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Carl Thurnau, PE

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# NYSED Office of Facilities Planning Newsletter



Carl T. Thurnau, P.E.

Issue #121 June 2015

## All Students and Staff Deserve Safe and Healthy School Facilities

When most think of school facility health and safety requirements, they generally refer to Commissioner's Regulations §155 (8 NYCRR 155). While these regulations prescribe many facility health and safety rules for New York State public schools, nonpublic schools are not subject to the majority of §155. Notwithstanding the fact that a significant percentage of §155 primarily applies only to public schools, there are many New York State and federal laws that do encompass nonpublic school facilities.

To address the needs of all students and staff, we need to take a closer look at a sampling of the school-specific laws that contain identical requirements for public **and** nonpublic facilities. If all schools comply with the following requirements, public and nonpublic students and staff will be educated in, and work in, safe and healthy school environments.

### Federal

The federal Asbestos Hazard Emergency Response Act (AHERA) rule requires all local education agencies nationwide

to inspect their school buildings for asbestos-containing building material, prepare asbestos management plans and perform asbestos response actions to prevent or reduce asbestos hazards. Public school districts and non-profit private schools, including charter schools and schools affiliated with religious institutions are subject to the rule's requirements.

### New York State

The following sections of State Education Law Title 1, Article 9 (School Buildings and Sites) cover both public and nonpublic schools.

**NOTE: These citations only contain a small sample of each law's actual text.**

### §409. School building regulations in relation to health and safety.

2. Notwithstanding the provisions of any other law, rule or regulation, tobacco use shall not be permitted and no person shall use tobacco on school grounds. "School grounds" means any building, structure and surrounding outdoor grounds, including entrances or exits, contained

within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries as registered in a county clerk's office.

### §409-f. Electrically operated partition and door safety.

The board of education, trustees, principal or other person in charge of every public or private school or educational institution within the state, wherein classrooms or other facilities used by students are found to have electrically operated partitions, doors or room dividers, shall arrange for, and require, that.....

### §409-g. Purchase and use of paradichlorobenzene deodorizers.

1. No board of education or trustees, principal or other person in charge of any public or private, elementary or secondary school shall authorize the purchase of or purchase any urinal or toilet deodorizer containing paradichlorobenzene.

**(continued on next page)**

# All Students and Staff Deserve Safe and Healthy School Facilities (cont.)

## §409-h. Requirements for notification of pesticide applications.

(a) "School" shall mean any public school district or private or parochial school or board of cooperative educational services.

(c) "Facility" means any school building used for instructional purposes and its surrounding grounds, sites and other grounds to be used for playgrounds, athletics and other instructional purposes, and any administrative offices.

2. Schools shall establish a pesticide notification procedure to provide information on pesticide applications at school facilities. Schools shall provide written notification of pesticide applications at any relevant facility to staff and persons in parental relation according to the following provisions:

## §409-i. Procurement and use of environmentally-sensitive cleaning and maintenance products.

(a) "Elementary or secondary school" means a facility used for instruction of elementary or secondary students by: (i) any school district, including a special act school district and a city school district in a city having a population of one hundred twenty-five thousand inhabitants or more, (ii) a board of cooperative educational services, (iii) a charter school, (iv) an approved private school for the education of students with disabilities, (v) a state-supported school for the deaf or blind operated pursuant to article eighty-five of this chapter, and (vi) any other private or parochial elementary or secondary school.

(b) "Environmentally-sensitive cleaning and maintenance products" means those cleaning and maintenance products that minimize adverse impacts on children's health and the environment.

(c) "Facility" means any school building or facility used for instructional purposes and the surrounding grounds or other sites used for playgrounds, athletics or other instructional purposes.

## §409-k. Pesticide alternatives.

(a) "School" shall mean any public school district or private or parochial school or board of cooperative educational services.

2. No school shall apply pesticide to any playgrounds, turf, athletic or playing fields, except that an emergency application of a pesticide may be made as determined by the county health department or for a county not having a health department such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school board.

The collective intent of these laws is to ensure that all school facility environments are safe. New York State students and staff deserve healthy school facilities—regardless of whether they attend a public school or a non-public school.

