



Jason E. Glass, Ed.D.
Commissioner and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION

300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov

MEMORANDUM No. 50 - DRAFT

Use of Restricted Funds for District Facility Plan (DFP) Priority 5 Projects

**TO: Design Professionals, Construction Managers and Fiscal Agents
Providing Services to Kentucky's K-12 Public Schools and
Kentucky's Finance Officers and Facility Directors**

**FROM: Chay Ritter, Director, Division of District Support
Greg Dunbar, MBA, AIA, Manager, District Facilities Branch**

DATE: August 20, 2021

KDE legal counsel has recently provided the following opinion:

“The use of restricted funds for Priority 5 projects is limited by the School Facilities Planning Manual (Planning Manual) which is incorporated by reference into 702 KAR 4:180. Therefore, the Planning Manual has the force of law. The Planning Manual on page 6 defines a discretionary project as:

DISCRETIONARY PROJECT means a project noted on the District Facilities Plan in Priority - 5 that does not qualify to be included in Priority 1 through 4 and as such **cannot be completed using restricted funds**. These projects **may be completed using non-restricted funds** as they become available. Discretionary projects shall be itemized in the last section of the district facility plan. Discretionary projects **are not eligible for SFCC Needs Based funding**.

Page 37 states:

202.5 Priority 5 – Discretionary Construction Projects

202.5.1 This Priority shall be used to list projects by school or building that do not qualify for inclusion in the DFP in the first four (4) priorities. These shall include;

1. The addition of space within existing buildings that are in excess of those allowed for each individual building type as noted in Chapter 4.

2. Renovation of spaces and buildings that are too new or minor in nature [(less than 3 systems to be replaced, except those systems specifically noted as exceptions to the definition of Major Renovation(HVAC, roofing, life safety and ADA compliance)] to meet the definition for Major Renovation.

3. **Extracurricular Facilities** - Construction of field houses; stadiums; sports field facilities; or any athletic facility.

202.5.2 Projects listed in this priority do not count toward the district's needs assessment.

202.5.3 Restricted construction funding shall not be used for projects noted in this Priority unless all projects noted in Priorities 1 through 4 have been completed and the district shows no need that qualifies under the terms of this regulation.

202.5.4 The local district opting not to participate in SFCC funding may request all projects to be listed in this priority.

This opinion is also applicable to projects that are not included on a DFP.

SFCC, Capital Outlay and Building Fund cash and SFCC and FSPK bond funds are collectively considered by numerous statutes to be "restricted" for capital construction projects based on the Priorities established in the Planning Manual.

Related to 702 KAR 4:160 Capital Construction Process, BG-1's (initial and revised) shall identify all Priorities included in the Project Scope. Projects that include work in Priority 5 or work not listed on a DFP shall have unrestricted funds proportionate to the work described. Construction documents and addenda (if applicable) must provide a method of identifying the cost of this ineligible work on the Form of Proposal when bids are received. Changes to project scope after construction contracts have been approved by KDE are subject to the same restrictions.

Your cooperation regarding this matter is appreciated.

Chay Ritter
(502)564-3846 ext. 4453
Chay.Ritter@education.ky.gov

Greg Dunbar
(502)564-4326 ext.4401
Greg.Dunbar@education.ky.gov

cc: District Finance Officers & Facilities Directors
Design Professionals
Construction Managers
Fiscal Agents
KDE/DFB Architect Memo File