

Legal Challenges for School Districts

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Update: A new case makes it way to
the U.S. Supreme Court

B.L. v. Mahanoy Area School
District



Mahanoy Area School District v. B.L.

A few thoughts:

- disruption?
- violation of school rule?
 - is the rule reasonable?
- Do schools have any role in “inculcating fundamental values” when students are off campus?



Taylor Bell v. Itawamba County School Board, 799 F.3d 379 (5th Cir. 2015)

- School did not violate student’s First Amendment rights by punishing him for creating a rap song off-campus without school resources that did not create a substantial disruption.



To Respond or Not to Respond

- Courts are split regarding off-campus conduct.
- Suggestions:
 - Document the material and substantial disruption
 - Report serious issues to administrators / law enforcement / counselors.
 - Contact on-line medium directly.
 - Counsel with student(s) involved.
 - Involve parents.



American Rescue Plan Act of 2021 FFCRA

- Extended from April 1, 2021 until September 30, 2021
- Still voluntary
- Leave days are reset (days utilized previously don't count)



American Rescue Plan Act of 2021 FFCRA

– EPSL

- Qualifying reasons expanded to include
 - Getting the vaccine
 - Suffering from side effects of the vaccine
 - Seeking or awaiting results of a COVID-19 test when employee has been exposed or employer requested a test
- Regular rate of pay up to \$511 per day for these reasons along with original reasons
- 2/3 regular rate of pay capped at \$200 per day for remaining reasons



American Rescue Plan Act of 2021 FFCRA

– EFMLA

- Qualifying reasons expanded to include
 - Any of the EPSL reasons
 - Getting the vaccine
 - Suffering from side effects of the vaccine
 - Seeking or awaiting results of a COVID-19 test when employee has been exposed or employer requested a test
- 2/3 regular rate of pay capped at \$200 per day
- Employer can choose to make the first two weeks paid resulting in a total of 12 weeks paid



Private Prayer By Football Coach After Football Game

- Ninth Circuit Court of Appeals
- School district can ban football coach from taking a knee in brief, personal prayer after football games



Transgender Student Issues

- President Biden's Executive Order
- SB 2536
 - Designated teams and sports according to biological sex
 - Approximately 20 other states have pending similar legislation
- Miscellaneous issues



Transgender Student Issues

- Miscellaneous issues
 - Attire
 - Name
 - Activities such as Homecoming Court
 - Restrooms/locker rooms



Medical Marijuana

- MSDH in process of developing regulations
- Law does not require accommodation for the use of medical marijuana or require any onsite use of medical marijuana in any public or private ...place of education or employment
- Many states have already addressed some of the issues regarding the impact on public schools



Miscellaneous Issues

- Should we have prom this year?
- What should graduation look like?
- Should we open our facilities to public usage?
- Can we require employees to be vaccinated?
- Can we ask an employee if they have been vaccinated?



COVID-19 Supplemental Funding and Facilities Improvement Opportunities



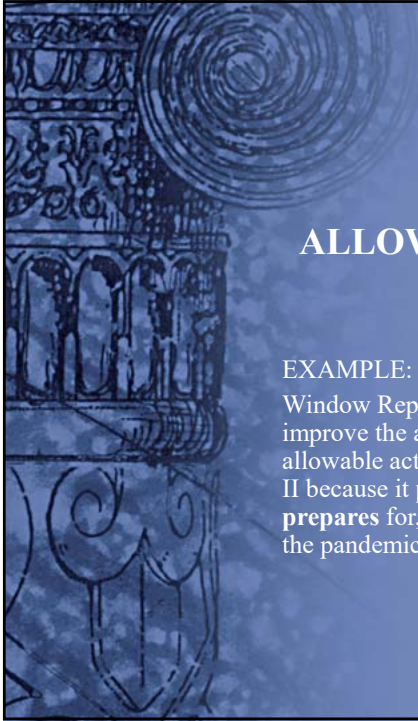
ESSER II

- The reason for the improvement or repair must be to
 - **prevent,**
 - **prepare for,** or
 - **respond** to coronavirus
- Procurement processes used by the district **must meet federal requirements.**