For additional information on any of the above noted laws, please visit our web site at: [www.p12.nysed.gov/facplan/](http://www.p12.nysed.gov/facplan/) or send an email to: [EMSCFP@NYSED.GOV](mailto:EMSCFP@NYSED.GOV)



*Carl T. Thurnau*

Is there a topic you would like addressed in the Facilities Planning Newsletter? Please email suggested topics and comments to:  
[laura.sahr@nysed.gov](mailto:laura.sahr@nysed.gov)

# Smart Schools Bond Act—Update

The New York State Smart Schools Bond Act of 2014 provides \$2 billion to fund public school technology, pre-K construction, and security capital projects. Individual school district allocations under the Bond Act can be viewed at: [www.governor.ny.gov/smart-schools-ny](http://www.governor.ny.gov/smart-schools-ny). The Smart Schools Bond Act guidance document is available at: [http://www.p12.nysed.gov/mgtserv/smart\\_schools/](http://www.p12.nysed.gov/mgtserv/smart_schools/).

The purpose of the Smart Schools Bond Act is to improve learning and opportunity for public and nonpublic school students by funding capital projects to:

- ✓ Install high-speed broadband or wireless internet connectivity for schools and communities;
- ✓ Acquire learning technology equipment or facilities, including but not limited to interactive whiteboards, computer servers, and desktop, laptop, and tablet computers;
- ✓ Construct, enhance, and modernize educational facilities to accommodate pre- kindergarten programs and to provide instructional space to replace classroom trailers; and/or
- ✓ Install high-tech security features in school buildings and on school campuses, including but not limited to video surveillance, emergency notification systems, and physical access controls.

All districts will be required to submit a Smart Schools Improvement Plan to demonstrate how Smart Schools Bond Act funds will be used to provide the educational tools and opportunities students throughout New York State will need to succeed in the 21st century economy. Effective plans should:

- ✓ Include linkages between the district's long-term educational planning and technology investments;
- ✓ Provide learning opportunities beyond the classroom through the use of technology; and
- ✓ Address the educational needs of all students, including students with disabilities, English language learners and those who have not succeeded in traditional classroom settings.

The Smart Schools Review Board will review each district plan for alignment with the goals in the guidance document and ensure the plan contains all critical elements neces-

sary for the long-term success of this program.

The Smart Schools Bond Act requires that school districts develop and receive approval of a Smart Schools Investment Plan from the Smart Schools Review Board, which is comprised of the Chancellor of the State University of New York, the Director of the Budget and the Commissioner of the State Education Department (SED). Districts will submit their Smart Schools Investment Plans, which will describe the intended expenditures and projects with Smart Schools Bond Act funds, through an application on SED's Business Portal. SED will review the Smart Schools Investment Plan for completeness and adherence to the guidance. If accepted, the application will be submitted for consideration by the Smart Schools Review Board.

**The SED Portal Application is currently under development and will launch on or before June 15, 2015.** A template of the Smart Schools Investment Plan application (with narrative and budget sections) will be made available on the SED website so that districts will have a clear sense of the required format as they develop their plans.

There are no specific deadlines for submission of Smart Schools Investment Plans, as these funds do not expire. However, no requests for reimbursement will be accepted until the submission of the relevant category section (devices, new Prekindergarten space, connectivity, and security) receives approval.

## Contact Information

### Smart Schools Program Questions

Contact the SED Office of Educational Management Services at: (518) 474-6541 or email: [Smartschools@nysed.gov](mailto:Smartschools@nysed.gov)

### Capital Project Questions

Contact the SED Office of Facilities Planning at: (518) 474-3906.

For additional information, please see:

[www.p12.nysed.gov/mgtserv/smart\\_schools/home.html](http://www.p12.nysed.gov/mgtserv/smart_schools/home.html).



# Launching the On-Line Fire Safety Reporting System

The new on-line NYSED fire safety system is now operational. The updated system will save school districts and BOCES significant time mailing large quantities of paper to the SED Office of Facilities Planning. To align the on-line fire safety system with existing NYSED systems, the old “fire inspection zones” have been modified to reflect SEDREF (SED Reference File) regions. As a result and as the new system rolls-out over the next year, we are fully aware that some school districts may be required to have their annual fire inspection performed sooner than they would have anticipated under the old system. This cannot be avoided. Wherever possible, we’ve done our best to align the old zones with the new regions.

