

DEPARTMENT OF EDUCATION

Division of Public School Capital Construction Assistance

BUILDING EXCELLENT SCHOOLS TODAY GRANT PROGRAM

1 CCR 303-3

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Authority

§ 22-43.7-106(2)(i)(I) C.R.S., the Public School Capital Construction Assistance Board may promulgate rules, in accordance with Article 4 of Title 24, C.R.S., as are necessary and proper for the administration of the BEST Act.

Scope and Purpose

This regulation shall govern the Building Excellent Schools Today (BEST) Public School Capital Construction Assistance Program pursuant to the BEST Act.

1. Definitions

- 1.1. "Applicant" means an entity that submits an Application for Financial Assistance to the Board, including:
 - 1.1.1. A School District;
 - 1.1.2. A District Charter School;
 - 1.1.3. An Institute Charter School;
 - 1.1.4. A Board of Cooperative Educational Services (BOCES);
 - 1.1.5. The Colorado School for the Deaf and Blind.
- 1.2. "Application" means the Application for Financial Assistance submitted by an Applicant.
- 1.3. "Assistance Fund" means the public school capital construction assistance fund created in § 22-43.7-104(1) C.R.S.
- 1.4. "Authorizer" means the School District that authorized the charter contract of a Charter School or, in the case of an Institute Charter School, as defined in § 22-43.7-106(1) C.R.S., the State Charter School Institute created and existing pursuant to § 22-30.5-502(6) C.R.S.
- 1.5. "BEST Act" means § 22-43.7-101 C.R.S. et seq.
- 1.6. "BEST Lease-purchase Funding" means funding from a sublease-purchase agreement entered into between the state and an entity as described in 2.1 pursuant to § 22-43.7-110(2) C.R.S.
- 1.7. "BEST Cash Grant" means cash funding as a matching grant.

- 1.8. "BEST Emergency Grant" means a request for Financial Assistance in connection with a Public School Facility Emergency.
- 1.9. "Board" means the Public School Capital Construction Assistance Board created in § 22-43.7-106 (1) C.R.S.
- 1.10. "Board of Cooperative Educational Services" or "BOCES" means a Board of Cooperative Services created and existing pursuant to § 22-5-104 C.R.S. that is eligible to receive State moneys pursuant to § 22-5-114 C.R.S.
- 1.11. "Capital Construction" means, pursuant to § 24-75-301 (1) C.R.S.:
 - 1.11.1. Purchase of land, regardless of the value thereof;
 - 1.11.2. Purchase, construction, or demolition of buildings or other physical facilities, including utilities and state highways or remodeling or renovation of existing buildings or other physical facilities, including utilities and state highways to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to the health and safety of persons which are not covered by codes, to effect conservation of energy resources, to effect cost savings for staffing, operations, or maintenance of the facility, or to improve appearance;
 - 1.11.3. Site improvement or development;
 - 1.11.4. Purchase and installation of the fixed and movable equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities and for the conduct of programs initially housed therein upon completion of the new construction, remodeling, or renovation;
 - 1.11.5. Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life-cycle cost studies, energy analyses, and other studies associated with any Capital Construction project and to supervise construction or execution of such Capital Construction projects;
 - 1.11.6. Any item of instructional or scientific equipment if the cost will exceed fifty thousand dollars.
- 1.12. "Capital Renewal Reserve" means moneys set aside by an Applicant that has received an award for a project for the specific purpose of replacing major Public School Facility systems with projected life cycles such as, but not limited to, roofs, interior finishes, electrical systems and heating, ventilating, and air conditioning systems.
- 1.13. "Charter School" means a Charter School as described in § 22-54-124 (1)(f.6)(I)(A) or (1)(f.6)(I)(B) C.R.S.
- 1.14. "Eligible Charter School" means a qualified charter school that is eligible for the Loan Program as defined in section 22-30.5-408(1)(c) C.R.S. and authorized to receive financial assistance pursuant to 22-43.7-103(7) C.R.S.
- 1.15. "Division" means the Division of Public School Capital Construction Assistance created in § 22-43.7-105 C.R.S.

