



## Office of Facilities Planning Newsletter #108 – March 2012

### New Forms Workbooks:

We have updated the Forms Workbooks containing various forms to be submitted to our office for project start-up, preliminary submissions, and final submissions. The new Forms Workbooks can be found on our web site on the **Forms & Checklists** page at:

<http://www.p12.nysesd.gov/facplan/SubInfo.htm>

New forms and workbooks include:

- **Letter of Intent Workbook** – found under Project Start-up and Preliminary Planning
- **Preliminary Submission Forms Workbook** – found under Approval of Preliminary Plans
- **Final Submission Forms Workbook** – found under Approval of Final Plans and Specifications.
- **The CSC has been divided into two separate forms.** They are the Partial CSC, and Final CSC. This will help avoid confusion and will be critical for the new FCR process to be described in the very near future.

Please use the new CSC forms immediately, and the updated forms included in the new workbooks for all future project submissions.

### New Fire Safety Reports:

We have updated the Fire Safety Manual and Report Forms. The new manual and report forms can be found on our web site on the **Fire Safety Home Page** at:

[http://www.p12.nysesd.gov/facplan/FireSafety/fire\\_safety\\_report\\_homepage.html](http://www.p12.nysesd.gov/facplan/FireSafety/fire_safety_report_homepage.html)

Please use the updated forms included for all future reporting.

### Requirements for Occupancy of Areas affected by Construction Operations

For all construction projects, when, on the basis of an inspection by the A/E, the work is considered to be “substantially complete,” the A/E must complete either the Partial Certification of Substantial Completion form or the Final Certification of Substantial Completion and send the original to our office and a copy to the district. This form, in essence, states that the work was done in accordance with the documents we approved and, hence, is in compliance with all applicable codes and can be occupied.

The point of “substantial completion” is a specific, defined time. The definitions provided by the American Institute of Architects (AIA), the National Society of Professional Engineers, the American Consulting Engineers Council, and the Construction Specification Institute (CSI) are essentially the same. The AIA definition is: “The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the contract documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it was intended.” As a licensed design professional, the A/E of record hired by the district should be able to determine this specific point in time.

For a new building or addition, the district must also have a formal fire inspection done of the entire facility as soon as possible following the completion of the Final Certification of Substantial Completion form by the A/E. The total building must be inspected, using the same reporting form as used for the annual fire inspection, and the completed report is sent to our office. Upon receipt of a satisfactory report (i.e., with all essential information provided, no non-conformances, and appropriate signatures on the last page of the report), a Certificate of Occupancy will be issued which will “bridge” to the date of the regular annual fire inspection and to the date of the Certificate of Occupancy (C.O.) that results from the annual inspection.

If there are areas of the building that are not complete, the A/E must indicate this on the Partial Certification of Substantial Completion form. For new buildings and additions a Partial Certificate of Occupancy will be issued. Note: These areas identified as incomplete can not be occupied until the work has been completed and the A/E inspects and issues either a new Partial Certification of Substantial Completion form, or a Final Certification of Substantial Completion form.

Additionally, the following excerpts from Commissioners Regulations must be heeded; Section 155.5 Uniform Safety Standards for School Construction and Maintenance Projects

- (a) Monitoring of construction and maintenance activities. The occupied portion of any school building shall always comply with the minimum requirements necessary to maintain a certificate of occupancy and shall be monitored during construction or maintenance activities for safety violations by school district personnel. It is the responsibility of the board of education or board of cooperative educational services to assure that these standards are continuously maintained when the building or any portion thereof is occupied.
- (n) Post construction inspection. The school district or board of cooperative educational services shall provide the opportunity for a walk-through inspection by the health and safety committee members to confirm that the area is ready to be reopened for use.

### **Discovered Buildings – Code Compliance**

In an effort to make the reviews of discovered buildings more consistent and better understood we are providing the following information. Over the years we have issued newsletter articles, forms and documents which contain our submission requirements for Discovered Buildings. The documents, which are still applicable, are located on our web site at [www.p12.nysed.gov/facplan/](http://www.p12.nysed.gov/facplan/).