In addition, the old “zone” system included a specific zone for the “Big 4” city school districts (Buffalo, Rochester, Syracuse, and Yonkers). Moving forward, the “Big 4” city school district will be integrated into the geographic region where they are located. In other words, the fire inspections for the Yonkers Public School District will be scheduled during the same cycle as the rest of Westchester County.

## Other significant changes in the process include:

- The on-line fire safety system can only be accessed via the password protected NYSED Application Business Portal. All superintendents of schools already use this portal and have specific passwords to access the data for their school district.
- Prior to entering fire inspection data, school districts will be required to **annually** verify all buildings in their district, including but not limit to the building’s street address, usage, and which SEDREF institutions are housed in each specific building. **This process can take place at anytime throughout the year and is currently available via the secure NYSED Application Business Portal at: <http://portal.nysed.gov/portal>.**
- School districts whose annual fire inspections are due by July 1, 2015, must submit the annual fire inspection data to Facilities Planning via the secure portal. Superintendents will be required to certify the information submitted electronically, similar to the handwritten signature previously required on the paper report.
- In the event the items of nonconformance have not

been corrected and/or there are severe violations, a temporary certificate of occupancy or a letter that no certificate of occupancy can be issued will automatically be generated. To generate an annual certificate of occupancy, once items have been corrected, superintendents or their designees will need to go back into the secure portal and add the dates these items were corrected.

- The annual fire inspection process has not changed, however the paper fire inspection report and the fire inspection manual have both been updated—for local use only. No new items have been added to the annual fire inspection report. These items are available for downloading from the Facilities Planning web site at: <http://www.p12.nysed.gov/facplan/FireSafety.htm>.
- **PLEASE DO NOT mail paper copies of annual fire inspection reports to Facilities Planning.** Paper copies of the inspection report should still be retained by the school district.
- Mailing labels, Certificates of Occupancy, and inspection reminder letters will no longer be mailed to school districts. School districts will need to print their own Certificates of Occupancy.

## Additional guidance, including the annual fire inspection due dates is available at:

<http://www.p12.nysed.gov/facplan/documents/CTT5-12-2015Memorenewfireinspectionreportprocess.pdf>

## PowerPoint presentation slides on the new system are available at:

<http://www.p12.nysed.gov/facplan/documents/UpdatedFireSafetyProcessPresentation.pdf>

We anticipate scheduling webinars on the new on-line system during July and August.

## **Specific questions on the updated fire safety system may be directed to the Office of Facilities Planning at:**

**518-474-3906 or email [firesafety@nysed.gov](mailto:firesafety@nysed.gov).**

# Hazard Communication Standard: Safety Data Sheets (SDS)

**Effective June 1, 2015**, chemical manufacturers, importers, distributors and employers are now required by federal law to provide a common approach to classifying chemicals and communicating hazard information on labels and safety data sheets. Chemical manufacturers and importers must provide a label that includes a signal word, pictogram, hazard statement, and precautionary statement for each hazard class and category. The updated provisions for labeling offer workers better protection from chemical hazards.

Beginning in December 2015, distributors may only ship containers labeled by the chemical manufacturer or importer if the labels meet these requirements.

The Hazard Communication Standard (HCS) (29 CFR 1910.1200(g)), revised in 2012, requires that the chemical manufacturer, distributor, or importer provide Safety Data Sheets (SDSs) (formerly MSDSs or Material Safety Data Sheets) for each hazardous chemical to users to communicate information on these hazards.

