



Cabot Public Schools

OFFICE OF THE SUPERINTENDENT

W. Tony Thurman, Ed.D.

September 12, 2013

Arkansas Department of Education
Office of General Counsel
Four Capitol Mall
Little Rock, AR 72201

To Whom It May Concern:

Please accept this letter from the Cabot School District as a request for an appeal and hearing with the Commission for Arkansas Public School Academic Facilities and Transportation regarding the Review Board's decision on the Ward Central Elementary dining expansion.

An explanation of our case is enclosed as support for this appeal. Please let me know if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Dr. T. Thurman", with a long horizontal line extending to the right.

Dr. Tony Thurman
Superintendent

cc: Charles Stein, Arkansas Division of Public School Academic Facilities and Transportation

Enclosure

**RECEIVED
ATTORNEY'S OFFICE**

SEP 16 2013

**DEPARTMENT OF EDUCATION
GENERAL DIVISION**



CABOT PUBLIC SCHOOLS
602 NORTH LINCOLN STREET • CABOT, ARKANSAS 72023 • (501) 843-3363

**BEFORE THE COMMISSION FOR PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION**

*In the matter of the Appeal of the Cabot School District
Proposed Partnership Project Number 1314-4304-003*

**APPEAL OF THE FINAL DETERMINATION OF THE ACADEMIC
FACILITIES REVIEW BOARD**

The Cabot School District respectfully requests that Commission for Public School Academic Facilities and Transportation grant its application for an Elementary School dining facility under the Arkansas Public School Academic Facilities Funding Act.

FACTS OF THE CASE

The Cabot School District ("Cabot") submitted, pursuant to the Academic Facilities Partnership Program for the 2013-2015 funding cycle, project number 1314-4304-003 for approval of a needed cafeteria expansion at its' Ward Elementary School campus. The cafeteria space at Ward Elementary School is insufficient and undersized pursuant to the Arkansas Division of Public School Academic Facilities and Transportation's ("Division") Program-Of-Requirements ("POR").

Ward Elementary School has a current enrollment of approximately 570 students. The School has undergone various expansion projects to accommodate the steady rise in student enrollment. However, while the classroom space has grown appropriately, the dining space has not. No student dining expansion has ever occurred at Ward Elementary School. Sufficient dining facilities are way past due and sorely needed.

Corey Williams
President

Mark Russell
Vice President

Donna Nash
Secretary

Wendel Msall

Dean Martin

Brian Evans

Ricky Hill

The current dining facility is only 3,100 square feet, whereby the Division's POR calls for 4,255 square feet. The proposed construction project would increase the cafeteria to an acceptable and usable 4,800 square feet. Cabot is being very cost-conscious and is not over-building with this proposed project.

It is without argument that this single-purpose space is currently lacking under Division standards and that under the current rules, more specifically, Section 4.03.1 of the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program ("Rules"), Cabot is indeed entitled to partnership funding. To put it bluntly, Cabot's dining hall space at Ward Elementary is undersized and taxing upon its workers, teachers and students. These cafeteria deficiencies force the Ward Elementary School administrators to compensate by scheduling six (6) different lunch serving periods, which run from 10:30 a.m. until 1:00 p.m. The efficiency of the academic workplace at Ward Elementary School is being severely hampered by the limiting factors currently in place at its dining facility. The cafeteria at Ward Elementary School does not currently meet the Division's regulations with regards to single-purpose dining facilities.

For the 2013-2015 funding cycle, the Division considered a total of seven (7) separate applications specifically earmarked as cafeteria/dining hall projects. Of those seven (7), all but Cabot's was approved. From our inquiries and research, we have been unable to find any other similar single-purpose dining-hall project denied for this funding cycle.

Cabot's application indicated the expected dining hall expansion cost to be approximately \$375,000. The partnership share for this project would be but \$225,000,

an amount far less than if Cabot had proposed a brand new, from the ground up, conforming, cafeteria project. On April 24, 2013, the Division disapproved the project on the sole basis of "no suitability need."

Cabot was notified of the adverse determination of the proposed project, and within the appropriate time-frame did appeal said determination to the Academic Facilities Review Board ("Review Board").

A hearing was held in front of only three of the five member Review Board, and on August 16, 2013, the three members of the Review Board who participated in the hearing upheld the Division's determination.

