

State of New Mexico
Public School Facilities Authority



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October 17, 2014

Representative Mimi Stewart
PSCOOTF Chair

Re: Update on Litigant District Adequacy Standards Concerns

Chair Stewart,

The AMS Subcommittee of the PSCOC asked that PSFA provide to you a summary of current status of litigant district concerns for possible discussion by the PSCOOTF.

On August 1, 2014, Gallup-McKinley County Public Schools presented to the PSCOOTF issues of concern regarding the Adequacy Standards, the period of time since the last status hearing, and that while the litigant districts (Zuni Public Schools, Gallup-McKinley County Schools, and Grants-Cibola County Schools) have been greatly improved, they believed inequities remain that need attention.

The majority of the concerns raised can be addressed within the existing adequacy standards. In summary, the district expressed that they would like state participation in:

1. constructing pre-kindergarten classrooms
2. constructing "Title Nine" athletic amenities to accommodate both sexes
3. extension of utilities off of site
4. constructing concession stands
5. constructing Navajo language classrooms
6. constructing cultural classrooms
7. constructing parent education spaces
8. constructing "response to intervention" spaces
9. constructing OT/PT spaces
10. constructing computer-based testing spaces
11. constructing improved campus security
12. minimal landscaping
13. constructing teacherages
14. constructing softball and baseball fields
15. payment of Navajo (Business Activity) Tax
16. providing additional funding for facility maintenance
17. revising the state-district match

PSCOC Chairman David Abbey directed PSFA to study the issues and accordingly the PSFA created the following table.

At the September 4, 2014 PSCOC meeting, Gallup, with Zuni Schools in attendance, again presented these same concerns, and PSFA followed with explanation of options for improvement to meet the concerns. Some can resolved within current law and rules, and others would need legislation, as described in detail in the table below.

In a work session with PSFA and Gallup Schools on September 18, 2014, more detailed discussions occurred and the following PSFA recommendations were developed (please refer to the attached spreadsheet: Proposed changes to the AS _30Sept2014 final.pdf).

Items	<p>Recommendation for concerns 1-4, 14: <u><i>Adequacy Standards and law would need to be revised. Pre-K (non-3&4 DD) and extra-curricular athletics are not a part of required statewide education nor are they funded by SEG.</i></u></p>
1	<p>Pre-K is not included in the Adequacy Standards as it is not a fully funded program. Pre-K is funded on a case-by-case basis by the legislature and every attempt has been made by PSFA and PSCOC to integrate this funding into PSCOC projects.</p>
2	<p>Adequacy Standards do not include Athletics. Definition of Title IX - equal opportunities based on sex; with respect to athletic programs -levels of completion effectively accommodate both sexes, equipment and supplies, scheduling of games and practices time, coaching, locker rooms, competitive facilities etc.</p>
3	<p>Offsite utilities and infrastructure such as roads are normally not owned or maintained by school districts as they are on land not owned by the district. Inclusion would require specific limitations and boundaries to be defined due to other entities besides a school district that might benefit from the public investment.</p>
4 & 14	<p>Because the Zuni lawsuit was focused on constitutional obligations, only facilities necessary to adequately support required state required learning objectives were included for consideration in the Adequacy Standards. When the Special Schools Adequacy Standards were developed, housing was added as necessary, similar to teacherages, to support necessary proximity of students, and occasional families, to each of the schools.</p>
Items	<p>Recommendation for concerns 5-9, 10, 11 & 12: <u><i>No revisions to the Adequacy Standards or law are required. However, a good definition of district "prudent spending" has been authorized by the PSCOC and this may free district funds for needed repairs and above adequacy spending and allow the PSCOC to provide additional local match waivers to qualified districts.</i></u></p>
5 -9	<p>Concern is that the PSFA Adequacy Standards Guidelines, that provide guidance on how to repair a school that has been measured to be inadequate by the Adequacy Standards, may be inadequate to support the state required educational programs or purposes within a school. These concerns are related to the Guidelines gross square foot (GSF) goals. However, the Guidelines also provide that the goal GSF can be exceeded when it can be demonstrated that additional space is required for the school to be fully functional for all of its intended educational purposes. Tools utilized to demonstrate insufficient space include furniture layouts and utilization calculations. PSFA has set in its guidelines that all spaces should be</p>