The information contained in the SDS is largely the same as the MSDS, except now the SDSs are required to be presented in a consistent user-friendly, 16-section format. Sections 1 through 8 contain general information about the chemical, identification, hazards, composition, safe handling practices, and emergency control measures (e.g., fire fighting). This information should be helpful to those that need to get the information quickly. Sections 9 through 11 and 16 contain other technical and scientific information, such as physical and chemical properties, stability and reactivity information, toxicological information, exposure control information, and other information including the date of preparation or last revision. The SDS must also state that no applicable information was found when the preparer does not find relevant information for any required element. The SDS must also contain Sections 12 through 15, to be consistent with the UN Globally Harmonized System of Classification and Labeling of Chemicals (GHS), but OSHA will not enforce the content of these sections because they concern matters handled by other agencies.

**Employers must ensure that the SDSs are readily accessible to employees for all hazardous chemicals in their workplace.** This may be done in many ways. Employers may keep the SDSs in a binder or on computers as long as the employees have immediate access to the infor-

mation without leaving their work area when needed and a back-up is available for rapid access to the SDS in the case of a power outage or other emergency.

The following are examples of some of the new pictograms. See: [www.osha.gov/dsg/hazcom/pictograms/index.html](http://www.osha.gov/dsg/hazcom/pictograms/index.html) for the complete list.



**Sources:**

[www.osha.gov/Publications/OSHA3514.pdf](http://www.osha.gov/Publications/OSHA3514.pdf)

[www.osha.gov/dsg/hazcom/pictograms/index.html](http://www.osha.gov/dsg/hazcom/pictograms/index.html)

## NYS Mold Inspector Licensing, Assessment, and Remediation Law

Article 32 of New York State Labor Law, signed into law on January 29, 2015, requires the licensure of mold inspection, assessment and remediation specialists and sets minimum work standards for mold inspection, assessment and remediation specialists. [This new law takes effect on July 28, 2015.](#) According to the legislative sponsor's memo of support, the intent of the law is to "...ensure the safety of the general public by ensuring that only licensed professionals are performing mold assessment, abatement, and remediation."

The following are a few key points from Article 32:

### Title 1: Licensing of Mold Inspection, Assessment, and Remediation Specialists and Minimum Work Standards

- Defines mold, mold remediation, mold assessment, and mold abatement.
- No person shall be licensed to conduct mold-related services unless they are (a) 18 years of age or older; (b) have satisfactorily completed Department approved course work, including training on the appropriate use and care of personal protection equipment as ap-

proved by the Commissioner of Health; and (c) have paid the appropriate fees.

### Title 2: Minimum Work Standards for the Conduct of Mold Assessments and Remediation by Licensed Persons

- Details the minimum work standards for the conduct of mold assessments and mold remediation by licensed persons.
- The bill requires a mold assessment licensee to prepare a mold remediation plan that is specific to each remediation project and to provide the plan to the client before the remediation begins.

The State Department of Labor is in the process of developing guidance materials on this new requirement. In the interim, you can read the entire legislation at:

[http://assembly.state.ny.us/leg/?default\\_fld=&bn=S03667&term=2013&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=S03667&term=2013&Text=Y)

As soon as more information is available, it will be posted on the Facilities Planning web site.

## NYS Office of Parks, Recreation, and Historic Preservation (OPRHP) Project Review—Based on the Letter of Resolution

The Office of Facilities Planning receives project submissions using the *SED Project Review Exemption Form FP-FP-OPRHP-LOR*, originally created in 2010.

Often times this form is completed incorrectly by the design professional. The form previously had a box that stated: *"This Building is 50 years old or older but has previously been evaluated by OPRHP and found not to meet the criteria for inclusion in the State and National Register."*

Many design professionals check this box in error, thinking that a review by OPRHP of scope submitted for a previous project that resulted in a 'No Impact' letter from OPRHP, constituted a review that the entire building did not meet the criteria for inclusion in the State and National Register.

This is not the case, as the 'No Impact' letter from OPRHP was only related to the specific work scope submitted for review.

We have updated the Form FP-FP-OPRHP-LOR so that design professionals certify items correctly. The new form can be found on our web site in the following locations:

- [http://www.p12.nysed.gov/facplan/documents/Project\\_Review\\_Exemption\\_Checklist.xls](http://www.p12.nysed.gov/facplan/documents/Project_Review_Exemption_Checklist.xls)
- [http://www.p12.nysed.gov/facplan/documents/Final\\_Submission\\_Forms\\_Workbook.xls](http://www.p12.nysed.gov/facplan/documents/Final_Submission_Forms_Workbook.xls)

## Discarded Computer Equipment and Fire Hazard

There are many valuable lessons we can learn from our colleague's experiences; and the following is a lesson shared by Jim Koch, Business Manager at the Indian River CSD.