- 1.16. "Financial Assistance" means BEST Cash Grants; BEST Lease-purchase Funding; BEST Emergency Grants; funding provided as matching grants by the Board from the Assistance Fund to an Applicant; or any other expenditure made from the Assistance Fund for the purpose of financing Public School Facility Capital Construction as authorized by the BEST Act.
- 1.17. "Grantee" means a School District, Charter School, Institute Charter School, BOCES or the Colorado School for the Deaf and Blind that has applied for Financial Assistance and received an award.
- 1.18. "Institute Charter School" means a Charter School chartered by the Colorado State Charter School Institute pursuant to § 22-30.5-507 C.R.S.
- 1.19. "Loan Program" means the charter school matching moneys loan program pursuant to 22-43.7-110.5 C.R.S.
- 1.20. "Matching Moneys" means moneys required to be used directly to pay a portion of the costs of a Public School Facility Capital Construction project by an Applicant as a condition of an award of Financial Assistance to the Applicant pursuant to § 22-43.7-109 (9) C.R.S and/or 22-43.7-110(2) C.R.S.
- 1.21. "Project" means the Capital Construction Project for which Financial Assistance is being requested.
- 1.22. "Public School Facility" means a building or portion of a building used for educational purposes by a School District, Charter School, Institute Charter School, a Board of Cooperative Education Services, the Colorado School for the Deaf and Blind created and existing pursuant to § 22-80-102(1)(a) C.R.S., including but not limited to school sites, classrooms, data centers, libraries and media centers, cafeterias and kitchens, auditoriums, multipurpose rooms, and other multi-use spaces; except that "Public School Facility" does not include a learning center, as defined in § 22-30.7-102(4) C.R.S., that is not used for any other public school purpose and is not part of a building otherwise owned, or leased in its entirety, by a School District, a Board of Cooperative Education Services, a Charter School, Institute Charter School, or the Colorado School for the Deaf and Blind for educational purposes.
- 1.23. "Public School Facility Construction Guidelines" means Public School Facility Construction Guidelines as established in § 22-43.7-107 C.R.S.
- 1.24. "Public School Facility Emergency" means an unanticipated event that makes all or a significant portion of a Public School Facility unusable for educational purposes or poses an imminent threat to the health or safety of persons using the Public School Facility.
- 1.25. "School District" means a School District, other than a junior or community college district, organized and existing pursuant to law in Colorado pursuant to § 22-43.7-103 (14) C.R.S.
- 1.26. "State Board" means the State Board of Education created and existing pursuant to section 1 of article IX of the State Constitution.
- 1.27. "Statewide Assessment" means the Financial Assistance priority assessment conducted pursuant to § 22-43.7-108 C.R.S.

2. Eligibility

- 2.1. The following entities are eligible to apply for Financial Assistance:
 - 2.1.1. A School District;
 - 2.1.2. A District Charter School or individual school of a School District if the school applies through the School District in which the school is located. The School District shall forward the Application from a Charter School or individual school of a School District to the Division with its comments;
 - 2.1.3. An Institute Charter School;
 - 2.1.4. A Board of Cooperative Educational Services (BOCES);
 - 2.1.5. The Colorado School for the Deaf and Blind.
- 2.2. The Board may only provide Financial Assistance for a Project for a Public School Facility that the Applicant owns or will have the right to own in the future under the terms of a lease-purchase agreement with the owner of the facility or a sublease-purchase agreement with the state entered into pursuant to § 22-43.7-110(2) C.R.S.
- 2.3. The Board, with the support of the Division and subject to the approval of the State Board and the lessor of the property, may provide financial assistance as specified in this section to an applicant that is operating or will operate in the next budget year in a leased facility that is:
 - 2.3.1. Listed on the state inventory of real property and improvements and other capital assets maintained by the Office of the State Architect pursuant to section 24-30-1303.5, C.R.S.; or
 - 2.3.2. State-owned property leased by the State Board of Land Commissioners, described in section 36-1-101.5, C.R.S., to the applicant.
 - 2.3.3. An award of financial assistance must be used to preserve or enhance the value of state-owned, leased property.
- 2.4. The Board may only provide financial assistance for a capital construction project for a public school in existence for at least three years at any time before the Board receives an application for financial assistance.
- 2.5. For a BEST Emergency Grant, the Applicant shall be operating in the Public School Facility for which Financial Assistance is requested.

3. Assistance Board

- 3.1. Conflict of Interest
 - 3.1.1. In regard to Board members providing information to potential Applicants:
 - 3.1.1.1. Board members shall exercise caution when responding to requests for information regarding potential Applications, especially in regard to questions that may increase the chances that the Board would give a favorable recommendation on an Application or Project.

