

In The Matter Of:

*Mandell, et al. v.
Town of Reading*

*Christine Lynch
September 18, 2000*

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*Jones, Fritz & Sheehan
A LegaLink Company
210 South Street
11th Floor
Boston, MA 02111
(617) 542-0039*

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 [5] COMMONWEALTH OF MASSACHUSETTS
 [6]
 [7] Middlesex, ss. Superior Court
 [8]
 [9] ROBERT L. MANDELL, et al.,
 [10] Plaintiffs, Civil Action
 [11] v. No. 002564-F
 [12]
 [13] TOWN OF READING,
 [14] Defendant.
 [15]
 [16]
 [17] DEPOSITION of CHRISTINE LYNCH
 [18] Monday, September 18, 2000
 [19] 10:03 a.m.
 [20] Hemenway & Barnes
 [21] 60 State Street
 [22] Boston, Massachusetts 02109
 [23] Court Reporter: Michelle Sylvia
 [24]

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[1] APPEARANCES:
 [2]
 [3] HEMENWAY & BARNES
 [4] By Joseph L. Bierwirth, Jr., Esq.
 [5] 60 State Street
 [6] Boston, Massachusetts 02109
 [7] (617) 227-7940
 [8] Counsel for the Plaintiffs.
 [9]
 [10] GADSBY & HANNAH, LLP
 [11] By Ronald G. Busconi, Esq.
 [12] 225 Franklin Street
 [13] Boston, Massachusetts 02110
 [14] (617) 345-7002
 [15] Counsel for the Defendant.
 [16]
 [17]
 [18]
 [19]
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[1] PROCEEDINGS
 [2] CHRISTINE LYNCH
 [3]
 [4] a witness called for examination by counsel for the
 [5] Plaintiffs, being first duly sworn, was examined and
 [6] testified as follows:
 [7]
 [8] DIRECT EXAMINATION
 [9] BY MR. BIERWIRTH:
 [10] Q: Good morning, ma'am.
 [11] A: Good morning.
 [12] Q: Could you state your name for the record,
 [13] please?
 [14] A: Christine Lynch.
 [15] Q: And who do you work for, Ms. Lynch?
 [16] A: Massachusetts Department of Education.
 [17] Q: And what is your title?
 [18] A: Acting director. I'm not sure, actually.
 [19] Acting director, I guess.
 [20] Q: Acting director of what?
 [21] A: School Building Assistance.
 [22] Q: And for how long have you been the acting
 [23] director of School Building Assistance?
 [24] A: About a year.

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[1] Q: Okay.

[2] MR. BIERWIRTH: Mr. Busconi, we can

[3] agree on the same stipulations as Friday?

[4] MR. BUSCONI: Yes. Of course, it's the

[5] witness's preference with respect to signing.

[6] I'd recommend that you want to take a

[7] look at your transcript and not waive the signing.

[8] Other than that —

[9] MR. BIERWIRTH: We'll agree on the

[10] stipulations that all objections, except for those

[11] as to form of the question, will be reserved.

[12] Motions to strike will also be reserved. And I will

[13] make the transcript available to Ms. Lynch.

[14] Q: Would you prefer that I send it directly to

[15] you? There's been an attorney at the Department of

[16] Education, Deborah Comfort, who I've been dealing

[17] with. Can I send it to Ms. Comfort or to you

[18] directly?

[19] A: Either way. I really don't care. If you'd

[20] prefer to work through her, that's fine.

[21] Q: All right. And as I just said, I've been

[22] working in preparation for this deposition and with

[23] respect to a keeper of records deposition notice

[24] that I sent to the Department of Education in this

[1] A: Okay.

[2] Q: If you want to take a break at any time,

[3] please let me know that. And with that, I guess we

[4] can proceed.

[5] When did you become the acting director

[6] of the School Building Assistance program?

[7] A: I think officially it was September 1st, I

[8] believe.

[9] Q: Of this year?

[10] A: Of 1999.

[11] Q: And who was the director prior to that?

[12] A: James Anderson.

[13] Q: And what was your title prior to September

[14] 1, 1999?

[15] A: Educational specialist.

[16] Q: And as an educational specialist, you also

[17] worked within the confines of the School Building

[18] Assistance program?

[19] A: No, I did not.

[20] Q: You worked generally for the Department of

[21] Education?

[22] A: I worked in another bureau within the

[23] department, yes.

[24] Q: What bureau was that?

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[1] case with an Attorney Deborah Comfort, but,

[2] Ms. Lynch, you are not represented by counsel here

[3] at this deposition today; is that correct?

[4] A: No.

[5] Q: Is there any reason why not?

[6] A: Not that I'm aware of. I wasn't aware that

[7] I should be. Should I be?

[8] Q: You can, or you can not. That's fine.

[9] A: Okay.

[10] Q: I'll give you now an explanation of the

[11] deposition process. Before I do, can I ask if

[12] you've been deposed before?

[13] A: No, I have not.

[14] Q: I'm going to be asking you questions and

[15] showing you documents with respect to this case,

[16] which is captioned Mandell versus the Town of

[17] Reading.

[18] I represent the plaintiffs, who are a

[19] group of taxpayers from the Town of Reading.

[20] Mr. Busconi represents the Town of Reading.

[21] If you don't understand any of my

[22] questions today, I'd ask that you let me know so I

[23] can rephrase them and perhaps make them more

[24] understandable to you.

[1] A: School finance.

[2] Q: Prior to September 1, 1999, had you ever

[3] worked with any School Building Assistance program?

[4] A: Yes. The answer is yes, but it's been

[5] reconfigured over the years. In a different

[6] capacity I worked there, yes.

[7] Q: In what capacity did you work within that

[8] program?

[9] A: That unit used to also deal with formation

[10] of regional school districts, which is — and also

[11] educational collaboratives, which is the area that I

[12] handled at one point in time within the School

[13] Building Assistance Bureau.

[14] Q: Those two matters are no longer handled by

[15] the School Building Assistance Bureau?

[16] A: Not directly.

[17] Q: I'm going to show you a copy of a notice and

[18] a subpoena which I had served on the Department of

[19] Education.

[20] MR. BIERWIRTH: We can get that marked

[21] as the first exhibit.

[22] (Exhibit Number 1

[23] marked for identification)

[24] Q: You can take a moment to look at that,

[1] Ms. Lynch.
 [2] (Pause)
 [3] **Q:** And in particular, if you could look at the
 [4] page which is — which has the words "Schedule A" at
 [5] the top.
 [6] **A:** Uh-hmm.
 [7] **Q:** Now, in this subpoena I have asked that the
 [8] Department of Education designate one or more
 [9] persons who are most knowledgeable to testify on its
 [10] behalf as to each of the subject matters set forth
 [11] in the Schedule A, which you have open there in
 [12] Exhibit 1.
 [13] In my conversations with Ms. Comfort she
 [14] indicated to me that you were the person who the
 [15] department was going to designate.
 [16] Let me ask you, are you the person who
 [17] is most knowledgeable within the Department of
 [18] Education with respect to each of the subjects set
 [19] forth there on Schedule A?
 [20] **A:** Within the Department of Education, I
 [21] probably am.
 [22] **Q:** At the same time that I had served this
 [23] subpoena asking the Department of Education to
 [24] designate and produce someone to be deposed, I had

[1] also served a request for records. Were you
 [2] involved in looking for and producing those records?
 [3] **A:** No, not really.
 [4] **Q:** I see you brought some documents with you
 [5] today. Could I take a look at those?
 [6] (Pause)
 [7] **MR. BUSCONI:** Are these documents
 [8] brought today in response to the subpoena?
 [9] **THE WITNESS:** No. You're welcome to
 [10] them, but no. I think you probably already would
 [11] have received a copy of them here. They're public
 [12] information on our Web site.
 [13] **MR. BIERWIRTH:** Why don't I get these
 [14] two documents marked just so we can refer to them.
 [15] And since I'm doing that, I will have to take the
 [16] original. I'll give you copies at the deposition.
 [17] **A:** That's fine. You can have those.
 [18] (Exhibit Numbers 2 and 3
 [19] marked for identification)
 [20] **Q:** Can you please tell us what those two
 [21] documents are?
 [22] **A:** One is the School Building Assistance
 [23] capital grant application, which is the application
 [24] process that the Town of Reading would have gone

[1] through when they filed the two projects for last
 [2] year.
 [3] **MR. BUSCONI:** And that is marked?
 [4] **MR. BIERWIRTH:** Number 2.
 [5] **A:** The other document is recently enacted
 [6] regulations by the Board of Education effective July
 [7] 27th, I believe, of 2000, which actually the Town of
 [8] Reading would not have gone through when it
 [9] submitted its two applications.
 [10] **MR. BUSCONI:** Is that Exhibit 3? Is
 [11] that marked Exhibit 3?
 [12] **THE WITNESS:** Yes.
 [13] **MR. BUSCONI:** Thanks.
 [14] **Q:** Now, Exhibit 3 is dated July 2000?
 [15] **A:** Correct.
 [16] **Q:** And you're saying that these regulations
 [17] dated July 2000 incorporate amendments which were
 [18] made to existing School Building Assistance program
 [19] regulations; is that accurate?
 [20] **A:** The Board of Education each year adopts new
 [21] School Building Assistance regulations. These are
 [22] the most recently adopted regulations. They became
 [23] effective July of 2000.
 [24] **Q:** And you say that the Board of Education

[1] adopts new regulations each year?
 [2] **A:** Yeah.
 [3] **Q:** Do they change from year to year?
 [4] **A:** Sometimes. In this particular year they
 [5] changed fairly substantially. Each year they each
 [6] keep the existing regulations and on an annual basis
 [7] they at least vote on changes to the square footage
 [8] allowance that is incorporated into the regulation.
 [9] So on an annual basis they at a minimum
 [10] do that on the cost allowance that's in the
 [11] regulations. In this particular year they made some
 [12] other substantial changes.
 [13] And one of the points that were raised
 [14] here is proposed changes to the School Building
 [15] Assistance program.
 [16] And in case you had not received them,
 [17] which I thought you did — if you did not, you're
 [18] welcome to this copy — these are the changes that
 [19] were most recently made.
 [20] **Q:** I actually did not receive them. I have
 [21] copies that I obtained by myself, but perhaps we'll
 [22] use the copy that you've brought along when we get
 [23] to that.
 [24] At what time of year does the Board of

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[1] Education ordinarily vote on adopting regulations
 [2] for that year for the SBA program?
 [3] **A:** I honestly don't know if I can say that it's
 [4] a set time every year. It's generally at the
 [5] beginning or end of the fiscal year. In other
 [6] words, June, July time frame, somewhere in that
 [7] vicinity. I don't know if it's consistently done on
 [8] a year-to-year basis at that same time, but it's
 [9] around that period.
 [10] **Q:** What sort of fiscal year does the SBA
 [11] program run on?
 [12] **A:** July 1st to June 30th.
 [13] **Q:** So we are currently in fiscal year 2001?
 [14] **A:** Correct.
 [15] **Q:** In calendar year 1999 do you know if the
 [16] regulations that were adopted by the Board of
 [17] Education were similar in all respects to those
 [18] which had been in place in 1998, calendar year?
 [19] **A:** I would have to look, but at a minimum, as I
 [20] say, the cost standards would have been different.
 [21] From my memory now, since I wasn't
 [22] involved in those years, there was also, I believe,
 [23] another change in the law that would have included a
 [24] maintenance requirement, I believe, a change in the

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[1] maintenance issues.
 [2] I'd honestly have to look from one year
 [3] to the next to see whatever changes, but at least
 [4] the cost standards would have been different in
 [5] those two years.
 [6] **Q:** Setting aside the cost standards, you
 [7] described these changes which are reflected in
 [8] Exhibit 3 as substantial changes to the regulations.
 [9] Do you know when's the last time the SBA had such
 [10] substantial changes to its regulations?
 [11] **A:** No, I would not know that.
 [12] **Q:** How long have you worked for the Department
 [13] of Education?
 [14] **A:** 30 years.
 [15] **Q:** Have you ever served as the director of any
 [16] of the other bureaus within the Department of
 [17] Education?
 [18] **A:** No.
 [19] **Q:** Where did you spend most of your time
 [20] working for the Department of Education?
 [21] **A:** We had regional offices at the Department of
 [22] Education. So I was at, again, those regional
 [23] offices much of my career.
 [24] And as I mentioned earlier, in a

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[1] different configuration of the School Building
 [2] Assistance unit when it had other activities as part
 [3] of its configuration, I worked on those other
 [4] activities. For the last seven years I've worked in
 [5] school finance prior to this most recent change.
 [6] **Q:** Okay. Who was the director of the SBA prior
 [7] to your becoming the acting director?
 [8] **A:** James Anderson.
 [9] **Q:** How long had he been the director?
 [10] **A:** I'm guessing. I don't know. Five years. I
 [11] honestly don't know that for sure.
 [12] **Q:** Did he retire September 1999?
 [13] **A:** He left the department around September of
 [14] 1999, I believe, just prior to that.
 [15] **Q:** Do you know where he's working now?
 [16] **A:** Yes.
 [17] **Q:** Where is that?
 [18] **A:** Merrimac Education Center.
 [19] **Q:** Do you know where that's located?
 [20] **A:** Chelmsford, I believe.
 [21] **Q:** And what is the Merrimac Education Center?
 [22] **A:** It's a private organization.
 [23] **Q:** Do you know what its purpose is?
 [24] **A:** It's my understanding that it has a number

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[1] of purposes, that it assists school districts in a
 [2] number of activities for staff training and
 [3] consulting work. I honestly wouldn't be able to
 [4] really address what they do in total.
 [5] **Q:** Do you know if it consults with school
 [6] districts on building programs?
 [7] **A:** I believe so.
 [8] **Q:** Do you know if that is what Mr. Anderson is
 [9] doing?
 [10] **A:** I believe Mr. Anderson is working on an
 [11] audit program, but I don't know the full extent of
 [12] what his job entails there.
 [13] **Q:** As acting director of the SBA program, I
 [14] take it you oversee staff?
 [15] **A:** Yes.
 [16] **Q:** What does your staff number?
 [17] **A:** How many?
 [18] **Q:** Yes.
 [19] **A:** Three, I guess. Four. I'm sorry.
 [20] **Q:** Can you tell me their names and titles?
 [21] **A:** Sure. John Lawler, who is an educational
 [22] specialist; Helen Skulski, S-K-U-L-S-K-I, grants
 [23] manager; Frank McComas, auditor; Pam King,
 [24] consultant.

[1] There was another consultant that we had
 [2] at one point in time. I don't know if you -- You're
 [3] talking about current staff?
 [4] Q: I asked for current staff, correct.
 [5] This other consultant, did he or she
 [6] work for the SBA between January 1, 1998 and now?
 [7] A: Yes.
 [8] Q: Who was that?
 [9] A: Robert Conway.
 [10] Q: And when did Mr. Conway stop working for
 [11] SBA?
 [12] A: Stop working?
 [13] Q: Correct.
 [14] A: It might have been last July, possibly.
 [15] Q: How many programs are currently run through
 [16] the SBA bureau?
 [17] A: Programs. You mean different types of
 [18] activities?
 [19] Q: Yes.
 [20] A: School Building Assistance, school
 [21] construction. We approve tuition arrangements with
 [22] other school districts.
 [23] Could I explain the configuration of the
 [24] department a little bit?

[1] school districts, transportation policy, impact aid
 [2] programs. I don't know if I'm leaving anything out,
 [3] but I think that's it.
 [4] Q: Of those programs that you indicated are run
 [5] through the SBA bureau, what percentage of time is
 [6] spent by the staff on the building construction
 [7] aspect of the program?
 [8] A: I would say of those staff members I
 [9] mentioned, 100 percent of their time is spent on
 [10] construction. And there were other programs I
 [11] talked about. For the most part it is me.
 [12] Q: Can you explain the School Building
 [13] Assistance program generally for me?
 [14] A: The School Building Assistance program was
 [15] created by law about 52 years ago. It's for the
 [16] purposes of assisting school districts in
 [17] constructing new schools, additions, renovations to
 [18] existing schools and providing state assistance to
 [19] help communities in the construction of those types
 [20] of school buildings.
 [21] And we coordinate other state agency
 [22] approvals as well. So by completing -- By filing a
 [23] complete application with the School Building
 [24] Assistance unit, it's expected that other state

[1] Q: Please do.
 [2] A: Because of this recent reorganization, which
 [3] goes back to a year ago when I first started in this
 [4] particular position, there was also a reorganization
 [5] which created a unit called School Business
 [6] Services, which is over School Building Assistance.
 [7] As part of that unit there is a number
 [8] of different activities that the department is
 [9] continuing to -- it's evolving in terms of who has
 [10] responsibility for the various activities within
 [11] that overall unit.
 [12] So there are some activities that
 [13] myself, because I have experience with these various
 [14] programs for the last 30 years, have somewhat kept
 [15] hold of because of the lack of staff. There is no
 [16] place to move those programs to yet.
 [17] So earlier I had mentioned that I dealt
 [18] with regional school districts, collaboratives.
 [19] There are some leftovers in terms of that role that
 [20] I somewhat maintain, but it's somewhat being moved
 [21] over to this larger unit called School Business
 [22] Services.
 [23] So right now what I'm involved in would
 [24] be the tuition and leasing arrangements, regional

[1] agencies -- the rules and regulations that other
 [2] state agencies would have in terms of construction
 [3] of school buildings would also be complied with.
 [4] Q: Okay. These other state agencies, do they
 [5] provide assistance for local building projects?
 [6] A: Financial assistance?
 [7] Q: Yes.
 [8] A: Not that I -- No.
 [9] Q: But they have regulatory oversight over
 [10] these local building projects; is that correct?
 [11] A: Yes.
 [12] Q: So by making a submission to the SBA, you're
 [13] saying that that -- through that process the other
 [14] state agencies can enforce their regulatory
 [15] oversight; is that correct?
 [16] A: Yes.
 [17] Q: You said that part of the function of the
 [18] SBA program is to help local authorities with the
 [19] construction process -- projects. How does the SBA
 [20] exactly help?
 [21] A: We work with school districts, school
 [22] building committees, to ensure that the regulations
 [23] that have been adopted by the Board of Education are
 [24] complied with.

[1] And in so doing we make sure that the
[2] project that's proposed is — meets the square
[3] footage standards that are in place in the
[4] regulations as well as the cost standards.

[5] We make sure that the application is
[6] complete and meets all the various provisions of the
[7] regulations.

[8] Q: Now, these regulations which govern the
[9] square footage standards and the cost standards that
[10] you just mentioned, I just want to make sure I
[11] understand. These regulations of the SBA are in
[12] place only to make an ultimate decision as to
[13] whether the SBA will reimburse costs for the
[14] project; is that correct?

[15] A: Correct.

[16] Q: So these are not regulations which are
[17] generally applicable to local construction projects;
[18] is that correct?

[19] A: School Building Assistance regulations are
[20] not, right. There may be other rules and
[21] regulations, obviously, that would be applicable.

[22] Q: So the SBA regulations only become important
[23] because the municipalities will seek reimbursement
[24] from the SBA?

[1] that would be basically the first official stage
[2] that we meet with them.

[3] Q: Do SBA staff have contact with the school
[4] building committees prior to this first official
[5] stage ordinarily?

[6] A: We might. I mean, we try to. What we try
[7] to do is work with communities prior to the official
[8] stage.

[9] I mean, at the building needs conference
[10] oftentimes what is presented to us is a particular
[11] proposal, which we then give some indication as to
[12] whether or not, based on materials and conversations
[13] we have had, if they should move forward with that
[14] proposal or they should investigate other
[15] alternatives.

[16] What we like to do is meet or discuss or
[17] review alternatives to the proposal, so things that
[18] aren't just presented to us as "This is sort of a
[19] fait accompli." "These are alternatives."

[20] So we oftentimes talk to the building
[21] committee, superintendent, prior to what might be
[22] the official school conference stage.

[23] Q: Do school superintendents ordinarily take an
[24] active role in this process?

[1] A: Correct.

[2] Q: You mentioned earlier school building
[3] committees. In your experience, how does the SBA
[4] work with local school building committees?

[5] A: By law, each applicant must show that they
[6] have appointed locally through local town vote, city
[7] vote, a building committee that's comprised of at
[8] least a member of the school committee; otherwise,
[9] they can appoint whoever they wish locally, but we
[10] require that at least they have a member of the
[11] school committee.

[12] We work with them. The first official,
[13] let's say, stage that we work at them is through
[14] what we call a building needs conference.

[15] At that point in time representatives of
[16] the building committee — not necessarily the whole
[17] building committee, but representatives of the
[18] building committee will meet with us to discuss
[19] their proposed project or alternatives to an
[20] educational problem that they see.

[21] And at that point we ask them for a
[22] number of different materials including
[23] demonstration of what their issue is, what their
[24] problem is, what their enrollment needs are. So

[1] A: Most superintendents would be ex officio on
[2] the committee or sometimes even a member of the
[3] building committee.

[4] What we do usually ask is that the
[5] superintendent or a designee be involved because we
[6] try to — we ask that they appoint a contact. And
[7] generally it would be the superintendent. So we'd
[8] want them involved, obviously, in this construction
[9] proposal.

[10] Q: So when you make contact with the town or
[11] have communications with the town, is it the
[12] ordinary practice that the superintendent of schools
[13] or some designee of his or hers is the contact
[14] person at the town?

[15] A: Most often it is the superintendent.

[16] Q: If you come upon a situation as you've
[17] described where the school building committee will
[18] present you with only one alternative, a fait
[19] accompli, as you said, is it the ordinary practice
[20] to ask to see alternatives?

[21] A: Yes. Just to clarify, it's a fait accompli
[22] in their minds.

[23] Q: Right. But not in yours?

[24] A: Not necessarily in ours.