"At 10am this morning, we noticed that several pallets of excess computer equipment awaiting transfer to a reclamation service were on fire. They were in a fenced-in area by a maintenance barn. The Philadelphia (NY) Fire Department responded and extinguished the fire. There were no injuries reported, no structural damage, and the only things lost were already excess equipment. We were lucky.

Because computers were involved and they contain plastics and heavy metals, our employees who initially tried to knock it down have discarded their clothing and are seeing our district physician."

"The fire department concluded its investigation and determined that the fire was caused by a projector lens sitting in the sun. The lens magnified the sun and melted the plastic. They found several other units with this damage but their angle of exposure must not have been right for a fire to start. I recommend you immediately notify all districts

that they need to remove lenses from discarded equipment and bag them to prevent this from happening anywhere else (or at least keep them from direct sunlight). I anticipate a lot of things, but I didn't see this one coming, and neither did the Fire Chief."



Photo and Article courtesy of  
Jim Koch, Business Manager, Indian River CSD

## NYS Public Schools Recognized With AIA New York State Excelsior Award

The American Institute of Architects (AIA) New York State, in collaboration with New York State contracting agencies, created awards to provide a model of excellence for future State-funded building design and professional practice and advocacy. There are two types of awards: Public Architecture Awards and Professional Awards. The Public Architecture Awards are comprised of three separate categories: Historic Preservation, New Construction, and Renovation/Addition.

This year, the following two New York State public schools were recognized with Public Architecture Awards in the New Construction category:

- ◇ White Plains Public School District  
Post Road Elementary School  
White Plains, New York

Designed by KG&D Architects, PC

- ◇ New York City Department of Education  
Public School 330Q  
Queens, New York

Designed by Murphy, Burnham, & Buttrick Architects

For additional information on AIA New York State, see: <http://www.aianys.org/index.shtml>. Congratulations to the recipients and their designers.



AIA New York State Excelsior Awards Program

Richardson Olmsted Complex  
RH Richardson, Architect  
Photo by Greg Meadows

## AHERA: Are Your Records Up-to-Date?

Careful up-to-date recordkeeping is key to ensuring compliance with the federal Asbestos Hazard Emergency Response Act (AHERA). The following recordkeeping-related questions/answers have been copied from the U.S. Environmental Protection Agency's (EPA) web site at: [www2.epa.gov/asbestos](http://www2.epa.gov/asbestos).

**Q:** Does the AHERA management plan have to be updated periodically?

**A:** Yes. The asbestos management plan must be updated with information collected during periodic surveillance every 6 months, re-inspections every 3 years, and every time a response action is taken within the school. Also, records of annual notifications to parents, teachers, and staff concerning the availability of the school's asbestos management plan must be included within the asbestos management plan files.

**Q:** If a school has all asbestos-containing building material (ACBM) removed, how long do we need to keep records in the asbestos management plan pursuant to AHERA?

**A:** After all the ACBM has been removed, certain records listed under 40 part 763.94(a) can be discarded three years after the next scheduled reinspection. However, other records that are part of the management plan must be maintained indefinitely. (Note: the next reinspection is scheduled for 2016. Therefore, three years after the next scheduled reinspection is 2019.)

**Q:** Is each individual school required to keep a complete updated copy of its asbestos management plan pursuant to the AHERA in its administrative office?

**A:** Yes, each school is required to maintain in its administrative office a complete, updated asbestos management plan for that school. (40 CFR part 763.93(g)(3)). (Note: Two identical copies of each plan needs to be maintained. Once copy is to be kept in each individual school's administrative office; while the second copy is to be kept in the school district's administrative office.)

**Q:** Pursuant to AHERA, can a local education agency (LEA) store a management plan in electronic format (e.g., CD ROM)?