	used during normal hours a minimum of 95% for grade K-6, and 80% for grades 7-12.
10	Space needed to accommodate standardized and PAARC testing requirements is not well defined. Some believe that every student must be tested at the same time and in a computer lab. Others believe that bring your own device (BYOD) with wi-fi classroom links will support future testing. Regardless, the current Guidelines will support necessary space, but rooms may have to be multi-use if testing is to be at the same time for all students. Design information will be developed on this need on a school-by-school basis until a standard has been established.
11	Active vs. Passive Security Features. Passive security features such as controlled entries and fencing are included in the Guidelines. These security improvements can be controlled through design. All other security such as cameras, intrusion alarms, etc. are considered above adequacy costs to be paid by the district.
12	Landscape for kindergarten play areas, sufficient to identify the schools main entry, an athletic playing field for grades 7-12, and landscape to control site drainage are included in the current Guidelines. Aesthetic landscaping and (for example) multiple playing fields are considered above adequacy costs to be paid by the district.
Item	Recommendation for concern 13: <i>No revisions to the Adequacy Standards or law are required, but are recommended. It is recommended that a <u>statute change would help</u> to maintain the current average condition of school facilities by leaving adequate funding for the current standards-based program. A five year program with limited funding and sunset similar to the expired roofing program would allow progress and better understanding of need.</i>
13	Teacherages are included in the adequacy standards as they were considered necessary to state required educational programs, but have not been included in the priority rankings to be eligible for PSCOC funding. It was originally determined that school facilities and improving educational spaces needed all available funding. While progress has been made, current funding levels appear sufficient only to adequately maintain the statewide average FCI without new strategies that will reduce total capital needs over time.
Item	Recommendation for concern 15: <i>No revisions to the Adequacy Standards or law are required.</i>
15	Tribal taxes (TERO, NBAT, etc.) are <u>in addition to all state and local taxes</u> . Currently, the PSCOC by agreement with districts and contractors are excluded from liability for payment of tribal taxes. Many tribes waive tax on school district projects. <u>The Taxation and Revenue Department can enter into tax agreements with specific governmental entities, including tribal governments.</u> The agreements provide that if a pueblo, tribe or nation grants a 25% credit against its tax and meets other specified conditions, the state grants a 75% credit against state and local gross receipts tax due from taxpayers who are subject to both taxes (Section 7-9-88.1 NMSA 1978). <u>The taxpayers therefore pay the same tax as they would under state and local taxes alone – dual taxation is eliminated.</u> Tribal taxes apply only to businesses operating on land owned by a tribe or held by the United States in trust for the tribe.
Item	Recommendation for concerns 16: <i>Law change required. This a statutory funding issue.</i>
16	Additional funding for maintenance. PSFA recommends that as SB9 has tripled over the past decade, the next step should be installing better financial reporting measures of sources and uses. It is recommended that accounting codes related to all facility spending including capital, routine maintenance, infrastructure maintenance, custodial, and utilities be revised and both line item budget and spending be required to be reported into STARS. PSFA

	acknowledge that schools in poor condition will have higher infrastructure maintenance costs and more rural schools will have higher costs in most areas due to travel, time, and available resources.
Items	Recommendation for concern 17: <i>Law change required. This is a statutory funding issue.</i>
17	Revisions in PSCOC funding formula for state and local share funding. Based upon a calculation of wealth that is basically total district property value divided by the number of students in that district, there are many variables not fully accounted for in the statutory calculation formula. Still, with the waiver provision in statute, if a district has adequately indebted itself as defined by statute to be eligible for a waiver, local share funding can be waived so that any district can provide adequate facilities in partnership with the PSCOC.

Cc. School Districts – Gallup, Zuni and Grants
David Abbey, PSCOC Chair
Raul Burciaga, LCS Director