[1] **Q:** Do you ordinarily work with municipalities
 [2] at the feasibility study stage of the process?
 [3] **A:** Sometimes, yes. You know, as I mentioned,
 [4] it's, like, we like to be involved earlier on in the
 [5] process and at the point prior to maybe a
 [6] feasibility study being done. Sometimes we're not.
 [7] **Q:** Is it usually the case that the building
 [8] needs conference takes place after the feasibility
 [9] study has been submitted and the school building
 [10] committee has selected an option?
 [11] **A:** I don't know what the percentages would be.
 [12] I mean, I suppose the majority of the situations
 [13] would be that the situation might be presented to us
 [14] after a feasibility study has been done.
 [15] Sometimes in the feasibility study there
 [16] are options as well. So the fact that a feasibility
 [17] study is done does not necessarily mean that the
 [18] community has picked an option. You know, they may
 [19] very well still have a number of different options
 [20] in place or under discussion.
 [21] **Q:** And what is the purpose of the building
 [22] needs conference? What is the desired outcome from
 [23] that conference?
 [24] **A:** At the building needs we do collect a lot of

[1] information. First of all, we ask really that it be
 [2] submitted to us prior to the conference so that we'd
 [3] have an opportunity, if we have not already had
 [4] conversations with the applicant, that at least
 [5] prior to the conference that we would have materials
 [6] in place for us to look at.
 [7] Those materials would be enrollment
 [8] projections, long-range educational facility plan,
 [9] vote of the town or city council to appoint the
 [10] building committee — the school building committee.
 [11] There's a number of different things.
 [12] Oh, we ask that if they're planning new
 [13] construction that they show us or explain to us, you
 [14] know, why existing buildings are not feasible
 [15] alternatives to new construction.
 [16] We ask for space inventories of all
 [17] their existing buildings at the grade range of the
 [18] application that they're thinking of.
 [19] And depending upon the situation, we may
 [20] ask for other pieces of information, but as a
 [21] standard, I don't think I'm leaving anything out.
 [22] Those are their standard pieces of information that
 [23] we would ask at the building needs conference level.
 [24] And then we would have the applicant —

[1] representatives of the applicant explain to us what
 [2] it is they need, why are they coming to us for some
 [3] state assistance in terms of a construction
 [4] proposal.
 [5] And again, depending on the way the
 [6] conversation flows, we may very well ask for other
 [7] pieces of information.
 [8] **Q:** With regards to the space inventory
 [9] information that you're seeking at the building
 [10] needs conference stage of the process, why would
 [11] your request for information be limited only to
 [12] existing inventory at the grade level at which the
 [13] project is proposed?
 [14] **A:** Well, I mean, generally, if they're dealing
 [15] with elementary or any level — It doesn't make any
 [16] difference at this point what level we're dealing
 [17] with. We ask for buildings that are in place that
 [18] could accommodate that enrollment level.
 [19] Now we're asking for all of them, but, I
 [20] mean, last year we asked for only — it had been the
 [21] practice in the past, at least, to only ask for the
 [22] grade range of the proposed project.
 [23] **Q:** But there's been a change in that practice?
 [24] **A:** There has been a change in the practice.

[1] **Q:** As of this year?
 [2] **A:** Yes.
 [3] **Q:** Is that a result of these new regulations?
 [4] **A:** Yes, and the new law. There also has been a
 [5] new law that has passed or a change to the law, I
 [6] should say. And as a result, really, of two things
 [7] we have changed the process somewhat.
 [8] **Q:** You mentioned a change in the law. Is that
 [9] an amendment to the statute?
 [10] **A:** Yes.
 [11] **Q:** What statute is that; do you know?
 [12] **A:** The authorizing statute is Chapter 645 of
 [13] the Acts of 1948 as amended.
 [14] In the budget this year, the General
 [15] Appropriation Act, basically what it did is it
 [16] completely rewrote Chapter 645, and now it's — I
 [17] believe it's codified as Chapter 70B of the General
 [18] Laws.
 [19] Prior to this year the law was basically
 [20] a sunset legislation, which every three, four, five
 [21] years it would have to be reenacted. This year it
 [22] was codified into the Mass. General Laws as — I
 [23] think it's 70B.
 [24] **Q:** And as part of that statutory change your

[1] charge now is to look at existing space, existing
[2] capacities within a public school system generally,
[3] as opposed to just at the grade level at which the
[4] project is proposed; is that accurate?

[5] A: No, not really. In the regulations and in
[6] the law there's language that places emphasis on
[7] changes — somewhat changes the emphasis that has
[8] been placed on the school construction program.

[9] Procedurally, the Department of
[10] Education or my unit through the Department of
[11] Education is charged really with developing
[12] procedures and policies that will help to implement
[13] both the new law and the new regulations.

[14] One small piece of those changes that
[15] have been — that we are in the midst of trying to
[16] implement would be to collect inventories of all
[17] school buildings.

[18] I'd say it's more in line with the
[19] provision of the new law and regulations that say
[20] the Department of Education should maintain a
[21] inventory of all buildings in the state. That's
[22] sort of a new change.

[23] So it has less to do, in a sense, with
[24] individual projects and more to do with trying to

[1] during this process.

[2] As I said, it's more to do with if we
[3] did not do it in that way, we would send out a
[4] general letter from the commissioner, or
[5] something — a request from the commissioner
[6] basically saying, "Give us your inventories of every
[7] school building in the state."

[8] Q: So you see this change as increasing or
[9] affecting your information-gathering role?

[10] A: Yes.

[11] Q: But not affecting your role in analyzing
[12] specific projects?

[13] A: It could help, but the purpose of it really
[14] in terms of collecting all the inventories — not
[15] the ones I'm talking about in terms of the grade
[16] range of the applicant, the proposal that's being
[17] put forth, but the main intent of collecting
[18] inventories for all grade ranges is more information
[19] gathering.

[20] Q: You mentioned also that you request
[21] information on the rationale for construction and on
[22] the district's long-range plan for its facilities.

[23] How stringent is your review at that
[24] stage — at the building needs conference stage of

[1] implement a provision of the law that says the
[2] Department of Education should maintain an inventory
[3] of all school buildings in the state.

[4] Q: But specifically at the building needs
[5] conference stage of the process it is now your
[6] practice that you are going to look at all existing
[7] capacity within the public school system within that
[8] municipality or district for purposes of evaluating
[9] the plan which is presented to you at the building
[10] needs conference?

[11] A: No, not necessarily. Again, I think this is
[12] an attempt for us to collect inventories of all
[13] existing buildings.

[14] One way we can begin that process, at
[15] least, is we don't deal with every school district
[16] in the state. We deal with school districts who
[17] request state assistance from us when they have a
[18] building project.

[19] So when they ask us for state assistance
[20] for a building project, we can request information
[21] from the school district.

[22] One way of getting complete inventories
[23] from each of the school districts that we have —
[24] that we are working with is to ask them for it

[1] that long-range plan?

[2] A: Well, I mean, I guess we certainly review
[3] it. What we want to make sure of is a number of
[4] different things: that there is a need as expressed
[5] by the community, we want to make sure that — And
[6] it can vary, too. There is addition, renovation —
[7] addition, renovation, there is new schools.

[8] What we want to make sure is there is a
[9] need there. And that has to be expressed by the
[10] school district. They have to convince us there is
[11] some issue involving the school district that can
[12] only be solved by some form of school construction,
[13] whether that's renovation, addition or new.

[14] So the burden of proof, basically, is on
[15] the community to convince us that there needs to be
[16] some sort of school construction happening in that
[17] community.

[18] In order to convince us, they need to
[19] draft a long-range facilities plan. In that plan
[20] they have to lay out how do they foresee that they
[21] are going to solve this issue that they have for the
[22] foreseeable future.

[23] This is more or less a 20-year
[24] reimbursement program. We want to make sure at

[1] least these facilities are in place for 20 years,
[2] hopefully a lot longer than that.

[3] We want to make sure that the facilities
[4] that they do have are being used in the best way
[5] that they can in order to accommodate the
[6] educational program that's within the school
[7] district.

[8] So we want to see how they are making
[9] use of their buildings, what is their plan for now,
[10] for the foreseeable future, how are they going to
[11] accommodate not just their enrollments but also
[12] their programmatic needs, again, for the next 20 to
[13] 50 years.

[14] I'd say given the limitations we have in
[15] terms of staff, we try to do the best we can in
[16] terms of reviewing those proposals to make sure they
[17] make sense for the community as well as for the
[18] Commonwealth.

[19] Q: And are you — Obviously you are limited by
[20] the staff that you have in place. Do you feel as if
[21] you have sufficient staff to carry out your mandate?

[22] A: It would be very helpful, I think, to have
[23] additional staff to be able to assist the school
[24] districts to a greater degree than we're able to at

[1] method that's used in terms of doing these
[2] projections.

[3] We also look to see what enrollments,
[4] for instance, they have now. We have enrollment —
[5] We have historic enrollments within the Department
[6] of Education.

[7] So oftentimes in terms of projecting
[8] future enrollments, the method used is to look also
[9] at past enrollments.

[10] So one thing we are able to check is
[11] what are the past enrollments. So if there's some
[12] question, I guess, that we might have in terms of
[13] the validity of the projections that a district is
[14] making, we would be able to look at the historic
[15] information and see if in fact that information is
[16] on line.

[17] Q: You mentioned the question of where the
[18] enrollment projections come from. Is NESDEC one of
[19] the outfits that you frequently see providing
[20] enrollment projections?

[21] A: Yes.

[22] Q: That's NESDEC?

[23] A: Yes.

[24] Q: Which is the New England School Development

[1] this point in time.

[2] There's information, I think, that we
[3] could be more helpful in in terms of our experience.
[4] Oftentimes school districts only go through this
[5] once or twice and maybe their experience they have
[6] within their school districts.

[7] So I think it would be very helpful to
[8] have more people to give more help to school
[9] districts.

[10] Q: You mentioned enrollment and enrollment
[11] projections as another element of the information
[12] that you'd be seeking at these building needs
[13] conferences.

[14] Is it your ordinary practice to look
[15] behind those enrollment numbers? What sort of
[16] analysis do you give to the enrollment numbers —
[17] enrollment projections which are projected to you by
[18] the district at a building needs conference?

[19] A: Well, I mean, we ask oftentimes — We first
[20] look to see if the enrollment projections are more
[21] or less from a known source, from a source within
[22] the Commonwealth or outside the Commonwealth,
[23] actually, the people who have had experience in
[24] doing this and that have an explanation of the

[1] Council?

[2] A: Correct.

[3] Q: Do they do most of the projections for
[4] enrollment that you come across?

[5] A: They probably do the majority of the
[6] enrollment projections, yes.

[7] Q: And they're considered a credible
[8] organization?

[9] A: Yes.

[10] Q: Do you know anything about that
[11] organization?

[12] A: I know they've been in existence for — I
[13] don't know — probably as long as I've worked for
[14] the department. Maybe it hasn't been that long, but
[15] it seems as though they've been in existence for a
[16] good number of years.

[17] And they work closely with school
[18] districts in terms of enrollment projections as well
[19] as other educational planning activities.

[20] Q: Is it a private firm?

[21] A: I believe so.

[22] Q: Is it for profit?

[23] A: I don't know. I believe so. I really don't
[24] know the organization of that firm.

[1] **Q:** After the building needs conference stage,
 [2] generally what is the next stage in the process?
 [3] **A:** Again, there's sort of four benchmark
 [4] stages, but this is sort of an ongoing process. So
 [5] there's a lot of communications or there can be a
 [6] lot of communications throughout this whole planning
 [7] phase.
 [8] But the next, I guess, benchmark, I'd
 [9] say, would be the site visit. There are occasions
 [10] where we do the site visit at the same time as the
 [11] building needs conference. That just is dependent
 [12] on staff and how we can organize things.
 [13] If possible, we try to do the building
 [14] needs conference on site, but it doesn't always work
 [15] that way.
 [16] **Q:** Okay.
 [17] **A:** But in any case, we would do a site visit.
 [18] **Q:** And when you say "we would do a site visit,"
 [19] is there a particular person who's in charge of site
 [20] visits?
 [21] **A:** No. It would either be myself or John
 [22] Lawler, who I mentioned already.
 [23] **Q:** Within your unit is a particular person
 [24] assigned to a project?

[1] They often come in in CD-ROM or they do come in in
 [2] CD-ROM, so she does do that review.
 [3] She maintains information on our Web
 [4] site, does most of the sort of secretarial type of
 [5] work, responding, again, on the phone to questions
 [6] that come in.
 [7] Frank McComas is the auditor. We are
 [8] required by law to review audits of all of the
 [9] school construction projects that we fund on a
 [10] state-wide basis. He is the auditor.
 [11] **Q:** So any work that he would perform would be
 [12] after a grant had been made and money had been
 [13] distributed?
 [14] **A:** Yes.
 [15] **Q:** So with respect to reviewing applications,
 [16] it's only you and Mr. Lawler?
 [17] **A:** And we did have the consultant that I
 [18] mentioned, Robert Conway, last year. We hired him
 [19] last year to come in.
 [20] And there is another stage that we
 [21] really haven't gotten to yet, which is the schematic
 [22] design and educational specification stage.
 [23] And at that point Bob Conway would look
 [24] at actual architectural drawings along with the

[1] **A:** No.
 [2] **Q:** How is it determined who would attend each
 [3] of the events or review submissions or have
 [4] communications with the district during the course
 [5] of the project?
 [6] **A:** There's, as I think I mentioned, only really
 [7] two of us. So the two of us have worked with these
 [8] projects.
 [9] **Q:** So when you say "the two of us," it's you
 [10] and Mr. Lawler?
 [11] **A:** Yes.
 [12] **Q:** And the other personnel who you mentioned as
 [13] staff, what are their duties?
 [14] **A:** Helen Skulski is a budget manager. She
 [15] maintains our computer system in order to make
 [16] payments.
 [17] We have over 3,000 projects, or
 [18] somewhere in that vicinity, that we make ongoing
 [19] payments on a quarterly basis. She more or less
 [20] maintains the computer system, developing cherry
 [21] sheets for the budgets. That's state aid.
 [22] Pam King more or less works as a
 [23] secretary in terms of phone conversations, typing.
 [24] She reviews the final applications for completeness.

[1] educational specifications that have been filed and
 [2] do the review of those documents.
 [3] **Q:** But he was no longer employed at the SBA as
 [4] of July of 1999?
 [5] **A:** Right. Again, I'm not sure of the date, but
 [6] I don't believe — I think it was really June. I
 [7] don't think he even worked there in July, but it was
 [8] in that vicinity.
 [9] **Q:** And as of that date, whatever it was when he
 [10] left, who performed those duties that you had said
 [11] were previously performed by Mr. Conway?
 [12] **A:** At that point in time that review was
 [13] complete for that year. There were deadlines in
 [14] place that said preliminary plans and specifications
 [15] had to be in by March 1st of 1999.
 [16] **Q:** Right.
 [17] **A:** So Mr. Conway was employed around that time
 [18] in order to review the 100-plus applications that we
 [19] received to meet that March 1st deadline, and after
 [20] that review he left.
 [21] **Q:** And who performed those duties for the March
 [22] 1, 2000 submissions?
 [23] **A:** What year are we on? I'm sorry. Back up
 [24] here. It was that year. What year are we in?

[1] Q: This is 2000.
 [2] A: This is 2000. I'm sorry. I apologize. It
 [3] was March — This was this past year that he left.
 [4] It was during this past March that he did that
 [5] review.
 [6] Q: So he left —
 [7] A: And he left in June of 2000.
 [8] Q: He left three or four months ago?
 [9] A: Yes.
 [10] Q: What sort of background did Mr. Conway have;
 [11] do you know?
 [12] A: He was an employee of the Department of
 [13] Education for I don't know how many years. At least
 [14] 20 years, probably more than that, and retired
 [15] several years ago.
 [16] So he had a number of different — He
 [17] worked on a number of different activities while as
 [18] an employee. Part of the time he was assisting with
 [19] the School Building Assistance program at a regional
 [20] office at that time that we had.
 [21] Q: Does he hold any engineering degrees; do you
 [22] know?
 [23] A: I wouldn't know. I don't know.
 [24] Q: Is he a certified architect?

[1] A: No. I don't know. I don't know.
 [2] Q: Do you know what sort of educational
 [3] background or certifications or degrees he holds at
 [4] all?
 [5] A: No, I don't at this point. We have his
 [6] resume, but I don't honestly remember.
 [7] Q: The site visit. What is the purpose of the
 [8] site visit?
 [9] A: The site visit is to review — to look at
 [10] where — Again, it varies in terms of what the
 [11] proposal is, but generally we want to see what
 [12] building is under discussion, whether it's an
 [13] existing building that we need to do some work on or
 [14] whether, again, the proposal is for a new building;
 [15] if so, where is that new building to be located.
 [16] What we look at, really, is for what we
 [17] just call as educational adequacy. And what we more
 [18] or less mean by that is to make sure that the
 [19] building can accommodate, let's say, an addition, if
 [20] that's the proposal.
 [21] If the building is being renovated, we
 [22] want to be able to see what the issues are with that
 [23] building, what's wrong with it. We need to see, you
 [24] know, if there's issues with the roof or the

[1] structural integrity or whatever it is.
 [2] If it's a new site, we want to see that,
 [3] more or less, it's of sufficient size to be able to
 [4] accommodate what the plan is to be built there; that
 [5] more or less it's in a safe area, close to the
 [6] enrollments that are proposed; if there are
 [7] alternative sites. Oftentimes there might be two or
 [8] three or more sites that districts might suggest to
 [9] us.
 [10] So what we would, again, do is to see
 [11] whether or not those sites are on an educational
 [12] basis, at least, able to accommodate what the plan
 [13] is.
 [14] We also point out, obviously, at that
 [15] time that any new site would need to be reviewed,
 [16] for instance, by the environmental — secretary of
 [17] environmental affairs office to make sure that they
 [18] can satisfy any MEPA environmental issues that might
 [19] be involved in a new site as well as sometimes with
 [20] an addition to an existing site because there still
 [21] may be some issues in terms of infringing upon
 [22] wetlands or some issues there.
 [23] Q: When you go for a site visit are you
 [24] accompanied by a representative from the school

[1] building committee or the school department?
 [2] A: It's up to the school district who they have
 [3] accompany us, but somebody representing either the
 [4] school district or the school building committee,
 [5] yes.
 [6] Q: And ordinarily will there be an architect or
 [7] a consultant from the town with you?
 [8] A: Oftentimes the architect goes with us. And
 [9] again, sometimes we're dealing with additional
 [10] renovations. So what we'd like to have pointed out
 [11] to us is where is the addition going, what the plan
 [12] is. Sometimes it's a maintenance supervisor.
 [13] Oftentimes it's a principal.
 [14] A combination of any of those —
 [15] superintendent — a combination of any of those
 [16] people might be in attendance.
 [17] Q: Can I ask you what your educational
 [18] background is?
 [19] A: I have a bachelor's and a master's.
 [20] Q: And what is your master's in?
 [21] A: History.
 [22] Q: Bachelor's degree?
 [23] A: History.
 [24] Q: And Mr. Lawler, do you know his educational

[1] background?
 [2] **A:** He has a bachelor's, but I honestly don't
 [3] know his educational background in terms of what
 [4] degrees he has or in what.
 [5] **Q:** Is he an engineer?
 [6] **A:** No.
 [7] **Q:** Is he an architect?
 [8] **A:** No.
 [9] **Q:** Do you know if he has any certifications or
 [10] degrees that would help him in reviewing sites so as
 [11] to make a determination if they are appropriate for
 [12] a proposed project?
 [13] **A:** What type of degree would be required for
 [14] that?
 [15] **Q:** Do you know if he has any degree that would
 [16] help him in that analysis?
 [17] **A:** I don't know.
 [18] **Q:** Is it ordinarily the case that when you
 [19] conduct a site visit you would rely upon the
 [20] representations made by an architect or a consultant
 [21] to the town with respect to whether the site is
 [22] appropriate for building or for renovating or for
 [23] putting an addition on?
 [24] **A:** What we try to do is take any information

[1] has occurred?
 [2] **A:** Oftentimes it happens when an applicant is
 [3] proposing a new building in place of an existing
 [4] building.
 [5] For instance, we may get a report where
 [6] a planner or a consultant or somebody has said it is
 [7] not feasible to renovate a particular building.
 [8] It's too costly, educationally it doesn't make
 [9] sense.
 [10] There have been instances where the
 [11] department has said, "We'd like a second opinion,"
 [12] and the school district then is in the position of
 [13] giving us the second opinion.
 [14] **Q:** And in your experience, that has only
 [15] occurred when there has been proposed a new building
 [16] to replace an existing building?
 [17] **A:** I can't say that for sure. If you're asking
 [18] me right now to try to come up with — I can't think
 [19] of —
 [20] **Q:** Your best memory.
 [21] **A:** Yeah.
 [22] **Q:** Okay. What is the desired outcome of a site
 [23] visit?
 [24] **A:** Desired outcome of the site visit. Well,

[1] into consideration. And that would certainly be a
 [2] big part.
 [3] If there are recommendations from the
 [4] building committee, the planner, the educational
 [5] planner, potentially, that's hired or the architect
 [6] that there are sites that they do not think are
 [7] appropriate, we'd certainly take that into
 [8] consideration.
 [9] I don't think, you know, the department
 [10] is — we review sites that are proposed to us. We
 [11] don't necessarily go out and try to suggest a better
 [12] site.
 [13] **Q:** Have you ever suggested a better site?
 [14] **A:** No, not to my knowledge.
 [15] **Q:** Does the SBA ever commission an independent
 [16] review of a site?
 [17] **A:** No. We may ask — In certain situations we
 [18] have asked, however, that a study that might propose
 [19] a certain alternative — we may propose that the
 [20] applicant hire someone else to do a second study.
 [21] That has happened many times. So we don't
 [22] commission it, but we require that the school
 [23] district do something.
 [24] **Q:** Do you know when that has occurred why it

[1] again, it's to be able to look at the proposal, to
 [2] be able to see what the plan is firsthand instead of
 [3] just looking at paper.
 [4] Sometimes it's much easier to capture
 [5] what is needed, what the problem is, the validity of
 [6] the solution by actually being on site to see it. I
 [7] think that's an important aspect of the job.
 [8] **Q:** Is there some document or decision that
 [9] comes out of the site visit?
 [10] **A:** Generally we would write a letter that
 [11] basically says to the applicant that the site that's
 [12] proposed or the renovation or addition to the
 [13] existing building as proposed meets — is
 [14] appropriate in terms of educational adequacy and,
 [15] again, with a reminder in that same letter that they
 [16] must go through any other necessary approvals in
 [17] terms of conservation commission, agricultural
 [18] commission, historical society, historical
 [19] commission, MEPA.
 [20] **Q:** Let me show you a document.
 [21] **MR. BIERWIRTH:** We can get this marked
 [22] as Exhibit 4.
 [23] (Exhibit Number 4
 [24] marked for identification)

[1] Q: Have you had a chance to look at that?
 [2] A: Yes.
 [3] Q: The second page of the document is a letter
 [4] from John Lawler at the SBA to Dr. Harry Hartunian,
 [5] the superintendent of schools for the Reading Public
 [6] Schools. Is this the type of letter that you are —
 [7] were just referring to?
 [8] A: Yes.
 [9] Q: Did Mr. Lawler go on the site visit for the
 [10] Reading proposal?
 [11] A: Yes.
 [12] Q: Do you know who attended the building needs
 [13] conference with respect to this proposal for the
 [14] Barrows Elementary School renovation and the new
 [15] elementary school on town-owned land?
 [16] A: I would have to look at the file. Do you
 [17] mean from the staff or from —
 [18] Q: I'm sorry. From your staff.
 [19] A: The building needs conference on both of
 [20] these two schools were really held prior to my
 [21] arrival and prior to John Lawler's arrival.
 [22] So I would believe that the original
 [23] building needs conference was held with probably Jim
 [24] Anderson.