- 3.1.2. If a potential or actual conflict of interest occurs with a Board member, the Board member will complete a Conflict of Interest disclosure form and it will be presented at the following CCAB meeting. The Division shall document the date of the disclosure, the name of the board member and conflict disclosed, and the documented disclosure shall be retained and made available at all board meetings which evaluation of applications or voting occurs.
- 3.1.3. Board members, and their firms, shall not present their position on the Board to School Districts, Charter Schools, Institute Charter Schools, BOCES, or the Colorado School for the Deaf and Blind as an advantage for using their firm over other firms in a bid to provide services on any capital construction project.
- 3.1.4. In regard to Board members avoiding potential conflicts of interest in evaluation of and voting on Applications:
 - 3.1.4.1. If a Board member's firm has no prior involvement regarding the Project included in an Application and the Board member does not have a direct or indirect substantial financial interest in an Application, the Board member may appropriately vote on the Application, but may not bid or work on the Project. The Board member's firm may bid or work on the Project, so long as the Board member plays no role in the entire procurement process and the Board member discloses any conflict of interest;
 - 3.1.4.2. No Board member shall participate in the Board's evaluation process, including voting, for any Application when the Board member has a direct or indirect substantial financial interest in the Project or Application or the Board member's firm has had prior involvement with the Applicant directly related to the Project or Application;
 - 3.1.4.3. At all times Board members must exercise judgment and caution to avoid conflicts of interest and/or appearance of impropriety, and should inform the Division staff of any questionable situation that may arise. A Board member may recuse himself or herself from any vote.
 - 3.1.4.4. Board members shall be aware of and comply with the Colorado Code of Ethics, section 24-18-108.5(2), C.R.S., and shall not perform any official act which may have a direct economic benefit on a business or other undertaking in which the member has a direct or substantial financial interest.
 - 3.1.4.4.1. A financial interest means a substantial interest held by an individual which is (i) an ownership interest in a business, (ii) a creditor interest in an insolvent business, (iii) an employment or prospective employment for which negotiations have begun, (iv) an ownership interest in real or personal property, (v) a loan or any other, or (vi) a directorship or officer ship in a business.
 - 3.1.4.4.2. An official action means any vote decision, recommendation, approval, disapproval or other action, including inaction, which involves the use of discretionary authority.

- 3.1.5. In cases where a Board member has violated the conflict of interest policy as determined by the board chair, the Division Director will notify the Board member's appointing authority of the violation in writing. In the event of a conflict involving the board chair, the vice-chair will make the determination.

4. Matching Requirement

- 4.1. Except as provided below in section 4.2, Financial Assistance may be provided only if the Applicant provides Matching Moneys in an amount equal to a percentage of the total cost of the Project determined by the Board after consideration of the Applicant's financial capacity, based on the following factors:
 - 4.1.1. With respect to a School District's Application for Financial Assistance:
 - 4.1.1.1. The School District's assessed value per pupil relative to the state average;
 - 4.1.1.2. The School District's median household income relative to the state average;
 - 4.1.1.3. The School District's bond redemption fund mill levy relative to the statewide average;
 - 4.1.1.4. The percentage of pupils enrolled in the School District who are eligible for free or reduced-cost lunch;
 - 4.1.1.5. The school district's current available bond capacity remaining;
 - 4.1.1.6. The school district's unreserved fund balance as a percentage of its annual budget; and
 - 4.1.1.7. The amount of effort put forth by the School District to obtain voter approval for a ballot question for bonded indebtedness, including but not limited to, a ballot question for entry by the district into a sublease-purchase agreement of the type that constitutes an indebtedness of the district pursuant to § 22-32-127 C.R.S., during the ten years preceding the year in which the district submitted the Application, which factor may be used only to reduce the percentage of Matching Moneys required from a district that has put forth such effort and not to increase the amount of Matching Moneys required from any district;
 - 4.1.1.8. A School District shall not be required to provide any amount of Matching Moneys in excess of the difference between the School District's limit of bonded indebtedness, as calculated pursuant to § 22-42-104 C.R.S., and the total amount of outstanding bonded indebtedness already incurred by the School District.
 - 4.1.2. With respect to a Board of Cooperative Education Services' Application for Financial Assistance:
 - 4.1.2.1. The average assessed value per pupil of all members of the Board of Cooperative Education Services participating in the Project relative to the state average;