**A:** The asbestos in schools rule does not specifically prohibit LEAs from storing records in electronic format. However, such records must be available to the public, without cost or restriction on request in the LEAs administrative office and from each school's individual administrative office within 5 working days after the request for an inspection. Documents containing original signatures may be scanned and stored in electronic format, but must be made available and accessible in their entirety (40 CFR part 763.93(g)(2) or (3)).

**Q:** A local education agency (LEA) is required to "designate a person to ensure" that all LEA responsibilities and/or requirements "are properly implemented." (40 CFR part 763.84(g)(1)) Such a designated person, in turn, is required to obtain "adequate training." Does this mean that the designated person is required to be "accredited"? If not, what constitutes adequate training?

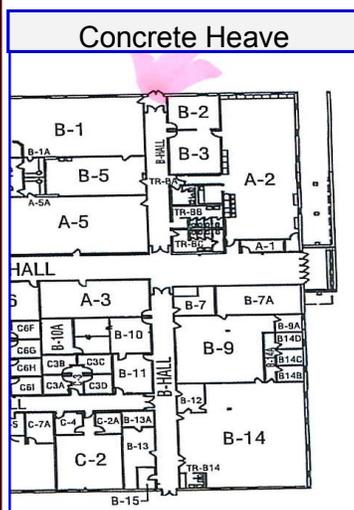
**A:** The LEA's designated person is not required to be "accredited" as the term is used in the asbestos in schools rule; nonetheless, he or she must have some minimal training. 40 CFR part 763.84(g)(2) of the asbestos in schools rule lists areas for which the designated person is required to receive basic knowledge through training, as necessary. However, no specific hours of training are required since a designated person in a small LEA with only non-friable asbestos-containing building material (ACBM) may not need to have as much training as the designated person for a large city school system. 40 CFR part 763.93 (e)(4) of the asbestos in schools rule requires, however, that the management plan for any LEA include the course name, dates, and hours of training undertaken by the designated person.

EPA Region 10 developed the guidance document *How to Manage Asbestos in School Buildings: AHERA Designated Person's Self-study Guide* (January 1996) to help clarify which topics a designated person should be familiar with. It is available at: <http://www.epa.gov/region2/ahera/e23.pdf>.



## Winter Weather, Concrete Heaves and Egress

The calendar may say spring, but winter is still being felt in school buildings throughout the State. Not long ago we received a phone call from a school facility manager with a serious problem directly related to the record-setting cold weather New York State experienced this past winter. The concrete slab located just outside the exit from one the school's corridors had lifted-up and heaved due to the unusually deep frost. This heave was so significant that the doors would no longer open and a dead-end corridor had unexpectedly been created.



By the time we learned of this situation, the most important steps had already taken place toward resolving the issue: recognizing that a problem existed and the critical importance of fixing the problem. The solution was relatively inexpensive and quick:

1. First—make certain building occupants are aware that the exit at the end of that hallway is temporarily inoperable. This includes providing information on the nearest alternate exits from that area.

temporarily inoperable. This includes providing information on the nearest alternate exits from that area.

2. Use a jackhammer or other power equipment to grind down the concrete to enable door to open.
3. Once the door is usable, notify building occupants that the door is back in service.

Winter weather, the related freeze/thaw cycle, and buckling concrete are not new. The U.S. Department of Transportation addresses this issue in its guidance on "Maintaining Pedestrian Facilities for Enhanced Safety" - see: [http://safety.fhwa.dot.gov/ped\\_bike/tools\\_solve/fhwasa13037/chap3.cfm](http://safety.fhwa.dot.gov/ped_bike/tools_solve/fhwasa13037/chap3.cfm). The following points are taken from this document:

"Many of the forces that cause damage to sidewalks are related to freeze and thaw action of the subbase."

"The tendency for a concrete sidewalk slab to rise, subside or tilt as a result of expansive native soil, frost action (freeze and thaw) or thermal expansion of the concrete slab. This could also be due to non-uniform compaction of the subgrade. Since asphalt has a high tensile strength compared to concrete, deformation around the uplift will occur often causing a crack or a mounding of the material, but typically not a break characterized by a rift or fault of the material as seen with concrete. Also commonly known as "vertical uplift" or "projecting edge."