[1] Q: You didn't attend any building needs
 [2] conference?
 [3] A: I attended a meeting with the
 [4] superintendent. And again, I'd have to look through
 [5] the files to see who else was there.
 [6] When Jim Anderson left there were three
 [7] people left, more or less, at the same time. There
 [8] was a complete change in the School Building
 [9] Assistance.
 [10] There were a lot of districts who had
 [11] previously met with both Jim and other staff members
 [12] at the department previous to my arrival.
 [13] When I was appointed as the acting
 [14] administrator I met with many districts who were
 [15] concerned that the plans as they had originally
 [16] proposed them may now be under a different — have
 [17] different, I guess, opinions or different standards
 [18] applied to them.
 [19] My memory of this is that I met with the
 [20] superintendent — I believe there was somebody else
 [21] there, and I honestly don't know who at this point
 [22] it was — to discuss what had been proposed to Jim
 [23] Anderson on these two projects.
 [24] Q: Do you know when that meeting occurred?

[1] A: I don't. It's in the file, but I don't
 [2] remember it.
 [3] Q: Do you think it may have been December 1999?
 [4] A: Probably. It would have been before — at
 [5] least no later than December of 1999 because I think
 [6] that's generally when we ask to meet with people,
 [7] prior to that date.
 [8] Q: And the town needed to have a building needs
 [9] conference prior to January 1, 2000 in order to
 [10] submit by March 1, 2000; is that correct?
 [11] A: Right. They did, as I say, have a building
 [12] needs conference prior to that time, but when I took
 [13] over what I wanted to do is try to meet with
 [14] everyone myself so I'd be familiar with it.
 [15] So it wasn't so much that they had to
 [16] have another one in order to meet that deadline.
 [17] They already had one, at least, in my memory to
 [18] this.
 [19] But again, I wanted to myself meet with
 [20] these people so that — since I was now the acting
 [21] administrator, I wanted to have an idea as to what
 [22] these projects were, not just with Reading but with
 [23] anybody else that may have met in the past.
 [24] Q: So you didn't consider the meeting that you

[1] had in 1999, whether it was December or earlier, to
 [2] be another building needs conference; is that
 [3] correct?
 [4] A: I don't think so. Again, I don't really
 [5] remember, but I don't think there was a need to have
 [6] another building needs conference.
 [7] I think it was really to meet to discuss
 [8] the proposal as it was originally planned. I don't
 [9] think there was a change in the scope of these
 [10] proposals.
 [11] Generally, if there had been then I
 [12] would have said, "You need another building needs
 [13] conference." It was the same scope, same projects.
 [14] Q: Turning back to Exhibit 4 and the second
 [15] page of the letter from Mr. Lawler, it states that,
 [16] "This is to indicate that the proposed site(s) for
 [17] the following named proposed projects are approvable
 [18] by the Massachusetts Department of Education for new
 [19] construction."
 [20] Is that ordinarily the language that is
 [21] used in this type of letter, that the proposed sites
 [22] are approvable?
 [23] A: Yes.
 [24] Q: And what does that mean exactly, that they

[1] are approvable?

[2] **A:** This application project is fairly lengthy.
[3] This is one step in the process. The commissioner
[4] of education and the Board of Education approve
[5] school construction applications. The staff more or
[6] less sent letters to say that things were still on
[7] track, if you will.

[8] So we are not, neither John Lawler nor
[9] myself, in a position to say that a project is
[10] approved. It is just a manner of speaking, I guess.
[11] We reserve the word "approved" for the commissioner.

[12] **Q:** The next full sentence begins, "We suggest
[13] that, before architectural planning proceeds on this
[14] site, you secure competent engineering advice as to
[15] the adequacy of this site for construction and/or
[16] disposal purposes."

[17] What do you mean by "competent
[18] engineering advice as to the adequacy of the site"?
[19] And let's limit ourselves as to for construction,
[20] which is what's going on here.

[21] **A:** Well, I mean, they do have a professional
[22] that will be able to tell the district that in fact
[23] the site, you know, is buildable, that they can look
[24] to see whether or not there's adequate, you know,

[1] we, the staff, do not do it.

[2] **Q:** What do you require the school district to
[3] do with respect to traffic analysis?

[4] **A:** We would ask questions to determine access
[5] to the site, what the route would be, what's
[6] available in terms of bus turnaround, parent
[7] drop-offs. Again, in terms of looking at the site
[8] for educational adequacy, those are the kinds of
[9] issues we would ask.

[10] We would ask if it were pertinent if
[11] there were railroad crossings nearby that cars or
[12] buses would have to go through; if — again, if
[13] appropriate, if sidewalks were there, questions on
[14] that sort.

[15] It depends, again, on the individual
[16] site and the individual application that we're
[17] talking about and whether or not we ask all or some
[18] of those questions, but those are the kinds of
[19] things.

[20] **Q:** And when you say "we ask questions," is it
[21] the practice to do just that, to at a meeting ask
[22] questions and receive oral answers, or is there a
[23] specific format for a town to respond to inquiries
[24] in a formal written manner with respect to traffic

[1] sewer — accomodation of sewer and water and so on.
[2] That's basically, I believe, what we mean by that.

[3] **Q:** So whether the site is adequate for sewer,
[4] for water, whether the soil conditions are
[5] appropriate, would that fall within that?

[6] **A:** I suppose so, yes.

[7] **Q:** So is it true that your review does not take
[8] into account those issues which you suggest the town
[9] address by means of competent engineering advice?

[10] **A:** We would ask if — We would ask certain
[11] questions in that regard, but we do not do a review
[12] based on soil conditions or any of that, no. So we
[13] would ask that — require the school district or the
[14] applicant of the town to do that review.

[15] **Q:** And is that true for the entire process? In
[16] other words, at any time during the process do you
[17] perform any review of the soil conditions or the
[18] adequacy of the site for sewer or water?

[19] **A:** We would not do any review of those
[20] conditions, no.

[21] **Q:** Does the same hold true with respect to
[22] traffic analysis?

[23] **A:** Yes. Again, we would ask questions on that.
[24] We would require the school district to do it, but

[1] analysis?

[2] **A:** Well, again, most times it's questions, but
[3] we also ask that they submit plans that would
[4] include in most cases the — again, as I mentioned,
[5] the bus turnarounds and the parent drop-offs and
[6] things — more or less, the site being used for the
[7] school.

[8] I mean, we don't necessarily ask them to
[9] provide written documentation in terms of off-site
[10] traffic changes or anything, no.

[11] **Q:** So your concerns and the way that they are
[12] addressed by the applicant have to do with the
[13] on-site conditions as opposed to the off-site
[14] conditions for traffic?

[15] **A:** Our written materials would address on-site
[16] conditions. Our verbal questions might involve
[17] off-site types of questions.

[18] **MR. BUSCONI:** Ms. Lynch, would you like
[19] to take a break? Why don't we take a five-minute
[20] break?

[21] (Recess taken)

[22] **Q:** Ms. Lynch, earlier we talked about NESDEC as
[23] one outfit that provides enrollment projections. Do
[24] you recognize the name MISER, M-I-S-E-R?

[1] A: Yes.
 [2] Q: Do they also provide enrollment projections
 [3] for school projects?
 [4] A: Yes.
 [5] Q: They are the Massachusetts Institute for
 [6] Social and Economic Research; is that correct?
 [7] A: Yes.
 [8] Q: And are they recognized as a credible
 [9] organization by the SBA?
 [10] A: Yes.
 [11] Q: Now, with respect to those enrollment
 [12] projections, would you agree that making those
 [13] projections is an imperfect art?
 [14] A: Yes.
 [15] Q: How long are the projections good for?
 [16] A: We ask that an applicant provide us with a
 [17] 10-year projection.
 [18] Q: And is it the case that as you get further
 [19] out in time, your faith in those projections
 [20] decreases?
 [21] A: Yes.
 [22] Q: After the site visit occurs, what is the
 [23] next benchmark in the process?
 [24] A: Preliminary plans and educational

[1] specifications.
 [2] Q: Is that the submission which needs to be
 [3] made by March 1?
 [4] A: Yes.
 [5] Q: Is that a new requirement of the SBA?
 [6] A: The March 1st?
 [7] Q: Yes.
 [8] A: The deadline or the fact that they need to
 [9] submit?
 [10] Q: The March 1 deadline.
 [11] A: The March 1st deadline, I don't know if it
 [12] was new. I think it was new last year. I don't
 [13] know how many years they had used that.
 [14] Q: When you say "last year" do you mean —
 [15] A: This past March 1st, 2000, I guess.
 [16] Q: So that may have been the first year that
 [17] that deadline was imposed?
 [18] A: I honestly don't know. It never was in the
 [19] regulations before. I don't know whether it had
 [20] been in for two years or one year. It was in place
 [21] last year.
 [22] Q: Do you know what the purpose was for — Let
 [23] me ask you this question first: The materials that
 [24] were required to be submitted March 1, 2000, in the

[1] prior practice when were those materials due to be
 [2] submitted?
 [3] A: Prior practice?
 [4] Q: Before the institution of the March 1
 [5] deadline.
 [6] A: I don't know if they're — There was no
 [7] deadline, to my knowledge, prior to March 1st. So
 [8] preliminary plans could have been submitted at any
 [9] point in time during the year.
 [10] Q: Was there a June 1 deadline in place under
 [11] the prior practice?
 [12] A: I don't know if I know of the answer to that
 [13] either. There is an annual cycle, and it's based on
 [14] the legislative cycle.
 [15] So it may not have been June 1st, but
 [16] there would have been some sort of ending date at
 [17] which point we are required to place communities on
 [18] a priority list, which is based on the legislative
 [19] cycle. So that is, as I mentioned earlier, the
 [20] fiscal year cycle.
 [21] Q: And what is the event from the legislature
 [22] that sets the cycle in motion?
 [23] A: Budget. Passage of the state budget.
 [24] Q: When does that occur during the year?

[1] A: It could be any time during the year. Last
 [2] year it was July or August. The year before it was,
 [3] like, November or something. So it just is
 [4] dependent on when they act on the budget.
 [5] Q: Working backwards from that date, you're
 [6] saying that there is a time that is necessary for
 [7] you to put together a priority list; is that
 [8] correct?
 [9] A: Correct.
 [10] Q: Prior to that, obviously, the applications
 [11] have to be submitted?
 [12] A: Correct.
 [13] Q: Do you know why it is that the SBA imposed
 [14] the deadlines of March 1 and June 1, whenever it was
 [15] that these deadlines were imposed?
 [16] A: I would just be guessing because I was not
 [17] involved in that, but I think it was to give our own
 [18] staff as well as give the local staff an opportunity
 [19] to go through the different stages that are
 [20] involved, to present a plan that may or may not be
 [21] acceptable to the department, to move forward with
 [22] that plan, now putting it on a site and looking at
 [23] the site, and to move forward with that and to start
 [24] developing actual schematic drawings.

[1] So I would suspect it was to somewhat
 [2] lay out a process that gives an opportunity for at
 [3] least periods of time in between those various
 [4] stages.
 [5] Q: In setting that March 1 deadline for an
 [6] initial submission, did the SBA take into account
 [7] the fact that due to schedules of various
 [8] municipalities it might not yet be determined
 [9] whether a town wants to move forward with a proposed
 [10] project until late in the preceding year or, in
 [11] fact, even sometimes early in the year when the
 [12] March 1 deadline arises?
 [13] A: Let me see if I understand the question. By
 [14] putting in place the March 1st deadline, did we take
 [15] into consideration when towns vote for a particular
 [16] school building project?
 [17] Q: Right. That's the gist of the question.
 [18] A: I don't know if I can address that. To my
 [19] understanding, towns generally vote in May or June.
 [20] I'm not sure how the March submittal relates to
 [21] that.
 [22] We would — It would be prior to a final
 [23] submittal that we would need to make sure that the
 [24] town had voted their construction money, you know —

[1] organizational chart under the School Building
 [2] Assistance Bureau but not on school construction
 [3] issues.
 [4] Q: That was probably a better question to ask.
 [5] Prior to September 1999, just so I'm clear, had you
 [6] done work for the SBA on school construction
 [7] projects?
 [8] A: Not directly.
 [9] Q: Tell me how indirectly you did.
 [10] A: I've worked for the department for 30 years.
 [11] So again, at various points in time it's gone
 [12] through a number of reorganizations.
 [13] So at points in time I have worked on
 [14] developing administrative budgets for School
 [15] Building Assistance, not for the capital
 [16] construction proposals but for our internal
 [17] operations.
 [18] I've worked on legislative issues
 [19] involving School Building Assistance because I've
 [20] had a more overall role, more of a research type of
 [21] a role, I guess, that has involved School Building
 [22] Assistance as one of the items that I've worked on.
 [23] I have never worked — I have never been
 [24] responsible for working with school building

[1] money — the total amount for the project, but at
 [2] the March submittal we would not require that.
 [3] Q: In your experience, is it the ordinary
 [4] practice for school districts of towns to vote to
 [5] authorize specific projects in May or June?
 [6] A: In my experience, is that when they usually
 [7] do it?
 [8] Q: Yes.
 [9] A: Yes.
 [10] Q: Prior to becoming the acting director, just
 [11] for clarification, in September 1999, had you ever
 [12] worked for the School Building Assistance Bureau
 [13] directly?
 [14] A: Yes. I'm trying to think how it was
 [15] organized. Yes, I did.
 [16] Q: From what years?
 [17] A: I honestly — Maybe from '90 to '93. I
 [18] honestly — I'd have to think about that. The
 [19] department has been reorganized a number of
 [20] different times. The School Building Assistance
 [21] unit as it is currently configured has changed over
 [22] periods of time.
 [23] So again, at various points in time I
 [24] have done — I have worked probably on an

[1] construction actual applications in the past.
 [2] Q: Prior to September 1999 you had never
 [3] reviewed an application?
 [4] A: Correct.
 [5] Q: What is required under the current policy to
 [6] be submitted by March 1?
 [7] A: Preliminary plans and educational
 [8] specifications.
 [9] Q: And how does the SBA review the March 1
 [10] submissions?
 [11] A: We would look first at the educational
 [12] specifications and if it's part of this application
 [13] process that you have here and it's part of the
 [14] regulations, as well in terms of the space
 [15] standards, design standards that we would expect of
 [16] an application.
 [17] So we first look to see whether or not
 [18] all of the types of rooms are offered in the
 [19] building, whether art, music, sewing, cafeteria,
 [20] things of that nature, at the size that our design
 [21] standards would indicate through our regulations and
 [22] application process, and we'd also make sure that
 [23] the preliminary plans, the schematic plans as
 [24] they're shown to us, would include those same spaces

[1] at the same sizes, make sure the educational plan
[2] matched the actual schematic drawings and it was
[3] also within our overall square footage allowance.

[4] There is a maximum square footage
[5] allowance that we would review to make sure that the
[6] community did not exceed that.

[7] Q: Can you explain that for me, a maximum
[8] square footage allowance?

[9] A: Based on the grade range of the building
[10] that's being proposed, there is a square footage per
[11] student.

[12] So we'd look at the enrollment, what's
[13] the building being planned for, we'd look at the
[14] square footage allowance that's in our regulations,
[15] and we would look to make sure that the overall
[16] square footage of the building did not exceed that
[17] amount.

[18] So it's basically a formula that says
[19] how many students times how many square footage.
[20] There's some exceptions to that based on some
[21] priorities at the Board of Education which says that
[22] you can exceed those square footage allowances for
[23] rooms to accommodate, for instance, special
[24] education students, collaborative students,

[1] technology issues in terms of computer drops,
[2] resource remedial-type rooms and a certain amount
[3] for community space.

[4] So you can — An amount can exceed those
[5] square foot maximums if they in fact show that they
[6] can have some of those other spaces that they're
[7] planning in that particular building.

[8] So we would look at those kinds of
[9] spaces, make sure they match the plan — schematic
[10] drawings that were proposed, submitted, as well.

[11] An applicant can exceed those square
[12] footages. It does not necessarily mean that the
[13] department would pay for it, but an applicant can
[14] always exceed — build more than what our
[15] regulations and guidelines would propose.

[16] It's just that we're reviewing it in
[17] terms of what would the state pay for.

[18] Q: And if that was the case, if an applicant
[19] exceeded your allowances, would it be that the state
[20] would reimburse for up until the maximum allowance
[21] and then the applicant would bear the burden of the
[22] remainder?

[23] A: Yes.

[24] MR. BIERWIRTH: Why don't we mark this

[1] as the next exhibit?
[2] (Exhibit Number 5
[3] marked for identification)

[4] (Pause)

[5] Q: Tell me when you've had a chance to review
[6] it.

[7] A: I'm all set.

[8] Q: If you'd turn to the first page, please.

[9] You'll see this is a cover letter from Dr. Harry
[10] Hartunian, superintendent of schools in Reading, to
[11] you. Did you know Dr. Hartunian prior to this date,
[12] February 29?

[13] A: I may have met him in another capacity. I
[14] can't say that I didn't. I've worked with a lot of
[15] superintendents over the years.

[16] Q: You mentioned earlier a meeting that you had
[17] that was a followup to a building needs conference
[18] that James Anderson had had the previous year with
[19] Reading officials. Do you recall meeting
[20] Dr. Hartunian at that followup meeting?

[21] A: Yes, I think I did meet with him. You're
[22] right. December or something, yeah.

[23] Q: Did you know him prior to that outside the
[24] context of the Town of Reading schools?

[1] A: That's what I thought you were asking the
[2] first time. I probably did meet him. I worked in
[3] school finance. I worked with a lot of school
[4] superintendents. I don't specifically remember
[5] working with him on a specific issue, but I very
[6] well might have.

[7] Do I know him personally? No, I don't.

[8] Q: Between the time of the meeting that you had
[9] in late 1999 and this submission of February 29,
[10] 2000, did you have any other conversations with
[11] Dr. Hartunian?

[12] A: Say the time again. Between —

[13] Q: Between the time of your meeting — Let me
[14] ask you, where did your meeting take place?

[15] A: I believe we met in Malden in my office.

[16] Q: Between the time of that meeting in Malden
[17] and your receipt of this submission, did you have
[18] any conversations with Dr. Hartunian?

[19] A: I don't know. I could have. I'd have to go
[20] back and look in the file to see.

[21] Q: What documents may exist in the file that
[22] would —

[23] A: I don't know if I had any other
[24] correspondence with him. You're asking about phone

[1] conversations?

[2] **Q:** I'm asking about communications you had with
[3] him.

[4] **A:** Yeah. Again, I don't know. I'd have to
[5] look in the file to see if there is any written
[6] correspondence with him. And I also have somewhat
[7] of a phone log, you know, that I keep, so I'd have
[8] to look at that as well. From my memory, I can't
[9] remember any conversations.

[10] **Q:** Is there anywhere in Exhibit 5 where the
[11] applicant shows you what the historical or current
[12] enrollments have been at the elementary school
[13] level?

[14] **A:** Well, they do have enrollment projections
[15] here.

[16] **Q:** What page are you looking at? At the top
[17] left it's captioned "Reading Elementary Schools
[18] ERF&A Project Number 9825"?

[19] **A:** Yes.

[20] **Q:** And these are enrollment projections; is
[21] that correct?

[22] **A:** Well, they look like partial enrollment
[23] projections. They go up to, it looks like, 2004.

[24] **Q:** Now, you're looking at the left-hand column

[1] entry for school year '00 would relate to the
[2] academic year 1999/2000 or would it make more sense
[3] if it were related to the academic year 2000/2001?

[4] **A:** I don't know what year they're referring to.

[5] **Q:** Let me ask you this: When you received this
[6] package of information did you review the package?

[7] **A:** Yes.

[8] **Q:** Were you the person at the SBA in charge of
[9] reviewing this submission?

[10] **A:** There were three of us that might have
[11] reviewed this. It would be either John Lawler, Bob
[12] Conway or myself.

[13] **Q:** Do you recall reviewing this submission?

[14] **A:** I recall being involved in the review of the
[15] submission, yes. I can't say that I looked at every
[16] piece of paper, no.

[17] **Q:** Can you point to anywhere elsewhere the
[18] applicant showed you the historic or current
[19] enrollments at the elementary level in this
[20] submission?

[21] **A:** Not in this submission, no.

[22] **Q:** Do you believe that the SBA had that
[23] information available to it in its review of this
[24] application?

[1] under "Year"; is that right?

[2] **A:** Yes.

[3] **Q:** Just moving across to the right from there,
[4] the first column is "Year," the next is "Births" and
[5] the next is "School Year."

[6] **A:** Okay. Yeah.

[7] **Q:** So do you read this to mean that the first
[8] entry working from left to right — the first entry
[9] relates to a birth year of 1994, a number of 298 for
[10] the number of births and a school year of 2000?

[11] **A:** Yes, that's what it looks like.

[12] **Q:** So since this document was created, as
[13] indicated on the bottom, February 29, 2000, the
[14] creator of this document had not yet reached the
[15] beginning of the year 2000 for academic purposes.
[16] These are all projections; is that correct?

[17] **A:** I don't know. You mean for '00, you're
[18] asking whether or not I think that's a projection or
[19] whether I think that's actual?

[20] **Q:** Yes.

[21] **A:** I don't know. They're in the school year,
[22] so I don't know if they themselves have information.
[23] I don't know.

