



The Commonwealth of Massachusetts
Office of the Inspector General

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Massachusetts School Building Authority
3 Center Plaza, Suite 430
Boston, MA 02108

Dear Board of Directors:

I am writing to urge you to consider these recommendations and implement a series of measures that will instill discipline in the state's school building assistance program.

Two years ago, after imposing a moratorium on state-supported school construction financing because the former state reimbursement program was billions of dollars over budget with no foreseeable fiscal solution, the Legislature abolished the former school building assistance program and created a new state authority to manage state-aided school construction projects.

In 1980, the Ward Commission found that to stamp out corruption in publicly funded construction projects, the state needed to create a single state agency dedicated to building, renovating and managing state property. That agency was the predecessor of today's Division of Capital Asset Management and Maintenance.

The new Massachusetts School Building Authority (MSBA) must apply the same rigor and expertise to school building projects. The MSBA must play a role in supervising each project from its conception through design, construction and project close-out, including making sure that any owner's project manager is protecting taxpayers' interests. Cities and towns cannot assume that the school building assistance program is operating as it had been.

The Legislature overhauled the former program in order to create a sustainable school construction program for the future.

If the MSBA fails to exercise its full authority and oversight responsibility under Chapter 208 of the Acts of 2004 and Chapter 70B of the General Laws, the state could again face the unsupervised cost escalation and unapproved design escalation that forced the Legislature to impose a moratorium in 2003 and abolish the former program.

I want to acknowledge and emphasize that the authority has been charged with the critical statutory responsibility of bringing the commonwealth's school funding program under control and ensuring the program stays within its budget.

Since the Legislature created the new Massachusetts School Building Authority, a number of significant problems have been identified in the former program. These problems are described below and I have made specific recommendations that I hope the board considers as they are finalizing the regulations for the new program.

Lack of Accountability for State Expenditures - Monitoring Project Expenditures

The Department of Education did a poor job of monitoring spending. Under the former program, the Department of Education vastly understated the cost of its commitments to local school districts. In 2004, the Department of Education told lawmakers that the 428 projects on its waiting list would cost the state a hefty \$4.1 billion. However, the Department of Education's official number misrepresented the actual cost by more than 30 percent. The former school building assistance program made promises it couldn't afford to keep and didn't adequately document.

For example, the Board of Education annually reviewed "cost per square foot standards" (603 CMR 38.06) which represented an increase in state reimbursed costs to approved projects waiting for state funding. However, the amounts set aside on the official Department of Education waiting list were not updated to reflect these increases and would only be updated upon final audit, which often didn't occur until 5 or 10 years after the project was completed. In addition, a sample of the files associated with some of these projects are filled with promises to fund items that were otherwise ineligible under the Department of Education's own rules.

For instance, in the spring of 2004, just three months before Gov. Mitt Romney signed legislation creating the MSBA, the Department of Education agreed to pay some \$1.3 million (57 percent of a \$2.35 million price tag) to upgrade and reconstruct athletic facilities at the Dover-Sherborn middle and high school. Those facilities, which included tennis courts, a running track, a football field and soccer practice fields, weren't included in the original scope of the project and shouldn't have been allowed.

However, DOE twice wrote to the school district citing the regulations that prohibited the extras – and then waived the regulations and accepted the extra cost.

Promises like these and unenforced policies helped bring the price tag for the waiting listed projects to \$5.5 billion.

Recommendations:

The MSBA must honor documented commitments the state has already made under the former program. However, the MSBA also must establish equitable funding rules for the future program, apply them consistently and accurately track the amount of funds that it has committed.

For waiting list projects, the MSBA should not make payments to communities for items that are beyond the scope of what was approved by the Department of Education. Any promises that can be documented in the files should be honored, but any claimed promises based on hearsay or revisionist history without proper documentation should be set aside.

