

**OLO Report 2021-12**

*State School Construction Aid Eligibility and Funding of MCPS Capital Projects*

# State School Construction Aid Eligibility and Funding of MCPS Capital Projects

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**OFFICE OF LEGISLATIVE OVERSIGHT REPORT 2021-12**

Stephanie Bryant

Aron Trombka

**PREPARED IN CONJUNCTION WITH**

**INTERAGENCY WORKING GROUP ON SCHOOL CONSTRUCTION AID ELIGIBILITY**

**COUNTY COUNCIL**

Keith Levchenko  
Essie McGuire  
Nicole Rodriguez-  
Hernandez

**COUNTY EXECUTIVE**

Mary Beck  
Veronica Jaua  
Melanie Wenger

**MONTGOMERY COUNTY  
PUBLIC SCHOOLS**

Seth Adams  
Donald Connelly  
Adrienne Karamihias

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#### **Introduction**

As part of the FY22 Work Plan for the Office of Legislative Oversight (OLO), the County Council directed OLO to chair an interagency working group to assess which State aid eligibility criteria have the greatest effect on capital project funding received by Montgomery County Public Schools (MCPS). The Council further asked that the working group identify possible modifications to State policies and/or MCPS practices that would increase school construction aid to MCPS.

In September 2021, OLO convened a working group consisting of representatives from MCPS' Department of Facilities Management, the County Government's Office of Management and Budget, the County Government's Office of Intergovernmental Relations, and County Council Central Staff. The working group met seven times between September 17 and November 8, 2021, to review and study:

- Cost, facility, and State aid data from MCPS capital projects;
- Fiscal constraints affecting the County's Capital Improvement Program;
- State rules governing the distribution of aid to Local Education Agencies (LEAs); and
- State, County, and MCPS policies and practices that affect County eligibility for State school construction aid.

This document, *State School Construction Aid Eligibility and Funding of MCPS Capital Projects*, is the final product of the working group. This OLO report presents background information on, and analysis of, the State's contributions to MCPS capital construction projects. The report further identifies key challenges facing the County and MCPS and identifies possible action items to help increase the State's share of MCPS capital construction expenditures.

The report includes three appendices. Appendix A provides cost, facility, and funding data from a recent MCPS capital project; Appendix B presents a hypothetical example showing the impact of adjacency calculations; and Appendix C summarizes the Working Group's recommended changes to the State funding formula.

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#### **Introductory Observations from OLO**

The County Council directed OLO to prepare this report to provide information explaining why, on average, the State of Maryland contributes less than 20 percent of the total cost of major MCPS capital projects. Councilmembers expressed interest in learning what steps could be taken to increase State aid as a percentage of MCPS project costs.

In preparing this report, OLO observed that State school construction aid as a percentage of project cost is a function of program and policy choices made at both the State and County levels. Two approaches exist to increase the State contribution as a percent of MCPS project costs:

1. **Modify County Priorities:** MCPS routinely builds schools with average square footage per student greater than the “baseline” levels eligible for State funding. The additional square footage is often a product of space dedicated for County programmatic priorities such as class size reduction, magnet programs, and health/social support services similar to the priorities identified in the Blueprint (Kirwan Commission) legislation. In addition, the County has supported building schools with sufficient space to accommodate projected capacity growth in years beyond the six-year State timeframe and to minimize the need to frequently relocate relatively small numbers of students from one school to another. The County could revisit these choices to reduce building size and project costs.
2. **Modify State Policies and Regulations:** The formula for State aid for school construction is a product of broad legislative direction as interpreted by the Interagency Commission on School Construction (IAC). Through its interpretation of State law, the IAC has developed the specific regulations and policies that produce State contribution levels for specific school construction projects. These regulations, in turn, generate formulas that adjust State funding based on factors such as average square footage per student, capacity of nearby schools, and definitions of eligible costs.

The tension between State policies and County priorities will further play out with the implementation of the Built to Learn (BTL) program. While State law allocates BTL funding by jurisdiction, the project-specific funding process and formulas are under the authority of the IAC and the Maryland Stadium Authority (MSA). Although some uncertainty remains regarding BTL funding requirements, the IAC and MSA may apply similar eligibility rules for BTL as have been applied to traditional State aid for school construction.

If County priorities and State policies remain substantially unchanged, the County cannot expect to receive higher levels of State aid as a percent of school construction costs.

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#### **Section 1: The Current Challenge of Funding MCPS Capital Improvements**

Both the County and the State provide funding for MCPS capital projects. In upcoming years, the degree to which the County will be able to support the MCPS CIP to provide adequate facilities to meet enrollment demands and program priorities will be dependent on how much the County can afford and the level of State funding received.

#### **NEED FOR CAPITAL IMPROVEMENTS**

The Amended FY21-26 Capital Improvements Program (CIP) includes more than \$1.6 billion in expenditures and funding for a total of 39 MCPS capital projects and 14 sub-projects. MCPS projects comprise more than one-third of County CIP spending (not including WSSC Water).

Significant needs for ongoing MCPS capital spending will continue for the foreseeable future. MCPS has seen a steady increase in enrollment since the 2007-08 school year. However, the COVID-19 pandemic impacted MCPS student enrollment. Preliminary September 30, 2021, enrollment is 159,005 students, a one-year decrease of 1,559 students. This represents a second year of decline in student enrollment. Despite enrollment decreases, MCPS' latest projections anticipate a return to pre-pandemic enrollment trends with over 166,000 students by the 2027-28 school year. New schools and additions will be needed to accommodate this growth. Also, MCPS must continue to maintain, renovate, and upgrade its existing inventory of over 200 school facilities.