[24] **Q:** So would it make sense to you that that top

[1] **A:** We would have had the historic enrollment
[2] because we collect that information anyway. Whether
[3] or not Reading submitted it to us or not, we would
[4] have had it because they are required by law to
[5] submit enrollment information to the Department of
[6] Education anyway. So we have that.

[7] And as far as the school year — the
[8] current school year, we have that as well.

[9] **Q:** And you would have had information for the
[10] academic year 1999/2000 by the time the submission
[11] was made in — on February 29, 2000; is that
[12] correct?

[13] **A:** We would have had October of '99 enrollments
[14] available to us, which would be school year
[15] '99/2000, which would relate — theoretically relate
[16] to the year — this first year on this projected
[17] enrollment sheet.

[18] **Q:** Do you know if in your review of the
[19] application of the Town of Reading for SBA
[20] reimbursement in the year 2000 if you or anyone else
[21] within your unit looked at the historical or current
[22] enrollment figures that you had on file?

[23] **A:** We would look at the current year, the
[24] current enrollments. In terms of historic

[1] enrollments, did we look at that, I can't say that
 [2] we did or we didn't. I don't know.
 [3] **Q:** But you believe you did look at the current
 [4] enrollment?
 [5] **A:** Yes.
 [6] **Q:** Why do you believe that?
 [7] **A:** Because when we do a ranking we use current
 [8] enrollments. Not necessarily in February or March,
 [9] whenever this was submitted, but we use it when we
 [10] rank projects.
 [11] **Q:** And that ranking is on that worksheet that
 [12] you referred to earlier?
 [13] **A:** Yes.
 [14] **Q:** And when you fill out that worksheet and
 [15] obtain that ranking, you believe you look at the
 [16] current enrollment that you have on file?
 [17] **A:** Correct.
 [18] **Q:** If you could look at — it's about the fifth
 [19] page into the document, Exhibit 5. It's a letter
 [20] from Dr. Hartunian to James Anderson dated May 7,
 [21] 1998.
 [22] You had earlier mentioned with respect
 [23] to our conversation about the building needs
 [24] conferences that you required a long-range

[1] educational plan. Is this the long-range
 [2] educational plan of the Town of Reading?
 [3] **A:** Well, this looks like it would be it or a
 [4] piece of it, at least. I don't know if they've
 [5] submitted something else, but as part of this
 [6] package, this is it, yes.
 [7] **Q:** If it wasn't submitted as part of this
 [8] package, when would it get submitted?
 [9] **A:** This is the February submittal, which
 [10] they've included a lot of information that generally
 [11] would have been filed at the building needs
 [12] conference stage.
 [13] So I don't know whether this is just a
 [14] repeat or not. I mean, there may be some additional
 [15] information in the file.
 [16] **Q:** At the stage of the process when the
 [17] applicant needs to make a March 1 deadline, are they
 [18] required to provide the SBA with a long-range
 [19] educational plan?
 [20] **A:** Are they required to do that with the March
 [21] submittal?
 [22] **Q:** Correct.
 [23] **A:** They're generally required to do that at the
 [24] building needs conference stage, but there are

[1] occasions when they can either provide a duplicate,
 [2] they can provide supplemental information, or for
 [3] whatever the reason was they may not have submitted
 [4] certain pieces of the required building needs
 [5] conference material and they get submitted at this
 [6] stage.
 [7] **Q:** Is there a requirement at the March 1 stage
 [8] for them to submit a long-range educational plan?
 [9] **A:** No.
 [10] **Q:** If you could turn to the next numbered
 [11] document in this submission. This was referred to
 [12] by the applicant as document 1. The next is
 [13] document 2, the rationale for capital construction.
 [14] Now, this document — Is this a form?
 [15] **A:** Yes.
 [16] **Q:** It's a form that's put out by the SBA?
 [17] **A:** Yes.
 [18] **Q:** In the first paragraph here in this form it
 [19] states that there is a requirement that "every
 [20] applicant for a School Building Assistance grant
 [21] examine thoroughly 'all available options for
 [22] satisfying the described (school space) need'." Do
 [23] you see that?
 [24] **A:** Yes.

[1] **Q:** And it asks that the applicant complete this
 [2] form and submit it to the department staff at the
 [3] building needs conference. Do you know if the Town
 [4] of Reading did so with respect to this project?
 [5] **A:** I don't know.
 [6] **Q:** The form also asks that the applicant
 [7] respond to each question with a cost-effectiveness
 [8] analysis of the option. Do you see that?
 [9] **A:** Uh-hmm.
 [10] **Q:** Let's just take a look at number 2 there.
 [11] It says, "Can the need be met through acquisition of
 [12] a suitable structure?" It says, "No available
 [13] buildings in Reading will accommodate the program."
 [14] Is that, in your opinion, an adequate
 [15] response to that inquiry?
 [16] **A:** Yes.
 [17] **Q:** Moving back up to number 1, it says, "A part
 [18] of the need will be met by an addition to an
 [19] existing school. Additional capacity cannot be
 [20] provided without another elementary school, as the
 [21] other available schools have no core capacity
 [22] remaining."
 [23] Is it your understanding that the
 [24] applicant there is referring to the need not being

[1] able to be met by the existing elementary schools as
[2] opposed to existing middle or high schools, that the
[3] applicant in responding to that question is only
[4] referring to elementary schools?

[5] **A:** That's correct.

[6] **Q:** That's correct?

[7] **A:** I'm not sure what the applicant necessarily
[8] had in mind when they filled it out. I mean, we
[9] would look at it to say that they are saying to us
[10] that there are no buildings, whether they —
[11] whatever buildings might be available within the
[12] public school system to accommodate the need that
[13] they're expressing to us.

[14] **Q:** So you will read this as an answer that
[15] takes into its scope all public school buildings in
[16] the town?

[17] **A:** Right. We're not limiting our — We're not
[18] even saying it has to be necessarily a school
[19] building. They could propose some other building to
[20] us.

[21] So that's how we would be reading it.

[22] How they wrote it, I can't speak to that.

[23] **Q:** Do you know if the Town of Reading at the
[24] feasibility study stage of the process explored

[1] they handling the various levels of educational
[2] programs that they may have.

[3] And it's up to the individual school
[4] committee to determine those levels. We would want
[5] to make sure that there is some consistency there,
[6] that they don't change their grade configuration
[7] without very good reason, and that it's not really
[8] building-driven.

[9] In other words, their grade
[10] configuration should be developed through
[11] educational policy and it should be consistent and
[12] it should be a vote of the school committee and it
[13] should be pretty consistent.

[14] Once they establish that and they show
[15] that and they show that it's consistent and they
[16] show that they're not changing it, I guess the issue
[17] is here we would not necessarily get involved in
[18] saying, "You should now change — move your
[19] elementary population to somewhere else."

[20] If this is the grade configuration that
[21] an application is suggesting to us and we have no
[22] reason to think that they're changing it for the
[23] purposes of building a school and then they're not
[24] going to change it back as soon as we give them some

[1] using other facilities outside of the elementary
[2] school facilities to address their concerns?

[3] **A:** I'm not aware of them looking at any other
[4] buildings, I guess.

[5] **Q:** Would it make a difference to your analysis
[6] of the application if they did or did not?

[7] **A:** Well, if they proposed using another
[8] building, then we would have investigated, I guess,
[9] that other building. To my knowledge, they didn't.

[10] **Q:** If they did not explore options outside of
[11] the existing elementary schools to look for space to
[12] address their concerns, would that fact affect your
[13] analysis of the application which is made to build a
[14] new elementary school?

[15] **A:** I guess as part of our process what we would
[16] look at is all the schools within any particular
[17] district within reason.

[18] What we'd want to see as part of their
[19] long-range plan, whether they wrote it down or
[20] whether they verbalized it to us, is that there's a
[21] certain grade configuration that the community
[22] intended to stay within and that it was their plan
[23] to either change that or keep it the same, but we
[24] would ask what is their grade configuration, how are

[1] money to build a school, we would accept their grade
[2] configuration.

[3] **Q:** Okay. With respect to any of the answers
[4] that are provided to these four questions on this
[5] form, has the applicant complied with the
[6] requirement that they respond to each question with
[7] a cost-effectiveness analysis of the option?

[8] **A:** I think the issue is here that there's
[9] really — What they're indicating to us is that
[10] there are no other options, that their options are
[11] to put an additional renovation on the building and
[12] to build a new school.

[13] So in terms of the cost-effectiveness of
[14] those proposals, that's, I guess, part of the
[15] overall package, that they're proposing —
[16] ultimately they'd be proposing to us what's it going
[17] to cost to do the additional renovation, what's it
[18] going to cost to do the new building.

[19] No, I don't believe they did any kind of
[20] cost analysis on are there any other available
[21] buildings in Reading or — What they're indicating
[22] to us is there are no other available buildings, so
[23] there's not necessarily a need for a cost analysis.

[24] **Q:** If you could turn to document number 3, the

[1] first inventory — It says “Page 1 of 2.” That
 [2] relates to the Birch Meadow School. Do you see
 [3] that?
 [4] **A:** Yes, I do.
 [5] **Q:** What are these inventory forms?
 [6] **A:** What are they used for?
 [7] **Q:** What are they used for? Exactly.
 [8] **A:** A couple of things, really. One is to show
 [9] the age of the buildings within the particular
 [10] community, what renovations or additions or when
 [11] they were built, obviously, or any changes that have
 [12] occurred over the years in the buildings and also
 [13] the educational capacity.
 [14] We use it directly in terms of the
 [15] ranking to indicate the need for additional
 [16] classroom space.
 [17] We use what they have in terms of
 [18] educational capacity within their existing buildings
 [19] at the grade range — grade level that they’re
 [20] asking, you know, for in order to determine the
 [21] ranking.
 [22] **Q:** If you could turn to page 2 of 2 for this
 [23] Birch Meadow School. And it lists a description of
 [24] the type of room and then provides for the number of

[1] that type of rooms, square footage and the rooms’
 [2] location.
 [3] For arts and crafts, do you see that
 [4] there?
 [5] **A:** Uh-hmm.
 [6] **Q:** It says, “1.”
 [7] **A:** Yes.
 [8] **Q:** 1,000 square feet?
 [9] **A:** Yes.
 [10] **Q:** And for music it also says 1 at 1,000 square
 [11] feet?
 [12] **A:** Yes.
 [13] **Q:** Do you know if in the Birch Meadow
 [14] Elementary School there actually is an art classroom
 [15] and a music classroom?
 [16] **A:** Do I know firsthand that there is?
 [17] **Q:** Yes.
 [18] **A:** No.
 [19] **Q:** If there were not, would there be a reason
 [20] why the applicant would list these numbers here?
 [21] **A:** If they did not have those rooms but yet
 [22] they listed those numbers anyway?
 [23] **Q:** Yeah.
 [24] **A:** Would there be a reason for that?

[1] **Q:** Correct.
 [2] **A:** I don’t know why that would happen.
 [3] **Q:** Do you see on the next inventory for the
 [4] Joshua Eaton School it also shows that there is an
 [5] art room, a music room; and in the Barrows
 [6] Elementary School which follows —
 [7] **A:** Uh-hmm.
 [8] **Q:** — it also seems to indicate that there is
 [9] an art room and a music room?
 [10] **A:** Yes.
 [11] **Q:** Do you recall having any conversation with
 [12] any representative of the Reading Public Schools as
 [13] to filling out these forms on the inventory,
 [14] particularly with respect to listing the number of
 [15] art rooms and music rooms?
 [16] **A:** Did we have any conversations with the Town
 [17] of Reading or representatives to question art and
 [18] music on these forms?
 [19] **Q:** Any conversation at all relating to their
 [20] completion of these forms.
 [21] **A:** I don’t recall, but there are occasions when
 [22] communities would call us and say — and ask a
 [23] question. I can’t say for sure that someone didn’t
 [24] call and ask that question. I don’t remember

[1] talking to anyone specifically about how to complete
 [2] this form.
 [3] **Q:** And these inventory forms are intended to be
 [4] an accurate inventory of the then-existing
 [5] conditions at each of the schools; is that correct?
 [6] **A:** Yes.
 [7] **Q:** If you could turn to the document numbered
 [8] 6. It’s the educational specifications. What is
 [9] the purpose of this document?
 [10] **A:** This is the part of the application where
 [11] the district would tell us what kinds of programs,
 [12] generally, they are offering in the building being
 [13] proposed and the square footage, the classrooms or
 [14] core facility.
 [15] **Q:** If you look at the first page of this form,
 [16] the bottom right-hand corner, there is a chart with
 [17] an enrollment date in it?
 [18] **A:** Yes.
 [19] **Q:** On the bottom left-hand side of the document
 [20] under “Current” that is not filled out because the
 [21] school was not then existing. It was a proposed
 [22] school; is that correct?
 [23] **A:** Correct.
 [24] **Q:** On the bottom right hand we have projected

[1] headcounts; is that correct?
 [2] **A:** Right.
 [3] **Q:** And the date indicated there is September 4,
 [4] 2006?
 [5] **A:** Yes.
 [6] **Q:** Do you know why that date was selected?
 [7] **A:** It may have been the highest enrollment
 [8] number of the 10-year — It could have been one of
 [9] two things: one, the last year of the projection or
 [10] the highest year of the projection.
 [11] In this case, since they went out to
 [12] 2010, it's probably the highest year of the
 [13] projection.
 [14] **Q:** Is that ordinarily the practice, that it's
 [15] the highest number that's put in there?
 [16] **A:** It can be. We would generally look to have
 [17] it be the average, you know, to have not necessarily
 [18] the highest but some average of consistency.
 [19] I don't know. I'd have to look at the
 [20] enrollment projections now to see whether it was the
 [21] average or highest or what.
 [22] (Pause)
 [23] **Q:** Were you able to determine if it was the —
 [24] **A:** No. What we'd have to do is find out what

[1] We were working on the Barrows, so we
 [2] had an idea what that one was. And Killam, I guess,
 [3] was the last school.
 [4] So I think in looking at all of those
 [5] schools and then comparing that to the enrollment
 [6] projections, that we had a fair idea as to the
 [7] intent of the Town of Reading, how to solve their
 [8] enrollment issues within those five schools.
 [9] **Q:** This number on the bottom right-hand corner
 [10] of this form, which is document 6, is this number
 [11] carried forward somewhere and does it become part of
 [12] a calculation?
 [13] **A:** Does it become part of a calculation, the
 [14] enrollment number?
 [15] **Q:** Uh-hmm.
 [16] **A:** No, I can't think of any calculation it
 [17] would become part of. No, not for this school. No.
 [18] **Q:** Let me ask you a more general question. For
 [19] this new school which was being proposed, what were
 [20] you told by the applicant was the capacity of the
 [21] school?
 [22] **A:** How was I told?
 [23] **Q:** What were you told? What number were you
 [24] told was the capacity for the school?

[1] the planned capacity of the other four — other
 [2] three — four — I'm sorry — elementary school
 [3] buildings would be.
 [4] What they give us is overall enrollment
 [5] projections for all of their elementary buildings.
 [6] **Q:** So you were not able to determine from
 [7] looking at this entire submission what these
 [8] headcounts represent; is that correct?
 [9] **A:** This information is not sufficient to allow
 [10] me to answer that question, I guess.
 [11] **Q:** Do you recall whether or not in your
 [12] analysis of this submission or at any part in the
 [13] stage or in the process of analyzing the Town of
 [14] Reading submission whether you were able to make a
 [15] determination what these numbers represent?
 [16] **A:** Well, I think as part of the plan that
 [17] Reading submitted they indicated that there was a
 [18] certain number of schools within the community, what
 [19] the capacity of those schools were.
 [20] In fact, we had just participated in the
 [21] planning that was involved on two of the schools.
 [22] So, more or less, we had at least at some point some
 [23] general enrollment capacity numbers for those two
 [24] schools.

[1] **A:** For this one?
 [2] **Q:** Uh-hmm.
 [3] **A:** On this sheet, that's where they tell us
 [4] what the capacity is.
 [5] **Q:** And that number is 404 full-time employment?
 [6] **A:** Right.
 [7] **Q:** Do you recall reviewing this exact
 [8] submission?
 [9] **A:** It was reviewed — All the applications were
 [10] reviewed by Bob Conway and John Lawler, and they
 [11] would then review it with me.
 [12] So did I get in-depth in all these
 [13] applications? No.
 [14] **Q:** Those gentlemen, when they reviewed their
 [15] in-depth analysis with you, do you recall in
 [16] particular that process with respect to the — this
 [17] proposal for the new school in Reading?
 [18] **A:** Do I recall what process was —
 [19] **Q:** Do you recall anything about the process?
 [20] Do you remember any conversations you had with
 [21] Mr. Lawler or Mr. Conway where they reported to you,
 [22] as you just described, about their in-depth review
 [23] of these proposals?
 [24] **A:** No. Again, I'd have to look at the file. I

[1] mean, generally, we went through them all. I looked
 [2] at them all. It's just that some had issues, some
 [3] did not.
 [4] Whether or not this particular one had
 [5] any issues, we would have made notes in the file or
 [6] notes on the plans or on the ed. specs themselves.
 [7] So if there were no notes — Generally
 [8] speaking, there were issues with every single one of
 [9] them. So whether or not — what issue happened to
 [10] be involved in this one, no, nothing strikes me
 [11] off — but I can't say that there wasn't because
 [12] there was not one application that was submitted
 [13] totally, you know, perfect.
 [14] So we had conversations with everyone.
 [15] And I don't know exactly what conversations we might
 [16] have had on this one.
 [17] **MR. BIERWIRTH:** Let's go off the record
 [18] for a second.
 [19] (Off the record)
 [20] (Lunch recess)
 [21]
 [22]
 [23]
 [24]

[1] **AFTERNOONSESSION**
 [2] **BY MR. BIERWIRTH:**
 [3] **Q:** Let me show you a letter from your
 [4] predecessor.
 [5] **MR. BIERWIRTH:** Actually, we need that
 [6] marked, please.
 [7] (Exhibit Number 6
 [8] marked for identification)
 [9] **Q:** Have you had a chance to see that letter?
 [10] **A:** I think I've seen this before, yes.
 [11] **Q:** This is a letter from Dr. Hartunian to
 [12] Mr. Anderson requesting that he reduce to writing
 [13] the SBAB's position on the Town of Reading moving
 [14] forward on the Barrows school project.
 [15] Are you familiar with that request from
 [16] the Town of Reading that the SBAB policy with
 [17] respect to that issue be put in writing?
 [18] **A:** I recall, first of all, seeing this letter
 [19] and I believe probably having a conversation with
 [20] Dr. Hartunian concerning the two projects and
 [21] whether or not they needed to go forward in tandem.
 [22] **Q:** And when did you have that conversation; do
 [23] you know?
 [24] **A:** I would suspect that it was probably during

[1] the meeting that we had sometime prior to last
 [2] December.
 [3] **Q:** What did you tell him?
 [4] **A:** He did not necessarily — He was moving
 [5] forward — The Town of Reading was moving forward
 [6] under the procedures and the policies and the
 [7] process that was in place based on discussions that
 [8] they had with Jim Anderson.
 [9] So he did not necessarily, to my
 [10] knowledge, ask me to put in writing this question.
 [11] **Q:** You had a conversation with him where his
 [12] previous request to Mr. Anderson came up as a topic?
 [13] **A:** My recollection is that we met to discuss
 [14] two proposals and that he and the building committee
 [15] of Reading were moving forward based on previous
 [16] information and conversations and direction from Jim
 [17] Anderson.
 [18] And he was reiterating where they stood,
 [19] where they were, what they were moving forward with
 [20] to update me and, since I was new into the position,
 [21] in terms of where they were going.
 [22] **Q:** Did he complain to you about the fact that
 [23] Mr. Anderson had not complied with his request to
 [24] reduce the SBA's position to writing?

[1] **A:** I think he — the way it was presented was
 [2] more or less that he was moving forward under those
 [3] verbal instructions and that it would have probably
 [4] been easier had something been put in writing from
 [5] the department.
 [6] **Q:** Did he say anything more to you about that?
 [7] **A:** I think, if anything, he probably would have
 [8] asked if he was still moving forward under those
 [9] same set of directions. In other words, that the
 [10] two schools would move forward.
 [11] **Q:** And did you provide him with any guidance on
 [12] whether or not these two schools had to move forward
 [13] together through the SBA process?
 [14] **A:** I believe what I would have said was there
 [15] was nothing that would indicate to me that there had
 [16] been any change to overrule what the previous
 [17] director had provided in terms of information and
 [18] direction to the Town of Reading.
 [19] **Q:** So you relied on Mr. Anderson's conclusion
 [20] that the two had to go forward together?
 [21] **A:** I think I relied more on two things. One is
 [22] the experience and the direction the previous
 [23] director had indicated, as well as the fact that the
 [24] information — based on the information that I also

[1] had, there was nothing that convinced me that I
 [2] needed to overrule that decision.
 [3] **Q:** What information did you look at to educate
 [4] yourself about that decision?
 [5] **A:** Well, I think the information that at that
 [6] point would have been in our files and also — And
 [7] by “our files” I think I also mean that we had, as I
 [8] mention earlier, two other elementary school
 [9] projects that had already been supported under the
 [10] School Building Assistance program, so we had those
 [11] files as well to know that at that point in time,
 [12] based on enrollments and based on a need, we had
 [13] gone forward with two elementary school
 [14] additions/renovations project.
 [15] We had on hand at that point in time as
 [16] well enrollments, as they were known at that point,
 [17] space inventories. We ask for space inventories
 [18] every time we have a project.
 [19] So we would have had those, also, for
 [20] the other elementary schools in the district prior
 [21] to having received them.
 [22] I don’t remember now the times on this.
 [23] We might have had this package as well at the point
 [24] in time when we spoke. I don’t remember. But

[1] certainly we would have had it from previous
 [2] projects anyway. So I think based on that
 [3] information.
 [4] Again, there was no convincing evidence
 [5] at that point in time to cause me to say that a
 [6] decision had been made that would have been wrong.
 [7] **Q:** Do you yourself recall ever going back and
 [8] looking at previous submissions or information with
 [9] respect to other projects within the Town of Reading
 [10] in order to educate yourself about the approvability
 [11] of this project?
 [12] **A:** Oh, yeah, I think I did. I mean, in other
 [13] words, it’s all part of the whole package,
 [14] basically. When a community indicates that there is
 [15] no additional space within their own elementary —
 [16] within their current elementary buildings, then yes.
 [17] I mean, basically, we do go back and
 [18] look and see if that all makes sense.
 [19] **Q:** And you recall doing that with respect to
 [20] this Reading project?
 [21] **A:** Yes.
 [22] **Q:** Why did the SBA take the position that the
 [23] Town of Reading could not move forward with the
 [24] Barrows School project without moving forward with

[1] the new elementary school project?
 [2] And I ask the question in light of the
 [3] fact that during the course of the process the town
 [4] voters approved the Barrows renovation without also
 [5] approving the new elementary school.
 [6] So why did SBA take the position that it
 [7] didn’t?
 [8] **A:** When we accept an application, we accept
 [9] it — we require as part of the application that the
 [10] district submit a long-range enrollment plan, a
 [11] long-range facilities plan and enrollment plan.
 [12] As part of that they need to explain to
 [13] us how they plan to solve their space issue, if
 [14] there is one, or their enrollment issues for the
 [15] foreseeable future.
 [16] The plan that was submitted to us
 [17] indicated there was an enrollment need, that there
 [18] was a need for somewhere in the vicinity of 400
 [19] seats for additional students based on the
 [20] enrollment projections that were given to us at that
 [21] point in time.
 [22] My understanding is that the Barrows
 [23] project would not necessarily do anything to solve
 [24] that enrollment plan, that there undoubtedly is a

[1] need to renovate the Barrows and do something there,
 [2] but that that would do nothing or very little to
 [3] solve what was at least presented to us as a plan —
 [4] a need for additional classroom seats.
 [5] So on that basis the two projects needed
 [6] to go forward in tandem. Actually, I should say
 [7] that really the new school needed to go forward. It
 [8] was of less importance, at least from the state’s
 [9] perspective, that the Barrows went forward.
 [10] **Q:** So the state’s perspective was that moving
 [11] forward with the Barrows project would not address
 [12] the enrollment problem that was presented to you in
 [13] the applicant’s file; is that correct?
 [14] **A:** Correct.
 [15] **Q:** Can you point to somewhere — We’ve marked
 [16] as Exhibit 3 the regulations which are currently
 [17] governing the State Building Assistance program.
 [18] Can you point to somewhere in these
 [19] regulations the authority for the SBA’s decision in
 [20] that regard?
 [21] In other words, authority for the
 [22] proposition that unless the project addresses to the
 [23] SBA’s satisfaction an enrollment problem, that the
 [24] SBA will not provide reimbursement for that project?

