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## **CORRECTIVE ACTION PROGRAM GUIDELINES**

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**Subject:** Corrective Action Program

**Approval:** Commission Resolution 11-104

**Code Section/Reference:** ORC Section 331.49

**Owner:** Program Services

**Policy Number:** PS-05

**Originally Issued:** March 26, 2009

**Revised:** September 2011; December 2017;  
April 2018

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### **APPLIES TO**

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CFAP, 1990 Lookback, ENP, and  
VFAP

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#### **I. Overview**

Through Amended Substitute House Bill Number 266, the 127<sup>th</sup> General Assembly authorized the Commission to create the Corrective Action Grants Program. The 129<sup>th</sup> General Assembly, through Amended Substitute House Bill Number 153, replaced the Corrective Action with the Corrective Action Program codified in ORC Section 3318.49. Through the Corrective Action Program, the Commission may award funding to school districts that participated, or are participating in, a Commission program pursuant to R.C. Sections 3318.01 to 3318.20 or 3318.40 to 3318.45 for the correction of work that is found to be defective or to have been omitted. Funding awards will be on a case-by-case basis and will be based on the correction of work found during or after project closeout to be defective, or for the remediation of work found during or after project closeout to be omitted.

#### **II. Eligible Recipients and Distribution of Funds**

Statutory guidelines stipulate that corrective action funding shall only be provided for work if the impacted school district notifies the Executive Director of the Commission within 5 years of project occupancy. For the purposes of this program, all public schools and joint vocational schools that meet the program requirements are eligible.

- A. The Commission may provide funding assistance necessary to take corrective measures after evaluating defective or omitted work. Defective work means work that does not conform to the Contract Documents or does not meet the requirements of any Applicable Law, inspection, reference standard, test, or approval or work not designed in accordance with the Ohio School Design Manual (OSDM) or in conformance with the applicable codes or standard of care. Omitted work means work shown in the project's contract documents but omitted during the actual construction or scopes of work omitted from the design and construction documents but were required or

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contemplated by the Project's assessment, the OSDM, or to meet the requirements of any Applicable Law or standard of care.

- B. If the work to be corrected or remediated was part of a project not yet completed, the Commission may amend the project agreement to increase the project budget and use corrective action funding to provide the state share of the amendment.
- C. If the work to be corrected or remediated was part of a completed project and funds were retained or transferred pursuant to division (C) of section 3318.12 of the Revised Code, the Commission may enter a new agreement to address the necessary corrective action.
- D. Whether the project is completed, the district must contribute a portion of the costs of the corrective action, to be determined in accordance with section 3318.032 of the Revised Code or, if the district is a joint vocation school district, section 3318.42 of the Revised Code. A district that is unable to provide its portion so that remediation can proceed may apply to the Commission for additional assistance under section 3318.042 of the Revised Code.
- E. The Commission shall assess responsibility for the defective or omitted work and seek cost recovery from responsible parties, if applicable. Responsible parties are considered the entity, or entities, which through design, installation, oversight, review, or through other actions or inactions, contributed to the defective work or omission of work. Any recovery of the expense of the remediation shall be applied first to the district portion of the cost of the corrective action. Any remaining funds recovered shall be applied to the state portion and shall be deposited into the School Building Program Assistance Fund (Fund 7032).

### **III. Criteria for Awarding Funding**

The Commission has sole discretion in determining eligibility of a school district to receive funding. The Commission reserves the right to deny a school district funding in whole or in part from this Program. Corrective Action funding is not intended to fund or reimburse any capital improvement projects, HVAC, technology, or security enhancements to a facility(s).

- A. A school district's building(s) must have been constructed with state funding under one of the following programs: 1990 Lookback, Exceptional Needs Program (ENP), Classroom Facilities Assistance Program (CFAP), or Vocational Facilities Assistance Program (VFAP).
- B. Defective or omitted work must have been reported to the Executive Director of the Commission within 5 years of project occupancy.