- 4.1.2.2. The average median household income of all members of the Board of Cooperative Education Services participating in the Project relative to the state average;
 - 4.1.2.3. The average bond redemption fund mill levy of all members of the Board of Cooperative Education Services participating in the Project relative to the statewide average;
 - 4.1.2.4. The percentage of pupils enrolled in the member schools within the Board of Cooperative Education Services that are participating in the Project who are eligible for free or reduced-cost lunch;
 - 4.1.2.5. The average available bond capacity remaining of all members of the board of cooperative services participating in the capital construction project;
 - 4.1.2.6. The average unreserved fund balance as a percentage of the annual budget of all members of the board of cooperative services participating in the capital construction project; and
 - 4.1.2.7. The amount of effort put forth by the members of the Board of Cooperative Education Services to obtain voter approval for a ballot question for bonded indebtedness, including but not limited to a ballot question for entry by any member into a sublease-purchase agreement of the type that constitutes an indebtedness of the member pursuant to § 22-32-127 C.R.S., during the ten years preceding the year in which the Board of Cooperative Education Services submitted the Application, which factor may be used only to reduce the percentage of Matching Moneys required from a Board of Cooperative Education Services whose members, or any of them, have put forth such effort and not to increase the amount of Matching Moneys required from any Board of Cooperative Education Services.
- 4.1.3. With respect to a Charter School's Application for Financial Assistance:
- 4.1.3.1. The weighted average of the match percentages for the school districts of residence for the students enrolled in a district charter school or fifty percent of the average of the match percentages for all school districts in the state for an institute charter school;
 - 4.1.3.2. Whether the charter school's authorizer retains no more than ten percent of its capacity to issue bonds;
 - 4.1.3.3. Whether the charter school is operating in a district-owned facility at the time it submits its application;
 - 4.1.3.4. In the ten years preceding the year in which the charter school submits the application, the number of times the charter school has attempted to obtain or has obtained:
 - 4.1.3.4.1. Bond proceeds pursuant to 22-30.5-404 C.R.S through inclusion in a ballot measure submitted by the charter school's authorizer to the registered electors of the school district:

- 4.1.3.4.2. Proceeds from a special mill levy for capital needs pursuant to 22-30.5-405 C.R.S.;
- 4.1.3.4.3. Grant funding for capital needs from a source other than the assistance fund; and
- 4.1.3.4.4. Funding for capital construction from bonds issued on its behalf by the Colorado Educational and Cultural Facilities authority created and existing pursuant to 23-15-104(1)(a), C.R.S., or from some other source of financing.
- 4.1.3.5. If the charter school is a district charter school, the student enrollment of the charter school as a percentage of the student enrollment of the charter school's authorizing school district.
- 4.1.3.6. The percentage of students enrolled in the charter school who are eligible for the federal free and reduced-cost lunch program in relation to the overall percentage of students enrolled in the public schools in the State who are eligible for the federal free and reduced-cost lunch program.
- 4.1.3.7. The percentage of the per pupil revenue received by the charter school that the charter school spends on facility costs other than facilities operations and maintenance.
- 4.1.3.8. The charter school's unreserved fund balance as a percentage of its annual budget.
- 4.1.3.9. The match percentage for a charter school calculated based on the above criteria shall not be higher than the highest match percentage for a school district, or lower than the lowest match percentage for a school district, in the same grant cycle.
- 4.2. Waiver or reduction of Matching Moneys
 - 4.2.1. An Applicant may apply to the Board for a waiver or reduction of the Matching Moneys requirement. Such application shall discuss unique issues demonstrating why the percentage is not representative of the Applicant's current financial state. The Board may grant a waiver or reduction if it determines:
 - 4.2.1.1. That the waiver or reduction would significantly enhance educational opportunity and quality within a School District, Board of Cooperative Education Services, or Applicant school,
 - 4.2.1.2. That the cost of complying with the Matching Moneys requirement would significantly limit educational opportunities within a School District, Board of Cooperative Education Services, or Applicant school, or
 - 4.2.1.3. That extenuating circumstances deemed significant by the Board make a waiver appropriate.