A “Discovered Building” is any building constructed or placed on school district property without approval from the Commissioner of Education and a Building permit from the Office of Facilities

Planning. For this reason, the building does not have a Certificate of Occupancy and does not legally exist. When a district submits a Discovered Building Project to our office, a Code review is performed which is intended to result in the “legalization of the building”. All construction needs to be fully compliant with the NYS Uniform Fire Prevention and Building Code, the Energy Conservation Construction Code of NYS, the Manual of Planning Standards and the Commissioner’s Regulations (collectively referred to as “Code”). Code compliance applies to all disciplines; architectural, mechanical, electric, plumbing. The following items are required in a Discovered Building submission in order for us to evaluate the building. Once these items are received and approved we will issue a Certificate of Occupancy or a building permit:

1. 2 copies of Form FP-AU, Request for Approval of Use of a Facility
2. Date of Construction with supporting documentation.
3. Public School Fire Safety Report (not required if a building permit is required to bring the building up to Code)
4. Certification by a Design Professional currently licensed and registered in New York State that the building conforms to the Code in effect at the time the building was constructed, or the current Code as applicable.
5. Architectural quality floor plans (similar to working drawings) with dimensions, door swings, windows, fire extinguishers, mechanical, electrical, fire protection systems, and plumbing fixtures drawn to scale.
6. Site Plan which shows nearest property lines, nearby buildings, streets, parking areas, driveways, walks and fire hydrants as required.
7. AHERA Management Plan or certification by a qualified professional that the building does not contain asbestos.

There are many problems and challenges to achieving Code compliance presented by Discovered Buildings (DB's). These buildings often have non-conformances with the Code. Some issues are very severe while other issues are relatively minor. Very often the building is lacking handicap accessibility. Unfortunately, Discovered Buildings almost invariably have certain features which were not constructed in accordance with the Code in effect at the time of construction. We generally find a wide range of non-compliances such as; fire-ratings are not met, fire apparatus roads are missing, stairs are non-compliant, exit doors/hardware are inadequate and so on.

Non-compliant items need to be addressed and/or corrected before we can approve the building. Unfortunately the expense of the corrections is the penalty for erecting a building without going through the building permit process required of public school districts. No aid will be paid, even for projects that would have otherwise been eligible had the appropriate permits been obtained prior to construction.

The starting point for all DB's is to determine when the building was constructed. The date of construction is needed to determine the edition of the Code with which the building must comply. One problem with this task is that the age of an older building is often difficult to determine because insufficient records exist. Even buildings constructed as recently as the 80's may lack substantial records. It must be demonstrated that a reasonable effort was made to determine when the building was constructed. If the date of construction can not be determined, conformance with the current Code will be required. A Technical Bulletin issued by the Department of State, titled: Construction

without a Building Permit, dated January 1, 2003, addresses the Code requirements for a building constructed without a permit. It informs us that if the date of construction is known, compliance with the Code in effect at the time of construction is required.

The Technical Bulletin (TB) also advises that if the time of construction can not be determined, “it is reasonable to require compliance with the Code in effect at the time of the ‘legalization’ of the building construction, as it is presumed a building permit will be issued.” If the date of construction of a building can only be narrowed down to within a span of say 10 years, we will use our authority to assign a date based on the evidence and require compliance with the Code in effect at that time. This will often ease the Code requirements. If the alterations required to “bring the building up to Code” are extensive a building permit will be required. “Legalization” happens when the project is submitted and approved by Facilities Planning. Documents will need to be submitted which show that the building conforms to the applicable Code or will be altered as required to achieve Code compliance. In addition to instruction found in the TB, the Fire Code of New York State Section 102.1.1 requires compliance with the construction and design provisions of the Fire Code for existing structures, facilities and conditions not legally in existence at the time of adoption of the Fire Code. This means for most DB’s no matter when they were constructed, conformance with applicable sections of the Fire Code is required.

In summary, if the date of construction can be confirmed then conformance with the Code in effect at that date will be required. If the date of construction can not be determined, the building must comply with the current Code. Finally all buildings will have to comply with the Fire Code in accordance with Section 102.1.1. A Discovered Building which requires extensive alterations will be issued a building permit upon completion of our review. Following the construction alterations, the A/E will issue a Certificate of Substantial Completion and a Public School Fire Safety Report will be needed. After we have received the appropriate documents, a Certificate of Occupancy will be issued. If the building will only require minimal improvements, we will require evidence of those corrections, and then a Certificate of Occupancy will be issued. Below, we have compiled the Codes with which compliance will most often be required.

