

Guide for Obtaining Special Education Program Support for New, Replacement, Renovated, or Expanded School Facilities

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Background and Purpose

The purpose of this guide is to assist local education agencies (LEAs) during the evaluation of certain special education (SE) programs prior to the start of a major construction or renovation project in order to obtain a letter of support for the project.

The Maryland State Department of Education (MSDE) requires the LEA to obtain a letter of support from the Assistant State Superintendent, Division of Early Intervention and Special Education Services (DEI/SES) and/or their designee for all major public school construction projects that include SE programs serving students in a location other than their regular school attendance area.

This location has historically been a separate, stand-alone school, and more recently has been co-located within a comprehensive school. Moving forward, for the purpose of this document, the following terms will be used:

- “Regional SE program” means a special education service location co-located in a comprehensive school that provides special education programs and related services to students from outside their regular attendance area, and
- “Separate SE school” means a stand-alone, public, special education, day school.

Students in co-located regional programs have opportunities for inclusion with nondisabled peers that students in separate SE schools do not. It is the expectation of MSDE that students with disabilities in regional SE programs participate with nondisabled peers in all appropriate settings.

This guide is intended for use by local special education directors and local facilities planners requesting support for a proposed construction project in a regional SE program or separate SE school.

MSDE DEI/SES Review and Support

All SE students must have an Individualized Education Program (IEP) specific to their individual needs and be placed in the least restrictive environment (LRE). Most students with IEPs successfully attend comprehensive schools in their regular attendance area; however, some are placed in regional programs or separate schools.

MSDE DEI/SES provides technical assistance to special education program directors, administers grants, and monitors program compliance.

Major construction projects that change existing or create new regional SE programs or separate SE schools require review by the DEI/SES and by the Office of School Facilities (OSF) at MSDE.

A DEI/SES letter of support for the proposed project indicates agreement that:

- the students' IEPs cannot be implemented in the students' home school based on a review of IEPs and documentation of the provision of supplementary aids and services as required in 34 Code of Federal Regulations (CFR) §§ 300.28 and 300.130; and
- the proposed location of the special education program facilities and opportunities to participate with non-disabled peers in academic, non-academic, and extracurricular activities as described in the request is appropriate.

A letter of support from the DEI/SES Assistant State Superintendent and/or their designee is a prerequisite for:

- Schematic Design approval for a comprehensive school with regional SE programs and for separate SE schools by the State Superintendent of Schools (or designee);
- OSF's recommendation to the Interagency Commission on School Construction (IAC) for State support of Local Planning approval or of State Construction funding for a capital project involving a separate SE school; and
- OSF's recommendation to the IAC for State Construction funding for a capital project involving a comprehensive school with regional SE programs.

Exceptions that do not require a letter of support:

- A renovation project that does not change an existing regional SE program in capacity or delivery of educational programs; or
- A construction project in a school that does not contain a regional program but will have special education classrooms.

The table that follows details the request requirements based on the types of SE programs in a proposed school construction project.

FIGURE 1: TYPES OF SE PROGRAM NOTIFICATION FOR SCHOOL CONSTRUCTION PROJECTS

Type of Project	What is Required?	DEI/SES Response
<p>Construction project where:</p> <p>Regional SE program(s) exists at the school and there will be NO increase to the capacity and/or change to the educational delivery of the program(s).</p>	<p>Letter addressed to the DEI/SES Program Manager of Performance Support and Technical Assistance (PSTA), copied to the Executive Director of the Office of School Facilities, informing DEI/SES that there will be regional SE program(s) impacted by a construction project but will entail no change in SE program capacity or delivery.</p>	<p>Letter from DEI/SES confirming receipt of letter from LEA and acknowledgment that there will be no impact on regional SE programs for this project.</p>
<p>Construction project where:</p> <p>Existing regional SE program(s) to be moved from an adjacent or nearby school, but with NO increase to the capacity or changes to the educational delivery.</p>	<p>Letter addressed to the Program Manager of PSTA, copied to the Executive Director of the Office of School Facilities, informing DEI/SES that there will be regional program(s) moved to a school undergoing capital improvements but will entail no increase in program capacity or changes to delivery of those programs.</p> <p>The letter can request a waiver from an extensive review, but it must also include support material that shows the move lessens the travel distance for the SE students impacted.</p>	<p>Letter from DEI/SES confirming receipt of letter from LEA and acknowledgment that an existing program is being moved with no changes to instructional delivery or capacity.</p>
<p>Construction project where:</p> <p>A new school will have regional SE program(s); or</p> <p>An existing school where regional SE program(s) WILL have an increase to the capacity or change to the educational delivery of the program, whether already at the school or moved there from another school.</p>	<p>Letter addressed to DEI/SES Assistant State Superintendent (or designee) requesting approval of program changes and providing all necessary support materials for review.</p>	<p>Response letter from DEI/SES outlining the review process and next steps.</p> <p>Upon conclusion of the review process, the LEA will receive a letter from DEI/SES Assistant State Superintendent (or designee) stating that the project has been approved or requesting modifications or resubmission of information.</p>

School Construction Review and Approval

Many school construction projects are funded on a shared cost basis by the State of Maryland and local governments. Some projects are funded by the local government only. Planning, design, and construction submissions for both State-funded and locally funded projects require review and approval at the State level.