Program Standards

The Department of Education had regulations in place to ensure that state funds were distributed fairly and that the state didn't foot the bill for an expansive, deluxe design in one district and an under-sized economy model in another. But Department of Education officials repeatedly waived those regulations and allowed communities to build schools of varying size and design standards. A review of the projects approved under the Department of Education's administration of the program found that the department failed to follow its most basic rules. For instance, the Department of Education's regulations specified how much square footage per student the state would pay for and required that all state construction grants "not exceed the cost" of multiplying this allowable gross square footage by the established cost per square foot. However, also included in the regulation was a blanket waiver provision that "the Commissioner may recommend to the Board that this requirement be waived in exceptional circumstances." These standards were unrealistically low and most school districts sought a waiver or inclusion of additional space as an "allowable extra." Instead of modifying the regulations, the Department of Education granted waivers, or allowable extras, on almost every project. As a result, Massachusetts' schools have been built, on average, more than 30 percent larger than Department of Education standards.

Recommendations:

The MSBA must continue with its initiative to create realistic standards and enforce them without relying on a systematic end-run of the rules. By making the standards for the new program meaningful and uniformly enforcing them, the MSBA is attempting to avoid an environment where the standards are ignored and cities and towns get more or less square footage based on their ability to effectively lobby for waivers or allowable extras. Establishing standards and enforcing them will ensure that designers design to the standard, not above it. Local expectations won't grow beyond what is attainable under the standards if locals know that the standards are the limit and that requests for additional spaces will not be allowed on a systematic basis.

Project Audits

A 2004 report by Auditor A. Joseph DeNucci estimated that the Department of Education could have lowered payments by more than \$20.5 million if the agency had done a better job auditing school building project costs. At the time of the creation of the MSBA, 1156 school projects were either receiving or awaiting payment from the

Commonwealth. Of these 1156 projects, only 375 of these had received their final audit. This indicates that under the Department of Education's administration of the program, the state was making payments and promises to communities without any known, realistic budget levels and the Department of Education had created a backlog of over 800 audits. A document provided by the MSBA to the Office of the Inspector General identified 90 school building and renovation projects – some of them completed a decade ago – that never submitted audit materials to the Department of Education, yet have been receiving payments from the state for years. Other school districts did file audits but the Department of Education never examined them. MSBA staff told my office they found some audits still sealed in the envelopes in which they had been mailed months or years earlier.

Recommendations:

The MSBA should audit school construction projects in a timely manner. Waiting years to complete audits only leads to missing and inaccurate project documentation and confusion about audit adjustments made years in arrears. For the new program, the MSBA should implement an audit procedure that does not have to wait for a project to be complete. Instead, the MSBA should implement an audit-as-you-build process to ensure that expenditures are monitored as they are incurred and payments to municipalities reflect only those amounts that are eligible for reimbursement.

The MSBA should continue to aggressively reduce the backlog of outstanding audits that the authority inherited from the Department of Education. Once these audits are complete, the MSBA should make the necessary reductions in future payments to these communities to allow the state to recover the misspent funds – and make these audit savings available for future school building projects.

It is worth noting that since taking over the program, the MSBA has completed more than 100 audits. These audits found some \$65 million in construction costs and \$35 million in interest payments that the Department of Education should not have approved under its own rules and regulations, according to documents provided by the MSBA.

Due Diligence and Needs-Based Project Approval

When the Legislature created the MSBA, it provided a generous but finite source of funding. For the MSBA to live within its means, certain fundamental changes are required. The MSBA's primary task is to instill discipline in the use of the state's resources. To live within its budget, the MSBA has to establish priorities, provide a firm structure for school districts to follow, and closely monitor construction.

The MSBA must make it clear that the days of school districts presenting a final plan to the state based on the district's wish list and relying on a certain percentage of reimbursement are over. The MSBA cannot afford to make verbal commitments of state funding for multi-million dollar project expansions or casually make major changes in project scope, as was done under the Department of Education. The MSBA must make

sure that local districts understand that the state can't be expected to pay for each school district's wish list for creating the dream school. The sooner cities and towns understand that the state will no longer bankroll an architect's grand vision, the easier it will be to equitably distribute scarce resources.