DB with date of construction documentation:

Comply with Current (2010) FCNYS, Current (2010) PMCNYS, NYSUFPBC effective at time of construction (if any), ECCCNYS effective at time of construction (if any), SED MPS effective at time of construction (if any), RCE 155, and ADA Title II

DB without date of construction documentation:

Comply with Current (2010) NYSUFPBC, Current (2010) ECCCNYS, Current [1998 (2011 - not effective yet)] SED MPS, RCE 155, and Current ADA Title II

RCE = Regulations of the Commissioner of Education Part 155

FCNYS = Fire Code of New York State

ECCCNYS = Energy Conservation Construction Code of NYS (1979, 1989, 1991)

SED MPS = NYS Manual of Planning Standards

NYSUFPBC = NYS Uniform Fire Prevention and Building Codes

One very important issue with DB’s is handicap accessibility. The Americans with Disabilities Act was signed into law on July 26, 1990. Prior to this date, the Rehabilitation Act of 1973 had

requirements that federally funded public entities could not discriminate against the disabled. This law resulted in increased requirements for handicap accessibility in the enforcement of building Codes. In January 1992 the provisions of Title II of the ADA prohibiting discrimination in public services, programs or activities were put into effect. This meant that public entities (including public school districts) were required to perform alterations to remove all physical barriers "so that all programs and services are accessible to and usable by individuals with disabilities". Public entities were also required to assess their facilities and prepare a written plan addressing the removal of barriers to handicap access. Further, they had to ensure that all newly constructed facilities were handicap accessible.

Since many discovered buildings are often viewed as "minor" buildings, such as storage buildings, concessions stands, garages, etc., the need for accessibility is over-looked or thought to be unnecessary. This assumption is in most cases incorrect. Accessibility is required unless the building is a F or U occupancy, or is exempt as determined by Code or ADA. We have found all kinds of handicap accessibility problems from inappropriate level changes to non-compliant hardware, to insufficient wheelchair clearances. Often an attempt has been made to make the buildings accessible, but the details and space allocations do not conform to the required standards. We will exercise our authority to improve accessibility to these installations where we find it is warranted. We will require full accessibility in any building constructed after January 1992. Reasonable application of the accessibility requirements in effect at the time the building was constructed will be used on buildings prior to this date as long as compliance with ADA is achieved.

**Reminder:** Discovered buildings are not legal buildings. Districts assume significant risk by allowing illegal buildings to be used by staff and the public. It is strongly recommended that all illegal buildings be immediately closed until the discovered building process is completed, and Certificates of Occupancy have been received.

### **Contract Allowance for Special Inspections**

Recently we received an inquiry whether an allowance in the General Contractor's contract can be used to pay for Special Inspections and Tests. Following a review of the Building Code and discussions among our staff we have concluded that this method of funding Special Inspections and Tests is not appropriate. Building Code Section 1704 states that the owner or the design professional, as agent for the owner, shall employ the special inspectors. Special inspections and tests are professional services required by the owner and must be paid directly by the Owner or indirectly through the project design professional.

In addition, Special Tests and Inspections are required to be performed by an independent third party qualified inspector to ensure the quality of work is in accordance with the contract documents. Section 1703.1.1 sets forth the requirement that the Special Inspector performs his work objectively or independently. If the cost for inspections were a part of a construction contract, the contractor would have control of that money, third party independence is lost and a conflict of interest is likely. The code requires the owner to employ the special inspectors to ensure that an independent, qualified professional performs the tests and inspections on behalf of the owner. The owner must pay this cost directly or indirectly through the project design professional. We will not permit allowances designated for this purpose to be included in the construction contract.

Please send any general comments, requests, or questions to Curt Miller at [hmiller2@mail.nysed.gov](mailto:hmiller2@mail.nysed.gov) or 518-474-3906.

An Index of our Newsletters is available on our website at  
<http://www.emsc.nysed.gov/facplan/NewsLetters.htm>