- 4.2.2. An applicant must complete a waiver application and submit it to the Board in conjunction with their grant application. The waiver application shall explain issues and impacts in detail, including dollar amounts of the issues and impacts, and demonstrate why each of the factors used to calculate their Matching Moneys percentage are not representative of their actual financial capacity. The Board will determine the merit of the waiver by evaluating each wavier application using the prescribed wavier application evaluation tool.
- 4.3. Charter School matching moneys Loan Program.
 - 4.3.1. The Charter School matching moneys Loan Program will assist Eligible Charter Schools in obtaining the Matching Moneys requirement for an award of Financial Assistance pursuant to 22-43.7-109 C.R.S.
 - 4.3.2. An Eligible Charter School that chooses to seek a loan through the Loan Program shall apply to the Board to receive a loan.
 - 4.3.3. To be an Eligible Charter School for the Loan Program means a Charter School that is described in section 22-30.5-104 or an Institute Charter School as that term is defined in section 22-30.5-502 has a stand-alone credit assessment or rating of at least investment grade by a nationally recognized rating agency at the time of issuance of any qualified Charter School bonds on behalf of the Charter School by the Colorado educational and cultural facilities authority pursuant to the "Colorado Educational and Cultural Facilities Authority Act", article 15 of title 23, C.R.S., and that has been certified as a qualified Charter School by the State Treasurer.
 - 4.3.4. The Board may approve a loan for an Eligible Charter School in an amount that does not exceed fifty percent of the amount of Matching Moneys calculated for the Eligible Charter School pursuant to 22-43.7-109(9)(c) C.R.S.
 - 4.3.5. If a loan is approved by the Board the project will be considered as a BEST Lease-Purchase project pursuant to 22-43.7-110.5(2)(b)C.R.S., and the proposed project must be one that is financeable.
 - 4.3.6. The Board shall direct the State Treasurer to include the amount of a loan approved pursuant to the terms in the Lease-Purchase agreement entered into pursuant to 22-43.7-110 (2) C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved.
 - 4.3.7. Charter School Loan Program application
 - 4.3.7.1. An application for a loan shall include:
 - 4.3.7.1.1. Basic contact information, justification for seeking a BEST loan and documentation of a stand-alone credit assessment or rating of at least investment grade by a nationally recognized rating agency for the Charter School;
 - 4.3.7.1.2. Identify the Charter Schools current facilities and indicate if those facilities are owned, leased or in a lease-purchase agreement;

- 4.3.7.1.3. A current credit disclosure statement along, any business notes payable or reviews, notices or warnings from the Charter School's authorizer;
 - 4.3.7.1.4. Financial information to include internal financial statements, CPA Audits and IRS 990's for the previous three years. Detailed operating budget for the current and next year. The Charter School's projected operating budget for the next five years. Enrollment figures for the previous three years, the current year and the following three years;
 - 4.3.7.1.5. CDE listed minimum match requirement for the BEST grant;
 - 4.3.7.1.6. Amount of total match provided by the Charter School for the BEST grant;
 - 4.3.7.1.7. Amount of the loan request for the BEST grant;
 - 4.3.7.1.8. A loan application from a Charter School shall include signatures of the District Superintendent, School Board Officer, and the Charter School Director;
 - 4.3.7.1.9. A loan application from an Institute Charter School shall include signatures of the Charter School Institute Director and the Institute Charter School Director;
 - 4.3.7.1.10. Applications that are incomplete may be rejected without further review.
- 4.3.8. Charter School Loan Program deadline for submission
- 4.3.8.1. The loan application, along with any supporting material, shall be submitted with the BEST grant application on or before the BEST grant application due date.
 - 4.3.8.2. An application will not be accepted unless it is received in the Board office by 4:30 p.m. on or before the deadline date determined by the board.
 - 4.3.8.3. The Board may, in its sole discretion and upon a showing of good cause in written request from an Applicant, extend the deadline for filing an Application.
- 4.3.9. To receive a loan through the Loan Program, an Eligible Charter School shall:
- 4.3.9.1. Authorize the State Treasurer to withhold moneys payable to the Eligible Charter School in the amount of the loan payments pursuant to 22-30.5-406 C.R.S.;
 - 4.3.9.2. Pay an interest rate on the loan that is equal to the interest rate paid by the State Treasurer on the Lease-Purchase agreement entered into pursuant to 22-43.7-110 C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved;

4.3.9.3. Amortize the loan payments over the same period in years as the Lease-Purchase agreement entered into pursuant to 22-43.7-110 C.R.S. to provide Financial Assistance to the Eligible Charter School for which the loan is approved; except that the Eligible Charter School may pay the full amount of the loan early without incurring a prepayment penalty; and

4.3.9.4. Create an escrow account for the benefit of the state with a balance in the amount of six months of loan payments.