#### **STATE AID FOR MCPS CIP**

State aid is a critical component in funding the MCPS CIP. However, significant need for ongoing MCPS capital spending will continue for the foreseeable future. As noted above, MCPS enrollment is projected to continue to grow which will require capacity enhancements at both new and existing schools. In the amended FY21-FY26 CIP, approved State aid contributions totaled \$44.8 million for FY22. The adopted FY22 CIP also assumed an additional \$23.9 million based on the approved Built to Learn Act. If State aid eligibility per project were to remain at current percentages, OMB estimates that State aid assumed in the amended FY21-FY26 CIP is approximately \$119 million higher than will be received. It will be important that Montgomery County is able to realize the anticipated increases in State aid to fund the MCPS CIP.

At present, many MCPS schools rely on relocatable classrooms to provide sufficient space for student enrollment. Demand remains great for capital projects to renovate and upgrade aging existing schools and building systems. In addition, the County seeks to provide adequate in-school space to accommodate programmatic priorities such as class size reduction.

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#### HISTORIC STATE AID TRENDS

Historically, State contributions to MCPS projects have averaged \$53.2 million per year from FY16-FY22 (Table 1). The table below examines State-local share of MCPS' entire CIP budget. As shown, on average State aid funds 16.9% and County dollars fund 83.1% of the CIP. Total State aid for school construction (traditional aid plus Enrollment Growth or Relocatable Classroom (EGRC) aid) has decreased annually since FY19. Also, many vital MCPS CIP projects are not eligible for State aid (see Section 2).

**Table 1. Share of State and County Funds for MCPS Construction Budget (FY10-FY22)**  
(\$millions)

<b>Fiscal Year</b>	<b>State Funds</b>	<b>County Funds</b>	<b>Total Funds</b>	<b>% State</b>	<b>% County</b>
<b>2016</b>	\$45.7	\$243.5	\$289.2	15.8%	84.2%
<b>2017</b>	\$50.1	\$254.9	\$305.0	16.4%	83.6%
<b>2018</b>	\$59.2	\$233.0	\$292.2	20.3%	79.7%
<b>2019</b>	\$59.7	\$235.3	\$295.0	20.2%	79.8%
<b>2020</b>	\$58.7	\$246.4	\$305.1	19.2%	80.8%
<b>2021</b>	\$54.1	\$262.8	\$316.9	17.1%	82.9%
<b>2022</b>	\$44.8	\$234.2	\$279.0	16.1%	83.9%
<b>Totals</b>	<b>\$591.0</b>	<b>\$2,915.1</b>	<b>\$3,506.0</b>	<b>16.9%</b>	<b>83.1%</b>

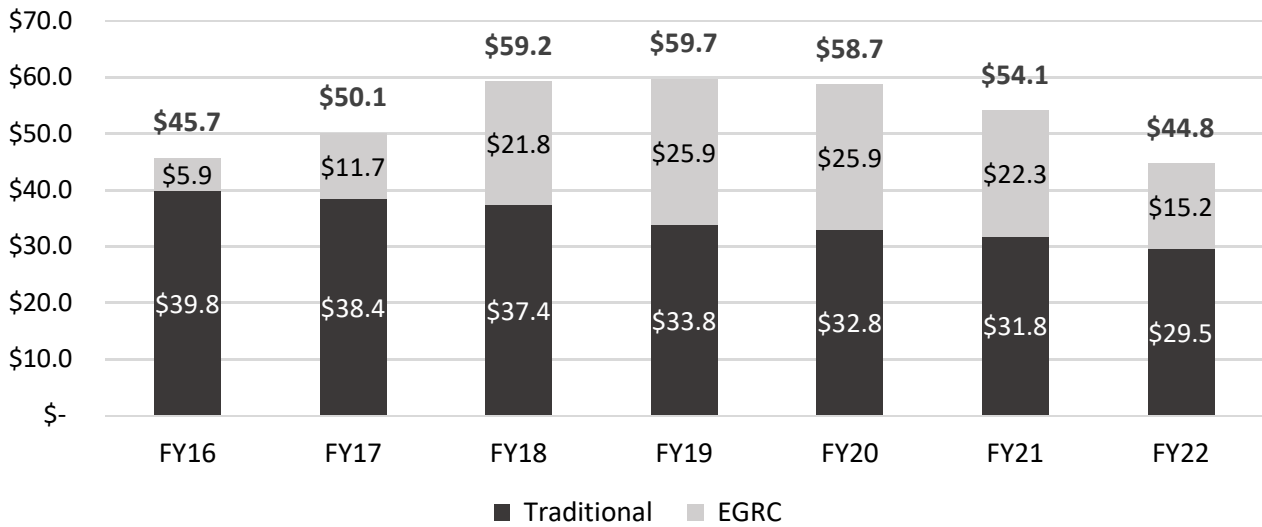
Source: MCPS

Chart 1 on the following page shows the historic State aid totals broken down by traditional and EGRC aid. As shown, traditional State aid has decreased from \$39.8 million in FY16 to \$29.5 million in FY22. This is despite EGRC legislative language that indicated the County's traditional State aid share should not be decreased.

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Chart 1. Traditional and EGRC Historic State Aid Totals (FY16-FY22) (\$millions)



Source: OMB

Per Project Funding. According to the current State funding formula, the County is eligible for State aid up to 50% of eligible costs (see Sections 2 and 4). In recent years, MCPS has received State funding averaging 15% to 20% of total construction costs per school for new and replacement schools. As a result, local funds (i.e., General Obligation Bonds, and Recordation and Impact Tax revenues), pay for 80% to 85% of each new and replacement school project.

### COUNTY BUDGET CONSIDERATIONS

In addition to school-related projects, demand remains high for transportation, public safety, and other CIP improvements that compete for finite capital budget resources. Moreover, CIP spending – whether in the form of current revenue or bond funding – draws on resources that otherwise would be available for the operating budget. Most notably, the FY22 County approved operating budget includes \$421 million in tax supported debt service expenditures, an amount that consumes more than 8% of total tax supported expenditures. (In fact, the largest County/agency budget is the MCPS operating budget.)

