15-109(e)) have been addressed. A district may also apply to accumulate up to 10% of its annual major maintenance distribution on the same basis. If a district is in possession of previously authorized 8% major maintenance funds, they are subject to expenditure on the same basis as 10% funds, but may continue to be held without further Commission approval.

~~Section 9. Use of Major Maintenance funds for other purposes in accordance with W.S. 21-15-109(c).~~

~~The legislature has granted the Commission the authority, under limited circumstances, to approve use of major maintenance funds for purposes other than those authorized by W.S. 21-15-109. The relevant language of the statute is noted below:~~

~~[E]xcept as specified under subsection (f) of this section [10% Expenditures], expenditures from the separate account, including any interest earnings on the account, shall be restricted to expenses incurred for major building and facility repair and replacement as defined in subsection (a) of this section or as prescribed by rule and regulation of the commission, otherwise in accordance with and satisfying the requirements of this Act, and shall be in accordance with the district's facility plan approved by the commission under W.S. 21-15-116.~~

~~Use of major maintenance funds for these purposes shall only be upon approval of the Commission. The Commission shall determine whether to approve or deny any such use of major maintenance funding only upon use of the following procedure and upon consideration of the following non-exclusive and non-prioritized list of factors. The Commission shall create a thorough written record supporting every approval or denial:~~

~~(a) Requests shall be forwarded through the Project Manager for the applicable district to the Director.~~

~~(b) The Director shall make a preliminary determination (based upon all of these factors) whether the request shall be forwarded to the Commission for its consideration.~~

~~(c) The written record requirements of this section apply to the Director's preliminary determinations as well as the Commission's final determinations.~~

~~(d) The Director and the affected district shall present a request approved preliminarily by the Director at a Commission meeting together with all documentation relevant to the request.~~

~~(e) The Commission (and the Director) shall, at a minimum, consider the following factors in determining whether to grant or deny a request:~~

~~(i) Whether the district's facility plan is current and approved, and whether the facility plan has been followed;~~

~~(ii) Whether the district's major maintenance needs identified by the Commission's processes have been adequately addressed;~~

~~(iii) Confirm that the request does not involve use of major maintenance funding for an enhancement;~~

~~(iv) Whether all value engineering requirements (if applicable) have been followed.~~

~~(v) Whether the facility, and the educational program proposed to be delivered within that facility, is endorsed by the Wyoming Department of Education as educationally appropriate.~~

~~(vi) Whether other facilities, owned and/or funded by the district or otherwise, may be used to provide part of the required educational program.~~

~~(vii) What effect granting or denial of the request would have upon current and future major maintenance needs in the district.~~

~~(viii) What effect granting or denial of the request would have upon current and future capital construction needs in the district.~~

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