The Cabot School District did receive the Review Board's final determination on or about August 21, 2013. The Cabot School District is appealing that determination to the Commission for Public School Academic Facilities and Transportation ("Commission") pursuant to 7.00 Appeal Process: Commission Review of Decisions of the Review Board. Furthermore, Cabot does hereby indicate its request for a formal hearing before the Commission.

ARGUMENT

The Division's determination is not supported by substantial evidence and is outside the legal authority vested in the Division.

Of the seven (7) different dining facility specific projects submitted to the Academic Facilities Partnership Program ("Program") for review, all but one (1) was approved. That one was Cabot. The single cafeteria/dining hall identified project rejected by the Division is the project being considered herein. Consequently, there are

no similarly situated Districts that would be impacted by approving Cabot's application for partnership funding.

There is no argument that the Ward Elementary School cafeteria is insufficient for the current student population at the School; and there is no argument that the Ward Elementary School cafeteria does not meet the current POR regulations. The dining hall at Ward Elementary School must be expanded in order to add to the efficiency of the academic workplace of Ward Elementary.

There is also no argument that the current Division standards would provide for partnership funding for a proposed new cafeteria project virtually identical to that which has been presented herein. Inexplicably, Cabot could have torn down the existing facility and proposed a project costing many times that which is currently before the Commission and such a proposed project would meet all of the current requirements needed for partnership funding approval.

The finding of "no suitability need" is contrary to current POR standards, and contrary to common sense. When everyone can agree that the project is needed, that the current facility is inadequate, and that the proposed expansion will improve Ward Elementary School's state of condition and provide for better academic efficiency, shouldn't these goals be met with the help of partnership funding?

Section 5.00 Division's Evaluation and Approval of School District's Application, sets forth the regulations and criteria used to evaluate a school district's application for partnership program participation. Because of the improper expansive interpretation of this applicable section, the Division's previous determination is not

supported by the proper evidence and is outside its legal authority pursuant to these regulations.

As the sole reason for denial is “no suitability need”, Cabot’s submission is deemed proper and the rules and regulations of Section 4.00 are satisfied without the need for further review. Therefore, this appeal is analyzed under Section 5.00 *et. al.*

The “suitability” requirement set forth within the applicable regulations and requirements of Section 5.00, specifically reference Section 3.32 of the, then applicable, Rules. The first sentence of Section 3.32 indicates the “suitability” process is to be undertaken to determine whether **any existing academic facility** is eligible. The Ward Elementary School cafeteria project is a single-purpose space that is **non-academic** in nature. Therefore, “no suitability need” is **not** a proper basis for denial in this particular case.

Should Cabot have withdrawn its application and re-submitted the identical construction project for partnership funding, or had Cabot simply proposed to abandon its current facility and build an entirely new cafeteria building, this project would be approved pursuant to the new Section 4.03.1. In accordance with today’s standards, Cabot would not be required to prove suitability for a project involving student dining and kitchen facilities. In accordance with today’s standards, Cabot would be granted Partnership Program funding for a new cafeteria project submission.

It is not without precedence that the Commission could apply the law as it currently exists to Cabot’s submission. The United States Supreme Court has consistently held that the law which is in effect **at the time a decision is rendered** is the correct law to be applied. (Please see, *Langraf v. USI Film Products*, 511 U.S. 244

(1994) and *Bradley v. School Board of City of Richmond*, 416 U.S. 696 (1974)) As there is not a single like-project that has been denied partnership funding during this funding cycle, there is no possibility of injustice or prejudice against any existing, or potential, party or District.

This Commission is being asked to decide whether Cabot is entitled to Partnership Program funding. Today's "law" would dictate that Cabot's project application would be approved and that Cabot receives its deserved share of program funding.

CONCLUSION

The Divisions' determination that Cabot's single-purpose dining hall project should be denied partnership funding is not proper. The evidence shows that Ward Elementary is in dire need of an expanded dining facility. And for whatever reason, this Elementary School project is the only known proposed single-purpose, non-academic, cafeteria project denied during this funding cycle. There is an obvious suitable need for the Cabot project, and there is no similarly situated project or district that would be impacted by the approval of this project.

Respectfully submitted,

CABOT SCHOOL DISTRICT

By: 

Dr. Tony Thurman
Superintendent
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