5. Applications

5.1. Deadline for submission

5.1.1. Except as provided below, Applications shall be filed with the Board on or before a date determined by the Board.

5.1.2. An Application will not be accepted unless it is received in the Board office by 4:00 p.m. on or before the deadline date determined by the Board. This does not apply to an Application in connection with a Public School Facility Emergency;

5.1.3. The Board may, in its sole discretion and upon a showing of good cause in a written request from an Applicant, extend the deadline for filing an Application.

5.2. The Board prefers Applications to be in electronic form, but one hard copy to the Board office is acceptable. Each Application shall be in a form prescribed by the Board and shall include, but not be limited to, the following (with supporting documentation):

5.2.1. A description of the scope and nature of the Project;

5.2.2. A description of the architectural, functional, and construction standards that are to be applied to the Project that indicates whether the standards are consistent with the Construction Guidelines and provides an explanation for the use of any standard that is not consistent with the Construction Guidelines;

5.2.3. The estimated amount of Financial Assistance needed for the Project and the form and amount of Matching Moneys that the Applicant will provide for the Project;

5.2.4. If the Project involves the construction of a new Public School Facility or a major renovation of an existing Public School Facility, a demonstration of the ability and willingness of the Applicant to renew the Project over time that includes, at a minimum, the establishment of a capital renewal budget and a commitment to make annual contributions to a Capital Renewal Reserve within a School District's capital reserve fund or any functionally similar reserve fund separately maintained by an Applicant that is not a School District;

5.2.5. If the Application is for Financial Assistance for the renovation, reconstruction, expansion, or replacement of an existing Public School Facility, a description of the condition of the Public School Facility at the time the Applicant purchased or completed the construction of the Public School Facility and, if the Public School Facility was not new or was not adequate at that time, the rationale of the Applicant for purchasing the Public School Facility or constructing it in the manner in which it did;

- 5.2.6. A statement regarding the means by which the Applicant intends to provide Matching Moneys required for the Project, including but not limited to voter-approved multiple-fiscal year debt or other financial obligations, gifts, grants, donations, or any other means of financing permitted by law, or the intent of the Applicant to seek a waiver of the Matching Moneys requirement. If an Applicant that is a School District or a Board of Cooperative Educational Services with a participating School District intends to raise Matching Moneys by obtaining voter approval to enter into a sublease-purchase agreement that constitutes an indebtedness of the district as pursuant to § 22-32-127 C.R.S., it shall indicate whether it has received the required voter approval or, if the election has not already been held, the anticipated date of the election;
- 5.2.7. A description of any efforts by the Applicant to coordinate Capital Construction projects with local governmental entities or community-based or other organizations that provide facilities or services that benefit the community in order to more efficiently or effectively provide such facilities or services, including but not limited to a description of any financial commitment received from any such entity or organization that will allow better leveraging of any Financial Assistance awarded;
- 5.2.8. A copy of any existing Master Plan or facility assessment relating to the facility(ies) for which Financial Assistance is sought;
- 5.2.9. Any other information that the Board may require for the evaluation of the project;
- 5.2.10. An Application from a School District shall include signatures of the Superintendent and a District Board Officer;
- 5.2.11. An Application from a Charter School shall include signatures of the District Superintendent, School Board Officer, and the Charter School Director;
- 5.2.12. An Application from an Institute Charter School shall include signatures of the Charter School Institute Director and the Institute Charter School Director;
- 5.2.13. An Application from a Board of Cooperative Educational Services shall include signatures of the BOCES Director and a BOCES Board Officer;
- 5.2.14. An Application from the Colorado School for the Deaf and Blind shall include signatures of the Colorado School for the Deaf and Blind Director and a Colorado School for the Deaf and Blind Board Officer.
- 5.3. BEST Lease-Purchase Funding
 - 5.3.1. In addition to the information required in section 5.2 above, the Applicant shall agree to provide any necessary documentation related to securing the lease-purchase agreement.
- 5.4. BEST Emergency Grants
 - 5.4.1. Applicant shall contact the Division by phone, fax, or email. Appropriate follow up documentation will be determined based on type and severity of emergency, including financial need.

5.4.2. In the event the Governor declares a disaster emergency, pursuant to section 24-33.5-704(4) C.R.S., the Division shall, as soon as possible following the declaration of the disaster emergency, contact each affected school facility in any area of the State in which the Governor declared the disaster emergency to assess any facility needs resulting from the declared disaster emergency.

5.4.2.1. The Division must report its findings to the Board as soon as possible following its outreach.

5.4.2.2. In determining whether to recommend to the State Board that Emergency Financial Assistance be provided, the Board shall consider the findings that the Division provided to the Board.