The County uses a series of debt capacity indicators to consider whether the County’s current and projected future debt obligations are affordable. Current County debt obligations exceed the policy thresholds for all but one of the County’s debt indicators. In addition to being a negative factor in bond ratings, debt that exceeds the policy thresholds for the indicators constrains the County’s ability to meet operating expense priorities.

The current debt obligations have limited the County’s ability to issue new General Obligation (GO) bonds. The Spending Affordability Guidelines (SAG) approved by the Council in October

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2021 include annual declines in GO bond issuance, decreasing from \$300 million in FY23 to \$270 million in FY28 and beyond. This is \$90 million less than the previously approved SAG limits. As a further budget constraint, the County has experienced multi-year declines in revenues generated from impact and recordation taxes.

The County's CIP is increasingly constrained by these fiscal obligations, and the County is not likely to be able to significantly expand school construction under the historic patterns of State aid as outlined above (average \$52.3 million per year). This fiscal challenge may be even more pronounced in the upcoming year as construction costs have spiked in response to labor shortages and building materials supply chain delays. The anticipated significant increases in State aid as provided in Built to Learn Act offer a funding stream for school construction. However, at the same time, Montgomery County must have certainty that State eligibility requirements will provide sufficient State aid to offset the increased County investment required to meet match obligations.

To add to the challenge, as noted earlier, the County's current approved CIP assumes future year increases in State aid for school construction related to Built to Learn Act State aid. One way to address this challenge would be to increase the proportion of MCPS capital project costs that are covered by State aid. This outcome could be achieved through modifications to State aid funding policies and/or through changes in MCPS facility and educational initiatives (as detailed later in this paper).

### **BUILT TO LEARN ACT**

The ability of the County to maximize its eligibility for school construction aid has become even more urgent as the State begins to implement the 2020 Built to Learn Act. MCPS' share of Built to Learn Act aid is estimated at \$378 million over the next ten years. The Built to Learn Act does not require prevailing wage for eligible projects. However, the Act does give the IAC and the MSA significant authority over program policies and dollars. All communication received as of December 1, 2021 note that the IAC and MSA will require prevailing wage for Built to Learn projects (See Section 4). However, the actual amount of school construction aid to be received by MCPS will depend on details of the State funding formula, the extent to which MCPS projects conform with eligibility requirements, and other factors that affect the County's required share of project matching costs (See Sections 2 and 4).



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#### **COUNTY STATE AID CONSIDERATIONS**

To maximize State Aid funding for MCPS construction, it will be necessary that:

- Traditional State aid is maintained at least at previous funding levels;
- EGRC funding does not decrease beyond the legally mandated amounts; and
- The County achieves the full \$378 million in Built to Learn funds earmarked for MCPS projects.

To do this, the County will need to be strategic about matching construction projects with the most appropriate mix of traditional and Built to Learn funding. As one effort to do this, MCPS has already begun bidding roof and HVAC replacement projects with prevailing wages since these projects have been successful in receiving 50% matching funds from the State under traditional State aid programs.

This gap is between what the County can afford with funding sources devoted to school construction such as GO Bonds, Impact Tax, Recordation Tax and what it needs to afford to be able to access the State aid that is available from the traditional State aid (base + EGRC) and Built to Learn Act. Montgomery County wants to maximize State aid by accessing first all traditional State aid that it can afford and then, leveraging the Built to Learn Act funding.

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## Section 2: Projects and Costs Eligible for State Funding

Only certain projects and project costs are eligible for State funding. Local Education Agencies (LEAs) receive a percentage of State funds based on a wealth-equalized cost-share formula.

### PROJECTS NOT ELIGIBLE FOR STATE FUNDING

New and replacement schools, renovations, additions, and systemic projects are eligible for State funding.<sup>1</sup> Key project types not eligible for State aid include:<sup>2</sup>

- ADA compliance;
- Asbestos abatement;
- Building modifications and program improvements;
- Fire safety code upgrades;
- Planned Life Cycle Asset Replacements (PLAR)\*;
- Restroom renovations;
- School security systems\*;
- Stormwater discharge and water quality management; and
- Technology Modernization.

\*PLAR and school security systems receive funding through other State programs. MCPS can apply each year through the Aging Schools Program for cost sharing of some PLAR-related projects. School security has been sporadically funded through special grant programs but has not been eligible for inclusion in the traditional State school construction aid program.<sup>3</sup>

### SCHOOL CONSTRUCTION PROJECT COSTS ELIGIBLE FOR FUNDING

Within eligible projects, only select construction costs are eligible for State funding as defined in State regulations and interpreted by the IAC.<sup>4</sup> Prior to the Built to Learn Act, eligible costs were

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<sup>1</sup> COMAR 14.39.02.03; Maryland Interagency Commission on School Construction, Administrative Procedures Guide, §§ 100.4 (B) and 102.1 (C), Revised August 2020; <https://iac.mdschoolconstruction.org/wp-content/uploads/2021/09/APG-Revised-9.14.2021.pdf>.

<sup>2</sup> Montgomery County Office of Management and Budget; Montgomery County Public Schools, FY2022 Educational Facilities Master Plan and Amendments to the FY2021-FY2026 Capital Improvements Program, Chapter 1, The Relationship Between State and Local Funding, §1-4. [https://gis.mcpsmd.org/cipmasterpdfs/Archive\\_MP22EntireBook.pdf](https://gis.mcpsmd.org/cipmasterpdfs/Archive_MP22EntireBook.pdf)

<sup>3</sup> Maryland Interagency Commission on School Construction, Administrative Procedures Guide, §102.1 (A)(3)(b), Revised August 2020.

<sup>4</sup> MD Code Ann., Ed. Art. §5-301; COMAR 14.39.02.11, Eligible Expenditures; COMAR 14.39.02.12, Ineligible Expenditures.