[1] A: First of all, these weren't the regulations
 [2] that were in effect at that point in time.
 [3] Q: That's correct.
 [4] A: So I'm not as familiar with the way these
 [5] are phrased, but I think the whole gist of the whole
 [6] regulation is that this program has been put in
 [7] place in order to solve facilities needs, issues
 [8] involving solving the facilities needs for school
 [9] districts and solving any enrollment issues.

[10] So I think that's the gist of the whole
 [11] law or that's been my understanding of my
 [12] involvement with this.

[13] So I don't know if I could find very
 [14] specific language that says exactly what you just
 [15] said, but my understanding of this whole program has
 [16] always been that the reason we're in business is to
 [17] do — to solve districts' enrollment need and less
 [18] to do with renovating a particular building.

[19] That is — By order of our priorities,
 [20] that's the third priority. So by the nature of even
 [21] our priority system or categorization system in
 [22] terms of what we — what this regulation or what
 [23] that process thinks is the most important,
 [24] overcrowding issues are the most important issues.

[1] enrollment and renovation projects. Does the state
 [2] currently fund renovation projects?

[3] A: Yes.

[4] Q: And that will continue under the new
 [5] regulations?

[6] A: Yes.

[7] Q: It's just a matter of priority, you're
 [8] saying?

[9] ~~A: Yes, in terms of our system, there are~~
 [10] ~~three different categories, basically, of priority,~~
 [11] ~~whatever you want to call it. The third would be~~
 [12] ~~renovation — just renovation projects that would~~
 [13] ~~solve no enrollment issues.~~

[14] Q: The Town of Reading for this project has a
 [15] reimbursement rate of 66 percent. Would that
 [16] reimbursement rate remain the same for a renovation
 [17] project?

[18] A: Yes.

[19] Q: Is there any reason that you know of why
 [20] Mr. Anderson did not provide Dr. Hartunian with a
 [21] statement of the SBA's position on the going-
 [22] forward-with-the-Barrows-project-alone issue in
 [23] writing?

[24] A: I really wouldn't know.

[1] So I think in that section of these
 [2] regulations or the older regulations when you look
 [3] at how projects are categorized, by the nature of
 [4] how they're categorized, it indicates what we
 [5] think — what these regulations — what the state
 [6] thinks is important.

[7] Q: I do have the old regulations. These were
 [8] produced to me by your counsel as of September 1999.
 [9] And I could mark them or you could refer to them if
 [10] you think your answer would change if you had the
 [11] benefit of these old regulations.

[12] A: I unfortunately have not memorized the old
 [13] regulations or the new ones, so there may very well
 [14] be some other language that I might have missed in
 [15] my answer to your question.

[16] But I think the fact, again, that we —
 [17] included in those regulations and in these
 [18] regulations are this categorization system that
 [19] talks about prioritizing projects.

[20] I believe that answers your question.
 [21] If it doesn't, I'd be happy to review those and look
 [22] for more specific answers.

[23] Q: You made a distinction between capital
 [24] construction projects which are designed to address

[1] Q: Did you yourself provide Dr. Hartunian with
 [2] a written position?

[3] A: I don't believe I did.

[4] Q: Do you recall being asked by a state
 [5] representative, Brad Jones, to provide the SBA's
 [6] position in writing on that issue?

[7] A: I'm trying to remember whether he asked us
 [8] to put it in writing. He asked the question. I
 [9] don't know whether he asked us to put it in writing
 [10] or not. He very well may have.

[11] Q: Do you recall your response to
 [12] Representative Jones?

[13] A: It seems to me we weren't talking about this
 [14] town at all. It was just sort of another issue that
 [15] was raised, if I'm remembering this conversation.

[16] And the response to that other question
 [17] was that we generally respond to specific proposals
 [18] that are presented to us as opposed to responding to
 [19] say that we will not do something else.

[20] In other words, we'll only respond to
 [21] something that's proposed to us by designated
 [22] officials. We're not really in a position of saying
 [23] what we won't do. We say generally what we will do,
 [24] what we would support, not what we won't support.

[1] **Q:** And is that true with respect to all of the
 [2] issues for which you provide guidance to school
 [3] districts?
 [4] **A:** Yes, I believe so. I mean, what we do in
 [5] terms of this program is react, respond to requests
 [6] for school construction funds, and we review
 [7] potentially alternative plans, but what generally is
 [8] arrived at is through the local officials in the
 [9] building committee and the town officials and
 [10] however — the school committee, a plan is put forth
 [11] to us.
 [12] And we would accept that plan or not.
 [13] And if a plan is not put forth to us, we don't
 [14] necessarily react to it.
 [15] In other words, the district has to come
 [16] to us with the plan. We do not have the knowledge
 [17] or the expertise or the time to go out and look at
 [18] every school district in the state to see what
 [19] potentially might come forward to us as a project.
 [20] **Q:** And when you say that their obligation is to
 [21] put forward a plan to you, do you mean —
 [22] **A:** Or a series of options. That's a
 [23] possibility as well.
 [24] **Q:** And that occurs?

[1] Reading within this process to address their
 [2] concerns?
 [3] **A:** I don't know other than what was in — what
 [4] was given to us in writing by the town, which
 [5] indicated that they had looked at a number of plans.
 [6] Whether they produced those to former
 [7] staff, I — there's nothing in the files to indicate
 [8] they did or they didn't, so I wouldn't know.
 [9] **Q:** Let me show you two more letters, both of
 [10] them from you.
 [11] **MR. BIERWIRTH:** Could we get those
 [12] marked as the next two exhibits, please?
 [13] (Exhibit Numbers 7 and 8
 [14] marked for identification)
 [15] **Q:** You're familiar with those documents,
 [16] Ms. Lynch?
 [17] **A:** Yes.
 [18] **Q:** You created those documents?
 [19] **A:** Yes.
 [20] **Q:** And you signed each of those letters?
 [21] **A:** Yes.
 [22] **Q:** I'm referring to Exhibits 7 and 8. With
 [23] respect to Exhibit 7, if you could focus on the
 [24] projected enrollment number of 360.

[1] **A:** Yes, that does occur.
 [2] **Q:** And when that occurs you provide guidance as
 [3] to which of those options you would prefer; is that
 [4] correct?
 [5] **A:** Probably, yes. Yes, we would.
 [6] **Q:** Do you ever do so in writing?
 [7] **A:** I did not do that in writing, no. It had
 [8] already progressed — In writing. It had already
 [9] progressed to the point where those options had
 [10] been — to my knowledge, had been reviewed both
 [11] locally —
 [12] And I can't speak for the previous
 [13] administration. I don't know how in-depth they were
 [14] reviewed, but they were reviewed locally.
 [15] And two conclusions or two alternatives,
 [16] I guess, or two proposals were presented to us. And
 [17] that had already occurred prior to my arriving.
 [18] And it was still the plan of the school
 [19] district, the school building committee, the school
 [20] committee, to go forward with those same set of
 [21] plans that had already been conceptually, at least,
 [22] approved prior to my taking over this position.
 [23] **Q:** Do you know if anyone at the SBA was ever
 [24] presented with alternative plans by the Town of

[1] **A:** Yes.
 [2] **Q:** Do you know where that number comes from?
 [3] **A:** Well, it's from the educational
 [4] specifications that they gave to us. But again,
 [5] it's part of the capacity that the Town of Reading
 [6] has within its elementary schools to house the total
 [7] enrollment projections that were presented to us.
 [8] **Q:** So the 360 number — And maybe it would help
 [9] if you look at the number for the new school as
 [10] well, which is 404. Does that represent a capacity
 [11] number?
 [12] **A:** That's a number that that school has planned
 [13] for, yes, in terms of capacity.
 [14] **Q:** And that information as you included it on
 [15] these letters of May 1 is based upon information
 [16] that you received from the town in its submission?
 [17] **A:** Right. Correct.
 [18] **Q:** Looking at the — Exhibit 7 with respect to
 [19] the Barrows School, could you explain to me the
 [20] chart here which sets out total space under "Max
 [21] Allowed," "Requested" and "Approved"?
 [22] Can you just walk through that chart a
 [23] little bit for me and just explain it for me?
 [24] **A:** Sure. In the regulations it allows for a

[1] mathematical formula to arrive at a maximum square
 [2] footage allowance that the state will pay for under
 [3] this program.
 [4] And the square footage is based on the
 [5] number of students that the building is planned for
 [6] times the square footage allowance for the grade
 [7] range of the school that's being planned.
 [8] There are additional spaces as outlined
 [9] here on this chart for special needs. TBE — I'm
 [10] reading from this chart — represents transitional
 [11] bilingual education, remedial space, collaboratives,
 [12] community, technology and excess space.
 [13] These are the categories over and above
 [14] what that mathematical formula would arrive at.
 [15] These are areas that the Board of Education
 [16] encourages.
 [17] So we are willing or they are willing to
 [18] allow additional square footage if in fact the
 [19] community's planning space for those types of
 [20] programs.
 [21] And you can see outlined on the chart
 [22] the number of square footage — the amount of square
 [23] footage requested and the amount that we approved
 [24] for those additional types of programs.

[1] Q: So as I understand it, the Town of Reading
 [2] requested 8,120 square feet of excess space, which
 [3] would encompass all of those categories that you
 [4] just ticked off; is that correct?
 [5] A: Yes, correct.
 [6] Q: And the SBA approved, which means that the
 [7] SBA is telling the town by way of this letter that
 [8] it will provide for reimbursement for that excess
 [9] space; is that correct?
 [10] A: Yes, that's correct.
 [11] Q: Going back to the total space number that's
 [12] arrived at, the Town of Reading requested 54,471
 [13] square feet of total space, and the SBA approved the
 [14] full amount; is that correct?
 [15] A: Correct.
 [16] Q: And giving us your explanation of how that
 [17] number is arrived at, you made reference to the
 [18] projected enrollment in the school?
 [19] A: Yes.
 [20] Q: So that number is derived in part from
 [21] looking at the projected enrollment, which in this
 [22] case for the Barrows School would be 360, correct?
 [23] A: Correct.
 [24] Q: For these excess space uses, what steps does

[1] the SBA take to oversee the uses to reach any
 [2] determination, if it does, that the space is
 [3] actually being used for those purposes at subsequent
 [4] dates?
 [5] A: Do we have a mechanism for in future years
 [6] going back into a school building to monitor whether
 [7] or not the spaces are as we originally approved?
 [8] Q: Yes, ma'am.
 [9] A: There could be two ways of doing this. One
 [10] is, what we try to do is go back into the school
 [11] after it's built or renovated.
 [12] When that is done, that might give us an
 [13] opportunity to review — to see whether or not the
 [14] building was built as we originally approved it.
 [15] We also do an audit. That is more of a
 [16] fiscal audit. So it's — it could happen that it
 [17] would be found out that a building was not built in
 [18] the way we had originally approved it.
 [19] It, again, looks at more fiscal
 [20] information, so it's less likely that that would
 [21] occur.
 [22] Really, we don't have the capacity to go
 [23] back into a building in future years and monitor
 [24] whether or not they in fact have these rooms or any

[1] other rooms that we might have approved.
 [2] I should add, however, if a community
 [3] comes back with an application for this same school,
 [4] we would look to see what work had been done
 [5] recently.
 [6] And we would look — if it had been done
 [7] through the School Building Assistance — under the
 [8] School Building Assistance Act and we had records of
 [9] it, we would go back and look to see what had been
 [10] done to make sure that it was as we originally
 [11] planned it.
 [12] Q: This excess space, if I understand your
 [13] testimony, the SBA does not require that the school
 [14] district include these delineated uses within a
 [15] proposal, but the SBA encourages those uses and will
 [16] provide reimbursement for them if the school
 [17] district elects to seek reimbursement for space
 [18] dedicated to those uses; is that correct?
 [19] A: Partially. We would — If the community
 [20] came in and said that they had no technology planned
 [21] for a particular building, we would certainly ask
 [22] why; however, this space is in excess of the maximum
 [23] allowable space.
 [24] So if they could provide technology

[1] within the maximum allowable space, we wouldn't make
[2] them build larger, but we would certainly ask the
[3] question, "Why haven't you planned for any
[4] technology? If you need additional space in order
[5] to offer that, the state is willing to allow that
[6] and also reimburse it."

[7] The same with special needs, for
[8] instance. We would say, "How do you intend to
[9] handle — Do you have a special needs population?
[10] If so, how do you intend to handle that? Is it as
[11] part of this building?" which in most cases because
[12] of integration and programmatic needs, pretty much
[13] every school building has some sort of special needs
[14] room or facility, some sort of a programmatic need
[15] for special educational space.

[16] We don't require that it be in excess of
[17] the maximum. We — They certainly can provide it as
[18] part of the maximum.

[19] Q: And if in response to your inquiries an
[20] applicant said that they had no reserve within the
[21] total space for, say, technology use and were not
[22] requesting excess space for technology, would you
[23] refuse to approve the proposal and provide
[24] reimbursement?

[1] Q: Does the SBA take a position on whether it
[2] would require a dedicated space for art before
[3] approving a project?

[4] A: Yes.

[5] Q: What is that position?

[6] A: We would expect that it would be there, that
[7] there would be a dedicated space for art.

[8] Q: Does that mean an approval would be withheld
[9] unless there is dedicated space for art?

[10] A: What it means is that I would not approve
[11] it. Again, there is a provision in the regulations
[12] that allows the commissioner and/or the board to
[13] waive any of the standards that are in the
[14] regulations.

[15] So I would view my role as flagging
[16] those. If there was a reason for them to be waived
[17] by the board and/or the commissioner, then that's a
[18] different set of issues, I guess.

[19] Q: And would the same hold true for dedicated
[20] space for music?

[21] A: Yes.

[22] Q: Any other dedicated space requirements?

[23] A: Well, I mean, I think we expect to see a
[24] cafeteria or some way to provide lunches for those

[1] A: If they did not include technology at all?

[2] Q: Correct.

[3] A: Honestly, it hasn't come up, but I would
[4] think we'd seriously question a proposal that didn't
[5] come in with some sort of space for technology, a
[6] computer lab or technology within the classroom.

[7] It just would be unbelievable that a
[8] project would come forth that had no capacity for
[9] computers.

[10] Q: Other than seriously questioning it, is
[11] there any authority within the regulations or
[12] elsewhere for the SBA to refuse to approve and
[13] reimburse such a project?

[14] A: Yes, there is.

[15] Q: Where is that?

[16] A: Well, again, in the regulations there is
[17] space standards and design standards for school
[18] buildings in the state.

[19] And what we would expect is that those
[20] design standards, space standards, are met. When
[21] they are not met, what I'd recommend to the
[22] commissioner is that he not approve it. The
[23] commissioner can overrule it, but that would be my
[24] recommendation.

[1] students. You expect if there is kindergarten that
[2] there's certain space for kindergarten.

[3] Depending on what was being planned,
[4] there is, again — in the regulations there is a
[5] fairly clear-cut provision for different types of
[6] classrooms for different grade ranges.

[7] And we would generally expect to see
[8] that or see very good reason as to why it was not
[9] needed.

[10] Q: Do you know of any policy of the SBA that
[11] would require that if the Barrows School and the new
[12] elementary school had dedicated facilities for art,
[13] music, technology, that the Town of Reading
[14] undertake renovations to its other elementary
[15] schools which did not have those dedicated spaces in
[16] order to create those dedicated spaces?

[17] A: Would the state through School Building
[18] Assistance have any policy that would require the
[19] Town of Reading to offer those in all of its
[20] elementary schools even though they're not coming to
[21] us for state assistance?

[22] Q: Please answer your question and then I'll
[23] ask you another one.

[24] A: At the present time we don't — we do not go

[1] proactively into buildings in the state and do an
 [2] evaluation to say that they have or have not the
 [3] correct number or types of rooms to handle their
 [4] educational programming.
 [5] We, again, react to what a district is
 [6] asking of us, which is state money. So when they're
 [7] asking for state money, then under our regulations
 [8] we then have the right to say, "In order to get that
 [9] money, this is what you need to do."
 [10] So we can insist upon certain things
 [11] when we receive an application, but whether we have
 [12] the right or not, I guess I would not be able to
 [13] answer that, to go into a building for which they're
 [14] not asking for any money and insist that they
 [15] renovate it in some fashion.
 [16] ~~Q: Is it the policy of the SBA; then to~~
 [17] withhold reimbursement in an instance such as this
 [18] where the Barrows school or the — and the new
 [19] elementary school have dedicated spaces for art and
 [20] music and technology, but the other elementary
 [21] schools in the system do not, if the Town of Reading
 [22] does not demonstrate to you that they are going to
 [23] adapt those other schools for those purposes?
 [24] ~~A: Again, if I understand you properly, that if~~

[1] Barrows school and the new elementary school, if the
 [2] Town of Reading was to then at some future date come
 [3] to you for reimbursement for a project relating to
 [4] one of the other elementary schools, would you make
 [5] it a requirement for that reimbursement that that
 [6] school offer the art, music or technology spaces
 [7] that were at the Barrows Elementary School?
 [8] A: Yes. If at the time they submitted their
 [9] application the same regulations are in effect, then
 [10] yes, we would expect that they would offer those
 [11] types of services.
 [12] Q: And —
 [13] A: Dedicated space.
 [14] Q: And when you say "we would expect that they
 [15] would do that," would it be the case that you,
 [16] again, would not recommend approval of that project
 [17] absent those dedicated spaces?
 [18] A: Yes. I would not.
 [19] Q: And in order to get by your recommendation
 [20] in that instance that the reimbursement not be
 [21] given, the applicant would need to — What would the
 [22] applicant need to demonstrate in order to do that?
 [23] A: You're talking about art or music, for
 [24] instance?

[1] the Town of Reading would indicate to us that
 [2] they're providing art, music in these two schools
 [3] but they had no intention of providing that type of
 [4] offering in any of the other elementary schools,
 [5] would we then say we will not provide state
 [6] assistance for these two schools?
 [7] Q: Correct.
 [8] A: No, I don't think we would refuse state
 [9] assistance for the two applications that were
 [10] presented to us.
 [11] Again, as part of a long-range plan
 [12] you'd hope that the offerings that they had for
 [13] their elementary school population would be similar,
 [14] or at least the long-range plan would be to move
 [15] towards similarity.
 [16] We understand building constraints that
 [17] districts have and financial limitations, that you
 [18] can't provide, I guess, the ideal situation
 [19] immediately, but we would look at their long-range
 [20] plan to see that there was some plan for consistency
 [21] of offerings amongst, you know, all of the, in this
 [22] case, elementary schools.
 [23] Q: Assume again that Reading is going to offer
 [24] art, music, technology dedicated spaces in the

[1] Q: Yes.
 [2] A: First of all, my answer would be no. So now
 [3] they have an opportunity to do whatever they want,
 [4] but I'm assuming they would have to make some sort
 [5] of a case to the commissioner to say that either
 [6] they don't need art or music, there is no reason
 [7] they see to offer that, or they intend to offer it
 [8] in some other fashion.
 [9] And then, as I say, depending on what
 [10] information the community would have submitted, the
 [11] commissioner has the right, then, to say yes or no.
 [12] Q: Does the SBA take any position on the
 [13] advisability of having the same architect who does
 [14] the feasibility study continue on to perform design
 [15] services for a project?
 [16] A: Do we have any opinion on that?
 [17] Q: Correct.
 [18] A: No.
 [19] Q: Let me show you another document.
 [20] MR. BIERWIRTH: We can get that marked.
 [21] (Exhibit Number 9
 [22] marked for identification)
 [23] Q: Do you see that letter, ma'am?
 [24] A: Yes.

(1) Q: This is a letter that was produced from your
(2) files. Do you know when this was — would have been
(3) submitted to the SBA?

(4) A: It's required as part of the final
(5) application.

(6) Q: And that final application is the June 1
(7) deadline?

(8) A: Yes.

(9) Q: And what is the purpose of this letter —
(10) your purpose for this letter, I should say?

(11) A: It's required as part of our regulation, but
(12) it's to indicate that the local conservation
(13) commission does not have any particular issues —
(14) the application does not adversely impact any
(15) conservation issues within the town.