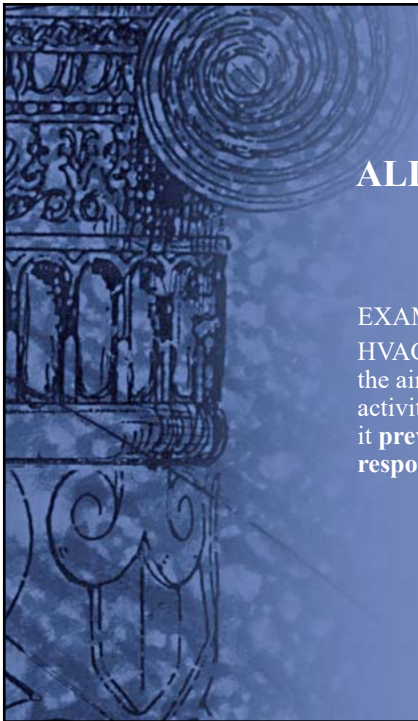
ALLOWABLE CONSTRUCTION ACTIVITIES

- Inspection
- Testing
- HVAC
 - Filtering / Purification
 - Other Cleaning
 - Fans
 - Control Systems
 - UV Lighting
- Window & Door Repair and Replacement
- Bathroom Renovations
- Architect/Engineer's Compensation



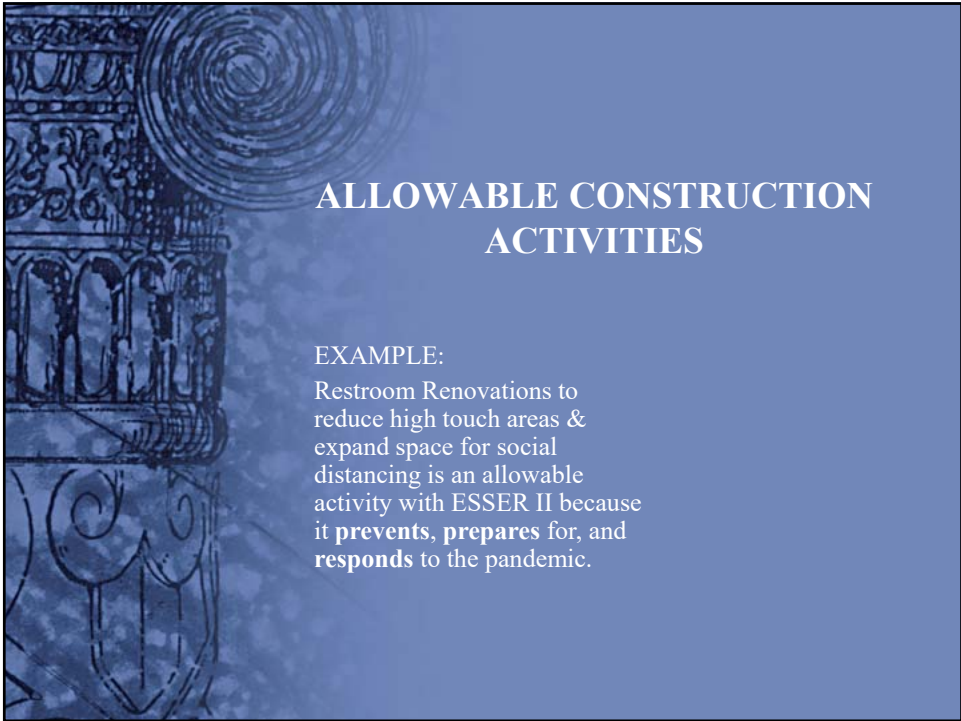
ALLOWABLE CONSTRUCTION ACTIVITIES

EXAMPLE:
Window Replacements to improve the air quality is an allowable activity with ESSER II because it **prevents**, **prepares for**, and **responds to** the pandemic.



ALLOWABLE CONSTRUCTION ACTIVITIES


EXAMPLE:
HVAC replacement to improve the air quality is an allowable activity with ESSER II because it **prevents**, **prepares for**, and **responds to** the pandemic.




ALLOWABLE CONSTRUCTION ACTIVITIES


EXAMPLE:
 Restroom Renovations to reduce high touch areas & expand space for social distancing is an allowable activity with ESSER II because it **prevents, prepares** for, and **responds** to the pandemic.

POTENTIALLY ALLOWED



Renovating an Existing Building to expand classroom spaces / Classroom Additions


 = YES


 = YES

IF the project addresses how the LEA Prevents, Prepares for, and Responds to the pandemic.