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limited to construction (“brick and mortar”) costs.<sup>5</sup> State participation has been limited to the approved Gross Area Baseline (see Section 3) for a project with any excess square footage and ineligible costs paid for with local dollars.<sup>6</sup>

**Table 2. Eligible and Ineligible Costs<sup>7</sup>**

<b>Eligible Costs</b>	<b>Ineligible Costs</b>
<ul style="list-style-type: none"><li>• New Construction (including new schools, additions, building replacements, and modular construction);</li><li>• Renovation necessary to restore and modernize existing facilities that are 16 years or older;</li><li>• Systemic renovations;</li><li>• State-owned relocatable classrooms;</li><li>• Temporary facilities (including utilities and portable classrooms) that are necessary on-site during construction of State-funded projects;</li><li>• Built-in equipment and furnishings;</li><li>• Off-site development costs required by local, State, or federal agencies; and</li><li>• Emergency repairs established by law.</li></ul>	<ul style="list-style-type: none"><li>• Site acquisition;</li><li>• Office development costs not listed as eligible by law;</li><li>• Master plans and feasibility studies;</li><li>• Educational specifications or equipment specifications;</li><li>• Ancillary construction (permits, test borings, soil analysis);</li><li>• Bid advertising;</li><li>• Water and sewer connection charges;</li><li>• Topographical surveys, models, renderings, estimates);</li><li>• Leasing or purchasing school facilities;</li><li>• Construction inspection services;</li><li>• Relocation costs for site occupants;</li><li>• Salaries of local employees;</li><li>• Construction of administrative or support facilities;</li><li>• Moveable equipment, furnishings and artwork; and</li><li>• Maintenance and temporary storage.</li></ul>

Source: COMAR 14.39.02.11-12

<sup>5</sup> Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, October 20, 2021, Briefing, Department of Legislative Services presentation on School Construction Cost-Share Formula, <https://mgaleg.maryland.gov/mgaweb/Committees/Details?cmte=SFW>

<sup>6</sup> *Ibid.*; Maryland Interagency on School Construction, Administrative Procedures Guide, §100.2(F), Approved September 22, 2011, Revised August 2020.

<sup>7</sup> COMAR 14.39.02.11, Eligible Expenditures; COMAR 14.39.02.12, Ineligible Expenditures.

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#### BUILT TO LEARN ACT

The Built to Learn Act authorized State participation in planning, design, and furniture, fixtures, and equipment (FF&E with a median useful life of 15 years). This additional State funding participation applies to all IAC projects, not just those funded through the Built to Learn Act.<sup>8</sup> Although not finalized, the Department of Legislative Services, anticipates these costs will be add-ons to the funding formula based on total construction costs. The expectation is a 10% add-on for planning/design and a 5% add-on for furniture, fixtures, and equipment (FF&E).<sup>9</sup>

#### KEY CHALLENGES AND IMPACTS

**Uncertainty About Rules.** Local school facility directors have reported receiving conflicting guidance and interpretations about State aid eligibility rules. Uncertainty remains to date regarding the eligibility rules that will apply for Built to Learn funded projects.

**Eligible Projects.** Many MCPS CIP projects are mandatory in nature and critical to school operations (e.g., ADA improvements, fire code safety projects, etc.). However, these programs are ineligible for State funding. Increasing the types of projects eligible for State funding would decrease total local dollars needed to fund MCPS' CIP.

**Increasing Costs Eligible for State Funding.** There are several ways to increase costs covered by State funding: (1) Changing regulations to add types of costs covered; (2) Adjusting building size to align with the Gross Area Baseline; or (3) examining site costs shared by the State.<sup>10</sup>

- **Adding Eligible Costs.** While the Built to Learn Act increased costs eligible for State funding, MCPS reports these increases will have a minimal impact on the overall State share of a school construction project.
- **Gross Area Baseline.** DLS reports that often statewide current school construction projects exceed the maximum size permitted by the Gross Area Baseline formula.<sup>11</sup> The Interagency Working Group on School Construction Aid Eligibility found that across LEAs

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<sup>8</sup> MD Code Ann. Ed. Art. 5-303(a)(4).

D Art. §5-303(a)(4); Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, July 7, 2021 Briefing, IAC briefing entitled Summary of Built to Learn Act of 2020, <https://mgaleg.maryland.gov/mgaweb/Committees/Details?cmte=SFW>

<sup>9</sup> Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, October 20, 2021, Briefing, Department of Legislative Services presentation entitled School Construction Cost-Share Formula.

<sup>10</sup> Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, October 20, 2021, Briefing, Department of Legislative Services presentation entitled School Construction Cost-Share Formula.

<sup>11</sup> *Ibid.*

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including MCPS, new elementary schools were of similar size. As discussed in the Funding Formula Section, Gross Area Baseline is not consistent with State and local programmatic goals designed to increase supports for at-promise students.

- **Site Costs.** Site costs vary from project to project and can be affected by geographic differences in the labor market, site topography and geography, and environmental considerations.<sup>12</sup> OLO Report 2017-4 found that State public school construction data show that grading, utilities, landscaping, and other site costs have increased since 2010, with many elements increasing by 20% or more. Site costs are eligible for State funding.<sup>13</sup> As shown in Section 2, variances between local bids for cost per square feet with site development, may vary from the State average cost per square foot. Costs above the State average are paid for by local dollars.

### ITEMS FOR COUNTY CONSIDERATION

To increase the share of State funding, the following provides considerations for local and State policy changes.

#### Local

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##### Assess:

- Updates to IAC policies regarding planning, design, and FF&E costs and ensure these add-ons are requested as part of project submission; and
- Opportunities to increase the State share as a percent of total project costs;
- County policies and practices that add significant project costs.

#### State

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##### Advocate for:

- Expansion of projects eligible for State cost-share based on mandatory nature of expenses or criticality to school operations.