A key lesson to take from this is to ensure all sub-base is properly compacted during construction.

## Fire Alarm Pull Station Protective Covers

It has come to our attention that there has been some confusion related to "protective covers" that are sometimes installed over fire alarm pull stations. The current Code addresses the use of protective covers, and there are no prohibitions on limiting actions to no more than 2 to initiate an alarm (see citation below).

Therefore, NYSED now allows the installation of protective covers, as well as a local sounder at local option. There is no formal approval process for local sounder required from Facilities Planning.

**NFPA 72®-2013, National Fire Alarm and Signaling Code, Chapter 17 (Initiating Devices)**, provides requirements for the performance, selection, use, and location of automatic fire detection devices, sprinkler water flow detectors, manually activated fire alarm stations, and supervisory signal-initiating devices (including guard tour reporting used to ensure timely warning for the purposes of life

safety and the protection of a building, a space, a structure, an area, or an object).

**Section 17.14** provides the requirements for manually actuated alarm-initiating devices. **Paragraph 17.14.7** provides that listed protective covers are permitted to be installed over single- or double-action manually actuated alarm initiating devices. There were no specific provisions regarding protective covers for manually actuated alarm initiating devices in the NFPA 72-2007 and 2002 editions. The current edition of the Code includes, for the first time, specific provisions regarding protective covers for manually actuated alarm initiating devices. Also refer to **A.17.14.7**.



Questions concerning this topic may be directed to: [EMSCFP@NYSED.GOV](mailto:EMSCFP@NYSED.GOV).

## Wicks Reform and Items of Clarification

The following questions have been raised concerning Wicks Reform, contractor fingerprinting, and capital construction projects submitted to the Office of Facilities Planning for review and approval.

**Question:** In referring to "up-state's limit of \$500,000," what is Facilities Planning's interpretation of what is included in this number in a single prime contract for work. We have a client's attorney indicating it is project cost??

**Answer:** Our interpretation is that the \$500,000 limit is bid cost of the actual construction work. We don't believe it includes all non-construction incidental costs such as A/E fees, attorney fees, construction management fees, etc. It is our understanding that it is limited to actual costs of brick and mortar construction.

**Question:** What happens if unforeseen conditions push the construction contract value over the limit?

**Answer:** We believe the law expects a good faith effort to determine the cost of the project at the time of bid. If it is expected to be under \$500K and bids are arranged as a single prime and bids are opened at under \$500K, you can proceed as a single prime.

If an unanticipated change order pushes it over \$500K after the project starts, we don't believe there is an expectation to stop the project and rebid with partially completed construction contracts, etc. If the original bid was reasonably estimated under \$500K, we believe you should continue and complete the job as a single prime. There is no clean way to complete the project in any other format.

## Selling School Buildings and EXCEL Funding

We have recently worked with several school districts and the Dormitory Authority of the State of New York (DASNY) to resolve issues that arose because buildings that had utilized EXCEL (Expanding Our Children's Education and Learning) funds were sold.

In order to receive EXCEL funding, districts were required to certify through the DASNY Grant disbursement agreement, that the district covenants and agrees that no action will be taken *that will cause the EXCEL project constructed, reconstructed, or repaired with such EXCEL Grant, or such portion thereof, to no longer be used as a public school facility unless the district has provided prior written notice to*

*DASNY and that DASNY has notified the school district that such proposed action will not adversely affect the status of the EXCEL/Qualified School Construction Bond (QSCB) bonds of which the EXCEL grant was funded as qualified school construction bonds under Section 54f of the Internal Revenue Service Code.*

In other words, the sale of an EXCEL funded building before EXCEL bonds are paid off by the State, jeopardizes the tax exempt status of the bonds.

Any school district that has sold an EXCEL funded building should notify this office.