(16) Q: Is that what this letter says to you?

(17) A: The Reading conservation commission is
(18) basically signing a document that indicates that the
(19) project may be developable. That's what it says.

(20) Q: Which is really different than saying that
(21) it doesn't have any issues with respect to the
(22) project; is that right?

(23) A: By having a letter from the conservation
(24) commission, it's expected that the conservation

(1) Reading conservation commission is saying that these
(2) notice of filing requirements need to be met before
(3) this project can be approved by the conservation
(4) commission; is that correct?

(5) A: I honestly don't know what they meant by
(6) that.

(7) Q: Okay. Do you know what they meant by "the
(8) project may be developable"?

(9) A: I guess I would assume that when the
(10) actual — when all of the final plans had been
(11) submitted, that this land — there is no reason why
(12) this land can't be developed.

(13) I mean, I don't know what else it would
(14) say other than...

(15) Q: Would you agree with the statement that this
(16) letter is essentially meaningless?

(17) A: It's not meaningless to me. It indicates
(18) that the conservation commission has signed this
(19) letter.

(20) And as part of our application, we
(21) require a signature from the conservation
(22) commission. They gave us a signature saying that
(23) the land — that it's able to be developed. That's
(24) what that says to me.

(1) commission does not have any issues; otherwise, we
(2) would have hoped that they would say that they had
(3) issues.

(4) Q: Go ahead.

(5) A: I was just going to say, we require that the
(6) community indicate to the conservation commission,
(7) give them the information to say that the plans are
(8) being developed, certain sites are being used.

(9) By that requirement we're involving —
(10) whether the applicant had planned to do it or not,
(11) we're requiring that the conservation commission be
(12) involved.

(13) So the fact that we got a letter from
(14) the conservation commission saying yes, they are
(15) knowledgeable about this plan, they have been
(16) involved, and they're signing a letter, indicates to
(17) us that they have not indicated to us any issues.

(18) Q: Okay. You'll see in the sentence
(19) immediately preceding the one you quoted from it
(20) says that, "When a more detailed plan and supporting
(21) information are prepared, the proposed Reading
(22) elementary school project will require a filing,
(23) formal review and approval by the Commission."

(24) You understand that in this letter the

(1) Q: That it's able to be or may be?

(2) A: I don't know if I see the distinction.

(3) Q: Okay. Let me show you this other document
(4) that was produced by the Department of Education.
(5) (Exhibit Number 10
(6) marked for identification)

(7) Q: Do you recognize that document?

(8) A: Yes.

(9) Q: What is that document?

(10) A: This is a priority list that was presented
(11) to the Board of Education, I think — I don't know
(12) if it was in August — which lists the projects that
(13) were previously placed on the priority list as well
(14) as the new applications that were received as of
(15) June — last June.

(16) Q: And for the new applications, am I correct
(17) in assuming that they begin in the ranking system
(18) under category 2 and 3 with number 84?

(19) A: Yes.

(20) Q: And you'll see in entry 103 there is an
(21) entry for Reading?

(22) A: Yes.

(23) Q: A new school. The name of the school is
(24) listed as Sunset Rock Lane, an elementary school.

[1] Can you tell me what — It says, "Years: 20." What
 [2] does that refer to?
 [3] **A:** They indicated to us they would be borrowing
 [4] for 20 years, and the amount of money — the
 [5] authorization that we would require is based on a
 [6] 20-year payback. So that's an annual
 [7] authorization — annual amount for a 20-year period
 [8] of time.
 [9] **Q:** Does that mean that if all goes smoothly,
 [10] there will be 20 payments from the state to the Town
 [11] of Reading as reimbursement for this project?
 [12] **A:** Yes. There is, as I mentioned, an audit
 [13] process. We create this priority list on the basis
 [14] of estimated cost because it is prior to
 [15] construction, oftentimes prior to actually going out
 [16] for a construction contract.
 [17] The applicant after somewhere between
 [18] three to five years after construction, they would
 [19] be required to file an audit with us, at which point
 [20] it's possible that this amount would go down or up.
 [21] It depends how the audit progresses.
 [22] So they would receive some amount for
 [23] the next 20 years, presumably this amount.
 [24] **Q:** When you say "this amount," what amount are

[1] to a certain date in order for them to receive the
 [2] rates that were in effect prior to the change in the
 [3] law.
 [4] So the timing was such that we could not
 [5] take off projects for funding and add on new
 [6] projects. It had to be presented all at once in
 [7] order to meet that grandfathering provision of the
 [8] law.
 [9] So I believe it was presented in July
 [10] for board action, and it was to approve new projects
 [11] being added on as opposed to existing projects being
 [12] taken off, if that makes sense.
 [13] Because of the budget process it was a
 [14] little confused this year, but I believe it was
 [15] presented to the board in July.
 [16] **Q:** The change in the law, did that affect the
 [17] reimbursement rates?
 [18] **A:** Not for — As long as we got these on the
 [19] priority list by July, I think it was, it did not.
 [20] **Q:** For projects which did not make this list
 [21] will it affect the reimbursement rate?
 [22] **A:** When the final budget was passed it also
 [23] included a new grandfathering situation that said
 [24] any applicants that have a vote for design or

[1] you referring to?
 [2] **A:** For the Sunset Rock Lane it would be
 [3] \$543,155.
 [4] **Q:** Annually?
 [5] **A:** Annually.
 [6] **Q:** For 20 years?
 [7] **A:** Correct.
 [8] **Q:** You said that this document was presented to
 [9] the Board of Education at a meeting?
 [10] **A:** Yes, I believe so.
 [11] **Q:** Do you know when that meeting occurred?
 [12] **A:** I'm trying to remember whether it was July
 [13] or August. It must have been August. No. I'm
 [14] sorry. I think it was July.
 [15] **Q:** Did the board act upon this list?
 [16] **A:** The board — Yes, I think they acted on
 [17] this. I was trying to remember if it was this
 [18] information or not.
 [19] Let me explain. The reason for the
 [20] little bit of confusion is, generally speaking, we
 [21] would present the priority list at the time after
 [22] the budget has been passed. That did not occur.
 [23] There was also a provision that said we
 [24] had to include districts on the priority list prior

[1] construction by December 30th of 2000, have filed an
 [2] application by June 30th of 2001, would also be
 [3] grandfathered.
 [4] At the time this was put together there
 [5] was some question. Since the budget had — I don't
 [6] believe had been passed at the time, there was some
 [7] question as to which projects were being
 [8] grandfathered.
 [9] And to make sure that the projects that
 [10] we had been working with for at least the last year,
 [11] and sometimes even prior to that, went forward with
 [12] the same expectation of percentage reimbursement
 [13] that they had been led to believe right along, this
 [14] was created prior to the passage of the budget.
 [15] **Q:** For those projects which are not voted upon
 [16] by the towns by December 30, 2000, you believe that
 [17] there will be a change in the reimbursement rate?
 [18] **A:** Yes, there will be, yes, if they do not meet
 [19] the grandfathering provision. There already is a
 [20] change in the reimbursement rates.
 [21] **Q:** And how will those new reimbursement rates
 [22] be calculated?
 [23] **A:** There was a formula put in place in the new
 [24] law, and it's based on a number of factors. There

[1] is a base rate that's calculated on the basis of the
[2] town value, property and income.

[3] In addition to that, a town or applicant
[4] might be available for certain incentive points that
[5] are specified in the law that could bring them
[6] higher than, let's say, the base rate of the lowest
[7] home would be 39 percent. So the range could be
[8] anywhere from 50 to 90 percent.

[9] Q: So it's going to remain within the 50 to 90
[10] percent range?

[11] A: Yes.

[12] Q: It's going to be an adjustment within the
[13] communities based upon a formula?

[14] A: Correct. There's a formula that arrives at
[15] a base rate and then there is — there are incentive
[16] points that can be added to that base rate based on
[17] the new law.

[18] Q: Is it anticipated that overall funding for
[19] the SBA program will go down or go up?

[20] A: That's hard to — I don't know what people
[21] anticipated. Are you asking my opinion?

[22] Q: You're the acting director of the program.

[23] A: In my opinion, it's going up.

[24] Q: At the Board of Education meeting in July,

[1] A: In other words, the next step for an
[2] applicant would be they actually start construction.
[3] The next step for us would be to actually fund them.

[4] Q: And when do you anticipate a decision on
[5] state funding will be made?

[6] A: State funding is dependent upon legislative
[7] authorization on an annual basis. Each year the
[8] legislature will hopefully give us, give the state,
[9] a certain amount of money to allow us to work
[10] through some of these projects.

[11] I don't know how long it would take to
[12] get down to all these projects. It's been ranging
[13] anywhere from three to four years.

[14] Q: Do you have any expectation as to when the
[15] first project on the list that we are interested in,
[16] the new school project numbered 103, will be reached
[17] on the list for authorization?

[18] A: Well, let's see. This year the legislature
[19] gave us about \$34 million. So if you can anticipate
[20] that — I mean, I don't know what the legislature
[21] would give every year. Let's say it's \$34 million.

[22] It would take presumably three to four years to get
[23] to the first project.

[24] Q: Then for the Barrows project, when might

[1] what action did the board take on the two items on
[2] this priority list that we are interested in;
[3] namely, 103, the Reading project on Sunset Rock
[4] Lane, and 120, the Reading project on Alice Barrows
[5] division.

[6] A: The board doesn't act on — unless
[7] specifically requested to do so, the board does not
[8] act on individual projects. It acts on a listing
[9] like this presented to it.

[10] Q: What action did the board take that would
[11] have affected those projects?

[12] A: It voted to approve the priority list, which
[13] effectively means that the new applications that
[14] were presented as of June of 2000 have been added to
[15] this priority list, which means it's working its way
[16] up to receive — these projects are working their
[17] way up to receive state funding eventually.

[18] Q: Is that the next step in the process?

[19] A: Funding?

[20] Q: Yes.

[21] A: It would be the next step in our process,
[22] yes.

[23] Q: When you say "our process," you just mean
[24] the state process for reimbursement?

[1] that be expected to be reached?

[2] A: Well, four to five years, I suppose. Again,
[3] I have no way of predicting what the legislature
[4] will appropriate on an annual basis. I'm going more
[5] or less on last year's amount.

[6] Q: Getting back to our conversation about
[7] dedicated spaces for art and music, you had
[8] indicated that there could be an opportunity for an
[9] applicant to demonstrate that due to some
[10] circumstances, their project was appropriate even
[11] though it didn't set aside spaces for art, music,
[12] per se.

[13] Would such circumstances include the
[14] fact that a town couldn't afford to staff dedicated
[15] spaces?

[16] A: I haven't heard that as a reason.

[17] Q: Would that be an acceptable reason?

[18] A: Not to me.

[19] Q: Why not?

[20] A: Well, first of all, again, I'm not in a
[21] position to waive the standards. I'm in a position
[22] that I implement the standards.

[23] So if someone were to say that they
[24] could not provide art because they couldn't afford

[1] to hire a teacher — actually, it doesn't really
[2] make any difference what their reasons are. I would
[3] not be able to accept it.

[4] Again, that would go to the commissioner
[5] of education. It might be a convincing argument for
[6] him.

[7] **Q:** But you had indicated that you are at least
[8] in a position to make recommendations; is that
[9] correct?

[10] **A:** Yes.

[11] **Q:** And I'm just wondering, what circumstances
[12] would or could exist that would be persuasive in
[13] your analysis?

[14] And I'm thinking of a situation where a
[15] school has historically provided art in the
[16] classroom setting, where an art teacher — perhaps a
[17] part-time art teacher has provided such services by
[18] bringing materials into the classroom for the
[19] students' use in the classroom.

[20] And if they could demonstrate that that
[21] adequately met the students' needs for art, would
[22] that constitute sufficient circumstances for you to
[23] make a recommendation that that project, which did
[24] not include dedicated art facilities, be approved?

[1] **A:** I think it depends on a lot of factors. It
[2] depends on whether somebody is building a new
[3] school, whether putting an addition on an existing
[4] school, renovating an existing school, how many
[5] schools they have, is art offered everywhere else
[6] but in that particular school, have they never had
[7] art, in the foreseeable future is the school
[8] committee going to submit to never having art.

[9] There are so many factors, I guess, that
[10] are involved here. The community would have to make
[11] a pretty good case to say that the school committee
[12] has deliberately voted not to offer art — a
[13] dedicated art space and will agree to that for the
[14] foreseeable future because what we would not want to
[15] see is a new school committee, new superintendent,
[16] new whoever in five years coming in and saying now
[17] this building is not any good because we don't have
[18] any dedicated art rooms or cafeteria or whatever
[19] else we might have had in our space standards, that
[20] hopefully they've been designed to say that this is
[21] what we expect to have in buildings.

[22] So we wouldn't want to say, "Don't put
[23] it in that building and five years later you can
[24] come back and we'll build you another wing in order

[1] to do that."

[2] We want to look at a long-range plan
[3] that says what's the best plan that you can put in
[4] place for the students in your particular community.

[5] And maybe somebody could convince us
[6] that the best way to offer that is through a la
[7] carte or with a part-time teacher having paint in
[8] the classroom. Maybe they could. I don't know what
[9] that would be. I can't think of anything offhand.

[10] **Q:** Is it fair to say that SBA policies and
[11] procedures prior to the enactment of these
[12] regulations — I'm pointing to Exhibit 3, which is
[13] July 2000 — favored new construction over
[14] renovation of existing buildings?

[15] **A:** Does it favor new construction over
[16] renovation of existing buildings? No. It's the
[17] exact opposite.

[18] **Q:** Okay. Tell me how that is.

[19] **A:** It places added emphasis on renovations or
[20] addition renovations to existing buildings.

[21] That, by the way, is not a change.
[22] That's an emphasis. So the regulations have always
[23] said if you're planning a new building — I'm
[24] paraphrasing — If you're planning a new building,

[1] show us why you can't use an existing building.

[2] One of the forms you had pointed out
[3] earlier says a rationale for school construction.
[4] So in other words, tell us what other buildings you
[5] may have to accommodate your particular problem that
[6] you're presenting to us.

[7] The regulations previously in effect had
[8] said that same language. And as far back as I can
[9] remember — and again, I wasn't directly involved in
[10] this program all those years, but it's always had
[11] that language. This has been — it's been
[12] emphasized in these regulations.

[13] **Q:** Perhaps my question was a little confusing.
[14] I understand your testimony. You are saying that
[15] the regime under the old regulations favored
[16] renovation over building new construction, but with
[17] these new regulations which were enacted as of July
[18] 2000 there is an even greater emphasis upon
[19] renovation as opposed to new building; is that
[20] correct?

[21] **A:** Yes.

[22] **Q:** Let me show you this memorandum.
[23] (Exhibit Number 11
[24] marked for identification)

[1] Q: Do you recognize that document, ma'am?
 [2] A: Yes.
 [3] Q: This is a memorandum from David Driscoll,
 [4] the commissioner of the Department of Education, to
 [5] superintendents and interested parties.
 [6] A: Yes.
 [7] Q: And I think if you look at that regulation
 [8] which he quotes on the first page there, that is
 [9] perhaps the regulation you were referring to?
 [10] A: Yes.
 [11] Q: And his summary of that regulation states in
 [12] the following sentence, "In short, our preference is
 [13] to reuse and renovate existing buildings whenever it
 [14] is cost-efficient to do so and can meet the
 [15] educational needs of the district."
 [16] And in fact, he says that, "Of the 58
 [17] capital construction grants awarded in fiscal year
 [18] 1999, only 13 involved the replacement of an
 [19] existing building with a new building."
 [20] Going back to the regulation itself
 [21] there — the quote there, it uses mandatory
 [22] language. It says, "Projects calling for new
 [23] construction shall be approved and funded only where
 [24] the feasibility and cost of renovating an existing

[1] alternatives. Do you know of any alternative plan
 [2] that was presented by the Town of Reading to the
 [3] SBA?
 [4] A: I don't believe — I don't know if there was
 [5] an alternative proposed. There were materials that
 [6] were submitted to us not necessarily as part of the
 [7] application but as informational to indicate that
 [8] locally there had been some alternatives discussed,
 [9] but the building committee did not indicate to us
 [10] that there was any other alternative after
 [11] investigation by the local officials, as I
 [12] understood it. The alternatives that were arrived
 [13] at were the two that were presented to us.
 [14] Q: I'm sorry. But those are not alternatives.
 [15] Those are parts of the same proposal?
 [16] A: No. That's true. I'm sorry. You're right,
 [17] it was the same proposal.
 [18] Q: So other than having an internal dialogue
 [19] about alternative proposals, how did the town
 [20] demonstrate to you that the best alternative — the
 [21] best available alternative was the alternative that
 [22] they were presenting to you?
 [23] And I'm mindful of the fact that the
 [24] regulation calls upon you to only approve and fund

[1] school building, or of acquiring an existing
 [2] building or buildings which are structurally sound,
 [3] available within the community, and adaptable for
 [4] school purposes, has been studied and the applicant
 [5] demonstrates that the proposed new construction is
 [6] the best available alternative to meet the projected
 [7] need based upon the educational program to be
 [8] housed, total cost-effectiveness, and the public
 [9] interest."
 [10] By what documents or what communications
 [11] did the Town of Reading demonstrate to the SBA that
 [12] the proposal for the new elementary school was the
 [13] best available alternative to meet the projected
 [14] need based upon the educational program to be
 [15] housed, total cost-effectiveness and the public
 [16] interest?
 [17] A: Well, I mean, they submitted the space
 [18] inventories that we received as part of the
 [19] application, they submitted the rationale for school
 [20] construction as part of the application, and they
 [21] presented their enrollment needs and their
 [22] long-range facilities plan as part of the
 [23] application.
 [24] Q: And the regulation makes reference to

[1] those projects where such a demonstration has been
 [2] made in light of the total cost-effectiveness of the
 [3] various alternatives.
 [4] A: We're aware of how many buildings the Town
 [5] of Reading has. We're aware that — In fact, we
 [6] just — we are still in the process of paying for
 [7] two buildings.
 [8] The Town of Reading might have had an
 [9] alternative that said we would participate again in
 [10] renovating or adding to those two facilities. That
 [11] was not an option, so we can rule that out.
 [12] Q: I'm sorry. If I could interrupt you, maybe
 [13] we could do it piecemeal and get to it quicker. Can
 [14] you explain why that was not an option?
 [15] A: Because we don't generally — Again, an
 [16] application is submitted to us on the basis of a
 [17] long-range educational facility plan.
 [18] For two schools there were applications
 [19] that were submitted, I believe, like in 1994. There
 [20] was an indication that those schools would be used
 [21] to house a certain population.
 [22] It was reviewed at that time. We were
 [23] paying for those — I believe we are paying for
 [24] those projects. If we haven't, we should be soon.

[1] We generally would not go back and say
 [2] after only four or five years that we're going to
 [3] renovate those same buildings again through state
 [4] assistance.
 [5] They have — There were two other
 [6] elementary schools in town, one of which we are
 [7] planning to participate in. That is one of the
 [8] proposals. There is no other building in town that
 [9] was presented to us that we're aware of.
 [10] And granted, we cannot go out and look
 [11] at every building that's in a town. We rely on the
 [12] building committee and the school committee and the
 [13] superintendent and their best judgment to present
 [14] proposals to us that say, "These are buildings that
 [15] we have within our town or within our geographic
 [16] limits that could be used as a schoolhouse."
 [17] There were no other proposals for an
 [18] elementary — that would house an elementary school
 [19] program.
 [20] **MR. BIERWIRTH:** We can go off the
 [21] record.
 [22] (Off the record)
 [23] **A:** May I clarify something that I said?
 [24] **Q:** That would be fine.

[1] **A:** This priority list, Exhibit 10 — I
 [2] apologize. I didn't read the fine print on this.
 [3] This is — When I just saw Medford I was assuming it
 [4] was the priority list we had sent to the board in, I
 [5] think I said, July.
 [6] This actually says right on it this is
 [7] being presented to the board in September. The
 [8] first page is the funded list that we're going to
 [9] give to the board in September and the second page
 [10] is the changed — the new priority list that we'll
 [11] be giving to the board in September.
 [12] They look similar in that these
 [13] projects, the Medford, New Bedford — all of the
 [14] same projects was the first page of the priority
 [15] list that we sent to the board in July, so I didn't
 [16] look at the fine print. And I apologize for
 [17] misleading you on that one.
 [18] **Q:** So has the Board of Education approved that
 [19] priority list?
 [20] **A:** Just to separate out the two — There's
 [21] actually two different documents here, which is why
 [22] I was a little confused myself.
 [23] This would have been the first page on
 [24] our old priority list because this represents the

[1] oldest projects that have been waiting for funding.
 [2] **Q:** When you say "this" —
 [3] **A:** The top page. This first page. We did
 [4] present this listing of school districts as well as
 [5] all of the other listing of school districts from
 [6] '99 and up to '99 and 2000 to the Board of Education
 [7] in July.
 [8] So it would have included this top page
 [9] plus all the new applications that were submitted —
 [10] that were submitted to us as of last June.
 [11] At that point in time the budget had not
 [12] passed, so we were not able to take any projects off
 [13] the priority list. Now the budget has been passed.
 [14] We're presenting this list. This is the ones that
 [15] we're asking the board to fund, the first page.
 [16] The remaining three — four pages — I'm
 [17] sorry — represents the projects remaining on the
 [18] priority list after funding this first page, if that
 [19] makes sense.
 [20] **Q:** I'm, of course, interested in the Reading
 [21] projects.
 [22] **A:** I just didn't want to mislead you. It is
 [23] going to the board in September.
 [24] The board has already seen this whole

[1] thing in July, but now we're separating it and
 [2] saying the first page represents those to be funded.
 [3] The remaining pages are still waiting — are still
 [4] on our priority list and are not funded yet.
 [5] **Q:** And have those remaining pages of proposals,
 [6] including the Reading proposals, have those been
 [7] approved by the board?
 [8] **A:** They have in terms of being on the priority
 [9] list, yes.
 [10] **Q:** Okay. Do they await further approval by the
 [11] board?
 [12] **A:** No. We're just giving them a new list
 [13] because we've taken some off. We just want to have
 [14] them have the most updated list, so we'll go to the
 [15] board again.
 [16] **Q:** If you could turn to your Exhibit 3. Let me
 [17] actually get the regulation for you.
 [18] (Pause)
 [19] **MR. BIERWIRTH:** You don't have a copy of
 [20] that. That's a copy of the new regulations which I
 [21] got from a different source. I believe it's the
 [22] same contact as Exhibit 3. I'll get you a copy of
 [23] the original exhibit which Ms. Lynch brought with
 [24] her today.