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<sup>12</sup> Office of Legislative Oversight, Report 2017-4, New School Construction Costs, November 15, 2016, <https://www.montgomerycountymd.gov/OLO/Resources/Files/2017%20Reports/OLO%20Report%202017-4%20New%20School%20Construction%20Costs.pdf>

<sup>13</sup> *Ibid.*

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## Section 3: New/Replacement School State Construction Aid Formula

Local Education Agencies (LEAs) submit annual capital improvement funding requests for eligible projects to the IAC. The State uses a formula to calculate total school construction costs for each project eligible for State funding. The formula is defined by the IAC in State regulations. The total amount of State aid for each project is then wealth equalized (Cost-Share Section).<sup>14</sup> LEA requests often exceed costs eligible for State funding under traditional State aid programs.<sup>15</sup>

### FUNDING FORMULA

**Cost Per Square Foot X Gross Area Baseline (GAB) = Total Project Cost Eligible for State Funding<sup>16</sup>**

#### Cost Per Square Foot

Each year the IAC calculates an average cost per square foot. The average is based on recent bids and the National Index for School Construction Costs and is applied uniformly to all LEA submittals, where applicable.<sup>17</sup> The IAC-determined average cost per square foot for FY23 is \$358 per square foot for new construction *without* site development and \$427 per square foot for new construction *with* site development.<sup>18</sup> The IAC continues to gather information on project costs and may adjust the average cost per square foot prior to the final approval of projects.<sup>19</sup> MCPS notes current construction projects are affected by market pricing disruptions due to the pandemic.

MCPS' costs have typically not reflected prevailing wage costs. The Interagency Working Group on School Construction Aid Eligibility reported that when comparing non-prevailing wage

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<sup>14</sup> MD Code Ann. Ed. Art. §5-303; COMAR 14.39.02.03-06; Maryland Interagency on School Construction, Administrative Procedures Guide, Revised August 2020; Maryland Interagency on School Construction, Instructions for Submission of the FY2023 Capital Improvement Program, March 31, 2021, <https://iac.mdschoolconstruction.org/wp-content/uploads/2021/07/FY-2023-CIP-Submission-Instructions-2021-07-12.pdf>

<sup>15</sup> Interagency Working Group on School Construction Aid Eligibility.

<sup>16</sup> COMAR 14.39.02.06; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, September 22, 2021, Briefing, Department of Legislative Services presentation entitled Gross Area Baseline in Public School Construction, <https://mgaleg.maryland.gov/mgawebsite/Committees/Details?cmte=SFW>

<sup>17</sup> COMAR 14.39.02.06; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6; Revised August 2020; Office of Legislative Oversight, Report 2017-4, New School Construction Costs, November 15, 2016.

<sup>18</sup> Maryland Interagency on School Construction, Cost per Square Foot, [https://iac.mdschoolconstruction.org/?page\\_id=4633](https://iac.mdschoolconstruction.org/?page_id=4633)

<sup>19</sup> COMAR 14.39.02.06; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6 (C), Revised August 2020.

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project costs, MCPS' construction costs are lower than neighboring LEAs that use prevailing wage.

#### **Gross Area Baseline (GAB)**

The IAC establishes per student, square foot allocations for elementary, middle, and high schools as well as for special education, career & technology, and other specialized programs. Any square feet that exceed the GAB are not eligible for State funding and must be paid for by the LEA.<sup>20</sup>

#### **GROSS AREA BASELINE (GAB) FORMULA**

**Enrollment Projections x Per Student Allowable Square Feet = Gross Area Baseline (GAB)<sup>21</sup>**

#### **Enrollment Projections**

LEAs must submit school-specific, 7-year enrollment projections for each project. However, the local enrollment projections are adjusted, possibly downward, by the IAC through an evaluation of adjacent capacity.<sup>22</sup>

Adjacent Capacity. LEAs must submit enrollment capacity for geographically adjacent schools of similar grade level (elementary, middle, etc.). Enrollment in these adjacent schools is based on State-Rated Capacity, and any available seats are deducted from the eligible project capacity on a one-to-one basis, regardless of number of seats available.<sup>23</sup> Reassigning students to align with the State's adjacency criteria would potentially be disruptive to communities, families, and schools if a small number of seats are available overall or a small number of seats are available per classroom or grade in a given school.

#### **Per Student Allowable Square Feet**

The IAC determines allowable square feet per student based on program level.

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<sup>20</sup> Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6 and Appendix 102 (B), Revised August 2020.

<sup>21</sup> COMAR 14.39.02.06; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6 and Appendix 102 (B), Revised August 2020; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, September 22, 2021, Briefing, Department of Legislative Services presentation entitled Gross Area Baseline in Public School Construction.

<sup>22</sup> COMAR 14.39.02.03; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.4, Revised August 2020; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, September 22, 2021, Briefing, Department of Legislative Services presentation entitled Gross Area Baseline in Public School Construction.

<sup>23</sup> COMAR 14.39.02.03-07; Maryland Interagency on School Construction, Administrative Procedures Guide, §§102.4-102.5, Revised August 2020; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, September 22, 2021, Briefing, Department of Legislative Services presentation entitled Gross Area Baseline in Public School Construction.

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- Regular Education Students = 105 sq. ft. to 160 sq. ft. (varies by level)
- Special Education Students = 180 sq. ft. (elementary and middle school); 200 sq. ft. (high school)
- Career and Technology Students = 210 sq. ft. (high school only)<sup>24</sup>

Existing Building Square Feet. Allowable square feet may be impacted by the existing square feet of the school building. For any addition or partial tear down/replacement, existing/remaining square feet are calculated as part of the State funding request. If the existing square feet are larger than the GAB, the State will not fund the difference.<sup>25</sup>

#### KEY CHALLENGES AND IMPACTS

**Cost Per Square Foot.** Due to the COVID-19 pandemic and impacts on the supply chain, MCPS is experiencing an average increase of 23% per project. This will lead to a greater mismatch in school construction funding supported by State dollars.

**Gross Area Baseline.** The current formula does not consider schools with programmatic priorities (e.g., class size reduction, magnet, etc.) with LEAs responsible for all costs above the GAB. However, the GAB is not consistent with many State or local programmatic goals, including the State Blueprint Legislation which prioritizes equity and projects that are responsive to community needs. Schools may appeal the GAB decision to the IAC; however, the current IAC appeals process is rigidly tied to the funding formula and does not promote flexibility, including review of programmatic needs.