POTENTIALLY ALLOWED

Construction Already Underway



PROJECT IN CONSTRUCTION
Started BEFORE
March 13, 2020

= NO

ESSER MODS
Started AFTER
March 13, 2020

= YES

IF the project addresses how the LEA Prevents, Prepares for, and Responds to the pandemic.



POTENTIALLY ALLOWED

New School Sites

- New Site Cost Evaluation must be done prior to the close of the grant period.
- Must be submitted and approved by MS Board of Education



BAD (demo)



NEW

= **YES**, **IF** the project addresses how the LEA Prevents, Prepares for, and Responds to the pandemic and must be completed BEFORE September 30, 2023.



NOT ALLOWED



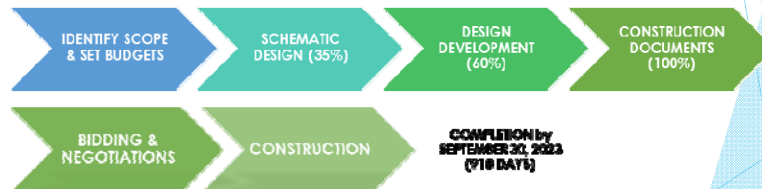
- Exterior Doors Card System & Electromagnetic Locks
- Normal Maintenance & Repair Projects
 - EX: Roofing Repair and Replacements
- Standalone Lighting Projects
- Standalone Communication Systems Projects

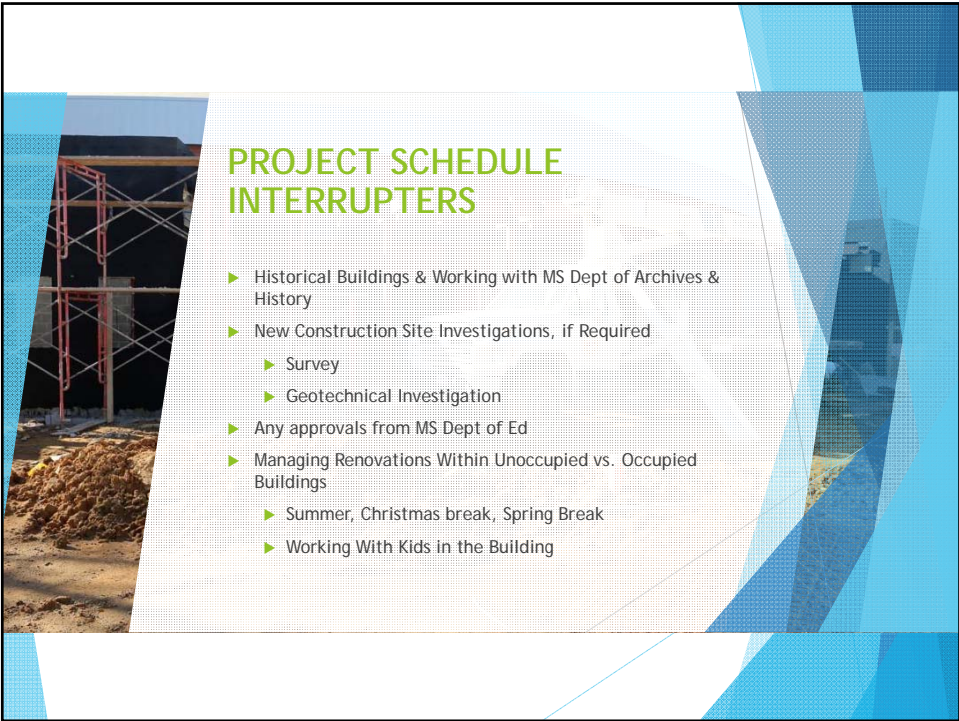
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JBHM
Architecture

PROJECT SCHEDULE

- Planning or Repair must have occurred on or after **March 13, 2020**
- ESSER II Application due by **April 30, 2021** and includes:
 - Project Description, ESSER Relation, Estimated Cost, and Start & Completion Dates
- All Projects to be Completed by **September 30, 2023**





PROJECT SCHEDULE INTERRUPTERS

- ▶ Historical Buildings & Working with MS Dept of Archives & History
- ▶ New Construction Site Investigations, if Required
 - ▶ Survey
 - ▶ Geotechnical Investigation
- ▶ Any approvals from MS Dept of Ed
- ▶ Managing Renovations Within Unoccupied vs. Occupied Buildings
 - ▶ Summer, Christmas break, Spring Break
 - ▶ Working With Kids in the Building

ESSER III and BEYOND.....