[1] Q: I'm looking at 38061 in parentheses. Those
[2] numbers there, which are the per square foot
[3] allowable costs for elementary schools and other
[4] schools, do those numbers represent an increase or a
[5] decrease over the previous per square footage
[6] allotments?

[7] A: Overall it's an increase, but as you see in
[8] the next subsection, the two in parentheses, it says
[9] \$15 and additional \$15 for furnishings and
[10] equipment.

[11] In the past or, let's say, last year in
[12] the old regulations for elementary schools it was a
[13] total of \$161 per square foot. This year in total
[14] it's \$163 per square foot, but \$15 of that total is
[15] more or less set aside for furnishings and
[16] equipment.

[17] Q: And that per square foot cost which has
[18] increased will be applied to new submissions; is
[19] that correct?

[20] A: Yes. It would also be applied to, just to
[21] clarify, the year in which the actual construction
[22] starts.

[23] Projects that are placed on our wait
[24] list do not — are not obliged to start their

[1] A: Yes.

[2] Q: In making your determination pursuant to
[3] your obligation under this regulation before
[4] authorizing or — I'm sorry — before approving a
[5] new construction project, do you take into account
[6] the costs of maintaining and staffing a new building
[7] as part of the public interest?

[8] A: I would say it's not something that we have
[9] a formal procedure for, but I think I mentioned that
[10] I — before I came into this job that I worked for
[11] seven years in school finance.

[12] Those seven years I was directly
[13] involved in operational expenses of school districts
[14] and the need of public school districts to maintain
[15] or towns to maintain a certain amount of spending
[16] for their operational expenses.

[17] And I think I also mentioned that part
[18] of my responsibility involves transportation policy
[19] and expenses involved in that.

[20] So my answer, I guess, would be we don't
[21] have a formal process, but based on my experience in
[22] the department and my background, it's something
[23] that with certain projects it might strike a cord.

[24] I can't say I think of it with every

[1] construction right away. They're able to if they
[2] want to, but they could wait two, three, four —
[3] they could wait until they actually receive Board of
[4] Education funding, authorization for actual money.

[5] If they do that, they would receive the
[6] cost standards that are in effect at the time that
[7] they actually start construction.

[8] Q: So for the —

[9] A: If they need it. We don't automatically
[10] give it to them. If for one reason or another the
[11] construction — Let's say they don't award the bid
[12] three years from now. Presumably the estimates that
[13] they will use are based on today's dollars, so three
[14] years from now the construction contract might be
[15] awarded and it might be higher than that, which is
[16] the reason why we increase these cost standards to
[17] begin with.

[18] If they don't start, for instance, until
[19] three years from now, we would allow them — at
[20] audit time we would adjust, if needed, the outgoing
[21] annual payments upward to reflect the higher cost.

[22] Q: If I could refer your attention back to
[23] Exhibit 11. You'll see that it makes reference to
[24] the public interest.

[1] single project that comes before me, but it's
[2] something that's in the back of my mind all the
[3] time.

[4] Q: Do you know of any instance where the SBA
[5] has refused to approve a project because of those
[6] considerations?

[7] A: Because it would increase operational costs?
[8] Q: Or for — Increased operational costs or
[9] considerations outside the bounds of the project
[10] itself but for considerations of impact upon
[11] taxpayers.

[12] A: I guess I'd respond to that by saying, the
[13] School Building Assistance Act just went through an
[14] absolute overhaul. I mentioned that earlier. There
[15] is new law, new regulations.

[16] As part of that, there's been a
[17] commission that's been established to review — to
[18] have involvement in the applications that are
[19] presented for school construction.

[20] Some of the issues that are raised
[21] sometimes is the ability of a town to support the
[22] school not just for construction costs but just, as
[23] you say, for operational costs.

[24] I think that's been recognized as an

[1] issue and one that hopefully this new law and new
 [2] regulations will begin to try to address.
 [3] I can't say for sure in the past that
 [4] the state through the School Building Assistance
 [5] Bureau has not approved buildings that ultimately
 [6] the town has difficulty in paying for either in
 [7] terms of the construction cost or the operational
 [8] costs, but it's an issue that has been recognized.
 [9] And I think this new law and new
 [10] regulation is meant to try to address that, among
 [11] other things.
 [12] Q: And the SBS intends to give perhaps more
 [13] consideration to that in the future?
 [14] A: I would think so, yes, because I think
 [15] everyone recognizes that it's an important
 [16] consideration.
 [17] On the other hand, every application is
 [18] different. You need to review it, you need to see
 [19] what makes the best sense. The local community
 [20] needs to decide what makes the best sense for them.
 [21] They know their own community better than anyone
 [22] else.
 [23] And we need to look at it in terms of
 [24] our regulations and guidelines and in terms of the

[1] public interest.
 [2] MR. BIERWIRTH: That's all I have.
 [3] L. ATTORNEY: I have no questions.
 [4] (Whereupon the deposition
 [5] was concluded at 2:55 p.m.)
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[1] ERRATASHEET
 [2] I, CHRISTINE LYNCH, do hereby certify that I
 [3] have read the foregoing transcript of my testimony,
 [4] and further certify that said transcript is a true
 [5] and accurate record of my testimony (with the
 [6] exception of the following corrections listed
 [7] below):
 [8] Page Line Correction
 [9]
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 [19]
 [20]
 [21] Signed under the pains and penalties of perjury
 [22] this day of , 2000.
 [23]
 [24] CHRISTINE LYNCH

[1] COMMONWEALTH OF MASSACHUSETTS
 [2] SUFFOLK, SS.
 [3]
 [4] I, Michelle Sylvia, Registered Professional
 [5] Reporter and Notary Public in and for the
 [6] Commonwealth of Massachusetts, do hereby certify
 [7] that CHRISTINE LYNCH, the witness whose deposition
 [8] is hereinbefore set forth, was duly sworn by me and
 [9] that such deposition is a true record, to the best
 [10] of my ability, of the testimony given by the
 [11] witness.
 [12] I further certify that I am neither related to
 [13] or employed by any of the parties in or counsel to
 [14] this action, nor am I financially interested in the
 [15] outcome of this action.
 [16] In witness whereof, I have hereunto set my hand
 [17] and seal this 25th day of September, 2000.
 [18]
 [19]
 [20]
 [21]
 [22] Notary Public
 [23] My commission expires:
 [24] June 10, 2005

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\$15 141:9, 9, 14
\$161 141:13
\$163 141:14
\$34 million 127:19, 21
\$543,155 122:3

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00 70:17; 71:1

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1 7:14; 8:2, 22; 9:12; 17:6;
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2 10:18; 11:4; 75:13;
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20 33:1, 12; 41:14; 121:1,
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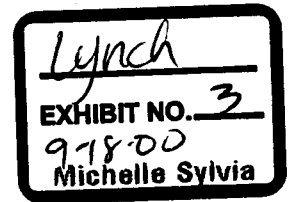
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REGULATIONS GOVERNING THE SCHOOL BUILDING ASSISTANCE ACT
OF CHAPTER 645 OF THE ACTS OF 1948, AS AMENDED

603 CMR 38.00: SCHOOL CONSTRUCTION July 2000



Section

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38.01: Authority, Scope and Purpose

- (1) 603 CMR 38.00 is promulgated pursuant to the authority of the Board stated in St.1948, c.645, § 11A to issue regulations for the implementation of that statue.
- (2) The provisions of 603 CMR 38.00 apply to all school construction, expansion, renovation, regional buy-in, and emergency repair projects for which State school building assistance funds are sought.
- (3) The purpose of 603 CMR 38.00 is to set forth the requirements which shall be met, the standards which shall be applied, and the procedures which shall be followed in the awarding of State school building assistance grants.

38.02: Definitions

As used in 603 CMR 38.00, the following terms shall have the meanings set forth in St. 1948, c.645, § 3, as most recently amended:

- Approved school project;*
- Board of education or board;*
- Capital construction project;*
- Commissioner;*
- Consolidated school;*
- Major reconstruction project;*
- Regional school;*
- Regional school building committee;*
- Total construction grant;*

The following additional terms shall have the following meanings:

Audit shall mean the determination of the final approved cost of an approved school project by the Board. The final approved costs are determined by an examination of all contracts, documents, votes and other records as required by the Department relating to a specific school project.

Construction documents shall mean plans, which, together with specifications, form the basis for construction bids. Final plans shall substantially reflect the approved preliminary drawings and shall bear the seal of an architect registered in Massachusetts.

Department shall mean the Department of Education, which administers St. 1948, c.645.

Educational Specifications shall mean a numerical and verbal description of a specific educational program for a specified number of students over a specified period of time, together with spaces needed to support the program, complete to the degree that an architect may use it as the basic document from which to create the design of the facility.

Regional school district shall mean a district comprised of two or more member towns, established pursuant to M.G.L. c. 71, § 15, c.74, § 5A, or by a special act of the Great and General Court for the purpose of operating regional schools.

Schematic Plans/Drawings shall mean floor plans identifying programmatic and other spaces, elevations, site plans, plot plans, topographical plans, plans showing the location of the proposed project in relationship to other schools in the district, and any other plans deemed necessary by the Department. Said plans and drawings shall bear the seal of an architect registered in Massachusetts.

School district or district shall mean the public schools department of any city, town, and any regional school district.

38.03: General Requirements: Capital Construction

To assure that the Commonwealth's interests in funding public school construction are safeguarded and ensure maximum attention to the cost effects of program and design decisions and materials and systems selections, all capital construction projects for which school building assistance grants are sought must meet the following requirements:

- (1) All capital constructions projects shall have an anticipated useful life of at least 50 years as a public school of the applicant school district, provided that this requirement may be waived by the Commissioner where the applicant can demonstrate that a shorter term solution is consistent with the projected enrollment levels and is cost effective or otherwise in the public interest.
- (2) The design specifications for all projects, including those for the expansion and renovation of an existing building, shall meet the applicable building code requirements established by the Executive Office of Public Safety.
- (3) Buildings shall be designed to minimize vandalism, and materials and furnishings shall be selected to minimize vandalism.

38.03: continued

(4) All facilities in an approved school project shall provide for equality of educational opportunity without discrimination on account of sex, race, color, religion, sexual orientation or national origin, and shall meet the requirements of M.G.L. c. 76, § 5 and regulations made thereunder. Projects shall comply with all applicable provisions of federal, state, and local law relative to the accessibility of programs and facilities to persons with disabilities.

(5) All projects shall have undergone review, in accordance with applicable state law and regulations, by the Massachusetts Historical Commission, the Massachusetts Commission Against Discrimination, the Secretary of Environmental Affairs, and any other department or agency of the Commonwealth required by law to review such projects.

(6) All projects shall demonstrate that they have identified any collaborative programs in the school district not currently housed in public school facilities, and have reviewed any such programs to determine if those students can be better served in the proposed new facility.

(7) The plans for all projects shall reflect, to the best of the applicant's ability, cost effective design, material, and finish decisions consistent with good engineering practice and the requirements of the school building assistance program.

(8) The plans for all projects shall reflect, to the best of the applicant's ability, attention to the 21st century technological needs of students, faculty, and school staff.

(9) In the interest of cost effectiveness, the applicant shall carefully weigh the effects of initial capital costs against maintenance costs over the life of the building in order to reduce such maintenance costs. Life-cycle cost estimates for all technically feasible energy systems as defined in St. 1976, c. 433, shall be considered during the preliminary design stage in order to ensure that the energy system with the lowest life-cycle cost estimate will be identified in accordance with the provisions of St. 1976, c.433.

(10) Projects calling for a new school construction shall be approved and funded only where the feasibility and cost of renovating an existing school building, or of acquiring an existing building or buildings which are structurally sound, available within the community, and adaptable for school purposes, has been studied and the applicant demonstrates that the proposed new construction is the best available alternative to meet the projected need based upon the educational program to be housed, total cost effectiveness, and the public interest.

(11) Any city, town, or regional school district which applies for a grant pursuant to 603 CMR 38.00 and which has, prior to application, sold, leased or otherwise removed from service any schoolhouse operated by said city, town, or regional school district shall be eligible for such grant only if the Commissioner determines that the grant is not for the purpose of replacing a schoolhouse sold, leased, or otherwise removed from service in the past ten years or that the need for the project covered by the grant could not have reasonably been anticipated at the time that such schoolhouse was sold, leased, or otherwise removed from service.

(12) The applicant shall provide a qualified construction manager to oversee all capital construction projects.

38.03: General requirements: Capital Construction cont.

(13) Applicants shall implement containment procedures for dusts, gases, fumes, and other pollutants created during renovations/construction as part of any planned construction, addition to, or renovation of a school if the building is occupied by students, teachers or school department staff while such renovation and construction is occurring. Such containment procedures shall be consistent with the most current edition of the "IAQ Guidelines for Occupied buildings Under Construction" published by the Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA). All bids received for school construction or renovations shall include the cost of planning and execution of containment of construction/renovation pollutants consistent with the SMACNA guidelines.

38.04: Site Standards: Capital Construction

The site on which a proposed capital construction project is to be built shall conform to the following requirements:

- (1) The site selected shall be chosen on the basis that it will meet the educational need and minimize any possible adverse educational, environmental, social, or economical impact upon the community. Such adverse impact includes, but need not be limited to: the need to provide new sewers, roads, transportation facilities, water supply, water connections, and the like to the site; existence of soil conditions which will cause site development costs to be greatly increased; curtailment of the approved educational program.
- (2) The site shall be so located as to serve efficiently and safely the school population it is intended to serve, and shall be of sufficient size to accommodate the building and planned future additions thereto, the agreed upon outdoor educational program, needed parking areas, bus turnarounds delivery areas, required setbacks and planned aesthetics.
- (3) The site shall be reasonably free from olfactory, auditory, visual, and noxious pollution, or should be capable of being made so prior to commencement of construction.
- (4) Proximity to other facilities such as libraries, museums, parks, natural resources, nature study areas, and business, which would enhance the proposed educational program shall be carefully studied and strongly encouraged.
- (5) The site shall be owned by the applicant school district, or be under control of the school district pursuant to a lease which assures the school district exclusive jurisdiction and control of the land for the anticipated useful life of the school to be constructed thereon.

38.05: Program Standards: Capital Construction

(1) **Program Design** A school project shall be designed based upon an approved program for a specified number of students for a typical academic week. The program model shall be approved by the district school committee, and shall comply with requirements of law and Board regulations relative to curriculum, program, student learning time and length of school year. In addition, the project design may contain provision for community programs approved by the district school committee or other local agency or office having lawful control of community programs. Community school spaces shall be included within the gross square footage established in 603 CMR 38.00 unless the Commissioner specifically approves additional space based on a demonstrable community need that cannot be accommodated

38.05: Program Standards: Capital Construction

within those limitations. Swimming pools and skating rinks shall not be eligible for reimbursement. Field houses shall only be eligible for reimbursement to the same extent as gymnasiums.

(2) **Planned Enrollment** The Department and the applicant shall agree on a planned enrollment for the school project. The applicant shall provide adequate supporting documentation as requested by the Department. The planned enrollment shall be consistent with demonstrable need, and shall not include incoming school choice students.

(3) **Per Pupil Space Allowance** The Commonwealth shall share in construction of school facilities within the following limitations in gross square footage, determined according to the method of computation contained in 603 CMR 38.05(6):

- (a) Elementary Schools - not more than 115 gross square feet per pupil in planned enrollment.
- (b) Middle Schools/Junior High Schools - not more than 135 gross square feet per pupil in planned enrollment.
- (c) Academic High Schools - not more than 155 gross square feet per pupil in planned enrollment.
- (d) Vocational Technical Schools - not more than 225 gross square feet per pupil in planned enrollment.
- (e) Comprehensive High Schools - not more than 225 gross square feet per planned vocational technical student enrollment plus not more than 155 gross square feet per planned academic pupil enrollment.

(4) **Space Allowance by Program Activity** The standards set forth in Tables 1 through 3 shall be followed in planning school construction and expansion for elementary, junior high/middle, and secondary schools for which State school building assistance funds are sought.

TABLE 1
ELEMENTARY SCHOOL PROGRAM STANDARDS

Program spaces for an elementary school shall be shared in by the Commonwealth if they fall within these ranges. A variation of 5% is permitted.

All spaces exclusive of storage	Minimum - Maximum (net area)
Classrooms -(Grades 1-8)	900 - 1000 square feet
Pre-Kindergarten & Kindergarten (with self-contained lavatory)	1200 - 1300 square feet
Special Education and Collaboratives	as needed
Art	1000 - 1200 square feet
Music 1. Practice Rooms 2. Ensemble Rooms	1000 - 1200 square feet 75 - 130 square feet up to 300 square feet
Cafeteria	15 square feet per pupil computed to accommodate not more than \square nor less than the planned enrollment.
Kitchen	1300 square feet for the first 300 students; one square foot per each additional meal.
Gymnasium 1. 12+ classroom school/separate gymnasium, first 2 teaching stations 2. Smaller school, all purpose room or third teaching station and subsequent teaching stations.	3000 square feet per station minimum 2000 - 3000 square feet each station
Administration	up to 800 square feet
Health Area	300 - 750 square feet
Guidance Area	as needed
Small Group and Seminar	up to 500 square feet each
Computer Labs/Work Stations	30 square feet per work station
Media Center/Library Reading Room	1800-3000 square feet

TABLE 2
JUNIOR HIGH AND MIDDLE SCHOOL PROGRAM STANDARDS

Program spaces for junior high and middle schools shall be shared in by the Commonwealth if the fall within these ranges. A variation of 5% is permitted.

All spaces exclusive of storage	Minimum - Maximum (net area)
Classrooms 1. Small Group Seminar 2. Regular Interchangeable (20-30 pupils) 3. Large Group (80-125 pupils) 4. Storage	300 - 500 square feet 750 - 850 square feet 1500 - 2000 square feet as needed
Computer Labs/Work Stations	30 square feet per work station
Art 1. General Area (storage not incl.) 2. Specialized Areas (storage not incl.) 3. Storage	1200 - 1400 square feet 600 - 1200 square feet min. 100 -200 square feet/art room
Music 1. Rehearsal(band, chorus, etc.) 2. Theory & Choral 3. Practice Rooms 4. Ensemble Rooms 5. Storage	1400 - 1600 square feet 900 - 1200 square feet 75 -130 square feet up to 200 square feet each as needed
Office Technology	1200 -1400 square feet
Family & Consumer Science	1400 -2400 square feet
Life Management Skills(incl. computer & demo space)	2400 -2600 square feet
Technology Education 1. Unified Lab 2. Technical Illustration(computer aided drafting)	up to 100 square feet/pupil each lab. Min. 2000 square feet 1200 -1400 square feet
Science	1000 - 1200 square feet
Physical Education (2 stations) Additional teaching stations	6000 - 7500 square feet up to 3000 square feet each

TABLE 3
SECONDARY SCHOOL PROGRAM STANDARDS

Program spaces for a secondary school shall be shared in by the Commonwealth if the fall within these ranges. A variation of 5% is permitted.

All spaces exclusive of storage	Minimum - Maximum (net area)
Classrooms 1. Small Group Seminar 2. Regular Interchangeable (20-30 pupils) 3. Large Group (80-125 pupils) 4. Storage	300 - 500 square feet 750 - 850 square feet 1500 - 2000 square feet as needed
Computer Labs/Work Stations	30 square feet per work station
Art 1. General Area (storage not incl.) 2. Specialized Areas (storage not incl.) 3. Storage	1200 - 1400 square feet 600 - 1200 square feet min. 100 -200 square feet/art room
Music 1. Rehearsal(band, chorus, etc.) 2. Theory & Choral 3. Practice Rooms 4. Ensemble Rooms 5. Storage	1400 - 1600 square feet 900 - 1200 square feet 75 -130 square feet up to 200 square feet each as needed
Office Technology	1200 -1400 square feet
Family & Consumer Science	1200 -1400 square feet
Technology Education 1. Unified Lab 2. Technical Illustration(computer aided drafting)	up to 100 square feet/pupil each lab. Min. 2000 square feet 1200 -1400 square feet
Science 1. Lecture-Laboratory 2. Demonstration/General Science	1000 - 1200 square feet 900 - 1000 square feet
Physical Education 1. Gymnasium (2 stations) 2. Additional teaching stations	6200 - 7500 square feet 1200 - 3500 square feet
Cafeteria	15 square feet per pupil computed to accommodate not more than <input type="checkbox"/> nor less than the planned enrollment
Administration	up to 1500 square feet
Guidance	800 - 1000 square feet
Health	500 - 1000 square feet
Library (Instructional Materials Center) Reading room-up to 15% of enrollment x 40 square feet - maximum. (Other areas may be added, if planned, i.e., office, conference, etc.)	
Auditorium Seating for not more than the planned enrollment or more than 1000 persons. If the planned enrollment exceeds 1000, allow 7 square feet per person maximum.	

(5) Space Allowance Exceptions:

- (a) The Commissioner may approve reasonable departures from the gross square footage requirements to accommodate proposed additions to existing school buildings when such departures will be consistent with the intent of 603 CMR 38.00 to provide adequate, safe, cost effective and programmatically sound school projects.
- (b) The applicant shall assure that any capital construction project provides adequate and appropriate space to accommodate early childhood programs as appropriate and students with special needs or linguistic minority students who lack for space are not currently served in regular public school facilities. The Commissioner may grant an exception to the space allowance limitations if needed to accomplish these purposes.
- (c) In the case of open plan buildings, the commissioner may approve reasonable variations from the size of the listed program spaces with adjustment in gross project allowances where it can be demonstrated that the planning for such facility reflects good educational practice.
- (d) Spaces for special education classes/programs will receive special consideration, in the discretion of the Commissioner, notwithstanding the gross square footage allowances contained in 603 CMR 38.00.
- (e) Other exceptions to the minimum and maximum program space allowances may be granted at the discretion of the Commissioner or the Board.