**Uncertainty About Rules.** Local school facility directors have reported inconsistent application of the GAB eligibility threshold.

**Adjacent Capacity.** Adjacent capacity does not align with local calculated enrollment capacity due to programmatic priorities, like class size reduction. Even if available adjacent capacity is minimal (for example a range of 1 available seat to 114 available seats in each school), the

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<sup>24</sup> Maryland Interagency on School Construction, Administrative Procedures Guide, Appendix 102(B), Revised August 2020; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, September 22, 2021, Briefing, Department of Legislative Services presentation entitled Gross Area Baseline in Public School Construction.

<sup>25</sup> COMAR 14.39.02.03 -.06; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6, Revised August 2020.



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capacity is counted against the requested project.<sup>26</sup> LEAs must entirely fund additional capacity at the requested project beyond what is permitted by the State's adjacency calculation.

**Existing Building Square Feet.** The current calculation does not consider individual attributes of existing school buildings. For example, an addition might be a more cost-effective way to add classroom capacity at an older school than renovating existing space. The IAC's current methodology would count existing space as usable programmatic space without further cost benefit analysis.

#### ITEMS FOR COUNTY CONSIDERATION

County and MCPS leaders have made extensive investments in programmatic approaches and interventions. However, the current State aid formula does not account for or financially support program priorities. This creates a funding gap, that must be closed with local dollars. To increase the share of State funding, the following provides considerations for local and State policy changes.

#### Local

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Assess the feasibility of:

- Designing schools to meet GAB calculations established by the State. This would require decisions on spaces to not include during construction;
- Reviewing MCPS' programmatic priorities and their effect on school capacity, school boundaries, use of relocatable classrooms; and
- Increasing the use of relocatable classrooms, boundary studies, or other solutions when the square footage of the existing building is larger than the State formula.

#### State

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Advocate for:

- Revisions to the GAB to be consistent with agreed upon statewide standards under the Blueprint Legislation, which prioritizes equity and projects that are responsive to community needs;
- No eligible enrollment deduction for adjacent schools with less than 150 seats available; and
- A more robust IAC appeals process that employs case by case flexibility.

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<sup>26</sup> Montgomery County Public Schools, State Aid Funding Presentation to the Interagency Working Group on School Construction Aid Eligibility, September 3, 2021.

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#### Section 4: State-Local Cost-Share Formula

The State provides a maximum cost-share percentage to provide funding for *eligible* school construction costs. At present, the State cost-share is wealth equalized and ranges from 50% to 100% of eligible costs, depending on the LEA. The State's share varies for each LEA.<sup>27</sup>

#### CURRENT STATE COST-SHARE PERCENTAGES – Montgomery County and Neighboring LEAs

State law requires the IAC to establish a cost-share formula, with the formula defined in regulations.<sup>28</sup> State regulations require the IAC to recalculate State-local cost-shares every two years. If the recalculation results in a State share decrease of more than 5%, the reduction is phased in over two years. No LEA receives less than a 50% State cost-share (funding floor).<sup>29</sup> The table below shows the minimum cost-share percentages for MCPS and neighboring LEAs.

**Table 3. Minimum State Cost-Share Percentages (FY21-FY24)<sup>30</sup>**

Local Education Agency	FY21-FY22	FY23-FY24
Montgomery	50%	50%
Anne Arundel	50%	50%
Baltimore County	57%	61%
Frederick	64%	65%
Howard	55%	56%

Source: IAC

<sup>27</sup> MD Code Ann. Ed. Art. §5-303; COMAR 14.39.02.05-.06; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6, Revised August 2020; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, October 20, 2021, Briefing, Department of Legislative Services presentation entitled School Construction Cost-Share Formula.

<sup>28</sup> MD Code Ann. Ed. Art. §5-303.

<sup>29</sup> COMAR 14.39.02.05-.06; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6, Revised August 2020; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, October 20, 2021, Briefing, Department of Legislative Services presentation entitled School Construction Cost-Share Formula.

<sup>30</sup> Maryland Interagency on School Construction, State & Local Cost Shares, [https://iac.mdschoolconstruction.org/?page\\_id=4067](https://iac.mdschoolconstruction.org/?page_id=4067)

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#### **COST-SHARE FORMULA FACTORS**

The State cost-share percentage is determined by multiple factors, including wealth.<sup>31</sup>

- Percentage State share of Foundation Program;
- Guaranteed Tax Base (GTB) program amount as percentage of foundation program (local school funding effort);
- 1/5th of the amount by which free and reduced-price meal (FRPM) percentage exceeds State average;
- Percentage points by which five-year enrollment growth exceeds State average growth for the same period;
- Five percentage points for Tier 1 "One Maryland" counties that meet specified unemployment rate thresholds;
- Five percentage points for Tier 1 counties that meet specified median household income thresholds; and
- Percentage points by which outstanding school construction debt plus PAYGO exceeds 1% of County wealth (local construction effort).

#### **FY23-FY24 COST-SHARE CALCULATION**

Table 4 on the following page shows the State cost-share total as the sum of all factors. Sums are rounded to the nearest whole percentage. As defined in regulations, if the total for any LEA is less than 50%, the State cost-share is adjusted upwards to meet a minimum of 50%.<sup>32</sup> MCPS benefits from this minimum funding floor.

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<sup>31</sup> COMAR 14.39.02.05-.06; Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, October 20, 2021, Briefing, Department of Legislative Services presentation entitled School Construction Cost-Share Formula.