Facility Analysis

- ◆ Facility Maintenance Planning
- ◆ Security / ADA / Code **Status**


Enrollment

- ◆ Post Virus Enrollment and Staff Changes/Additions


Educational Development Analysis

- ◆ Program Planning for Space Needs





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JBHM
Architecture

ESSER II Construction Approval Form



Form must be completed with all boxes checked and signed by the LEA's superintendent



Any revisions to the construction project will require a revised ESSER II Construction Approval Form



SAMPLE

QBS Request for Architect Qualifications

(Federal/State Qualifications Based on Selection)

NOT REQUIRED IF USING LOCAL FUNDS

SCHOOL LOGO / LETTERHEAD / INFO

DATE

YOUR SCHOOL DISTRICT is seeking informal Requests for Qualifications (RFQ) for architectural/engineering design and bid services related to the following project:

LIST PROJECTS HERE, include a short description.

The federally funded project must be completed on or before September 30, 2023.

Please include the following information in your proposal:

- Qualifications of member(s) in the area of the project described above;
- Qualifications of any sub-consultant, not members of your firm, who will be utilized as a consultant in the project described above;
- Prior involvement or experience with federally-funded projects;
- Certification that your firm or individual members of your firm have not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistant programs or activities.

The selected firm or individual will be required to provide proof of insurance, Form W-9 IRS Form, and certify other federal and state requirements upon execution of a contractual agreement.

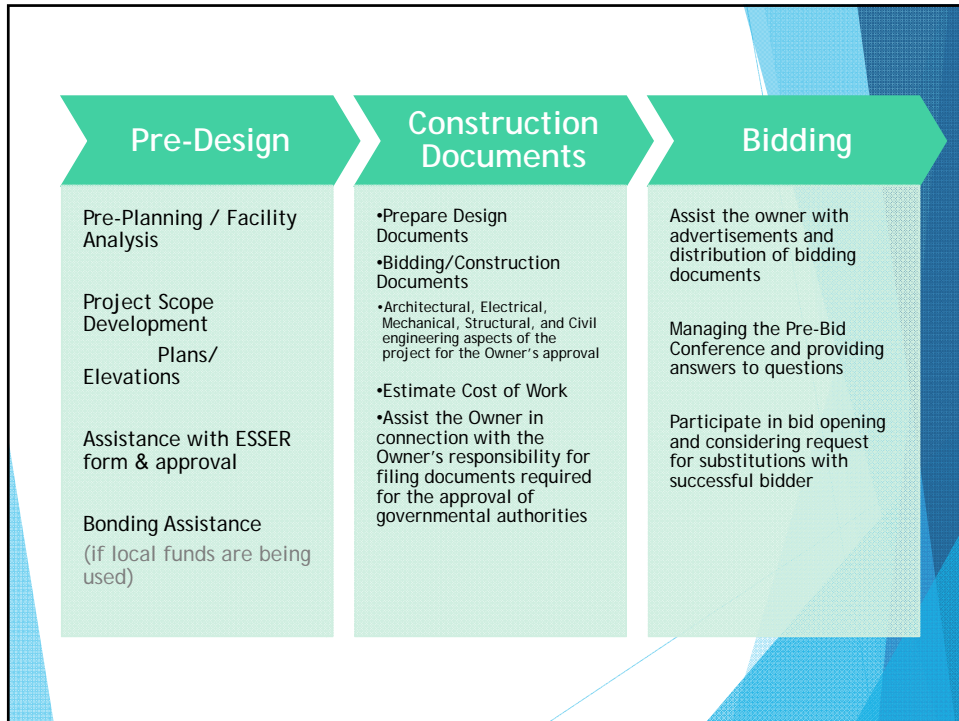
YOUR SCHOOL DISTRICT reserves the right to evaluate the qualifications based on the proposal that is most advantageous to **YOUR SCHOOL DISTRICT**. **YOUR SCHOOL DISTRICT** also reserves the right to reject any and all Request for Qualifications (RFQ).

For Consideration by the **YOUR SCHOOL DISTRICT**, a Request for Qualifications (RFQ) should be received by mail or hand delivery no later than April 11, 2023 by 2:00pm.

Sincerely,

YOUR NAME
Superintendent of **YOUR SCHOOL DISTRICT**





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