5.4.3. The Board shall meet within fifteen days of receiving the Application for a BEST Emergency Grant to determine whether to recommend to the State Board that emergency Financial Assistance be provided, the amount of any assistance recommended to be provided, and any conditions that the Applicant shall meet to receive the assistance.

5.5. Applications that are incomplete may be rejected without further review.

5.6. The Board may request supplementation of an Application with additional information or supporting documentation.

6. Application Review

6.1. Time for Review

6.1.1. The Board, with the support of the Division, will review the Applications;

6.1.2. The Board will submit the prioritized list of Projects to the State Board for which the Board is recommending Financial Assistance according to the timeline established by the Board;

6.1.3. In the case of Financial Assistance that involves lease-purchase agreements, the prioritized list is subject to both the preliminary approval of the state board and the final approval of the capital development committee.

6.1.4. The Board may, in its discretion, extend these deadlines.

6.2. The Board, taking into consideration the Statewide Assessment, shall prioritize and determine the type and amount of the grant or matching grant for Applications for Projects deemed eligible for Financial Assistance based on the following criteria, in descending order of importance:

6.2.1. Projects that will address safety hazards or health concerns at existing Public School Facilities, including concerns relating to Public School Facility security, and projects that are designed to incorporate technology into the educational environment

- 6.2.1.1. In prioritizing an Application for a Public School Facility renovation project that will address safety hazards or health concerns, the Board shall consider the condition of the entire Public School Facility for which the project is proposed and determine whether it would be more fiscally prudent to replace the entire facility than to provide Financial Assistance for the renovation project.
- 6.2.2. Projects that will relieve overcrowding in Public School Facilities, including but not limited to projects that will allow students to move from temporary instructional facilities into permanent facilities, and.
- 6.2.3. All other projects.
- 6.2.4. Among other considerations, the Board may take into account the following in reviewing Applications:
 - 6.2.4.1. The amount of the matching contribution being provided in excess of or less than the minimum;
 - 6.2.4.2. Whether the Applicant has been placed on financial watch by the Colorado Department of Education;
 - 6.2.4.3. Overall condition of the Applicant's existing facilities;
 - 6.2.4.4. The project cost per pupil based on number of pupils affected by the proposed Project;
 - 6.2.4.5. The project life cycle.
 - 6.2.4.6. The Public School Facility's Facility Condition Index (FCI), Colorado Facility Index (CFI), school priority score and construction guidelines score.
 - 6.2.4.7. The Applicants ability to help itself, including available bonding capacity, planning and criteria in sections 4.1.1 or 4.1.2 or 4.1.3.
- 6.3. Additional actions the Board may take when reviewing an Application:
 - 6.3.1. The Board may modify the amount of Financial Assistance requested or modify the amount of Matching Moneys required;
 - 6.3.2. The Board may recommend funding a project in its entirety or recommend a partial award to the project;
 - 6.3.2.1. If a project is partially funded a written explanation will be provided.
- 6.4. The Board shall submit to the State Board the prioritized list of Projects. The prioritized list shall include:
 - 6.4.1. The Board's recommendation to the State Board as to the amount of Financial Assistance to be provided to each Applicant approved by the Board to receive funding and whether the assistance should be in the form of a BEST Cash Grant, BEST Lease-purchase Funding or a BEST Emergency Grant.

- 6.5. In considering the amount of each recommended award of Financial Assistance, the Board shall seek to be as equitable as practical in considering the total financial capacity of each Applicant.

7. BEST Lease-purchase Funding

- 7.1. Subject to the following limitations, the Board may instruct the State Treasurer to enter into lease-purchase agreements on behalf of the state to provide Lease-purchase Funding for Projects for which the State Board has authorized provision of Financial Assistance.
- 7.2. Whenever the State Treasurer enters into a lease-purchase agreement pursuant to § 22-43.7-110 C.R.S., the Applicant that will use the facility funded with the Lease-purchase Funding shall enter into a sublease-purchase agreement with the state that includes, but is not limited to, the following requirements:
 - 7.2.1. The Applicant shall perform all the duties of the state to maintain and operate the Public School Facility that are required by the lease-purchase agreement;
 - 7.2.2. The Applicant shall make periodic rental payments to the state, which payments shall be credited to the Assistance Fund as Matching Moneys of the Applicant;
 - 7.2.3. Ownership of the Public School Facility shall be transferred by the state to the Applicant upon fulfillment of both the state's obligations under the lease-purchase agreement and the Applicant's obligations under the sublease-purchase agreement.