<sup>32</sup> *Ibid.*

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**Table 4. State Cost-Share Calculation (FY23-FY24)<sup>33</sup>**

	FY21 State Share of Foundation	FY21 Guaranteed Tax Base Add-on	Fall 2019 20% of FRPM% Above State Av.	Enrollment Growth '14-'19 Beyond State Av.	Tier I County Add-On	FY 2019 Local Debt + PAYGO Above 1% of Local Wealth	Total	Increase to 50% Threshold
Montgomery	33.0%	--	--	3.1%	--	4.2%	<b>40.3%</b>	<b>Yes</b>
Anne Arundel	38.6%	--	--	2.9%	--	4.6%	<b>46.1%</b>	<b>Yes</b>
Baltimore County	52.4%	--	0.4%	0.7%	--	7.1%	<b>60.6%</b>	
Frederick	57.0%	--	--	2.8%	--	4.7%	<b>64.5%</b>	
Howard	45.2%	--	--	5.6%	--	5.2%	<b>56.0%</b>	

Note: Table does not reflect other adjustments from the Blueprint for Maryland's Future  
 Source: Maryland General Assembly, Assessment and Funding of School Facilities Workgroup

### KEY CHALLENGES AND IMPACTS

**Cost-Share Formula Factors.** The cost-share formula has not been updated since 2006. The Blueprint for Maryland's Future adopted several formula changes to school aid program on the operating side which will automatically roll into the current State cost-share formula for capital projects. The General Assembly Assessment and Funding Workgroup is charged with updating the State cost-share formula for capital projects. Updates recently discussed by the Workgroup include incorporating: (1) concentration of poverty (by system or project); (2) greater than the prior year FTE enrollment count or three-year rolling average; (3) capping State cost-share decreases for each two-year cycle; (4) additional factors to incentivize local jurisdictions (e.g., school maintenance); and (5) other factors (e.g., unemployment calculations used by the IAC as part of the wealth calculation).<sup>34</sup> These changes could impact the allocation of State funding, with lower-income Counties or LEAs with higher percentages of at-promise students receiving more funding.

**Cost-Share Percentage.** The cost-share formula only applies to eligible costs and is inextricably linked to GAB. Once ineligible costs are factored into the total cost of the school project, actual State funding, as a percent of the total project, is less than the formula derived cost-share percentage. According to analysis from the Department of Legislative Services, there are several LEAs that while eligible for 50% State cost-share are receiving far less, around 25% State

<sup>33</sup> *Ibid.*

<sup>34</sup> Maryland General Assembly, Assessment and Funding of School Facilities Workgroup, October 20, 2021, Briefing, Department of Legislative Services presentation entitled School Construction Cost-Share Formula.

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cost-share (percentages may vary based on use of prevailing wage).<sup>35</sup> As a result of this formula, Montgomery County must pay the bulk of school construction projects with local dollars.

**Funding Floor.** MCPS benefits from IAC regulations which provide a funding floor for any LEA which would receive less than 50% State aid for eligible costs. As shown, without this provision, the State share for MCPS would decrease to 40%. Any increase in the funding floor would result in MCPS receiving additional State aid dollars.

**Prevailing Wage.** Since 2014, school construction projects in Maryland trigger a prevailing wage requirement if the State funds 25% or more of total project costs (prior to 2014 prevailing wage was triggered if the State funded 50% or more of total project costs). This threshold applies to the State's traditional school construction program for all counties for school construction projects valued at \$250,000 or more.<sup>36</sup> Of note, prevailing wage applies to total project costs not just the State's share. However, a school system can accept less than 25% of State funding and not require bidding contractors to comply with prevailing wage requirements.<sup>37</sup> Until recently, MCPS did not assume prevailing wage costs in any projects because the additional costs typically exceeded the additional State aid eligibility.

As previously noted, the Built to Learn Act does not require prevailing wage for eligible projects. However, all communication received as of December 1, 2021, notes the IAC and MSA will require prevailing wage for Built to Learn projects.

In recent years, MCPS has contracted HVAC and roof projects using prevailing wage since the increased State aid eligibility per project has more than offset the increased project costs. While MCPS has received additional State aid, increased project costs for HVAC and roof projects and fiscal constraints in the County CIP has reduced the number of these projects completed per year.

MCPS now bids its school construction projects both with and without prevailing wage. Based on this bidding experience, MCPS estimates prevailing wage requirements results in a bump in construction costs of approximately 15%.

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<sup>35</sup> *Ibid.*

<sup>36</sup> Maryland Department of Labor, Overview – Prevailing Wage for State Funded Construction Contracts, <https://www.dlhr.state.md.us/labor/prev/prevoverview.shtml#law>; Hannah Sturm, Update on Prevailing Wage Rates, Maryland Interagency on School Construction, <https://iac.mdschoolconstruction.org/?p=4696>; Office of Legislative Oversight, Report 2017-4, New School Construction Costs, November 15, 2016.

<sup>37</sup> MD Code Ann. State Finance and Procurement Article §§17-201-226; Maryland Interagency on School Construction, Administrative Procedures Guide, §102.6, Revised August 2020.

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**Built to Learn Act.** The Act included a provision that all LEAs receiving the 50% funding floor and has advanced construction funding, are eligible for up to 150% of the GAB for school construction projects (depending on what the cost of the project is).<sup>38</sup> For projects funded with Built to Learn funds, an increase in the GAB means a larger share of the project will be eligible for State funding. Any reductions in the 50% funding floor could eliminate this benefit.

**Uncertainty About Rules.** Local school facility directors have expressed uncertainty regarding the application of the cost-share formula to Built to Learn funded projects.

### ITEMS FOR COUNTY CONSIDERATION

Historically, State funding pays for less than 20% of a MCPS new school construction project. MCPS' CIP is almost entirely funded by local dollars. To increase the share of State funding, the following provides considerations for local and State policy changes.

Local	State
Consider:	Advocate for:
<ul style="list-style-type: none"><li>• Opportunities to increase the percentage of a project eligible for State construction aid (e.g., use of prevailing wage) and any impacts on the number, scope, or schedule of CIP projects.</li></ul>	<ul style="list-style-type: none"><li>• An increase in the minimum State funding floor for eligible project costs; and</li><li>• Preservation of the Built to Learn Act regarding 150% of the GAB for LEAs subject to the 50% floor amount.</li></ul>

<sup>38</sup> MD. Code Ann. Econ. Dev. §10-650 (c)(2).