The MSDE Office of School Facilities provides professional support and design review services to LEA facilities planners engaged in major construction projects funded both by the State and local governments.

Locally Funded Projects

The State Superintendent of Schools (or designee), upon the recommendation of the Office of School Facilities, approves educational specifications and facility design plans at the schematic design, design development, construction document, and change order phases for locally funded projects, in accordance with Maryland Education Article §2-303(f), as regulated by COMAR 13A.01.02.03.

This applies to public school projects over \$1,000,000 in estimated construction costs or construction Change Orders costing more than \$50,000. (Note: The statutorily defined minimum cost triggers were updated as of July 1, 2023. The statute supersedes the regulations, which will be updated in the future.) Before the State Superintendent of Schools will give approval of facility design plans, all outstanding issues, including those involving SE programming, must be resolved.

State-funded Projects

For State-funded projects, the IAC (or its designee) approves construction plans for State-funded projects at the schematic design, design development, and construction document phases in accordance with COMAR 14.39.02.13. Staff of the OSF handles the schematic design review, with the subsequent design development and construction document phase reviews conducted in coordination with the Maryland Department of General Services. Once all issues have been resolved, including those involving SE programming, a project is approved to move forward to the next phase.

State funding for major school construction projects is approved by the IAC in the annual Capital Improvements Program (CIP), the Built to Learn Program, or other capital programs authorized by the legislature. The State Superintendent of Schools serves as a member of the IAC. The MSDE OSF provides input in staff recommendations for Local Planning or Construction Funding approvals that go before the IAC.

- “Local Planning” approval as part of the CIP process means the State accepts obligation to provide its share of construction funding for a project in the current or a future budget year.
- “Construction Funding” approval means the State accepts obligation to provide all or a set portion of its share of construction funding for a project in that current budget year.

Only projects with all outstanding issues resolved, including those involving SE programming, are recommended.

Local planning and funding approval is subject to the IAC staff analysis of enrollment projections and justifications provided for the subject school and adjacent schools in the system. Approved State-funded projects that include SE programs serving certain students may receive State funding for square feet over and above that of a school without such programs. The additional area is based on the number of students enrolled in the SE programs as reported annually to MSDE by the LEAs. All students reported to be receiving education and related services outside the general education setting more than 60% of the time are eligible for the additional square feet allowance. These students may be attending comprehensive schools in their regular home attendance area, regional programs, or separate schools.

NOTE: The identification and calculation of additional square feet allowances for special education students is an independent IAC procedure, not subject to this guide.

Recommended Actions for Local Education Agencies

The local special education program director (the Director) may:

1. Develop materials required for review by the DEI/SES as shown on page 9;
2. Coordinate with the designated local school facilities planner (the Planner) to ensure proposed special education enrollments are aligned with total enrollment projections for the school system and the subject school;
3. Submit a written request to the MSDE Assistant State Superintendent, DEI/SES, for program review and a letter of support as soon as possible after determining a major construction project will affect a regional SE program or separate SE school;
4. Coordinate site visits, meet with, and respond to questions from the DEI/SES staff;
5. Coordinate the DEI/SES programmatic and location recommendations with the Planner;
6. Provide a copy of the support letter to the Planner for inclusion in current year State capital budget request and design submissions;
7. Assist in the development or review of educational specifications for the proposed special education rooms, describing the number of users, activities, nature of space, size, configuration, furnishings, equipment, building systems requirements, and relationships to other spaces in the school; and
8. Assist the Planner in reviewing and approving preliminary and detailed designs.

The Planner may:

1. Identify proposed major construction projects that will affect special education facilities;
2. Notify the Director of the proposed scope of work;
3. Consult with the Director and other instructional leaders on proposed scope, special education program integration, physical proximity to general education, budget, and schedule for the work;
4. Coordinate overall building scope and feasibility studies for the total project as needed;
5. Assist the Director in developing materials required for review by the DEI/SES;
6. Assist the Director in developing or reviewing educational specifications for the proposed special education programs;
7. Coordinate with the OSF staff on development and State review of educational specifications for the entire project;
8. Include the project in the Educational Facilities Master Plan (EFMP) and capital requests as prioritized by the local board of education and submitted annually to the IAC, if applicable;

9. Coordinate with the OSF Executive Director or the OSF School Facility Architect in charge of project review to determine the number of special education students and the amount of additional space eligible for inclusion in capital funding requests;
10. Include a copy of the DEI/SES letter of support in the capital budget request submitted to the IAC, if applicable;
11. Include the Director and the OSF staff as active members of the local planning committee and invite the DEI/SES staff to participate on committee as needed; and
12. Include a copy of the DEI/SES letter of support in the schematic design submission to the State.