Your new application process, beginning with the Statement of Interest, which filters potential projects according to the statutory needs-based criteria and the centralization and standardization of feasibility studies, is a good start to seizing control of this unwieldy process.

Your recent Needs Assessment was another excellent first step in gathering baseline school facility information to help inform decisions that will be made under the new program and create a rational process that addresses the needs of students across the state. I look forward to seeing your comprehensive plan for rebuilding schools based on real needs – rather than the desires of local officials. I hope that plan will make clear that under the MSBA, the state – not the local school district – is now in charge of the direction of state expenditures.

Recommendations:

I applaud you for informing school districts that they should not expend funds for school designs and plans, and then submit plans with their applications. Focusing the first phase of the application process on having districts identify what they believe are the problems with their school facilities instead of starting with finished designs for a solution that may or may not be needed, is a good beginning.

It is crucial to begin the application process not with final plans for a “solution”, but with local officials identifying what deficiencies they believe exist with their local school facilities. The MSBA then needs to understand and verify these deficiencies, see how they fit within the statutory priority criteria and then work collaboratively with districts in developing a solution that is in the best interests of both the local district and the MSBA.

Change Order Review

The Department of Education had very little involvement with a project once the application process was over and a project was given approval by the Board of Education. Cities and towns were left to make their own decisions once the project received approval and began construction. While the state was footing the majority of the bill, local communities were calling the shots. And when things went over budget, cities and towns often turned to the state as the funding source of first resort.

In Lawrence, the city proposed a change order to refit science labs during the construction of the new Lawrence High School. The proposed design changes would have added approximately \$2 million in additional costs to the project. While modern science labs are an important educational tool, the state shouldn't be expected to foot the bill when local officials change their minds in the middle of a building project.

While the MSBA, like the Department of Education, would like to fund supplemental

requests like Lawrence's, it has instead rejected this request in recognition of the concomitant effect such supplemental funding increases would have in depriving other worthy districts of basic funding.

Recommendations:

The MSBA must make it clear that the state – not local school districts – holds the program's purse strings and will determine how much it plans to spend on each school. The MSBA should create a process to review all change orders for school construction projects. Any owner-directed change orders that are for items that exceed the agreed upon project scope, should be reviewed to determine whether they are subject to construction bidding laws and should be paid for with local dollars, not state dollars.

Standard Contracts

Most communities are at the mercy of the vendors when negotiating and executing contracts for services. Some districts do very well in negotiations while others sign very disadvantageous contracts. Fees paid for the same type of service can vary widely. For example, in a sample of audits reviewed by my office, fees for architectural services range from a low of 5 percent to high of over 14 percent.

In Somerville the architectural fees for the Lincoln Park School are estimated at \$2.2 million – 10 percent of the project's estimated construction cost. That percentage exceeds architectural fees that appear to be typical for school building projects. The MSBA should not approve excessive fees.

The agency needs to continue to hold the line – or communities throughout Massachusetts will suffer.

Recommendations:

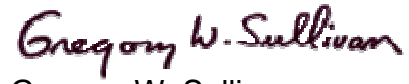
The MSBA should develop elements of standard contracts for use by all communities. By standardizing the contract and fee structure, the MSBA will provide local districts with the protection they need from aggressive vendors and this in turn will save taxpayers money at both the local and state level. There is no need to reinvent the wheel every time a contract is executed with an architect or project manager. By developing elements of standard contracts, the MSBA will save local districts time and money. No longer will district resources be wasted reviewing differing contract terms and no longer will the base document be heavily weighted in favor of the vendor. This will save time, effort and money and provide cities and towns the comfort of knowing that their best interests are being protected.

If a school district wishes to pay more than the standard, they should do it at their cost.

Like the Big Dig, this program is mammoth in scope, amounting to billions of dollars in state funding. My office intends to monitor this important program to ensure that the

state's resources are used prudently and effectively.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a prominent initial "G".

Gregory W. Sullivan
Inspector General

cc: Katherine P. Craven, Executive Director