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#### **APPENDIX A: Example of School Construction Costs and State Contribution: Brown Station Elementary School Revitalization/Expansion**

Project Cost and State Aid	
Total Project Cost	\$31.2M
Total Eligible Site and Construction Costs	\$28.7M
Amount of State Aid Request (non-prevailing wage 24.9%)	\$7.98M
Amount of State Aid Received	\$6.87M
State Aid as Percent of Total Eligible Project Cost	23.9%
State Aid as Percent of State Aid Request	86.1%

Facility Size	
Projected Enrollment (IAC Eligible)	709 students
State IAC Maximum Gross Area Allowance	
GSF per Student	118 Sq. Ft./Student
Total Facility GSF	84,000 Sq. Ft.
MCPS Built Square Footage	
Projected Enrollment (MCPS Approved)	761 students
GSF per Student	149 Sq. Ft./Student
Total Facility GSF	113,998 Sq. Ft.
Facility Features:	<ul style="list-style-type: none"> <li>• Class Size Reduction</li> <li>• 1,000 sq. ft. standard classroom</li> <li>• 3,000 sq. ft. Linkages to Learning and day care space</li> <li>• 4,000 sq. ft. gym</li> <li>• 4,000 sq. ft. cafeteria</li> </ul>

**Key Takeaway – Project Cost and State Aid:** Total eligible site and construction costs for Brown Station ES for State aid was \$2.5 million less than actual project costs, \$28.7 million compared to \$31.2 million. Additionally, since prevailing wage typically adds to overall project costs, in practice MCPS does not utilize prevailing wage. As a result, MCPS was only eligible for a State cost-share percentage 24.9%, or \$7.98 million. Of this lower cost-share amount, MCPS received \$6.87 million in State aid for Brown Station ES – 86.1% of the non-prevailing wage request and 23.9% of total eligible costs.

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**Key Takeaway – Prevailing Wage:** Under the traditional State construction program, MCPS would have been eligible for up to 50% State cost-share if prevailing wage was used for the Brown Station ES contract. However, at a minimum, the increased State cost-share amount must offset increased construction costs using prevailing wage. MCPS' recent bid experience has shown increases in school construction costs from prevailing wage of approximately 15%. Future cost-benefit analyses will need to be made on a project-by-project basis, examining all formula funding factors (e.g., State versus local enrollment capacity, adjacent school capacity, etc.).

**Key Takeaway – Facility Size:** The State IAC approved funding for Brown Station ES was based on a building size of 84,000 square feet and the IAC eligible enrollment of 709 students. To meet local capacity and program needs, the MCPS-approved building size of Brown Station ES was 113,998 square feet with an enrollment of 761 students. The difference between the two calculations is about 30,000 square feet and 52 students. If MCPS would have constructed the building to meet IAC eligible enrollment at 84,000 square feet, the State cost-share percentage for Brown Station ES would have increased, but the school building would have been too small to meet local capacity and program needs.



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#### APPENDIX B: Example of the Impact of IAC Adjacency Calculations (Hypothetical)

Adjacent School Capacity	
Projected Enrollment	775 students
Adjacent Schools	<u>5 Total Schools</u> School A School B School C School D (Class Size Reduction) School E (Class Size Reduction)
Surplus State Capacity of Adjacent Schools	110, 81, -22, 13, and 52 spaces
Sum of Surplus Capacity of Adjacent Schools	234 spaces
Average Surplus Capacity of Adjacent Schools	46 spaces (7.8 spaces per grade level)

**Key Takeaway – Adjacency Calculations:** Total surplus capacity of 234 is based on State-Rated Capacity. The State aid formula deducts this total capacity from the project enrollment of 775 students at the Hypothetical Elementary School. This results in a new projected enrollment of 541 students (775 students minus 234 spaces). The IAC then calculates total eligible square feet for the State cost-share of the Hypothetical Elementary School based on 541 students. This results in a reduction of eligible costs and the State cost-share for the project. To construct the school at 775 students and not use available adjacent capacity, MCPS must entirely fund the difference in project enrollment and size of the building – which could total one-quarter to one-third of construction costs.

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## **APPENDIX C: Working Group Recommended Changes to State Funding Formula**

### Existing Funding

1. Request that State leaders reiterate a commitment to the legislative intent of the Built to Learn Act and maintain prior levels of traditional State school construction funding to LEAs.

### Types of Projects Eligible for State Funding

2. Request an expansion of projects eligible for State cost-share based on mandatory nature of expenses or criticality to school operations (e.g., restroom renovations, ADA compliance, asbestos abatements, stormwater discharge and water quality management, fire and safety upgrades, etc.) Expanding funding to these categories of projects would promote statewide goals of maintaining the physical condition of public school facilities.

### Cost-Share

3. Request an increase in the cost-share funding floor above 50% while preserving the Built to Learn Act provision regarding 150% of the GAB for LEAs subject to the floor amount.

### Appeals Process

4. Request a more robust and transparent IAC appeals process that employs case by case flexibility and examines factors beyond the funding formula, including cost effectiveness and statewide programmatic goals.

### Adjacencies

5. Request that when calculating adjacency, schools with less than 150 seats available are not deducted from the eligible enrollment. Re-assigning capacity only if there are 150 seats or more available would help minimize disruptions to families and reduce community impacts when children are moved from schools. This could be the outcome if a local education agency were to reassign students to align with the State's adjacency criteria, regardless of how few seats are available overall or how many seats are available per classroom or grade in a given school.

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#### Kirwan

6. Request the GAB is revised to be consistent with agreed upon statewide standards under Kirwan, aligning with the five Blueprint categories and any other standards:
  - Early Childhood Education;
  - High-quality and Diverse Teachers and Leaders;
  - College and Career Readiness Pathways (including Career and Technical Education);
  - More Resources to Ensure All Students are Successful; and
  - Governance and Accountability.