8. Payment and Oversight

- 8.1. Payment.
 - 8.1.1. All Cash Grant Financial Assistance Grantees must sign a grant contract with CDE outlining the terms and conditions associated with the Financial Assistance.
 - 8.1.2. All Financial Assistance awarded is expressly conditioned on the availability of funds.
 - 8.1.3. Payment of Financial Assistance will be on a draw basis. As a Grantee expends funds on a Project, the Grantee may submit a request for funds to the Division on a fund request form provided by the Division. The fund request shall be accompanied by copies of invoices from the vendors for which reimbursement is being requested and any other documentation requested by the Division.
 - 8.1.3.1. The Division will review the fund request and make payment. Payments will only be made for work that is included in the Project scope of work defined in the Application.
 - 8.1.3.2. If the Grantee is a School District, request for payment shall come from the School District. Requests will not be accepted from individual School District schools.

8.1.3.3. If the Grantee is a District Charter School, request for payment shall come from the School District. Payment shall be made to the School District and the School District shall make payment to the charter school. The School District may not retain any portion of the moneys for any reason.

8.1.3.4. If the Grantee is an Institute Charter School, request for payment shall come from the Charter School Institute and the Charter School Institute shall make payment to the Institute Charter School. Payment shall be made directly to the Charter School Institute.

8.1.3.5. If the Grantee is a Board of Cooperative Educational Services, request for payment shall come from the Board of Cooperative Educational Services. Requests will not be accepted from individual Board of Cooperative Educational Services schools.

8.1.3.6. If the Grantee is the Colorado School for the Deaf and Blind, request for payment shall come from the Colorado School for the Deaf and Blind.

8.1.4. Payment of BEST Lease-purchase Funding will be determined by the terms of the lease-purchase agreement and any subsequent sublease-purchase agreements.

8.1.5. Each grant cycle the Board may make a motion to authorize up to 5% of the assistance fund dollars be used to address grant reserves for projects awarded in that given year.

8.1.5.1. Grant reserve requests shall be submitted on a Division provided application;

8.1.5.2. Grant reserve applications will be submitted to the Board as an action item at the board meeting following the date the grant reserve application was submitted to the Division.

8.1.5.3. Grant reserve draws shall be limited to issues that were unforeseen, unanticipated and could not have been known about or planned for at the time the Application was submitted.

8.2. Oversight

8.2.1. When a Grantee completes Project, it shall submit a final report to the Division on a Division provided form before final payment will be made. Once the final report is submitted and final payment is made, the Project shall be considered closed.

8.2.2. If a Grantee has not used all Financial Assistance on a closed out BEST Cash Grant, the unused balance will be returned to the Assistance Fund.

8.2.3. If a Grantee has not used all Financial Assistance on a closed out Lease-Purchase Grant, the unused balance will be treated in accordance with the Board policy on returning Matching Moneys.

8.2.4. The Division may make site visits to review Project progress or to review a completed Project;

- 8.2.5. The Division may require a Grantee to hire additional independent professional construction management to represent the Applicant's interests, if the Division deems it necessary due to the size of the Project, the complexity of the Project, or the Grantee's ability to manage the Project with Grantee personnel.
- 8.2.6. Upon completion of a new school, major renovation or addition Project, the Grantee shall affix a permanent sign that reads: "Funding for this school was provided through the Building Excellent Schools Today Program from School Trust Lands," unless waived in writing by the Division.

9. Technical Consultation

- 9.1. The Division will provide technical consultation and administrative services to School Districts, Charter Schools, Institute Charter Schools, BOCES and the Colorado School for the Deaf and Blind.

Editor's Notes

History

Entire rule emer. rule eff. 11/19/2008; expired 02/19/2009.

Entire rule eff. 03/30/2009.

Entire rule eff. 12/30/2009.

Entire rule eff. 08/14/2011.

Entire rule eff. 12/30/2012.

Entire rule eff. 05/15/2014.

Rules 3.1.3 – 3.1.4, 4.3.8.3, 5.4, 8.1.5 eff. 01/30/2015; Rule 6.1.5 repealed eff. 01/30/2015.

Rules 1.13, 1.14, 2.3-2.5, 6.2.1-6.2.4.7, 8.1.3.5, 8.1.5 eff. 11/30/2016.