## Carbon Monoxide Alarms & Commercial Buildings

Governor Cuomo signed a bill (Chapter 541 of the Laws of 2014) that amends the Executive Law to require the Uniform Fire Prevention and Building Code to address standards for the installation of carbon monoxide detecting devices and requiring that every commercial building and restaurant that has appliances, devices or systems that may emit carbon monoxide or an attached garage be equipped with carbon monoxide detecting devices of such manufacture, design and installation standards as are established by the State Fire Prevention and Building Code Council. The rule will apply to all new and existing com-

mercial buildings, including schools, and restaurants that have appliances, devices or systems that may emit carbon monoxide, or that have an attached garage. These new provisions will be contained in a new Section 1228.4 to be added to 19 NYCRR Part 1228. "Commercial building" means any new or existing building that is **not** a one-family dwelling, a two-family dwelling, or a building containing only townhouses. **Additional information is available at:** [www.dos.ny.gov/DCEA/noticerule\\_dev.html](http://www.dos.ny.gov/DCEA/noticerule_dev.html). **Guidance on this rule will be forthcoming from the Office of Facilities Planning.**

## Facilities Planning: True or False



Managing a school facility requires a skilled professional adept at understanding and interpreting a wide variety of requirements. This article addresses issues which school facility directors often need to address. This is a regular feature in the Facilities Planning newsletter.

### True or False?

All contractors on a school site must be fingerprinted.

### False.

NYSED has never required contractors to be fingerprinted, however there are other requirements in place. Construction work must be separated from student occupied spaces. Designated doorways, stairwells, toilets, etc. are required on a project site. If a contractor needs to work in an occupied area, they must be supervised by district or CM staff. Many contractors in New York State are Union affiliated and they may not know from one day to the next who the hall will send to a jobsite. Requiring all construction contract personnel to be fingerprinted will result in work grinding to a halt and costs will skyrocket. For more information on fingerprinting see: [www.highered.nysed.gov/tsei/ospra/fingerprintingcharts.html](http://www.highered.nysed.gov/tsei/ospra/fingerprintingcharts.html).

### True or False?

A building is defined as a structure with four walls, a roof, and a lockable door.

### True.

A structure, regardless of size, with four walls, a roof, and a lockable door is a building. All structures must allow for free exiting, so that individuals cannot be unintentionally locked inside.

### True or False?

All buildings must have a certificate of occupancy.

### True.

ALL buildings, regardless of size, are required to have a current certificate of occupancy.

### True or False?

A building permit is required for work on all buildings, regardless of the building's size.

### False.

Storage/utility buildings that are "nonhabitable space" and are not "occupied space" as defined by Section 606.3 of the Uniform Code, and that do not exceed a total net clear area of 350 sq. ft., do not require a building permit. Such structures shall have no mechanical systems...and shall have at least one door with appropriate exiting hardware that can be operated from within the space.

## Questions From the Field:

This section will address an actual question which has been raised by a school facility professional in the field.

### Do all structures that are owned or used by a school district or BOCES need to be in compliance with the New York State Building Code and the Regulations of the Commissioner of Education?

**YES.** The New York State Education Department is charged by the Secretary of State [19NYCRR441.2(d)] with the "administration and enforcement of the New York State Uniform Fire Prevention and Building Code with respect to buildings, premises and equipment in the custody of, or activities related thereto, undertaken by school districts and boards of cooperative educational services."

The uniform code applies to each and every facility owned or operated by a school district or board of cooperative educational services (BOCES). This includes, but is not limited to: instructional buildings, administration buildings, bus/maintenance/garages, public school public libraries, storage buildings/sheds, press boxes, and concession stands, and also their premises (19NYCRR 444).

While not all buildings may require a building permit, depending on their size, all buildings require an annual fire inspection and annual certificate of occupancy.

Additionally in December 1994, the New York State Board of Regents adopted the following guiding principles developed by the Regents Advisory Committee on Environmental Quality in Schools:

- Every child has a right to an environmentally safe and healthy learning environment that is clean and in good repair.
- Every child, parent, and school employee has a "right to know" about environmental health issues and hazards in their school environment.
- School officials and appropriate public agencies should be held accountable for environmental safe and healthy school facilities.
- Schools should serve as role models for environmentally responsible behavior.
- Federal, State, local, and private sector entities should work together to ensure that resources are used effectively and efficiently to address environmental health and safety concerns.