(6) Space Computations. Gross and net square footage and perimeter measurements shall be reported with all preliminary, revised, and final drawings submitted for approval, and shall be computed according to the following methods:

- (a) Gross Square Footage The gross area of a building is the sum of all areas of the several floors, including mezzanines, stairwells, and basements having a floor slab and 7'6" or more headroom. Additionally covered walkways, roofed-over areaways or courts, and similar areas shall be included in the gross area at one half their actual area. All horizontal measurements shall be taken from the exterior face of enclosing walls, at the plane of the floor. The following shall not be included in gross area computation: basements having no floor slab or less than 7'6" headroom; pipe trenches; retaining walls; roof overhangs; exterior terraces; and courts open to the sky.
- (b) Net Square Footage The net area of individual spaces shown on approved educational specifications and included in the plans shall be measured from the inside face of enclosing walls and partitions. Wall thickness shall be excluded.
 - 1. "Basic Instructional Spaces" (classrooms) shall include the net area of all nonspecialized and special subject teaching areas, including directly-related preparation and equipment storage rooms. Do not include the area of such spaces as ancillary toilets, wardrobes, and teachers' supply closets.
 - 2. "Miscellaneous Educational Space" shall include the net area of miscellaneous specified or required educational space, such as gymnasium locker rooms, cafeteria dining areas, kitchens, administration offices, health service unit, guidance quarters, teacher workrooms, storage, community rooms and serving rooms.
 - 3. "Other" square footage is determined by subtracting "Basic Instructional" and "Miscellaneous Educational" spaces, determined as above, from the calculated gross area. Thus, "Other" will include wall thickness; corridors, stairways, and other circulation spaces; general storage areas; custodians' closets and receiving areas; toilets; and heating and mechanical spaces.

(c) *Perimeter*. The perimeter of a building shall be the sum of the lineal length of the enclosing walls (including piers, wall extensions and courts) taken at the plan of the floor level, including finished basements.

38.06: Cost Standards: Capital Construction

(1) Grants for capital construction shall be based on the following amounts per square foot for the cost of the general contract, design fees, allowable site preparation, site development, insurance, construction supervision, costs related to the issuance of notes and bonds, contingency amounts, and miscellaneous costs.

Elementary School	\$148.00 per square foot
Middle School/Junior High School	\$158.00 per square foot
High School	\$170.00 per square foot
Vocational School	\$182.00 per square foot

(2) Grants for capital construction projects may also include not more than \$15.00 per square foot for furnishings and equipment

3) For the purpose of calculating the state construction grant, the estimated approved cost and the final approved cost for a school project shall not exceed the cost that would result by multiplying the gross square footage per pupil by the planned enrollment and by multiplying the result by the established cost per square foot as set forth in paragraphs (1) and (2) of this section. Said costs per square foot shall apply to projects for which the general contract work begins on or after June 1, 2000. The Commissioner may recommend to the Board that his requirement be waived in exceptional circumstances. If the project cost estimate exceeds the approved cost limit and the applicant believes a waiver is warranted, the applicant must submit a waiver request before soliciting construction bids. Waiver requests submitted the general contract has been awarded should be limited to extraordinary situations which arise during construction and which could not have been reasonably anticipated during the design process. All waiver requests must include documentation demonstrating that the bid process was or will be fair, open, and cost-effective.

(4) The provisions of 603 CMR 38.05 and 38.06 shall not be deemed to preclude a city, town or regional school district from including in an approved school project such facilities or design as it determines, in addition to those required to conform to minimum program standards and costs. The cost of such additional facilities and design shall not, however, be included in the estimated approved cost and final approved cost on the basis of which the state construction grant is calculated.

(5) In determining the allowable costs for an addition, the Board shall consider the nature of the approved spaces to be added, the nature of the required equipment and other furnishings, the relationship of the addition to other elements of the school and any factor which would cause the cost of the addition to exceed substantially the cost standard established for new construction, and may in its discretion allow the increased costs or a lesser amount. The intent of 603 CMR 38.06(5) is to make allowance for the varied nature of additions to school buildings.

38.06: Cost Standards

(6) Capital construction projects may include the renovation and rehabilitation of existing buildings to accommodate changes in educational use, compliance with building code and other legal requirements, and such other work as may be approved by the Commissioner. In making such determination, the Commissioner shall take into account the age of the building, its current condition, past school construction funding for the building, the adequacy of the applicant's maintenance program, and any other relevant factors. The Commissioner shall establish appropriate cost limits for the renovation and rehabilitation portions of a capital construction project, subject to the overall limitations of 603 CMR 38.06 (3).

(7) The value of a facility to be acquired shall be determined by the Board on the basis of the reports of at least two fee appraisers registered with the Attorney General and retained by the applicant. The final approved cost of combined acquisition, renovation and conversion work shall not exceed the equivalent costs in new construction.

38.07: Major Reconstruction Projects

(1) The school facility in which a major reconstruction project is proposed must be generally capable of supporting a modern educational program. The facility must have teaching stations and support areas in sufficient size, number, and condition to be recognized as a reasonably modern school building and must be structurally sound.

(2) The school facility in which a major reconstruction project is proposed must be necessary to meet the school district's overall facility needs, and must have an anticipated term of use as a public school building of the district of at least seven years after completion of the repairs project.

(3) All construction documents, including plans and specifications, related to a proposed major reconstruction shall bear the stamp of approval and signature of the building inspector in whose jurisdiction the replacement, renovation, or modernization will take place.

(4) Projects that may qualify for major reconstruction projects grants include: a project to eliminate a structural or environmental safety hazard; a project to make a building accessible to persons with physical disabilities; a roof replacement or reconstruction project; the replacement or improvement of a heating system; a project to make a building more energy efficient. Specific approval requirements applicable to the listed projects may be established by the Department.

(5) Information concerning the specific approval requirements for a particular type of major reconstruction project, and the documentation, which must be submitted in support of the application for a grant for such a project, shall be available from the Department.

38.08: Regional Buy-In Grants

(1) Any city or town newly admitted to an existing regional school district may be reimbursed for part of the buy-in amount that the city or town is required to pay for admission to the regional school district.

38.08: Regional Buy-In Grants

- (2) The Board will determine the amount of the grant based on information and documentation concerning the costs of constructing, equipping and financing the building(s) which is the subject of the buy-in, including any additions and renovations to the original building(s), State funding of those costs, student enrollment in the building(s), and the reimbursement percentage applicable to the new member town under St. 1948, c. 645, § 12.
- (3) The grant shall be paid in equal annual installments made over the term specified in the agreement between the regional school district's member municipalities, as approved by the Commissioner.

38.09: Emergency Reconstruction Grants

- (1) Subject to appropriation, the Board may provide emergency school building assistance grants to assist in the repairing or reconstructing school buildings which are damaged as a result of a fire, flood, earthquake, hurricane, blizzard, or other unavoidable destructive occurrence.
- (2) In the event of such an emergency, officials of the city, town, or regional school district shall contact the Commissioner forthwith, and the Department shall assign a representative to evaluate the damage, obtain a building inspection, and meet with local officials to determine the nature and extent of the emergency repair or reconstruction required.
- (3) Depending on the nature and extent of the damage and the type of repair or reconstruction necessitated thereby, the Department shall determine whether the capital construction project or major reconstruction project application shall be filed in support of the emergency reconstruction grant request.
- (4) The amount of any emergency reconstruction grant shall be determined in accordance with the reimbursement percentages and total construction grant computation formula set forth in St. 1948, c. 645, § 3 and § 12.

38.10: Application Procedures

- (1) Applications for State approval of and funding assistance for school projects may be submitted to the Department at any time of the year.
- (2) For the purpose of 603 CMR 38.00 there shall be four types of applications:
 - (a) An ***application for approval and funding of a capital construction project***, which shall consist of an updated building inventory and long-range facilities plan for the district; a feasibility study evaluating the various options for meeting the buildings needs; schematic plans/drawings and educational specifications for the proposed project; required municipal and state approvals; construction documents; and other documentation required to demonstrate that the planning for a proposed project is complete throughout the construction document phase and meets the approval requirements set forth in 603 CMR 38.03, 38.04, 38.05, and 38.06. An application form and check list of required submissions will be provided by the Department. Applications materials may be submitted to the Department in stages as the planning for the project progresses. To qualify for State funding, the application for a capital

38.10: Application Procedures

- construction project must be complete, and the Commissioner must have determined that the project meets all program requirements, prior to any construction start.
- (b) An **application for approval and funding of a major reconstruction project**, which shall consist of a single submission providing detailed design, material and cost information concerning the specific repair proposed. An application form and check list of required submissions will be provided by the Department. The application shall identify each distinct repair proposed for a give school building, *i.e.* roof, heating system, handicapped access, etc. to qualify for State funding, the application for a major reconstruction project grant must be filed with the Department, and the Commissioner must have determined that the project meets all program requirements, prior to any construction start.
- (c) An **application for a regional buy-in grant**, which shall consist of a completed application form provided by the Department, a copy of the amended regional agreement expanding the district to include the applicant city or town, and any other information requested by the Department pursuant to the provisions of 603 CMR 38.08.
- (d) The **initial application for an emergency reconstruction grant**, which shall consist of a written request from the applicant city, town, or regional school district in need of emergency school building assistance. Upon initial review the emergency circumstances giving rise to the grant request, the Department shall determine what additional application materials must be submitted in support of a particular emergency grant request.
- (3) As a first step in the application consideration process for all capital construction projects the Department shall conduct a building needs conference to evaluate the need for a proposed project and ensure that all alternatives for satisfying the need are fully studied. Said study shall include a review of any appropriate non-construction alternatives, whether or not such alternatives are eligible for state reimbursement. The building needs conference shall be attended by representatives of the applicant including, but not limited to: one or more representatives of the school committee; one or more members of the building committee, where applicable, or in the case of cities, a representative of the office or body authorized by law to construct school buildings in that city; and the superintendent of schools or his designee.
- (4) Following the submission of the district's building inventory and long-range plan, enrollment projections, feasibility study, educational specifications, schematic drawings, and other such information as a may be required by the Department, the Commissioner will make a preliminary determination on the adequacy of the proposed project's size, scope and location. Prior to such determination, the Commissioner may require the study of additional building construction alternatives or project locations.
- (5) Completed school project applications shall be reviewed by the Department for educational adequacy and for compliance with the requirements and standards set forth in the provision of 603 CMR 38.00 applicable to the type of project for which the applicant seeks funding, and for compliance with the priorities set fort in St. 1948 c. 645, § 10 as amended.
- (6) As part of an application for a capital construction project or major reconstruction project grant, the applicant shall submit certification of city, town, or regional school district approval of the funding required to cover the estimated cost of the proposed project.

38.10: Application Procedures

(7) The Commissioner shall consult with the secretary of administration and finance, the deputy commissioner of revenue for local services, the commissioner of capital asset management, the director of housing and community development, the secretary of environmental affairs, and the commissioner of public health, or their respective designees, with respect to each application for a capital construction project. Said officers shall be given the opportunity to review all application materials, to request additional information relating thereto, and to provide advice and comment to the Commissioner with respect to whether such proposed projects are in the best interests of the Commonwealth.

(8) The Commissioner shall notify each applicant in writing of his determination for each proposed project. The Department will maintain a list of projects, which have been determined by the Commissioner as meeting all program requirements and which are awaiting funding. Projects will be placed on the waiting list in accordance with the priorities established by statute, and within each priority category based upon the order in which they were approved.

(9) The Commissioner's determination and placement on the waiting list do not constitute a guarantee of project funding. Any applicant with a project on the waiting list may commence construction prior to the grant award but does so at its own risk. Only a grant award provides a funding commitment by the Commonwealth. The Board will award grants to projects on the waiting list as funding authorization is available.

(10) Projects for which a higher reimbursement rate is requested pursuant to M.G.L. c.15, § 11 and St. 1948, c.645, § 12(b), as amended, shall be presented to the Board for approval prior to being placed on the waiting list.

38.11: Grant Awards

(1) The Board shall annually award school construction grants with the amounts authorized in the general appropriations act or any supplemental appropriation acts. Grants shall be awarded to projects in the order in which they were placed on the waiting list, provided that a project may be bypassed if it does not appear that the applicant will be able to start construction in the current fiscal year.

(2) As communities award construction bids, they must send the Department an amended financial form along with bid documentation. In cases where the original estimate exceeds the bids, the portion of the authorization no longer required for a given project may be released and accrued so that the Board can award additional construction grants.

(3) Minor changes in the final school construction documents may be made with the approval of the Commissioner in cases where an appreciable amount of time has elapsed between document preparation and the Board award of a construction grant where such changes are necessitated by evolving educational needs and changes in municipal building code. In cases of major changes in the scope or design of the project, the Commissioner may recommend that the grant be rescinded and a new application filed.

(4) Upon determination of the final approved cost of the project, the Board may recompute the maximum cost limitations using the cost standards in effect on the date that work began under the general contract, and the grant may be adjusted accordingly.

38.12: Payment Requirements

(7) Every contractor and subcontractor working under the terms of any contract for construction on an approved school project shall file weekly payroll records with the awarding authority in the form described in M.G.L. c. 149, § 27B. The awarding authority shall withhold payment for any construction work performed on an approved school project for so long as the payroll records for the work performed are not filed with the awarding authority.

(8) In the event payments have been withheld, subject to completion of audits; payment shall resume in the fiscal year following the fiscal year in which the audit has been completed.

(9) In the case of approved school projects that are part of the Department of Education approved plan to eliminate racial imbalance under the provisions of M.G.L. c.15, §1I, the Board may, upon request of a city, town or regional school district eligible under the provisions of M.G.L. c.15, §1I for additional assistance, make payments due to such city, town or regional school district on an unequal annual payment schedule, said schedule to be subject to the approval of the Board.

(10) Each grant recipient shall submit to the Division of Capital Asset Management within 90 days after the completion of the general contract a contractor evaluation form for the project general contractor. A copy of the evaluation form shall be included in the audit materials submitted pursuant to 603 CMR 38.12(3)(b).

(11) Each grant recipient shall notify the Department within 90 days if bonds or notes issued for an approved school project are refunded pursuant to M.G.L. c.44, § 21A.

38.13: Waivers

The Board may, upon written application and with the recommendation of the Commissioner, grant a waiver of part or all of the requirements of 603 CMR 38.00 for good cause.

38.14 Minimum Spending Requirements for Building Maintenance

(1) Every operating school district shall, in fiscal year 1999 and each succeeding year thereafter, expend funds for the purposes of utilities and ordinary maintenance and for extraordinary maintenance in an amount not less than fifty percent of the district's combined foundation budget allotment for those categories for said fiscal year.

(2) Effective July 1, 1999, no school project will be authorized for funding unless the district is in compliance with the requirements of 603 CMR 38.14(1).

(3) If a district fails to maintain compliance with the requirements of 603 CMR 38.14(1), payments for all projects authorized on or after July 1, 1999, will be suspended for a period of one year, beginning on the July 1 next following the Commissioner's determination of non-compliance. Following such suspension, payments may be resumed with the joint approval of the Commissioner and the deputy commissioner of the division of local services of the Department of Revenue, upon their finding that the district has adequately redressed its noncompliance.

38.12: Payment Requirements and Procedures

(1) All capital construction projects for which the Board has authorized funding shall commence construction on or before June 1 of the fiscal year in which the school building assistance grant was authorized.

(2) The first payment of the grant for approved school project shall be made in the fiscal year following the Board approval or start of construction, whichever is the later date.

(3) The following procedures shall be used after receipt of a school building assistance grant award notice to ensure that the payment schedule will begin in a timely manner and will not be disrupted during the life of the grant.

(a) The Department shall notify all grant recipients of Board approval. The grant announcement will include a form labeled the "Request for Project Number". This form must be completed and returned to the Department along with the most recent financial information (SBAB-3, Form F) to institute payment schedule. Failure to submit this request on or before December 15 of the fiscal year following the fiscal year of Board approval will result in a delay of the entire payment schedule by one fiscal year.

(b) The Board shall determine the final approved project cost within two years of the occupancy of new space, or in the year of the third payment, whichever occurs later. This audit shall be performed by Department staff. Subsequent payments will be adjusted to reflect the actual approved project cost on an equal annual payment schedule to begin in the fiscal year following the fiscal year the audit is performed. Audit materials are due in the Department by December 1 of the fiscal year in which the audit is scheduled.

(c) Failure of the grant recipient to provide the Department with satisfactory audit materials will result in the suspension of the payment schedule effective July 1 of the fiscal year following the fiscal year the audit is due.

(d) Suspended payment schedules shall not be reinstated until the fiscal year following the fiscal year in which the audit is performed.

(e) The city, town, or regional school district shall maintain all records related to any school construction project for seven years after the final cost are determined, and shall retain the final project drawings for as long as the completed facility is in service as a public school.

(4) During construction, staff of the Department may visit the construction site to determine that the project is being built as approved. A review of the completed facility, in operation, shall also be made by the Department prior to acceptance of the final, audited project cost.

(5) All construction contracts and subcontracts shall be in conformity with all applicable provisions of federal, state and local law, and where in the judgment of the Board, violations of such laws are deemed to exist, the Board may withhold funds due on account of the project until such violations are remedied.

(6) All construction contracts shall be in conformity with applicable law and regulations related to minority hiring. Every state-assisted contract for a school project including subcontracts shall include the Commonwealth's Supplemental Equal Employment Opportunity/Anti-Discrimination and Affirmative Action Program as part of the contract. Compliance with and enforcement of all safety and building code provisions, shall be the responsibility of the applicant.

(4) The provisions of 603 CMR 38.14 may be waived by joint approval of the Board and the deputy commissioner of the division of local services of the Department of Revenue, in instances of unanticipated or extraordinary changes in maintenance spending. Such circumstances may include, but are not limited to: opening of a new school building; closing of an existing building; completion of a major renovation project; significant reduction in utility costs; significant maintenance work performed by municipal or district employees; significant maintenance work performed under energy management contracts; or significant numbers of students tuitioned to other districts.

REGULATORY AUTHORITY

603 CMR 38.00: M.G.L. c.15; St. 1948, c.645, as amended.

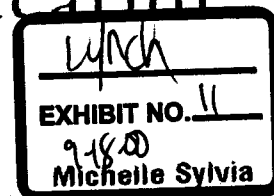
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"We help children learn."

Massachusetts Department of
Education

TO: Superintendents and Interested Parties
FROM: David P. Driscoll, Commissioner
DATE: July 1, 1999
Subj: SCHOOL BUILDING ASSISTANCE PROGRAM -- POLICIES ON THE RE-USE AND RENOVATION OF EXISTING SCHOOL BUILDINGS



I have been asked by several superintendents, legislators, and municipal officials to explain the policies of the Department's school building assistance (SBA) program regarding the re-use and renovation of existing school buildings. These policies are based on the SBA enabling statute (Chapter 645 of the Acts of 1948, as amended) and the program regulations adopted by the Board of Education (603 CMR 38.00). If you are planning a capital construction project in the near future, I would ask you to share this information with your school committee and appropriate municipal officials.

Our basic policy is set forth in 603 CMR 38.03(10):

Projects calling for new school construction shall be approved and funded only where the feasibility and cost of renovating an existing school building, or of acquiring an existing building or buildings which are structurally sound, available within the community, and adaptable for school purposes, has been studied and the applicant demonstrates that the proposed new construction is the best available alternative to meet the projected need based upon the educational program to be housed, total cost effectiveness, and the public interest.

In short, our preference is to re-use and renovate existing buildings whenever it is cost efficient to do so and can meet the educational needs of the district. Of the 58 capital construction grants awarded in FY99, only 13 involved the replacement of an existing building with a new building.

Our expectation is that state-funded school construction projects will have a useful life of 50 years, meet all applicable building codes and accessibility requirements, provide for current and future technology needs, and include adequate space for classrooms and other support functions as defined in 603 CMR 38.05. We are always willing to consider minor deviations from these published requirements, particularly if they are needed to allow the re-use of an existing building. However, it would be unfair to the students who will use the building, and the taxpayers who will pay for it, if the proposed deviations are so substantial that the result is an inadequate facility.

With respect to costs, renovation projects qualify for the same reimbursements, and are subject to the same cost limits, as new construction. Often the actual costs of a renovation project far exceed the initial estimates, due to unforeseen construction problems. For planning purposes, we often use a 50% guideline: if the estimated cost of a renovation project is less than 50% of the allowable cost limit, it clearly makes economic sense. Above 50%, the likelihood of construction cost overruns and higher lifetime maintenance costs makes the economic case for renovation less clear. But again, the cost limit for state reimbursement for renovation projects is the same as that for new construction projects, and is based on the costs per square foot set forth in 603 CMR 38.06. If the actual cost exceeds the SBA cost limit, the district can still undertake the project, but the state will not provide any reimbursement for costs in excess of the limit.

Many older school buildings, particularly those built in the early 1900's, have unique architectural qualities, but they often cannot be renovated into 21st century schools at a reasonable cost. In these cases, communities should consider alternative sites for a new school building and allow the existing building to be re-used for other purposes. Old school buildings have been successfully recycled as administrative offices, early childhood education centers, recreation facilities, and even housing.

An ancillary issue which often arises when studying the possible renovation of existing buildings is the size of the site. The program regulations (603 CMR 38.04) are fairly broad, stating that the site "will meet the educational need

and minimize any possible adverse educational, environmental, social, or economic impact on the community." Ideally, a school building site should have adequate space for the proposed building and any planned future additions; playgrounds and playing fields; and parking, bus turnaround, and truck delivery areas. The following site sizes are recommended but not required:

Elementary site: 10 acres plus 1 acre for each 100 seats

Middle/junior high site: 15 acres plus 1 acre for each 100 seats

High school site: 20 acres plus 1 acre for each 100 seats.

Many existing school buildings, particularly in congested urban areas, are on much smaller sites, and options for other sites in the neighborhood may be limited. As with all other SBA program requirements, our intent is to be flexible in helping districts evaluate alternatives, recognizing that siting decisions often present difficult choices with no ideal solution. In any event, the site must be under the clear control of the school committee, either by title or long-term lease, for the anticipated life of the building.

Districts are encouraged to study all feasible alternatives and options with respect to sites and the re-use of existing buildings. No reasonable alternative should be excluded from study because of a belief that the Department will not approve it. Our SBA staff is available for consultation during the planning process and can provide guidance on evaluating different alternatives with respect to the SBA program regulations. If the district's preferred approach requires a waiver from any of the SBA program standards, we will try to give you timely feedback as to whether such a waiver is likely to be granted, and if not, the specific reasons.

For further information on these issues or on the SBA program in general, please contact SBA program administrator Jim Anderson at 781-388-3300 ext. 842, or by e-mail to janderson@doe.mass.edu.