### **IV. Application Process**

The Corrective Action Program application is based solely on providing funding to bring identified defective or omitted work up to Ohio School Design Manual standards, for the correction of work found to be defective, or the remediation of work found to be omitted during or after project occupancy. School districts will be required to identify projects in their district and to provide a narrative description

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of the project. School districts will also be asked to provide written and photographic documentation of proposed projects.

- A. Applicants must provide a complete application. The application and photographic evidence provided should be the primary instruments by which school districts will be evaluated.
- B. School districts may only submit one application. The administrator of the school district or his or her designee who is knowledgeable about the school facility should complete the application. School districts may want to consult with architectural, engineering or other experts to properly complete the application.
- C. Completed applications must be returned to the Ohio Facilities Construction Commission, 30 West Spring Street, 4<sup>th</sup> Floor, Columbus, Ohio 43215. Any questions regarding the program should be directed to Rick Swart of the Commission, at 614-466-6290, or by email at <mailto:rick.swart@ofcc.ohio.gov>

#### **V. Use of Corrective Action Funds**

Corrective Action funding approved by the Commission and subsequent expenditures can be used only to bring facilities up to Ohio School Design Manual standards for the correction of work found to be defective or the remediation of work found to be omitted from a Commission CFAP, ENP, 1990 Lookback or VFAP project.

Ineligible expenditures under an approved Corrective Action funding include:

- A. Payment of maintenance costs relating to any project constructed in whole or in part with Corrective Action funds.
- B. The construction of new facilities.
- C. Work done to stadiums, other outdoor athletic facilities, general site work, parking lots or playgrounds will not be considered as qualifying work.
- D. Work done to leased or non-owned buildings, buildings not in the state of Ohio, buildings housing solely district administrative offices or records, or other buildings owned by the school district but not directly used for K-12 education, will not be considered as qualifying scope of work.
- E. Payment of costs for upgrades or betterment of materials.

The school district is solely responsible for any ineligible expenditure.

#### **VI. Funding Process**

The major steps in the evaluation and selection process are listed below:

- Step One**      The school district submits a formal request/application to the Commission for consideration under the Corrective Action Program.

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- Step Two** Commission staff acknowledges receipt and logs in the application. Then, Commission staff reviews the application for content and completeness.
- Step Three** Commission may consult with individuals with technical expertise in architecture and engineering to assist in review and evaluation of the application.
- Step Four** Executive Director is provided information about a school district that meets all the selection criteria to decide on whether the funding application shall be submitted to the Commission for approval.
- Step Five** Executive Director makes recommendations for funding awards to the Commission;

**-OR-**

Executive Director notifies the school district in writing if the Corrective Action application has been denied for any reason.

## **VII. Awarding of Funding**

- A. The Commission reserves the right, before the approval of a school district's application, to conduct an on-site inspection that may include the following:
1. On-site review of the proposed qualifying work
  2. Meeting with insurance adjusters, (if applicable)
  3. Meeting with life, safety, or health code violation representative (if applicable)
  4. Review of court order to perform repairs (if applicable)
  5. A cost estimate of proposed work
  6. Review and evaluation of the district's maintenance program and records
- B. The Commission reserves the right to award a portion of a school district's request for funding and make funding conditional upon the reconciliation of the project's construction fund.
- C. The Commission will evaluate the remaining useful life of any building, part of a building or building system as part of the school district's application and consideration of funding.
- D. Once the Commission has approved the application for Corrective Action funding, the school district will be notified. After receiving approval for a grant, the school district

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must enter into a project agreement with the state. The school district must comply with all terms and conditions of the agreement.

**VIII. Agreement Between the Commission and the School District**

- A. Upon approval of an application, the school district will enter into and be bound by an agreement with the Commission that defines the procedures and requirements of completing Corrective Action Projects.
- B. Projects funded under this program will be administered by the school district in accordance with the Agreement. Until the project is completed the school district will provide progress updates to the Commission. The Commission reserves the right to conduct an on-site inspection to confirm the completed status of the work.