



## Bureau Brief



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### Facilities Distress

The state of Arkansas is responsible for ensuring adequate educational facilities for student learning. In his 2001 order in the long-running Lakeview lawsuit, Chancery Court Judge Collins Killgore wrote, "Buildings properly equipped and suitable for instruction are critical for education and must be provided ...

When a local district fails or has failed because of the inequitable effects of the funding formula, or for some other reason, to build or maintain adequate facilities, or mismanages its resources for its daily operations, the State cannot abdicate its Constitutional responsibility and blame 'local control.'" One way the state asserts that responsibility is through its facilities distress program.

**Facilities distress** is the state's program for identifying, correcting, or sanctioning a public school or school district that is unable to maintain the health and safety of its academic facilities. Facilities distress is one of the state's three distress programs. (The other two are academic and fiscal distress.) The **Arkansas Division of Public School Academic Facilities and Transportation** (the Division) identifies districts it believes should be classified as being in facilities distress, and the **Commission for Arkansas Public School Academic Facilities and Transportation** (the Commission) makes the final determination. The Commission is made up of three members: the Education Commissioner, the Director of the Department of Finance and Administration and the President of the Arkansas Development Authority.

#### Designation Criteria

Act 1426 of 2005 created the facilities distress program to provide state oversight and assistance to school districts failing to maintain their academic facilities [A.C.A. § 6-21-811(a)(b)]. The statute requires the Commission to identify schools or districts in facilities distress for material failures to:

- Properly maintain academic facilities.
- Provide timely and accurate facilities master plans to the Division. (State statute requires each district to develop a six-year districtwide facilities master plan based on the Division's facilities needs priority list and the district's needs. A.C.A. §6-21-806)
- Comply with state laws regarding purchasing, bid requirements or school construction.
- Plan and progress satisfactorily toward accomplishing priorities set by the Division and the district's master plan.

Schools or districts may also be designated in facilities distress for defaulting on district debt obligations or for material violations of building codes or fire, health, or safety codes.

In July 2008, Hermitage School District became the first and only district to be placed in facilities distress. The Commission placed Hermitage in facilities distress due to building code and procurement law violations for a renovation project. The district was removed from the distress list in September 2009.

#### Requirements

After a school district has been designated as being in facilities distress, the district must submit a supplemental facilities improvement plan (FIP) to be approved by the Division. This plan must identify specific interventions and acts the district will take to correct deficient areas. It also describes a timeframe for all of the deficiencies to be corrected. The Division may provide the district technical assistance and recommendations.

If a district needs immediate repairs, renovations or construction, the Division may provide a loan to the district. The loan must be repaid from any available funds that are not required to provide an adequate education.

The Division, with the approval of the Commission, may also:

- Require the district to conduct a special election for a millage increase to support facilities construction or repair.
- Require the superintendent to step down and appoint a replacement.
- Suspend or remove school board members.
- Assume authority over a district in facilities distress.
- Prohibit the district from spending money on any activity that is not part of providing an adequate education.
- Petition the State Board of Education to consolidate, annex, reconstitute or dissolve the district.

During this time, students may transfer to another district that is not in facilities distress (A.C.A §6-18-206).

#### Removal of Designation

A district can be removed from facilities distress only after the Division certifies that the district has corrected all facilities distress criteria and the Commission has approved. If a district is not removed from facilities distress within five years, the State Board of Education is *required* to annex, consolidate or reconstitute the district.

In 2013, the General Assembly passed Act 600, which extended the time districts could remain in facilities distress from two years to five. The law allows the State Board to grant additional time if the district is unable to be removed from academic distress due to conditions beyond its control.