Materials Required for Special Education Program Review

1. Letter from the Director to the MSDE Assistant Superintendent, DEI/SES, formally requesting program review and support.
2. Complete description of the following specific to the school and project:
 - a. Justification for the establishment or continuation of the program based on review of IEPs to ensure that the appropriate accommodations and modifications, as well as supplementary aides and supports, are included to meet the needs of each student; and
 - b. Existing and proposed methods to integrate special education students with their non-disabled peers in the proposed building or program and generally within the LEA.
3. Identify the locations of the existing special education program within the school, the proposed location, and the proposed accessible routes throughout the school, if known, on digital floor plans.
4. A sampling of IEPs with documentation of the provision of supplementary aids and supports used for LRE decision making will be reviewed by the DEI/SES staff prior to the school visit. **Do not submit copies of IEPs with request letter.**

Submission Process

Submit letter and one (1) copy of items 2a, 2b, and 3 above to:

Assistant State Superintendent or Designee
Maryland State Department of Education
Division of Early Intervention and Special Education Services
200 West Baltimore Street, Baltimore, MD 21201

MSDE DEI/SES Staff Review Process

Before the Project Begins

1. The DEI/SES staff will check submission for completeness. Staff will return incomplete documentation or contact the Director to request missing information.
2. Staff will arrange with the Director to visit existing school(s) to conduct at least three separate observations of classrooms within the program.
3. DEI/SES staff will review at least 20% (but no more than 50) IEPs across grade levels (if applicable) and documentation of supplementary aids and services.
4. Staff will review existing and proposed programs.
5. Staff may request to attend educational specifications or other facility planning meetings to better understand the proposal.
6. When all questions and issues have been resolved, staff will recommend supporting or not supporting the proposed program to the Assistant State Superintendent.
7. The Assistant State Superintendent will write to the Director formally supporting or not supporting the proposed program, copying the local superintendent and the MSDE DBS/OSF Director.
8. If the Assistant State Superintendent does not support the proposed programs, the LEA may modify the program and reapply or may appeal the decision to the State Superintendent of Schools.

The DEI/SES review and letter of support does not:

1. determine specific staffing, capacity, or enrollment for the programs;
2. guarantee IAC approval of local planning or construction funding for the project;
3. guarantee IAC approval at the projected enrollment and square feet area requested; or
4. guarantee State approval of the schematic design or construction plans for the project.

During the Construction Process

1. DEI/SES staff will communicate with the local director to verify and plan for opportunities to access general education for all SE students who will be impacted by the new construction.

After Construction is Completed

1. DEI/SES staff will meet with LEA and school leadership at least quarterly to monitor student access to general education for one year following construction.
2. After the first year, DEI/SES staff will meet with LEA and school leadership yearly to review data on student access to general education.



Submission Checklist to Request MSDE Review of Special Education Programs in a Construction Project

Date: _____ (Original Submission Date, if this is a Revision: _____)

Project Type: New ; Replacement ; Addition ; Renovation ; Limited Renovation

School Name: _____ Grade Level: _____

School System: _____ PSC # (If any): _____

SEND SUBMISSION & THIS COMPLETED CHECKLIST TO:

Program Manager, Performance Support and Technical Assistance
Division of Early Intervention and Special Education Services
Maryland Department of Education
200 West Baltimore Street, Baltimore, MD 21201

AND COPY:

Executive Director, MSDE Office of School Facilities at osfsubmissions.msde@maryland.gov

MATERIALS REQUIRED FOR SPECIAL EDUCATION PROGRAM REVIEW

Use this Checklist to ensure all necessary and appropriate materials are submitted for the Special Education Program Review.

___ Letter from the LEA Director of Special Education to the MSDE Assistant State Superintendent, DEI/SES, formally requesting program review and support.

___ Complete description of the following, specific to the school and project:

___ Justification for the establishment or continuation of the program based on review of IEPs to ensure that the appropriate accommodations and modifications, as well as supplementary aides and supports, are included to meet the needs of each student; and

___ Existing and proposed methods to integrate special education students with their non-disabled peers in the proposed building or program and generally within the LEA.

___ Provide a current and complete description of existing Regional Special Education programs and their location in the school facility.

___ Identify existing special education program within the school, the proposed location (s), the current and proposed number of classrooms for each program type, and the proposed accessible routes throughout the school, if known, on digital floor plans.